

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Robin Chang,)
4)
5 Plaintiff,)
6 vs.)
7 CSAA General Insurance Company,)
8 Defendant.)
9)

Case No.: 2:14-cv-1411-GMN-CWH

ORDER

10 Pending before the Court is the Motion to Dismiss, (ECF No. 6), filed by Defendant
11 CSAA General Insurance Company. Plaintiff Robin Chang filed a Response, (ECF No. 10), to
12 which Defendant replied, (ECF No. 12).

13 **I. BACKGROUND**

14 This case arises out of Defendant’s alleged refusal to pay benefits under an uninsured
15 motorist policy (“UIM” Policy) held by Plaintiff.

16 Specifically, the First Amended Complaint states that Plaintiff suffered extensive
17 injuries when he was struck by a vehicle while riding a bicycle on February 27, 2012. (Am.
18 Compl. ¶¶ 7-11, ECF No. 1-2). On May 29, 2012, Geico Claims Insurance Company, which
19 insured the alleged tortfeasor, tendered its policy limits of \$15,000 to Plaintiff. (Id. at ¶ 12). On
20 January 11, 2013, Plaintiff submitted a demand letter to Defendant, requesting payment of the
21 full \$250,000 UIM policy limit. (Id. at ¶ 15).

22 On February 13, 2013, Defendant declined to pay the full UIM policy limit, and instead
23 allegedly offered to pay \$88,000 in “new money” to settle Plaintiff’s claim. (Id. at ¶ 16). After
24 Plaintiff rejected this offer, Defendant requested that Plaintiff undergo a medical examination
25 by a doctor of Defendant’s choosing in order to assess the value of Plaintiff’s claim. (Id. at ¶

1 18). After the examination took place, Defendant allegedly offered to settle Plaintiff's claim
2 for "\$35,000.00 new money." (Id. at ¶ 19).

3 On February 25, 2013, Plaintiff alleges that he supplemented his demand with a
4 "medical recommendation for surgery and a future cost estimate of \$131,400.00." (Id. at ¶ 20).
5 Nevertheless, Defendant refused to exceed its prior "\$35,000.00 new money offer." (Id. at ¶ 21).

6 In response to Defendant's refusal to pay the requested sum, Plaintiff filed the instant
7 action in Nevada state court. See (Am. Compl., ECF No. 1-2). The Amended Complaint sets
8 forth three causes of action: (1) breach of contract; (2) breach of the implied covenant of good
9 faith and fair dealing; and (3) violations of the Nevada Unfair Claims Practices Act. (Id. at
10 ¶¶ 22-37). Based on these claims, Plaintiff seeks general damages in excess of \$10,000,
11 punitive damages in excess of \$10,000, an unspecified amount in special damages, and
12 attorneys' fees. (Id. at 9:1-13).

13 On August 29, 2014, Defendant removed the action to this Court. (Pet. For Removal,
14 ECF No. 1). Thereafter, Defendant filed the instant Motion, seeking the dismissal of Plaintiff's
15 claims for violations of the Nevada Unfair Claims Practices Act and his request for punitive
16 damages pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 6).

17 **II. LEGAL STANDARD**

18 Dismissal is appropriate under Rule 12(b)(6) where a pleader fails to state a claim upon
19 which relief can be granted. Fed. R. Civ. P. 12(b)(6); Bell Atl. Corp. v. Twombly, 550 U.S. 544,
20 555 (2007). A pleading must give fair notice of a legally cognizable claim and the grounds on
21 which it rests, and although a court must take all factual allegations as true, legal conclusions
22 couched as a factual allegation are insufficient. Twombly, 550 U.S. at 555. Accordingly, Rule
23 12(b)(6) requires "more than labels and conclusions, and a formulaic recitation of the elements
24 of a cause of action will not do." Id. "To survive a motion to dismiss, a complaint must contain
25 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its

1 face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555). “A
2 claim has facial plausibility when the plaintiff pleads factual content that allows the court to
3 draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. This
4 standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” Id.

5 If the court grants a motion to dismiss for failure to state a claim, leave to amend should
6 be granted unless it is clear that the deficiencies of the complaint cannot be cured by
7 amendment. DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992). Pursuant
8 to Rule 15(a), the court should “freely” give leave to amend “when justice so requires,” and in
9 the absence of a reason such as “undue delay, bad faith or dilatory motive on the part of the
10 movant, repeated failure to cure deficiencies by amendments previously allowed, undue
11 prejudice to the opposing party by virtue of allowance of the amendment, futility of the
12 amendment, etc.” Foman v. Davis, 371 U.S. 178, 182 (1962).

13 **III. DISCUSSION**

14 In the instant Motion, Defendant argues that the Court should dismiss: (1) Plaintiff’s
15 claims arising under Nevada’s Unfair Claims Practices Act and (2) Plaintiff’s request for
16 punitive damages. The Court will address each of these arguments in turn.

17 **A. Violations of the Nevada Unfair Claims Practices Act**

18 Defendant argues that Plaintiff has failed to provide sufficient factual allegations to
19 support his claims arising under the Nevada Unfair Claims Practices Act. The Nevada Unfair
20 Claims Practices Act, codified at Section 686A.310 of the Nevada Revised Statutes, lists sixteen
21 activities which constitute unfair practices in the insurance context.

22 In lieu of setting forth factual allegations to support Plaintiff’s claims, the Amended
23 Complaint asserts that Defendant committed violated the Nevada Unfair Claims Practices Act
24 with a series of conclusory allegations that consist of nothing more than the language of each
25 relevant subsection. For instance, Nev. Rev Stat § 686A.310(1)(e) prohibits an insurer from

1 “[f]ailing to effectuate prompt, fair and equitable settlements of claims in which liability of the
2 insurer has become reasonably clear.” In alleging his claim under this subsection, Plaintiff
3 states only that Defendant “failed to effectuate a prompt, fair and equitable settlement of
4 Plaintiff’s claim even though liability was reasonably clear, as required by NRS
5 686A.310(1)(e).” (Am. Compl. ¶ 34, ECF No. 1-2). This type of cut-and-paste allegation is
6 precisely what the Supreme Court held to be insufficient in *Iqbal* and *Twombly*.

7 Plaintiff’s bald recitations of the various subsections of section 686A.310 fail to
8 plausibly allege violations of the Nevada Unfair Claims Practices Act. See *Ashcroft v. Iqbal*,
9 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). Therefore, the Court will dismiss
10 Plaintiff’s claims arising under the Nevada Unfair Claims Practices Act. As Plaintiff may be
11 able to cure the defects in these claims through amendment, the dismissal will be without
12 prejudice.

13 **B. Punitive Damages**

14 Under Nevada law, punitive damages may be awarded only upon a showing that a
15 defendant acted with oppression, fraud, or malice. See, e.g., *D.R. Horton, Inc. v. Betsinger*, 335
16 P.3d 1230, 1232 (Nev. 2014) (citing Nev. Rev. Stat. § 42.005). As relevant to this
17 determination, Section 42.001(2) of the Nevada Revised Statutes defines “fraud” as “an
18 intentional misrepresentation, deception or concealment of a material fact known to [a] person
19 with the intent to deprive another person of his or her rights or property or to otherwise injure
20 another person.” Nev. Rev. Stat. § 42.001(2). Section 42.001(3) defines “[m]alice, express or
21 implied” as “conduct which is intended to injure a person or despicable conduct which is
22 engaged in with a conscious disregard of the rights or safety of others.” Nev. Rev. Stat. §
23 42.001(3). Section 42.001(4) defines “oppression” as “despicable conduct that subjects a
24 person to cruel and unjust hardship with conscious disregard of the rights of the person.” Nev.
25 Rev. Stat. § 42.001(4).

1 In the instant case, the allegations in the Amended Complaint do not raise a plausible
2 inference that Defendant acted with oppression, fraud, or malice. Indeed, Plaintiff's allegations
3 indicate only that Defendant failed to tender the full amount to which Plaintiff believed he was
4 entitled as a result of his injuries. (Am. Compl. ¶¶ 7-21). Accordingly, the Court will dismiss
5 Plaintiff's request for punitive damages. However, as Plaintiff may be able to correct this
6 deficiency through amendment, the dismissal will be without prejudice.

7 **IV. CONCLUSION**

8 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 6), is
9 **GRANTED.**

10 **IT IS FURTHER ORDERED** that Plaintiff's third cause of action, alleging violations
11 of the Nevada Unfair Claims Practices Act, and Plaintiff's request for punitive damages are
12 **DISMISSED without prejudice.**

13 **IT IS FURTHER ORDERED** that Plaintiff shall have until **April 15, 2015**, to file a
14 Second Amended Complaint in this action. Failure to file by this deadline will result in
15 **dismissal** of Plaintiff's third cause of action and request for punitive damages, **with prejudice.**

16 **DATED** this 30th day of March, 2015.

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20 Gloria M. Navarro, Chief Judge
21 United States District Court
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