

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BARBARA SGRILLO,

Plaintiff(s),

v.

GEICO CASUALTY COMPANY,

Defendant(s).

Case No. 2:18-CV-285 JCM (CWH)

ORDER

Presently before the court is defendant Geico Casualty Insurance Company’s motion to dismiss. (ECF No. 7). Plaintiff Barbara Sgrillo filed a response (ECF No. 10), to which defendant replied (ECF No. 14).

Also before the court is defendant’s motion to stay. (ECF No. 8). Plaintiff filed a response (ECF No. 10), to which defendant replied (ECF No. 14).

I. Facts

On February 5, 2016, while parked at a stop light, plaintiff’s car was hit by a third-party driver. (ECF No. 1-1). Plaintiff alleges that she sustained serious injuries from the accident that require continuing medical treatment. *Id.*

At the time of the accident, plaintiff was insured through defendant. Plaintiff’s policy provides for \$250,000/\$500,000 uninsured/underinsured motorist insurance. *Id.* “[F]ollowing the accident with the third-party driver, and after determining that the third party driver had insufficient policy limits to cover Plaintiff’s injuries and damages, Plaintiff demanded uninsured/underinsured policy limit payment from Defendant” *Id.* Plaintiff alleges that defendant “refused to make adequate payment to Plaintiff as was required under the Policy.” *Id.* (emphasis added). Plaintiff alleges that “Defendant’s refusal to pay Policy limits was made in bad

1 faith and for the purpose of denying the benefits of contract for underinsured motorist coverage to
2 plaintiff.” Id. (emphasis added).

3 On December 14, 2017, plaintiff filed suit in state court.¹ (ECF No. 1). Plaintiff’s
4 complaint alleges three causes of action: (1) breach of contract; (2) bad faith and unfair claims
5 practices; and (3) breach of the covenant of good faith and fair dealing. (ECF No. 1-1).

6 On February 15, 2018, defendant removed the instant action to this court. (ECF No. 1).
7 Thereafter, defendant filed a motion to dismiss for failure to state a claim upon which relief can
8 be granted, (ECF No. 7), and a motion to stay plaintiff’s claims for bad faith and unfair claims
9 practices, (ECF No. 8).

10 **II. Legal Standard**

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

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

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

26
27
28 _____
¹ Plaintiff served the summons and complaint upon defendant’s registered agent on January
26, 2018.

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

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

9 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
10 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

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

18 *Id.*

19 **III. Discussion**

20 Defendant moves to dismiss plaintiff’s second and third causes of action for failure to state
21 a claim upon which relief can be granted. (ECF No. 7). Plaintiff asserts that her complaint
22 adequately pleads causes of action for bad faith/breach of the covenant of good faith and fair
23 dealing and unfair claims practices. (ECF No. 10).

24 A violation of the covenant of good faith and fair dealing in the insurance context gives
25 rise to a bad-faith tort claim. *McKinnon v. Hartford Ins. Co. of the Midwest*, No. 2:12-cv-1809-
26 RCJ-CWH, 2013 WL 1088702, at *6 (D. Nev. Mar. 14, 2013) (citing *Allstate Ins. Co. v. Miller*,
27 212 P.3d 318, 324 (Nev. 2009)).

28 To assert a claim for bad faith, a plaintiff must show: (1) an insurer’s denial of (or refusal
to pay) an insured’s claim; (2) without any reasonable basis; and (3) the insurer’s knowledge or
reckless disregard of the lack of a reasonable basis for its claim denial. *Sandoval v. Hartford*
Underwriters Ins. Co., No. 2:10-CV-1799 JCM PAL, 2011 WL 586414, at *2 (D. Nev. Feb. 9,

1 2011) (citing *Pioneer Chlor Alkali Co. V. Nat'l Union Fire Ins. Co.*, 863 F. Supp. 1237, 1247 (D.
2 Nev. 1994)). Bad faith is “the absence of a reasonable basis for denying benefits . . . and the
3 defendant’s knowledge or reckless disregard of the lack of a reasonable basis for denying the
4 claim.” *Id.* (citing *United States Fidelity & Guar. Co. v. Peterson*, 540 P.2d 1070 (Nev. 1975)).
5 An insurer is not liable for bad faith so long as it had a reasonable basis to deny coverage. *Pioneer*,
6 863 F. Supp. at 1249 (refusing to find bad faith where insurance company investigated damage
7 and requested documents, despite insured’s argument that investigation was incomplete).

8 Here, plaintiff’s second and third causes of action do not survive the instant motion to
9 dismiss. Plaintiff’s theory is that she is owed the policy limits of her UM/UIM coverage, and that
10 failure to pay these policy limits on demand constitutes bad faith. (ECF No. 1-1). However,
11 plaintiff’s complaint contains only conclusory statements asserting that she is entitled to the policy
12 limits. See *id.* The complaint does not detail plaintiff’s medical bills, the amount (if any) that she
13 received from the underinsured motorist, or the offer (if any) she received from defendant.

14 Further, plaintiff’s second and third causes of action rely on the conclusory allegation that
15 defendant’s failure to immediately pay plaintiff the policy limits constitutes bad faith. As the Court
16 clarified in *Iqbal*, these conclusory assertions are not entitled to a presumption of truth. See 556
17 U.S. at 678–79. Plaintiff’s complaint contains no factual allegations detailing the circumstances
18 surrounding defendant’s refusal to pay the policy limits immediately after plaintiff demanded
19 payment. Therefore, plaintiff’s bald allegations that defendant’s failure to pay the policy limit of
20 demand constitutes bad faith do not state a claim upon which relief can be granted. See *Twombly*,
21 550 U.S. at 570.

22 Plaintiff’s unfair claims practices allegations fare no better. As defendant notes in its
23 motion, the allegations merely regurgitate the statutory provisions of NRS 686A without providing
24 any underlying factual support. See (ECF No. 1-1). Because legal conclusions are not entitled to
25 the presumption of truth, and plaintiff has not offered any factual assertions to support a finding
26 of unfair claims practices, plaintiff fails to state a claim upon which relief can be granted. See
27 *Twombly*, 550 U.S. at 570.

28 . . .

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. Conclusion

Plaintiff's complaint does not contain factual allegations plausibly suggesting that defendant's failure to pay the policy limits upon plaintiff's request rises to the level of bad faith or constitutes an unfair claims practice. Therefore, plaintiff's second and third causes of action fail to state claims upon which relief can be granted. See *Twombly*, 550 U.S. at 570. The court will dismiss plaintiff's second and third causes of action. This holding renders defendant's motion to stay plaintiff's second and third causes of action moot, and the court will deny that motion.

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to dismiss (ECF No. 7) be, and the same hereby is, GRANTED.

IT IS FURTHER ORDERED that defendant's motion to stay (ECF No. 8) be, and the same hereby is, DENIED as moot.

DATED July 13, 2018.


UNITED STATES DISTRICT JUDGE