UNITED STATES DISTRICT COURT

JS-6 **CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

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CASE NO.: CV 12-01669 (AGRx) **DATE:** June 12, 2012

TITLE: Robin Monterastelli v. Standard Insurance Company

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PRESENT: THE HONORABLE S. JAMES OTERO, UNITED STATES DISTRICT JUDGE

Victor Paul Cruz Courtroom Clerk	Not Present Court Reporter
COUNSEL PRESENT FOR PLAINTIFF:	**COUNSEL PRESENT FOR DEFENDANT:**
Not Present	Not Present

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PROCEEDINGS: ORDER GRANTING DEFENDANT'S MOTION TO DISMISS [Docket No. 13]

The matter is before the Court on Defendant Standard Insurance Company's ("Defendant") Motion to Dismiss ("Motion"), filed on May 4, 2012. Plaintiff Robin Monterastelli ("Plaintiff") filed an Opposition ("Opposition") on May 17, 2012.[1] Defendant filed a Reply on May 24, 2012. The Court finds this matter suitable for disposition without oral argument and vacates the hearing set for June 4, 2012. *See* Fed R. Civ P. 78(b). For the following reasons, Defendant's Motion is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Complaint sets forth the following allegations: At all relevant times, Plaintiff was an employee for the City of Burbank. (Compl. ¶ 10, Feb. 28, 2012, ECF No. 1.) Defendant provided insurance coverage to "specified employees" of the City of Burbank. (Compl. ¶ 8.) Plaintiff obtained disability insurance coverage through her employer. (Compl. ¶10.) The disability insurance policy that covered Plaintiff included a term that placed a 24-month cap on payments for mental disabilities and other conditions: "payment of long-term disability benefits is limited to 24 months during [the insured's] entire lifetime for a Disability caused or contributed to by . . . [m]ental [d]isorders, [s]ubstance [a]buse or [o]ther [l]imited [c]onditions." (Compl. ¶ 12.) The policy classifies depression and anxiety under mental disorders, while chronic pain conditions (like fibromyalgia), chronic fatigue syndrome, and carpal tunnel syndrome fall under "other limited conditions." (*Id.*) Under the terms of the policy, "[n]o long-term disability benefits will be payable after the end of the limited pay period, unless on that date [one] continue[s] to be [d]isabled as a

[1] Plaintiff's Opposition was untimely and exceeded the Court's page limitation. On May 18, 2012, Plaintiff filed a Corrected Opposition along with an Ex Parte Application seeking leave to submit her Corrected Opposition. The Court **DENIED** the Ex Parte Application, indicating that it may or may not consider the Corrected Opposition. The Court decided to consider Plaintiff's Corrected Opposition.

result of a Physical Disease, Injury, or Pregnancy for which payment of long-term disability benefits is not limited." (*Id.*)

Effective April 18, 2008, Plaintiff became mentally disabled. (Compl. ¶ 14.) Plaintiff also suffered from fibromyalgia, carpal tunnel syndrome, chronic fatigue syndrome, anxiety and depression. (Compl. ¶ 20.) Plaintiff received the benefit of Defendant's insurance disability coverage for two years, after which Defendant terminated coverage pursuant to the policy. (Compl. ¶¶ 16-20.) Plaintiff alleges that the termination of her benefits was improper because Defendant's 24-month limitation on payments for mental disorders and other limited conditions is unenforceable under California Insurance Code section 10144 ("section 10144"). (Compl. ¶ 32.)

The Complaint states the following causes of action: (1) breach of contract; (2) insurance bad faith; and (3) intentional infliction of emotional distress. (*See generally* Compl.) Plaintiff seeks compensatory damages for past and future disability benefits and for emotional distress, as well as triple punitive damages. (Compl. Prayer for Relief.) The instant Motion seeks to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) or, in the alternative, to strike specific portions of the Complaint.[2] (*See generally* Mot., May 4, 2012, ECF No. 13.) Defendant's main argument is that section 10144 does not compel equivalent coverage for physical and mental disabilities and does not prohibit the 24-month limitation contained in Defendant's policy. (Motion 3-4.)

II. DISCUSSION

A. Legal Standard

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. *Ileto v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003). In evaluating a motion to dismiss, a court accepts the plaintiff's material allegations in the complaint as true and construes them in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000). Dismissal is proper if the complaint lacks a "cognizable legal theory" or "sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). If a court dismisses a complaint for failure to state a claim, leave to amend should be granted "unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (quoting *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986)). "A district court does not err in denying leave to amend where the amendment would be futile." *Id.* (citing *Reddy v. Litton Indus.*, 912 F.2d 291, 296 (9th Cir. 1990).

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[2] Pursuant to Rule 12(f), Defendant seeks to strike paragraphs 13, 21, 26-28, 31(H), 32, 34, 39-41, and 43 from the Complaint should its Motion to Dismiss fail. (Motion 2.)

Rule 12(b)(6) must be read in conjunction with Rule 8(a), which requires a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *see Ileto*, 349 F.3d at 1200. "While legal conclusions can provide the complaint's framework, they must be supported by factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). To plead sufficiently, a plaintiff must proffer "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

B. Disability Coverage Under California Insurance Code section 10144

The parties agree that Plaintiff suffered from a mental disability as well as other limited conditions during the relevant period in question. (Motion 1; Opp'n 1.) The parties also agree that Plaintiff received the benefits of her insurance coverage for 24 months. (Motion 1; Opp'n 2.) Moreover, the parties agree that Defendant terminated Plaintiff's coverage after the 24-month cap expired. (Motion 3-4; Opp'n 2.) The parties dispute, however, the validity of this 24-month cap on disability benefits in light of section 10144. (Motion 4; Opp'n 2.) The text of section 10144 reads, in relevant part, as follows:

> No insurer issuing, providing, or administering any contract of individual or group insurance providing . . . disability benefits . . . shall **refuse to insure, refuse to continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage** solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual and reasonably anticipated experience.

Cal. Ins. Code § 10144 (emphasis added).

Plaintiff alleges that section 10144 "permits insurance companies . . . to limit benefits under disability policies for mental or physical disabilities **IF** the limitations are supported by sound actuarial principles or are related to actual and reasonably anticipated experience." (Opp'n 1.) Plaintiff contends that Defendant's 24-month limitation of benefits does not meet this threshold requirement. (Opp'n 1.) Thus, Plaintiff concludes that the limitation is unenforceable under section 10144. (Opp'n 1.) In contrast, Defendant argues that "[s]ection 10144 [merely] ensures equal access to insurance products; [b]ut it has never been interpreted to require that insurers alter their inventory of disability insurance products to provide the same benefit, for the same duration, for all disabilities." (Motion 2.)

To decide whether Defendant's 24-month limitation on certain disability benefits is enforceable under section 10144, this Court must follow the California Supreme Court's interpretation of its own law absent extraordinary circumstances. *See DeSoto*, 957 F.2d at 658. However, where that court has not decided an issue, the task of the federal courts is to predict how the state high court would resolve it. *See Dimidowich v. Bell & Howell*, 803 F.2d 1473, 1482 (9th Cir. 1986). In answering that question, this Court looks for "guidance" to decisions by intermediate appellate courts of the state and by courts in other jurisdictions. *Id.*

The words of a statute provide the most reliable indicator of legislative intent. *Hsu v. Abbara*, 9 Cal. 4th 863, 871 (1995). Thus, when interpreting a statute, courts turn first to its text. If there is no ambiguity in the language, California law presumes the Legislature meant what it said and the plain meaning of the statute governs. *People v. Snook*, 16 Cal. 4th 1210, 1215 (1997). Only when the statute's language is ambiguous or susceptible of more than one reasonable interpretation, may the court turn to extrinsic aids to assist in interpretation. *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal. 4th 1094, 1103 (2007). The Court's analysis thus begins with the words of section 10144.

Section 10144 deems it impermissibly discriminatory for an insurer who issues, provides or administers any contract providing . . . disability benefits:

> **[T]o refuse to insure, or . . . continue to insure, or limit the amount, extent, or kind of coverage available to an individual, or charge a different rate for the same coverage** solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual and reasonably anticipated experience.

Cal. Ins. Code § 10144 (emphasis added).

On its face, section 10144 only addresses **access to** or **charges for** disability insurance. It does so by proscribing four types of conduct by an insurer: (1) refusal to insure; (2) refusal to continue to insure; (3) limitation on coverage; and (4) charging of a different rate for similar coverage. However, by its terms, the provision does not dictate or even address the **content** of insurance that insurers must provide the insureds. It leaves open the possibility that an insurer may provide unequal coverage for mental and physical disabilities. Therefore, if an insurer chooses to allocate more resources to physical disabilities than to mental disabilities, this decision does not run afoul of section 10144. The California Legislature did not seek to create parity of coverage for mental and physical disabilities when it enacted section 10144. Rather, the Legislature simply guaranteed **access to** insurance otherwise unavailable to the disabled under state law.

Section 10144 is indubitably based on the Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment ("Model Regulation") from the

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National Association of Insurance Commissioners (NAIC). Section 3 of the Model Regulation describes an act or practice constituting unfair discrimination by a life or health insurer as:

> **[R]efusing to insure, or refusing to continue to insure, or limiting the amount, extent or kind of coverage available to an individual, or charging a different rate for the same coverage** solely because of a physical or mental impairment, except where the refusal, limitation or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

4 NAIC Model Laws, Regulations and Guidelines, at 887 (emphasis added).

Given this similarity of language, the Court finds persuasive the decisions of other jurisdictions interpreting state insurance laws that mimic the Model Regulation. Decisions in three states provide the Court with useful guidance. In *Polan v. State of N.Y. Ins. Dep't*, 3 N.Y.3d 54 (2004), the Court of Appeals of New York held that Insurance Law section 4224(b)(2) - almost textually identical to section 10144 - does not mandate equal benefits for mental and physical disabilities. *Id.* at 57. The *Polan* court noted that the Drafting Note to the Model Regulation makes it clear that "[t]he regulation is not intended to mandate the inclusion of particular coverages . . . or levels of benefits . . . for mental illness." *Id.* at 61-62 (quoting the Drafting Note of the Model Regulation). Maine's anti-discrimination insurance statute has been held to neither imply nor suggest that insurers must treat the mentally disabled in the same way that it treats the physically disabled. *Id.* at 59 (citing *El-Hajj v. Fortis Benefits Ins. Co.*, 156 F. Supp. 2d 27, 33 (D. Me. 2001)). The Fifth Circuit also declined to interpret the Texas Insurance Code as requiring equivalent coverage for mental and physical disabilities. *Id.* (citing *McNeil v. Time Ins. Co.*, 205 F.3d 179, 184-85 (5th Cir. 2000)). Thus, the Court concludes that the California Supreme Court would interpret section 10144 as only ensuring that a given insurance plan affords disabled individuals equal access to and eligibility for the same benefits as non-disabled individuals. It does not limit the kind of coverage an insurer can offer.

Against this analysis, it is clear that Plaintiff's Complaint is based on an erroneous reading of section 10144. In her bid to make out a claim for breach of contract, Plaintiff converts a provision that only concerns the right to **access** insurance on equal terms into a legislative mandate for equal **coverage**. (*See generally* Compl. and Opp'n.) But nothing in section 10144 bars the Defendant from providing, as it does, disability benefits until age 65 for the physically disabled, but only a 24-month window of benefits for mental disabilities. (Compl. ¶ 12.) Plaintiff's Complaint does not allege that Defendant either refused to insure her or altered the rate of her coverage. In fact, Plaintiff received exactly what section 10144 promises: **access to** insurance. Defendant's 24-month cap goes to the **content** of the benefits under the policy, and, on the question of **content**, section 10144 is silent. Additionally, the policy at issue applies on equal terms to all employees of the City of Burbank. (Compl. ¶¶ 6-8, 10.) And so long as every employee is offered the same plan regardless of that employee's contemporary or future disability status, no violation

of section 10144 has occurred. *See Equal Emp't Opportunity Comm'n v. CNA Ins. Cos.*, 96 F.3d 1039, 1044 (7th Cir. 1996) (observing that a 24-month limit for mental disability benefits "may or may not be an enlightened way to do things but it is not discriminatory in the usual sense of the term"). The Court therefore finds that Defendant's policy cap is enforceable.[3]

C. Inclusion of "Administering" in Section 10144

Section 10144 places restrictions on the conduct of those "issuing, providing, or **administering** . . . disability benefits." Because the word "administering" does not appear in the Model Regulation or in the similar statutes of New York, Maine, and Texas, use of such language in section 10144 presumably broadens the reach of the statute. It does so, however, by expanding the **class of persons** that the statute regulates. It does not expand the proscribed conduct. Plaintiff seizes upon the word "administering" to argue that its inclusion in section 10144 is unique, and that "issuing, providing, and administering . . . comprehensively describes . . . **regulated conduct** . . . ." (Opp'n 10.) Plaintiff contends that Defendant's 24-month limitation amounts to impermissible discriminatory **administering** of the policy in a manner prohibited by section 10144.

Plaintiff has pointed to nothing in either the text or legislative history of section 10144 that lends support to the notion that the inclusion of "administering" occasioned a radical departure from the Model Regulation. As the Defendant notes, "administering" appears in that part of section 10144 that identifies the persons subject to regulation; it does not appear in the section that delineates the four types of prohibited discriminatory conduct. (Motion 12-13.) It follows, therefore, that the Legislature's inclusion of that language merely signaled the **regulated entities** to which the provision is applicable. The four categories of prohibited conduct in section 10144 - refusal to insure; refusal to continue to insure; limitation on coverage; and charging of a different rate for similar coverage - are the exact same as those listed in the Model Regulation, a point which Plaintiff acknowledges. (Opp'n 9.) Plaintiff's interpretation unduly aggrandizes the import of "administering," reading the addition of this one word in a way that radically alters the notion of impermissible insurance discrimination.[4]

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[3] Plaintiff repeatedly contends that Defendant's 24-month limitation of disability benefits is unenforceable because it "is not based on sound actuarial principles and is not related to actual and reasonably anticipated experience." (Compl. ¶ 32.) However, the statute's "sound actuarial principles" requirement only comes into play if the insurer actually tries to do one of the four things the statute would otherwise prohibit: refuse to cover, refuse to continue to cover, limit access to coverage, or charge a different rate for individuals with disabilities. Nothing in the Complaint alleges any such attempts by Defendant. Therefore, the "sound actuarial principles" portion of the statute is irrelevant to the analysis.

[4] Plaintiff relies on *Chabner v. United of Omaha Life Ins. Co.*, 994 F. Supp. 1185 (N.D. Cal. 1998), *aff'd*, 225 F.3d 1042 (9th Cir. 2000), to support her reading of section 10144. (Opp'n

In light of the Court's reading of section 10144, Plaintiff's Complaint is deficient, and the deficiency is incurable. Plaintiff does not allege that the Defendant engaged in any conduct that section 10144 prohibits. Defendant provided Plaintiff access to disability insurance and did so on terms that were the same as to other employees of the City of Burbank. Thus, on these facts, Plaintiff cannot state a cognizable claim for breach of contract.

Consequently, Plaintiff's claims for insurance bad faith and intentional infliction of emotional distress are likewise doomed because they are inextricably tied to the claim for breach of contract. According to the Complaint, "Defendant unreasonably and in bad faith withheld and refused to pay Plaintiff benefits due her under [t]he Policy." (Compl. ¶ 40.) The Complaint cites this refusal as "extreme and outrageous," manifesting an intent to "cause Plaintiff to suffer severe emotional distress." (Compl. ¶¶ 54-55.) The Complaint also alleges that Plaintiff in fact suffered "severe emotional distress." (Compl. ¶ 56.) But the predicate conduct by Defendant that was allegedly in bad faith and allegedly caused Plaintiff emotional distress did not constitute a breach of contract. Nothing in section 10144 precludes the Defendant from adopting and applying a 24-month limitation of benefits for mental disability. "Section 10144 guarantees equal access to insurance products." (Motion 2.) Plaintiff was afforded that access. Because section 10144 does not prevent an insurer from providing different insurance benefits for physical and mental disabilities, Defendant's alleged impropriety is not actionable. Thus, the Motion is **GRANTED**. Leave to amend the complaint would be futile in this case.

III. RULING

For the foregoing reasons, the Court **GRANTS** Defendant's Motion and **DISMISSES** the action without leave to amend.

IT IS SO ORDERED.

5-6, 16.) But *Chabner* cannot bear the weight that Plaintiff puts on it. In *Chabner*, an insured who suffered from fascioscapulohumeral muscular dystrophy brought an action against an insurer to recover for disability discrimination in **rate for policy**. Finding that United of Omaha violated section 10144's prohibition against **rate differentials**, the district court entered summary judgment for Plaintiff. However, charging a different rate for individuals with certain disabilities is one of the specific acts section 10144 prohibits (absent sound actuarial principles to support the differential rate). In the instant case, Plaintiff does not allege that Defendant charged her a different rate; rather, Plaintiff alleges that Defendant enforced a 24-month cap on her disability payments for her mental disorder, which is not one of the four insurance practices forbidden by section 10144. *Chabner* therefore sheds no light on the question before this Court.