

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
9

10 Elizabeth M. Saaiman,
11 Plaintiff,
12 v.
13 American General Life Insurance
14 Company, Inc., a Texas
15 Corporation; ACG Life Insurance
16 Company, a Texas Corporation;
17 American International Group, Inc.,
18 a Delaware Corporation; AIG Life
19 Holdings, Inc., a Delaware
20 Corporation; SAFG Retirement
21 Services, Inc., a Delaware
22 Corporation,
23 Defendants.

Case No.: 18-cv-596-BTM-AGS

**ORDER DENYING PLAINTIFF'S
MOTION TO REMAND WITHOUT
PREJUDICE AND GRANTING
DEFENDANTS' MOTION TO
DISMISS WITH LEAVE TO
AMEND**

[ECF Nos. 10, 5]

22 Plaintiff Elizabeth M. Saaiman moves to remand, (ECF No. 10 ("Mot.
23 Remand")), and Defendants American General Life Insurance Company
24 ("American General"), AGC Life Insurance Company ("AGC"), American
25 International Group, Inc. ("AIG Group"), AIG Life Holdings, Inc. ("AIG Holdings"),
26 and SAFG Retirement Services, Inc. ("SAFG") (collectively, Defendants) move to
27 dismiss for lack of subject matter jurisdiction and failure to state a claim, (ECF
28 No. 5 ("MTD")). For the reasons discussed below, the Court **denies** Plaintiff's

1 motion to remand without prejudice and **grants** Defendants' motion to dismiss,
2 with leave to amend.

3 In March 2009, Plaintiff's husband, Mr. Danie Saaiman, took out a life
4 insurance policy (#YME0162737) for \$1 million, issued by American General.
5 (ECF No. 1-4, Ex. 7A ("Policy").) The only two parties to the Policy were Mr.
6 Saaiman and American General. (Id.) Mr. Saaiman was the owner of the policy,
7 and Plaintiff was the primary beneficiary. (Id.) Mr. Saaiman died on January 17,
8 2017. (ECF No. 1-2 ("Compl."), ¶¶ 13.) No benefit payments have been made
9 on the Policy. (Id.)

10 The policy lapsed in the summer of 2016. (Id. at ¶¶ 14-15.) Mr. Saaiman
11 completed a reinstatement application on or about August 31, 2016 and
12 transmitted the application via facsimile on or about September 1, 2016. (ECF
13 No. 1-2 ("Compl."), ¶¶ 16-17.) The policy was eventually reinstated on or about
14 March 9, 2017. (Id. at ¶ 26; ECF No. 1-4, Ex. 7 ("Adcock Decl."), ¶ 3.)

15 On April 4, 2017, Plaintiff's attorney, Mr. Branson, informed a service
16 relationship manager for AIG Consumer Insurance that Mr. Saaiman died in
17 January 2017 during the reinstatement process. (ECF No. 10-2 ("Branson
18 Decl."), ¶ 7.) On April 11, 2017, Mr. Branson received a letter dated April 6,
19 2017, purporting to unreinstate the policy and refund premium payments. (Id. at
20 ¶ 8, Ex. 5.) On May 2, 2017, Mr. Branson rejected the refund of payments and
21 submitted a claim for benefits under the policy. (Compl., ¶ 30; Branson Decl.,
22 ¶ 9.) Plaintiff received a letter in September 2017 denying her insurance claim.
23 (Compl., ¶ 39.)

24 On November 9, 2017, Plaintiff filed a suit in the Superior Court of
25 California, alleging violations of breach of contract, insurance bad faith,
26 conversion, and negligence. (Id.) Plaintiff raises her allegations against all five
27 Defendants, in part based on theories of alter ego and agency liability. (Id. at
28 ¶¶ 8-9.) American General is a wholly owned subsidiary of AGC, which is a

1 wholly owned subsidiary of AIG Holdings, which is a wholly owned subsidiary of
2 SAFG, which is a wholly owned subsidiary of AIG Group. (ECF No. 1 (“Notice of
3 Removal” or “Notice”), ¶ 21.)

4 On March 21, 2018, Defendants filed a notice of removal under 28 U.S.C.
5 §§ 1332, 1441, and 1446 on the basis that the action is between parties of
6 diverse citizenship and involves an amount in controversy exceeding \$75,000.
7 (Id. at ¶ 4.) Plaintiff asserts in the complaint that she is a resident of California
8 residing in the City of San Diego. (Compl., ¶ 1.) Defendants assert that
9 American General, AGC, and AIG Holdings are citizens of Texas and that AIG
10 Group is citizen of New York. (Notice, ¶¶ 7-10.) Defendants also concede that
11 SAFG is a citizen of California for diversity jurisdiction purposes and
12 consequently is nondiverse as to Plaintiff, also a citizen of California. (Id. at
13 ¶¶ 11, 16.) Defendants argue that removal is nonetheless appropriate because a
14 defendant may remove a case with a non-diverse defendant on the basis of
15 diversity jurisdiction and then seek to persuade the district court that the non-
16 diverse defendant was fraudulently joined. (Id. at ¶ 16.)

17 Plaintiff moves to remand, arguing that removal was improper because
18 Defendants fail to demonstrate that SAFG was fraudulently joined. Defendants
19 move to dismiss due to lack of subject matter jurisdiction and failure to state a
20 claim.

21 //

22 **PART I. MOTION TO REMAND**

23 **Standard**

24 The removal statute is strictly construed against removal jurisdiction, and
25 the defendant bears the burden of establishing that removal is proper. *Provincial*
26 *Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009).
27 A defendant may remove a case with a non-diverse defendant on the basis of
28 diversity jurisdiction by establishing that the non-diverse defendant was

1 fraudulently joined. See *McCabe v. General Foods Corp.*, 811 F.2d 1336,
2 1339 (9th Cir. 1987). “The party seeking removal bears a heavy burden of
3 proving that the joinder of the in-state party was improper.” *Hunter v. Philip*
4 *Morris USA*, 582 F.3d 1039, 1044 (9th Cir. 2009) (quoting *Smallwood v. Illinois*
5 *Central R.R. Co.*, 385 F.3d 568 (5th Cir. 2004) (en banc)).

6 “If the plaintiff fails to state a cause of action against a resident defendant,
7 and the failure is obvious according to the settled rules of the state, the joinder of
8 the resident defendant is fraudulent.” *Id.* “If there is any possibility that the state
9 law might impose liability on a resident defendant under the circumstances
10 alleged in the complaint, the federal court cannot find that joinder of the resident
11 defendant was fraudulent, and remand is necessary.” *Id.* (quoting *Florence v.*
12 *Crescent Res., LLC*, 484 F.3d 1293, 1299 (11th Cir. 2007)).

13 To determine whether the plaintiff has stated a cause of action against a
14 resident defendant, the court looks to the complaint and need not “speculate
15 about possible claims.” *Kwasniewski v. Sanofi-Aventis U.S., LLC*, 637 Fed.
16 App’x 405, 406 (9th Cir. 2016) (citing *Hunter*, 582 F.3d at 1046). Moreover,
17 whether the complaint is sufficient in stating a claim against the resident
18 defendant “does *not* include consideration of whether, with further discovery, the
19 plaintiff may uncover a factual basis for its claims.” *TPS Utilicom Servs., Inc. v.*
20 *AT& T Corp.*, 223 F. Supp. 2d 1089, 1102 (C.D. Cal. 2002) (emphasis in
21 original). Any “deference given to the plaintiff in a fraudulent joinder analysis
22 means that the court refrains from delving into the merits of defenses that do not
23 present a procedural bar to the action.” *Id.*

24 Finally, while the test for fraudulent joinder resembles a Rule 12(b)(6)
25 analysis, the inquiry is broader in that “[t]he defendant seeking removal to the
26 federal court is entitled to present the facts showing the joinder to be fraudulent.”
27 *Id.* (citing *McCabe*, 811 F.2d at 1339); see also *Hunter*, 582 F.3d at 1044.

28 //

1 **Discussion**

2 Plaintiff's complaint alleges breach of contract, breach of the implied
3 covenant of good faith and fair dealing, conversion, and negligence. Plaintiff
4 brings these claims against Defendants under theories of direct and vicarious
5 liability. Defendants argue that Plaintiff fails to plead facts to support the
6 allegations that the nondiverse defendant, SAFG, is liable under any theory.

7 **A. Failure to State A Claim Under a Theory of Direct Liability**

8 Plaintiff fails to state any cause of action against SAFG under a theory of
9 direct liability. First, any breach of contract claim asserted directly against SAFG
10 must fail because SAFG was never a party to the Policy. The only two parties to
11 the contract were Mr. Saaiman and American General. As to SAFG, Plaintiff
12 does not allege the existence of a contract, breach, or resulting damages. See
13 *Oasis West Realty, LLC v. Goldman*, 51 Cal. 4th 811, 820-21 (2011) ("The
14 elements of a cause of action for breach of fiduciary duty are the existence of a
15 fiduciary relationship, breach of fiduciary duty, and damages.").

16 Second, Plaintiff fails to state a cause of action against SAFG based on a
17 breach of the implied covenant of good faith and fair dealing because Plaintiff
18 does not allege contractual privity with SAFG. *Fireman's Fund Ins. Co. v.*
19 *Maryland Cas. Co.*, 21 Cal. App. 4th 1586, 1599 (1994) (stating that action for
20 breach of the implied covenant of good faith and fair dealing requires a
21 contractual relationship between the parties because the covenant is an implied
22 term in the contract). Nor does Plaintiff allege that SAFG took any wrongful acts
23 to interfere with Plaintiff's rights under the Policy.

24 Third, Plaintiff's claim for conversion fails because Plaintiff does not present
25 facts that SAFG took any wrongful action to interfere with Plaintiff's possession of
26 unearned premium payments allegedly belonging to her. *McKell v. Washington*
27 *Mut. Inc.*, 142 Cal. App. 4th 1457, 1491 (2006) ("A cause of action for conversion
28 requires allegations of plaintiff's ownership or right to possession of property;

1 defendant's wrongful act toward or disposition of the property, interfering with
2 plaintiff's possession; and damage to plaintiff.”).

3 Fourth, the complaint fails to state a negligence claim against SAFG
4 because Plaintiff makes no allegation that SAFG played any role in the
5 administration of the Policy, the reinstatement process, or the handling of
6 Plaintiff's insurance claim. Thus, SAFG owed no legal duty to Plaintiff. *Huber v.*
7 *Tower Grp., Inc.*, 881 F. Supp. 2d 1195, 1199 (E.D. Cal. 2012) (characterizing
8 the elements to state a claim for negligence as follows, “(1) a legal duty to use
9 reasonable care, (2) breach of that duty, and (3) proximate cause between the
10 breach and (4) the plaintiff's injury”) (citing *Mendoza v. City of L.A.*, 66 Cal. App.
11 4th 1333, 1339 (1998)).

12 While Plaintiff demonstrates that SAFG and American General share at
13 least one corporate officer, Julie Cotton Hearne, this is insufficient to state any
14 claim based on direct liability. Specifically, Plaintiff emphasizes that Ms. Hearne
15 is the Vice President and Secretary of both SAFG and American General. (See
16 ECF No. 12-1 (“SAFG Hearne Decl.”); ECF No. 12-2 (“American General Hearne
17 Decl.”).) Plaintiff argues that Ms. Hearne's role as both an officer of SAFG and
18 American General supports a claim of intentional interference with a contractual
19 relationship against SAFG under a theory of direct liability because the two
20 declarations together demonstrate SAFG's knowledge of the insurance contract.
21 (ECF No. 13 (“Pl.'s Reply”), p. 9 (citing *Higgins v. Standard Fed. Sav. & Loan*
22 *Ass'n*, 188 Cal. App. 2d 68, 71-72 (1961) for the proposition that when an
23 individual is an agent of two companies, her knowledge about one is imputed to
24 the other).) Even so, and as Plaintiff also points out, intentional interference with
25 a contractual relationship also requires a contract between the plaintiff and a third
26 party, intentional acts by the defendant designed to induce a breach or disruption
27 of the contractual relationship, actual breach or disruption, and resulting damage.
28 *Pac. Gas & Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990).

1 However, as stated above, Plaintiff has not pled any facts that SAFG acted in
2 any way to interfere in the Policy.

3 **B. Failure to State Any Claim Under Theories of Vicarious Liability**

4 Plaintiff also fails to state a claim based on the theory that SAFG is liable
5 for the acts of American General. Under California law, a parent corporation may
6 be held vicariously liable for the acts of its subsidiary only if that subsidiary is
7 either the agent or alter ego of the parent. *Salkin v. United Servs. Auto Ass'n*,
8 767 F. Supp. 2d 1062, 1065 (C.D. Cal. 2011). To allege claims based on agency
9 or alter ego liability, Plaintiff must plead specific facts, rather than mere
10 conclusory allegations. See *Cree, Inc. v. Tarr Inc.*, No. 3:17-cv-00506, 2017 WL
11 3219974, *7 (S.D. Cal. July 28, 2017) (alter ego); *Lincoln III v. Daylight Chem.*,
12 No. SACV 10-1573, 2011 WL 13225067, *7 (C.D. Cal. Feb. 14, 2011) (agency).

13 Whether a principal-agent relationship exists between a parent corporation
14 and its subsidiary hinges on the degree of control the parent exerts over the
15 subsidiary. See *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523,
16 541 (2000) (“Control is the key characteristic of the agent/principal relationship.”).
17 Liability may be attributed to the parent “where the nature and extent of the
18 control exercised over the subsidiary by the parent is so pervasive and continual
19 that the subsidiary may be considered nothing more than an agent or
20 instrumentality of the parent, notwithstanding the maintenance of separate
21 corporate formalities.” *Id.*; see also *Salkin*, 767 F. Supp. 2d at 1068.

22 The determination of alter ego liability is a question of fact, not law. See
23 *Misik v. D’Arco*, 197 Cal. App. 4th 1065, 1071-72 (2011). There are two general
24 requirements, first “that there be such unity of interest and ownership that the
25 separate personalities of the [parent] and the [subsidiary] no longer exist” and
26 second “that, if the acts are treated as those of the [subsidiary] alone, an
27 inequitable result will follow.” *Mid-Century Ins. Co. v. Gardner*, 9 Cal. App. 4th
28 1205, 1212 (1992) (quotations and citations omitted). Moreover, courts have

1 relied on an array of more than fifteen different factors when making the
2 determination as to the first requirement. See *id.* at 1213 (citing *Associated*
3 *Vendors, Inc. v. Oakland Meat Co.*, 210 Cal. App. 2d 825, 838-40 (1962)).
4 Relevant considerations to the inquiry here include the “identification of the
5 directors and officers of the two entities in the responsible supervision and
6 management” and “the employment of the same employees and/or attorney.”
7 *Associated Vendors, Inc.*, 210 Cal. App. 2d at 840-41.

8 Plaintiff argues she has provided facts sufficient to satisfy the requirements
9 for stating a claim based on theories of agency and alter ego liability. For
10 example, Plaintiff points out that SAFG and American General share a corporate
11 officer, Julie Cotton Hearne. (See SAFG Hearne Decl.; American General
12 Hearne Decl.) However, this fact does not support a theory of vicarious liability.
13 See *Sonora Diamond Corp.*, 83 Cal. App. 4th at 549 (“It is entirely appropriate for
14 directors of a parent corporation to serve as directors of its subsidiary, and that
15 fact alone may not serve to expose the parent corporation to liability for its
16 subsidiary’s acts.”) (internal citations and quotations omitted).

17 Plaintiff also presents correspondence from a medical records company
18 that stated it was requesting records from Mr. Saaiman on behalf of an insurance
19 company called, “AIG Life & Retirement-Nashville.” (Branson Decl., ¶ 3; Mot.
20 Remand, Ex. 1.) Plaintiff argues that this shows that American General was not
21 solely responsible for the underwriting, issuance, and administration of the
22 Policy. (Branson Decl., ¶ 3.) In response, Defendants declare that American
23 General has an office near Nashville, where it has employees who handle claims.
24 (American General Hearne Decl., ¶ 4.) Without more, the correspondence fails
25 to show that American General’s actions could be attributed to another entity or
26 were the result of another entity’s direction or supervision.

27 Plaintiff also offers a copy of the “AIG Code of Conduct,” which “provides
28 ethical guidelines for conducting business on behalf of all AIG companies.”

1 (Branson Decl., ¶ 4; Mot. Remand, Ex. 2.) In addition, Plaintiff provides a copy of
2 the “American International Group, Inc. Third Party Code of Conduct” published
3 on AIG Group’s website. (Branson Decl., ¶ 5; Mot. Remand, Ex. 3.) In the
4 introduction, the code refers to “AIG” as “American International Group, Inc.,
5 along with its subsidiaries and affiliates (collectively, ‘AIG’).” (Mot. Remand, Ex.
6 3.) In the second paragraph on “scope,” the code also states that it “applies to all
7 Third Parties engaged by AIG anywhere in the world.” (Id.) However, these
8 facts do not demonstrate the kind of pervasive and continual control necessary
9 for establishing agency liability or such a unity of interest that would make it
10 difficult to distinguish among the AIG companies, as required for alter ego
11 liability. *See Sonora Diamond Corp.*, 83 Cal. App. 4th at 542 (emphasizing that
12 agency requires a showing that the parent “moved beyond the establishment of
13 general policy and direction for the subsidiary and in effect [took] over
14 performance of the subsidiary’s *day-to-day* operations in carrying out that policy”)
15 (emphasis in original).

16 Plaintiff also presents an email requesting an additional payment to
17 reinstate the Policy from Ms. Sheena Long, whose signature block includes “AIG”
18 and indicates that she is a “Service Relationship Manager” in the “Customer
19 Solutions Unit – Life” of “AIG Consumer Insurance.” (Branson Decl., ¶ 6; Mot.
20 Remand, Ex. 4.) This fact fails to support claims based on agency or alter ego,
21 because it does not reveal that SAFG or any of the three other defendants were
22 controlling the operations or decision-making of American General.

23 Finally, Plaintiff pleads no facts at all in support of the second prong of
24 alter ego liability, which demands a showing that an inequitable result will follow if
25 the Court considers the actions taken by American General to be those of
26 American General alone. Specifically, Plaintiff presents no facts that American
27 General would be unable to satisfy a judgment that Plaintiff might obtain. Thus,
28 Plaintiff fails to plead facts sufficient to state any claim under agency and alter

1 ego theories.

2 Accordingly, because Plaintiff has failed to state a claim against SAFG, the
3 Court **denies** Plaintiff's motion to remand. However, the Court agrees with
4 Plaintiff that establishing agency and alter ego liability is particularly fact
5 intensive, especially with respect to the inequitable result prong of alter ego.
6 Thus, the denial is without prejudice.

7 //

8 **PART II. MOTION TO DISMISS**

9 Standard

10 **A. Fed. R. Civ. P. 12(b)(1)**

11 Defendants challenge the Complaint, in part, on the ground that Plaintiff
12 lacks Article III standing. Standing under Article III of the U.S. Constitution is an
13 element of subject matter jurisdiction. Generally, on a 12(b)(1) motion regarding
14 subject matter jurisdiction, unlike a 12(b)(6) motion, a court need not defer to a
15 plaintiff's factual allegations. But the Supreme Court has held that where a
16 12(b)(1) motion to dismiss is based on lack of standing, the Court must defer to
17 the plaintiff's factual allegations and must "presume that general allegations
18 embrace those specific facts that are necessary to support the claim." *Lujan v.*
19 *Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal quotation marks
20 omitted). "At the pleading stage, general factual allegations of injury resulting
21 from the defendant's conduct may suffice." *Id.* at 560. In short, a 12(b)(1) motion
22 to dismiss for lack of standing can only succeed if the plaintiff has failed to make
23 "general factual allegations of injury resulting from the defendant's conduct." *Id.*

24 **B. Fed. R. Civ. P. 12(b)(6)**

25 Defendants also move to dismiss the Complaint for failure to state a claim
26 upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).
27 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should be
28 granted only where a plaintiff's complaint lacks a "cognizable legal theory" or

1 sufficient facts to support a legal claim. *Balistreri v. Pacifica Police Dept.*, 901
2 F.2d 696, 699 (9th Cir. 1988). When reviewing a motion to dismiss, the
3 allegations of material fact in the plaintiff's complaint are taken as true and
4 construed in the light most favorable to the plaintiff. *Parks Sch. of Bus., Inc. v.*
5 *Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). Although detailed factual
6 allegations are not required, the factual allegations made "must be enough to
7 raise a right to relief above the speculative level." *Bell Atlantic v. Twombly*, 550
8 U.S. 544, 555 (2007). Only a complaint that states a plausible claim for relief will
9 survive a motion to dismiss. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

10 Discussion

11 **A. Four Defendants Other Than American General**

12 Aside from Defendant American General, Plaintiff's pleadings make no
13 meaningful factual distinctions among Defendants.¹ Thus, the analysis in Part I
14 determining that the Complaint fails to state any claim against Defendant SAFG
15 applies to Defendants AGC, AIG Group, and AIG Holdings as well. Accordingly,
16 the Court **grants** Defendants' motion to dismiss as to Defendants SAFG, AGC,
17 AIG Group, and AIG Holdings.

18 **B. American General**

19 Defendant American General moves to dismiss the Complaint with respect
20 to causes of action two, three, and four.

21 **1. Breach of Implied Covenant of Good Faith and Fair Dealing**

22 Plaintiff alleges that American General breached the covenant of good faith
23 and fair dealing implicit to the Policy. Plaintiff argues that American General
24 breached the covenant by delaying the proper reinstatement of the Policy and by
25 denying Plaintiff's insurance claim under the Policy. American General moves to
26

27 ¹ As discussed above, the exception is that Plaintiff points out that SAFG and American General share a
28 corporate officer, Ms. Hearne. In Part I, the Court held that this fact was not sufficient to establish claims of either
direct or vicarious liability.

1 dismiss this cause of action in its entirety, arguing that Plaintiff lacks standing to
2 assert bad faith based on any delay in the reinstatement that occurred before Mr.
3 Saaiman died and that Plaintiff fails to state a claim.

4 Under California law, “[e]very contract imposes on each party an implied
5 duty of good faith and fair dealing. Simply stated, the burden imposed is that
6 neither party will do anything which will injure the right of the other to receive the
7 benefits of the agreement.” *Bosetti v. U.S. Life Ins. Co.*, 175 Cal. App. 4th 1208,
8 1235 (2009) (internal citations and quotations omitted). A breach of this duty,
9 often referred to as bad faith as a shorthand, “implies unfair dealing rather than
10 mistaken judgment.” *Id.* To avoid liability for bad faith, an insurer’s “actions and
11 position with respect to the claim of an insured, and the delay or denial of policy
12 benefits, must be founded on a basis that is *reasonable under all the*
13 *circumstances.*” *Id.* at 1237 (emphasis in original) (internal citations and
14 quotations omitted). This is an objective standard. *Id.* Importantly, “[a]n insurer
15 denying or delaying the payment of policy benefits due to the existence of
16 a *genuine dispute* with its insured as to the existence of coverage liability or the
17 amount of the insured’s coverage claim is not liable in bad faith even though it
18 might be liable for breach of contract.” *Id.* To state a claim of breach of the
19 implied covenant of good faith and fair dealing, the Complaint must allege (1) the
20 existence of a contract between plaintiff and defendant, (2) substantial
21 performance by plaintiff, (3) conditions required for defendant’s performance had
22 occurred or were excused, (4) defendant unfairly interfered with plaintiff’s rights
23 under the contract, and (5) plaintiff suffered harm as a result of defendant’s
24 conduct. See *Judicial Council of California Civil Jury Instructions* (2019 ed.),
25 CACI No. 325.

26 **a. Delay in the Reinstatement of the Policy**

27 As to the delay in the reinstatement of the Policy, Plaintiff alleges that
28 American General failed to act promptly in addressing the reinstatement

1 application. Plaintiff asserts that Mr. Saaiman completed and sent in the
2 reinstatement application in September 2016 and that there was no reason to
3 believe that this was not enough to reinstate the Policy. (Compl., ¶¶ 16-17, 56-
4 57.) Nor did Plaintiff know until January 2017 that the Policy had not in fact been
5 reinstated. (Id.) When Mr. Saaiman’s attorney realized the Policy had not been
6 reinstated in January 2017, he allegedly took immediate steps to address the fact
7 that the Policy had not been reinstated. (Id. at ¶¶ 20-30.) Even so, the parties
8 do not dispute that the Policy was not reinstated until several months later. (Id.
9 at ¶ 26.)

10 Plaintiff has standing to bring a bad faith claim with respect to events
11 relating to the reinstatement before Mr. Saaiman died because Plaintiff was at all
12 times a third party beneficiary of the Policy. See *Fireman’s Fund Ins. Co. v.*
13 *Maryland Cas. Co.*, 21 Cal. App. 4th 1586, 1599-1600 (1994) (“Certainly a
14 noncontracting party is entitled to sue an insurer for breach of the implied
15 covenant if that noncontracting party is a third party beneficiary of the insurance
16 contract.”).

17 However, under all the circumstances, the Complaint fails to state a claim
18 of bad faith against American General with respect to the delay. On the one
19 hand, the allegation of how much time lapsed between the submission of the
20 reinstatement application and the eventual reinstatement supports the claim that
21 the delay was unreasonable. Moreover, American General fails to raise any
22 genuine dispute as to why the delay occurred. On the other hand,
23 notwithstanding the allegation of unreasonable delay, Plaintiff fails to allege that
24 she was harmed by the delay, because the Policy was eventually reinstated. A
25 claim of bad faith would require Plaintiff to allege that she suffered an injury as a
26 result of the delay. Perhaps Plaintiff asks the Court to infer that the delay
27 interfered with any possibility Plaintiff may have had in timely curing the
28 deficiencies in the reinstatement application that American General relied on in

1 denying the insurance claim. However, no facts are alleged to support this
2 hypothetical injury, and asking the Court to adopt this inference would be pure
3 speculation.

4 **b. Denial of Insurance Claim**

5 As to the denial of Plaintiff's insurance claim, Plaintiff alleges that the
6 reasons given by American General in its denial letter were merely pretextual.
7 Plaintiff further alleges that the statements made by American General in the
8 denial letter are false. The denial letter, however, informed Plaintiff that the claim
9 was denied because Mr. Saaiman failed to provide important information in
10 response to at least three questions on the reinstatement application, and for that
11 reason, the reinstatement application would not have been reinstated upon
12 further evaluation of Mr. Saaiman's health. Thus, American General
13 demonstrates that there is genuine dispute as to why Plaintiff's insurance claim
14 was denied. As a result, American General is not liable in bad faith based on the
15 denial of benefits, even though it might be liable for breach of contract.

16 Accordingly, the Court **grants** the dismissal of the second cause of action
17 for breach of the implied covenant of good faith and fair dealing.

18 **2. Conversion**

19 Plaintiff alleges a claim of conversion based on unearned premiums. "A
20 cause of action for conversion requires allegations of plaintiff's ownership or right
21 to possession of property; defendant's wrongful act toward or disposition of the
22 property, interfering with plaintiff's possession; and damage to plaintiff." *McKell*,
23 142 Cal. App. 4th at 1491 (2006). "Money cannot be the subject of a cause of
24 action for conversion unless there is a specific, identifiable sum involved, such as
25 where an agent accepts a sum of money to be paid to another and fails to make
26 the payment." *Id.*

27 Plaintiff argues she is indisputably owed at least \$322.01 plus interest
28 based on unearned premium payments that should have been refunded to her.

1 Plaintiff essentially argues that she has been overcharged under the Policy,
2 which Plaintiff can assert as part of her breach of contract claim. An overcharge,
3 however, is not enough to make out an independent claim of conversion. *Id.* at
4 1492 (explaining that California courts have declined to recognize a cause of
5 action for conversion based on an overcharge). Moreover, Plaintiff does not
6 allege that American General has been or is holding this payment on behalf of
7 another. *See id.* at 1491. Thus, the Court **grants** Defendants' motion to dismiss
8 the third cause of action against American General.

9 **3. Negligence**

10 Plaintiff alleges that American General was negligent in failing to (a)
11 process the reinstatement application in a timely manner, (b) monitor the
12 reinstatement application for time sensitive communication, (c) respond promptly
13 to communications from Plaintiff, and (d) maintain the Policy or process the
14 insurance claim with reasonable care.

15 To prove a cause of action for negligence, a plaintiff must show "(1) a legal
16 duty to use reasonable care, (2) breach of that duty, and (3) proximate cause
17 between the breach and (4) the plaintiff's injury." *Huber*, 881 F. Supp. 2d at 1199
18 (E.D. Cal. 2012) (citing *Mendoza v. City of L.A.*, 66 Cal. App. 4th 1333, 1339
19 (1998)).

20 As to (a) and (b), American General argues that Plaintiff cannot allege
21 injury due to any failure to process and monitor the reinstatement application
22 because the Policy was eventually reinstated. The Court agrees and holds that
23 without alleging any harm or damages, Plaintiff's negligence claim with respect to
24 the processing of the reinstatement application must fail.

25 As to (c) and (d), which allege negligence in the handling of Plaintiff's
26 insurance claim, Plaintiff fails to state a claim because California does not
27 recognize a cause of action based on negligent claim handling. *See id.* at 1200
28 ("[U]nder California law, negligence claims do not generally lie against insurers.").

1 California courts explain that “a contractual obligation may create a legal duty
2 and the breach of that duty may support an action in tort,” but “conduct
3 amounting to a breach of contract becomes tortious only when it also violates a
4 duty independent of the contract arising from principles of tort law.” *Erlich v.*
5 *Menezes*, 21 Cal. 4th 543, 551 (1991). Here, Defendant’s obligation under the
6 Policy was to properly handle any insurance claim. There is no independent duty
7 to take reasonable care in the handling of the claim, so Plaintiff fails to state a
8 cause of action for negligence with respect to the handling of the insurance
9 claim.

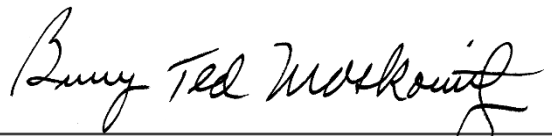
10 Thus, the Court **grants** Defendants’ motion to dismiss the fourth cause of
11 action against American General.

12 **CONCLUSION**

13 For the reasons discussed above, Plaintiff Elizabeth M. Saaiman’s motion
14 to remand (ECF No. 10) in **denied** without prejudice. Defendants’ motion to
15 dismiss (ECF No. 5) is **granted, with leave to amend**. Any amended complaint
16 must be filed and served by May 17, 2019.

17 **IT IS SO ORDERED.**

18 Dated: April 25, 2019

19 

20 Honorable Barry Ted Moskowitz
21 United States District Judge
22
23
24
25
26
27
28