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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BREANNA REINGRUBER,

Plaintiff(s),

v.

USAA GENERAL INDEMNITY COMPANY,

Defendant(s).

Case No. 2:23-CV-7 JCM (EJY)

ORDER

Presently before the court is defendant United Services Automobile Association (“defendant”)’s motion to dismiss. (ECF No. 7). Plaintiff Breanna Reingruber (“plaintiff”) responded. (ECF No. 12). Defendant replied. (ECF No. 18).

I. INTRODUCTION

Plaintiff initiated the instant action on October 26, 2022, with the filing of a complaint in state court. (ECF No. 1). Plaintiff amended her complaint on December 5, 2022. (*Id.*). Defendant timely removed. (*Id.*). The amended complaint is the operative complaint in this matter. (*See* ECF No. 1-2). Therein, plaintiff alleges the following.

On February 1, 2020, plaintiff was traveling in her automobile when a non-party—determined by law enforcement officials to be at fault—also traveling in an automobile collided with plaintiff. Plaintiff’s automobile was damaged, and she suffered sprains/strains of her cervical spine, injury to her right wrist, and various contusions.

Plaintiff sought coverage under the non-party’s insurance policy, whose limits failed to cover her vehicle damage and personal injury expenses. Plaintiff and her counsel subsequently submitted a claim to defendant—who provides plaintiff’s underinsured motorist policy (the “policy”)—seeking coverage for the remainder of her damages and a claim evaluation. Defendant made the same “offer to settle” twice in attempt to resolve plaintiff’s claim. The offer

1 allegedly did not have adequate basis, and plaintiff accordingly denied the offer. To date,
2 defendant has not provided any coverage for plaintiff's claim.

3 Plaintiff seeks declaratory judgment that (1) defendant had no legal basis to deny
4 coverage under the policy, (2) defendant's conduct violated Nevada law, (3) defendant's conduct
5 violated the implied covenant of good faith and fair dealing, and (4) defendant misrepresented
6 the policy to plaintiff and that the misrepresentation constituted a deceptive trade practice.
7 Plaintiff also brings claims for breach of contract, tortious breach of the implied covenant of
8 good faith and fair dealing, and breach of statutory duties. Finally, plaintiff seeks compensatory,
9 consequential, and punitive damages as well as attorney's fees and costs.

10 Defendant now moves to dismiss plaintiff's first, third, and fourth causes of action:
11 declaratory relief, tortious breach of the implied covenant of good faith and fair dealing, and
12 breach of statutory duties. (ECF No. 7). Defendant also seeks to dismiss plaintiff's requests for
13 punitive damages and attorney's fees. (*Id.*).

14 **II. LEGAL STANDARD**

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

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

26 The court can consider documents other than the pleadings whose contents are merely
27 alleged in a complaint and whose authenticity no party questions under the incorporation by
28 reference doctrine. *Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1043 (9th Cir.
2015); *United States v. Ritchie*, 342 F.3d 903, 907-08 (9th Cir. 2003) (holding that courts can
consider a document incorporated by reference "if the plaintiff refers extensively to the
document or the document forms the basis of the plaintiff's claim").

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

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

10 Where the complaint does not permit the court to infer more than the mere possibility of
11 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.”
12 *Id.* (internal quotation marks omitted). When the allegations in a complaint have not crossed the
13 line from conceivable to plausible, plaintiff’s claim must be dismissed. *Twombly*, 550 U.S. at
14 570.

15 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d
16 1202, 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

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

23 *Id.*

24 If the court grants a Rule 12(b)(6) motion to dismiss, it should grant leave to amend
25 unless the deficiencies cannot be cured by amendment. *DeSoto v. Yellow Freight Sys., Inc.*, 957
26 F.2d 655, 658 (9th Cir. 1992). Under Rule 15(a), the court should “freely” give leave to amend
27 “when justice so requires,” and absent “undue delay, bad faith, or dilatory motive on the part of
28 the movant, repeated failure to cure deficiencies by amendments . . . undue prejudice to the
opposing party . . . futility of the amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962).
The court should grant leave to amend “even if no request to amend the pleading was made.”
Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (internal quotation marks
omitted).

1 **III. DISCUSSION**

2 *a. Declaratory relief*

3 “Declaratory relief should be denied where it is redundant or where it will serve no
4 purpose in clarifying the dispute between parties.” *Clifford v. Geico Cas. Co.*, 428 F. Supp. 3d
5 317, 326 (D. Nev. 2019) (citing *United States v. State of Wash.*, 759 F.2d 1353, 1357 (9th Cir.
6 1985)). Defendant posits that each of plaintiff’s other causes of action are subsumed in her claim
7 for declaratory relief, rendering it redundant. (ECF No. 7). The court agrees.

8 Here, plaintiff essentially seeks a declaration that defendant is liable for all other causes
9 of action. A finding that “[d]efendant USAA had no legal basis for refusing to pay the benefits
10 due to [p]laintiff in accordance with the terms of the [p]olicy and within Nevada law” necessarily
11 requires a finding that defendant breached a contract—namely, the policy—and violated Nevada
12 law. (See ECF No. 1-2). At minimum, the court must make a determination of plaintiff’s second
13 claim for relief: breach of contract.

14 Moreover, findings that defendant’s conduct “violated Nevada law” and “violated the
15 implied covenant of good faith and fair dealing” as well as that defendant’s “knowing
16 misrepresentations to [p]laintiff constituted a deceptive trade practice within Nevada law”
17 necessarily invite determinations of plaintiff’s third and fourth claims for relief. (See *id.*).

18 Plaintiff contends that because “the declaratory relief claim does not establish the
19 essential elements in the remaining claims,” it is not duplicative of the other claims. (ECF No.
20 12). However, resolution of the declaratory relief claim would establish liability of defendant for
21 plaintiff’s other claims for relief. Thus, it is redundant and does not serve any purpose in
22 “clarifying the dispute between the parties.” See *Clifford*, 428 F. Supp 3d at 326.

23 *b. Tortious breach of implied covenant of good faith and fair dealing*

24 “An implied covenant of good faith and fair dealing exists in every Nevada contract and
25 essentially forbids arbitrary, unfair acts by one party that disadvantage the other.” *Frantz v.*
26 *Johnson*, 999 P.2d 351, 358 n.4 (Nev. 2000). “With respect to the covenant of good faith and
27 fair dealing, [the Nevada Supreme Court] ha[s] stated that ‘when one party performs a contract in
28 a manner that is unfaithful to the purpose of the contract and the justified expectations of the
other party are thus denied, damages may be awarded against the party who does not act in good
faith.’”

1 *Perry v. Jordan*, 900 P.2d 335, 338 (Nev. 1995) (quoting *Hilton Hotels v. Butch Lewis Prods.*,
2 808 P.2d 919, 923 (Nev. 1991)) (alteration omitted).

3 Finally, bad faith requires the “unreasonable denial or delay in payment of a valid claim.”
4 *Guar. Nat. Ins. Co. v. Potter*, 912 P.2d 267, 272 (Nev. 1996). “Bad faith involves an actual or
5 implied awareness of the absence of a reasonable basis for denying benefits of the policy.” *Am.*
6 *Excess Ins. Co. v. MGM Grand Hotels, Inc.*, 729 P.2d 1352, 1354–55 (Nev. 1986) (citation
7 omitted). Thus, a plaintiff must show that (1) the insurer denied or refused to pay the insured’s
8 claim, (2) that it objectively acted “unreasonably” in doing so, and (3) it acted “with knowledge
9 that there is no reasonable basis for its conduct.” *Potter*, 912 P.2d at 272.

10 Defendant contends that plaintiff’s allegations regarding the evaluation of her claim are
11 conclusory and are thus not entitled to a presumption of truth. (ECF No. 7 (citing *Iqbal*, 556
12 U.S. at 570)). Indeed, many allegations baldly label defendant’s actions and denial of coverage
13 as “unreasonable.” (See ECF No. 1-2). While plaintiff may dispute defendant’s methodology
14 for determining how much, if any, coverage is warranted, the allegations do not rise to the level
15 of bad faith.

16 Plaintiff made a number of inquiries into the specifics of how defendant’s “offer to settle”
17 was determined, which defendant partially answered. (ECF Nos. 7-10, 7-11). Defendant’s
18 response prompted plaintiff to preemptively conclude—without adequate factual basis—that
19 defendant’s methodology and offer were unreasonable. (ECF No. 1-2; see ECF No. 12). The
20 allegations labeling defendant’s conduct as unreasonable are thus conclusory. Plaintiff fails to
21 provide non-conclusory, factual allegations that support a finding that defendant acted in bad
22 faith.

23 Plaintiff’s claim for tortious breach of the implied covenant of good faith and fair dealing
24 is appropriately dismissed.

25 *c. Breach of statutory duties*

26 The allegations in plaintiff’s complaint regarding violations of Nevada Revised Statute
27 (“NRS”) 686A.310 are likewise conclusory. (See ECF No. 1-2). For each of the seven
28 subdivisions of the statute that plaintiff alleges were violated, she simply reiterates the language
of the statute. (ECF No. 1-2); see NRS 686A.310(1)(a)–(f), (n). No other factual allegations in
the amended complaint suggest that defendant breached its statutory duties.

Plaintiff’s claim for breach of statutory duties is thus appropriately dismissed.

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d. Leave to amend

The court does not grant plaintiff leave to amend for the deficiency of plaintiff’s claim for declaratory relief. Each form of declaratory relief that plaintiff seeks is duplicative of the liability she hopes to establish her other causes of action.

The court likewise declines to grant plaintiff leave to amend her complaint for her third and fourth causes of action. Plaintiff contends that her original complaint and amended complaint were filed in state court and thus she should be given the opportunity to amend pursuant to the heightened pleading standard in federal court.

This is a simple insurance dispute, and plaintiff has already amended the complaint once. (ECF No. 1). She has failed to provide specific, factual allegations supporting her conclusory statements twice. Further, documentation provided to the court in support of defendant’s motion does not indicate any bad faith or statutory violations.¹ (ECF Nos. 7-1–7-20). Beyond conclusory statements in plaintiff’s complaint, the court is not in receipt of any record or allegations that indicate her claims could be plausible, even with additional information.

Because amendment would be futile and only delay this litigation, plaintiff’s claims for declaratory relief, tortious breach of the implied covenant of good faith and fair dealing, and breach of statutory duties are dismissed with prejudice. *See DeSoto*, 957 F.2d at 658.

e. Punitive damages and attorney’s fees

The only surviving claim is breach of contract, which does not provide for recovery in the form of punitive damages when standing alone. Plaintiff’s request for punitive damages is thus dismissed.

Plaintiff’s request for attorney’s fees is not a separate cause of action. Defendant provides no case law that suggests plaintiff may not include it as a *potential* form of relief even without clear legal basis. Thus, plaintiff’s request for attorney’s fees is not dismissed.

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¹ The court may consider the documentation as neither party contests the authenticity thereof, and the documentation was referenced in the complaint. *See Northstar Fin. Advisors, Inc.*, 779 F.3d at 1043.


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IV. CONCLUSION

Accordingly, consistent with the foregoing,

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

DATED July 21, 2023.


UNITED STATES DISTRICT JUDGE