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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MOUNTAIN VIEW SURGICAL)	Case No. CV 13-08083 DDP (AGRx)
CENTER, a California)	
corporation,)	
)	ORDER GRANTING DEFENDANT'S MOTION
Plaintiff,)	TO DISMISS SECOND AMENDED
)	COMPLAINT IN PART AND DENYING IN
v.)	PART
)	
CIGNA HEALTH CORPORATION, a)	
Delaware corporation,)	[Dkt. No. 21]
)	
Defendant.)	
_____)	

Presently before the Court is Defendants Connecticut General Life Insurance Company and CIGNA Health and Life Insurance Company (collectively, "Cigna")'s Motion to Dismiss Plaintiff's Second Amended Complaint. Having considered the submissions of the parties, the Court grants the motion in part, denies in part, and adopts the following order.

I. Background

Plaintiff Mountain View Surgical Center ("Mountain View") is a multiple specialty surgery center whose patients include Cigna's insureds. (Second Amended Complaint ("SAC") ¶¶ 14-15.) Before

1 providing medical services to Cigna insureds, Plaintiff calls Cigna
2 to confirm that the patient's insurance covers the specific
3 treatment. (SAC ¶ 18.) Cigna authorizes covered treatments and
4 promises to pay Mountain View for providing the medical services.
5 (Id. ¶ 19.) Cigna authorizes treatments over the phone and/or via
6 a confirmation letter sent to Plaintiff. (Id. ¶ 22.)

7 Mountain View provided medical services valued at
8 \$1,159,440.20 to forty-one particular patients insured by Cigna.
9 (Id. ¶ 24.) Mountain View alleges that it provided those services
10 based on "CIGNA's promise to make payments on behalf of its insured
11 patients and on CIGNA's prior course of dealing." (Id. ¶ 25.)
12 Though Mountain View submitted claims for reimbursement to Cigna,
13 Cigna did not pay the claims. (Id. ¶¶ 26, 31.) Instead, Cigna
14 accused Mountain View of engaging in fraudulent "fee-forgiveness,"
15 or improper release of patients from their payment obligations.
16 (Id. ¶ 29).

17 The First Amended Complaint ("FAC") alleged causes of action
18 for breach of oral contract, breach of implied contract, fraud,
19 unjust enrichment, and unfair business practices. (Dkt. No. 12.)
20 Cigna then brought its first motion to dismiss. (Dkt. No. 14.) The
21 Court denied the motion with respect to certain fraud and unfair
22 business practices claims, granted the motion with prejudice on the
23 claim of unjust enrichment, and granted the motion with leave to
24 amend on the contract claims. (Dkt. No. 19.)

25 Mountain View filed a Second Amended Complaint, amending its
26 claims for breach of oral contract and breach of implied contract,
27 and maintaining its claims of fraud and unfair business practices.
28 (Dkt. No. 20.) Cigna now moves to dismiss the Second Amended

1 Complaint's claims of breach of implied contract, fraud, and unfair
2 business practices. (Dkt. No. 21.)

3 **II. Legal Standard**

4 A complaint will survive a motion to dismiss when it contains
5 "sufficient factual matter, accepted as true, to state a claim to
6 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
7 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
8 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
9 "accept as true all allegations of material fact and must construe
10 those facts in the light most favorable to the plaintiff." Resnick
11 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
12 need not include "detailed factual allegations," it must offer
13 "more than an unadorned, the-defendant-unlawfully-harmed-me
14 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
15 allegations that are no more than a statement of a legal conclusion
16 "are not entitled to the assumption of truth." Id. at 679. In
17 other words, a pleading that merely offers "labels and
18 conclusions," a "formulaic recitation of the elements," or "naked
19 assertions" will not be sufficient to state a claim upon which
20 relief can be granted. Id. at 678 (citations and internal
21 quotation marks omitted).

22 "When there are well-pleaded factual allegations, a court should
23 assume their veracity and then determine whether they plausibly
24 give rise to an entitlement of relief." Id. at 679. Plaintiffs
25 must allege "plausible grounds to infer" that their claims rise
26 "above the speculative level." Twombly, 550 U.S. at 555.
27 "Determining whether a complaint states a plausible claim for
28 relief" is a "context-specific task that requires the reviewing

1 court to draw on its judicial experience and common sense." Iqbal,
2 556 U.S. at 679.

3 **III. Discussion**

4 **A. Breach of Implied Contract**

5 A contract may be either express or implied. Cal. Civ. Code
6 § 1619. "A cause of action for breach of implied contract has the
7 same elements as does a cause of action for breach of contract,
8 except that the promise is not expressed in words but is implied
9 from the promisor's conduct." Yari v. Producers Guild of Am.,
10 Inc., 161 Cal.App.4th 172, 182 (2008). There cannot, however, "be
11 a valid, express contract and an implied contract, each embracing
12 the same subject matter, existing at the same time." Wal-Noon
13 Corp. v. Hill, 45 Cal.App.3d 605, 613 (1975). "An oral contract
14 claim is based on oral representations, while an implied contract
15 claim is predicated on the promisor's conduct." Davoodi v. Imani,
16 No. C 11-0260 SBA, 2011 WL 250392 at *3 (N.D. Cal. Jan. 26, 2011).
17 Plaintiff argues that it has pleaded breaches of an express, oral
18 contract and an implied contract as separate causes of action, in
19 the alternative. Indeed, parties may plead inconsistent
20 allegations in the alternative. Adams v. Paul, 11 Cal. 4th 583,
21 593 (1995).

22 As in the FAC, however, Plaintiff has not sufficiently alleged
23 a distinct claim for a breach of implied contract. Plaintiff's SAC
24 alleges that it acted "in conformity with Defendant's requirements
25 and based upon prior identical transactions between the parties."
26 (FAC ¶ 32; SAC ¶ 36.) The SAC reiterates several allegations
27 regarding the parties' "long standing business relationship" and
28 history of prior dealings by reference. (FAC ¶ 28; SAC ¶ 32.)

1 But, like the FAC, the SAC continues to refer not only to the
2 parties' pattern of prior conduct, but also to "the contract
3 [Plaintiff] bargained for" (FAC ¶ 46; SAC ¶ 50), and incorporates
4 by reference numerous allegations of oral promises. (FAC ¶ 37; SAC
5 ¶ 41.) Indeed, some of Plaintiff's attempts to amend the implied
6 contract claim add to the confusion. Plaintiff now alleges that it
7 provides medical services to patients insured by Defendant "after
8 verifying the patient's insurance benefits with Defendant's
9 representatives and obtaining authorization to provide the
10 services." (SAC ¶ 42.) This statement, although alleged as part of
11 Plaintiff's implied contract claim, is essentially a reiteration of
12 Plaintiff's claim for breach of oral contract. (SAC ¶¶ 34-36.)

13 Plaintiff's SAC does not adequately distinguish the breach of
14 express, oral contract claim from the incompatible breach of
15 implied contract claim. The claim is dismissed with prejudice.

16 **B. Fraud**

17 Under California law, the elements of fraud are (1)
18 misrepresentation, (2) knowledge of falsity, (3) intent to defraud,
19 (4) plaintiff's justifiable reliance, and (5) damages. Lazar v.
20 Superior Court, 12 Cal.4th 631, 638 (1996). A party alleging fraud
21 must state the circumstances constituting fraud with particularity.
22 Fed. R. Civ. P. 9(b). See Vess v. Ciba-Geigy Corp. USA, 317 F.3d
23 1097, 1103 (9th Cir. 2003). This must include more than just the
24 facts necessary to identify the transaction, and should include the
25 "who, what, when, where, and how of the misconduct charged."
26 Kearns v. Ford Motor Co., 567 F.3d 1120, 1124-25 (9th Cir. 2009).

27 This Court's prior Order found that Plaintiff's claim of fraud
28 survived with respect to thirteen specified misrepresentations.

1 (Dkt. No. 19 at 7 n. 2.) Both the FAC and SAC alleged that Cigna
2 authorized Mountain View to perform certain procedures,
3 affirmatively instructed Mountain View to perform those procedures,
4 and promised to pay Mountain View for those procedures. (FAC ¶ 49;
5 SAC ¶ 53.) Both the FAC and SAC further allege that Defendant never
6 intended to reimburse Plaintiff, and that Plaintiff performed the
7 procedures in reliance upon Defendant's promises and prior practice
8 of "routinely" reimbursing Plaintiff for similar medical services.
9 (FAC ¶¶ 52-54; SAC ¶¶ 56-58.) These allegations, coupled with
10 additional detailed examples of Defendant's alleged
11 misrepresentations (FAC ¶ 51; SAC ¶ 55) are sufficient to enable
12 Cigna to defend against the charge.

13 Although Plaintiff alleges forty-one cases (SAC ¶ 24), the
14 twenty-eight unspecified misrepresentations are not pleaded with
15 particularity. As stated in the prior Order (Dkt. No. 19),
16 however, the thirteen specified misrepresentations are sufficient
17 to maintain the claim of fraud.¹

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27 ¹ Plaintiff's unfair business practices claim under California
28 Civil Code Section 17200 again survives with respect to the
thirteen specified misrepresentations.

1 **IV. Conclusion**

2 For the reasons stated above, Defendant's Motion to Dismiss is
3 GRANTED, in part, and DENIED, in part. The motion is DENIED with
4 respect to Plaintiff's Third Cause of Action for Fraud and Fourth
5 Cause of Action for Unfair Business Practices. Plaintiff's Second
6 Cause of Action for Breach of Implied Contract is dismissed with
7 prejudice.

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9 IT IS SO ORDERED.

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12 Dated: September 17, 2015

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DEAN D. PREGERSON
United States District Judge