

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 WAYNE YOSHIMOTO, )  
4 )  
5 Plaintiff, )  
6 vs. )  
7 SAFECO INSURANCE COMPANY OF )  
8 ILLINOIS, )  
9 Defendant. )

Case No.: 2:17-cv-00382-GMN-CWH

ORDER

10 Pending before the Court is the Motion to Dismiss, (ECF No. 7), filed by Defendant  
11 Safeco Insurance Company of Illinois (“Defendant”). Plaintiff Wayne Yoshimoto (“Plaintiff”)   
12 filed a response, (ECF No. 9), and Defendant filed a reply, (ECF No. 11). For the reasons  
13 discussed herein, Defendant’s Motion to Dismiss is **GRANTED**.

14 **I. BACKGROUND**

15 This case arises out of a car accident that took place on or about September 12, 2013.  
16 (Compl. ¶¶ 7–9, Ex. 1 to Pet. of Removal, ECF No. 1-1). As a result of the accident, Plaintiff  
17 claims to have sustained both physical and mental injuries, disability, and medical expenses.  
18 (Id. ¶¶ 9–11). Plaintiff further claims that he could not recover the full amount of damages  
19 from the negligent parties because they were underinsured motorists. (Id. ¶ 22).

20 At the time of the accident, Plaintiff was allegedly covered under an insurance policy  
21 with Defendant. (Id. ¶¶ 12, 13). According to Plaintiff, Defendant “refused to properly and  
22 fairly compensate Plaintiff under the terms of the contract, and specifically the [underinsured  
23 motorist coverage] portion of the insurance policy.” (Id. ¶ 14). Based on these allegations,  
24 Plaintiff filed a Complaint asserting the following causes of action: (1) breach of contract; (2)

1 violation of the Unfair Claims Practices Act; and (3) breach of the covenant of good faith and  
2 fair dealing/bad faith.

3 **II. LEGAL STANDARD**

4 Rule 12(b)(6) of the Federal Rules of Civil Procedure mandates that a court dismiss a  
5 cause of action that fails to state a claim upon which relief can be granted. See *North Star Int'l*  
6 *v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to  
7 dismiss under Rule 12(b)(6) for failure to state a claim, dismissal is appropriate only when the  
8 complaint does not give the defendant fair notice of a legally cognizable claim and the grounds  
9 on which it rests. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering  
10 whether the complaint is sufficient to state a claim, the Court will take all material allegations  
11 as true and construe them in the light most favorable to the plaintiff. See *NL Indus., Inc. v.*  
12 *Kaplan*, 792 F.2d 896, 898 (9th Cir. 1986).

13 The Court, however, is not required to accept as true allegations that are merely  
14 conclusory, unwarranted deductions of fact, or unreasonable inferences. See *Sprewell v. Golden*  
15 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action  
16 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a  
17 violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing  
18 *Twombly*, 550 U.S. at 555) (emphasis added). In order to survive a motion to dismiss, a  
19 complaint must allege “sufficient factual matter, accepted as true, to state a claim to relief that  
20 is plausible on its face.” *Id.* “A claim has facial plausibility when the plaintiff pleads factual  
21 content that allows the court to draw the reasonable inference that the defendant is liable for the  
22 misconduct alleged.” *Id.*

23 “Generally, a district court may not consider any material beyond the pleadings in ruling  
24 on a Rule 12(b)(6) motion . . . . However, material which is properly submitted as part of the  
25 complaint may be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard*

1 Feiner & Co., 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,  
2 “documents whose contents are alleged in a complaint and whose authenticity no party  
3 questions, but which are not physically attached to the pleading, may be considered in ruling on  
4 a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for  
5 summary judgment. Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule  
6 of Evidence 201, a court may take judicial notice of “matters of public record.” Mack v. S. Bay  
7 Beer Distrib., 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers  
8 materials outside of the pleadings, the motion to dismiss is converted into a motion for  
9 summary judgment. See Fed. R. Civ. P. 12(d); Arpin v. Santa Clara Valley Transp. Agency, 261  
10 F.3d 912, 925 (9th Cir. 2001).

11 If the court grants a motion to dismiss, it must then decide whether to grant leave to  
12 amend. Pursuant to Rule 15(a), the court should “freely” give leave to amend “when justice so  
13 requires,” and in the absence of a reason such as “undue delay, bad faith or dilatory motive on  
14 the part of the movant, repeated failure to cure deficiencies by amendments previously allowed,  
15 undue prejudice to the opposing party by virtue of allowance of the amendment, futility of the  
16 amendment, etc.” Foman v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is  
17 only denied when it is clear that the deficiencies of the complaint cannot be cured by  
18 amendment. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

### 19 **III. DISCUSSION**

20 In the instant Motion, Defendant argues that each of Plaintiff’s causes of action should  
21 be dismissed for failure to state a claim. (See Def.’s Mot. to Dismiss, ECF No. 7). Specifically,  
22 Defendant argues that the Complaint is overly “vague and general” and therefore falls short of  
23 the pleading standards. (See id. 5:3–5). The Court addresses the sufficiency of each cause of  
24 action in turn.

1           **A. Breach of Contract**

2           In his first cause of action, Plaintiff broadly alleges that the underinsured motorist  
3 coverage (“UIM”) claim is one of a “contractual nature,” and “Plaintiff was insured under the  
4 policy.” (Compl. ¶¶ 18–21, Ex. 1 to Pet. of Removal). Plaintiff further alleges that Defendant  
5 breached the insurance contract by failing to “fully compensate Plaintiff for damages under the  
6 terms of the uninsured motorist policy.” (Id. ¶ 24).

7           To state a claim for a breach of contract in Nevada, the plaintiff must allege: (1) the  
8 existence of a valid agreement between the plaintiff and defendant; (2) a breach by the  
9 defendant; and (3) damages as a result of the breach. See *Brown v. Kinross Gold U.S.A., Inc.*,  
10 531 F. Supp. 2d 1234, 1240 (D. Nev. 2008). While Plaintiff adequately alleges the existence of  
11 an insurance contract, Plaintiff’s conclusory assertion that Defendant “breached” the agreement  
12 by failing to pay damages under the UIM provision is insufficient to satisfy the remaining  
13 elements. Notably, Plaintiff provides no allegations as to the terms of the agreement, the  
14 manner in which Defendant allegedly breached the agreement, or the coverage allegedly  
15 available under the agreement. Without factual context, Plaintiff’s assertion that Defendant  
16 breached the UIM portion of the agreement is nothing more than a legal conclusion and  
17 therefore insufficient under the pleading standards. See *Ashcroft*, 556 U.S. at 678. The Court  
18 therefore grants Defendant’s Motion to Dismiss as to this claim.

19           **B. Violation of the Unfair Claims Practices Act**

20           Plaintiff’s second cause of action alleges that Defendant breached the Unfair Claims  
21 Practices Act, NRS 686A.310. (Compl. ¶¶ 27–29, Ex. 1 to Pet. of Removal). This statute  
22 concerns the manner in which an insurer handles an insured’s claim. *Zurich Am. Ins. Co. v.*  
23 *Coeur Rochester, Inc.*, 720 F. Supp. 2d 1223, 1236 (D. Nev. 2010). To state a claim under  
24 NRS 686A.310, a plaintiff must allege a violation of one of the statute’s sixteen enumerated  
25 activities that constitute unfair practice in the insurance context. See NRS 686A.310(1)(a)-(p).

1 Here, much like the breach of contract claim, Plaintiff provides insufficient factual  
2 context to raise a claim under this statute. Plaintiff vaguely alleges that Defendant’s “actions”  
3 were in violation of provisions of the Unfair Claims Practices Act. (Compl. ¶ 28, Ex. 1 to Pet.  
4 of Removal). Yet, the only “action” raised as to Defendant is its alleged failure to compensate  
5 Plaintiff pursuant to the UIM. Even assuming this allegation were sufficient to raise a breach  
6 of contract claim, the mere act of breaching a contract does not give rise to a cause of action for  
7 unfair claim practices. Accordingly, the Court grants Defendant’s Motion to Dismiss as to this  
8 claim.

9 **C. Breach of the Covenant of Good Faith and Fair Dealing/Bad Faith**

10 Plaintiff’s third cause of action alleges that Defendant acted in bad faith and breached  
11 the covenant of good faith and fair dealing by “denying, and/or delaying payment of, benefits  
12 due under the insurance policy without proper cause.” (Id. ¶ 31). “An implied covenant of  
13 good faith and fair dealing is recognized in every contract under Nevada law.” *Consol.*  
14 *Generator-Nevada, Inc. v. Cummins Engine Co.*, 971 P.2d 1251, 1256 (Nev. 1998). A breach  
15 occurs where “the terms of a contract are literally complied with but one party to the contract  
16 deliberately contravenes the intention and spirit of the contract.” *Hilton Hotels Corp. v. Butch*  
17 *Lewis Prods., Inc.*, 808 P.2d 919, 922 (Nev. 1991). Furthermore, “[b]ad faith is established  
18 where the insurer acts unreasonably and with knowledge that there is no reasonable basis for its  
19 conduct.” See *American Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354–55  
20 (1986).

21 Here, the crux of Plaintiff’s claim is that Defendant denied payments “without proper  
22 cause.” Refusal to compensate a loss “without proper cause,” however, does not constitute a  
23 breach of the covenant of good faith and fair dealing unless the insurer “knew or recklessly  
24 disregarded the fact that there was no reasonable basis for disputing coverage.” *Powers v.*  
25

1 United *Servs. Auto. Ass'n*, 962 P.2d 596, 604 (Nev. 1998). Plaintiff fails to provide sufficient  
2 allegations as to this issue. Accordingly, the Court grants Defendant's Motion to Dismiss.

3 **D. Leave to Amend**

4 Rule 15(a)(2) of the Federal Rules of Civil Procedure permits courts to "freely give  
5 leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). The Ninth Circuit "ha[s]  
6 held that in dismissing for failure to state a claim under Rule 12(b)(6), 'a district court should  
7 grant leave to amend even if no request to amend the pleading was made, unless it determines  
8 that the pleading could not possibly be cured by the allegation of other facts.'" *Lopez v. Smith*,  
9 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.  
10 1995)).


11 The Court finds that Plaintiff may be able to plead additional facts to support the above  
12 causes of action. Accordingly, the Court will grant Plaintiff leave to file an amended  
13 complaint. Plaintiff shall file his amended complaint within twenty-one days of the date of this  
14 Order if he can allege sufficient facts that plausibly establish his claims against Defendant.

15 **IV. CONCLUSION**

16 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss, (ECF No. 7), is  
17 **GRANTED**.

18 **IT IS FURTHER ORDERED** that Plaintiff's claims are **DISMISSED without**  
19 **prejudice**. Plaintiff shall have twenty-one days from the filing of this Order to file an amended  
20 complaint. Failure to file an amended complaint by this date shall result in the Court  
21 dismissing this action.

22 **DATED** this 25 day of September, 2017.

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Gloria M. Navarro, Chief Judge  
United States District Judge