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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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10 MICHAEL WURM, an individual, and) 3:16-cv-00244-HDM-WGC
11 KRISTEN KENNEDY, an individual,)
12 Plaintiffs,) ORDER
13 vs.)
14 MARKEL INSURANCE COMPANY, a)
15 Virginia Corporation; MARKEL)
16 CORPORATION, a Virginia)
17 Corporation; MID-CENTURY)
18 INSURANCE COMPANY, a reciprocal)
or inter-insurance exchange; and)
ABC CORPORATIONS 1-30; and DOES)
1-30, inclusive,)
19 Defendants.)
_____)

20 Pending before the court is Defendant Markel Insurance Company's
21 ("MIC") motion for judgment on the pleadings (ECF No. 39). Plaintiff
22 Kristen Kennedy ("Kennedy") responded (ECF No. 47) and MIC replied
23 (ECF No. 48).

24 Also pending before the court is MIC's motion for sanctions
25 pursuant to Federal Rule of Civil Procedure 11 (ECF No. 49). Kennedy
26 responded (ECF No. 52) and MIC replied (ECF No. 58).

27 **I. Background**

28 This action arises from an automobile accident that occurred on

1 July 11, 2013. (ECF No. 1-3 at ¶¶ 9-15). Plaintiff Michael Wurm
2 ("Wurm") was driving a vehicle and Kennedy was his passenger when they
3 were hit from behind by another vehicle. (*Id.* at ¶¶ 9, 15). At the
4 time of the accident, the vehicle driven by Wurm was insured by MIC
5 under a policy that provided \$1,000,000 Under Insured Motorist ("UIM")
6 coverage. (*Id.* at ¶ 19).

7 Wurm and Kennedy each carried their own personal automobile
8 insurance policies. (*Id.* at ¶¶ 20-21). Wurm received \$40,000 from
9 the tortfeasor's insurance carrier. (*Id.* at ¶ 29). Kennedy received
10 \$50,000 from the tortfeasor's insurance carrier and \$25,000 in UIM
11 benefits from her insurer, State Farm. (*Id.* at ¶¶ 29, 32).

12 This action was initially filed by Wurm and Kennedy in the Second
13 Judicial District Court for the State of Nevada against MIC and
14 Farmers Insurance Exchange¹, Wurm's personal automobile insurance
15 carrier. (ECF No. 1-3). Plaintiffs allege breach of contract, breach
16 of the duty of good faith and fair dealing, statutory violations, and
17 intentional infliction of emotional distress. This action was
18 removed to this court on May 6, 2016. (ECF No. 1). On June 6, 2016,
19 MIC filed a counterclaim against Wurm and Kennedy for declaratory
20 relief. (ECF No. 11). On January 20, 2017, the court approved the
21 stipulation to dismiss with prejudice: (1) Wurm's claims against MIC
22 and Mid-Century Insurance Company and (2) MIC's counterclaims against
23 Wurm. (ECF No. 33).

24 **II. Motion for Judgment on the Pleadings**

25 MIC now moves for judgment on the pleadings against Kennedy.

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27 ¹ On June 1, 2016, the court approved the stipulation to correct
28 the case caption so that all references to Farmers Insurance Exchange
are modified to Mid-Century Insurance Company. (ECF No. 10).

1 (ECF No. 39). Federal Rule of Civil Procedure 12(c) provides that
2 “[a]fter the pleadings are closed—but early enough not to delay trial—
3 a party may move for judgment on the pleadings.” Fed.R.Civ.P. 12(c).
4 Pleadings are closed when all pleadings required or permitted in
5 federal actions by Rule 7(a) have been served and filed. *See Doe v.*
6 *U.S.*, 419 F.3d 1058, 1061 (9th Cir. 2005).

7 “A judgment on the pleadings is properly granted when, taking all
8 allegations in the non-moving party’s pleadings as true, the moving
9 party is entitled to judgment as a matter of law.” *United States v.*
10 *Teng Jiao Zhou*, 815 F.3d 639, 642 (9th Cir. 2016) (quoting *Fajardo v.*
11 *Cty. of L.A.*, 179 F.3d 698, 699 (1999)). In ruling on a motion for
12 judgment on the pleadings, the court accepts as true all well-pleaded
13 factual allegations by the nonmoving party and construes the facts in
14 the light most favorable to that party. *Gen. Conference Corp. of*
15 *Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*,
16 887 F.2d 228, 230 (9th Cir. 1989). Thus, the court must determine if,
17 taking the alleged facts as true, and drawing all reasonable
18 inferences in favor of plaintiff, whether the complaint plausibly
19 states a claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct.
20 1937 (2009); *Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047,
21 1054 n. 4 (9th Cir. 2011) (stating the standard governing a Rule 12(c)
22 motion is “functionally identical” to that governing a Rule 12(b) (6)
23 motion).

24 MIC argues that Kennedy failed to satisfy certain conditions
25 precedent to coverage, and as such cannot prevail on her claims for
26 breach of contract and breach of the duty of good faith and fair
27 dealing.

28 Kennedy first claims that MIC breached the contract. Kennedy

1 alleges the existence of a contract, that she "performed all of the
2 conditions of the contract required to be performed on [her] part,"
3 and that MIC "breached the contract by failing to pay and unreasonably
4 delaying payment of benefits due and owing, including the undisputed
5 benefits, and by failing to promptly, fairly and equitably process and
6 investigate [Kennedy's] claims." (ECF No. 1-3 at ¶¶ 45, 47). Kennedy
7 has asserted sufficient facts to plead the breach of contract claim.

8 Kennedy also claims that MIC breached the duty of good faith and
9 fair dealing. Kennedy alleges that her contract with MIC had an
10 implied covenant of good faith and fair dealing, that MIC breached its
11 duties by, among other reasons, adjusting her claim in violation of
12 the Nevada Unfair Claims Practices Act, and failing to promptly settle
13 and process her claim. (*Id.* at ¶¶ 50-51). Kennedy has asserted
14 sufficient facts to plead the breach of the duty of good faith and
15 fair dealing claim.

16 Accordingly, MIC is not entitled to judgment on the pleadings.
17 MIC's motion for judgment on the pleadings (ECF No. 39) is denied
18 without prejudice to renew as a motion for summary judgment at the
19 close of discovery.

20 **III. Motion for Sanctions**

21 On June 26, 2017, MIC filed a motion for sanctions pursuant to
22 Federal Rule of Civil Procedure 11. (ECF No. 49). Rule 11 provides
23 for the imposition of sanctions when a pleading is frivolous, legally
24 unreasonable, or presented for an improper purpose. *See Fed.R.Civ.P.*
25 11(b). Sanctions under Rule 11 is "an extraordinary remedy" and "one
26 to be exercised with extreme caution." *In re Keegan Mgmt. Co., Sec.*
27 *Lit.*, 78 F.3d 431, 437 (9th Cir. 1996) (quoting *Operating Eng'rs*
28 *Pension Trust v. A-C Company*, 859 F.2d 1336, 1345 (9th Cir. 1988)).

1 "A court considering a motion pursuant to Rule 11 must do two
2 things: (1) decide whether a Rule 11 violation has occurred, and (2)
3 decide whether to impose sanctions." *Smith & Green Corp. v. Trustees*
4 *of Const. Indus. & Laborers Health & Welfare Trust*, 244 F. Supp. 2d
5 1098, 1103 (D. Nev. 2003). When, as here, a "complaint is the primary
6 focus of Rule 11 proceedings, a district court must conduct a two-
7 prong inquiry to determine (1) whether the complaint is legally or
8 factually baseless from an objective prospective, and (2) if the
9 attorney has conducted a reasonable and competent inquire before
10 signing and filing it." *Christian v. Mattel, Inc.*, 286 F.3d 1118,
11 1127 (9th Cir. 2002) (internal quotations and citations omitted).
12 Sanctions imposed under this rule "must be limited to what suffices
13 to deter repetition of the conduct or comparable conduct by others
14 similarly situated." Fed.R.Civ.P. 11(c) (4).

15 MIC argues that the complaint contains four misrepresentations,
16 is legally baseless, and was filed for an improper purpose. Based on
17 the pleadings and the current record the court cannot conclude that
18 the complaint is legally or factually baseless from an objective
19 prospective. Additionally, it appears that Kennedy's counsel
20 conducted a reasonable and competent inquiry before signing the
21 complaint. Therefore, the motion for sanctions (ECF No. 49) is denied.

22 **IV. Conclusion**

23 IT IS THEREFORE ORDERED that the motion for judgment on the
24 pleadings (ECF No. 39) is **denied without prejudice** to renew as a
25 motion for summary judgment at the close of discovery.

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1 IT IS FURTHER ORDERED that the motion for sanctions pursuant to
2 Federal Rule of Civil Procedure 11 (ECF No. 49) is **denied**.

3 DATED: This 31st day of August, 2017.

4 *Howard D. McKibben*
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6 UNITED STATES DISTRICT JUDGE
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