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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BONNIE JUE, D.D.S,
Plaintiff,
v.
UNUM GROUP, et al.,
Defendants.

Case No. [19-cv-08299-WHO](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Re: Dkt. No. 25, 33

INTRODUCTION

This is an insurance disability case involving a disputed termination of disability benefits in which the parties have submitted cross motions for partial summary judgment. Plaintiff Bonnie Jue, DDS, moves for summary judgment on her claim for breach of contract on the basis that defendants Unum Group and Unum Life Insurance Company of America (“Unum”) waived the right to insist that she undergo De Quervain’s surgery as the “appropriate treatment” for her condition under her insurance policy. Unum opposes the motion and moves for summary judgment on Jue’s claim for breach of the implied covenant of good faith and fair dealing and request for punitive damages, arguing that these claims fail as a matter of law because there is a “genuine dispute” whether Unum was justified in terminating Jue’s benefits and because Jue has failed to put forth evidence that Unum acted with malice, oppression, or fraud. For the reasons discussed in detail below, Jue’s motion for partial summary judgment on the breach of contract claim is DENIED because there are material facts in dispute; Unum’s actions in 2001 did not estop it from reevaluating Jue’s ongoing claim in 2018 as a matter of law. There are genuine and reasonable disputes of fact concerning Unum’s reevaluation and its conduct was not inequitable, nor did it put Jue at a disadvantage. Its motion for partial summary judgment on the breach of

1 implied covenant of good faith and fair dealing claim and punitive damages demand is
2 GRANTED.

3 **BACKGROUND**

4 **I. THE POLICY**

5 Jue graduated from the University of Pacific School of Dentistry in 1993, became a
6 licensed dentist in California, and began work as a general dentist at her father’s dental practice.
7 Dkt. No. 25-2 (“Jue Decl.”) ¶ 2. She purchased an “own-occupation” disability insurance policy
8 in 1994 from Unum Life Insurance Company of America (“Unum”). *See* Jue Decl., Ex. A. (the
9 “Policy”). Under the Policy, Unum agreed to pay total or residual disability benefits of up to
10 \$4,499 per month to Jue if she became sick or injured and unable to work, or work only part-time,
11 as a dentist. The Policy’s definitions of total and residual disability require that the insured is
12 “receiving medical care from someone other than yourself which is appropriate for the injury or
13 sickness.” *Id.* at UA-POL-IDI-DUP-000019. It further states, “We will waive this requirement
14 when continued care would be of no benefit to you.” *Id.*

15 **II. 1998 – ONSSENT OF DISABILITY AND INITIAL CLAIM**

16 In 1998, following the birth of her first child, Jue developed swelling and pain in both
17 wrists and was diagnosed with De Quervain’s Tenosynovitis. Jue Decl. ¶ 4. This condition
18 involves swelling of the tendons at the base of the thumb leading to compression of nearby nerves,
19 causing pain and numbness, especially with repetitive or prolonged pinching and grasping
20 motions. *Id.* In September of 1998, Jue submitted a claim for disability benefits to Unum. *Id.*,
21 Ex. B. In that claim her rheumatologist, Dr. Carteron, identified her condition as De Quervain’s,
22 stated she was restricted from using her hands repetitively and to grip, opined that she was unable
23 to perform dental procedures with her hands, and estimated that her condition would
24 fundamentally change in 5-6 months. *Id.* at UA-CL-IDI-000139.

25 On October 1, 1998, Tony Sides, an Unum claims adjuster, spoke with Jue about her
26 claim. Dkt. No. 25-1 (“Coleman Decl.”), Ex. B at UA-CL-IDI-000126. Notes from the call
27 indicate that Jue told Sides possible treatments for her condition might include “steroid injection”
28 and “[s]urgery as last resort.” *Id.* In November 1998, Lisa Stiffler, R.N. provided Sides with a

1 memorandum based on her review of Jue’s medical records. *See* Coleman Decl., Ex. B at UA-CL-
2 IDI-000059. In the memo, Stiffler described the appropriate treatment for Jue’s condition:

3 What would be considered appropriate treatment? Treatment is symptomatic relief
4 provided by rest, immobilization (splint), NSAIDS, analgesic agents, heat-cold, and
5 controlled exercises. Steroid injections may be helpful and surgical exploration may be
6 considered in persistent cases, but is rare. The insured has undergone a series of
7 conservative treatments and is continuing to show slow progress. Treatment has been
8 appropriate.

9 *Id.* at UA-CL-IDO-000060. Stiffler also determined that because Jue had seen improvement in her
10 condition, “the insured has a good prognosis for a complete recovery.” *Id.*

11 On December 9, 1998, Unum approved Jue’s disability claim, agreeing to pay total
12 disability benefits for July 26, 1998 through January 12, 1999 and 50% residual disability benefits
13 from January 12 through February 1, 1999, when Jue was expected to transition back to work. *See*
14 Jue Decl., Ex. D at UA-CL-IDI-000040. Unum’s letter to Jue further stated that she should
15 contact Unum if she was not able to return to work full time by February 1, 1999 or believed that
16 she qualified for any further residual disability benefits. *Id.*

17 **III. 1999 – JUE RENEWS DISABILITY CLAIM**

18 In March 1999, after unsuccessfully attempting to return to work full time, Jue filed a
19 renewed claim for disability benefits. *See* Jue Decl., Ex. E. Her claim included a new attending
20 physician progress statement from her rheumatologist, Dr. Carteron, which indicated that Jue was
21 not able to perform dentistry work more than two or three days a week, that she was taking an
22 anti-inflammatory and had undergone physical therapy, and estimated that she was not likely to
23 fundamentally improve within the next six months. *Id.* at UA-CL-IDI-000522.

24 In May 1999, Unum had internist John LoCascio, MD, conduct a medical review of her
25 claim. Coleman Decl. Ex. B at UA-CL-IDI-000485-UA-CL-IDI-000486. LoCascio’s resulting
26 memorandum indicated that her persistent pain, despite standard treatment for De Quervain’s, was
27 “somewhat puzzling and unusual” and that the “prognosis in this case is worrisome.” *Id.* He
28 further stated, “The treatment rendered for deQuervain tenosynovitis including hand physical
therapy does appear to be reasonable at this juncture” but expressed concern that there was no
evidence of a functional capacities evaluation or chronic pain evaluation in Jue’s case. *Id.* Unum

1 approved Jue’s claim for residual benefits on June 24, 1999. *See* Jue Decl., Ex. F.

2 **IV. 1999 - 2003 – JUE’S CONDITION PERSISTS**

3 Following the approval of her residual disability benefits, Jue periodically provided Unum
4 with updates regarding her condition, treatment, and work frequency. On December 2, 1999, she
5 spoke with a claim servicer for Unum and explained that she was not seeing Dr. Carteron on a
6 regular basis, but only when she had a flare up. Coleman Decl., Ex. B at UA-CL-IDI-000415.
7 She also told Unum that her wrist and thumb were improving each month. *Id.* A note from
8 Unum’s claim file for Jue’s case indicates that following this call, Unum planned to “[o]btain upd.
9 med recs based on frequency of med care & watch for surgery.” *Id.* at UA-CL-IDI-000167.

10 In December 2000, Jue consulted a hand surgeon, Dr. George Wu, for a second opinion
11 regarding her condition. Jue Decl. ¶ 14. Dr. Wu submitted an attending physician statement to
12 Unum confirming Jue’s diagnosis of De Quervain’s. Jue Decl., Ex. H at UA-CL-IDI-000286. In
13 his statement, Dr. Wu indicated that she planned to “attempt corticosteroid injection at the end of
14 Jan. 2001.” *Id.* He further stated that she “may eventually need surgical treatment if she fails
15 corticosteroid injection treatment.” *Id.* Jue returned to see Dr. Wu in late February, but did not
16 receive a corticosteroid injection because she was busy with work and concerned that she would
17 not be able to work immediately after the injection. Butler Decl., Ex. 11(b) at UA-CL-IDI-
18 000639.

19 On March 1, 2001, Jue spoke with Unum claims representative Cheryl Collin. Coleman
20 Decl., Ex. B at UA-CL-IDI-000274. Collin has since left Unum and is not available as a witness,
21 but her notes from the call document the conversation as follows:

22 Spoke w/ insured. She wanted to discuss the fact that she has Chronic Tendonitis
23 and has had it for a while. Switched specialist. Saw him yesterday, the wrist is
24 inflamed. She has been taking napasin, which helps for a little while. The
25 specialist would like to suggest to her to have steroid injections to relieve the
26 inflammation or at least for a couple of mos or to have surgery. She works ½ the
time w/out much problem, if she works more it swells. She wanted to know if she
chooses not to have surgery would it affect her benefits, I told her that we cannot
force her to have surgery, that if she chose not to have surgery it would not affect
her benefits. She thanked me.

27 *Id.* In May, 2001, Unum had a nurse review and assess Jue’s file. *See* Butler Decl. Ex. 13. The
28 reviewer noted that Jue was planning to schedule a time to receive a corticosteroid injection and

1 might need surgical treatment eventually. *Id.* at UA-CL-IDI-000224. The reviewer recommended
2 that Unum “re-look at medical in 6 months” because “steroid injections and/or surgery may be
3 pursued.” *Id.* Unum did not proceed to follow up and instead continued to pay Jue residual
4 disability benefits until fall of 2002.

5 In September 2002, Jue applied for total disability benefits from Unum as she had stopped
6 working entirely as a result of her second pregnancy, which exacerbated her symptoms. *See*
7 Butler Decl., Ex. 14. Unum approved the claim. Butler Decl. ¶ 16.

8 In March 2003, Jue informed Unum that she had returned to work part time. Coleman
9 Decl., Ex. B at UA-CL-IDI-000646. The Unum claim representative’s notes from the call state
10 “She has not seen Dr. Wu since late last year. She states that the only treatment option left is
11 surgery. If surgery is performed she feels that she may not work at all.” *Id.* On March 20, 2003,
12 Unum sent Jue a letter noting that she would be considered for eligibility under the residual
13 provision of her policy going forward. Butler Decl., Ex. 15 at UA-CL-IDI-000652. The letter
14 noted that Dr. Wu’s medical records indicated that Jue had not received medical treatment from
15 him since February 2001 and requested that she have Dr. Wu provide an updated attending
16 physician statement on her condition. *Id.*

17 In April 2003, Dr. Wu submitted an updated attending physician statement to Unum on
18 Jue’s behalf. *See* Butler Decl., Ex. 16(b). Dr. Wu’s statement indicated that Jue had continued
19 symptoms and must limit use of her hands for sustained gripping, pinching, or pushing, and should
20 not work more than one day a week. *Id.* at UA-CL-IDI-000697. It also stated that she was not
21 taking any medications because she was still nursing. *Id.* The statement indicated that Dr. Wu’s
22 treatment goal was to return her to work and that he was awaiting results for blood and serum
23 testing to further evaluate her condition. *Id.* Unum resumed providing Jue residual disability
24 payments after receiving Dr. Wu’s updated physician statement.

25 On December 8, 2003, Jue contacted Unum to request that her claim be placed on annual
26 certification – which would reduce the frequency with which she would need to provide Unum
27 with updates on her condition. Coleman Decl., Ex. B at UA-CL-IDI-000714. The Unum
28 representative’s notes from the call state “She has explained that her condition will not change

1 w/out surgery. She is only 33 and doesn't want surgery at this time." *Id.* The notes also indicate
2 that Jue told her representative she was "considering seeking another opinion" and agreed to
3 inform Unum if that opinion differed from Dr. Wu's. *Id.* Following this call, Jue's claim was
4 transferred to Unum's extended duration unit, whose function was administrative claim
5 monitoring, rather than active claim management. Butler Decl. ¶ 19.

6 **V. 2004-2011 – UNUM PAYS BENEFITS WITH MINIMAL MONITORING**

7 From 2004 to 2011 Unum continued to pay Jue residual benefits while exercising minimal
8 oversight of her claim. During this time, she submitted annual claimant statements as well as
9 monthly income statements from her office so Unum could calculate her residual benefits. Butler
10 Decl. ¶ 20. Dr. Wu also submitted several attending physician statements on her behalf during this
11 time. In April 2004, Dr. Wu submitted a statement indicating that she had received a
12 corticosteroid shot in her left wrist, which resulted in some pain reduction but did not permit her to
13 return to full-time work. Butler Decl., Ex. 18 at UA-CL-IDI-000762. In October 2005, he
14 submitted an updated statement indicating that she was still experiencing pain and could not work
15 on a full-time basis. *Id.* at UA-CL-IDI-000871. He further stated "[p]atient is considering
16 surgical remedy" and commented, "[h]opefully she will accept the concept of surgical remedy of
17 the condition as she is fearful of surgery." *Id.* In December 2007, he submitted a final statement
18 indicating that Jue still could not work full-time and was currently being treatment with "trial of
19 biofeedback training" and "workstation ergonomics." *Id.* at UA-CL-IDI-000926. He noted in this
20 statement that she was "fearful of injections or surgery." *Id.*

21 From 2008-2011, Jue did not submit any attending physician statements to Unum and
22 Unum did not press her to do so. Unum conducted an internal review of her claim in 2009 to
23 assess whether the claim was being properly managed. *See* Colman Decl., Ex. B at UA-CL-IDI-
24 001088. The reviewer concluded that her condition appeared "permanent" based on Dr. Wu's
25 statement from 2007 and that "[i]t does not appear that any changes are expected." *Id.* The
26 reviewer recommended that Unum obtain updated physician statements and tax documents from
27 her, but otherwise concluded that "handling appears appropriate as nominal" and suggested
28 returning the claim to the extended duration unit. *Id.* In 2012, Unum requested that Jue provide

1 an updated attending physician statement and a new physician, Dr. Susan Hsu, subsequently
2 submitted one on her behalf. Dkt. No. 33-4 (“Bernacchi Decl.”) ¶ 2.

3 **VI. 2015 – REFERRAL TO VALIDATION UNIT**

4 In 2015, Jue’s father merged his dental practice into a new company called Apple Tree
5 Dental in San Mateo. Butler Decl. ¶ 21. In September 2015, Jue sent a letter notifying Unum that
6 she had transferred to the new Apple Tree practice. Butler Decl., Ex. 19. In the letter, she noted
7 that she had been compensated for computer training at the new practice from April 20, 2015 to
8 May 30, 2015, but explained that she did not think that income should be counted as dental
9 income for purposes of calculating her residual benefit. *Id.* Following this email, her claim was
10 referred to Unum’s validation unit, a group that handles long-term claims requiring more active
11 claims management. Butler Decl. ¶ 21.

12 In December 2015, Unum sent Jue a letter indicating that it would not count her computer
13 training income as dental income for purposes of calculating her residual benefit, but also
14 instructed her to provide supplemental information that was missing in her file, including a current
15 attending physician statement and various tax returns and pay records. Butler Decl., Ex. 9(b) at
16 UA-CL-IDI-001827. She submitted an updated claim form and attending physician statement
17 from Dr. Hsu in October 2016, in which Dr. Hsu stated that “improvement [was] not expected” for
18 her condition. *See* Butler Decl., Ex. 20.

19 In December 2016, Unum had Dr. John Groves, a hand surgeon, conduct a medical review
20 of Jue’s file. Butler Decl. Ex. 23 at UA-CL-IDI-002325-002326. Dr. Groves concluded that her
21 current condition was unclear because there was no recent evidence of a physical exam supporting
22 her diagnosis, noted that surgery was likely an appropriate treatment if her condition was
23 persistent, and recommended getting in contact with Dr. Hsu. Butler Decl., Ex. 21 at UA-CL-IDI-
24 002325-002326. Dr. Groves subsequently contacted Dr. Hsu, who agreed that a good next step to
25 assess Jue’s condition and appropriate treatment would be for Jue to undergo an independent
26 medical examination. Butler Decl., Ex. 22 at UA-CL-IDI-002334.

27 Jue participated in an independent medical examination in June 2017 by Dr. Mathias
28 Masem. Butler Decl., Ex. 24(a) at UA-CL-IDI-002765-002769. Dr. Masem confirmed Jue’s

1 diagnosis of De Quervain’s and opined that surgery would be an appropriate treatment for her
2 condition, noting that she had been a candidate for surgery since 2000 but had resisted the
3 procedure. *Id.* Dr. Masem further opined that “[t]he complication rate from DeQuervain’s
4 surgery is extremely low, and the results are generally good” but noted that it was unclear whether
5 the surgery would allow Jue to return to work full time. *Id.* Dr. Groves reviewed Dr. Masem’s
6 assessment and concluded that Jue was not pursuing the appropriate treatment for her condition,
7 which he determined was De Quervain’s surgery. Butler Decl., Ex. 24(b) at UA-CL-IDI-002774.
8 He subsequently spoke again with Dr. Hsu, who generally acknowledged that surgery was
9 appropriate for persistent De Quervain cases but noted that Jue was reluctant to undergo surgery
10 due to the risk of a bad outcome. *Id.* at UA-CL-IDI-002795. In October 2017, Unum sent Jue a
11 letter explaining that her policy required her to obtain appropriate treatment for her condition, that
12 Unum had determined the appropriate treatment for her condition was surgery, and that she was to
13 schedule surgery within 90 days or Unum would discontinue her benefits. Butler Decl., Ex. 26 at
14 UA-CL-IDI-002891-002893.

15 In January 2018, Jue notified Unum that she had been examined by a hand surgeon, Dr.
16 Kilaru, and was returning to see him on January 31, 2018, at which time he would further evaluate
17 her for possible surgery. Butler Decl., Ex. 27 at UA-CL-IDI-002934. The Unum representative
18 informed Jue that Unum would not stop benefits at that time because she was pursuing treatment
19 with Dr. Kilaru and that Unum would consider his opinion. *Id.*

20 In early February 2018, Jue emailed Unum and explained that she had recently returned to
21 Dr. Kilaru for treatment. Butler Decl., Ex. 28. She stated in the email that Dr. Kilaru had given
22 her the option to either continue conservative treatment of her condition or surgery. *Id.* at UA-CL-
23 IDI-002989. Jue further represented that Dr. Kilaru had told her that conservative maintenance
24 was “appropriate care” for her condition. *Id.*

25 In March 2018, Dr. Groves spoke with Dr. Kilaru to discuss Jue’s case. Butler Decl., Ex.
26 29(a). A letter memorializing the call indicates that Dr. Kilaru believed that if corticosteroid
27 injections he had administered to Jue did not allow her to return to work on a full-time basis, De
28 Quervain’s surgery was the next appropriate treatment step. *Id.* at UA-CL-IDI-003018. The letter

1 also reflects that Dr. Kilaru had reviewed the independent medical examination report prepared by
2 Dr. Marsem and agreed with Dr. Marsem’s assessment of appropriate treatment. *Id.*

3 Dr. Kilaru conducted a follow-up visit with Jue in April 2018, during which he observed
4 that she had seen only temporary improvement from the corticosteroid shots. Butler Decl., Ex.
5 29(b) at UA-CL-IDI-003061. He recommended surgery, but she explained that she did not want
6 surgery. *Id.*

7 In May 2018, Unum sent Jue a termination of benefits letter on the basis that she was not
8 pursuing appropriate treatment for her condition. Butler Decl., Ex. 30 at UA-CL-IDI-003079.
9 The letter noted that Jue could appeal Unum’s decision. *Id.* After receiving no response and
10 being unable to reach Jue by phone, Unum sent a subsequent letter in June 2018, reiterating that it
11 was discontinuing her disability benefits and that she had a right to appeal. *Id.* at UA-CL-IDI-
12 003104. In November 2018, Jue submitted a treatment note from Dr. Hsu, who noted that Jue’s
13 condition had worsened and opined that Jue had valid concerns about the surgery because no
14 surgeon could guarantee that her condition would not worsen. Butler Decl., Ex. 31 at UA-CL-IDI-
15 003120-3123. Dr. Hsu stated that “she is making an appropriate choice for her condition and thus
16 conservative maintenance would be appropriate care under her circumstances.” *Id.*

17 Unum reviewed and considered Dr. Hsu’s medical note, but ultimately concluded that the
18 opinions of the three hand surgeons who had reviewed Jue’s condition and recommended surgery
19 were persuasive. Butler Decl., Ex. 32 at UA-CL-IDI-003157. In April 2019, Unum sent Jue a
20 letter informing her that it had completed review of her appeal and that it would move forward
21 with its decision to terminate her benefits for failure to obtain appropriate medical treatment. *Id.*
22 at UA-CL-IDI-003150.

23 LEGAL STANDARD

24 Summary judgment on a claim or defense is appropriate “if the movant shows that there is
25 no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
26 law.” Fed. R. Civ. P. 56(a). In order to prevail, a party moving for summary judgment must show
27 the absence of a genuine issue of material fact with respect to an essential element of the non-
28 moving party’s claim, or to a defense on which the non-moving party will bear the burden of

1 persuasion at trial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the movant has
2 made this showing, the burden then shifts to the party opposing summary judgment to identify
3 “specific facts showing there is a genuine issue for trial.” *Id.* 324.

4 The party opposing summary judgment must then present affirmative evidence from which
5 a jury could return a verdict in that party’s favor. *Anderson v. Liberty Lobby*, 477 U.S. 242, 257
6 (1986). On summary judgment, the Court draws all reasonable factual inferences in favor of the
7 non-movant. *Id.* at 255. “Credibility determinations, the weighing of the evidence, and the
8 drawing of legitimate inferences from the facts are jury functions, not those of a
9 judge.” *Id.* (citation omitted). “The mere existence of a scintilla of evidence in support of the
10 plaintiff’s position will be insufficient; there must be evidence on which the jury could reasonably
11 find for the plaintiff.” *Id.* at 242.

12 DISCUSSION

13 I. JUE MOTION FOR PARTIAL SUMMARY JUDGMENT

14 Jue moves for summary judgment on her contract claim on the bases of waiver and
15 estoppel. She argues that Unum waived its right to insist that Jue have surgery as a condition of
16 receiving benefits and/or should be estopped from requiring Jue to obtain surgery. Dkt. No. 25
17 (“Jue Mot.”). Unum opposes the motion on three primary bases: (1) Jue’s complaint does not
18 adequately allege her waiver and estoppel theories; (2) waiver and estoppel cannot create an
19 entitlement to future benefits under controlling case law; and (3) there are material facts in dispute
20 whether Unum waived its right to insist that Jue obtain surgery and/or should be estopped from
21 requiring her to obtain surgery. Dkt. No. 32 (“Unum Opp.”) at 13-25.

22 While I do not find Unum’s first and second arguments convincing, I agree the factual
23 issue of waiver cannot be determined as a matter of law. Further, I conclude that Jue has failed to
24 carry her burden, as a matter of law, on the issue of estoppel, which is “a nonjury fact question to
25 be determined by the trial court in accordance with applicable law.” *DRG/Beverly Hills, Ltd. v.*
26 *Chopstix Dim Sum Café & Takeout III, Ltd.*, 30 Cal. App. 4th 54, 61 (1994)

27 A. Unum’s Procedural and Legal Challenges to Jue’s Motion

28 Unum’s first two arguments in opposition to Jue’s motion contend that her waiver and

1 estoppel arguments fail: Jue did adequately allege these positions in her Complaint, and waiver
2 and estoppel can create a right to future benefits in specific and limited circumstances. Because
3 these Unum’s arguments pose broad legal attacks to both Jue’s waiver and estoppel claims, I will
4 address them first.

5 **1. Sufficiency of Jue’s Waiver and Estoppel Allegations**

6 Unum argues that Jue’s motion is procedurally improper and should be denied because Jue
7 failed to adequately plead waiver or estoppel in her Complaint. Unum Opp. at 14. It notes that
8 federal pleading standards require that a plaintiff “give the defendant fair notice of what the claim
9 is and the grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 545
10 (2007). And it points out that “despite the liberal pleading standard for civil complaints, plaintiffs
11 may not raise new claims at the summary judgment stage.” *White v. Beltram Edge Tool Supply,*
12 *Inc.*, 789 F.3d 1188, 1200 (11th Cir. 2015). Unum acknowledges that Jue’s Complaint briefly
13 alleges waiver and estoppel, but argues that this is insufficient because Jue did not bring waiver or
14 estoppel as separate claims and because “there is no discussion in the Complaint of the underlying
15 facts giving rise to them.” Unum Opp. at 14.

16 Although Jue’s Complaint does not contain extensive allegations regarding waiver and
17 estoppel, I do not agree with Unum that Jue’s allegations are so deficient as to preclude
18 consideration of them at the summary judgment stage. The Complaint contains a brief, but
19 explicit, allegation regarding waiver and estoppel in the context of Jue’s breach of contract claim:
20 it states that defendants “are estopped from asserting and have waived all contractual provisions, if
21 any, purporting to limit their obligations to provide benefits.” Dkt. No. 1-1 (“Complaint”) at ¶ 31.
22 While it is true that Jue did not bring waiver or estoppel as separate claims, she is not asserting
23 them as separate claims now. Rather, she argues that she is entitled to summary judgment on her
24 breach of contract claim because Unum has waived the right to demand, or should be estopped
25 from demanding, that she have hand surgery and that there are no other factual disputes as to her
26 entitlement to benefits. This is perfectly consistent with the Complaint, which alleges waiver and
27 estoppel as part of Jue’s breach of contract allegations. As a result, the cases Unum cites, barring
28 plaintiffs from raising new *claims* at summary judgment, are not on point; Jue is not asserting any

1 new claims.

2 Further, the Complaint contains at least some allegations relevant to Jue’s waiver and
3 estoppel arguments. She alleges in the Complaint that Unum investigated and approved her claim
4 to benefits and paid her claim for many years before changing course and determining that Jue “no
5 longer met the Policy’s purported requirement of ‘receiving medical care from someone other than
6 yourself which is appropriate.’” Complaint ¶ 22. This is consistent with her argument that Unum
7 is estopped or has waived the right to insist on hand surgery in part because it approved her claim
8 without insisting on that treatment for a fifteen-year period. *See* Jue MSJ at 12. These allegations
9 are sufficient to meet the liberal Rule 8 pleading standard.

10 Jue’s allegations regarding waiver and estoppel are sufficient and do not bar her from
11 raising these issues on summary judgment.

12 **2. Whether Jue’s Motion Fails Because Waiver and Estoppel Cannot**
13 **Create Coverage for Future Benefits**

14 Unum argues that Jue’s waiver and estoppel arguments fail as a matter of law because
15 waiver and estoppel cannot create a right to future coverage. It relies primarily on *Erreca v.*
16 *Western States Life Ins. Co.*, 19 Cal. 2d 388, 402 (1942), in which the California Supreme Court
17 rejected the argument that an insurer had waived the right to insist on an independent medical
18 examination, and to enforce any policy requirements against the insured, because it had previously
19 refused to pay disability benefits. The Court explained that because a disability insurance contract
20 constitutes “a continuing contract for periodic installment payments depending upon the insured’s
21 continued disability,” an insurer’s alleged breach or failure to pay under the contract does not
22 permit the insured “to treat the entire contract as repudiated and ask for future benefits upon a
23 theory of anticipatory breach.” *Id.* Unum also cites *Aetna Casualty & Surety Co. v. Richmond*, 76
24 Cal. App. 3d 645, 652-53 (1977) for the proposition that waiver and estoppel “are not available to
25 bring within the coverage of a policy risks not covered by its terms, or risks expressly excluded
26 therefrom.”

27 Although the cases Unum cites clearly establish some limitations on the application of
28 waiver and estoppel in the insurance context, they are not directly on point and do not clearly bar

1 Jue’s invocation of these doctrines as a matter of law. For example, Jue is not arguing that Unum
2 has broadly waived the right to assert any policy provisions against her, but that Unum specifically
3 waived the right to insist that she obtain surgery for her condition. This is a much narrower
4 waiver than the court addressed in *Erreca*, which does not go so far as to hold that waiver and
5 estoppel are completely inapplicable in disability insurance cases. Further, Jue is not attempting
6 to use waiver or estoppel to expand the scope of her disability coverage, as in *Aetna*.

7 Courts have applied waiver and estoppel to limit an insurer’s ability to assert certain
8 defenses or policy provisions in the disability insurance context. *See August v. Provident Life and*
9 *Accident Ins. Co.*, 772 F. Supp. 2d 1197, 1208 (C.D. Cal. 2011) (holding that insurer was estopped
10 from terminating benefits based on a justification that injury was the result of “late-blooming
11 sickness” where insurer accepted claim based on accident and did not inform insured of its
12 sickness determination until ten years later). Unum has failed to demonstrate that Jue’s waiver
13 and estoppel arguments fail as a matter of law on this basis.

14 **B. Unum’s Disputed Facts Challenge**

15 Unum argues that Jue’s motion should be denied because there are material factual
16 disputes as to waiver and estoppel. I agree that the facts regarding waiver are not sufficiently clear
17 to resolve this issue as a matter of law at the summary judgment stage. Estoppel, in contrast, is “a
18 nonjury fact question to be determined by the trial court in accordance with applicable law.”
19 *DRG/Beverly Hills*, 30 Cal. App. 4th at 61. I conclude that Jue has failed to carry her burden to
20 establish estoppel.

21 **1. Waiver**

22 “Like any other contracting party, an insurance company may waive provisions placed in a
23 policy solely for its own benefit . . .” Waiver “is the intentional relinquishment of a known right
24 after knowledge of the facts.” *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal. 4th 1, 31 (1995). “The
25 waiver may be either express, based on the words of the waiving party, or implied, based on
26 conduct indicating an intent to relinquish the right.” *Id.* “Whether there has been a waiver is
27 usually regarded as a question of fact to be determined by the jury, or by the trial court if there is
28 no jury.” *Posner v. Grunwald-Marx, Inc.*, 56 Cal. 2d 169, 189 (1961). “However, the trial court

1 may properly resolve an issue of waiver as a question of law when the underlying facts are
2 undisputed.” *Old Republic Ins. Co. v. FSR Brokerage, Inc.*, 80 Cal. App. 4th 666, 679 (2000).
3 Where there are disputes or conflicting evidence regarding a party’s intent or the parties’
4 understanding as to a particular statement or representation, waiver is generally “not resolvable as
5 a matter of law.” *Id.*

6 To support her waiver argument, Jue relies heavily on Cheryl Collin’s statement to her in
7 2001, in which Collin reportedly told her that Unum “cannot force her to have surgery, that if she
8 chose not to have surgery it would not affect her benefits.” Coleman Decl., Ex. B at UA-CL-IDI-
9 000274. Jue further notes that following this representation, Unum did not insist that she obtain
10 surgery for a fifteen-year period, even though her physician, Dr. Wu, suggested surgery as a
11 possible treatment for her condition as early as 2000. Jue. Mot. at 11-12. She points out that from
12 2001 – 2016, she and Unum repeatedly acknowledged that surgery was a potential treatment for
13 her condition, that she consistently communicated that she was reluctant or unwilling to get
14 surgery, and that during this time, Unum never insisted that she get surgery. *Id.* On these facts,
15 she argues that Unum indisputably waived the right to insist that she get hand surgery to fulfill the
16 “appropriate treatment” requirement of her policy. *Id.*

17 While the facts she cites could permit a finding of waiver, Unum has submitted additional
18 evidence that could permit a finding against waiver. For example, Unum highlights the context of
19 Jue’s conversation with Collin in 2001, which occurred only a few years after Jue was first
20 diagnosed with De Quervain’s and while she was undergoing other, more conservative treatments
21 for her condition. It notes, for example, that in her call with Collin, Jue told Collin that she was
22 being treated by Dr. Wu and might pursue corticosteroid shots. *See* Butler Decl., Ex. 12 at UA-
23 CL-IDI-000274. It argues that in context, Collin’s statement is best read as an assurance that
24 Unum would not require surgery *at that time*. In further support of its position that it did not
25 intend to waive its right to insist upon surgery, Unum states that shortly after Jue’s call with
26 Collin, a nurse reviewer suggested following up in six months because “steroid injections and/or
27 surgery may be pursued” Butler Decl. Ex. 13. at UA-CL-IDI-000224, indicating that Unum still
28 considered surgery a real possibility for Jue’s case.

1 I agree with Unum that whether it intended to waive its right to insist upon surgery as an
2 appropriate treatment in Jue’s case cannot be resolved as a matter of law on these facts. Jue’s
3 waiver argument rests heavily on a single statement from a claims representative in 2001. While
4 the statement could be interpreted as a waiver, Unum makes a strong argument that, when read in
5 context, the statement could also be interpreted as Unum assuring Jue that it would not insist upon
6 surgery *at that time* based on her then-existing condition and other available treatment options. In
7 addition, Jue’s waiver argument must be considered in the context of considerable back and forth
8 and interactions between her and Unum over more than a decade following her call with Collin.
9 These facts, including the fact that the parties did not discuss whether surgery might be required
10 under the policy at any point following Jue’s 2001 call, is open to multiple readings and
11 interpretations. A reasonable fact finder could find waiver on these facts, but could also find that
12 Unum did not waive its right to insist upon surgery. As a result, the issue of waiver is not suitable
13 for resolution at the summary judgment stage. *See Old Republic*, 80 Cal. App. 4th at 679 (finding
14 waiver claim “not resolvable as a matter of law” where there was conflicting evidence as to the
15 party’s intent to waive). For this reason, Jue’s motion for summary judgment is DENIED on the
16 issue of waiver.

17 **2. Estoppel**

18 Equitable estoppel may be applied in the insurance context where “(1) The [insurer] to be
19 estopped has engaged in blameworthy or inequitable conduct; (2) that conduct caused or induced
20 the [insured] to suffer some disadvantage; and (3) equitable considerations warrant the conclusion
21 that the [insurer] should not be permitted to exploit the disadvantage [it] has thus inflicted upon
22 [its insured].” *City of Hollister v. Monterey Ins. Co.*, 165 Cal. App. 4th 455, 488 (2008); *see also*
23 *August v. Provident Life and Acc. Ins. Co.*, 772 F. Supp. 2d 1197, 1205 (C.D. Cal. 2001) (applying
24 *Hollister* in a disability insurance action). Jue fails to meet each element of the *Hollister* test.

25 First, Jue has failed to establish that Unum engaged in “inequitable conduct.” She argues
26 that Unum engaged in inequitable conduct because it told her in 2001 that it would not insist that
27 she obtain surgery as a condition of receiving benefits and failed to correct this representation for
28 fifteen years. Jue Mot. at 13. She asserts that this conduct violated Unum’s “common law

1 obligation to assist the insured to recover bargained-for policy benefits,” and its broad “duty to
2 speak.” *August*, 772 F. Supp. 2d at 1206. She further contends that “in situations in which an
3 insured’s lack of knowledge may potentially result in a loss of benefits or a forfeiture of rights, an
4 insurer has been required to bring to the insured’s attention relevant information so as to enable
5 the insured to take action to secure rights afforded by the policy.” *Davis v. Blue Cross of No. Cal.*,
6 25 Cal. 3d 418, 428 (1979).

7 Unum’s conduct in this case does not appear to run afoul of these duties. Collin’s
8 representation to Jue in 2001 that Unum would not require her to obtain surgery was accurate at
9 that time and for the next fifteen years. Unum paid Jue disability benefits for that entire period
10 without requiring her to get hand surgery. In 2017, after conducting a new review of Jue’s
11 condition and treatment options and determining that surgery was the appropriate treatment at that
12 time, Unum directly informed her of this requirement. It then gave her an opportunity to have the
13 surgery and only terminated her benefits when, after several months, she declined to do so. Jue
14 has failed to establish that Unum engaged in “inequitable conduct” by failing to apprise her of
15 relevant facts or terms of her policy.

16 Second, Jue has failed to establish that Unum’s conduct caused disadvantage to her. She
17 makes several claims of disadvantage, none of which are persuasive. She argues that information
18 and evidence supporting her waiver argument and years of conservative treatment are not
19 available because former employee Collin could not be located and two doctors who approved her
20 conservative course of treatment over the years, Dr. LoCascio and Dr. Wu, have passed away. Jue
21 Mot. at 14-15. But it is unlikely that Collin, if located, would have been able to provide additional
22 meaningful support for Jue’s waiver argument. Jue does not contend that she had any additional
23 discussions with Collin on this topic, and it is unlikely that Collin would be able to provide
24 significant detail regarding a single phone call from 2001 beyond what is contained in her fairly
25 detailed contemporaneous notes from the call. Further, while Dr. LoCascio and Dr. Wu, if
26 available, may have been able to provide some support for Jue’s conservative course of treatment
27 in 1999 and Jue’s decision not to pursue surgery in the early 2000’s, these facts are not relevant to
28 whether De Quervain’s surgery was the appropriate course of treatment for Jue’s condition in

1 2018 when Unum terminated her benefits. Because Unum’s decision was based on Jue’s
2 condition at that time, the unavailability of these doctors does not cause any disadvantage to Jue.

3 Jue also argues that she has been disadvantaged because, in reliance on Unum’s
4 representation that she would not need to have surgery, and believing that Unum would
5 “continue[] to pay benefits without question,” she transitioned away from clinical dentistry. Jue
6 Mot. at 15; Jue Decl., ¶ 43. She asserts that, as a result of this transition away from dentistry, she
7 would struggle to find a full-time clinical position now even if she was physically able to do the
8 work. *Id.*

9 This argument is not convincing for multiple reasons. First, as is well documented by the
10 evidence submitted by both parties, Jue transitioned away from the practice of clinical dentistry
11 because of persistent De Quervain’s syndrome, which has prevented her from practicing dental
12 work for more than a few hours a couple of days a week for many years. She did not “transition
13 out of clinical dentistry” because of Unum’s representations, but because of her disability, which
14 prevented her from working as a dentist. Further, this harm is speculative and theoretical. She
15 does not claim that she has the physical ability to work as a dentist nor the desire to do so. And,
16 even if her condition resolved and she was able to work, any trouble in finding a job due to her
17 long absence from the profession would be the result of her long-term disability, which Unum did
18 not cause.

19 Jue finally argues that she has been disadvantaged because, if Unum had mandated surgery
20 as the “appropriate treatment” earlier, she could have considered its position at a time when she
21 was far younger and when she would have had a better chance of a successful surgical outcome.
22 Jue Mot. at 15. But she admits that her doctors recommended surgery as early as 2000 and that
23 she was reluctant to undergo the procedure due to concerns over possible complications. She had
24 the opportunity to consider surgery when she was younger and did. Any negative health effects
25 resulting from her decision not to pursue surgery when she was younger is the result of her
26 personal decisions regarding what treatment to undertake.

27 Third, and finally, Jue has failed to show that equitable considerations warrant preventing
28 Unum from exploiting any disadvantage caused to her. As discussed above, she has failed to

1 convincingly show that Unum’s conduct has caused her any disadvantage. As a result, she cannot
2 establish this element.

3 For the reasons discussed above, Jue has failed to carry her burden of showing that Unum
4 should be estopped from requiring surgery as an “appropriate treatment” for her condition.

5 Jue’s motion for partial summary judgment on her contract claim is DENIED.

6 **II. UNUM SUMMARY JUDGMENT MOTION**

7 Unum has moved for partial summary judgment on Jue’s good faith and fair dealing claim
8 and on her request for punitive damages.

9 **A. Good Faith and Fair Dealing Claim**

10 Unum moves for summary judgment on Jue’s good faith and fair dealing claim, arguing
11 that Jue cannot possibly succeed on this claim because there is a “genuine dispute” whether Unum
12 was justified in withholding benefits. Dkt. No. 33 (“Unum Mot.”) at 16.

13 In the insurance context, “[t]he key to a bad faith claim is whether or not the insurer’s
14 denial of coverage was reasonable.” *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 992 (9th Cir.
15 2001). While the reasonableness of an insurer’s claims decisions is generally a fact question “a
16 court can conclude as a matter of law that an insurer’s denial of a claim is not unreasonable, so
17 long as there existed a genuine issue as to the insurer’s liability.” *Lunsford v. Am. Guar. & Liab.*
18 *Ins. Co.*, 18 F.3d 653, 656 (9th Cir. 1994). “The genuine issue rule in the context of bad faith
19 claims allows a district court to grant summary judgment when it is undisputed or indisputable that
20 the basis for the insurer’s denial of benefits was reasonable—for example, where even under the
21 plaintiff’s version of the facts there is a genuine issue as to the insurer’s liability under California
22 law.” *Amadeo v. Principal Mut. Life Ins. Co.*, 290 F.3d 1152, 1161 (9th Cir. 2002).

23 The “genuine dispute” rule is evaluated under an objective standard and “[i]f conduct of
24 the insurer in denying coverage was objectively reasonable, its subjective intent is irrelevant.”
25 *CalFarm Ins. v. Krusiewicz*, 131 Cal. App. 4th 273, 287 (2005). Under California law it is not
26 unreasonable for an insurer to “give its own interests consideration equal to that it gives the
27 interests of its insured,” *Fraley v. Allstate Ins. Co.*, 81 Cal. App. 4th 1282, 1292 (2000), or “to
28 resolve good faith doubts about the claim against the claimant.” *Phelps v. Provident Life & Acc.*

1 *Ins. Co.*, 60 F. Supp. 2d 1014, 1022 (C.D. Cal. 1999). Conduct that has been found to be
2 unreasonable includes: (1) failing to thoroughly investigate the foundation for the denial of
3 benefits, *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 818-819 (1979); (2) ignoring, or
4 failing to obtain readily available evidence that supports coverage, *Mariscal v. Old Republic Life*
5 *Ins. Co.*, 42 Cal. App. 4th 1617, 1624 (1996); and (3) unreasonably interpreting the policy
6 language to effectuate a denial, *Amadeo*, 290 F.3d at 1162-63.

7 Reviewing the facts in the light most favorable to Jue, I agree with Unum that there is a
8 “genuine dispute” whether Unum was justified in terminating Jue’s benefits and that no reasonable
9 jury could conclude that Unum acted unreasonably. The dispute in this case centers on whether
10 the “appropriate care” language in Jue’s policy required her to undergo De Quervain’s surgery at
11 the time Unum terminated her benefits in 2018. Unum notes that courts have interpreted similar
12 “appropriate care” policy language to require an insured to “seek and accept appropriate care for
13 his disabling condition.” *Henry v. Provident Life & Accident Ins. Co.*, 106 F. Supp. 2d 1002,
14 1004-1005 (C.D. Cal. 2000). The court in *Henry* further concluded that there was a triable issue
15 whether appropriate care in that case required the insured to undergo carpal tunnel syndrome
16 release surgery. *Id.* at 1005. Jue herself “recognizes that under some circumstances, surgery may
17 be the only form of appropriate treatment,” Jue Opp. at 20, and in her summary judgment motion
18 argues that Unum “knew that is *could* insist upon surgery as a form of ‘appropriate care’ in order
19 for its insured to be eligible for benefits” Jue Mot. at 11. The key question then is whether Unum
20 has submitted sufficient evidence to demonstrate a “genuine dispute” whether De Quervain’s
21 surgery was the “appropriate treatment” in Jue’s case when it terminated her benefits. It has.

22 The key facts are not in dispute. After years of paying Jue disability benefits and requiring
23 relatively minimal documents and updates from her, in 2015 her case was reassigned to Unum’s
24 validation unit, known for more active claims management. *See supra*, Background, Section F.
25 The validation unit determined that Jue’s medical documentation was out of date and requested
26 updated claims documents from her, including an attending physician statement. *Id.* In 2016, Dr.
27 Hsu submitted a statement on her behalf that confirmed her current disability and work
28 restrictions. *Id.* Unum then had its consultant Dr. Groves, a hand surgeon, perform a medical

1 review of Jue's file. *Id.* Dr. Groves felt that her medical documentation did not clearly support
2 her current restrictions and contacted Dr. Hsu to discuss her case. *Id.* Dr. Hsu agreed with Dr.
3 Groves that it would make sense to refer Jue to have an independent medical examination to assess
4 her condition and treatment options. *Id.* In 2017, Dr. Masem, a hand surgeon, conducted such an
5 examination and determined that Jue had a persistent case of De Quervain's and that surgery was
6 the appropriate treatment for her condition. *Id.* Dr. Groves reviewed Dr. Masem's report and
7 agreed that surgery appeared appropriate. *Id.* Unum then informed Jue that it believed hand
8 surgery was the appropriate treatment for her condition and that it would discontinue benefits if
9 she did not schedule surgery within 90 days. *Id.* In 2018, Jue informed Unum she was consulting
10 with a hand surgeon, Dr. Kilaru, and Unum agreed to delay any termination of benefits so it could
11 consider Dr. Kilaru's opinion. *Id.* Jue was examined by Dr. Kilaru, who prescribed an anti-
12 inflammatory and attempted to treat her wrist issues with corticosteroid shots. *Id.* After the shots
13 did not resolve the problem and provided only temporary relief, he too concluded that hand
14 surgery was the appropriate next step in her treatment. *Id.* Jue did not get hand surgery and Unum
15 accordingly terminated her benefits in May 2018. *Id.* During the appeals process Jue submitted a
16 note from Dr. Hsu indicating that Dr. Hsu believed that Jue's concerns regarding the hand surgery
17 were valid because nobody could guarantee that the surgery would be successful or would not
18 worsen her condition and that conservative treatment and management was therefore appropriate
19 care for Jue's case. *Id.* Unum reviewed Dr. Hsu's note but concluded that the opinions of Dr.
20 Kilaru, Dr. Masem, and Dr. Groves were more persuasive and confirmed its termination of Jue's
21 benefits. *Id.*

22 Based on these facts, I conclude that Unum's validation team's investigation and
23 assessment of her condition and treatment options was thorough and fair. Over nearly three years,
24 Unum consulted multiple doctors, including Jue's personal physician, an independent medical
25 examiner, and a hand surgeon of Jue's choosing to assess her condition. Three different hand
26 specialists agreed that the appropriate treatment for Jue was De Quervain's surgery and that the
27 surgery was low-risk and likely to significantly improve her condition, possibly allowing her to
28 return to work full time. After surgery was identified as the appropriate treatment, Unum still

1 allowed Jue an opportunity to see if alternative treatments from Dr. Kilaru would resolve her
2 condition. Even Dr. Hsu, Jue’s general physician, did not dispute that the surgery would be an
3 appropriate treatment for Jue, but determined that conservative treatment was also appropriate,
4 given her reluctance to obtain the surgery. Jue has not submitted any evidence suggesting that
5 Unum failed to investigate key aspects of her condition or failed to consider relevant medical
6 information. She does not dispute that “under some circumstances, surgery may be the only form
7 of appropriate treatment.” Jue Opp. at 20. The facts show that Unum conducted a thorough and
8 fair investigation, considered all relevant medical evidence, and made a reasonable conclusion that
9 the appropriate treatment for Jue’s case was hand surgery. I therefore find that there is a genuine
10 dispute whether Unum was justified in denying benefits and that Unum did not act unreasonably
11 in its investigation, review, and treatment of Jue’s claim.

12 Jue makes several arguments in opposition to Unum’s summary judgment motion, none of
13 which are convincing. First, she contends that it was unfair for Unum to investigate the
14 appropriate treatment for her condition because an Unum representative had told her in 2001 that
15 Unum would not force her to have surgery. Jue Opp. at 20. This argument makes little sense –
16 there is no reason why this statement in 2001 would make it unfair for Unum to investigate her
17 claim in 2018 and determine what the appropriate treatment for her condition was. To the extent
18 Jue is arguing it was unfair for Unum to require surgery, after previously telling her surgery was
19 not required, I disagree. The mere fact that Unum reached different conclusions about the
20 appropriate medical treatment for Jue’s condition seventeen years apart does not make its later
21 conclusion unreasonable. As discussed above, Unum conducted a thorough investigation into
22 Jue’s condition from 2015 to 2018 and its determination that the appropriate treatment for Jue’s
23 condition at that time was hand surgery was well supported by medical experts.

24 Second, Jue argues that Unum’s investigation into her condition was untimely. Jue Opp. at
25 20. While it certainly appears that Unum took a lax approach to the management of Jue’s claim
26 for some years, it is unclear how this was in any way unfair to her or evidence of bad faith.
27 Unum’s investigation into Jue’s condition starting in 2015 was into her condition at that time and
28 the appropriate treatment for her condition at that time. Unum is permitted to assess an insured’s

1 entitlement to benefits on an ongoing basis, including investigating an insured’s current condition
2 and treatment options. Accordingly, Unum’s potential failure to closely investigate Jue’s claim
3 prior to 2015, when it was paying her disability benefits, is not relevant to whether its later
4 investigation and termination of benefits was reasonable.

5 Third, Jue suggests that Unum intentionally misapplied its policy to interpret “appropriate
6 treatment” as treatment designed to facilitate a return to full-time work. Jue Opp. at 20. However,
7 whether “appropriate treatment” should be interpreted to mean treatment that can facilitate a return
8 to full-time work is an unresolved question. Jue has not convincingly argued that Unum’s
9 interpretation is facially unreasonable or that Unum intentionally misapplied the policy language.
10 Further, even if “appropriate treatment” should not be read to require treatment that may return an
11 insured to full-time work, Unum has submitted substantial evidence indicating that multiple
12 doctors determined De Quervain’s surgery was “appropriate treatment” for Jue’s condition and
13 case. As a result, Unum’s decision to terminate benefits may have been justified under the plain
14 language of the policy, which requires insureds to obtain “appropriate treatment.”

15 Fourth, Jue argues that Unum knew surgery was not the appropriate treatment in her case
16 because (1) it had previously acknowledged other treatments as appropriate for De Quervain’s; (2)
17 Unum told her in 2001 that it would not force her to have hand surgery; and (3) it approved her
18 benefits for 18 years. Jue Opp. at 20-21. This argument is not persuasive. These facts are all
19 consistent with Unum reasonably determining that surgery was the only appropriate remaining
20 treatment for Jue after all other treatment options were exhausted. It is perfectly plausible that the
21 “appropriate treatment” for a chronic condition might change over time; Unum’s “flip-flop”
22 regarding the appropriate treatment for Jue does not reflect bad faith.

23 Fifth, Jue argues that Unum’s decision was unfair because Unum’s validation unit operates
24 on a quota system with the specific goal of denying long-term claims. Opp. at 16-19. However,
25 the evidence she cites does not support this characterization. The evidence indicates that Unum
26 uses forecasts to estimate, in part, the number of claims likely to be terminated each month and
27 that repeated failure to meet likely forecasts could be one metric Unum management would use to
28 assess the validation unit employees’ performance. *See* Colman Decl., Ex. DD at 75:2-77:24

1 (testimony from validation team manager acknowledging that Unum used forecasts and trend
2 reports to estimate likely recoveries per month and that there could be consequences for failure to
3 meet targets over time, “depending on the reason for the variance”). Unum’s use of forecasts and
4 metrics as a way to manage its business and assess employees is not on its own evidence of bad
5 faith. The evidence submitted indicates that Unum used these tools reasonably and did not enforce
6 strict or rigid quotas based on these forecasts. *See id.* Moreover, the specific facts of Jue’s case
7 indicate that the validation team thoroughly investigated her claim, considered multiple physician
8 opinions, and made a plausible determination that surgery was the appropriate treatment for her
9 case over a three-year period. The validation team’s general use of metrics and forecasts does not
10 demonstrate bad faith in Jue’s case.

11 Finally, Jue argues that the “genuine dispute” doctrine does not apply because a dispute is
12 not legitimate “unless it is founded on a basis that is reasonable under the circumstances.” Jue
13 Opp. at 21 (citing *Wilson v. 21st Century Ins. Co.*, 42 Cal. 4th 713, 724, n.7 (2003)). She argues
14 that Unum’s decision was not reasonable under the circumstances for the same reasons discussed
15 above. For the same reasons already addressed, I disagree and conclude that there is a reasonable
16 and genuine dispute whether Unum was entitled to terminate Jue’s benefits.

17 For these reasons, I agree with Unum that there is a “genuine dispute” whether Unum was
18 justified in denying Jue’s claim. Unum’s motion for summary judgment concerning Jue’s good
19 faith and fair dealing claim is GRANTED.

20 **B. Punitive Damages**

21 Unum also moves for summary judgment on Jue’s demand for punitive damages, arguing
22 that Jue cannot meet California’s heavy punitive damages standard of showing “malice, fraud or
23 oppression” by “clear and convincing” evidence. Unum Mot. at 20. I agree.

24 California sets a high standard for recovering punitive damages. “The party requesting
25 punitive damages must come forward with ‘clear and convincing’ evidence of fraud, oppression,
26 or malice that is ‘sufficiently strong to command the unhesitant assent of every reasonable mind.’”
27 *Porsandeh v. Prudential Prop. & Cas. Ins. Co.*, Case No. CV-02-5343-EFS (SHx), 2004 WL
28 5642440, at *8 (C.D. Cal. Apr. 30, 2004) (citing *In re Angelis P.*, 28 Cal. 3d 908, 919 (1981).

1 California courts have noted that this includes conduct that is “so vile, base, contemptible,
2 miserable, wretched or loathsome that is would be looked down upon and despised by ordinary
3 decent people,” *Stewart v. Truck Ins. Exch.*, 17 Cal. App. 4th 468, 483 n. 29 (1993), and conduct
4 “conceived in a spirit of mischief or with criminal indifference towards to obligations owed to
5 others,” *Kendall Yacht Corp. v. United California Bank*, 50 Cal. App. 3d 949, 958 (1975).

6 Jue has not submitted evidence sufficient to meet this high standard. As discussed above,
7 the evidence indicates that Unum conducted a thorough, years-long investigation into her
8 condition and appropriate medical treatment, considered the opinions of several different medical
9 experts, including two physicians of her choosing, and made a reasonable determination that
10 “appropriate treatment” in her case was De Quervain’s surgery. This evidence is not sufficient to
11 demonstrate bad faith and certainly does not meet the higher standard to establish punitive
12 damages.

13 Jue argues that Unum acted in bad faith because its validation team operated on a quota
14 system with the aim of terminating claims and because Unum has “unacceptable corporate
15 practices.” Jue Opp. at 23. As discussed above, the evidence she submitted regarding the
16 validation team’s use of forecasts does not support her characterization that the team operated on a
17 rigid quota system to deny a certain number of predetermined claims each month. Nor has she
18 presented any evidence or argument that these forecasts had any negative impact on her claim; the
19 facts indicate that Unum conducted a thorough, fair, and lengthy investigation into her condition
20 and the appropriate treatment for her case before terminating her benefits.

21 Jue also argues that Unum acted in bad faith because it “deliberately sought to downplay
22 the known risks associated with the surgery when insisting that Dr. Jue must undergo the
23 procedure as a condition to receiving benefits.” Jue Opp. at 23. Her primary evidence for this is
24 Unum’s motion, which she argues improperly characterizes the surgery as “minor.” Jue Opp. at 7-
25 8. But Unum’s arguments from counsel, years after Unum denied Jue’s benefits, is not evidence.
26 Her only other cited evidence on this point is deposition testimony from Dr. Groves and Dr.
27 Kilaru, who testified that a rare complication of De Quervain’s surgery is injury to the radial
28 nerve. *See* Colman Decl., Ex. J at 34:10-35:12, 41:14-42:15; Colman Decl., Ex. Q at 56:5-59:8.

1 But she does not submit any evidence to support the idea that Unum did not consider this possible
2 risk in assessing the appropriate treatment for her case. This testimony is consistent with Unum’s
3 records, which reflect that complications for De Quervain surgery are uncommon. *See* Colman
4 Decl., Ex. B at UA-CL-IDI-002769 (independent medical examination memorandum noting that
5 “[t]he complication rate from DeQuervain’s surgery is extremely low”). Further, Dr. Kilaru
6 testified that he informed Jue that possible risks of De Quervain’s surgery included “injury to
7 tendons, nerves, blood vessels” resulting in possible “stiffness, weakness, or pain” strongly
8 suggesting that Dr. Kilaru was aware of, and specifically considered this possible risk, when he
9 determined that surgery was appropriate for Jue’s condition. Coleman Decl., Ex. Q at 44:23-
10 45:16.

11 Finally, Jue points to various cases in which punitive damages have been upheld, claiming
12 that these cases reflect conduct that is “far less severe” than Unum’s actions here. Jue Opp. at 23.
13 Neither case is comparable to the facts here. In *Mazik v. Geico*, 35 Cal. App. 5th 455, 470 (2009),
14 the California Court of Appeal upheld a punitive damage award where the defendant had
15 “approv[ed] settlement offers that ignored [plaintiff’s] serious and permanent injuries.” And in
16 *Little v. Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 462-463 (1977), the court upheld punitive
17 damages where the insurer had relied on physician opinions, but had withheld relevant medical
18 information from the physicians on which it relied. Jue does not allege any comparable facts to
19 those at issue in *Mazik* or *Little*: there is no evidence that Unum ignored or disregarded medical
20 information regarding Jue’s condition or that Unum failed to provide full and accurate information
21 to the physicians who examined and opined on the appropriate treatment in her case.

22 Jue has failed to provide clear and convincing evidence that Unum acted with malice,
23 oppression, or fraud in terminating her disability benefits. Unum’s motion for summary judgment
24 concerning Jue’s punitive damages demand is GRANTED.

25 **III. MOTIONS TO SEAL**

26 Jue has filed an administrative motion to seal certain documents that have been designated
27 confidential by Unum. *See* Dkt. No. 35. Unum has also filed an administrative motion to seal
28 certain documents that it has personally designated confidential. *See* Dkt. No. 40. It has not

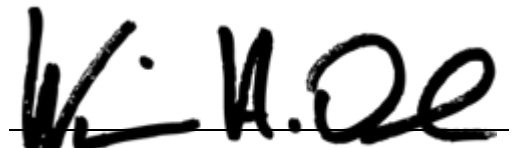
1 submitted a declaration in support of either motion, as required by Local Rule 79-5, but has
2 instead filed two declarations requesting additional time to file substantive supporting
3 declarations, which defense counsel was not able to secure at the time the motions were initial
4 filed due to the holiday season. *See* Dkt. No. 39; Dkt. No. 40-1. Accordingly, Unum will have
5 four days from the date of this order to file a substantive supporting declaration to justify sealing
6 the documents provisionally filed under seal at Dockets No. 35 and 40.

7 **CONCLUSION**

8 For the reasons discussed above Jue's motion for partial summary judgment on the breach
9 of contract claim is DENIED. Unum's motion for partial summary judgment as to the breach of
10 implied covenant of fair dealing claim and punitive damages demand is GRANTED. Unum will
11 have four days to file a declaration in support of sealing the documents filed at Docket Nos. 35
12 and 40.

13 **IT IS SO ORDERED.**

14 Dated: February 8, 2021

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17 William H. Orrick
18 United States District Judge