

1 1450, 1478 (C.D. Cal. 1996) (internal citations omitted); *see also Nevada Fair Housing Ctr., Inc. v.*
2 *Clark County*, 265 F. Supp. 2d 1178, 1187 (D. Nev. 2008).

3 Defendant's motion seeks to strike the reference to itself as a "fiduciar[y]" in paragraph 44
4 of the Complaint. Defendant acknowledges that the Nevada Supreme Court has expressly approved
5 a jury instruction that "[t]he duty owed by an insurance company to an insured is fiduciary in
6 nature." Reply at 3 (quoting *Powers v. United Serv. Auto. Assoc. & USAA Cas. Ins. Co.*, 114 Nev.
7 690, 701 (1998)). But Defendant argues that this duty is only "akin" to that of a fiduciary and not
8 equivalent to it. *See id.* In short, Defendant asserts that "Plaintiffs have alleged a fiduciary duty
9 rather than a special contractual duty akin to a fiduciary duty." *See id.* at 5.

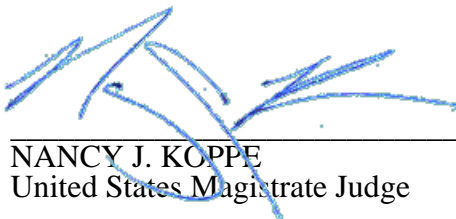
10 Defendant fails to cite to any case law of any kind addressing Rule 12(f), let alone case law
11 supporting its assertion that striking is appropriate in this matter. *See Mot.* at 5-6; Reply at 4-5. Nor
12 is Defendant's reasoning persuasive. Because the Complaint refers to Defendant as a "fiduciar[y]"
13 rather than "akin to a fiduciary," Defendant worries that Plaintiffs "attempt[] to impose a higher
14 duty" on Defendant. *See Mot.* at 6. Suffice it to say, the Court is not persuaded that Plaintiffs' use
15 of the word "fiduciary" in their complaint rather than the phrase "akin to a fiduciary" will result in
16 the imposition of a higher duty on Defendant.

17 The Court is simply not persuaded that a Rule 12(f) motion is the proper vehicle for
18 determining the contours of Defendant's duty. Nor is it clear to the Court that a dispute between the
19 parties of the contours of the duty owed even exists.

20 Accordingly, the motion is hereby **DENIED**.

21 IT IS SO ORDERED.

22 DATED: April 18, 2013

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25 NANCY J. KOPPE
26 United States Magistrate Judge
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