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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAMERON HOSPITAL ASSOCIATION, a)
California Non-Profit)
Association,)
)
Plaintiff,)
)
v.)
)
GEICO GENERAL INSURANCE COMPANY,)
a Nebraska Corporation,)
)
Defendant.)

Case No. 2:24-cv-01379-JAM-AC

**ORDER GRANTING IN PART
DEFENDANTS' MOTION TO DISMISS**

DAMERON HOSPITAL ASSOCIATION, a)
California Non-Profit)
Association,)
)
Plaintiff,)
)
v.)
)
GEICO INDEMNITY COMPANY, a)
Maryland Corporation,)
)
Defendant.)

Case No. 2:24-cv-00934-JAM-AC

INTRODUCTION OF CASE

Before the Court is two related cases involving Geico General Insurance Company and Geico Indemnity Company ("Defendant(s)"), who

1 move to dismiss the Complaint by Dameron Hospital Association
2 ("Plaintiff") for failure to state a claim. See Mot., ECF No. 12
3 and 10; Compl., ECF No. 1 (both). These cases involve nearly
4 identical claims and legal arguments and were related pursuant to
5 Local Rule 123. See ECF No. 9 (both). Plaintiff opposed the
6 motions. See Opp'n, ECF Nos. 14 and 12. Defendants filed replies.
7 See Reply, ECF Nos. 15 and 14. For the reasons below, Defendants'
8 Motions are denied in part and granted in part with leave to
9 amend.¹

10 I. FACTUAL ALLEGATIONS

11 Plaintiff Dameron Hospital operates an emergency room in
12 Stockton, California and seeks injunctive, declaratory, and
13 compensatory relief arising from Defendants' Geico General
14 Insurance Company ("Geico General") and Geico Indemnity Company
15 ("Geico Indemnity") failure to pay Dameron Hospital certain
16 benefits due under various patients' automobile policies. See
17 Compl. at 24-25 (both). Specifically, this case involves the
18 purported assignment of Med-Pay ("MP") and Uninsured Motorist
19 ("UM") benefits by five patients who were admitted and discharged
20 from Dameron Hospital. Dameron claims entitlement to these
21 benefits pursuant to the Assignment of Benefits ("AOB") contained
22 in each patients' respective Conditions of Admission ("COA")
23 paperwork. Four of the patients have Medicare or Veterans
24 Administration healthcare as their medical insurance (D.S., X.K.,
25 M.A., A.G.) and one individual (J.M.) is alleged to be a self-pay
26 patient with no other insurance. See Compl. ¶ 4 (both). Each of

27 _____
28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled
for August 20, 2024.

1 these individuals is alleged to maintain automobile coverage
2 through either Defendant Geico General Insurance Company or Geico
3 Indemnity Company. See Compl. ¶ 6-7 (both).

4 Dameron Hospital alleges three causes of action in its
5 Complaint. The First Cause of Action is a claim for injunctive
6 relief under California's Unfair Competition Law, Business and
7 Professions Code § 17200 ("UCL") stemming from a breach of
8 contract. The Second Cause of Action alleges breach of contract by
9 Defendants for failure to honor the assignment of MP or UM benefits
10 in Dameron Hospital's COAs signed by the aforementioned emergency
11 room patients. The Third and final Cause of Action is a claim
12 under the Medicare Secondary Payer Act, U.S.C.A. § 1395y(b)(3)(A)
13 ("MSP Act"), alleging that Defendants have primary payer
14 responsibility for the services rendered by Plaintiff Dameron
15 Hospital.

16 II. OPINION

17 A. Legal Standard

18 A Rule 12(b)(6) motion challenges the sufficiency of a
19 complaint for "failure to state a claim upon which relief can be
20 granted." Fed. R. Civ. P. 12(b)(6). Under the plausibility
21 pleading standard set forth in Bell Atlantic Corp. v. Twombly, 550
22 U.S. 544, 570 (2007), a plaintiff survives a motion to dismiss by
23 alleging "enough facts to state a claim to relief that is
24 plausible on its face." The complaint must contain sufficient
25 "factual content that allows the court to draw the reasonable
26 inference that the defendant is liable for the misconduct
27 alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). At the
28 Rule 12(b)(6) stage, the Court must accept all nonconclusory

1 factual allegations of the complaint as true and construe those
2 facts and the reasonable inferences that follow in the light most
3 favorable to the Plaintiff. Id.; see also Knievel v. ESPN, 393
4 F.3d 1068, 1072 (9th Cir. 2005).

5 B. Analysis

6 1. Plaintiff Fails to State a Claim for Breach of
7 Contract

8 a. The COAs Are Unenforceable Adhesion Contracts Under
9 California Caselaw for Patients with Medical
10 Insurance

11 Defendants argue that the COAs and AOBs that Plaintiff
12 requires patients to sign upon admittance or discharge from
13 Dameron Hospital are adhesion contracts, thus there is no breach
14 of contract claim for such unenforceable contracts that defy the
15 reasonable expectations of the signatory. See Mot. at 9.
16 Plaintiff argues that an unpublished district court order in this
17 district, Dameron Hosp. Ass'n v. State Farm Mut. Auto. Ins. Co.,
18 2018 WL 1425981, at *4 (E.D. Cal. Mar. 22, 2018) (hereinafter,
19 "State Farm 2018") supports its position that the AOBs are valid
20 contracts. See Opp'n at 10; Exhibit 1. However, as Defendants
21 correctly point out in their Reply, State Farm 2018 did not
22 address arguments that AOBs are unenforceable as adhesion
23 contracts that defy reasonable expectations. See Reply at 6.
24 Importantly, unlike this Court, the State Farm 2018 district court
25 order did not have the benefit of the analysis in Dameron Hosp.
26 Assn. v. AAA N. California, Nevada & Utah Ins. Exch., 77 Cal. App.
27 5th 971 (2022) ("AAA") - a recently decided case - which as
28 discussed below, deemed Dameron Hospital's COAs unenforceable

1 adhesion contracts under California law.

2 The factual allegations and legal arguments in this case are
3 strikingly similar to those at issue in AAA: both involve Dameron
4 Hospital, automobile insurers, and questions surrounding the
5 assignment of MP and UM benefits. Plaintiff argues that AAA
6 disposes the contract issue in its favor, however, the Court finds
7 that AAA squarely holds that Dameron Hospital's COAs are adhesion
8 contracts and are unenforceable if patients do not reasonably
9 expect such assignment of benefits to occur. Id. at 988, 994.

10 "The distinctive feature of a contract of adhesion is that
11 the weaker party has no realistic choice as to its terms." AAA at
12 992, quoting Wheeler v. St. Joseph Hosp., 63 Cal. App. 3d 345, 356
13 (1976). There is arguably no weaker party than an individual
14 recently admitted to an emergency room for injuries sustained in
15 an accident or any individual under the care of medical
16 professionals and awaiting discharge from a hospital. As
17 Defendants persuasively point out, Dameron Hospital's COAs possess
18 all the characteristics of a contract of adhesion because "[t]he
19 would-be patient is in no position to reject the proffered
20 agreement, to bargain with the hospital, or in lieu of agreement
21 to find another hospital." AAA, at 992-93, quoting Wheeler, 63
22 Cal. App. 3d at 357.

23 The COAs Dameron Hospital requires are dense standardized
24 contract forms, which must be signed by or on behalf of all
25 patients receiving emergency medical services, before any patient
26 may be discharged. See Compl. Exhibit 1; ¶ 8. Patients in need
27 of emergency care like those in this case are in no position to
28 bargain with Dameron Hospital over the terms of the COA or refuse

1 to sign it and find another emergency room.

2 As California caselaw maintains, the enforceability of an
3 adhesion contract "depends upon whether the terms of which the
4 adherent was unaware are beyond the reasonable expectations of an
5 ordinary person or are oppressive or unconscionable." AAA at 993,
6 quoting Wheeler at 357. Here, the Court finds that the COAs that
7 Dameron Hospital required patients to sign are unenforceable when
8 applied to those who would not reasonably expect to sign away
9 their benefits, namely those with medical insurance.

10 As AAA explained, "[p]atients with medical insurance coverage
11 expect that coverage will 'insulate [them] from any monetary
12 obligation for such medical care.'" AAA, 77 Cal. App. 5th at 988
13 (quoting Whiteside v. Tenet Healthcare Corp., 101 Cal. App. 4th
14 693, 705 (2002)). Just like in AAA, Plaintiff's attempt to claim
15 patients' UM and MP benefits once again to recoup more than what
16 health insurance companies would otherwise pay for their patients
17 is simply another attempt to reduce a capped amount of funds that
18 are intended to compensate the patient for the patients' losses
19 and expenses. Id.

20 Both policy holders insured by Geico General - D.S. and X.K.
21 - have medical insurance. D.S. is alleged to have Veterans
22 healthcare benefits and X.K. has Medicare. Compl. ¶ 4.
23 Similarly, two of three Geico Indemnity policy holders - M.A. and
24 A.G. - are also Medicare recipients. Id. Thus, under a
25 straightforward application of AAA, these patients constitute the
26 precise type of patient whose reasonable expectations would not
27 align with Dameron Hospital's AOBs. The lesson of AAA is that any
28 policy holder with medical insurance would not reasonably expect

1 to assign their MP and/or UM Benefits because persons with these
2 benefits "expect benefits to be paid directly to them to
3 compensate them for their bodily injuries." Id. at 993-94.

4 Plaintiff suggests that government-funded insurance may be
5 different than other insurance. But Plaintiff's Complaint does
6 not contain sufficient factual allegations to support its claim
7 that Medicare or Veterans healthcare insurance is a "payer of last
8 resort" under the facts of this case.

9 The only scenario AAA recognized where an AOB was not
10 immediately invalid as beyond the reasonable expectations of an
11 ordinary person concerned the patient, R.D., who had MP benefits
12 that were capped at \$5,000. AAA, 77 Cal. App. 5th at 992, 995;
13 see also Opp'n at 7. Because R.D. had a cap on his benefits, the
14 court found that a trier of fact could conclude it was within
15 reasonable expectations that Dameron would collect amounts beyond
16 the \$5,000 policy from other benefits. Here, J.M., who is alleged
17 to be a self-payer with no other insurance, parallels R.D. because
18 without medical insurance, he is not similarly situated to those
19 with Medicare or Veterans healthcare who would reasonably expect
20 their MP or UM benefits to compensate them for their injuries.
21 See Compl. ¶ 31. Thus, the Court agrees with Plaintiff's
22 contention that AAA acknowledged there might be an assignment
23 expectation for first-party MP where the patient was self-paying
24 (i.e., had no other form of health insurance or health care
25 payment coverage) and finds that Dameron Hospital has plausibly
26 stated a claim for breach of contract only with regard to the
27 self-pay patient J.M. 77 Cal. App. 5th at 992-995.

28 ///

1 b. Partial Assignment May Be Valid Assignments As to
2 J.M.

3 Given the Court's determination that Dameron Hospital's COAs
4 and the AOBs within them are unenforceable adhesion contracts for
5 those with medical insurance, the Court need not reach the partial
6 assignment issue except with regard to J.M., the self-payer. In
7 the case of J.M., it is plausible that it was within that
8 individual's reasonable expectations for Dameron Hospital to
9 collect direct payments from Geico Indemnity out of J.M.'s MP or
10 UM benefits since J.M. is alleged to have had no other insurance
11 and these automobile benefits do cover medical expenses in
12 addition to compensating bodily injuries. Therefore, it follows
13 that if J.M. could have reasonably expected to sign over "all
14 medical payments under any policy of insurance, and all uninsured
15 and underinsured motorist insurance benefits payable to or on
16 behalf of the patient," to Dameron Hospital, it is possible that
17 the assignments, even if partial, are valid. Compl., ¶ 10.

18 Defendants' partial assignment argument, discussed in Mot. at
19 11, boils down to a debate over reasonable expectations, which at
20 this stage of litigation, is subject to a low standard of
21 plausibility. Defendants cite Stein v. Cobb, 38 Cal. App. 2d 8
22 (1940), Reichert v. Gen. Ins. Co. of Am., 68 Cal. 2d 822, 834
23 (1968), and Portillo v. Farmers Ins. Exch., 238 Cal. App. 2d 58
24 (1965) for the proposition that their consent is needed. See Mot.
25 at 11, 13. However, these cases are inapposite because they were
26 decided in distinguishable contexts. Stein does not deal with the
27 automobile insurance context, rather, it discusses publishing
28 rights. Reichert deals with property damage and fire insurance.

1 Portillo deals with the wrongful death context where an individual
2 did not survive their injuries, implicating a very different body
3 of common law not in operation here. Even if the Court credited
4 Defendants' arguments that personal injury causes of action cannot
5 be transferred, this would at most mean that J.M.'s UM benefits,
6 which are paid directly for personal injuries and not at issue in
7 this case, are not transferrable. Here, Dameron Hospital is not
8 claiming J.M.'s UM benefits, and only alleges that Geico paid MP,
9 which exists to cover medical expenses, in violation of the AOB.
10 See Compl. ¶ 31.

11 Based on these cases, the Court is not persuaded as a matter
12 of law that Geico's consent was necessary to assign MP benefits or
13 that partial assignments "increase[] Geico's burden beyond what it
14 contracted for" because presumably, if a patient can reasonably
15 expect to assign automobile benefits to cover medical expenses,
16 they would not expect to receive these benefits directly from
17 their automobile insurer, meaning that Geico would only need to
18 pay MP benefits to Dameron Hospital.²

19 Construing the facts most favorable to the Plaintiff that
20 J.M. received MP benefits from Geico Indemnity as alleged in
21 Compl. ¶ 31, the Court finds that Plaintiff has plausibly pleaded
22 that J.M. could have assigned their automobile benefits to Dameron
23 Hospital.

24 2. Plaintiff Fails to State a Claim Under the UCL

25 The UCL protects California's consumers by prohibiting any

26
27 ² In any case, the Court cannot consider the additional arguments
28 regarding Stein, Reichert, or Portillo discussed in the latter
half of Defendant's Reply because it exceeds the page limit set by
the filing order in this case. See Order, ECF No. 11-2; 5.

1 "unlawful, unfair or fraudulent business act or practice." Cal.
2 Bus. & Prof. Code § 17200. The remedies available under the UCL
3 are injunction and restitution. Id. As discussed below, because
4 Plaintiff has failed to state a viable breach of contract claim
5 for four of the five patients due to the unenforceable nature of
6 the adhesion contracts, it follows that the UCL claims flowing
7 from those allegations similarly fail. The UCL claim as to the
8 fifth patient, J.M., also fails because breach of contract claims
9 are not actionable under the UCL and Plaintiff has failed to
10 allege any unlawful, unfair, fraudulent, or injurious conduct to
11 consumers.

12 a. Unlawful Prong

13 Under the "unlawful prong" of § 17200, a specific activity is
14 not proscribed, rather, the UCL "borrows violations of other laws
15 and treats them as unlawful practices that the [UCL] makes
16 independently actionable." Id. at 1048. Cel-Tech Commc'ns, Inc.
17 v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999)
18 (citing Farmers Ins. Exch. v. Superior Court, 2 Cal. 4th 377, 383
19 (1992)). However, "a common law violation such as breach of
20 contract is insufficient" to support a claim under the unlawful
21 prong of California's UCL. See Shroyer v. New Cingular Wireless
22 Servs., 622 F.3d 1035, 1044 (9th Cir. 2010); Vascular Imaging
23 Professionals, Inc. v. Digirad Corporation, 401 F. Supp.3d 1005,
24 1014 (S.D. Cal. 2019) (quoting Shroyer); see also Mazal Group, LLC
25 v. Espana, 2:17-cv-05856-RSWL-KS, 2017 WL 6001721, at *4 (C.D.
26 Cal. Dec. 4, 2017) (granting motion to dismiss UCL claim when
27 plaintiff did not go beyond alleging a violation of common law).
28 Plaintiff in the instant case does not go beyond alleging common

1 law contract violations and has, therefore, failed to state a
2 claim under the first prong of the UCL.

3 b. Unfair Prong

4 Plaintiff argues that a business practice is unfair "when the
5 practice 'offends an established policy or when the practice is
6 immoral, unethical, oppressive, unscrupulous or substantially
7 injurious to consumer.' [citations]". State Farm Fire & Casualty
8 Company v. Sup. Ct., 45 Cal.App.4th 1093, 1104 (1996). Yet,
9 Dameron Hospital fails to allege anything beyond the purported
10 violation of the AOBs and an unsubstantiated California policy
11 that "favors enforceability of a hospital patient's assignment of
12 insurance benefits." Compl. ¶ 19.

13 As demonstrated by the caselaw surrounding patients'
14 reasonable expectations, the established policy is that automobile
15 insurers, like Geico, will directly pay their policyholders MP and
16 UM benefits. On its face, there is no plausible unfair business
17 practice claim because Geico's payments to patients are in line
18 with well-established practices in the medical and automobile
19 insurance industry.

20 Plaintiff's UCL claim under the unfair competition prong is
21 simply a repetition of its contract claim. As discussed above,
22 this prong of the UCL claim is both not covered by the UCL and
23 unenforceable. See Compl. ¶ 19. Additionally, as Defendants
24 counter, Dameron does not explain why its own interest in
25 receiving direct payment from Geico outweighs the insureds'
26 interests in receiving their auto-policy benefits directly from
27 Geico and using those benefits to pay their medical bills. Reply
28 at 7.

1 In sum, Plaintiff fails to allege any immoral, unethical,
2 oppressive, unscrupulous or injurious behavior attributable to the
3 Defendants. Because the AOBs are unenforceable and contract
4 claims are not covered by the UCL, Plaintiff must assert that
5 Geico's practices harm consumers to state a plausible claim for
6 relief under the UCL. As currently alleged, Defendants' failure
7 to comply with an unenforceable contract does not by itself create
8 a harm to consumers or the insured individuals. In fact, these
9 contracts are unenforceable precisely because the lack of
10 negotiation or opportunity to examine adhesion contracts makes
11 them restrictive and oppressive for consumers. Geico refusal to
12 comply with an unenforceable contract is not unlawful nor unfair.
13 Dameron's claim under the UCL is therefore dismissed.

14 3. Dameron fails to state a claim under the Medicare
15 Secondary Payer Act

16 Plaintiff argues that it is entitled to payment since
17 Defendant is the primary payer under federal law and that Medicare
18 is the payer of last resort. See Compl. ¶ 30, 54. Defendants
19 argue that Plaintiff's allegations are simply conclusory
20 statements and Plaintiff has not adequately alleged that Geico
21 General and Geico Indemnity are responsible for the medical
22 services at issue. Mot. at 6. The parties agree that a private
23 cause of action is available under the MSP Act only where a
24 primary plan fails to provide for primary payment or reimbursement
25 in accordance with the Act. Mot. at 15; Opp'n at 18. Thus, a
26 claim under the MSP Act is plausible only if Defendants are
27 primary plan providers.

28 While Plaintiff alleges in its Complaint that Defendants'

1 automobile insurance coverage is primary to patients' Medicare
2 coverage, the federal law Plaintiff cites specifies situations in
3 which Medicare is the secondary payer, for example, where an
4 individual is insured by another healthcare plan. See Compl. ¶
5 54; 42 U.S.C.A. § 1395y(b). The MSP Act refers to certain primary
6 plans, which are defined by federal statute as "a group health
7 plan or large group health plan" 42 U.S.C.A. § 1395y(a)(2)(A)(ii).
8 These group health plans are defined as "plan[s] (including a
9 self-insured plan) of, or contributed to by, an employer
10 (including a self-employed person) or employee organization to
11 provide health care (directly or otherwise) to the employees,
12 former employees, the employer, others associated or formerly
13 associated with the employer in a business relationship, or their
14 families." 26 U.S.C.A. § 5000(b)(1), (2). By letter of the
15 statute, the MSP Act defines primary plans as other medical
16 insurance plans, not automobile insurance policies.

17 Dameron Hospital alleges that Defendants are the primary
18 payers, but whether an automobile insurer can by law be a primary
19 payer is not addressed in the MSP Act's statutory text. Indeed,
20 the statute does not reference automobile insurance at all and
21 addresses only other healthcare insurance. See generally, 42
22 U.S.C.A. § 1395y(b). Plaintiff cites an out of circuit case for
23 the proposition that Geico has payment responsibility in this
24 case. See Opp'n at 8 (citing MSP Recovery Claims v. Ace American
25 Ins. Co., 974 F.3d 1305, 1316 (11th Cir. 2020)). However, that
26 case is not binding on this Court and even if the Court accepts
27 Plaintiff's allegation that Medicare and Veterans healthcare are
28 never primary insurers, this does not automatically make another

1 presumably secondary insurance, like automobile insurance, a
2 primary payer. As Defendants point out, Plaintiff fails to
3 identify the type of coverage at issue or any applicable
4 settlement agreement or contractual obligation to establish that
5 Geico has payment responsibility. See Mot. at 17.

6 Here, Dameron Hospital's allegations are too conclusory to
7 plausibly support primary medical payment responsibility for
8 Defendants who are automobile insurers. Id. While Dameron
9 hospital "prays for leave to take discovery from Geico and then
10 file an amended complaint," as discussed below, the Court instead
11 grants Defendants' motion to dismiss this claim without prejudice.

12 C. Leave to Amend

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

1 Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v.
2 Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need
3 not be granted where the amendment of the complaint . . .
4 constitutes an exercise in futility").

5 Here, the Court finds that it is not clear that the
6 Complaint's defects cannot "be saved by [] amendment," and
7 allowing Plaintiff an opportunity to try to save its claims at this
8 stage of the litigation would not be prejudicial to Defendant since
9 the Court is allowing Plaintiff's breach of contract claim for
10 patient J.M. to move forward.

11 III. ORDER

12 For the reasons set forth above, the Court GRANTS Defendant
13 Geico General Insurance Company and Geico Indemnity Company's
14 Motions to Dismiss WITH LEAVE TO AMEND and DENIES Defendants motion
15 to dismiss the breach of contract claim only as it pertains to
16 self-pay patient J.M..

17 If Plaintiff elects to amend its complaint, it shall file a
18 First Amended Complaint within twenty days of this Order.
19 Defendants' responsive pleadings are due twenty days thereafter.
20 Additionally, Defendants' counsel is ordered to pay \$250 to the
21 Clerk of the Court, within five days of this Order, for violation
22 of the specified page limits for Reply Briefs pursuant to the Order
23 Regarding Filing Requirements, ECF No. 11-2; 5.

24 IT IS SO ORDERED.

25 Dated: October 24, 2024

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28 
JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE