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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
7

8 CORA J. WILLIAMS,

No. C 08-04170 SI

9 Plaintiff,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT**

10 v.

11 PRUDENTIAL INS CO., and DOES 1-50,
12 inclusive

13 Defendant.
_____/

14
15 Plaintiff has filed a motion for leave to file a first amended complaint. The motion is scheduled
16 for hearing on February 5, 2010. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter
17 appropriate for resolution without oral argument, and hereby VACATES the hearing. Having
18 considered the papers submitted, and for good cause shown, the Court hereby GRANTS plaintiff's
19 motion for leave to amend.
20

21 **BACKGROUND**

22 On May 31, 2008 plaintiff, Cora J. Williams, filed a complaint in state court alleging two causes
23 of action: breach of contract and breach of the covenant of good faith and fair dealing in the termination
24 of plaintiff's disability benefits. Notice of Removal [Docket No. 1]. The case was removed to this
25 Court by defendant, The Prudential Insurance Company of America (hereinafter "Prudential"), on
26 September 3, 2008. *Id.*

27 The allegations in the original complaint maintain that plaintiff was a covered beneficiary under
28

1 a group long-term disability insurance policy (hereinafter “Policy”) issued by the defendant which
2 covered the employees of plaintiff’s former employer, Queen of the Valley Hospital, a facility of St.
3 Joseph Health System. *Id.* at Exhibit “A”, Compl. ¶ 1. According to the original complaint, the breach
4 of contract claim is based upon defendant’s denial of “plaintiff’s claim for disability benefits due and
5 owing to her under the Policy. . . [and] unreasonably and wrongfully failing to conduct a proper
6 investigation and review prior to refusing payment of plaintiff’s benefits.” *Id.* at ¶¶ 5,7. The breach of
7 covenant of good faith and fair dealing claim rests on allegations that “[d]efendant’s denial of plaintiff’s
8 claim for payment of disability insurance benefits was unreasonable and without proper foundation.”
9 *Id.* at ¶ 10.

10 Plaintiff’s original complaint prayed for judgement to include: benefits due under the Policy,
11 declaratory and equitable relief, prejudgment interest, attorney fees, costs and expenses, and “other and
12 further relief as the Court deems just and proper.” *Id.* at 3:16-21.

13 This motion for leave to amend comes 45 days after the parties stipulated, and this Court
14 ordered, that Prudential could file an Amended Answer to include an affirmative counterclaim against
15 plaintiff, and that plaintiff could seek the Court’s leave to amend her complaint to add a punitive
16 damages claim to this action. Docket No. 44; 1:24-25, 2:1-9. Plaintiff’s motion for leave to amend the
17 complaint was filed in tandem with a declaration of her counsel, Julian M. Baum, and includes a
18 Proposed First Amended Complaint. [Docket No. 53] (hereinafter “Baum Decl.” and “Proposed FAC”).

19 In the current motion, plaintiff seeks to file her FAC to include a prayer for punitive damages
20 under Cal. Civ. Code §3294, trebled damages under Cal. Civ. Code §3345, and to allege a third claim
21 for violation of the Unfair Trade Practices Act of the California Business and Professions Code
22 (hereinafter “UCL”). Plaintiff’s proposed third cause of action seeks to enjoin defendant from illegal
23 business practices in violation of UCL, a court order requiring defendant to institute changes in its
24 record keeping practices, and restitution for all persons who have suffered from such illegal acts.
25 Proposed FAC 7:3-7.

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27 **LEGAL STANDARD**

28 Federal Rule of Civil Procedure 15 governs amendment of the pleadings. It states that if a

1 responsive pleading has already been filed, the party seeking amendment “may amend its pleading only
2 with the opposing party’s written consent or the court’s leave. The court should freely give leave when
3 justice so requires.” Fed. R. Civ. P. 15(a). This rule reflects an underlying policy that disputes should
4 be determined on their merits, and not on the technicalities of pleading rules. See *Foman v. Davis*, 371
5 U.S. 178, 181-82 (1962). Accordingly, the Court must be generous in granting leave to amend. See
6 *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990) (leave to amend granted
7 with “extreme liberality”); *Ascon Props., Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

8 However, there are several accepted reasons to deny leave to amend, including the presence of
9 bad faith on the part of the plaintiff, undue delay, prejudice to the defendant, futility of amendment, and
10 that the plaintiff has previously amended the complaint. See *Ascon Props.*, 866 F.2d at 1160;
11 *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 809 (9th Cir. 1988). Courts do not ordinarily consider
12 the validity of a proposed amended pleading in deciding whether to grant leave to amend, but leave may
13 be denied if the proposed amendment is futile or would be subject to dismissal. See *Saul v. United*
14 *States*, 928 F.2d 829, 843 (9th Cir. 1991).

15 16 DISCUSSION

17 Plaintiff cites two events as the basis for the Proposed FAC. First, plaintiff asserts that the
18 corporate deposition of a Prudential employee that took place on September 24, 2009, in conjunction
19 with other documents produced by defendant after this action was removed from state court, gave rise
20 to good faith grounds in compliance with Rule 11 for plaintiff to seek punitive damages. Plf.’s Memo,
21 4:18-21 [Docket 52]; Baum Decl. ¶ 4. Second, plaintiff asserts that the recent California appellate
22 opinion in *Zhang v. Superior Court*, 178 Cal. App 4th 1081 (Oct. 29, 2009) provided good faith grounds
23 for her to add a cause of action for injunctive relief under the UCL. Plf.’s Memo at 4: 21-22; Baum
24 Decl. ¶ 5. Defendant opposes the motion for leave to amend, arguing that it is unnecessarily delayed,
25 would be unfairly prejudicial to defendant, is futile as a matter of law, and violates constitutional
26 protections.

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28 I. Undue Delay and Unfair Prejudice

1 Defendant asserts that plaintiff's motion for leave to amend should be denied in light of
2 plaintiff's unreasonable delay and that allowing amendment would result in unfair prejudice to
3 defendant. Def.'s Opp'n. 9-11. The Court observes that the original complaint in this case was filed
4 approximately 20 months ago. Although "delay, by itself, is insufficient to justify denial of leave to
5 amend," *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987), prejudice occasioned by
6 an undue delay is a proper ground for denial. *See Howey v. United States*, 481 F.2d 1187, 1190 (D.
7 Alaska 1973) ("[T]he crucial factor [in determining whether to grant leave to amend] is the resulting
8 prejudice to the opposing party."). To decide whether the addition of new claims will prejudice
9 defendant, the Court looks to whether plaintiff's amendment(s) will necessitate additional discovery,
10 research or preparation, delay the proceedings, or increase the cost of litigation. *See Ascon*, 866 F.2d
11 at 1161.

12 Defendant asserts two arguments to show undue delay and unfair prejudice: 1) that no new facts
13 have been alleged since the inception of this action to justify the delay in seeking leave to amend; and
14 2) that the addition of a claim for relief under UCL and the expansion of potential damages to include
15 punitive and treble damages under Cal. Civ. Code §3294 and §3345 will "dramatically expand the scope
16 of the lawsuit." Def.'s Opp'n. 12:8-9.

17 Defendant states that plaintiff attempts to bring a new cause of action based on the same facts
18 previously known at the time of the original filing. *Id.* at 10:14-19. Defendant argues that because the
19 facts of the case have not changed since May 2008 when the suit was originally filed, plaintiff's
20 tardiness in requesting leave to amend is not justified. *Id.* at 11:14-17. However, the Court finds that
21 plaintiff has based the Proposed FAC on a sufficient change in circumstances to justify amendment at
22 this time. First, plaintiff's reliance on deposition testimony of the Prudential employee most
23 knowledgeable about the business practices at issue is adequate to permit amendment of the complaint.
24 It is certainly feasible that testimony from this deposition gave rise to good faith grounds for seeking
25 punitive damages. The Court need not assess the merits of the damages claim at the pleadings stage and
26 there is no reason to preclude plaintiff from presenting her claims on the merits.

27 Furthermore, plaintiff's interpretation of the decision in *Zhang* to "enlarg[e] the circumstances
28 under which plaintiffs may properly assert claims for relief under [UCL]" is adequate to support good

1 faith grounds for the addition of the third claim. Plf.'s Memo, 4:1-5. The applicability of the *Zhang*
2 decision to plaintiff's case is discussed in further detail below.

3 With regard to the expansion of the scope of the lawsuit, defendant argues that granting leave
4 to amend would necessitate additional investigation and discovery, and could necessitate the retention
5 of additional expert witnesses. Def.'s Opp'n. 12:19-23. Defendant brings the Court's attention to the
6 upcoming February 26, 2010 and April 26, 2010 discovery deadlines to illustrate the unfair prejudice
7 granting plaintiff's motion would create at this stage in the litigation. Def.'s Opp'n. 14:12-21.
8 However, the Court is not persuaded by this argument. The Proposed FAC neither expands the time
9 period of liability, nor adds new defendants, two sufficient reasons this Court has found for rejecting
10 leave to amend at this late stage in the litigation. *See Ambat v. City & County of San Francisco*, 2009
11 U.S. Dist. LEXIS 93205 (N.D. Cal. Sept. 18, 2009). With regard to the limited time to seek additional
12 experts or conduct additional discovery, defendant may seek an extension of those scheduled deadlines
13 if it becomes necessary to do so.

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15 **II. Futility**

16 Defendant asserts that amending the complaint to include either a claim arising under UCL or
17 a prayer for trebled damages under Cal Civ. Code §3345 would be futile. More specifically, defendant
18 argues that plaintiff's claim under UCL is an improper end-run around *Moradi-Shalal v. Fireman's Fund*
19 *Ins. Cos.*, 250 Cal. Rptr. 116 (1988), and that the treble damages sought by plaintiff are not applicable
20 to Cal. Civ. Code §3294, the statute under which plaintiff seeks punitive damages.

21
22 **A. UCL Claim**

23 Plaintiff seeks to add a cause of action under California's Unfair Competition Law, Cal. Bus.
24 & Prof. Code §§ 17200, et seq., which prohibits any "unlawful, unfair, or fraudulent business act."
25 Plaintiff asserts that her UCL claim is predicated upon violations of Cal. Code Reg. §10, sub. 2695.3
26 requiring, *inter alia*, maintenance of accessible business records of all insurance claims. Plaintiff asserts
27 that the decision in *Zhang v. Superior Court*, which came down after her original complaint was filed,
28 enlarged the scope of private rights of action under the UCL to include such a claim. Mot. 8:10-11.

1 Defendant responds that Cal. Code Reg. §10 is only enforceable by the Insurance Commissioner and
2 not a viable predicate claim for a private right of action under the UCL. Def.’s Opp’n. 7:1-12. As such,
3 Defendant contends that plaintiff’s UCL claim is barred.

4 In *Moradi-Shalal*, the California Supreme Court held that no private cause of action may be
5 brought under Cal. Ins. Code § 790.03(h). *Moradi-Shalal*, 46 Cal.3d at 313. Since *Moradi-Shalal*,
6 California courts have held that a plaintiff cannot plead a violation of § 790.03(h) as an “unfair,
7 unlawful or fraudulent business act” for the purposes of the UCL. See *Textron Fin. Corp. v. Nat’l Union*
8 *Fire Ins. Co.*, 118 Cal. App. 4th 1061 (2004). However, the Court notes that the California Court of
9 Appeal recently expressly rejected *Textron*. See *Zhang v. Superior Court*, 100 Cal. Rptr. 3d at 806,
10 808-09. A court in the Central District of California has subsequently held that “to the extent *Textron*
11 stands for the proposition that conduct that falls within the UIPA [Unfair Insurance Practice Act,
12 Insurance Code §§ 790 et al.] can never give rise to a UCL violation, the Court finds it contrary to the
13 great weight of authority and declines to follow it for the reasons expressed in *Zhang*.” *Burdick v.*
14 *Union Sec. Ins. Co.*, 2009 U.S. Dist. LEXIS 121768 (C.D. Cal. Dec. 9, 2009).

15 Given that plaintiff’s UCL claim is predicated on the violation of laws other than the UCL, it
16 is fair to conclude that she is not simply repackaging an Insurance Code §790 claim as a UCL claim as
17 defendant contends. Additionally, because her complaint does not allege any unfair claims settlement
18 practices, the holding of *Moradi-Shalal* does not preclude plaintiff’s UCL claim alleging other unfair
19 acts in the business of insurance. Therefore, plaintiff may add a cause of action under the UCL based
20 on the current law governing private rights of action for UCL violations.

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22 **B. Civil Code 3345**

23 Defendant next contends that the trebling of punitive damage claims under Cal. Civ. Code §3345
24 is limited to only *statutory* causes of action and that plaintiff cannot establish a basis for her proposed
25 claim for trebling of damages under this provision because her causes of action arise under common
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1 law.¹ Def.’s Opp’n. 8:4-12.

2 The statute reads in relevant part that §3345 trebled damages apply to acts against senior citizens
3 or disabled persons “[w]henver a trier of fact is authorized by a statute to impose either a fine, or a civil
4 penalty or other penalty, or any other remedy the purpose or effect of which is to punish or deter.” Cal.
5 Civ. Code §3345(b). Thus, on its face, §3345 limits treble damages not to statutory causes of action,
6 but to statutory awards of punitive damages. Plaintiff seeks statutory punitive damages under Cal. Civ.
7 Code §3294, which permits a trier of fact to impose punitive damages for the purpose of deterrence.²
8 Plaintiff may seek to treble those damages pursuant to Cal. Civ. Code §3345.

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10 **III. Constitutional Implications**

11 Finally, defendant opposes the trebling of damages under §3345 because it “runs afoul of federal
12 and state constitutional protections against excessive and arbitrary punitive damages awards.” Def’s
13 Opp’n. 8:14-15. Defendant cites to *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003)
14 as a caution against damages that are disproportionate to the amount of harm suffered by the plaintiff.
15 *Campbell* also goes on to say that “[a] basic principle of federalism is that each state may make its own
16 reasoned judgment about what conduct is permitted or proscribed within its borders, and each state alone
17 can determine what measure of punishment, if any, to impose on a defendant who acts within its
18 jurisdiction.” *Id.* at 422. California has chosen to provide the opportunity to treble punitive damages
19 for claims made by senior citizens and disabled persons.³ Plaintiff has alleged that she is disabled within
20 the meaning of §3345. Of course, courts reviewing punitive damages must ensure that the award is

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22 ¹Another court in this district recently heard similar arguments in opposition to trebled damages
23 for a UCL claim and ultimately allowed claims for trebled damages under Cal. Civ. Code §3345 to
24 proceed at the pleadings stage pending California Supreme Court review of *Clark v. Superior Court*,
94 Cal. Rptr. 3d 135 (Cal. Ct. App. 2009). *George v. Hartford Life & Accident Insurance Co.*, No.
09-CV-04059-VRW, Doc. No. 11, 3:18-28 (Filed 11/13/09).

25 ²*Ross v. Pioneer Life Ins. Co.*, 545 F. Supp. 2d 1061, 1064 (C.D. Cal. 2008) (“California’s civil
26 statutory scheme permits a trier of fact to impose a penalty for such conduct, by virtue of California
Civil Code §3294, which permits a trier of fact to impose punitive damages for the purpose of
deterrence.”)

27 ³ “[T]he Legislative history of Civil Code §3345 indicates that when it was enacted it was
28 expressly foreseen that the provision would be applied to a trebling of punitive damages under Civil
Code §3294.” *Ross*, 545 F. Supp. 2d at 1066.

1 reasonable and proportionate, but this consideration in not properly invoked at the pleadings stage of
2 litigation. Consequently, the Court does not find that permitting plaintiff to pray for trebling of punitive
3 damages would be an unconstitutional violation of defendant's right to be free from excessive and
4 arbitrary punitive damage awards.


5 In sum, because the proposed amendment would not be futile and does not significantly
6 prejudice defendant's case, the Court will grant plaintiff's motion. Plaintiff has not previously amended
7 her complaint, and she is only seeking to add punitive damages and injunctive relief, not change or add
8 defendants or expand the time period of the litigation. If the amended complaint truly creates a time
9 management issue for the defendant to conduct discovery based on current schedule, plaintiff has
10 indicated a willingness to stipulate to extend the current deadlines.

11
12 **CONCLUSION**

13 For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiff's
14 motion for leave to amend her complaint. [Docket No. 52].

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16 **IT IS SO ORDERED.**

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18 Dated: February 2, 2010

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21 SUSAN ILLSTON
22 United States District Judge
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