

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 * * *

4 TANYA TEODORO, individually, and on
5 behalf of others similarly situated,

6 Plaintiff,

7 v.

8 ALLSTATE FIRE AND CASUALTY
9 INSURANCE COMPANY,

10 Defendant.

Case No. 217-cv-02135-APG-VCF

**ORDER GRANTING MOTIONS TO
DISMISS**

(ECF Nos. 11, 13)

11 In March 2016, plaintiff Tanya Teodoro was involved in an automobile accident. As a
12 result, she incurred medical and hospital charges of approximately \$85,000. She provided her
13 automobile insurer, defendant Allstate Fire and Casualty Insurance Company (Allstate), with her
14 bills. Her Allstate policy included medical payments coverage of \$100,000. Allstate paid
15 approximately \$45,000 of the bills.¹

16 Now, Teodoro sues Allstate, in her individual capacity and on behalf of a proposed class.
17 She claims that the terms of her insurance policy require Allstate to pay the entirety of her
18 medical expenses. She brings claims for breach of contract, breach of the implied covenant of
19 good faith and fair dealing, violation of Nevada's Deceptive Trade Practices Act, violation of
20 Nevada's Unfair Claims Practices Act, and unjust enrichment. Allstate moves to dismiss both the
21 individual and class claims, arguing that Teodoro does not have standing because she has not
22 alleged an actual injury, that her claims fall under the exclusive jurisdiction of the Nevada
23 Division of Insurance (NDOI), and that she has failed to sufficiently allege the elements of her
24 claims. Allstate also contends that class action treatment is inappropriate because individualized
25 factual issues would predominate. I grant both of Allstate's motions.

26 ///

27 _____
28 ¹ Teodoro's complaint does not specify whether these payments were made directly to her or her
medical providers.

1 **I. ANALYSIS**

2 A properly pleaded complaint must provide a “short and plain statement of the claim
3 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*,
4 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands
5 more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of
6 action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). “Factual allegations must be enough to rise
7 above the speculative level.” *Twombly*, 550 U.S. at 555. To survive a motion to dismiss, a
8 complaint must “contain[] enough facts to state a claim to relief that is plausible on its face.”
9 *Iqbal*, 556 U.S. at 696 (internal quotation marks and citation omitted).

10 I must apply a two-step approach when considering motions to dismiss. *Id.* at 679. First, I
11 must accept as true all well-pleaded factual allegations and draw all reasonable inferences from
12 the complaint in the plaintiff’s favor. *Id.*; *Brown v. Elec. Arts, Inc.*, 724 F.3d 1235, 1247–48 (9th
13 Cir. 2013). Legal conclusions, however, are not entitled to the same assumption of truth even if
14 cast in the form of factual allegations. *Iqbal*, 556 U.S. at 679; *Brown*, 724 F.3d at 1248. Mere
15 recitals of the elements of a cause of action, supported by only conclusory statements, do not
16 suffice. *Iqbal*, 556 U.S. at 678.

17 Second, I must consider whether the factual allegations in the complaint allege a plausible
18 claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges facts that
19 allow the court to draw a reasonable inference that the defendant is liable for the alleged
20 misconduct. *Id.* at 663. Where the complaint does not permit the court to infer more than the
21 mere possibility of misconduct, the complaint has “alleged – but it has not shown – that the
22 pleader is entitled to relief.” *Id.* at 679 (internal quotation marks and citations omitted). When the
23 claims have not crossed the line from conceivable to plausible, the complaint must be dismissed.
24 *Twombly*, 550 U.S. at 570. “Determining whether a complaint states a plausible claim for relief
25 will . . . be a context-specific task that requires [me] to draw on [my] judicial experience and
26 common sense.” *Iqbal*, 556 U.S. at 679.

27 ///

1 **A. Subject Matter Jurisdiction**

2 Allstate initially argues that the court does not have subject matter jurisdiction over
3 Teodoro’s claims because she has not alleged an injury in fact and thus has no standing and her
4 claims are within the exclusive jurisdiction of the NDOI. Teodoro responds that she has alleged
5 an injury: the difference between the amount Allstate paid her and what she alleges is its
6 contractual obligation to pay. She also argues that her claims stem from Allstate’s alleged breach
7 of contract, and that any mention of NDOI was only supportive, rather than a basis for her claims.

8 1. *Standing*

9 Article III of the U.S. Constitution confines the federal judicial power to actual “cases or
10 controversies.” U.S. Const. art. III § 2; *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). The
11 “irreducible constitutional minimum of standing consists of three elements. The plaintiff must
12 have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the
13 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo*, 136 S.
14 Ct. at 1547 (internal quotation omitted).

15 Teodoro has alleged that she incurred over \$80,000 in medical bills, that Allstate is
16 contractually obligated to pay the entirety of these charges, and that it did not do so. Thus,
17 Teodoro has alleged an actual injury of the money she believes she is owed under the insurance
18 policy.

19 2. *Nevada Department of Insurance*

20 In Nevada, a plaintiff challenging violations of the insurance code “generally must
21 exhaust all available administrative remedies before initiating a lawsuit.” *Allstate Ins. Co. v.*
22 *Thorpe*, 170 P.3d 989, 993 (Nev. 2007). While her complaint alleges the NDOI did not approve
23 Allstate’s actions, Teodoro repeatedly argues that her claims do not rely on this assertion, but
24 rather on Allstate’s alleged breach of contract. Moreover, Teodoro’s causes of action do not rest
25 on alleged violations of particular sections of the insurance code. Allstate has therefore not
26 shown that Teodoro’s claims are within NDOI’s exclusive jurisdiction and that the court lacks
27
28

1 subject matter jurisdiction. Therefore, I deny Allstate’s motion to dismiss for lack of subject
2 matter jurisdiction.

3 **B. Individual Claims**

4 *1. Breach of Contract*

5 Teodoro’s first claim is that Allstate breached its insurance contract with her by not
6 paying the entirety of her medical expenses. With regard to medical payments coverage,
7 Teodoro’s policy states that Allstate “will pay to or on behalf of an insured person all reasonable
8 expenses actually incurred by the insured person for necessary medical treatment, services, or
9 products actually provided to the insured person.” ECF No. 11-1 at 31. Teodoro claims Allstate
10 violated this language when it did not pay the entirety of her billed medical expenses. Allstate
11 contends that Teodoro does not allege a breach, as the policy does not include an obligation to
12 pay the entirety of medical expenses unless they are reasonable and necessary. Allstate also
13 argues that Teodoro’s statement that her bills were “reasonable and necessary” is a conclusory
14 statement unsupported by any facts, such as what injuries were sustained or medical services
15 provided. Teodoro responds that Nevada is a notice-pleading state, and her complaint sufficiently
16 put Allstate on notice as to her claims.

17 As this case was removed to federal court, the Federal Rules of Civil Procedure apply.
18 Teodoro’s complaint must meet the pleading standard of Rule 8 and *Iqbal-Twombly* to survive a
19 motion to dismiss. It does not. Teodoro alleges that all \$85,000 of her medical expenses were
20 reasonable and necessary, but alleges no facts allowing that inference. Her bare assertion permits
21 only an inference of the possibility of a breach of contract by Allstate. Moreover, Teodoro’s
22 allegations in her complaint focus on Allstate’s alleged obligation to pay the entirety of billed
23 medical expenses, regardless of reasonableness or necessity. *See* ECF No. 1-2 at 16 (“Allstate
24 breached its obligation under the contracts of insurance with Plaintiff and each Class member by
25 refusing to pay them the entirety of the Billed Medical Expenses.”). Teodoro alleges no facts
26 allowing the inference that the “reasonable and necessary” language in her insurance policy
27 requires the payment of the “entirety” of billed medical expenses. I dismiss this claim without
28

1 prejudice. I grant Teodoro leave to amend her complaint to plead facts plausibly alleging that the
2 entirety of her billed medical expenses were reasonable and necessary such that Allstate breached
3 the insurance policy by not paying the full amount.

4 *2. Breach of the Implied Covenant of Good Faith and Fair Dealing*

5 Teodoro's second cause of action alleges Allstate breached the implied covenant of good
6 faith and fair dealing by "arbitrarily and unreasonably refusing to pay the entirety" of her billed
7 medical expenses and concealing the fact that Teodoro was entitled to such a payment. ECF No.
8 1-2 at 17. Allstate argues that Teodoro alleges only a breach of contract and fails to allege that it
9 lacked a reasonable basis for its payment decisions. Teodoro again argues that her complaint
10 meets notice-pleading standards. She also contends that Allstate did not provide her a reason for
11 its payment decisions.

12 To the extent that Teodoro alleges a contractual breach of the covenant of good faith, her
13 claim fails. "Where the terms of a contract are literally complied with but one party to the
14 contract deliberately countervenes the intention and spirit of the contract, that party can incur
15 liability for breach of the implied covenant of good faith and fair dealing." *Hilton Hotels Corp. v.*
16 *Butch Lewis Prods., Inc.*, 808 P.2d 919, 922-23 (Nev. 1991). Teodoro's claim relies on Allstate's
17 breach of the express terms of her insurance policy, "thereby negating the possibility of a valid
18 claim for breach of the contractual covenant of good faith." *Tomkiel v. Hartford Cas. Ins. Co.*,
19 No. 2:13-cv-01888-JCM-PAL, 2014 WL 1494248, at *2 (D. Nev. Apr. 14, 2014).

20 To the extent Teodoro alleges a tortious breach of the covenant, her claim also fails. To
21 establish such a cause of action, the plaintiff must allege facts showing an insurer denied her
22 claim without any reasonable basis and the insurer knew or recklessly disregarded the lack of a
23 reasonable basis. *See id.* (citing *Pioneer Chlor Alkali Co. v. Nat'l Union Fire Ins. Co. of*
24 *Pittsburg, Pa.*, 863 F. Supp. 1237, 1242 (D. Nev. 1994)). Teodoro alleges conclusorily that
25 Allstate unreasonably refused to pay the entirety of her medical bills without explaining what was
26 unreasonable about this decision. She alleges no facts showing that Allstate did not have a
27 reasonable basis for its decision. *See Henderson v. Prop. & Cas. Ins. Co. of Hartford*, No. 2:12-
28

1 cv-00149-KJD-PAL, 2012 WL 2283361, at *2 (D. Nev. Jun. 18, 2012) (finding bare allegations
2 that a defendant insurance company refused to make adequate payment without a reasonable basis
3 was “no more than labels and conclusions”). Therefore, I dismiss this claim without prejudice
4 and grant Teodoro leave to amend. If Allstate explained its decision—for example, in an
5 explanation of benefits—Teodoro should allege what this explanation was and why it was
6 unreasonable. If Allstate never explained its decision and this lack of explanation is the basis of
7 her complaint, Teodoro must allege so in her complaint.

8 3. *Deceptive Trade Practices Act*

9 Teodoro’s third cause of action alleges Allstate violated Nevada’s Deceptive Trade
10 Practices Act (DTPA) by breaching the insurance contract, breaching the implied covenant of
11 good faith and fair dealing, and violating Nevada’s Unfair Claims Practices Act. Allstate argues
12 this claim should be dismissed because Teodoro does not identify any specific statutory section it
13 violated or allege sufficient facts to show a violation. Allstate also argues that the DTPA only
14 applies to the sale of goods or services. Teodoro responds that Allstate is on notice of the nature
15 of her claims, and that certain sections of the DTPA have been applied to claims unrelated to the
16 sale of goods and services.

17 Teodoro is correct that some sections of the DTPA are not necessarily limited to the sale
18 of goods and services. *See, e.g., The Bank of N.Y. Mellon fka The Bank of N.Y. v. Cape Jasmine*
19 *CT Trust*, No. 2:16-cv-00248-JAD-GWF, 2016 WL 3511253, at *4–5 (D. Nev. Jun. 27, 2016)
20 (noting that certain provisions of the statute explicitly require the sale or lease of goods and
21 services but others do not); *Kawahara v. Kennedy*, No. 3:14-cv-00012-MMD-WGC, 2015 WL
22 789744, at *5–6 (D. Nev. Feb. 25, 2015) (same). However, Teodoro does not allege violations of
23 particular sections of the statute. Thus, I cannot determine whether the requirement of the sale or
24 lease of goods and services applies to her claim.

25 In *Reyes v. GMAC Mortgage LLC*, the court held that an allegation that the defendant
26 “violated the Nevada Deceptive Trade Practices [Act] at NRS 598 through the actions they have
27 taken” did not “point the court to any specific statute within [Nevada Revised Statutes §] 598 nor
28

1 did [the plaintiffs] assert facts that would allow the court to assume which statute they are
2 claiming violations of.” No. 2:11-cv-00100-JCM-RJJ, 2011 WL 1322775, at *3 (D. Nev. Apr. 5,
3 2011). This is essentially what Teodoro has done. She does not allege a violation of a particular
4 section of the statute, and the lack of alleged facts does not allow me to infer what her claim is.
5 Teodoro has not given Allstate fair notice of her claim and the grounds for that claim. *See*
6 *Twombly*, 550 U.S. at 555. Therefore, I grant the motion to dismiss this claim without prejudice.
7 I grant Teodoro leave to amend to plead facts sufficient to show violation of specific sections of
8 the DTPA.

9 4. *Unfair Claims Practices Act*

10 Teodoro’s fourth cause of action is for violation of Nevada’s Unfair Claims Practices Act.
11 She claims Allstate violated the statute by “unlawfully, fraudulently, and knowingly” refusing to
12 pay the entirety of her billed medical expenses and misrepresenting to her that it was allowed to
13 do so. ECF No. 1-2 at 19. Allstate argues that Teodoro fails to plead any facts showing a
14 violation of the statute. Teodoro responds she sufficiently alleged a violation of Nevada Revised
15 Statutes § 686A.310(1)(a) by alleging that Allstate refused to pay the entirety of her expenses,
16 misrepresented that such reductions were valid, and concealed that they were not.

17 As with all of her claims, Teodoro’s unfair claims practice claim is based on Allstate’s
18 alleged breach of the insurance policy. She alleges no facts showing why a payment of less than
19 the entirety of her billed expenses was fraudulent, or how any misrepresentation was made to her
20 about this payment. Teodoro “provides insufficient factual context to raise a claim under this
21 statute.” *Yoshimoto v. Safeco Ins. Co. of Ill.*, No. 2:17-cv-00382-GMN-CWH, 2017 WL 4248141,
22 at *2–3 (D. Nev. Sept. 25, 2017). Therefore, I dismiss this claim without prejudice and grant
23 Teodoro leave to amend to plead sufficient facts to show a violation of the statute.

24 5. *Unjust Enrichment*

25 Teodoro’s final claim is for unjust enrichment. She claims that Allstate was unjustly
26 enriched by collecting insurance premiums while refusing to pay the entirety of billed medical
27 expenses. Allstate argues that the existence of the written insurance contract forecloses an unjust
28

1 enrichment claim. Teodoro responds that this claim should be allowed to proceed as an
2 alternative to the breach of contract claim because it would be viable if the contract was held to
3 be unenforceable.

4 To plead a claim for unjust enrichment, a plaintiff must allege she conferred a benefit on
5 the defendant and the defendant appreciated that benefit “under circumstances such that it would
6 be inequitable” to retain the benefit. *Certified Fire Prot. Inc. v. Precision Constr.*, 283 P.3d 250,
7 257 (Nev. 2012). “An action based on a theory of unjust enrichment is not available when there
8 is an express, written contract, because no agreement can be implied when there is an express
9 agreement.” *Leasepartners Corp. v. Robert L. Brooks Trust Dated Nov. 12, 1975*, 942 P.2d 182,
10 187 (Nev. 1997).

11 Teodoro’s entire complaint, including her claim for unjust enrichment, relies on her
12 written insurance contract with Allstate and its enforceability. Allstate has not denied the
13 existence or validity of the contract. Nor, on the face of the complaint, did Teodoro plead this
14 claim in the alternative. Therefore, an action based on a theory of unjust enrichment is
15 unavailable and I grant Allstate’s motion to dismiss this claim.

16 **C. Class Claims**

17 Under Rule 23(c)(1)(A), at “an early practicable time after a person sues or is sued as a
18 class representative,” the court must determine whether to certify a class. While the dismissal of
19 class allegations at the pleading stage should be done rarely, if, “as a matter of law, a class cannot
20 be certified . . . it would be a waste of the parties’ resources and judicial resources to conduct
21 discovery on class certification.” *Picus v. Wal-Mart Stores, Inc.*, 256 F.R.D. 651, 655 (D. Nev.
22 2009) (quotations and citations omitted). “Although it would be improper to require a plaintiff to
23 establish she can maintain a class before she attempts to do so, it would be appropriate to dismiss
24 the class allegations if the plaintiff does not allege facts sufficient to make out a class.” *Id.*; *see*
25 *also Kennedy v. Unumprovident Corp.*, 50 F. App’x 354, 355 (9th Cir. 2002) (“The Supreme
26 Court has stated that it is sometimes ‘plain enough from the pleadings to determine whether the
27
28

1 interests of the absent parties are fairly encompassed within the named plaintiff's claims."
2 (quoting *Gen. Tel. Co. of the SW. v. Falcon*, 457 U.S. 147, 160 (1982)).

3 The party seeking certification bears the burden of establishing the proposed class meets
4 the requirements of numerosity, commonality, typicality, and adequacy of representation set out
5 in Rule 23(a). See *Lozano v. AT&T Wireless Servs., Inc.*, 504 F.3d 718, 724 (9th Cir. 2007). That
6 party must also meet at least one of the requirements of Rule 23(b). Here, Teodoro seeks class
7 certification under Rule 23(b)(3), which requires that "questions of law or fact common to class
8 members predominate over any questions affecting only individual members" and a class action
9 be "superior to other available methods for fairly and efficiently adjudicating the controversy."

10 Allstate argues that Teodoro's proposed class claims should be dismissed primarily
11 because Teodoro cannot meet the predominance and superiority requirements of Rule 23(b).
12 Allstate argues that individual issues regarding the reasonableness and necessity of class
13 members' bills will predominate any common questions of law or fact. As to superiority, Allstate
14 contends that because of the likelihood that many individualized issues would need to be litigated,
15 trial of the claims on a class basis would be unmanageable. Teodoro responds that individualized
16 issues will not predominate, as all members of the proposed class were not paid the entirety of
17 their billed medical expenses.

18 1. *Predominance*

19 The predominance inquiry "tests whether proposed classes are sufficiently cohesive to
20 warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623
21 (1997). The predominance requirement is primarily concerned with whether "adjudication of
22 common issues will help achieve judicial economy." *Vinole v. Countrywide Home Loans, Inc.*,
23 571 F.3d 935, 944 (9th Cir. 2009). In "the insurance context, courts commonly find the
24 predominance requirement unmet where liability depends on individual, fact-intensive questions."
25 *Ratnayake v. Farmers Ins. Exch.*, No. 2:11-cv-01668-APG-CWH, 2015 WL 875432, at *4 (D.
26 Nev. Feb. 27, 2015) (collecting cases).

1 Teodoro's individual and class claims are based on Allstate's refusal to pay the entirety of
2 her billed medical expenses, in alleged violation of an insurance policy which requires the insurer
3 to pay "all reasonable expenses actually incurred by the insured person for necessary medical
4 treatment." ECF No. 11-1 at 31. Thus, each proposed class member "would be required to prove
5 entitlement to benefits under the terms of the policy and that the medical expenses were
6 reasonable and the services were necessary." *Gloria v. Allstate Cnty. Mut. Ins. Co.*, No. SA-99-
7 CA-676-PM, 2000 WL 35754563, at *9 (W.D. Tex. Sept. 29, 2000). Such issues could not be
8 determined on a class basis; the trier of fact would need to decide whether Allstate breached its
9 contract with each class member by determining whether their entire billed medical expenses
10 were reasonable and their treatment necessary. Furthermore, although proposed class members
11 allegedly have policies with similar medical payments coverage and were not paid the entirety of
12 their billed medical expenses, these commonalities are overshadowed by the individual, fact-
13 intensive questions that would be necessary to determine Allstate's liability to each potential class
14 member. To establish their right to recover, each class member in Teodoro's proposed class
15 would have to litigate the reasonableness of their bills and necessity of treatment, Allstate's lack
16 of a reasonable basis for its payment decisions and knowledge its decision was unreasonable, and
17 how and whether Allstate misrepresented its contractual obligations, among other issues. The
18 few common issues Teodoro points to do not predominate over these individualized issues.

19 2. *Superiority*

20 In determining superiority, I consider the four factors set forth in Rule 23(b)(3): the
21 interest class members have in individually controlling the prosecution or defense of separate
22 actions; the extent and nature of any litigation concerning the controversy that has already been
23 commenced by or against class members; the desirability or undesirability of concentrating
24 litigation of the claims in the particular forum; and the difficulties that will likely be encountered
25 in managing the suit as a class action.

26 The fourth factor weighs heavily against allowing Teodoro's class claims to continue. "If
27 each class member has to litigate numerous and substantial separate issues to establish his or her
28

1 right to recover individually, a class action is not ‘superior.’” *Zinser v. Accufix Research Inst.,*
2 *Inc.*, 253 F.3d 1180, 1192 (9th Cir. 2001). Teodoro’s attempts to simplify the questions of
3 liability notwithstanding, she has not shown that the management of this case as a class action is
4 superior to individual adjudication in light of the individual inquiries discussed above.

5 Because Teodoro’s putative class fails as to predominance and superiority, it cannot be
6 certified as a matter of law. I will therefore grant Allstate’s motion to dismiss Teodoro’s class
7 claims with prejudice.

8 **II. CONCLUSION**

9 IT IS THEREFORE ORDERED that defendant Allstate Fire and Casualty Insurance
10 Company’s motions to dismiss (**ECF Nos. 11, 13**) are **GRANTED**. Plaintiff Tanya Teodoro’s
11 individual claims are dismissed without prejudice. Her class claims are dismissed with prejudice.
12 Teodoro may file any amended complaint within 30 days of entry of this order. If she does not,
13 this case will be closed.

14 DATED this 13th day of April, 2018.



15
16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
18
19
20
21
22
23
24
25
26
27
28