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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CELIA STAUTY LUIS,
Plaintiff,

v.

METROPOLITAN LIFE INSURANCE
COMPANY,
Defendant.

Case No. [5:14-cv-04436-EJD](#)

**ORDER GRANTING DEFENDANT’S
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Re: Dkt. No. 22

Plaintiff Celia Stauty Luis (“Plaintiff”) filed this action against Defendant Metropolitan Life Insurance Company (“MetLife”) after learning she could not recover life insurance benefits because she was not named as the beneficiary of her husband’s policy. Presently before the court is MetLife’s Motion for Judgment on the Pleadings. See Docket Item No. 22. Plaintiff filed an opposition to the motion. See Docket Item No. 25.

Federal jurisdiction arises pursuant to 28 U.S.C. § 1332. The court has carefully considered both parties’ arguments, including those related to Plaintiff’s request for leave to file an amended complaint. As will be explained below, MetLife is entitled to judgment on the pleadings and Plaintiff has not articulated a valid claim upon which she could base an amended complaint. Accordingly, MetLife’s motion will be granted and Plaintiff’s request for leave to amend will be denied.

1 **I. BACKGROUND**

2 **A. Plaintiff's Allegations**

3 Plaintiff was married to Osvaldo Luis ("Osvaldo"),¹ who is deceased. See Compl., Docket
4 Item No. 1, at ¶ 1. Prior to his marriage to Plaintiff, Osvaldo purchased a life insurance policy
5 from MetLife and designated Kristan Grace ("Grace") as the intended beneficiary. Id. at ¶ 3.

6 On June 21, 2011, Osvaldo attempted to change the beneficiary designation from Grace to
7 Plaintiff by submitting a change of beneficiary form to MetLife. Id. at ¶ 4. In response, Osvaldo
8 received a letter from MetLife on July 5, 2011, rejecting the proposed change and informing
9 Osvaldo that Grace would need to contact MetLife in order to complete the beneficiary change.
10 Id. at ¶ 5.

11 Osvaldo responded on July 18, 2011, by sending a letter in which he informed MetLife that
12 Grace had passed away. Id. at ¶ 6. He included a copy of Grace's death certificate with the letter
13 and again requested that Plaintiff be named as the beneficiary. Id. Based on this communication,
14 Osvaldo believed the requested beneficiary change would be effective. Id.

15 Plaintiff alleges that MetLife received Osvaldo's July 18th letter and reviewed it on August
16 1, 2011. Id. at ¶ 7. She also alleges that Osvaldo did not receive a response from MetLife, and
17 that MetLife continued to accept premium payments. Id.

18 Osvaldo continued to make the premium payments until his death. Id. at ¶ 9. Despite his
19 request to change the beneficiary, Plaintiff alleges the insurance proceeds were ultimately
20 distributed to Grace's contingent beneficiaries. Id.

21 **B. The Prior Interpleader**

22 On October 29, 2013, MetLife commenced an interpleader action over the life insurance
23 proceeds in the United States District Court for the Central District of California in order to
24 resolve the competing claims of Plaintiff and Grace's beneficiaries. See MetLife's Req. for
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¹ Since Plaintiff and Osvaldo share a common surname, the court will refer to Osvaldo by his first
28 name in this order solely for clarity. The court means no disrespect.

1 Judicial Notice (“RJN”), Docket Item No. 22, at Ex. 1.²

2 While the interpleader was pending, Plaintiff signed a document on January 6, 2014,
3 entitled “Stipulation for Release of Funds” (the “Stipulation”) in which Plaintiff agreed that
4 neither she nor Grace’s beneficiaries had competing claims against the life insurance proceeds.
5 See Decl. of James C. Castle, Docket Item No. 22, at Ex. 1. Plaintiff further agreed that the
6 proceeds should be paid to Grace’s beneficiaries, and that the interpleader should be dismissed.
7 Id.

8 The district court issued an order to show cause on January 13, 2014, requiring MetLife to
9 identify the basis for federal subject matter jurisdiction. See Pl.’s RJN, at Ex. B. MetLife then
10 voluntarily dismissed the interpleader action on February 21, 2014. See MetLife’s RJN, at Ex. 2.

11 **C. Commencement of this Action**

12 Plaintiff initiated the instant action in Monterey County Superior Court on August 22,
13 2014, based on the theory that MetLife is estopped from denying Plaintiff the insurance proceeds.
14 MetLife removed the case to this court on October 2, 2014. This motion followed.

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 12(c) allows a party to move for judgment on the
17 pleadings “[a]fter the pleadings are closed - but early enough not to delay trial.” Judgment on the

18 _____
19 ² Plaintiff’s RJN consisting of the interpleader docket and an order to show cause issued by the
20 court in that action is GRANTED. See Fed. R. Evid. 201(b) (the court “may judicially notice a
21 fact that is not subject to reasonable dispute because it . . . can be accurately and readily
22 determined from sources whose accuracy cannot reasonably be questioned”); see also Reyn’s
Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) (the court “may take
judicial notice of court filings and other matters of public record”).

23 MetLife’s RJN, which contains the interpleader complaint and the Stipulation signed by the is also
24 GRANTED. Although Plaintiff objects generally to these documents, she notably does not
25 question their authenticity. Nor can she legitimately claim she was unaware of these documents.
26 Thus, the interpleader complaint is properly noticed as a court-filing. The Stipulation, although
27 apparently never filed in the interpleader, is nonetheless subject to judicial notice as a document
“crucial to the plaintiff’s claims, but not explicitly incorporated in” the complaint. Parrino v. FHP,
Inc., 146 F.3d 699, 706 (9th Cir. 1998); see Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42,
47 (2d Cir. 1991) (explaining that a “plaintiff should not so easily be allowed to escape the
consequences of its own failure” by neglecting to reference or attach unfavorable documents to the
complaint).

1 pleadings is proper when “there is no issue of material fact in dispute, and the moving party is
2 entitled to judgment as a matter of law.” Chavez v. United States, 683 F.3d 1102, 1108 (9th Cir.
3 2012) (quoting Fleming v. Pickard, 581 F.3d 922, 925 (9th Cir. 2009)).

4 The standard for a Rule 12(c) motion is essentially the same as that for a Rule 12(b)(6)
5 motion. Id. Thus, a court must presume all facts alleged in the complaint as true, and determine
6 whether the complaint demonstrates a plausible entitlement to a legal remedy. See Bell Atl. Corp.
7 v. Twombly, 550 U.S. 544, 555-57 (2007) (discussing the standard for dismissal under Rule
8 12(b)(6)). It may also consider materials subject to judicial notice without converting the motion
9 into one for summary judgment. United States v. 14.02 Acres, 547 F.3d 943, 955 (9th Cir. 2008).

10 **III. DISCUSSION**

11 MetLife makes a number of arguments in support of judgment on the pleadings, each of
12 which is discussed below.

13 **A. Compulsory Counterclaim**

14 MetLife first argues that Plaintiff is barred from bringing this action because any claims
15 should have been asserted in the prior interpleader action as compulsory counterclaims. This
16 argument lacks merit.

17 Federal Rule of Civil Procedure 13(a) governs compulsory counterclaims, and states in
18 pertinent part:

19 A pleading must state as a counterclaim any claim that - at the time
20 of its service - the pleader has against an opposing party if the claim:
21 (A) arises out of the transaction or occurrence that is the subject
22 matter of the opposing party's claim; and (B) does not require
adding another party over whom the court cannot acquire
jurisdiction.

23 “The purpose and design of Rule 13(a) is to prevent multiplicity of litigation and to bring
24 about prompt resolution of all disputes arising from common matters.” Local Union No. 11, Int'l
25 Bhd. of Elec. Workers, AFL-CIO v. G.P. Thompson Elec., Inc., 363 F.2d 181, 184 (9th Cir. 1966).
26 For that reason, “[i]f a party fails to plead a compulsory counterclaim, he is held to waive it and is
27 precluded by res judicata from ever suing upon it again.” Id.

1 Rule 13 does not apply to every claim that could or should have been asserted in prior
2 litigation. Indeed, the language of the rule denotes that preclusion will only apply to claims that
3 should have been asserted in a “pleading.” Thus, while the Ninth Circuit has not yet commented
4 on this issue, district courts faced with these circumstances have held, consistent with other
5 circuits, that “the bar to future suit does not arise if the defendant in the prior action did not file a
6 responsive pleading.” MRW, Inc. v. Big-O Tires, LLC, No. CIV. S-08-1732 LKK/DAD, 2008
7 U.S. Dist. LEXIS 101902, at *29, 2008 WL 5113782 (E.D. Cal. Nov. 26, 2008) (citing United
8 States v. Snider, 779 F.2d 1151, 1157 (6th Cir. 1985) (“Rule 13(a) only requires a compulsory
9 counterclaim if the party who desires to assert a claim has served a pleading.”)).

10 Here, Plaintiff argues she was never served with the MetLife’s interpleader complaint and
11 never filed a responsive pleading in that action. MetLife has not shown otherwise and its
12 authorities do not address the particular procedural circumstances presented by this case.
13 Accordingly, MetLife has not met its burden on this issue and cannot obtain judgment based on
14 Rule 13(a).

15 **B. Waiver and Estoppel**

16 MetLife believes Plaintiff waived her right to recover the life insurance proceeds when she
17 signed the Stipulation in connection with the interpleader action. On a similar note, MetLife
18 argues Plaintiff is estopped from now seeking payment of the insurance proceeds due to the
19 Stipulation. In response, Plaintiff argues that disputed issues of fact make a motion for judgment
20 on the pleadings an ineffective vehicle for the application of these affirmative defenses. Plaintiff
21 is correct.

22 “Waiver is the voluntary relinquishment of a known right.” Outboard Marine Corp. v.
23 Super. Ct., 52 Cal. App. 3d 30, 41 (1975). “To constitute a waiver, it is essential that there be an
24 existing right, benefit, or advantage, a knowledge, actual or constructive, of its existence, and an
25 actual intention to relinquish it or conduct so inconsistent with the intent to enforce the right in
26 question as to induce a reasonable belief that it has been relinquished.” Id.

27 “The doctrine of equitable estoppel is founded on concepts of equity and fair dealing.”

1 Strong v. Cnty. of Santa Cruz, 15 Cal. 3d 720, 725 (1975). Generally, “[i]t provides that a person
2 may not deny the existence of a state of facts if he intentionally led another to believe a particular
3 circumstance to be true and to rely upon such belief to his detriment.” Id. “The elements of the
4 doctrine are that (1) the party to be estopped must be apprised of the facts; (2) he must intend that
5 his conduct shall be acted upon, or must so act that the party asserting the estoppel has a right to
6 believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he
7 must rely upon the conduct to his injury.” Id.

8 Although waiver and estoppel are related doctrines and are sometimes referred to
9 collectively under one moniker, they actually require distinct considerations. “Waiver refers to the
10 act, or the consequences of the act, of one side.” Old Republic Ins. Co. v. FSR Brokerage, Inc., 80
11 Cal. App. 4th 666, 678 (2000). “Thus, [t]he pivotal issue in a claim of waiver is the intention of
12 the party who allegedly relinquished the known legal right.” Id. (quoting DRG/Beverly Hills,
13 Ltd. v. Chopstix Dim Sum Cafe & Takeout III, Ltd., 30 Cal. App. 4th 54, 60 (1994)). Estoppel, in
14 contrast, focuses solely on conduct. See Oakland Raiders v. Oakland-Alameda Cnty. Coliseum,
15 Inc., 144 Cal. App. 4th 1175, 1189 (2006). That doctrine “is applicable where the conduct of one
16 side has induced the other to take such a position that it would be injured if the first should be
17 permitted to repudiate its acts.” Old Republic Ins. Co., 80 Cal. App. 4th at 678 (quoting
18 DRG/Beverly Hills, Ltd., 30 Cal. App. 4th at 59).

19 As Plaintiff points out, waiver and estoppel are traditionally asserted as affirmative
20 defenses and most often compel the consideration of facts outside the complaint in order to
21 determine whether they preclude a plaintiff’s claims. This attribute commonly makes them
22 unsuitable topics for a motion under Rule 12. However, there is no absolute bar to the
23 consideration of affirmative defenses in the context of a motion challenging only the complaint.
24 “[T]he assertion of an affirmative defense may be considered properly on a motion to dismiss
25 where the ‘allegations in the complaint suffice to establish’ the defense.” Sams v. Yahoo! Inc.,
26 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting Jones v. Bock, 549 U.S. 199, 215 (2007)). “Where a
27 court grants a Rule 12(b)(6) or Rule 12(c) motion based on an affirmative defense, the facts

1 establishing that defense must: (1) be “definitively ascertainable from the complaint and other
2 allowable sources of information,” and (2) “suffice to establish the affirmative defense with
3 certitude.” Gray v. Evercore Restructuring L.L.C., 544 F.3d 320, 324 (1st Cir. 2008) (quoting
4 Nisselson v. Lernout, 469 F.3d 143, 150 (1st Cir. 2006)).

5 Here, the Complaint and “other allowable sources of information” do not establish for the
6 purposes of this motion that Plaintiff waived any claim against MetLife. This is so because the
7 language of the document upon which MetLife principally relies for this argument - the
8 Stipulation filed in the interpleader - does not sufficiently reveal what Plaintiff intended when she
9 signed it. According to the Stipulation, Plaintiff acknowledged and agreed only that she did not
10 have a competing claim against the life insurance proceeds. While this statement does seem
11 superficially inconsistent with Plaintiff’s instant claims, the court cannot confidently find that
12 Plaintiff waived any unstated claim based on that language alone. Divining Plaintiff’s intent
13 would require the court to engage in the types of fact-finding or interpretation that cannot be done
14 in the context of a motion for judgment on the pleadings. At this point, all reasonable inferences
15 must be drawn in favor of Plaintiff, not MetLife. Retail Prop. Trust v. United Bhd. of Carpenters
16 & Joiners of Am., 768 F.3d 938, 945 (9th Cir. 2014).

17 Whether or not Plaintiff should be estopped from asserting claims against MetLife is also
18 an issue that cannot be resolved on this limited record. As the papers reveal, the parties dispute
19 the universe of relevant facts as well as the extent of Plaintiff’s knowledge at the time she signed
20 the Stipulation. In addition, the extent of MetLife’s ignorance of the true state of facts is not
21 something that can be determined solely from the dismissal of the interpleader subsequent to
22 Plaintiff’s execution of the Stipulation. Though MetLife proposes a possible and reasonable
23 narrative, it is not enough to obtain judgment in its favor.

24 In sum, the parties’ states of mind are critical to both waiver and estoppel in one form or
25 another and simply cannot be established based on the Complaint and other documents presently
26 subject to consideration. Accordingly, MetLife has not shown that these affirmative defenses
27 foreclose Plaintiff’s claims.

C. Plausible Entitlement to Remedy

1 MetLife further argues that Plaintiff cannot recover damages against it because the
2 allegations in the Complaint, which seem to sound in estoppel,³ do not make out a valid claim
3 under California law. The court agrees with MetLife that Plaintiff cannot as a matter of law assert
4 such a claim under these circumstances. See Behnke v. State Farm Gen. Ins. Co., 196 Cal. App.
5 4th 1443, 1462-63 (2011) (affirming demurrer to claim for equitable estoppel because “a stand-
6 alone cause of action for equitable estoppel will not lie as a matter of law”); Moncada v. W. Coast
7 Quartz Corp., 221 Cal. App. 4th 768, 782 (2013) (“As estoppel in pais cannot be stated as an
8 independent cause of action in California, the trial court was correct in sustaining defendant’s
9 demurrer to this allegation in the original complaint.”). Thus, MetLife is entitled to judgment on
10 the pleadings as to the only claim presently asserted in the Complaint.

11 For her part, Plaintiff essentially concedes her inability to base claims on an equitable
12 estoppel theory and instead seeks leave to assert other causes of action not currently listed in the
13 Complaint. See Opp’n, Docket Item No. 25, at p. 6:18-20 (“MetLife’s argument is based upon the
14 existing complaint, which Plaintiff seeks leave to amend. Consequently, rather than focusing on
15 the existing complaint (which will be amended), Plaintiff will outline the causes of action she will
16 be able . . . to assert.”). Specifically, Plaintiff contends she can state claims against MetLife for
17 promissory estoppel, misrepresentation, breach of contract, breach of the covenant of good faith
18 and fair dealing, and violation of the Unfair Competition Law (“UCL”), California Business and
19 Professions Code § 17200 et seq. Accordingly, the court examines whether Plaintiff should be
20 permitted leave to amend her complaint.

21 Leave to amend is generally granted with liberality. Fed. R. Civ. P. 15(a)(2) (“The court
22 should freely give leave when justice so requires.”); Morongo Band of Mission Indians v. Rose,
23 893 F.2d 1074, 1079 (9th Cir.1990). Leave need not be granted, however, where the amendment
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25 _____
26 ³ In that regard, Plaintiff alleges that “MetLife is equitably estopped from denying payment of the
27 life insurance proceeds to Plaintiff because MetLife engaged in conduct which caused Plaintiff not
28 to take further steps to change the policy beneficiary to Plaintiff or take other action to provide
Plaintiff with life insurance,” and that “MetLife is estopped from denying Plaintiff the proceeds of
[Osvaldo’s] life insurance policy as his intended beneficiary.” See Compl., at ¶¶ 10, 12.

1 of the complaint would cause the opposing party undue prejudice, is sought in bad faith,
2 constitutes an exercise in futility, or creates undue delay. Foman v. Davis, 371 U.S. 178, 182
3 (1962); Janicki Logging Co. v. Mateer, 42 F.3d 561, 566 (9th Cir. 1994).

4 In its reply, MetLife resists Plaintiff's leave request with arguments focused mainly on the
5 futility of her proposal. "A district court does not err in denying leave to amend where the
6 amendment would be futile . . . or would be subject to dismissal." Saul v. United States, 928 F.2d
7 829, 843 (9th Cir. 1991) (citations omitted). "However, a proposed amendment is futile only if no
8 set of facts can be proved under the amendment to the pleadings that would constitute a valid and
9 sufficient claim or defense." Miller v. Rykoff-Sexton, Inc., 845 F.2d 209, 214 (9th Cir. 1988);
10 Foman, 371 U.S. at 182 (1962) (stating that "[i]f the underlying facts or circumstances relied upon
11 by a [movant] may be a proper subject of relief, he ought to be afforded an opportunity to test his
12 claim on the merits").

13 Plaintiff cannot state a claim for promissory estoppel. The elements of promissory
14 estoppel are: "(1) a promise that is clear and unambiguous in its terms; (2) reliance by the party to
15 whom the promise is made; (3) the reliance must be reasonable and foreseeable; and (4) the party
16 asserting the estoppel must be injured by his or her reliance." Boon Rawd Trading Int'l Co., Ltd.
17 v. Paleewong Trading Co., Inc., 688 F. Supp. 2d 940, 953 (N.D. Cal. 2010). Contrary to what
18 Plaintiff argues, there are no allegations either in the Complaint or cited in the opposition which
19 would reference a "clear and ambiguous" promise by MetLife that would have reasonably led
20 Plaintiff to believe that she had become the beneficiary of the policy. Nor can the court surmise
21 what such promise Plaintiff could allege under this factual scenario considering the entire dispute
22 stems from an alleged lack of communication. Plaintiff's reliance on the "animating principle"
23 underlying the estoppel doctrine aside, the existence of an actual promise is critical to any
24 promissory estoppel claim and, without it, the claim can be maintained. Div. of Labor Law
25 Enforcement v. Transpacific Transp. Co., 69 Cal. App. 3d 268, 277 (1977) (holding that "a
26 promise is an indispensable element of the doctrine of promissory estoppel," and observing that
27 "[t]he cases are uniform in holding that this doctrine cannot be invoked and must be held

1 inapplicable in the absence of a showing that a promise had been made upon which the
2 complaining party relied to his prejudice”). Thus, Plaintiff’s general reference to unidentified
3 “misrepresentations” from MetLife is not enough to raise the possibility of a plausible estoppel
4 claim.⁴

5 Similarly, allowing Plaintiff to bring a claim for breach of contract would be a futile
6 exercise. Plaintiff cannot plead the existence of a contract between herself and MetLife with
7 respect to the life insurance policy. See McKell v. Washington Mutual, Inc., 142 Cal. App. 4th
8 1457, 1489 (2006) (“A cause of action for breach of contract requires pleading of a contract . . .
9 .”). Furthermore, Plaintiff cannot plead that she was a third party beneficiary of the policy
10 because none of its provisions were for her benefit; to the contrary, her own allegations establish
11 that the policy was for the benefit of others. See Cal. Civ. Code § 1559; see also Murphy v.
12 Allstate Ins. Co., 17 Cal. 3d 937, 943 (1976) (“A third party beneficiary may enforce a contract
13 expressly made for his benefit. . . . And although the contract may not have been made to benefit
14 him alone, he may enforce those promises directly made for him.”). Without the availability of
15 such allegations, a claim for breach of the covenant of good faith and fair dealing is also a legal
16 impossibility. See Murphy, 17 Cal. 3d at 944 (“A third party should not be permitted to enforce
17 covenants made not for his benefit, but rather for others.”); see also Hatchwell v. Blue Shield of
18 Cal., 198 Cal. App. 3d 1027, 1034 (1988) (“[L]iability for ‘bad faith’ has been strictly tied to the
19 implied-in-law covenant of good faith and fair dealing arising out of an underlying contractual
20 relationship. Where no such relationship exists, no recovery for ‘bad faith’ may be had.”). None
21 of the cases cited by Plaintiff address the factual scenario presented by this case and are consistent
22

23 ⁴ The case relied on by Plaintiff, Cooper v. State Farm Mutual Automobile Insurance Company,
24 177 Cal. App. 4th 876 (2009), is in accord. There, the California Court of Appeals found that a
25 duty to retain evidence could be imposed on an automobile insurer after that insurer made an
26 explicit promise to the insured that it would do so. 177 Cal. App. 4th at 894. When the insurer
27 later disposed of the evidence - a tire - to the detriment of the insured’s litigation against the
28 manufacturer, the court held that the insured could bring a claim against the insurer based, inter
alia, on a promissory estoppel theory. Id. (“Thus, rather than attempting to impose a duty on
State Farm to preserve evidence based upon general tort principles . . . plaintiff asserts that State
Farm owed its duty to him based upon its promise to retain the tire and plaintiff’s reliance
thereon.”).

1 with this discussion in any event.

2 In addition, Plaintiff does not have standing to assert a misrepresentation claim against
3 MetLife. The elements of intentional misrepresentation in California are: (1) a misrepresentation;
4 (2) knowledge of falsity; (3) intent to defraud or to induce reliance; (4) justifiable reliance; and (5)
5 resulting damage. Engalla v. Permanente Med. Group, Inc., 15 Cal. 4th 951, 974 (1997). The
6 elements of negligent misrepresentation are similar except that a plaintiff need not show that the
7 defendant knew of the falsity of the statement, but rather that the defendant lacked reasonable
8 ground for believing the statement to be true.” McReynolds v. HSBC Bank USA, No. 5:11-cv-
9 05245 EJD, 2012 U.S. Dist. LEXIS 165219, at *6, 2012 WL 5868945 (N.D. Cal. Nov. 19, 2012).
10 According to Plaintiff, MetLife misrepresented that she was a beneficiary under the life insurance
11 policy or perhaps failed to inform her that she was not a beneficiary. Either way, it is inescapable
12 that Plaintiff, a stranger to the life insurance policy, cannot establish legal reliance on anything
13 MetLife did or did not do because MetLife “simply owed no duty to a person who was not the
14 prospective party to the insurance contract.” The Mega Life Health & Ins. Co. v. Super. Ct., 172
15 Cal. App. 4th 1522, 1530 (2009). Breach of a duty is “the crucial issue in any analysis of tort
16 liability.” Id. at 1529. “Without such a duty, any injury is ‘damnum absque injuria’ - injury
17 without wrong.” Id. at 1527. The cases upon which Plaintiff relies do not hold otherwise. See
18 Eddy v. Sharp, 199 Cal. App. 3d 858, 864 (1988) (“As is true of negligence, responsibility for
19 negligent misrepresentation rests upon the existence of a legal duty, imposed by contract, statute
20 or otherwise, owed by a defendant to the injured person.”); see also Pastoria v. Nationwide Ins.,
21 112 Cal. App. 4th 1490, 1499 (2003) (“The general rule is that even if material facts were known
22 to one party and not the other, the failure to disclose the facts is usually not actionable fraud absent
23 a fiduciary relationship giving rise to a duty to disclose.”).

24 Finally, Plaintiff’s damages theory would not permit her to recover for a UCL violation.
25 Remedies available to private plaintiffs under the UCL “are generally limited to injunctive relief
26 and restitution.” Cel-Tech Commc’ns Inc. v. L.A. Cellular Tel. Co., 20 Cal. 4th 163, 179 (1999).
27 Plaintiff has not requested and cannot receive injunctive relief against MetLife because any

1 alleged harm will not be repeated. See Mayfield v. United States, 599 F.3d 964, 970 (9th Cir.
2 2010) (explaining that “a plaintiff must show inter alia that he faces imminent injury on account of
3 the defendant's conduct” to seek an injunction). She also has not and does not propose asking for
4 anything other than damages. See Opp’n, at p. 8:5-7 (“Plaintiff alleged damages of at least
5 \$250,000. Plaintiff alleges that if MetLife had not misled her, she and her husband would have
6 cancelled the MetLife policy and obtained a replacement policy.”). Damages are not restitution
7 and cannot be recovered under the UCL. Zhang v. Super. Ct., 57 Cal. 4th 364, 371 (2013).

8 For these reasons, the court concludes that allowing Plaintiff to amend her complaint in the
9 way she proposes would be futile. Her request will be denied.

10 **IV. ORDER**

11 Based on the foregoing, MetLife’s Motion for Judgment on the Pleadings (Docket Item
12 No. 22) is GRANTED. Plaintiff’s request for leave to file an amended complaint is DENIED.

13 Since this result effectively resolves this action, judgment will be entered in favor of
14 MetLife and the Clerk shall close this file.

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16 **IT IS SO ORDERED.**

17 Dated: October 29, 2015

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19 EDWARD J. DAVILA
United States District Judge

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