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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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KATHLEEN GARCIA,
Plaintiff,

v.

STANDARD INSURANCE COMPANY,
and DOES 1 to 100,

Defendants.

CIV. NO. 2:13-02164 WBS CKD
MEMORANDUM AND ORDER

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Plaintiff Kathleen Garcia was denied benefits by her disability insurer Standard Insurance Company ("Standard"). In this action, originally filed in the Sacramento County Superior Court, plaintiff asserts claims against Standard for breach of contract and breach of the duty of good faith and fair dealing under California law. Standard timely removed the action to this court based on diversity of citizenship. Presently before the court is Standard's motion for partial summary judgment pursuant to Federal Rule of Civil Procedure 56.

1 I. Factual and Procedural Background

2 Plaintiff was employed as a dental hygienist. At the
3 age of 56, she took out a policy for long-term disability
4 insurance with Standard which entitled her to a monthly payment
5 of \$3,800 per month if she became disabled such that she could
6 not perform her job duties.

7 During a lunchtime walk on November 2, 2010, plaintiff
8 stumbled and injured her left hand. Claiming she was unable to
9 return to work, plaintiff applied for disability benefits.
10 Standard preliminarily approved plaintiff's claim for long-term
11 benefits under a reservation of rights. However, Standard
12 ultimately denied plaintiff's claim. Plaintiff has not returned
13 to her job as a dental hygienist, and she states she continues to
14 experience pain that radiates up the edge of her hand.

15 In its pending motion, Standard seeks summary judgment
16 only on plaintiff's good faith and fair dealing claim.¹ (See
17 Def.'s Mot. (Docket No. 22).)

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19 ¹ Although Standard does not seek summary judgment on
20 plaintiff's contract claim, it argues that plaintiff is
21 ineligible for her Supplemental Social Insurance Rider of an
22 additional monthly amount of up to \$1,200 because she failed to
23 apply for social security disability income ("SSDI"), which would
24 offset Standard's obligation. (Def.'s Mem. at 37.)

25 The court finds Standard's position on the \$1,200
26 supplemental payment confounding. Standard informed plaintiff it
27 would not be approving her claim. (See Ihnen Decl. Ex. A at 149,
28 173.) Thereafter, there would appear to be no reason for
29 plaintiff to complete additional paperwork to qualify for the
30 supplemental income since there would be nothing to offset.
31 After hearing oral argument it is still not clear to the court
32 what Standard wants plaintiff or the court to do. The court will
33 accordingly deny Standard's motion for partial summary judgment
34 on plaintiff's breach of contract claim.

1 II. Discussion

2 Standard argues that the court should apply the
3 doctrine of judicial estoppel to preclude plaintiff's tort claim
4 and limit her contract claim to \$50,000, because she failed to
5 disclose the tort claim in an earlier bankruptcy proceeding.
6 "Judicial estoppel is an equitable doctrine that precludes a
7 party from gaining an advantage by asserting one position, and
8 then later seeking an advantage by taking a clearly inconsistent
9 position." Hamilton v. State Farm Fire & Cas. Co., 270 F.3d 778,
10 782 (9th Cir. 2001) (citing Rissetto v. Plumbers & Steamfitters
11 Local 343, 94 F.3d 597, 600 (9th Cir. 1996)). It is invoked by a
12 court at its discretion. New Hampshire v. Maine, 532 U.S. 742,
13 750 (2001).

14 "In the bankruptcy context, the federal courts have
15 developed a basic default rule: If a plaintiff-debtor omits a
16 pending (or soon-to-be-filed) lawsuit from the bankruptcy
17 schedules and obtains a discharge (or plan confirmation),
18 judicial estoppel bars the action." Ah Quin v. Cnty. of Kauai
19 Dep't of Transp., 733 F.3d 267, 271 (9th Cir. 2013); see also
20 Payless Wholesale Distribs., Inc. v. Alberto Culver (P.R.) Inc.,
21 989 F.2d 570, 571 (1st Cir. 1993) ("Conceal your claims; get rid
22 of your creditors on the cheap, and start over with a bundle of
23 rights. This is a palpable fraud that the court will not
24 tolerate, even passively."). The Ninth Circuit has thus applied
25 judicial estoppel "when the debtor has knowledge of enough facts
26 to know that a potential cause of action exists during the
27 pendency of the bankruptcy, but fails to amend his schedules or
28 disclosure statements to identify the cause of action as a

1 contingent asset." Hamilton, 270 F.3d at 784.

2 Application of the doctrine is meant to ensure "the
3 orderly administration of justice and regard for the dignity of
4 judicial proceedings" and to "protect a litigant playing fast and
5 loose with the courts." Id. at 782 (internal quotation marks and
6 citation omitted). "[T]he integrity of the bankruptcy system
7 depends on full and honest disclosure by debtors of all their
8 assets." Hamilton, 270 F.3d at 785 (citing In re Coastal Plains,
9 179 F.3d 197, 208 (5th Cir. 1999)). The interests of the
10 creditors and the courts "are impaired when the disclosure
11 provided by the debtor is incomplete." Id.

12 In her chapter 7 bankruptcy filing, plaintiff disclosed
13 a claim against Standard for \$50,000 which she represented was
14 "exempt" under California Code of Civil Procedure Section 704.130
15 as a mere claim for recuperating disability benefits. (Id. at
16 256, 258); see Cal. Code Civ. P. § 704.130 ("Benefits from a
17 disability or health insurance policy or program are exempt
18 without making a claim."). Then, immediately after her debt was
19 discharged, plaintiff filed this action which included millions
20 of dollars in damages for a non-exempt tort claim.² (See Nelson
21

22 ² In her "Statement of Damages," filed in conjunction
23 with her state-court lawsuit against Standard on September 10,
24 2013, plaintiff valued her damages at a total of over \$3 million,
25 including \$1 million in punitive damages pursuant to her tort
26 claim. (Notice of Removal at 136 (Docket No. 1).) In her First
27 Amended Complaint ("FAC"), plaintiff does not seek a set dollar
28 amount but prays for damages for the failure to provide full
benefits under the policy, including interest and other economic
and consequential damages; general damages for emotional
distress; punitive and exemplary damages; future special and
general damages for breach of the duty of good faith and fair
dealing; and attorney's fees. (FAC "Prayer for Relief" ¶¶ 1-8.)

1 Decl. Ex. J at 248 (docket indicating debt was discharged August
2 15, 2013); Notice of Removal Ex. A at 15 (plaintiff's state court
3 Complaint filed on August 15, 2013)).

4 This is not a case where plaintiff merely undervalued
5 her claim in the bankruptcy filing. See Whitworth v. Nat'l
6 Enter. Sys, Inc., Civ. No. 3:08-00968, 2009 WL 2948529, at *4 (D.
7 Or. Sept. 9, 2009) (holding that the plaintiff did not take a
8 "clearly inconsistent" position with his prayer for damages of
9 over \$15,000 in the current action when his previous valuation
10 was \$1,000 in his bankruptcy filings). Plaintiff's
11 representation of her claim as one that was "exempt" because it
12 was limited to disability benefits was clearly inconsistent with
13 her Complaint in this action for multi-million dollar damages in
14 tort. See New Hampshire, 532 U.S. at 750. This representation,
15 accepted by the bankruptcy court, gave plaintiff an unfair
16 advantage by keeping potential proceeds from a tort claim from
17 her creditors. See id.

18 Moreover, the court need not make a further inquiry
19 into whether plaintiff's concealment of her tort claim was
20 intentional. The Supreme Court has recognized that "it may be
21 appropriate to resist application of judicial estoppel when a
22 party's prior position was based on inadvertence or mistake."
23 Id. at 753. However, the Ninth Circuit has, consistent with
24 other circuits, interpreted New Hampshire narrowly and held that
25 that in most circumstances, courts should "apply a presumption of
26 deliberate manipulation."³ Ah Quin, 733 F.3d at 273. Here,

27 ³ In Ah Quin, the Ninth Circuit carved out an exception
28 to this narrow interpretation, holding that "where, as here, the

1 there are no circumstances present to rebut this presumption.
2 Plaintiff made no effort to correct her misrepresentation, even
3 though it appears she was represented by counsel during her
4 bankruptcy proceeding. Plaintiff is therefore estopped from
5 bringing her good faith and fair dealing claim.

6 IT IS THEREFORE ORDERED that defendant's motion for
7 summary judgment be, and the same hereby is, GRANTED with respect
8 to plaintiff's good faith and fair dealing claim, and DENIED with
9 respect to plaintiff's contract claim, regarding plaintiff's
10 eligibility for supplemental social insurance benefits.

11 Dated: April 21, 2015

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13 **WILLIAM B. SHUBB**
14 **UNITED STATES DISTRICT JUDGE**

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23 plaintiff-debtor reopens bankruptcy proceedings, corrects her
24 initial error, and allows the bankruptcy court to re-process the
25 bankruptcy with the full and correct information, a presumption
26 of deceit no longer comports with New Hampshire." In those
27 circumstances, courts are to inquire "into whether the
28 plaintiff's bankruptcy filing was, in fact, inadvertent or
mistaken, as those terms are commonly understood." Id. at 276.
This exception does not apply to facts presently before the
court, because plaintiff did not reopen her bankruptcy
proceedings to amend her disclosures.