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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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NAYANANANDA RATNAYAKE,

Plaintiff,

v.

FARMERS INSURANCE EXCHANGE, d/b/a
FARMERS,

Defendant.

Case No. 2:11-cv-01668-APG-CWH

**ORDER DENYING DEFENDANT’S MOTION
FOR JUDGMENT ON THE PLEADINGS AND
DENYING PLAINTIFF’S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

(Dkt. ##29, 33)

On September 14, 2011, Nayananda Ratnayake (“Ratnayake”) filed his complaint in the District Court of Clark County, Nevada. Defendant Farmers Insurance Exchange (“Farmers”) removed the action to this Court on October 14, 2011 under the Class Action Fairness Act’s grant of diversity jurisdiction for class actions above a certain size. 28 U.S.C. § 1332(d).¹ The parties dispute whether Ratnayake’s three auto insurance policies with Farmers provide for the “stacking” of underinsured motorist (“UIM”) benefits under the policies’ uninsured motorist (“UM”) provisions.

During the relevant time frame, Ratnayake had three separate policies with Farmers—one for each of his family’s cars. The policies for his Honda, Nissan, and Toyota were effective on January 22, 2010, April 11, 2010, and April 20, 2010, respectively. (Docs. 29-1, 29-3, 29-5.) Each policy included uninsured motorist (“UM”) coverage for bodily injury in the amount of \$50,000 for each person and \$100,000 for each occurrence (“50/100 coverage”). (*E.g.*, Doc. 29-2

¹ Ratnayake has not challenged the removal of this case to federal court.

1 at 10.) Ratnayake paid a separate premium for UM coverage in each policy: \$43.30 in the Honda
2 policy; \$110.00 in the Nissan policy; and \$150.30 in the Toyota policy. Each policy also
3 contained the same exclusions to the UM coverage and an Endorsement that purported to prohibit
4 any stacking of UM coverages (the “Endorsement”). (E.g., Doc. 29-1 at 20.) The relevant
5 differences between the policies are described below.

6 On May 21, 2010, Ratnayake was in an accident while driving his Honda and allegedly
7 suffered severe injuries. The tortfeasor was underinsured to cover Ratnayake’s alleged damages.
8 Ratnayake sought coverage under each policy’s UM provision (which included UIM coverage),
9 asserting that each policy provided separate coverage for his injuries. Farmers paid him \$50,000
10 under the Honda policy but refused to pay UIM coverage under the Nissan and Toyota policies.
11 Farmers asserted that the Endorsement was a valid anti-stacking limitation that limited
12 Ratnayake’s recovery to the UM limit under the policy that covered the particular car he was
13 driving during the accident: the Honda policy. Ultimately, Ratnayake filed this lawsuit.

14 Ratnayake pleads six claims for relief: (1) an “underinsured motorist claim,” asserting that
15 Farmers is obligated to pay \$50,000 in UIM benefits under the Toyota policy and \$50,000 in UIM
16 benefits under the Nissan policy; (2) breach of the implied covenant of good faith and fair dealing
17 (e.g., common law bad faith); (3) unfair claims practices under NRS § 686A.310(1)(a), (c), and
18 (f); (4) unjust enrichment, for retaining funds he claims are owed to him; (5) declaratory relief,
19 that “Farmers failed to honor its obligations under the subject insurance policies . . . and that
20 Farmers is liable for all damages inflicted by its wrongful conduct and refusal to abide by the
21 terms of the subject insurance policies[;]” and (6) fraud/intentional misrepresentation, for
22 inducing Ratnayake to not seek UIM coverage under the Nissan policy by providing him with
23 falsified policy documents. Ratnayake pleads the first five claims as a class action with three
24 subclasses and the Sixth Claim in his individual capacity.²

25 On October 3, 2012, Farmers filed a motion for judgment on the pleadings, arguing that
26 the Endorsement is a valid anti-stacking limitation as a matter of law and thus Ratnayake cannot

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28 ² The court does not determine herein whether to certify a class action under Rule 23.

1 maintain his claims. (Dkt. No. 29.) Ratnayake counters that the Endorsement is invalid because
2 its language is unclear to a layperson, and because Ratnayake paid for separate coverage on the
3 same risk.

4 Ratnayake filed a motion for partial summary judgment on his First and Fifth Claims
5 (uninsured motorist and declaratory relief). (Dkt. No. 33.) Unsurprisingly, Ratnayake argues that
6 the Endorsement is invalid as a matter of law. Farmers responds that, at the least, there is a
7 genuine issue of material fact as to whether Ratnayake paid for separate coverage on the same
8 risk. The Court addresses each motion in turn.

9 **I. Farmer’s Motion for Judgment on the Pleadings**

10 **A. Legal Standard – Judgment on the Pleadings**

11 The review standard for a motion for judgment on the pleadings under Rule 12(c) is
12 “functionally identical” to that for a motion to dismiss for failure to state a claim under Rule
13 12(b)(6). *Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1055 n.4 (9th Cir.
14 2011). District courts must apply a two-step approach when considering motions to dismiss
15 under Rule 12(b)(6). *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). First, the court must accept as
16 true all well-pleaded factual allegations; legal conclusions, however, are not entitled to the same
17 assumption of truth. *Id.* at 679. Mere recitals of the elements of a cause of action, supported only
18 by conclusory statements, do not suffice. *Id.* at 678.

19 Second, the court must consider whether the factual allegations in the complaint allege a
20 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges
21 facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged
22 misconduct. *Id.* at 663. Where the complaint does not permit the court to infer more than the
23 mere possibility of misconduct, the complaint has “alleged—but it has not shown—that the
24 pleader is entitled to relief.” *Id.* at 679 (internal quotation marks and citation omitted). When the
25 claims have not crossed the line from conceivable to plausible, the complaint must be dismissed.
26 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The court also may dismiss a claim if its
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1 inadequacy as pled in the complaint is “apparent as a matter of law.” *Hernandez v. McClanahan*,
2 996 F. Supp. 975, 979 (N.D. Cal. 1998).

3 Claims for fraud must meet the heightened pleading standard of Rule 9(b), which provides
4 that “[i]n alleging fraud or mistake, a party must state with particularity the circumstances
5 constituting fraud or mistake.” FED. R. CIV. P. 9(b). The element of intent, however, “may be
6 alleged generally.” *Id.* The Rule 9(b) standard applies only to the Sixth Claim for Relief.

7 Legal Standard – Anti-Stacking Limitations

8 A valid anti-stacking provision must satisfy three prerequisites under NRS
9 687B.145(1).^{3]} “First, the limiting provision must be expressed in clear language.
10 Second, the provision must be prominently displayed in the policy, binder or
11 endorsement. Finally, the insured must not have purchased separate coverage on
the same risk nor paid a premium calculated for full reimbursement under that
coverage.”

12 *Nationwide Mut. Ins. Co. v. Coatney*, 42 P.3d 265, 267 (Nev. 2002) (quoting *Neumann v.*
13 *Standard Fire Ins. Co. of Hartford, Conn.*, 699 P.2d 101, 103 (Nev. 1985)). “[T]he burdens of
14 persuasion and production on the issue of the validity of an anti-stacking clause prohibiting
15 stacking of UM coverage rest on the insurer.” *Torres v. Farmers Ins. Exch.*, 793 P.2d 839, 842
16 (Nev. 1990). Ratnayake contests only the first and third elements of this test: clarity and single
17 payment.

18 The clarity of an anti-stacking limitation is a question of law. *Id.* at 842. The language
19 “must not only be clearly written, it must not be difficult to understand. . . . [I]t must be truly
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22 ³ The full text of Nevada’s anti-stacking statute, NRS § 687B.145(1) is:

23 Any policy of insurance or endorsement providing coverage under the provisions of NRS
24 690B.020 or other policy of casualty insurance may provide that if the insured has
25 coverage available to the insured under more than one policy or provision of coverage,
26 any recovery or benefits may equal but not exceed the higher of the applicable limits of
27 the respective coverages, and the recovery or benefits must be prorated between the
28 applicable coverages in the proportion that their respective limits bear to the aggregate of
their limits. Any provision which limits benefits pursuant to this section must be in clear
language and be prominently displayed in the policy, binder or endorsement. Any
limiting provision is void if the named insured has purchased separate coverage on the
same risk and has paid a premium calculated for full reimbursement under that coverage.

1 comprehensible to the average insured.” *Serrett v. Kimber*, 874 P.2d 747, 750 (Nev. 1994)
2 (internal quotation marks and citation omitted).

3 To satisfy the third element, called “single payment,” an affidavit of the insurer’s
4 employee without factual support is insufficient. *Id.* at 751. Testimony by the insurer’s actuary
5 explaining how the premiums were calculated is sufficient, however. *Coatney*, 42 P.3d at 268.
6 The insurer also meets its burden if each successive policy has a lower UM/UIM premium.
7 *Jackoby v. GEICO Gen. Ins. Co.*, 2012 WL 3598817 at *3 (D. Nev. 2012). Although this Court
8 has held that the insurer also meets its burden if the insured paid “separate premiums for each
9 policy,” *Farmers Ins. Exch. v. Lawless*, 680 F. Supp. 2d 1238, 1243 (D. Nev. 2010), there still
10 must be proof that the separate payments were not for the same UM/UIM risk. In other words,
11 evidence of separate premiums alone is insufficient. *Cf. Styles v. State Farm Mut. Auto. Ins. Co.*,
12 2007 WL 2688891 at *4 (D. Nev. 2007) (holding that affidavit and supporting documentation
13 showing 20% UM/UIM discount for multi-coverage were sufficient).

14 B. Application

15 1. Clarity

16 The parties contest only the clarity of the Endorsement itself, rather than other language in
17 the policies. Nevertheless, the Court must assess the meaning of the policies to determine what
18 the Endorsement purports to limit and what coverages they provide to Ratnayake if the
19 Endorsement is void. The policy section titled “PART II – UNINSURED MOTORIST, Coverage
20 C – Uninsured Motorist” states:

21 We will pay all sums which an **insured person** is legally entitled to recover as
22 **damages** from the owner or operator of an **uninsured motor vehicle** because of
23 **bodily injury** sustained by the injured person. The **bodily injury** must be caused
by an **accident** and arise out of the ownership, maintenance or use of the
uninsured motor vehicle.

24 (Dkt. No. 29-3 at 13 (emphasis in original).) For the purposes of uninsured motorist coverage,
25 “insured person” means: (a) “You or a family member” (Class I insureds); and (b) “any other
26 person while **occupying** the car described in the Declarations” (Class II insureds). (*Id.* (emphasis
27 in original).) Taken together, this means that Class I insureds enjoy UM coverage regardless of
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1 what vehicle they are in. Put differently, the Nissan policy affords UM coverage to Class I
2 insureds while they are in the Honda and Toyota. There is no dispute that Ratnayake is a Class I
3 insured.

4 The policies define “uninsured motor vehicle” to include underinsured motorists, although
5 the term “underinsured motorist” is not used. Specifically, an “uninsured motor vehicle” includes
6 “a **motor vehicle** which is: . . . [i]nsured by a **bodily injury** liability bond or policy at the time of
7 the **accident** which provides coverage in amounts less than the damages which the **insured**
8 **person** is legally entitled to recover from the owner or operator of that vehicle.” (*Id.* at 14
9 (emphasis in original).)

10 The policies also include an important exclusion to UM coverage:

11 This coverage does not apply while **occupying** any vehicle owned by you or a
12 **family member** for which insurance is not afforded under this policy or through
13 being struck by that vehicle. This exclusion only applies to those **damages** which
14 exceed the minimum limits of liability required by Nevada law for **Uninsured**
15 **Motorist** coverage.

16 (*Id.* (emphasis in original).) The first sentence prohibits stacking, and the second sentence applies
17 this prohibition only to the coverage amount above the statutory minimum of \$15,000 per person
18 and \$30,000 per incident (“15/30 coverage”). In short, the policies allow Class I insureds to stack
19 the 15/30 coverage amounts but prohibit stacking for any amounts over that. Farmers agrees with
20 this interpretation. (Dkt. No. 37 at 7 (This exclusion “limited the portability of each UM coverage
21 among Plaintiff’s owned vehicles to the minimum amount required by law.”).)

22 Put more directly, the Nissan policy included 50/100 coverage for Class I insureds for
23 bodily injury suffered in the Nissan and 15/30 coverage for Class I insureds for bodily injury
24 suffered in the Honda or Toyota. Likewise, the Honda policy provided 50/100 coverage for the
25 Honda and 15/30 coverage for the Nissan and Toyota, and the Toyota policy provided 50/100
26 coverage for the Toyota and 15/30 coverage for the Nissan and Honda. Each policy provided
27 separate coverage for the *same* risk—that a Class I insured would suffer bodily injury from an
28 uninsured motorist while occupying any of the three cars.

1 The Endorsement supersedes any contrary language in the policies. (Dkt. No. 29-1 at 21.)
2 If it is valid, the Endorsement prohibits the stacking of the 15/30 coverages allowed under the
3 policies themselves. Consequently, the crucial issue is whether the Endorsement is valid. In
4 relevant part, the Endorsement states:

5 **Part II – Uninsured Motorist**
6 **Coverage C – Uninsured Motorist Coverage**
7 **Limits of Coverage**

8 The LIMITATIONS ON STACKING COVERAGES provisions have been
9 changed as follows:

10 **LIMITATIONS ON STACKING COVERAGES**

11 **IF YOU HAVE MORE THAN ONE MOTOR VEHICLE INSURED WITH US**
12 **AND, IF YOU OR ANY OTHER INSURED PERSON IS IN AN ACCIDENT:**

13 **A) IN YOUR INSURED CAR – WE WILL NOT PAY MORE THAN THE**
14 ***UNINSURED MOTORIST* LIMIT OF COVERAGE FOR THAT**
15 **PARTICULAR INSURED CAR.**

16 **B) IN A MOTOR VEHICLE OTHER THAN YOUR INSURED CAR OR**
17 **WHILE A PEDESTRIAN – WE WILL NOT PAY FOR MORE THAN THE**
18 ***UNINSURED MOTORIST* LIMIT OF COVERAGE WHICH YOU HAVE**
19 **ON ANY ONE OF YOUR INSURED CARS.**

20 (Dkt. No. 29-1 at 20 (emphasis added in last two paragraphs).)

21 Farmers contends that this language applies to *underinsured* motorists as well because the
22 policies define “*uninsured* motorists” to include *underinsured* motorists. Ratnayake counters that
23 the incorporation by reference of *underinsured* motorists into the definition of *uninsured* motor
24 vehicle is unclear—that the Endorsement’s mention of UM coverage (but not also UIM coverage)
25 means that the Endorsement only validly limited stacking of UM coverage.

26 Although Ratnayake is correct that a complete understanding of the Endorsement requires
27 the insured to look at language in the policy, this relatively minimal labor does not render the
28 Endorsement unclear. The Endorsement was attached to each policy, rather than being sent
separately at a later date. The court must presume that Ratnayake read each policy and the
attached Endorsement at the same time and gave a “plain, common-sense meaning to [their]
provisions.” *Lawless*, 680 F. Supp. 2d at 1242. Although the policies’ definition of “*uninsured*

1 motor vehicle” does not specify “*underinsured* motorists” by that name, the definition of
2 *uninsured* motorists, which includes a clear description of *underinsured* motorists, is neither
3 ambiguous nor difficult to understand. (See Dkt. No. 29-3 at 14.) The average layperson would
4 understand that “uninsured motor vehicle” includes a vehicle that is insured for less than the
5 actual damages suffered and not just a vehicle that is entirely uninsured. Accordingly, the
6 Endorsement complies with the clarity requirement of NRS 687B.145(1).⁵

7 **2. Single Payment**

8 As set forth above, each policy provided coverage for the same risk: that a Class I insured
9 would be injured by an uninsured or underinsured motorist while the insured is in any of the three
10 insured cars. For the Endorsement to be valid and prohibit stacking (and thus entitle Farmers to
11 judgment), Farmers must prove that Ratnayake did not pay separate premiums under each policy
12 for that same coverage. Farmers has failed to do this.

13 The policies show separate UM premiums, but they are not lower in each successive
14 policy. Indeed, the opposite is true, as they rose from \$43.30 for the Honda on January 22, 2010
15 to \$150.70 for the Toyota on April 20, 2010. Farmers submitted a base rate schedule which
16 shows a significantly lower UM base rate for the geographic territory in which the Honda was
17 garaged (Territory 3) than the territory where the Nissan and Toyota were garaged (Territory 18).
18 This information alone indicates that the UM premiums for the Nissan and Toyota should be the
19 same, which they are not. Farmers explained that “[t]he multicar discount, along with other
20 applicable upcharges, discounts and surcharges, is applied to a base UM premium amount related
21 to the garage locations for the covered vehicles[.]” (Dkt. No. 37 at 17.) Yet Farmers did not
22 explain how this calculation was performed for the three policies at issue here. Supplying the
23 base rates is insufficient to prove that Ratnayake did not pay separate premiums for the same risk.

24 Moreover, only two of the three policies submitted as exhibits by Farmers state that the
25 UM premium is discounted because of limitations on stacking. (Dkt. Nos. 29-2 at 11 (Honda

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27 ⁵ Ratnayake’s argument that NRS 690B.020(3)’s narrow definition of “uninsured motor vehicle”
28 precludes Farmers’ more expansive definition fails because that statute defines the term only “for the
purposes of this section,” not for the policies. NEV. REV. STAT. 690B.020(3).

1 policy, discount purportedly applied), 29-3 at 4 (Nissan policy, no UM discount), 29-5 at 4
2 (Toyota policy, discount purportedly applied.) Although these statements in the policy
3 declarations, standing alone, are insufficient to prove that the discounts were actually applied to
4 the UM premiums, the inconsistency among the policies weighs against Farmers.

5 In sum, Farmers has failed to prove that the Endorsement is a valid anti-stacking
6 limitation as a matter of law. Accordingly, Farmers is not entitled to judgment on the pleadings
7 for the first five claims.

8 **3. The Fraud Claim and Rule 9(b)**

9 Ratnayake claims that Farmers gave him two versions of the policy declaration page for
10 his Nissan policy. On July 15, 2010, he received the first document, which said nothing about a
11 UM premium discount for limitations on stacking. (Dkt. No. 1-2 at 39.) Five days later, he
12 received the second document, which asserted that he did receive such a discount. (Dkt. No. 1-4
13 at 48.) Ratnayake claims that he relied on the second document to his detriment by declining to
14 file another claim for UIM benefits under the Nissan policy.

15 Farmers argues, to no avail, that Ratnayake could not have relied upon the latter document
16 because it was an offer of renewal dated several months before the first document, which was a
17 copy of the policy itself. Farmers' argument actually strengthens Ratnayake's claim, because if
18 Farmers was aware that the latter document was a non-binding offer of renewal that was
19 superseded by the policy, Farmers should not have sent the offer of renewal to Ratnayake as part
20 of the correspondence concerning the coverage available to Ratnayake. Moreover, Farmers sent a
21 letter dated June 30, 2011 to Ratnayake stating that a UM discount was applied in the Nissan
22 policy. (Dkt. No. 33-1 at 161.) A reasonable inference from this chain of events is that Farmers
23 sent the offer of renewal to bolster its assertion in the letter that the Nissan policy included a UM
24 discount. If so, the date of the offer of renewal, which is in small print on the bottom of the page,
25 could have been overlooked in favor of the date of the correspondence.

26 The court does not now determine whether the Sixth Claim will be meritorious, but it
27 meets the pleading requirements of Rule 9(b). Ratnayake pleads the circumstances surrounding
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1 the alleged fraud with particularity. He pleads a misrepresentation by explaining the conflicting
2 information in the documents. He pleads reliance by asserting that he would have filed another
3 UIM claim under the Nissan policy were it not for the alleged misrepresentation. He pleads intent
4 generally, which is what Rule 9(b) requires. Finally, the alleged facts concerning the
5 misrepresentation and reliance, along with other facts in the complaint regarding the claimed
6 insurance coverages, suffice to plead causation and damages with particularity. Accordingly,
7 Farmers is not entitled to judgment on the pleadings for the Sixth Claim.⁶

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9 **II. Ratnayake's Motion for Partial Summary Judgment**

10 "[T]he court shall grant summary judgment if the movant shows that there is no dispute as
11 to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P.
12 56(a). In other words, the movant has the burden to prove the absence of an issue of material
13 fact. Ratnayake has failed to carry this burden. As explained above, Farmers has failed to prove
14 the validity of the Endorsement. Yet it is certainly possible that Farmers could introduce
15 additional evidence to prove that Ratnayake did not pay separate premiums for the same UM
16 coverage. Consequently, Ratnayake's motion for partial summary judgment is denied.

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23 ⁶ Ratnayake newly argues in his response that the Endorsement is not enforceable because the
24 Farmers agent who sold him the policies represented that they allowed for stacking. (Dkt. No. 33 at 20.)
25 Farmers replies that Ratnayake's new contention amounts to a new cause of action for fraud in the
26 inducement and that, accordingly, the Court should ignore it. (Dkt. No. 37 at 12 (quoting *Navajo Nation v.*
U.S. Forest Serv., 535 F.3d 1058, 1080 (9th Cir. 2008) ("[W]here, as here, the complaint does not include
the necessary factual allegations to state a claim, raising such claim in a summary judgment motion is
insufficient to present the claim to the district court."))). The Court agrees with Farmers and disregards
Ratnayake's apparent claim for fraud in the inducement.

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III. Conclusion

Based on the foregoing, the court hereby ORDERS:

- 1. Farmers’ motion for judgment on the pleadings (Dkt. No. 29) is DENIED.
- 2. Ratnayake’s motion for partial summary judgment (Dkt. No. 33) is DENIED.

DATED this 10th day of October, 2013.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE