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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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LV DIAGNOSTICS, LLC,

Plaintiff(s),

v.

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

Defendant(s).

Case No. 2:17-CV-1371 JCM (PAL)

ORDER

Presently before the court is defendant Hartford Financial Services Group, Inc.'s ("Hartford") motion to dismiss. (ECF No. 5). Plaintiff has not filed a response, and the time for doing so has since passed.

Also before the court is defendant Hartford and defendant Sentinel Insurance Company, Ltd.'s ("Sentinel") joint motion to dismiss. (ECF No. 6). Plaintiff LV Diagnostics, LLC filed a response (ECF No. 10), to which defendants replied (ECF No. 12).

**I. Facts**

Plaintiff and defendant Sentinel entered into an insurance contract covering the building and business personal property located at 600 South Martin Luther King Blvd., Las Vegas, Nevada. (ECF No. 1). The coverage dates for the policy ran from December 1, 2014 to December 1, 2015. *Id.* On April 8, 2015, someone broke into plaintiff's business and stole a large amount of plaintiff's medical and business equipment. *Id.* Plaintiff alleges that the equipment was covered by the policy. *Id.*

On April 13, 2015, plaintiff submitted a claim to defendants regarding the lost property. *Id.* On June 15, 2015, defendants wrote to plaintiff, stating that in attempts to complete their

1 investigation and adjustment of loss defendants needed additional documentation to support  
2 plaintiff's claim. *Id.* Plaintiff sent defendants the requested documentation. *Id.* On July 6, 2015,  
3 defendants again wrote plaintiff to state that the provided documentation was insufficient. *Id.* The  
4 letter requested additional records. *Id.*

5 Plaintiff states that on at least two occasions thereafter it provided defendants with  
6 supporting documentation. *Id.* "Each time the documentation was deemed insufficient by  
7 Defendants and the claim denied." *Id.*

## 8 **II. Legal Standard**

9 A court may dismiss a complaint for "failure to state a claim upon which relief can be  
10 granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain  
11 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell*  
12 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed  
13 factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the  
14 elements of a cause of action." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

15 "Factual allegations must be enough to rise above the speculative level." *Twombly*, 550  
16 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual  
17 matter to "state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. 662, 678 (citation  
18 omitted).

19 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply  
20 when considering motions to dismiss. First, the court must accept as true all well-pled factual  
21 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.  
22 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory  
23 statements, do not suffice. *Id.* at 678.

24 Second, the court must consider whether the factual allegations in the complaint allege a  
25 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff's complaint  
26 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the  
27 alleged misconduct. *Id.* at 678.

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1           Where the complaint does not permit the court to infer more than the mere possibility of  
2 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*  
3 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line  
4 from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at 570.

5           The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,  
6 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

7           First, to be entitled to the presumption of truth, allegations in a complaint or  
8 counterclaim may not simply recite the elements of a cause of action, but must  
9 contain sufficient allegations of underlying facts to give fair notice and to enable  
10 the opposing party to defend itself effectively. Second, the factual allegations that  
are taken as true must plausibly suggest an entitlement to relief, such that it is not  
unfair to require the opposing party to be subjected to the expense of discovery and  
continued litigation.

11 *Id.*

12 **III. Discussion**

13 a. *Plaintiff’s claims against Hartford*

14           As an initial matter, the court will grant defendant Hartford’s unopposed motion to dismiss.  
15 Pursuant to LR 7-2(d), “[t]he failure of an opposing party to file points and authorities in response  
16 to any motion, except a motion under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes  
17 a consent to the granting of the motion.” Plaintiff’s failure to respond to defendant’s motion  
18 constitutes consent to granting of the motion. Further, as defendant is not plaintiff’s insurer and  
19 is not in privity with plaintiff, dismissal of plaintiff’s claims against defendant is appropriate. See  
20 *Winkler v. Hartford Financial Services Group, Inc.*, no 2:10-cv-02222-RLH-LRL, 2011 WL  
21 1705559, at \*2 (D. Nev. May 3, 2011).

22 b. *Plaintiff’s second, third, fourth, and fifth claims*

23 i. Breach of the covenant of good faith and fair dealing (contractual)

24           In Nevada, “[e]very contract imposes upon each party a duty of good faith and fair dealing  
25 in its performance and execution.” *A.C. Shaw Constr., Inc. v. Washoe Cnty.*, 784 P.2d 9, 9 (Nev.  
26 1989). This implied covenant requires that parties “act in a manner that is faithful to the purpose  
27 of the contract and the justified expectations of the other party.” *Morris v. Bank of Am. Nev.*, 886  
28 P.2d 454, 457 (Nev. 1994) (internal quotation marks omitted).

1           “When one party performs a contract in a manner that is unfaithful to the purpose of the  
2 contract . . . damages may be awarded against the party who does not act in good faith.” Hilton  
3 Hotels v. Butch Lewis Prods., 808 P.2d 919, 923 (Nev. 1991). A breach of the duty of good faith  
4 and fair dealing can occur “[w]here the terms of a contract are literally complied with but one party  
5 to the contract deliberately contravenes the intention and spirit of the contract.” Id. at 922–23.  
6 However, when allegations in a complaint allege facts that establish a violation of the express  
7 terms of the policy, but do not suggest compliance with the policy, a claim for breach of the  
8 covenant of good faith and fair dealing unnecessarily duplicates a claim for breach of contract.  
9 Kennedy v. Carriage Cemetery Servs., 727 F. Supp. 2d 925, 931 (D. Nev. 2010).

10           Here, plaintiff’s allegations in its complaint, and specifically those in its second claim for  
11 relief, allege that defendants breached Sentinel’s contract with plaintiff by “refusing to properly  
12 compensate plaintiff pursuant to its rightful claim for losses under said insurance contract.” (ECF  
13 No. 1). These allegations do not support a claim that defendants abided by the express terms of  
14 the contract but contravened its spirit. Accordingly, the court will dismiss plaintiff’s claim for  
15 breach of the contractual covenant of good faith and fair dealing without prejudice.

16           ii.       Tortious breach of the covenant of good faith and fair dealing/bad faith

17           “To establish a prima facie case of bad-faith refusal to pay an insurance claim, the plaintiff  
18 must establish that the insurer had no reasonable basis for disputing coverage, and that the insurer  
19 knew or recklessly disregarded the fact that there was no reasonable basis for disputing coverage.”  
20 *Powers v. United Servs. Auto. Ass’n*, 962 P.2d 596, 604 (1998), *modified on denial of reh’g*, 979  
21 P.2d 1286 (Nev. 1999) (citing *Falline v. GNLV Corp.*, 823 P.2d 888 (Nev. 1991)); see also *Pioneer*  
22 *Chlor Alkali Co. v. Nat’l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1249 (D. Nev. 1994) (refusing  
23 to find bad faith where insurance company investigated damage and requested documents, despite  
24 insured’s argument that investigation was incomplete). Refusing to compensate for a loss covered  
25 by an insurance contract is a factual allegation of breach of contract, not breach of the covenant of  
26 good faith and fair dealing. Id. (“the insurer is not liable for [tortious] bad faith for being incorrect  
27 about policy coverage as long as the insurer had a reasonable basis to take the position that it did.”).

28

1 Here, plaintiff asserts that its allegations regarding defendants' refusal to pay out plaintiff's  
2 claim after plaintiff provided four rounds of supporting documentation states a claim bad faith.  
3 (ECF Nos. 1, 10). The court disagrees. Neither these allegations, nor the other allegations in  
4 plaintiff's complaint, adequately allege that defendant lacked a reasonable basis for its denial or  
5 knew it lacked a reasonable basis to deny plaintiff's claim. As defendants note, "Plaintiff does not  
6 even allege the amount of coverage, the items claimed to be covered, or claim that the  
7 documentation submitted to Sentinel was sufficient." (ECF No. 6). The court will dismiss  
8 plaintiff's claim for tortious breach of the covenant of good faith and fair dealing without prejudice.

9 As the parties note in their filings, plaintiff's bad faith claim is duplicitous of plaintiff's  
10 tortious breach claim. (ECF Nos. 6, 10). The court will therefore dismiss plaintiff's claim for bad  
11 faith with prejudice.

12 iii. Violation of NRS 686A.310

13 As an initial note, plaintiff's complaint lists its fifth cause of action as "Unfair Trade  
14 Practices." However, both parties' filings related to defendants' motion to dismiss discuss NRS  
15 686A.310 only. The title of subsection 300 of NRS 686A is "Claims," and the title of NRS  
16 686A.310 is "Unfair practices in settling claims." Compare *id.*, with NRS 598A ("Chapter 598A  
17 - Unfair Trade Practices"); cf. *McKinnon v. Hartford Ins. Co.*, No. 2:12-cv-01809-RCJ-CWH,  
18 2013 WL 1088702 (D. Nev. Mar. 14, 2013) (using the term "Unfair Claims Practices Act" to  
19 describe NRS 686A.310). Accordingly, the court assumes that plaintiff intends her claim to state  
20 violations of NRS 686A.310, and will use the term "Unfair Claims Practices Act" for clarity.

21 Defendants argue that plaintiff's complaint fails to adequately plead a cause of action for  
22 violation of the Nevada Unfair Claims Practices Act. (ECF No. 6). Plaintiff responds that its  
23 complaint, when considered in its entirety, adequately pleads violations of NRS 686A.310. (ECF  
24 No. 10).

25 NRS 686A.310(1) sets forth various activities considered to be unfair claims practices.  
26 Nev. Rev. Stat. § 686A.310(1). In order to properly plead a violation of NRS 686A.310, a plaintiff  
27 must plausibly allege that defendant violated at least one provision of the act. *McKinnon*, 2013  
28 WL 1088702, at \*5.

1 Here, plaintiff's fifth cause of action alleges that defendants failed in their obligation to  
2 provide coverage on plaintiff's claim. This legal conclusion is not sufficient to defeat a motion to  
3 dismiss for failure to state a claim. See *Iqbal*, 556 U.S. at 678–79.

4 Plaintiff's fifth cause of action also incorporates by reference all prior allegations in the  
5 complaint. Plaintiff's complaint alleges that it corresponded back-and-forth with defendant on  
6 multiple occasions, and rests on this repeated correspondence along with defendant's eventual  
7 denial of plaintiff's claim to support its claim for violation of NRS 686A.310. As the court noted  
8 in its discussion of plaintiff's tortious breach of the covenant of good faith and fair dealing claim,  
9 plaintiff's complaint provides no more than conclusory statements that defendants improperly  
10 denied plaintiff's "rightful claim." This is not adequate to state a cause of action for breach of  
11 NRS 686A.310. See *McKinnon*, 2013 WL 1088702, at \*5.

12 Plaintiff alleges that at minimum, defendant has violated subsections (d) and (e) of NRS  
13 686A.310(1). These subsections pertain to "(d) [f]ailing to affirm or deny coverage of claims  
14 within a reasonable time after proof of loss requirements have been completed and submitted by  
15 the insured. . . . [and] (e) [f]ailing to effectuate prompt, fair and equitable settlements of claims in  
16 which liability of the insured has become reasonably clear." NRS 686A.310(1).

17 Here, plaintiff's complaint states that defendants denied coverage after proof of loss  
18 requirements had been completed, and plaintiff does not assert that defendants' denial took an  
19 unreasonable amount of time. Therefore, plaintiff's complaint does not adequately plead that  
20 defendants violated subsection (d) of NRS 686A.310. See *McKinnon*, 2013 WL 1088702, at \*5.  
21 Further, plaintiff's complaint, when stripped of its conclusory legal assertions, does not adequately  
22 plead that defendants' liability is reasonably clear under the contract. See *id.* The court will  
23 dismiss defendant's fifth cause of action without prejudice for failure to state a claim upon which  
24 relief can be granted.

#### 25 **IV. Conclusion**

26 Accordingly,

27 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Hartford's  
28 motion to dismiss (ECF No. 5) be, and the same hereby is, GRANTED.

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IT IS FURTHER ORDERED that defendants Hartford and Sentinel's motion to dismiss (ECF No. 6) be, and the same hereby is, GRANTED, consistent with the foregoing.

IT IS FURTHER ORDERED that plaintiff's claims for contractual breach of the duty of good faith and fair dealing, tortious breach of the duty of good faith and fair dealing, and violation of NRS 686A.310 be, and the same hereby are, dismissed without prejudice. Plaintiff's claim for bad faith is dismissed with prejudice.

DATED January 31, 2018.

  
UNITED STATES DISTRICT JUDGE