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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROSE MARIE RENO and LARRY
ANDERSON,

Plaintiffs,

v.

NATIONAL UNION FIRE INSURANCE
COMPANY OF PITTSBURGH, PA; AIG
CLAIMS, INC.; and DOES 1 through 10,

Defendants.

Case No.: 15cv2179 AJB (BGS)

**ORDER DENYING DEFENDANT
AIG CLAIMS, INC.’S MOTION TO
DISMISS**

(Doc. No. 21)

Presently before the Court is Defendant AIG Claims, Inc.’s (“AIG”) motion to dismiss Plaintiffs’ first amended complaint (“FAC”). (Doc. No. 21.) Finding this motion suitable for determination on the papers and without oral argument pursuant to Local Rule 7.1.d.1., the motion hearing set for August 25, 2016, is **VACATED**. For the reasons set forth below, AIG’s motion is **DENIED**.

BACKGROUND¹

On August 27, 2015, Plaintiffs filed suit against Defendants National Union Fire Insurance Company of Pittsburgh, PA (“National Union”) and AIG (collectively referred

¹ The Court set forth the factual background underlying Plaintiffs’ claims in its prior order, (Doc. No. 16), and sets forth only relevant procedural background of this matter.

1 to as “Defendants”) in San Diego County Superior Court, alleging causes of action for:
2 (1) breach of contract for failure to indemnify against National Union; (2) breach of
3 contract for failure to defend against National Union; (3) breach of the duty of good faith
4 and fair dealing against all Defendants; (4) negligence against all Defendants; and (5)
5 declaratory relief against all Defendants. (*See* Doc. No. 1-2 at 13–24.) The case was
6 removed to federal court on September 30, 2015. (Doc. No. 1.)

7 AIG thereafter moved to dismiss the claims asserted against it on the grounds that
8 AIG is not an insurer and cannot be held liable for breach of the duty of good faith and
9 fair dealing or negligence. (Doc. No. 8.) In ruling on that motion, the Court dismissed
10 Plaintiffs’ claims against AIG with leave to amend to permit Plaintiffs to include
11 additional allegations regarding AIG’s alleged role beyond that of an insurance adjuster.
12 (Doc. No. 16 at 6.) Following dismissal, Plaintiffs filed an amended complaint, which
13 includes new allegations specific to AIG’s role as an insurer. Additionally, the first
14 amended complaint asserts claims against both Defendants for (1) breach of contract for
15 failure to indemnify; (2) breach of contract for failure to defend; (3) breach of the
16 covenant of good faith and fair dealing; and (4) declaratory relief. (Doc. No. 19 ¶¶ 28–
17 49.)

18 AIG has again moved to dismiss the claims asserted against it, arguing that
19 Plaintiffs have failed to assert sufficient facts to demonstrate AIG is an insurer. (Doc. No.
20 21.)

21 LEGAL STANDARD

22 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of a plaintiff’s
23 complaint. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). “A court may
24 dismiss a complaint as a matter of law for (1) lack of cognizable legal theory or (2)
25 insufficient facts under a cognizable legal claim.” *SmileCare Dental Grp. v. Delta Dental*
26 *Plan of Cal.*, 88 F.3d 780, 783 (9th Cir. 1996) (internal citation omitted). However, a
27 complaint will survive a motion to dismiss if it contains “enough facts to state a claim to
28 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

1 In making this determination, a court reviews the contents of the complaint, accepting all
2 factual allegations as true, and drawing all reasonable inferences in favor of the
3 nonmoving party. *Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497
4 F.3d 972, 975 (9th Cir. 2007).

5 Notwithstanding this deference, the reviewing court need not accept legal
6 conclusions as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It is also improper for a
7 court to assume “the [plaintiff] can prove facts that [he or she] has not alleged.”
8 *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S.
9 519, 526 (1983). However, “[w]hen there are well-pleaded factual allegations, a court
10 should assume their veracity and then determine whether they plausibly give rise to an
11 entitlement to relief.” *Iqbal*, 556 U.S. at 679.

12 DISCUSSION

13 In the first amended complaint, Plaintiffs allege that AIG is an insurer, (Doc. No.
14 19 ¶ 13), and that AIG’s name appears throughout the coverage analysis provided to
15 Plaintiffs by Defendants, (*Id.* ¶ 19). Plaintiffs also, however, allege, “[b]ased upon the
16 language of the policy and the ubiquitous reference to AIG on the policy itself, it is
17 unclear whether Defendants AIG Claims, Inc. and/or National Union Fire Insurance of
18 Pittsburgh are both the insurers.” (*Id.* ¶ 30.)

19 In moving to dismiss, AIG claims the above allegations are insufficient to establish
20 that AIG is an insurer and directly contradict the language of the policy and the coverage
21 letter issued by Defendants. (Doc. No. 21-1 at 2, 6.) Plaintiffs contend they have
22 sufficiently alleged that AIG is an insurer and that in this stage of the proceedings, AIG’s
23 actual role beyond that of a claims adjuster, remains unclear. (Doc. No. 23 at 3–4.)

24 As noted in the Court’s prior order, the law is well established that only parties to a
25 contract can be held liable for breach of the implied covenant of good faith and fair
26 dealing. *See Minnesota Mut. Life Ins. Co. v. Ensley*, 174 F.3d 977, 981 (9th Cir. 1999)
27 (holding insurance agents or brokers cannot be held liable for breach of the implied
28 covenant of good faith and fair dealing because they were not parties to the insurance

1 contract). Therefore, to survive a motion to dismiss a plaintiff must allege a defendant is
2 an insurer, and a party to the contract to allege breach of contract and breach of the
3 implied covenant of good faith and fair dealing. *See Wright v. Allstate Ins. Co. of*
4 *California*, No. 15CV01020, 2015 WL 1548949, at *2 (N.D. Cal. Apr. 7, 2015) (“Under
5 California law, in order to be liable for breach of contract and breach of implied covenant
6 of good faith and fair dealing, a defendant must have been a consenting party to the
7 contract at issue.”); *Meisel v. Allstate Indem. Co.*, 357 F. Supp. 2d 1222, 1226 (E.D. Cal.
8 2005) (“Under California law an insurance agent cannot be held liable for breach of
9 contract or breach of the implied covenant of good faith and fair dealing because he is not
10 a party to the insurance contract.”) (internal quotations omitted).

11 Here, Plaintiffs have sufficiently alleged that AIG is an insurer and can therefore
12 potentially be liable for breach of contract and breach of the implied covenant of good
13 faith and fair dealing. Although AIG disputes the allegation that it is an insurer, the
14 policy relied upon by both parties supports Plaintiffs’ position. The following language of
15 the policy, in particular, suggests AIG was more than simply a claims administrator:

16 Congratulations on purchasing your employment practices
17 liability insurance policy from AIG, one of the premier writers
18 of commercial insurance. (Doc. No. 19-1 at 19.)

19 As a AIG policyholder, you have the confidence of knowing
20 that your claims will be handled by experienced claims
21 professionals. In addition, our panel counsel is comprised of
22 leaders in employment practices law throughout the country.
23 The services of these law firms are available to you at preferred
24 AIG rates. (*Id.*)

25 Your decision to purchase coverage through AIG has provided
26 your organization with powerful advantages in managing your
27 business. We thank you for choosing AIG and look forward to a
28 continuing successful relationship. If you have any questions or
would like additional information, please contact your broker, a
AIG representative. (*Id.*)

1 American International Group, Inc. {AIG} is a leading
2 international insurance organization serving customers in more
3 than 130 countries. AIG companies serve commercial,
4 institutional, and individual customers through one of the most
5 extensive worldwide property-casualty networks of any insurer.
(*Id.* at 21.)²

6 In addition to the language of the policy, AIG’s name appears at the corner of several
7 pages of the policy, (*Id.* at 20–22), and on the coverage letter issued by Defendants, (*Id.*
8 at 13–16).

9 While the above language is not conclusive in establishing AIG’s role as an
10 insurer, it does push the allegations across the plausibility threshold required to state a
11 claim. *Iqbal*, 556 U.S. at 696 (2009). Additionally, although other portions of the policy
12 language and coverage analysis may suggest a more limited role,³ all inferences must be
13 construed in favor of Plaintiffs. *Cedars-Sinai Med. Ctr.*, 497 F.3d at 975; *Stanford Ranch,*
14 *Inc. v. Maryland Cas. Co.*, 89 F.3d 618, 626 (9th Cir. 1996). That Plaintiffs have alleged
15 AIG’s role remains unclear is sufficient at this early stage in the proceedings when
16 coupled with the remaining allegations in the first amended complaint, the language of
17 the policy, and presumption that reasonable inferences are drawn in favor of the non-
18 moving party. *See Martinez v. City of Imperial*, No. 15CV0440, 2016 WL 245514, at *4
19 (S.D. Cal. Jan. 21, 2016) (denying motion to dismiss despite the plaintiff’s allegation that
20 it was “unclear” what a defendant’s role was).

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23 ² The Court properly considers the language of the policy in its analysis. (*See* Doc. No.
24 16 n.2.)

25 ³ The Court acknowledges that the policy states that AIG “is the marketing name for the
26 worldwide property-casualty and general insurance operations of AIG Property Casual
27 Inc.” and that “[a]ll products are written by insurance company subsidiaries or affiliates
28 of AIG Property Casualty Inc.” (Doc. No. 19-1 at 19.) The coverage letter also identifies
AIG as the claims administrator. (*Id.* at 13.) However, the Court declines to resolve any
factual disputes—such as whether AIG is an insurer or only a claims adjuster—in the
context of a motion to dismiss.

1 For these reasons, the Court finds AIG’s second argument in support of dismissal
2 unpersuasive. AIG argues that the Court should not accept the truth of the allegations in
3 Plaintiffs’ first amended complaint to the extent they contradict with the terms of the
4 insurance policy and the coverage letter. According to AIG, the policy clearly identifies
5 National Union as the sole insurance company, and therefore the Court may disregard
6 contradictory allegations in the first amended complaint.

7 The rule cited by AIG is correct—although a court assumes the truth of a
8 plaintiff’s allegations in ruling on a motion to dismiss, the court need not accept as true
9 allegations that contradict matters properly subject to judicial notice or in an attached
10 exhibit. *See Gonzalez v. Planned Parenthood of Los Angeles*, 759 F.3d 1112, 1116 (9th
11 Cir. 2014) (noting a court may ignore factual allegations in the complaint where “one
12 cannot plausibly conclude” a claim exists in light of a contradiction between the
13 pleadings and an exhibit). However, in applying this rule, courts have required that the
14 contradiction between a complaint and its exhibit “be virtually inescapable” to warrant
15 dismissal. *Estate of Prasad ex rel. Prasad v. Cty. of Sutter*, 958 F. Supp. 2d 1101, 1110–
16 11 (E.D. Cal. 2013).

17 Upon consideration of the insurance policy, cover letter, and allegations in the
18 amended complaint, an “inescapable” contradiction does not exist. Though the coverage
19 letter states that AIG is the claims administrator, AIG is referenced throughout both
20 documents, and the language of the policy suggests AIG was more than just a claims
21 adjuster. As such, the Court declines to depart from the well-established rule that a
22 plaintiff’s factual allegations are construed as true for the limited purpose of ruling on a
23 motion to dismiss.

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CONCLUSION

Upon review of the arguments presented in support and opposition of dismissal, AIG's motion to dismiss is **DENIED**. AIG must file an answer to the first amended complaint within fourteen (14) days of the date of this order.

IT IS SO ORDERED.

Dated: July 27, 2016



Hon. Anthony J. Battaglia
United States District Judge

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