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United States District Court
Northern District of California

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

KAREN TRINH, DDS, Inc., a California Corporation,

Plaintiff,

v.

STATE FARM GENERAL INSURANCE COMPANY, an Illinois Corporation doing business in California, and DOES 1 to 50, inclusive,

Defendants.

Case No. 5:20-cv-04265-BLF

ORDER GRANTING DEFENDANT’S MOTION TO DISMISS WITH LEAVE TO AMEND

[Re: ECF 27]

This case arises from a dispute over the interpretation of a business insurance policy against the backdrop of recent public health orders attempting to curb the spread of COVID-19. Karen Trinh, DDS, Inc. (“Plaintiff”) sues State Farm General Insurance Company (“Defendant”) and unidentified Does 1 through 50 for denying an insurance claim for loss of business income. Plaintiff asserts seven causes of action: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; (3) Bad Faith Denial; (4) Declaratory Relief; (5) Unjust Enrichment; (6) Unfair Competition under Cal. Bus. & Prof. Code § 17200 *et seq.*; and (7) Injunctive Relief under Cal. Bus. & Prof. Code § 17200 *et seq.* Second Am. Compl. (“SAC”), ECF 26. Defendant brings this Motion to Dismiss for failure to state a claim. Mot. to Dismiss Second Am. Compl. (“Mot.”), ECF 27. Pursuant to Civil Local Rule 7-1(b), the Court found the Motion appropriate for determination without oral argument on October 30, 2020. Order Vacating Hr’g, ECF 33. Having considered the parties’ briefing as well as the rapidly evolving applicable law, the Court GRANTS this Motion WITH LEAVE TO AMEND.

I. BACKGROUND

A. Factual Allegations

1 Plaintiff is an active dental practice in Watsonville, California. SAC ¶ 4. To safeguard
2 against unexpected calamities, on April 1, 2019, Plaintiff obtained from Defendant a business
3 insurance policy (the “Policy”), which remains effective today. SAC ¶¶ 11-14. The Policy covers
4 loss of income and extra expenses for “accidental direct physical loss” to “Covered Property,”
5 subject to certain limitations, including a “Virus Exclusion.” SAC ¶ 19.

6 In March 2020, COVID-19 was recognized as a pandemic, prompting governments around
7 the world to enact laws tackling the crisis. SAC ¶¶ 21-22. To curb the spread of the virus,
8 counties across California, as well as the state itself, issued public health ordinances aimed to limit
9 transmission of the virus. *See* SAC ¶¶ 23-31. As a designated “essential business” under the
10 Order of the Santa Cruz County Health Officer to Shelter in Place (“Santa Cruz Order”), Plaintiff
11 continued operations but was limited to urgent care and emergency visits only, causing substantial
12 revenue reductions. SAC ¶¶ 32-33.

13 On April 1, 2020, Plaintiff contacted Defendant to determine whether the Policy covered
14 loss of income as a result of the health ordinances. SAC ¶ 43. Defendant promptly informed
15 Plaintiff that the Policy likely did not cover such loss but explained how to initiate a claim.
16 SAC ¶ 43. Plaintiff submitted a claim on April 3, 2020. Compl. ¶ 43. The next day, Defendant,
17 pointing to the Policy’s Virus Exclusion, informed Plaintiff that the claim was denied. SAC ¶ 43.

B. Procedural History

19 Plaintiff commenced this action on April 6, 2020, in the Superior Court of California,
20 County of Santa Cruz. Notice of Removal, Ex. A (“Compl.”), ECF 1-1. On May 22, 2020,
21 Plaintiff filed an amended complaint in state court. Notice of Removal, Ex. B (“FAC”), ECF 1-2.
22 Defendant filed a Notice of Removal on June 26, 2020. Notice of Removal, ECF 1. Defendant
23 moved to dismiss the First Amended Complaint on July 6, 2020, and the parties stipulated to
24 allowing Plaintiff to amend the complaint on August 19, 2020. *See* Mot., ECF 7; Stipulation, ECF
25 25. Plaintiff filed the Second Amended Complaint on August 24, 2020. *See* SAC. Defendant
26 again moved to dismiss on September 5, 2020. *See* Mot. Plaintiff filed its Opposition on
27 September 21, 2020. *See* Opp’n to Mot. to Dismiss (“Opp’n”), ECF 29. Defendant filed its Reply
28

1 on October 13, 2020. *See* Reply to Opp'n ("Reply"), ECF 29.

2 II. LEGAL STANDARD

3 A. Federal Rule of Civil Procedure 12(b)(6): Failure to State a Claim

4 "A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for failure to state a
5 claim upon which relief can be granted 'tests the legal sufficiency of a claim.'" *Conservation*
6 *Force v. Salazar*, 646 F.3d 1240, 1241-42 (9th Cir. 2011) (quoting *Navarro v. Block*, 250 F.3d
7 729, 732 (9th Cir. 2001)). When considering such a motion, the Court "accept[s] factual
8 allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the
9 nonmoving party." *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir.
10 2008). While a complaint typically need not contain detailed factual allegations, it "must contain
11 sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
12 570 (2007)). A claim is facially plausible when it "allows the court to draw the reasonable
13 inference that the defendant is liable for the misconduct alleged." *Id.* However, the Court need
14 not "accept as true allegations that contradict matters properly subject to judicial notice" or
15 "allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable
16 inferences." *In re Gilead Sci. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation
17 marks and citations omitted). "Threadbare recitals of the elements of a cause of action, supported
18 by mere conclusory statements, do not suffice." *Id.*

20 B. Federal Rule of Civil Procedure 15(a): Leave to Amend

21 Under Federal Rule of Civil Procedure 15(a), the Court should freely grant leave to amend
22 "when justice so requires," keeping in mind Rule 15's underlying purpose "to facilitate decision
23 on the merits, rather than on the pleadings or technicalities." *Lopez v. Smith*, 203 F.3d 1122, 1127
24 (9th Cir. 2000) (en banc) (internal quotation marks and alterations omitted). When dismissing a
25 complaint for failure to state a claim, "a district court should grant leave to amend even if no
26 request to amend the pleading was made, unless it determines that the pleading could not possibly
27 be cured by the allegation of other facts." *Id.* at 1130 (internal quotation marks omitted). A court

1 *BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008) (citing *Foman v. Davis*, 371 U.S. 178, 182
2 (1962)).

3 **III. DISCUSSION¹**

4 Relying on a flurry of recent cases across the country interpreting similar insurance claims,
5 Defendant argues that the Policy language plainly does not cover Plaintiff's alleged losses,
6 meaning there is no breach of contract. *See* Mot. 1-3. And because there is no breach of contract,
7 the derivative contract claims necessarily fail. *See* Mot. 22-25. Plaintiff contends that its
8 insurance claim is covered, either by the Policy's plain language or, alternatively, because of its
9 ambiguities. Opp'n 1-2.

10 In California, the interpretation of an insurance policy is a question of law for the court to
11 decide. *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18 (1995). "Insurance policies are
12 contracts, and the ordinary rules of contract interpretation apply." *McMillin Homes Constr., Inc.*
13 *v. Nat'l Fire & Marine Ins. Co.*, 35 Cal. App. 5th 1042, 1050 (Cal. Ct. App. 2019). In interpreting
14 an insurance policy, the Court first examines the contract language to determine its plain or
15 ordinary meaning. *Waller*, 11 Cal. 4th at 18 (citation omitted). A policy is ambiguous if it is
16 "capable of two or more constructions, both of which are reasonable." *Id.* Where a policy is
17 ambiguous, it must be interpreted "to protect the objectively reasonable expectations of the
18 insured." *Minkler v. Safeco Inc.*, 49 Cal. 4th 315, 321 (2010). Courts should not, however, "strain
19 to create an ambiguity where none exists." *Waller*, 11 Cal. 4th at 18-19. If the insured shows that
20 a claim falls within the policy terms, the burden shifts to the insurer to demonstrate that an
21 exclusion applies. *Id.* at 16.

22
23 ¹ Defendant requests judicial notice of several public documents, including state and local health
24 ordinances as well as recent district court rulings addressing similar insurance claims and policies.
25 Mot. 1. n.1. Courts may take judicial notice of matters either that are "generally known within the
26 trial court's territorial jurisdiction" or that "can be accurately and readily determined from sources
27 whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Specifically, "a court
28 may take judicial notice of matters of public record . . . as long as the facts noticed are not subject
29 to reasonable dispute." *Intri-Plex Tech., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir.
30 2007) (internal brackets and quotation marks omitted). Here, the documents for which Defendant
31 requests judicial notice are matters of public record. *See* Exhibits 2-11, ECF 27; Notice, ECF 32;
32 Notice, ECF 34; Notice, ECF 36; Notice, ECF 37. And their factual contents are not disputed.

1 With this framework in mind, the Court discusses Plaintiff's claims.

2 **A. Breach of Contract**

3 In Claim One, Plaintiff alleges breach of contract for Defendant's alleged failure to fulfill
4 its obligations under the Policy. SAC ¶¶ 49-55. Defendant argues that the breach of contract
5 claim should be dismissed as a matter of law because "[u]nder the plain language of the Policy,
6 Plaintiff's claimed losses both do not meet the Policy's terms of coverage and are subject to
7 exclusions, including the Policy's Virus Exclusion." Mot. 4-5. This Court agrees with Defendant.

8 **1. Virus Exclusion**

9 Defendant moves to dismiss first on the ground that the Policy excludes from its coverage
10 any loss caused by virus. Mot. 5. This Court agrees that Defendant has met its burden of showing
11 that the Virus Exclusion precludes coverage. *See Waller*, 11 Cal. 4th at 16.

12 To obtain relief, Plaintiff's alleged losses must be covered under the Policy. *See* Mot. Ex.
13 A ("Policy") Ex. A-16, § I.² The Virus Exclusion states, in relevant part:

14 SECTION I — EXCLUSIONS . . .

15 2. We do not insure under any coverage for any loss caused by one or more of the
16 following: . . .

17 i. Fungi, Virus Or Bacteria . . .

18 (2) Virus, bacteria, or other microorganism that induces or is capable of inducing physical
distress, illness or disease . . .

19 Policy Ex. A-16, A-17 § I.2.i.(2), ECF 27-1. The language is plain and unambiguous—*any* loss
20 caused by virus that can induce physical distress, illness, or disease, such as COVID-19, is
21 excluded from coverage. *See Waller*, 11 Cal. 4th at 18. Courts in this circuit contemplating
22 comparable insurance policy exclusions agree. *See, e.g., 10E LLC v. Travelers Indem. Co. of*

23
24
25 ² Although a district court may generally not consider material beyond the pleadings in a motion
26 to dismiss based on Rule 12(b)(6), it can consider extrinsic materials when their "authenticity . . .
27 is not contested and the plaintiff's complaint necessarily relies on them." *Lee v. City of Los*
28 *Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citation and quotation marks omitted). Here, Plaintiff
does not contest the authenticity of the Policy provided by Defendant. And because Plaintiff seeks
to recover under the Policy, the Second Amended Complaint necessarily relies on it. Thus, the
Court "will consider the language contained directly in the Policy in resolving this [M]otion." *See*
Mark's Engine Co. No. 28 Rest. LLC v. Travelers Indem. Co. of Conn., No. 2:20-cv-04423-AB-

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