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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

H. PETER NOVICK, M.D.,)	Case No. CV 08-02830 DDP (PJWx)
)	
Plaintiff,)	ORDER DENYING DEFENDANTS' MOTION
)	TO STRIKE
v.)	
)	[Motion filed on June 13, 2008]
UNUM LIFE INSURANCE COMPANY)	
OF AMERICA,)	
)	
Defendants.)	
)	
)	

This matter is before the Court on Defendant UNUM Life Insurance Company of America's ("UNUM") Motion to Strike Portions of Plaintiff H. Peter Novick's ("Plaintiff") Complaint. After reviewing the materials submitted by the parties and considering the arguments therein, the Court is able to rule on the motion without oral argument. The Court denies the motion.

I. BACKGROUND

As alleged in the Complaint, UNUM issued a long term disability benefits policy to Plaintiff, a medical doctor, on January 18, 1976. The policy provided for benefits if Plaintiff

1 became totally disabled due to an accident suffered while
2 performing the regular duties of his occupation as a surgeon.
3 (Compl. ¶ 5.) In June 1992, Plaintiff suffered a spinal injury
4 rendering him incapable of performing his duties as a surgeon.
5 (Compl. ¶ 6.) Plaintiff later filed a claim with UNUM for benefits
6 under the policy. (Compl. ¶ 8.) UNUM approved Plaintiff's
7 entitlement to benefits, and paid benefits until January 18, 2007.
8 (Compl. ¶ 9.) UNUM then stopped paying benefits (Compl. ¶ 9.)
9 Plaintiff alleges that UNUM's decision to discontinue benefits was
10 a breach of contract and a breach of the covenant of good faith and
11 fair dealing.

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13 **II. DISCUSSION**

14 A. Legal Standard

15 Under Federal Rules of Civil Procedure 12(f), a court "may
16 order stricken from any pleading . . . any redundant, immaterial,
17 impertinent, or scandalous matter." Motions to strike are not
18 favored and "should not be granted unless it is clear that the
19 matter to be stricken could have no possible bearing on the subject
20 matter of the litigation." Colaprico v. Sun Microsystem, Inc., 758
21 F. Supp. 1335, 1339 (N.D. Cal. 1991). This is "because of the
22 limited importance of pleadings in federal practice and because [a
23 motion to strike] is usually used as a delaying tactic." RDF Media
24 Ltd. B. Fox Broad. Co., 372 F. Supp. 2d 556, 561 (C.D. Cal. 2005).
25 Courts will not grant motions to strike unless "convinced that
26 there are no questions of fact, that any questions of law are clear
27 and not in dispute, and that under no set of circumstances could
28 the claim or defense succeed. Id. When ruling on a motion to

1 strike, this Court "must view the pleading under attack in the
2 light most favorable to the pleader." Id.

3 B. Analysis

4 In the Complaint, Plaintiff alleges that UNUM conducted itself
5 in bad faith. For this conduct, Plaintiff requests punitive
6 damages pursuant to California Civil Code § 3294, and a trebling of
7 any punitive damages awarded by the trier of fact pursuant to
8 California Civil Code § 3345. (Compl. ¶¶ 18-19.)

9 UNUM seeks to strike Plaintiff's request. First, UNUM argues
10 that California Civil Code § 3345 does not allow trebling of
11 punitive damages. Second, UNUM contends that trebling of punitive
12 damages cannot be awarded for an insurer's bad faith conduct.

13 California Civil Code § 3345 provides that a trier of fact may
14 award treble damages (1) "in actions brought by, on behalf of, or
15 for the benefit of senior citizens or disabled persons, as those
16 terms are defined in subdivisions (f) and (g) of [California Civil
17 Code] Section 1761, to redress unfair and deceptive acts or
18 practices or unfair methods of competition," when (2) "a trier of
19 fact is authorized by statute to impose either a fine, or a civil
20 penalty or other penalty, or any other remedy for the purpose or
21 effect of which is to punish or deter" Cal. Civ. Code §
22 3345 (emphasis added).

23 Beginning with the second prong, California Civil Code § 3294
24 permits a trier of fact to award punitive damages for conduct
25 constituting malice, fraud, or oppression. See Cal. Code Civ. Pro.
26 § 3294. The language of California Civil Code § 3345 contemplates
27 trebling of punitive damages awards where a trier of fact is
28 authorized by § 3294 to impose punitive damages. Under § 3345, a

1 punitive damages award authorized by § 3294 qualifies as "other
2 penalt[ies], or any other remedy for the purpose or effect of which
3 is to punish or deter" See Cal. Civ. Code § 3345. Accordingly, §
4 3345 provides for treble punitive damages.

5 UNUM's motion, however, poses the separate question whether
6 California Civil Code § 3345 permits treble punitive damages that
7 are awarded as part of a bad faith claim. In opposition, Plaintiff
8 relies on a recent Central District of California decision, Ross v.
9 Pioneer Life Ins. Co., 545 F. Supp. 2d 1061 (C.D. Cal. 2008), that
10 construed California Civil Code § 3345 to allow trebling of
11 punitive damages for bad faith conduct by an insurer. Id. at 1065-
12 66. In its reply, UNUM suggests that trebling under California
13 Civil Code § 3345 is unavailable because Plaintiff has not alleged
14 a California Business and Professions Code § 17200 claim
15 challenging unfair competition. In other words, UNUM contends that
16 there cannot be a trebling of any punitive damages awarded as part
17 of Plaintiff's bad faith claim.¹

18 A court construes a statute to ascertain the legislative
19 intent and to effectuate the law's purpose. Green v. State of
20 California, 42 Cal. 4th 254, 261 (2007) (citations omitted). The
21 Court turns first to the language of § 3345. People v. Trevino, 26
22 Cal. 4th 237, 241 (2001). The trebling of punitive damages is
23 available "in actions brought by, on behalf of, or for the benefit
24 _____

25 ¹ After receiving the briefing on this motion, Plaintiff filed
26 a request for judicial notice of a recent district court decision
27 on the issue before the Court here. In Hood v. Hartford, No. 07-
28 1634-FCD/EFB (E.D. Cal. 2008), the court held that a trier of fact
may treble of punitive damages under § 3345 for an insurer's bad
faith conduct. The Court grants judicial notice of this decision.
Hood is persuasive as the most thorough analysis of § 3345 to date
in this context.

1 of senior citizens or disabled persons, as those terms are defined
2 in subdivisions (f) and (g) of [California Civil Code] Section
3 1761, to redress unfair and deceptive acts or practices or unfair
4 methods of competition” See Cal. Civ. Code § 3345. UNUM’s
5 implicit contention, to which Plaintiff disagrees, is that this
6 language is a limitation on the types of claims where trebling is
7 available, and that Plaintiff’s bad faith claim does not qualify as
8 an action to redress unfair practices. This dispute requires
9 determining whether the California legislature, when enacting §
10 3345, intended for the trebling provision to be limited to
11 statutory causes of action that specifically reference unfair
12 business practices and unfair competition - for example, the Unfair
13 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200, or the
14 Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code §§ 1750 et
15 seq, or whether the legislature intended a broader application of
16 some kind.

17 The relevant language in § 3345, that appears to limit
18 trebling to actions that seek “to redress unfair and deceptive acts
19 or practices or unfair methods of competition” is nearly identical
20 to language contained in the CLRA. The CLRA enumerates “unfair
21 methods of competition and unfair or deceptive acts or practices”
22 that are prohibited in consumer transactions. Cal. Civ. Code §
23 1770. Moreover, § 3345 incorporates the definitions of “senior
24 citizen” and “disabled person” from California Civil Code § 1761,
25 which is part of the CLRA. The CLRA further provides that “[a]ny
26 consumer who suffers any damage as a result of the use or
27 employment by any person of a method, act or practice declared to
28 be unlawful by [Civil Code] section 1770 may bring an action

1 against that person to recover actual damages, injunctive relief,
2 restitution of property, punitive damages, and any other relief the
3 court deems proper." Cal. Civ. Code 1780; see also Wang v. Massey
4 Chevrolet, 97 Cal. App. 4th 856, 869 (2002). The plain language of
5 California Civil Code § 3345 shows that California clearly intended
6 to allow trebling of punitive damages in a CLRA action within the
7 trier of fact's discretionary judgment.

8 § 3345, however, does not expressly limit its scope to CLRA
9 claims. As noted by the court in Hood, No. 07-1634-FCD/EFB, at 11
10 (E.D. Cal. 2008), the Unfair Insurance Practices Act, Cal. Ins.
11 Code §§ 790 *et seq.*, also provides a claim for "unfair or deceptive
12 practices or acts."² Id., citing Cal. Ins. Code § 790.03.

13 Moreover, the legislature has demonstrated that it will enumerate
14 remedies for statutory causes of action when it desires those
15 remedies to be specific to a particular statute. See Cal. Civ.
16 Code § 1780(b) (providing remedies for the CLRA); see also Hood,
17 No. 07-1634-FCD/EFB, at 11. The legislature did not do so when it
18 designed § 3345 as a general remedial provision. The text and
19 structure of the statute does not limit the availability of treble
20 damages to statutory causes of action asserting unfair practice
21

22
23 ² UNUM suggests that § 3345 would also permit trebling of
24 punitive damages for a UCL claim, Cal. Bus. & Prof. Code § 17200
25 claim. It is unclear whether this is so. California Civil Code §
26 3345 allows trebling in actions "to redress unfair methods of
27 competition", where § 17200 is a statutory cause of action
28 designed to serve that purpose. However, there is authority that
indicates punitive damages are unavailable when a plaintiff brings
a § 17200 claim. Korea Supply Co. V. Lockheed Martin Corp., 29
Cal. 4th 1134, 1148 (2003). The Court need not resolve this
question because Plaintiff has not raised a § 17200 claim, or a
CLRA claim for that matter.

1 claims nor exclude common law claims. The Court will not imply
2 limitations that the legislature did not intend.

3 The legislative history for Senate Bill 1157 added California
4 Business and Professions Code § 17206.1, amended California Civil
5 Code sections §§ 1761 and 1780, and added California Civil Code §
6 3345. (SB 1157 Legislative History, Declaration of Elizabeth
7 Green, Exh. A.) The preamble to the bill mentions first that
8 “[e]xisting law makes it unlawful for any person to engage in
9 unfair business practices, as defined”, and that California
10 Business and Professions Code § 17206.1 increases the civil penalty
11 for “acts of unfair competition . . . perpetrated against one or
12 more senior citizens or disabled persons.” The preamble next
13 provides that “[e]xisting law establishes the Consumers Legal
14 Remedies Act”, and that California Civil Code §§ 1761 and 1780
15 expand the statutory protections and penalties for violations under
16 the CLRA. The preamble finally appears to make reference to §
17 3294, in stating that “[e]xisting law provides for the award of
18 punitive damages to civil plaintiffs injured as the result of
19 certain unlawful acts involving oppression, fraud, or malice, and
20 awarded in order to punish the defendant” Following this
21 language is a summary of the language from California Civil Code §
22 3345.

23 The legislative history indicates that § 3345 and § 3294 are
24 to be read together, and that trebling of punitive damages is
25 available when the “underlying cause of action involves ‘unfair
26 practices.’” See Hood, No. 07-1634-FCD/EFB, at 13-14 (adopting
27 this approach). Similar to the court in Hood, this Court finds
28 that a bad faith claim redresses unfair practices. Id. at 14-15.

1 The court in Hood based its decision on the relationship between a
2 UCL claim and a bad faith action, and the fact that both types of
3 claims target unfair practices. Id. This Court adds that tort
4 recovery for bad faith in the context of the insurer-insured
5 relationship "is considered appropriate . . . [because u]nlike most
6 other contracts for goods or services, an insurance policy is
7 characterized by elements of adhesion, public interest and
8 fiduciary responsibility." Cates Constr. v. Talbot Partners, 21
9 Cal. 4th 28, 44 (1999) (citations omitted). An insurer's bad faith
10 failure to pay a claim strips an insured of the "protection against
11 calamity" that animates the purchase of insurance. Egan v. Mutual
12 of Omaha Ins. Co., 24 Cal. 3d 809, 819 (1979). This further
13 supports a reading of § 3345 that effectuates the legislature's
14 purpose of protecting senior citizens and disabled persons from
15 unfair practices.

16 UNUM relies on the Department of Consumer Affairs analysis of
17 SB 1157. (Def.'s Amended Request for Judicial Notice, Exh. 1.)
18 The Court does not consider this analysis to limit § 3345 in the
19 manner recommended by UNUM. First, the analysis primarily
20 addresses the addition of California Business and Professions Code
21 § 17206.1, not California Civil Code § 3345. It is thus of limited
22 relevance to interpretation of § 3345. Even so, the Court's
23 reading of § 3345 advances the policies of preventing consumer
24 fraud against senior citizens and disabled persons that are
25 identified by the Department of Consumer Affairs in the analysis.
26 (See id.) The trebling of punitive damages for bad faith conduct
27 by an insurer against senior citizens or disabled persons serves to
28 deter consumer fraud or other unfair practices.

1 The Court concludes that trebling under § 3345 was intended to
2 apply broadly to causes of action that challenge unfair practices.
3 Treble punitive damages are available as part of a bad faith
4 claim.³ Here, Plaintiff has alleged that he is a senior citizen
5 and a disabled person, and that UNUM acted in bad faith. Plaintiff
6 has also requested treble punitive damages. Plaintiff is entitled
7 to make this request.

8
9 **III. CONCLUSION**

10 For the foregoing reasons, the Court DENIES the motion to
11 strike.

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13 IT IS SO ORDERED.

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15 Dated: August 7, 2008



DEAN D. PREGERSON
United States District Judge

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23 _____
24 ³ UNUM additionally argues that § 3345 trebling of punitive
25 damages is unconstitutional under State Farm Mutual Automobile
26 Insurance Company v. Campbell, 538 U.S. 408, 416 (2003) (holding
27 with respect to punitive damages awards that "the Due Process
28 Clause of the Fourteenth Amendment prohibits the imposition of
grossly excessive or arbitrary punishments on a tortfeasor"). For
reasons discussed in the Hood decision, the Court disagrees. §
3345 is not facially unconstitutional. UNUM may be entitled to
raise an as-applied challenge to treble punitive damages if
awarded.