

1 against Liberty Mutual, ECF Nos. 39 and 40, as well as UPSF's Motion to Strike 33
2 newly added paragraphs of allegations appearing in Plaintiff's First Amended Complaint
3 ("FAC"). ECF No. 36. For the reasons that follow, Liberty Mutual's Motion to Dismiss is
4 GRANTED without leave to amend, and UPSF's Motion to Strike is GRANTED without
5 prejudice.³

7 **BACKGROUND**⁴

8
9 Plaintiff's claims arise out of an August 27, 2015, collision with a car driven by
10 Defendant Doris Montesdeoca. Plaintiff was operating a loaded transport truck and
11 trailer owned by UPSF. Plaintiff claims that Montesdeoca was fighting with a male
12 passenger in the back seat when she lost control of the car and careened into the
13 divider. The car rebounded from the divider and smashed into the front passenger side
14 of Plaintiff's truck.

15 Plaintiff claims to have suffered significant back and shoulder pain as well as knee
16 damage as a result of the accident. He visited the emergency room thereafter, began a
17 course of physical therapy, and returned to work for seven weeks of "light duty" when
18 permitted to do so. At the end of the seven weeks, Plaintiff was required to return to full
19 duty, purportedly before he was healed. He had no more treatment, therapy, or
20 prescribed medication and was not re-evaluated to determine his readiness to return to
21 work.

22 According to Plaintiff, UPSF initially prepared a Workers' Compensation claim on
23 behalf of Plaintiff but did not advise him on his rights to benefits or compensation.

24 Plaintiff did not know if the forms were submitted or if his claim was processed. Plaintiff

25 ///

26 ³ Because oral argument would not be of material assistance, the Court ordered this matter
27 submitted on the briefs. E.D. Cal. Local Rule 78-230(h).

28 ⁴ The background facts and allegations in this section are derived from Plaintiff's FAC, ECF
No. 33, and the Court's prior Order, ECF No. 31.

1 learned his claim was opened and then closed in November 2015 from the “vehicle
2 owner’s insurance carrier,” not from Defendants.

3 Plaintiff filed the present action in Sacramento Superior Court on August 25,
4 2017, claiming, in part, that Defendants acted in concert to adopt an illegal pattern and
5 practice of refusing to process Workers’ Compensation claims for injured UPSF
6 employees. The case was removed to this Court on October 24, 2017. Liberty Mutual
7 filed its previous Motion to Dismiss on November 2, 2017, on the grounds that each of
8 Plaintiff’s claims against it were barred by the exclusive remedy provisions of the
9 Workers’ Compensation Act (“WCA”). This Court agreed, and on August 14, 2018,
10 granted Liberty Mutual’s Motion. August 2018 Order, ECF No. 31. However, the Court
11 granted Plaintiff leave to amend, specifically providing that “Plaintiff will be given one
12 opportunity to assert a cause of action against Liberty Mutual that is not barred by the
13 exclusivity rule.” *Id.* at 10. Plaintiff then filed his FAC on September 13, 2018, alleging
14 the following claims against Defendants Liberty Mutual and UPSF: (1) “Fraud” against
15 UPSF (Second Cause of Action); (2) “Employment Discrimination, Lack of
16 Accommodation” against UPSF (Third Cause of Action); (3) “Employment Discrimination
17 by UPS Freight Harassment and Retaliation” against UPSF (Fourth Cause of Action); (4)
18 “Violation of ADEA” against UPSF (Fifth Cause of Action); (5) “Fraud Claims” against
19 Liberty Mutual (Sixth Cause of Action); (6) “Discrimination and Retaliation Claims”
20 against Liberty Mutual (also styled as the Sixth Cause of Action); (7) “Violations of State
21 Statutes” against UPSF (Seventh Cause of Action); and (8) “Employment Discrimination
22 Under Federal Law” against UPSF (Eighth Cause of Action). The FAC also contains a
23 paragraph titled “Misrepresentation – Retaliation” by UPSF and/or Liberty Mutual, which
24 is not designated as an independent cause of action. See FAC, ECF No. 33, at 19.⁵

25 ///

26
27 ⁵ The Court notes that Plaintiff’s FAC suffers from an extensive lack of clarity, both as to the
28 various allegations and to the structure of the causes of action. For purposes of this Order, the Court
construes Plaintiff’s “Misrepresentation – Retaliation” paragraph as a separate cause of action against
Defendants.

1 Subsequently, Liberty Mutual filed its instant Motion to Dismiss the claims raised against
2 it in the FAC, and UPSF filed its current Motion to Strike.

3 4 STANDARD

5 6 A. Rule 12(b)(6): Motion to Dismiss

7 On a motion to dismiss for failure to state a claim under Federal Rule of Civil
8 Procedure 12(b)(6), all allegations of material fact must be accepted as true and
9 construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins.
10 Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) requires only “a short and plain
11 statement of the claim showing that the pleader is entitled to relief” in order to “give the
12 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Bell
13 Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41,
14 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require
15 detailed factual allegations. However, “a plaintiff’s obligation to provide the grounds of
16 his entitlement to relief requires more than labels and conclusions, and a formulaic
17 recitation of the elements of a cause of action will not do.” Id. (internal citations and
18 quotations omitted). A court is not required to accept as true a “legal conclusion
19 couched as a factual allegation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 (2009)
20 (quoting Twombly, 550 U.S. at 555). “Factual allegations must be enough to raise a right
21 to relief above the speculative level.” Twombly, 550 U.S. at 555 (citing 5 Charles Alan
22 Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating
23 that the pleading must contain something more than “a statement of facts that merely
24 creates a suspicion [of] a legally cognizable right of action.”)).

25 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket
26 assertion, of entitlement to relief.” Twombly, 550 U.S. at 556 n.3 (internal citations and
27 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard
28 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of

1 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles
2 Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough
3 facts to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . .
4 have not nudged their claims across the line from conceivable to plausible, their
5 complaint must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed
6 even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a
7 recovery is very remote and unlikely.’” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S.
8 232, 236 (1974)).

9 A court granting a motion to dismiss a complaint must then decide whether to
10 grant leave to amend. Leave to amend should be “freely given” where there is no
11 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice
12 to the opposing party by virtue of allowance of the amendment, [or] futility of the
13 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.
14 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to
15 be considered when deciding whether to grant leave to amend). Not all of these factors
16 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .
17 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,
18 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that
19 “the complaint could not be saved by any amendment.” Intri-Plex Techs. v. Crest Group,
20 Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006,
21 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir.
22 1989) (“Leave need not be granted where the amendment of the complaint . . .
23 constitutes an exercise in futility”)).

24 **B. Rule 12(f): Motion to Strike**

25 The Court may strike “from any pleading any insufficient defense or any
26 redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “[T]he
27 function of a 12(f) motion to strike is to avoid the expenditure of time and money that
28 must arise from litigating spurious issues by dispensing with those issues prior to

1 trial. . . .” Sidney-Vinsein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983).
2 Immaterial matter is that which has no essential or important relationship to the claim for
3 relief or the defenses being pleaded. Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527
4 (9th Cir. 1993), rev’d on other grounds 510 U.S. 517 (1994) (internal citations and
5 quotations omitted). Impertinent matter consists of statements that do not pertain, and
6 are not necessary, to the issues in question. Id.

8 ANALYSIS

10 A. Liberty Mutual’s Motion to Dismiss

11 In its prior Order, this Court found that Plaintiff’s claims against Liberty Mutual
12 were barred by the WCA’s exclusive jurisdiction, but granted Plaintiff leave to amend to
13 attempt to assert a cause of action not barred by the exclusivity rule. August 2018
14 Order, ECF No. 31, at 10. In response, Plaintiff filed the operative FAC, setting forth
15 largely the same claims based on only slightly modified facts. FAC, ECF No. 33, at 11-
16 21. Despite these attempted modifications, Plaintiff’s claims are still barred.

17 Although the FAC has added allegations, Plaintiff asserts essentially the same
18 claims regarding Liberty Mutual as it did originally—that it mishandled Plaintiff’s Workers’
19 Compensation claim. Plaintiff again alleges that Liberty Mutual deprived him of medical
20 care, forced him to return to work without a proper examination or evaluation, directed its
21 medical entities to falsify his medical records, concealed its failure to determine whether
22 he had continuing injuries, denied him the ability to obtain proper treatment, prohibited
23 his treating physician from providing him medical care, withheld approval to allow any
24 form of treatment, and was aware that he was being treated by underqualified medical
25 personnel. FAC at 11-21. The Court previously found that each of these allegations
26 were “collateral to or derivative of Plaintiff’s physical injury claim, which is a
27 compensable injury under the WCA.” August 2018 Order at 8.

28 ///

1 Plaintiff asserts that the issues of fraud, discrimination, retaliation, and
2 misrepresentation will not be addressed in a WCA proceeding. FAC at 19-20. However,
3 as the Court explained in its prior Order, “concealment fraud, negligent and/or intentional
4 interference, and bad faith breach of contract [] do not fall outside the risks
5 contemplated by the compensation bargain.” August 2018 Order at 9. “[I]njuries arising
6 out of and in the course of the workers’ compensation claims process fall within the
7 scope of the exclusive remedy provisions because this process is tethered to a
8 compensable injury.” Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund,
9 24 Cal. 4th 800, 815 (2001). Plaintiff’s alleged injuries arose directly from Liberty
10 Mutual’s processing of Plaintiff’s claim and therefore fall within the exclusive jurisdiction
11 of the WCA.

12 Because Plaintiff apparently cannot add any allegations against Liberty Mutual
13 that would bring these claims outside of the WCA’s exclusive purview, Liberty Mutual’s
14 Motion to Dismiss, ECF No. 39, is GRANTED and the following causes of action against
15 Liberty Mutual are DISMISSED without leave to amend: (1) “Fraud Claims Against
16 Liberty Mutual Insurance Company” (Sixth Cause of Action); (2) “Discrimination and
17 Retaliation Claims Against Liberty Mutual Insurance Company (Pre and Post Filing of
18 Complaint)” (also styled as the Sixth Cause of Action); and (3) “Misrepresentation –
19 Retaliation” against Liberty Mutual (Plaintiff’s untitled Cause of Action).⁶

20 **B. UPSF’s Motion to Strike**

21 For the first time in the FAC, Plaintiff inserts 33 new paragraphs detailing novel
22 causes of action and factual allegations against UPSF. UPSF argues that these new
23 additions should be stricken because they exceed the scope of the Court’s prior Order,
24 which only allowed Plaintiff leave to amend his claims against Liberty Mutual. Mot.
25 Strike, ECF No. 36, at 1. Indeed, UPSF is correct in that when a court grants leave to
26 amend, the extent of that right is defined by the scope of permission granted. See, e.g.,

27 ⁶ Liberty Mutual also filed Motions for More Definite Statement under Rule 12(e) and to Strike
28 under Rule 12(f). ECF Nos. 39, 40. Given the Court’s ruling on Liberty Mutual’s Motion to Dismiss, these
additional motions are rendered moot.

1 Molly Stearns, et al. v. Select Comfort Retail Corp., et al., 2009 WL 3413679, at *3 (N.D.
2 Cal. Sept. 18, 2009). The Court's prior Order only permitted Plaintiff leave to amend
3 claims against Liberty Mutual; it did not contemplate new causes of action or factual
4 allegations against UPSF. August 2018 Order at 10. Nevertheless, Plaintiff included
5 additional allegations and claims against UPSF within his FAC, specifically adding 33
6 new paragraphs spanning nearly eight pages. These amendments, which constitute a
7 significant majority of Plaintiff's overall changes within the FAC, were improper.

8 Furthermore, Plaintiff not only failed to seek leave of the Court to include
9 significant amendments in the FAC concerning UPSF, he also did not address UPSF's
10 present Motion to Strike. Indeed, while Plaintiff filed an Opposition to Liberty Mutual's
11 Motion to Dismiss and included arguments against Liberty Mutual's Motion to Strike in
12 the alternative, UPSF's Motion to Strike was unaddressed within this Opposition. Pl.'s
13 Opp'n to Mot. Dismiss, ECF No. 47. The Local Rules of this District require a
14 responding party to either file an opposition to a motion or file a statement of non-
15 opposition. E.D. Cal. Local Rule 230(c). Because Plaintiff failed to address UPSF's
16 motion, the Court finds that allowing Plaintiff to assert these new allegations without the
17 Court's approval would severely prejudice UPSF. DeLeon v. Wells Fargo Bank, N.A.,
18 No. 10-CV-01390-LHK, 2010 WL 4285006, at *3 (N.D. Cal. Oct. 22, 2010) (“[W]here
19 leave to amend is given to cure deficiencies in certain specified claims, courts have
20 agreed that new claims alleged for the first time in the amended pleading should be
21 dismissed or stricken.”); see also Stiles v. Wal-Mart Stores, Inc., No. 2-14-cv-02234-
22 MCE-CMK, 2018 WL 3093501, at *6 (E.D. Cal. June 20, 2018) (striking newly added
23 claim because it exceeded the scope of amendment permitted by this Court's prior order,
24 finding that “such an amendment would prejudice Defendants this late in the game and
25 would cause undue delay”).

26 Accordingly, UPSF's Motion to Strike is GRANTED without prejudice. The
27 following portions of the FAC are hereby STRICKEN: (1) “Intentional/ Negligent Infliction
28 of Emotional Distress” from the caption that appears on the cover page; (2) Paragraph

1 28, lines 22-24; (3) Paragraph 77, line 23; (4) Paragraph 79 in its entirety; (5)
2 Paragraphs 80-86 in their entirety; and (6) Paragraphs 88-110 in their entirety. If Plaintiff
3 wishes to include additional allegations against UPSF in his operative complaint, he
4 must obtain the opposing party's written consent or the Court's leave to do so.⁷

5
6 **CONCLUSION**

7
8 For the reasons set forth above, Liberty Mutual's Motion to Dismiss, ECF No. 30,
9 is GRANTED and Plaintiff's claims against Liberty Mutual are DISMISSED without leave
10 to amend. Additionally, UPSF's Motion to Strike, ECF No. 36, is GRANTED without
11 prejudice. If Plaintiff wishes to amend his claims against UPSF, he must obtain either
12 UPSF's written consent or seek the Court's leave pursuant to this Order not later than
13 twenty (20) days following the date this Order is electronically filed. Failure to timely
14 comply with this Court's Order will result in the imposition of sanctions, up to and
15 including dismissal of these claims with prejudice, upon no further notice to the parties.

16 IT IS SO ORDERED.

17 Dated: March 21, 2019

18 
19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE

21
22
23
24
25
26
27
28 _____
⁷ Plaintiff is further cautioned that as construed, the newly added claims against UPSF within the
FAC would be unlikely to meet the federal pleading standard in any event.