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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 MICHAEL AND LENORA FITZSIMONDS,) 3:13-cv-00146-HDM-WGC
12)
13 Plaintiffs,)
14 vs.) ORDER
15)
16 ROCKY MOUNTAIN HOSPITAL AND)
MEDICAL SERVICES, INC., dba ANTHEM)
17 BLUE CROSS BLUE SHIELD, ANTHEM UM)
SERVICES, INC., et al., a Nevada)
corporation)
Defendant.

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19 Before this court is the defendant's partial motion to dismiss
20 (#10). Plaintiffs have opposed the motion (#17) and defendant's
21 have replied (#19).

22 The defendant moves to dismiss the plaintiffs' second and
23 third causes of action. Additionally, the defendant requests that
24 the court strike the plaintiffs' prayer for punitive damages.

25 In considering a motion to dismiss for failure to state a
26 claim under Fed. R. Civ. P. 12(b)(6), the court must accept as true
27 all material allegations in the complaint as well as all reasonable
28 inferences that may be drawn from such allegations. *LSO, Ltd. v.*

1 *Stroh*, 205 F.3d 1146, 1150 (9th Cir. 2000). The allegations of the
2 complaint also must be construed in the light most favorable to the
3 nonmoving party. *Shwarz v. United States*, 234 F.3d 428, 435 (9th
4 Cir. 2000).

5 "Under the notice pleading standard of the Federal Rules,
6 plaintiffs are only required to give a 'short and plain statement'
7 of their claims in the complaint." *Paulsen v. CNF Inc.*, 559 F.3d
8 1061, 1071 (9th Cir. 2009) (quoting *Diaz v. Int'l Longshore &*
9 *Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9th Cir. 2007)).
10 While this rule "does not require 'detailed factual allegations,' .
11 . . it demands more than an unadorned, the-defendant-unlawfully-
12 harmed-me accusation." *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949
13 (May 18, 2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S.
14 544, 555 (2007)). Thus, a complaint "must contain sufficient
15 factual matter . . . to state a claim to relief that is plausible
16 on its face." *Id.*

17 The court first assesses the defendant's motion to dismiss the
18 plaintiffs' second cause of action for tortious breach of the
19 implied covenant of good faith and fair dealing. In Nevada, "the
20 tort remedy is necessarily a narrow one found, for example, in
21 insurance cases. . ." *Hilton Hotels Corp. V. Butch Lewis*
22 *Productions, Inc.*, 107 Nev. 226, 233 n. 4 (1991). In order to
23 properly bring a claim for the tortious breach of the implied
24 covenant of good faith and fair dealing, there must be a "special
25 element of reliance or fiduciary duty" between the plaintiff and
26 the defendant. *Id.*

27 This case is a dispute over the execution of the terms of the
28 settlement agreement. Though the action that gave rise to the

1 settlement agreement was an insurance dispute, the issues in that
2 case were resolved by the settlement agreement. There is no
3 fiduciary duty involved in this action; therefore, the court
4 concludes that the plaintiffs' have failed to state a viable claim
5 for tortious breach of the implied covenant of good faith and fair
6 dealing.

7 The defendant also moves to dismiss the plaintiff's third
8 cause of action for conversion. In order to bring a claim for
9 conversion, the plaintiffs must allege that the defendant
10 "wrongfully exerted" dominion "over [the plaintiffs'] personal
11 property in denial of, or inconsistent with his title or rights."
12 *Wantz v. Redfield*, 74 Nev. 196, 198 (1958).

13 In this case, the plaintiffs' personal property is not at
14 issue. The claim involves the defendant's alleged failure to pay a
15 third party in accordance with the terms of the settlement
16 agreement. There is no assertion that the defendant "wrongfully
17 exerted dominion" over the plaintiffs' personal property.
18 Therefore, plaintiffs have failed to state an actionable claim for
19 conversion.

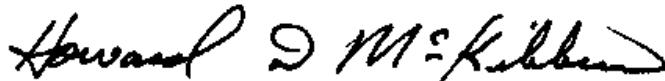
20 Finally, the defendant has moved to strike the plaintiffs'
21 prayer for punitive damages. In a breach of contract case damages
22 are limited to the damages arising out of the breach of the
23 contract. See *A.C. Shaw Constr. v. Washoe Country*, 105 Nev. 913
24 (1989)(holding that appellants were entitled to contract damages
25 arising from breach of contract irrespective of the existence of a
26 special relationship between the parties). Punitive damages are not
27 available in a breach of contract case unless there is also a
28 viable tort claim. See *Sprouse v. Wentz*, 105 Nev. 597, 604

1 (1989)(holding that punitive damages may only be awarded in a
2 breach of contract case if there is an underlying cause of action
3 sounding in tort). By this order, the court has dismissed the tort
4 claim in this case. The remaining claim is one for breach of
5 contract. Therefore, the plaintiff is not entitled to recover
6 punitive damages.

7 Accordingly, the defendant's motion to dismiss the plaintiffs'
8 second and third cause of action with prejudice, as well as their
9 request to strike the plaintiffs' prayer for punitive damages is
10 **GRANTED.**

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12 **IT IS SO ORDERED.**

13 DATED: This 16th day of May, 2013

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15 UNITED STATES DISTRICT JUDGE
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