

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
SOUTHERN DISTRICT OF CALIFORNIA**

WILLIAM HOFFMAN,

Plaintiff,

v.

HARTFORD FINANCIAL SERVICES
GROUP, INC.; et al.,

Defendants.

Case No.: 3:18-cv-02471-H-JLB

**ORDER DENYING MOTION TO
DISMISS**

[Doc. No. 5]

On November 1, 2018, Defendant Property and Casualty Insurance Company of Hartford (“Defendant”) filed a motion to dismiss Plaintiff William Hoffman’s (“Plaintiff”) complaint. (Doc. No. 5.) Plaintiff opposed the motion on November 19, 2018. (Doc. No. 6.) On November 26, 2018, Defendant replied. (Doc. No. 8.) On November 29, 2018, the Court submitted the motion on the papers. (Doc. No. 9.) For the reasons below, the Court denies Defendant’s motion to dismiss.

Background

The following facts are taken from the allegations in Plaintiff’s complaint. According to Plaintiff, he owns personal property and a home in San Diego County. (Doc.

1 No. 1-2 ¶¶ 1, 7.) Plaintiff purchased an insurance policy from Defendant insuring his
2 personal property from January 16, 2018 through January 16, 2019. (Id. ¶¶ 2, 5.) The
3 policy provided “coverage for personal property, anywhere in the world, that is vandalized
4 and/or stolen, if the property is owned or used by the insured.” (Id. ¶ 11.) Plaintiff stored
5 his personal property at 1621 Glade Place, Escondido, California, 92029 with the
6 permission of the half-owner of the residence, Pamela Mitchell. (Id. ¶ 7.)

7 On March 28, 2018, the other half-owner of the residence, Richard Leuthold, told
8 Plaintiff that he must remove his personal property from the residence. (Id. ¶ 7.) Leuthold
9 explained that he would leave Plaintiff’s property on the driveway on April 2, 2018 and
10 April 3, 2018. (Id.) On these dates, Plaintiff visited the residence and found that his
11 personal property damaged or otherwise missing. (Id.) Plaintiff asked to enter the
12 residence to retrieve his missing property, but Leuthold threatened Plaintiff and physically
13 prevented him from entering. (Id.)

14 Plaintiff provided Defendant with a claim for the loss of his personal property under
15 his policy. (Id. ¶ 8.) Defendant denied Plaintiff’s claim on the grounds that Plaintiff
16 abandoned his property when he first vacated the Glade Place residence in 2014 and
17 subsequently when he left his property on the residence’s driveway. (Id. ¶ 9.)

18 On September 21, 2018, Plaintiff filed a complaint at the California Superior Court
19 against Defendant for breach of contract, as well as breach of the implied covenant of good
20 faith and fair dealing.¹ (Id. ¶¶ 10–21.) On October 26, 2018, Defendant removed the case
21 to this Court. (Doc. No. 1-1.) On November 1, 2018, Defendant filed a motion to dismiss
22 Plaintiff’s complaint. (Doc. No. 5.)

23 ///

24
25 _____
26 ¹ Plaintiff filed his complaint against Hartford as well as Hartford Financial Services Group, Inc. and
27 Hartford Underwriters Insurance Company. The Court takes judicial notice of Plaintiff’s request for
28 dismissal without prejudice of Hartford Financial Services Group, Inc. and Hartford Underwriters
Insurance Company filed in state court by Plaintiff as its authenticity is not subject to reasonable dispute.
(Doc. No. 5-4, Exh. 10.) See Fed. R. Evid. 201(b)(2). Hartford Financial Services Group, Inc. and
Hartford Underwriters Insurance Company remain dismissed from this case without prejudice.

1 Discussion

2 **I. Legal Standards**

3 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the legal
4 sufficiency of the pleadings and allows a court to dismiss a complaint if the plaintiff has
5 failed to state a claim upon which relief can be granted. See Conservation Force v. Salazar,
6 646 F.3d 1240, 1241 (9th Cir. 2011). The Federal Rule of Civil Procedure 8(a)(2)'s
7 plausibility standard governs Plaintiff's claims. The Supreme Court has explained Rule
8 8(a)(2) as follows:

9 The Supreme Court has explained that:

10 Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a short
11 and plain statement of the claim showing that the pleader is entitled to relief.
12 As the Court held in [Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)],
13 the pleading standard Rule 8 announces does not require detailed factual
14 allegations, but it demands more than an unadorned, the-defendant-
unlawfully-harmed-me accusation. A pleading that offers labels and
conclusions or a formulaic recitation of the elements of a cause of action will
not do. Nor does a complaint suffice if it tenders naked assertions devoid of
further factual enhancement.

15 Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009) (citations, quotation marks, and brackets
16 omitted).

17 In reviewing a Rule 12(b)(6) motion to dismiss, “[a] claim has facial plausibility
18 when the plaintiff pleads factual content that allows the court to draw the reasonable
19 inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S. at 678.
20 “Factual allegations must be enough to raise a right to relief above the speculative level.”
21 Twombly, 550 U.S. at 555 (citation omitted). In addition, a court need not accept legal
22 conclusions as true. Ashcroft, 556 U.S. at 678. Further, it is improper for a court to assume
23 that the plaintiff “can prove facts which it has not alleged or that the defendants have
24 violated the . . . laws in ways that have not been alleged.” Assoc. Gen. Contractors of Cal.,
25 Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526 (1983). Finally, a court may
26 consider documents incorporated into the complaint by reference and items that are proper
27 subjects of judicial notice. See Coto Settlement v. Eisenberg, 593 F.3d 1031, 1038 (9th
28 Cir. 2010).

1 If the court dismisses a complaint for failure to state a claim, it must then determine
2 whether to grant leave to amend. See Doe v. United States, 58 F.3d 494, 497 (9th Cir.
3 1995). “A district court may deny a plaintiff leave to amend if it determines that allegation
4 of other facts consistent with the challenged pleading could not possibly cure the
5 deficiency, or if the plaintiff had several opportunities to amend its complaint and
6 repeatedly failed to cure deficiencies.” Telesaurus VPC, LLC v. Power, 623 F.3d 998,
7 1003 (9th Cir. 2010) (internal quotation marks and citations omitted).

8 **II. Analysis**

9 **A. Breach of Contract**

10 Defendant argues that Plaintiff has failed to prove that his property was vandalized
11 because he has not proven that the property was willfully and maliciously destroyed. (Doc.
12 No. 5-1 at 13–14.) In addition, Defendant contends that Plaintiff has failed to prove that
13 his property was stolen because he “presented no evidence of a felonious taking of his
14 personal property with the intent to deprive him of it.” (Id. at 14–15.) Plaintiff argues that
15 he alleged sufficient facts to support a breach of contract claim against Defendant. (Doc.
16 No. 6 at 6.)

17 The Court agrees with Plaintiff. An insurer breaches an insurance contract when it
18 wrongfully fails to provide coverage due under its policy. Isaacson v. California Ins.
19 Guarantee Assn., 44 Cal. 3d 775, 791 (1988). Plaintiff alleges that he purchased an
20 insurance policy from Defendant insuring his personal property from January 16, 2018
21 through January 16, 2019. (Doc. No. 1-2 ¶ 5.) According to the Plaintiff, the policy
22 provided “coverage for personal property, anywhere in the world, that is vandalized and/or
23 stolen, if the property is owned or used by the insured.” (Id. ¶ 11.)

24 Defendant argues that Plaintiff has not provided evidence that his property was
25 stolen or vandalized. (Doc. No. 5-1 at 13–15.) However, Plaintiff alleges that Leuthold
26 told him that he must remove his personal property from the residence on April 2, 2018
27 and April 3, 2018. (Id. ¶ 7.) On these dates, Plaintiff allegedly visited the residence and
28 found his personal property damaged or otherwise missing. (Id.) Plaintiff alleges that he

1 asked to enter the residence to retrieve his missing property, but Leuthold threatened
2 Plaintiff and physically prevented him from entering. (*Id.*) Under these circumstances,
3 Plaintiff has sufficiently alleged facts supporting the inference that his property was
4 vandalized or stolen. Accordingly, the Court denies Defendant’s motion to dismiss
5 Plaintiff’s breach of contract claim at this time, as the issue is factual and better suited for
6 resolution at summary judgment when the record is more fully developed.

7 **B. Implied Covenant of Good Faith and Fair Dealing**

8 Defendant argues that Plaintiff’s claim for breach of the implied covenant of good
9 faith and fair dealing should be dismissed because: (1) Plaintiff has failed to allege that
10 there was a breach of contract and (2) a genuine dispute exists as to Defendant’s liability.
11 (Doc. No. 5-1 at 17–19.) Plaintiff argues that he sufficiently pled that Defendant breached
12 the covenant. (Doc. No. 6 at 7–8.)

13 The Court agrees with Plaintiff. “There is an implied covenant of good faith and fair
14 dealing in every contract that neither party will do anything which will injure the right of
15 the other to receive the benefits of the agreement. . . . This principle is applicable to policies
16 of insurance.” Comunale v. Traders & Gen. Ins. Co., 50 Cal. 2d 654, 658 (1958) (internal
17 citations omitted). “[T]o establish breach of the implied covenant: (1) benefits due under
18 the policy must have been withheld; and (2) the reason for withholding benefits must have
19 been unreasonable or without proper cause.” Lemoine v. State Farm Gen. Ins. Co., No.
20 15-CV-02941-WHO, 2016 WL 6778647, at *6 (N.D. Cal. Nov. 16, 2016) (citing Love v.
21 Fire Ins. Exch., 221 Cal. App. 3d 1136, 1151 (1990)).

22 Plaintiff has alleged that the policy benefits were withheld. (Doc. No. 1-2 ¶¶ 8, 9.)
23 Plaintiff also alleges that Defendant failed to conduct an adequate investigation. (*Id.* ¶¶
24 14, 18.) In support, Plaintiff maintains that he attempted to remove his personal property
25 from the residence on April 2, 2018 and April 3, 2018 (as he previously agreed with
26 Leuthold), but found his personal property damaged or otherwise missing. (*Id.* ¶ 7.)
27 Plaintiff alleges that, nonetheless, Defendant determined that Plaintiff abandoned his
28 property. (*Id.* ¶ 9.) Based on these allegations, Plaintiff has sufficiently alleged facts

1 supporting the inference that Defendant failed to adequately investigate his claim.
2 Accordingly, the Court denies Defendant’s motion to dismiss Plaintiff’s breach of the
3 implied covenant of good faith and fair dealing claim, as the issue is factual and better
4 suited for resolution at summary judgment when the record is more fully developed.

5 **C. Punitive Damages**

6 Defendant argues that Plaintiff’s claim for punitive damages should be dismissed
7 because Plaintiff has not pled sufficient facts showing that Defendant engaged in
8 oppressive, fraudulent, or malicious conduct. (Doc. No. 5-1 at 19–22.) Plaintiff argues
9 that it is too early to determine whether he is entitled to punitive damages. (Doc. No. 6
10 at 9.)

11 The Court declines to dismiss Plaintiff’s prayer for punitive damages at this time.
12 Preliminarily, a request for punitive damages is not a claim but rather a prayer for relief.
13 Given that punitive damages are not a claim, they are not the proper subject of a motion to
14 dismiss. See Monaco v. Liberty Life Assur. Co., No. C06-07021 MJJ, 2007 WL 420139,
15 at *6 (N.D. Cal. Feb. 6, 2007) (“[A] complaint is not subject to a motion to dismiss for
16 failure to state a claim under Rule 12(b)(6) because the prayer seeks relief that is not
17 recoverable as a matter of law.”); see also Bontkowski v. Smith, 305 F.3d 757, 762 (7th
18 Cir. 2002); In re Methyl Tertiary Butyl Ether (“MTBE”) Prod. Liab. Litig., 517 F. Supp.
19 2d 662, 666 (S.D.N.Y. 2007); Douglas v. Miller, 864 F. Supp. 2d 1205, 1220 (W.D. Okla.
20 2012). Accordingly, the Court construes Defendant’s motion to dismiss the prayer for
21 punitive damages as a motion to strike under Rule 12(f). See Rees v. PNC Bank, N.A.,
22 308 F.R.D. 266, 272–73 (N.D. Cal. 2015) (evaluating defendants’ motion to strike
23 plaintiffs’ claims for exemplary and punitive damages); In re MTBE, 517 F. Supp. 2d at
24 665 (noting that defendant’s motion for partial summary judgment as to a punitive damages
25 remedy was “more like a motion in limine or motion to strike”).

26 Although punitive damages are not available for a breach of contract claim,
27 Plaintiff’s prayer for punitive damages is adequately pled as to the claim for breach of the
28 implied covenant of good faith and fair dealing. See Cal. Civ. Code § 3294; Slottow v.

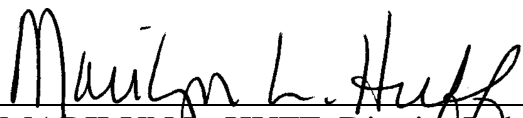
1 Am. Cas. Co. of Reading, Pennsylvania, 10 F.3d 1355, 1361 (9th Cir. 1993). Under
2 California law, when a defendant “has been [found] guilty of oppression, fraud, or malice,”
3 a court may award punitive damages. See Cal. Civ. Code § 3294; Clark v. Allstate Ins.
4 Co., 106 F. Supp. 2d 1016, 1018 (S.D. Cal. 2000). Moreover, “[i]t is well-established that
5 federal courts sitting in diversity must apply state substantive law and federal procedural
6 rules.” Clark, 106 F. Supp. 2d at 1018. Under Rule 9(b), “[m]alice, intent, knowledge,
7 and other conditions of mind of a person may be averred generally.” Fed. R. Civ. P. 9(b).
8 “[I]n federal court, a plaintiff may include a ‘short and plain’ prayer for punitive damages
9 that relies entirely on unsupported and conclusory averments of malice or fraudulent
10 intent.” Rees, 308 F.R.D. at 273 (quoting Clark, 106 F. Supp. 2d at 1018); but see Kelley
11 v. Corr. Corp. of Am., 750 F.Supp.2d 1132, 1147 (E.D. Cal. 2010) (rejecting conclusory
12 allegations of malice, fraud, or oppression as not reflecting new pleading requirements
13 under Twombly and Iqbal). Here, Plaintiff alleges that “the conduct of Defendants . . . was
14 willful, oppressive, fraudulent, and malicious. . . .” (Doc. No. 1-2 ¶ 21.) “Even if
15 conclusory and unsupported, such an averment of malice or fraudulent intent is sufficient
16 to support a request for punitive damages under Cal. Civ. Code § 3294(a) in federal court
17” Rees, 308 F.R.D. at 274. Accordingly, the Court denies Defendant’s motion to
18 dismiss Plaintiff’s prayer for punitive damages.

19 **Conclusion**

20 For the foregoing reasons, the Court denies Defendant’s motion to dismiss Plaintiff’s
21 breach of contract claim, breach of the implied covenant of good faith and fair dealing
22 claim, and prayer for punitive damages.

23 **IT IS SO ORDERED.**

24 DATED: December 4, 2018

25 
26 MARILYN L. HUFF, District Judge
27 UNITED STATES DISTRICT COURT
28