

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

SHIRLEY DALEY,  
Plaintiff,  
v.  
LOCKHEED MARTIN CORPORATION, et  
al.,  
Defendants.

Case No. 16-CV-07107-LHK

**ORDER GRANTING MOTIONS TO  
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. Nos. 41, 45, 52

Plaintiff Shirley Daley (“Plaintiff”) sues Defendants Lockheed Martin Corporation and Lockheed Martin Group Universal Life Plan (collectively, “Lockheed”), Marsh US Consumer (“Marsh”), and the Prudential Insurance Company of America (“Prudential”) (all Defendants collectively, “Defendants”). Before the Court are Lockheed and Prudential’s motions to dismiss the First Amended Complaint (“FAC”), in addition to Marsh’s motion for joinder in Lockheed’s motion to dismiss. *See* ECF No. 41, 45, 52. The Court finds these matters suitable for resolution without oral argument and hereby VACATES the motions hearings set for July 6 and 13, 2017. *See* Civil L.R. 7-1(b). Having considered the parties’ submissions, the relevant law, and the record in this case, the Court hereby GRANTS Marsh’s motion for joinder in Lockheed’s motion to dismiss, and GRANTS with leave to amend Lockheed and Prudential’s motions to dismiss.

1 **I. BACKGROUND**

2 **A. Factual Background**

3 Plaintiff is the late wife of Bruce Daley (“Mr. Daley”), who passed away on October 7,  
4 2015. ECF No. 16 (“FAC”), at ¶ 2, 6. Prior to his death, Mr. Daley worked for Lockheed for  
5 forty years. *Id.* During his employment, Mr. Daley acquired a life insurance policy pursuant to  
6 Lockheed’s Group Universal Life Plan (“Plan”). The Plan was administered by Seabury & Smith,  
7 which is the parent company of Marsh. *Id.* The Plan was issued by Prudential. *Id.*

8 Mr. Daley’s Plan provided his beneficiary a death benefit of four times Mr. Daley’s base  
9 pay. *Id.* ¶ 4. Plaintiff was Mr. Daley’s beneficiary under the Plan. *Id.* ¶ 5. After Mr. Daley’s  
10 death, Defendants told Plaintiff that Mr. Daley’s Plan had lapsed and that Plaintiff would not be  
11 paid any benefits under the Plan. *Id.* ¶ 7. According to the FAC, “[a]ssuming [Mr. Daley’s]  
12 [Plan] had lapsed, the lapse was caused by Defendants’ breach of their fiduciary duty to Mr. Daley  
13 by allowing the [Plan] to lapse without Mr. Daley’s informed knowledge or consent.” *Id.*  
14 Plaintiff exhausted her administrative remedies with Lockheed prior to filing suit. *Id.*

15 **B. Procedural History**

16 On July 14, 2016, Plaintiff filed a state court complaint against Lockheed Martin  
17 Corporation and unnamed Doe Defendants. *See* ECF No. 1-1. Plaintiff alleged three state law  
18 causes of action: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing;  
19 and (3) breach of fiduciary duty. *Id.*

20 On December 13, 2016, Lockheed removed Plaintiff’s state court complaint to this Court.  
21 ECF No. 1. As a basis for removal, Lockheed asserted that, because Plaintiff’s complaint sought  
22 benefits under a life insurance plan that was governed by the Employee Retirement Income  
23 Security Act of 1974 (“ERISA”), 29 U.S.C. § 1001, Plaintiff’s state law claims arose under  
24 ERISA and thus Plaintiff’s claims were removable to federal court. *Id.* at 3.

25 On December 20, 2016, Lockheed filed a motion to dismiss Plaintiff’s state court  
26 complaint. ECF No. 13. The motion asserted that Plaintiff’s state law claims were preempted by  
27 ERISA and thus must be dismissed. *Id.* Further, the motion argued that Plaintiff had failed to

1 allege that she exhausted her administrative remedies prior to filing suit. *Id.*

2 On January 3, 2017, Plaintiff filed an opposition. ECF No. 14. Plaintiff's opposition  
3 argued only that "the deficits cite[d] in Lockheed's motion may be cured by amendment." *Id.*  
4 Specifically, Plaintiff argued, Plaintiff "could allege a[n] ERISA claim," and Plaintiff "could  
5 allege that [Plaintiff] exhausted her administrative remedies" prior to filing suit in state court. *Id.*

6 On January 10, 2017, Lockheed filed a reply, which again requested dismissal of the  
7 original complaint because Plaintiff in effect conceded in her opposition that the original  
8 complaint was deficient. ECF No. 15.

9 Also on January 10, 2017, Plaintiff filed a FAC. *See* FAC. Plaintiff's FAC added  
10 Lockheed Martin Group Universal Life Plan, Marsh, and Prudential as Defendants. *Id.* Plaintiff's  
11 FAC also alleged that Plaintiff exhausted her administrative remedies prior to filing suit against  
12 Defendants. *Id.* ¶ 7. Plaintiff alleged a single "claim for relief," which asserted that "Defendants'  
13 breach[ed] their fiduciary duty to [Plaintiff] by allowing the [Plan] to lapse without Mr. Daley's  
14 informed knowledge or consent." *Id.* Plaintiff did not cite ERISA in her FAC. *See id.*

15 On February 7, 2017, the Court denied as moot Lockheed's motion to dismiss the original  
16 complaint. ECF No. 24. The Court found that Plaintiff's FAC was a timely amendment as of  
17 right under Federal Rule of Civil Procedure 15(a)(1)(B). *Id.* The Court noted that, in Plaintiff's  
18 opposition to Lockheed's motion to dismiss, Plaintiff recognized that her [state court] complaint  
19 was deficient." *Id.* The Court thus stated that "if the Court grants any future motion to dismiss the  
20 amended complaint based on" the deficiencies identified by Lockheed in its motion to dismiss the  
21 state court complaint, the Court would dismiss the FAC with prejudice. *Id.*

22 On March 30, 2014, Lockheed filed a motion to dismiss the FAC. ECF No. 41  
23 ("Lockheed Mot."). Lockheed's motion stated that Plaintiff's FAC failed to "refer to ERISA,  
24 much less to the provisions of ERISA under which Plaintiff seeks to bring her claim." *Id.* at 6.  
25 Further, Lockheed argued, to the extent that Plaintiff still sought to bring a *state law* breach of  
26 fiduciary duty claim against Lockheed, Plaintiff's state law claim was preempted by ERISA, as  
27 Lockheed argued in its original motion to dismiss. *Id.* Further, Lockheed argued, Plaintiff's FAC

1 failed to allege that Defendants were fiduciaries. *Id.* at 8. Rather, Plaintiff’s FAC alleged only  
2 that “the lapse [of Mr. Daley’s Plan] was caused by Defendants’ breach of fiduciary duty.” *Id.*

3 On April 13, 2017, Plaintiff filed an opposition to Lockheed’s motion to dismiss. ECF No.  
4 42 (“Opp. to Lockheed Mot.”). Plaintiff argued that her FAC did not allege any state law claims,  
5 but rather alleged only a claim under ERISA. *Id.* at 3. Plaintiff conceded that “the FAC does not  
6 explicitly reference ERISA.” *Id.* However, Plaintiff attached to her opposition communications  
7 between Plaintiff’s counsel and counsel for Lockheed Martin. *See id.* Ex. 1. According to  
8 Plaintiff, these communications showed “Lockheed’s awareness that [Plaintiff] is making an  
9 ERISA claim.” *Id.* at 4. Plaintiff thus argued that her FAC sufficiently gave Lockheed “fair  
10 notice” that she was alleging that Lockheed violated ERISA’s fiduciary duty provisions. *Id.* at 4.

11 On April 20, 2017, Lockheed filed a reply. ECF No. 44 (“Lockheed Reply”).

12 On April 28, 2017, Prudential filed a motion to dismiss the FAC. ECF No. 45 (“Prudential  
13 Mot.”). Prudential also argued that Plaintiff’s FAC failed to cite ERISA and, to the extent that  
14 Plaintiff sought to bring a state law breach of fiduciary duty claim, her state law claim was  
15 preempted by ERISA. *Id.* at 7. Prudential further argued that Plaintiff had failed to state an  
16 ERISA claim for breach of fiduciary duty because Plaintiff failed to allege that Prudential had any  
17 role in the alleged lapse of Mr. Daley’s Plan coverage, and because Plaintiff failed to allege injury  
18 to the Plan as a whole. *Id.* at 10.

19 On May 12, 2017, Marsh filed a motion for joinder in Lockheed’s motion to dismiss the  
20 FAC. ECF No. 52.

21 Also on May 12, 2017, Plaintiff filed an opposition to Prudential’s motion to dismiss the  
22 FAC. ECF No. 56 (“Opp. to Prudential Mot.”). Again, Plaintiff conceded that “[t]he FAC does  
23 not explicitly reference ERISA.” *Id.* at 4. As with Plaintiff’s opposition to Lockheed’s motion,  
24 Plaintiff attached to her opposition to Prudential’s motion exhibits of communications between  
25 Plaintiff’s counsel and Defendants’ counsel. *Id.* Ex. 1. According to Plaintiff, these exhibits  
26 showed that Prudential was sufficiently on notice that Plaintiff sought to allege an ERISA claim  
27 against Defendants. *Id.* at 5. Plaintiff further argued that she was not required to plead further

1 detail at this stage of the litigation regarding Defendants’ alleged misconduct. *Id.* at 4.

2 On May 19, 2017, Prudential filed a Reply. ECF No. 60 (“Prudential Reply”).

3 **II. LEGAL STANDARD**

4 **A. Motion to Dismiss Under Rule 12(b)(6)**

5 Pursuant to Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss an  
6 action for failure to allege “enough facts to state a claim to relief that is plausible on its face.” *Bell*  
7 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the  
8 plaintiff pleads factual content that allows the court to draw the reasonable inference that the  
9 defendant is liable for the misconduct alleged. The plausibility standard is not akin to a  
10 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted  
11 unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citation omitted).

12 For purposes of ruling on a Rule 12(b)(6) motion, the Court “accept[s] factual allegations  
13 in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving  
14 party.” *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008).  
15 However, a court need not accept as true allegations contradicted by judicially noticeable facts,  
16 *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and a “court may look beyond the  
17 plaintiff’s complaint to matters of public record” without converting the Rule 12(b)(6) motion into  
18 one for summary judgment, *Shaw v. Hahn*, 56 F.3d 1128, 1129 (9th Cir. 2011). Mere “conclusory  
19 allegations of law and unwarranted inferences are insufficient to defeat a motion to dismiss.”  
20 *Adams v. Johnson*, 355 F.3d 1179, 1183 (9th Cir. 2004).

21 **B. Leave to Amend**

22 If the Court concludes that a motion to dismiss should be granted, it must then decide  
23 whether to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave  
24 to amend “shall be freely given when justice so requires,” bearing in mind “the underlying purpose  
25 of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or  
26 technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted).  
27 Nonetheless, a district court may deny leave to amend a complaint due to “undue delay, bad faith

28

1 or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments  
2 previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
3 amendment, [and] futility of amendment.” *See Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d  
4 522, 532 (9th Cir. 2008).

5 **III. DISCUSSION**

6 Plaintiff’s FAC corrects the deficiencies identified by Lockheed in Lockheed’s motion to  
7 dismiss Plaintiff’s original state court complaint. Specifically, Plaintiff’s FAC no longer alleges  
8 state court causes of action, and Plaintiff’s FAC alleges that Plaintiff exhausted her administrative  
9 remedies. *See* FAC ¶ 7. However, in amending her complaint, Plaintiff’s FAC introduces two  
10 *new* pleading deficiencies. First, although Plaintiff states in her opposition that she is alleging a  
11 claim under Section 404 of ERISA for breach of fiduciary duty, Plaintiff’s FAC does not contain  
12 any citation or reference to ERISA. Second, even assuming that Plaintiff’s FAC adequately  
13 referenced ERISA, Plaintiff’s FAC is nonetheless deficient because Plaintiff fails to plausibly  
14 allege an ERISA claim. The Court discusses each of these deficiencies in turn.

15 **1. Plaintiff Fails to Identify Any ERISA Provision in her FAC**

16 Plaintiff asserts in her oppositions that her FAC alleges a claim under Section 404 of  
17 ERISA for breach of fiduciary duty. *See* Opp. to Lockheed Mot. at 4. However, as Plaintiff  
18 concedes in her oppositions, Plaintiff’s FAC does not cite or otherwise identify ERISA *at all*.  
19 Indeed, Plaintiff’s FAC does not identify *any* particular cause of action. Rather, under a heading  
20 entitled “claim for relief,” Plaintiff alleges only that “[a]ssuming [Mr. Daley’s Plan] had lapsed,  
21 the lapse was caused by Defendants’ breach of their fiduciary duty to Mr. Daley.” *Id.* ¶ 7.

22 Plaintiff contends that, even though her FAC does not identify any particular cause of  
23 action, her FAC is nonetheless sufficient to state a claim under Section 404 of ERISA for breach  
24 of fiduciary duty. Specifically, Plaintiff argues that communications between Plaintiff’s counsel  
25 and Defendants’ counsel, which Plaintiff attaches to her oppositions, show that Defendants are  
26 aware that Plaintiff is asserting an ERISA claim. *See, e.g.*, Opp. to Lockheed Mot., Ex. 1. For  
27 example, Plaintiff attaches an email in which Lockheed’s counsel “propos[es] two ERISA-

1 competent mediators.” *See id.* Ex. 1, ¶ 3.

2 For several reasons, however, Plaintiff’s argument is unpersuasive. First, on a motion to  
3 dismiss, the Court is limited to the “allegations contained in the pleadings, exhibits attached to the  
4 complaint, and matters properly subject to judicial notice.” *Akhtar v. Mesa*, 698 F.3d 1202, 1212  
5 (9th Cir. 2012). Thus, the Court may not consider the communications that Plaintiff attaches to  
6 her opposition. Second, even if the Court could consider the communications attached to  
7 Plaintiff’s opposition, and even if these communications showed that Defendants successfully  
8 guessed that Plaintiff was asserting an ERISA claim, “Defendants are not required to guess at the  
9 basis of [a plaintiff’s] claims.” *Primo v. Pac. Biosci. of Cal., Inc.*, 940 F. Supp. 2d 1105, 1112  
10 (N.D. Cal. Apr. 15, 2013) (rejecting plaintiff’s argument that, because the defendants could  
11 discern plaintiff’s claim “well enough to draft a motion to dismiss,” plaintiff had satisfied Rule 8).  
12 “Instead, Plaintiff[] ha[s] the burden to present at least a ‘short and plain statement’ of [her]  
13 claim[.]” *Id.* Plaintiff’s FAC does not identify *any* particular cause of action, let alone identify the  
14 specific provision of ERISA that Plaintiff contends Defendants breached. Plaintiff’s FAC is not  
15 sufficient under Rule 8 of the Federal Rules of Civil Procedure. *Id.*

16 Thus, because Plaintiff has failed to identify in her FAC the cause of action that Plaintiff  
17 brings against Defendants, the Court GRANTS Defendants’ motions to dismiss the FAC. In  
18 anticipation of Plaintiff amending her FAC to identify her cause of action as an ERISA claim, the  
19 Court considers the remainder of Defendants’ arguments.

20 **2. Plaintiff Fails to Adequately Allege an ERISA Claim**

21 Plaintiff asserts in her opposition that she intends to allege in her FAC that Defendants  
22 violated § 404 of ERISA, 29 U.S.C. § 1104. *See* Opp. to Lockheed Mot. at 4. Section 404 of  
23 ERISA “requires fiduciaries to discharge their duties with prudence, to diversify investments, to  
24 act solely in the interest of the participants, and to comply with the terms of the plan in so far as  
25 they don’t conflict with other ERISA laws.” *In re Syncor ERISA Litig.*, 351 F. Supp. 2d 970, 978  
26 (C.D. Cal. Aug. 23, 2004) (citing 29 U.S.C. § 1104(a)(1)). Section 409 of ERISA, 29 U.S.C. §  
27 109 “provides for liability for any breach of those fiduciary duties.” *Farr v. U.S. West Comm’ns*,

1 *Inc.*, 151 F.3d 908, 915–16 (9th Cir. 1998) (citing 29 U.S.C. § 1109). Specifically, § 409(a)  
2 provides that a plan fiduciary who breaches its fiduciary duties “shall be personally liable to make  
3 good to such plan any losses to the plan resulting from each such breach.” 29 U.S.C. § 1109(a).  
4 Under ERISA’s civil enforcement provision, 29 U.S.C. § 1132, a plan participant may bring a  
5 civil action for relief under § 409. *See* 29 U.S.C. § 1132(a)(1).

6 Prudential and Lockheed argue in their motions to dismiss that, assuming Plaintiff  
7 sufficiently identified the above statutory provisions in her FAC, Plaintiff’s FAC nonetheless fails  
8 to allege a breach of fiduciary duty under ERISA for two reasons. First, Prudential and Lockheed  
9 argue that the FAC fails to allege that Defendants are, in fact, fiduciaries. Second, Prudential  
10 further argues that the FAC fails to allege injury to the Plan or Plan assets. *Id.* The Court  
11 considers these arguments below.

12 First, Prudential and Lockheed argue that Plaintiff’s FAC fails to state a claim under  
13 ERISA for breach of fiduciary duty because Plaintiff fails to allege that Defendants are fiduciaries.  
14 “To be found liable under ERISA for breach of the duty of prudence and for participation in a  
15 breach of fiduciary duty, an individual or entity must be a ‘fiduciary.’” *Wright v. Oregon*  
16 *Metallurgical Corp.*, 360 F.3d 1090, 1101 (9th Cir. 2004) (citing 29 U.S.C. §§ 1104–05). “An  
17 individual can become an ERISA fiduciary in two ways.” *Carter v. San Pasqual Fiduciary Trust*  
18 *Co.*, 2016 WL 4870468, at \*2 (C.D. Cal. Feb. 22, 2016). “First, an individual may be named as a  
19 fiduciary under the terms of an ERISA plan.” *Id.* (citing 29 U.S.C. § 1102(a)(2)). Second, an  
20 individual can acquire functional or de facto fiduciary status when that individual:

- 21 (i) exercises any discretionary authority or discretionary control  
22 respecting management of such plan or exercises any authority or  
23 control respecting management or disposition of its assets; (ii) []  
24 renders investment advice for a fee or other compensation, direct or  
indirect . . . ; or (iii) [] has any discretionary authority or  
discretionary responsibility in the administration of such plan.

25 29 U.S.C. § 1002(21)(A).

26 Here, Plaintiff alleges only that Mr. Daley acquired the Plan during his employment with  
27 Lockheed, that Seabury & Smith, Inc.—who is not a defendant—administered the Plan, and that



1 the Plan was “issued by Prudential.” FAC ¶ 2. The FAC alleges that, “[a]ssuming the [Plan] had  
 2 lapsed, the lapse was caused by Defendants’ breach of their fiduciary duty to Mr. Daley.” *Id.* ¶ 7.  
 3 The FAC does not contain any allegations that Defendants are fiduciaries under the terms of the  
 4 Plan, and the FAC does not allege any facts to plausibly suggest that Defendants exercised  
 5 “discretionary authority or discretionary control respecting management” of the Plan or its assets.  
 6 *See* § 1002(21)(A). Accordingly, because the FAC does not contain any allegations that  
 7 Defendants are fiduciaries, the FAC fails to state a claim under ERISA for breach of fiduciary  
 8 duty. *See Carter*, 2016 WL 4870468, at \*2–3 (dismissing ERISA fiduciary duty claim for failure  
 9 to allege fiduciary status); *see also In re JDS Uniphase Corp. ERISA Litig.*, 2005 WL 1662131, at  
 10 \*3 (N.D. Cal. July 14, 2005) (same).

11 Second, Prudential also argues that the FAC fails to state a claim under ERISA for breach  
 12 of fiduciary duty because Plaintiff fails to allege that Defendants injured the Plan or Plan assets.  
 13 “To allege a fiduciary breach under § 1132(a)(2), [Plaintiff] must allege that the fiduciary injured  
 14 the benefit plan or otherwise ‘jeopardize[d] the entire plan or put at risk plan assets.’” *Wise v.*  
 15 *Verizon Comm’ns, Inc.*, 600 F.3d 1180, 1189 (9th Cir. 2010) (quoting *Amalgamated Clothing &*  
 16 *Textile Workers Union, AFL-CIO v. Murdock*, 861 F.2d 1406, 1414 (9th Cir. 1988)). Plaintiff’s  
 17 FAC does not contain any such allegations. *See generally* FAC; *see Wise*, 600 F.3d at 1189–90  
 18 (affirming district court’s dismissal of ERISA claim where the complaint did not allege “facts  
 19 tending to show that any claim besides [Plaintiff’s] was mishandled or that the result of any such  
 20 mishandling caused plan-wide injury”). Accordingly, for this additional reason, Plaintiff has  
 21 failed to state a claim under ERISA for breach of fiduciary duty.

22 Thus, for the reasons discussed above, Plaintiff’s FAC fails to state a claim under ERISA  
 23 for breach of fiduciary duty, and the Court GRANTS Defendants’ motions to dismiss the FAC.

24 **3. Leave to Amend**

25 Having granted Defendants’ motions to dismiss, the Court must next determine whether  
 26 leave to amend should be granted. Defendants argue that the Court should not grant leave to  
 27 amend because, in this Court’s order denying as moot Lockheed’s original motion to dismiss, the  
 28

1 Court stated that it would dismiss Plaintiffs' FAC with prejudice if Plaintiff failed to correct the  
2 deficiencies identified by Lockheed in its original motion to dismiss. *See* ECF No. 24. However,  
3 as discussed above, Plaintiff's FAC corrects the deficiencies identified by Lockheed in its original  
4 motion to dismiss. Specifically, Plaintiff's FAC no longer alleges state law claims, and Plaintiff's  
5 FAC adequately alleges that Plaintiff exhausted her administrative remedies. *See* ECF No. 14  
6 (identifying Plaintiff's allegation of preempted state court claims and failure to exhaust  
7 administrative remedies as reasons to dismiss Plaintiff's original complaint). Plaintiff intended to  
8 assert only an ERISA claim in her FAC. *See* Opp. to Lockheed Mot. at 4. Although Plaintiff  
9 failed to adequately allege an ERISA claim in her FAC, Plaintiff has yet to be given an  
10 opportunity to amend her ERISA claim, and the Court cannot find that the pleading cannot  
11 possibly be cured by the allegation of other facts. *See Lopez*, 203 F.3d at 1127 ("[A] district court  
12 should grant leave to amend even if no request to amend the pleading was made, unless it  
13 determines that the pleading could not possibly be cured by the allegation of other facts.").  
14 However, the Court notes that Plaintiff attached a proposed Second Amended Complaint ("SAC")  
15 to her opposition to Lockheed's second motion to dismiss. The Court has reviewed the proposed  
16 SAC, which is woefully inadequate. Accordingly, if Plaintiff files the proposed SAC, the Court  
17 will dismiss that SAC with prejudice and find that further amendment would be futile, frivolous,  
18 unduly prejudicial, and cause undue delay.

19 **IV. CONCLUSION**

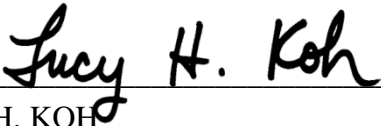
20 For the foregoing reasons, Defendants' motions to dismiss are GRANTED with leave to  
21 amend. Should Plaintiff elect to file an amended complaint curing the deficiencies identified  
22 herein, Plaintiff shall do so within twenty-one (21) days of this Order. Failure to meet the twenty-  
23 one deadline to file an amended complaint or failure to cure the deficiencies identified in this  
24 Order will result in a dismissal with prejudice of Plaintiff's claim. Plaintiff may not add new  
25 causes of action or parties without leave of the Court or stipulation of the parties pursuant to Rule  
26 15 of the Federal Rules of Civil Procedure.

27 **IT IS SO ORDERED.**

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: June 30, 2017

  
\_\_\_\_\_  
LUCY H. KOH  
United States District Judge