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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RENEE' L. MARTIN,

Plaintiff,

v.

AMERICAN AUTOMOBILE
ASSOCIATION OF NORTHERN
CALIFORNIA NEVADA AND UTAH, et
al.,

Defendants.

No. 2:15-cv-2496-TLN-EFB PS

FINDINGS AND RECOMMENDATIONS

This matter is before the court on defendant CSAA Insurance Exchange's¹ motion to dismiss plaintiff's complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.² ECF No. 6. For the reasons explained below, defendant's motion must be granted.³

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¹ Plaintiff erroneously sues CSAA Insurance Exchange as "American Automobile Association of Northern California Nevada and Utah[,] AAA Northern California Nevada and Utah Insurance Exchange[,] CSAA Insurance Exchange."

² This case, in which plaintiff is proceeding pro se, is before the undersigned pursuant to 28 U.S.C. § 636(b)(1) and Eastern District of California Local Rule 302(c)(21).

³ The court has preciously determined that oral argument would not materially assist in the resolution of the pending motions and the matter was ordered submitted on the briefs. *See* E.D. Cal. L.R. 230(g); ECF No. 15.

1 I. Factual Allegations

2 The complaint alleges that plaintiff is the owner of real property located at 2428 Covered
3 Wagon Circle, Elverta, California (the “subject property”), which she used as a rental property.
4 Compl. (ECF No. 1) 3-4. From 2003 to present, the subject property was insured by a rental
5 insurance policy that plaintiff maintained with defendant. *Id.* at 5-6.

6 Plaintiff visited the property on December 2, 2013, and discovered that the property was
7 in poor condition. *Id.* at 7. Plaintiff believes that the property was vandalized by the prior
8 tenants, who vacated the property on that date. *Id.* The damage included carpets that were urine
9 saturated and had burnt iron marks and “large red blotches throughout”; cuts in the floor; broken
10 doors, appliances, and fixtures; and damage to drywall and exterior framing. *Id.* at 7. Plaintiff
11 allegedly submitted a claim with defendant under her insurance “policy to restore the property
12 back to the condition before it was vandalized, damaged or destroyed.” *Id.* Defendant paid
13 plaintiff \$7,812.41 to cover damage to the property and approximately \$6,125.00 for loss of rent.
14 *Id.* at 8. However, plaintiff claims that defendant has failed to pay an addition \$34,689.59 for
15 “work that needs to be done” and \$22,614 for loss of rent. *Id.* Plaintiff further alleges that
16 defendant’s refusal “to pay the claim adequately” was “racially motivated because she is a Black
17 female.” *Id.* at 9 (internal quotations omitted).

18 II. Rule 12(b)(6) Standard

19 To survive dismissal for failure to state a claim pursuant to Rule 12(b)(6), a complaint
20 must contain more than a “formulaic recitation of the elements of a cause of action”; it must
21 contain factual allegations sufficient to “raise a right to relief above the speculative level.” *Bell*
22 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading must contain something more . .
23 . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of
24 action.” *Id.* (quoting 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235-
25 236 (3d ed. 2004)). “[A] complaint must contain sufficient factual matter, accepted as true, to
26 ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
27 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when plaintiff pleads factual
28 content that allows the court to draw the reasonable inference that the defendant is liable for the

1 misconduct alleged.” *Id.* Dismissal is appropriate based either on the lack of cognizable legal
2 theories or the lack of pleading sufficient facts to support cognizable legal theories. *Balistreri v.*
3 *Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

4 In considering a motion to dismiss, the court must accept as true the allegations of the
5 complaint in question, *Hospital Bldg. Co. v. Rex Hosp. Trs.*, 425 U.S. 738, 740 (1976), construe
6 the pleading in the light most favorable to the party opposing the motion, and resolve all doubts in
7 the pleader’s favor. *Jenkins v. McKeithem*, 395 U.S. 411, 421, *reh’g denied*, 396 U.S. 869
8 (1969). The court will “presume that general allegations embrace those specific facts that are
9 necessary to support the claim.” *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249, 256
10 (1994) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

11 Pro se pleadings are held to a less stringent standard than those drafted by lawyers.
12 *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir.
13 1985). The Ninth Circuit has held that the less stringent standard for pro se parties is now higher
14 in light of *Iqbal* and *Twombly*, but the court still continues to construe pro se filings liberally.
15 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). However, the court’s liberal interpretation of
16 a pro se litigant’s pleading may not supply essential elements of a claim that are not pled. *Pena v.*
17 *Gardner*, 976 F.2d 469, 471 (9th Cir. 1992); *Ivey v. Bd. of Regents of Univ. of Alaska*, 673 F.2d
18 266, 268 (9th Cir. 1982). Furthermore, “[t]he court is not required to accept legal conclusions
19 cast in the form of factual allegations if those conclusions cannot reasonably be drawn from the
20 facts alleged.” *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994). Neither
21 need the court accept unreasonable inferences, or unwarranted deductions of fact. *W. Mining*
22 *Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981).

23 In deciding a Rule 12(b)(6) motion to dismiss, the court may consider facts established by
24 exhibits attached to the complaint. *Durning v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir.
25 1987). The court may also consider facts which may be judicially noticed, *Mullis v. U.S. Bankr.*
26 *Ct.*, 828 F.2d 1385, 1388 (9th Cir. 1987), and matters of public record, including pleadings,
27 orders, and other papers filed with the court, *Mack v. South Bay Beer Distribs.*, 798 F.2d 1279,
28 1282 (9th Cir. 1986).

1 III. Discussion

2 Plaintiff's complaint purports to allege four causes of action: (1) breach of contract; (2)
3 civil rights violations; (3) intentional infliction of emotional distress; and (4) punitive damages.
4 ECF No. 1 at 6-15. Defendant moves to dismiss the complaint under Rule 12(b)(6), arguing that
5 plaintiff has failed to allege sufficient facts to support each claim for relief. ECF No. 6.

6 A. Breach of Contract

7 Defendant argues that plaintiff's breach of contract claim must be dismissed because the
8 complaint fails to allege the terms of the contract that defendant allegedly breached. ECF No. 6-1
9 at 5-6.

10 To succeed on a breach of contract claim under California law, plaintiff must establish (1)
11 the existence of a contract; (2) plaintiff's performance; (3) defendant's breach of the contract; and
12 (4) damages flowing from the breach. *CDF Firefighters v. Maldonado*, 158 Cal. App. 4th 1226,
13 1239 (2008). This requires plaintiff to plead "the contract either by its terms, set out verbatim in
14 the complaint or a copy of the contract attached to the complaint and incorporated therein by
15 reference, or by its legal effect." *N. County Commc'ns Corp. v. Verizon Global Networks, Inc.*,
16 685 F. Supp. 2d 1112, 1122 (S.D. Cal. 2010) (quoting *Mckell v. Washington Mut., Inc.*, 142 Cal.
17 App. 4th 1457, 1489 (2006)). Thus, "[t]he complaint must identify the specific provision of the
18 contract allegedly breached by the defendant." *Donohue v. Apple, Inc.*, 871 F. Supp. 2d 913, 930
19 (N.D. Cal. 2012) (citation omitted).

20 Plaintiff does not allege the terms of the contract that defendant allegedly breached. The
21 complaint merely alleges that plaintiff had an insurance policy with defendant, that she filed a
22 claim under the policy, and that defendant failed to pay the amount plaintiff believes she was
23 entitled to receive. ECF No. 1 at 5-8. Plaintiff does not, however, allege any specific terms of
24 the contract that defendant breached. Plaintiff also did not append a copy of the contract to her
25 complaint.⁴

26 ⁴ Plaintiff claims that she attached as exhibit 1 to the complaint copies of policy
27 declarations setting forth the policy limits covered by the insurance policy. ECF No. 1 at 5. The
28 compliant, however, does not include an "Exhibit 1," nor do any of the appended documents
appear to be part of the insurance policy at issue. *See generally* ECF No. 1 at 17-49.

1 As plaintiff's complaint fails to allege the terms of the contract that defendant breached,
2 she fails to state a claim for breach of contract under California law. Accordingly, plaintiff's
3 breach of contract claim must be dismissed with leave to amend.

4 B. Violation of Civil Rights

5 Plaintiff complaint also alleges a claim for violation of her civil rights. ECF No. 1 at 8-
6 14. The body of the complaint does not identify the basis for plaintiff's claim for violation of her
7 civil rights. *See generally* ECF No. 1. However, the caption page cites to 42 U.S.C. §§ 1981,
8 1982, 1983, and 28 U.S.C. § 1343. *Id.* at 1. Defendant argues that this claim or claims must be
9 dismissed because plaintiff fails to allege sufficient facts to state a claim under 42 U.S.C.
10 §§ 1981, 1982, and 1983, and 28 U.S.C. § 1343 does not provide a private right of action. ECF
11 No. 6-1 at 6-8.

12 Section 1981 guarantees "all persons the right to make and enforce contracts" and
13 prohibits racial discrimination in contracting. *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d
14 1116, 1122 (9th Cir. 2008) (quoting 42 U.S.C. § 1981(a)). The statute "creates a cause of action
15 only for those discriminated against on account of their race or ethnicity." *Id.* at 1123. "To state
16 a claim under § 1981, a plaintiff must identify an impaired 'contractual relation,' by showing that
17 intentional racial discrimination prevented the creation of a contractual relationship or impaired
18 an existing contractual relationship." *Schiff v. Barrett*, 2010 WL 2803037, at *4 (E.D. Cal. July
19 14, 2010) (citing *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006)).

20 Plaintiff has failed to allege any facts that, if accepted as true, would demonstrate that
21 intentional discrimination impaired her contract with defendant. Instead, plaintiff alleges that she
22 is a black female and that defendant's conduct was "argumentative and hostile with plaintiff."
23 ECF No. 1 at 9. She further alleges that the defendant's claims adjuster was white and that this
24 individual acted with hostility towards plaintiff. *Id.* at 10. While plaintiff alleges that she is a
25 different race than the claims adjuster, and that the adjuster acted hostile, she has failed to allege
26 any facts indicating that racial discrimination impaired her contractual relationship with
27 defendant. Accordingly, plaintiff's claim under section 1981 must be dismissed with leave to
28 amend.

1 Plaintiff's complaint also fails to allege a claim for violation of 42 U.S.C. § 1982. That
2 statute provides that all citizens shall have the same right "to inherit, purchase, lease, sell, hold,
3 and convey real and personal property." 42 U.S.C. § 1982. To state a claim under section 1982,
4 a plaintiff must allege that (1) [she] is a member of a racial minority; (2) [she] applied for and was
5 qualified to rent or purchase certain property or housing; (3) [she] was rejected; and (4) the
6 housing or rental opportunity remained available thereafter. *Phifer v. Proud Parrot Motor Hotel,*
7 *Inc.*, 648 F.2d 548, 551 (9th Cir. 1980).

8 This statute is inapposite to the factual allegations in the complaint. The dispute identified
9 in the complaint concerns whether defendant paid plaintiff the amount she was purportedly
10 entitled to receive under the insurance policy she maintained with defendant. There are no
11 allegations concerning any attempt by plaintiff to rent or purchase property or housing and
12 plaintiff's fails to state claim under section 1982. Because this statute has no bearing on the
13 subject matter of this litigation, plaintiff's purported claim under section 1982 must be dismissed
14 without leave to amend. *See Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir.2000) ("Under Ninth
15 Circuit case law, district courts are only required to grant leave to amend if a complaint can
16 possibly be saved.").

17 Plaintiff complaint is also devoid of facts sufficient to state a claim under 42 U.S.C.
18 § 1983. To state a section 1983 claim, plaintiff must allege (1) that a right secured by the
19 Constitution or laws of the United States was violated, and (2) that the alleged violation was
20 committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48
21 (1988). Although plaintiff generally alleges that defendant violated her constitutional rights, she
22 fails to identify the specific constitutional provision defendant allegedly violated. More
23 significantly, plaintiff fails to allege that defendant is state actor. As plaintiff only alleges
24 conduct between private parties, her section 1983 claim must be dismissed without leave to
25 amend. *See Lopez*, 203 F.3d at 1129.

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1 Lastly, plaintiff cannot maintain a claim under 28 U.S.C. § 1343. That statute “does not
2 create a cause of action itself; it confers jurisdiction where the plaintiff otherwise has stated a
3 cause of action.” *Deleo v. Rudin*, 328 F. Supp. 2d 1106, 1114 (D. Nev. 2004). Thus, plaintiff’s
4 reference to 28 U.S.C. § 1343 fails to provide a basis for relief.

5 Accordingly, plaintiff claim for violation of her civil rights must be dismissed as set forth
6 above.

7 C. Intentional Infliction of Emotion Distress

8 Defendant argues that plaintiff fails to state a claim for intentional infliction of emotional
9 distress because the complaint fails to allege that defendant engaged in egregious or outrageous
10 conduct. ECF No. 6-1 at 9-10.

11 “In order to establish a claim for intentional infliction of emotional distress under
12 California law, [plaintiff is] required to show (1) that the defendant’s conduct was outrageous, (2)
13 that the defendant intended to cause or recklessly disregarded the probability of causing
14 emotional distress, and (3) that the plaintiff’s severe emotional suffering was (4) actually and
15 proximately caused by defendant's conduct.” *Austin v. Terhune*, 367 F.3d 1167, 1172 (9th Cir.
16 2004). “Only conduct ‘exceeding all bounds usually tolerated by a decent society, of a nature
17 which is especially calculated to cause, and does cause, mental distress’ is actionable.” *Brooks v.*
18 *United States*, 29 F. Supp. 2d 613, 617–18 (N.D. Cal. 1998).

19 The complaint is devoid of any allegations that would support a claim for intentional
20 infliction of emotional distress. Again, plaintiff has simply alleged that she had an insurance
21 policy with defendant covering the subject property and that defendant failed to pay the full
22 amount plaintiff was allegedly due for a claim made under the policy. However, “[a]n insurer’s
23 refusal to pay an insurance claim in full does not, by itself, meet the threshold of extreme and
24 outrageous conduct.” *Eastman v. Allstate Ins. Co.*, 2014 WL 5355036, at *7 (S.D. Cal. Oct. 20,
25 2012); *see also Coleman v. Republic Indem. Ins. Co. of Cal.*, 132 Cal. App. 4th 403, 417 (2005)
26 (“[D]elay or denial of insurance claims is not sufficiently outrageous to state a cause of action for
27 intentional infliction of emotional distress.”), *but see Fletcher v. W. Nat’l Life Ins. Co.*, 10 Cal.
28 App. 3d 376, 401 (1970) (“We hold, therefore, that defendants threatened and actual bad faith

1 refusals to make payments under the policy, maliciously employed by defendants in concert with
2 false and threatening communications directed to plaintiff for the purpose of causing him to
3 surrender his policy or disadvantageously settle a nonexistent dispute is essentially tortious in
4 nature and is conduct that may legally be the basis for an action for damages for intentional
5 infliction of emotional distress.”).

6 Plaintiff has failed to allege facts indicating that defendant’s conduct was outrageous or
7 extreme, and therefore her claim for intentional infliction of emotion distress must be dismissed
8 with leave to amend.

9 D. Punitive Damages

10 Plaintiff also purports to allege a cause of action for punitive damages. ECF No. 1 at 15.
11 “There is no separate cause of action for punitive damages—they are only ancillary to a valid
12 cause of action.” *Caira v. Offner*, 126 Cal. App. 4th 12, 39 n.20 (2005). As explained above,
13 plaintiff’s complaint fails to state a claim upon which relief may be granted and must therefore be
14 dismissed. Accordingly, plaintiff’s purported cause of action for punitive damages must also be
15 dismissed.⁵

16 V. Conclusion

17 Accordingly, it is hereby RECOMMENDED that:

18 1. Defendant’s motion to dismiss (ECF No. 6) be granted as follows:

19 a. Plaintiff’s claims for breach of contract, violation of 42 U.S.C. § 1981, and
20 intentional infliction of emotional distress be dismissed with leave to amend.

21 b. Plaintiff’s claims for violation of 42 U.S.C. §§ 1982, 1983, 28 U.S.C. § 1343,
22 and punitive damages be dismissed without leave to amend.

23 2. Plaintiff be granted thirty days from the date of service of any order adopting these
24 findings and recommendations to file an amended complaint as provided herein. The amended
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26 ⁵ The court notes that plaintiff is not entitled to punitive damages based on her contention
27 that defendant breached the terms of the insurance policy. *Miller v. Nat’l Am. Life Ins. Co.*, 54
28 Cal. App. 3d 331, 336 (1976) (“Punitive damages are not available in an action in California
based solely upon breach of a contractual obligation, even where the breach is intentional, willful,
or in bad faith.”).

1 complaint must bear the docket number assigned to this case and must be labeled “First Amended
2 Complaint.”

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: June 14, 2016.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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