

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rollin v. Transamerica Life Insurance Company

No. 1:25-cv-00194-KES-HBK (E.D. Cal. July 2, 2025) · No. 1:25-cv-00194-KES-HBK · Decided July 3, 2025

SUMMARY

The United States District Court for the Eastern District of California granted Transamerica Life Insurance Company’s Rule 12(b)(6) motion to dismiss Carol A. Rollin’s first amended complaint. The court held that Rollin did not plausibly allege eligibility for long-term-care benefits, breach, damages, bad faith, or financial elder abuse. The dismissal was entered with leave to amend within fourteen days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 3, 2025
DOCKET	1:25-cv-00194-KES-HBK
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 12(b)(6) to dismiss the first amended complaint for failure to state a claim, and separately moved under Rule 9(b) as to the financial elder abuse claim. The court granted the Rule 12(b)(6) motion and dismissed the first amended complaint with leave to amend.
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court tests the legal sufficiency of the complaint, accepts well-pleaded factual allegations as true, construes them in the plaintiff’s favor, and determines whether the complaint contains sufficient factual matter to state a facially plausible claim. The court need not accept legal conclusions or conclusory allegations as true.
PRECEDENTIAL VALUE	unpublished district court order; precedential status unknown
PARTIES	Carol A. Rollin v. Transamerica Life Insurance Company

TOPICS

- motions to dismiss
- insurance coverage
- breach of contract
- insurance bad faith
- civil procedure

PRACTICE AREAS

civil procedure

insurance

contracts

torts

remedies

QUESTIONS PRESENTED

1. Whether the first amended complaint plausibly alleged breach of the long-term-care insurance contract.
2. Whether the first amended complaint plausibly alleged breach of the implied covenant of good faith and fair dealing.
3. Whether the first amended complaint plausibly alleged financial elder abuse under the California Elder Abuse and Dependent Adult Civil Protection Act.
4. Whether dismissal should be with leave to amend.

HOLDINGS

1. The first amended complaint failed to state a plausible breach-of-contract claim because Rollin did not allege facts showing that she satisfied the policy's benefit-eligibility requirements, requested benefits covered by a plan of care or the alternative payment benefit, or incurred identifiable damages.
2. The implied-covenant claim failed because Rollin did not plausibly allege that benefits were due under the policy, and her bad-faith allegations were conclusory.
3. The financial elder abuse claim failed because Rollin did not plausibly allege that benefits were due and independently failed to provide factual support for the alleged abuse or bad faith.
4. Leave to amend was warranted because this was the first time the court had identified deficiencies in the pleading and the record did not establish repeated failure to cure deficiencies after a court-ordered amendment.

KEY QUOTATIONS

“there can be no breach of the implied covenant of good faith and fair dealing if no benefits are due under the policy.” (at 8)

“Based upon the foregoing, defendant’s motion to dismiss, Doc. 24, is GRANTED, and the first amended complaint, Doc. 21, is DISMISSED with leave to amend.” (at 10)

FACTUAL BACKGROUND

Transamerica's predecessor issued Rollin a long-term-care insurance policy, and Rollin alleged that she paid all required premiums. The policy required certification by a licensed health-care practitioner of cognitive impairment or inability to perform at least two activities of daily living, as well as a qualifying plan of care, before benefits became payable. Rollin alleged that she became eligible, submitted all necessary documentation, and was denied benefits because family members could provide care; she did not allege the specific certification, plan-of-care benefits requested, alternative payment benefits requested, or expenses underlying her claimed damages.

PROCEDURAL HISTORY

Rollin filed the action on February 13, 2025. After Transamerica moved to dismiss the original complaint, Rollin filed a first amended complaint instead of opposing that motion. Transamerica again moved to dismiss, and after considering the parties' briefing and taking judicial notice of the incorporated insurance policy, the court dismissed the first amended complaint with leave to amend.

DISPOSITION

other

CASES CITED

- *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005)
- *Engers v. Allstate Ins. Co.*, 682 F. Supp. 2d 1094, 1097 (E.D. Cal. 2009)
- *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023)
- *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 1983)
- *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)
- *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 680 (2009)
- *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)
- *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983)
- *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011)
- *Brown v. Hancock Life Ins. Co.*, Case No. EDCV-15-01249-MWF (AGRx), 2015 WL 12781205, at *3 (C.D. Cal. Oct. 6, 2015)
- *Potovsky v. Lincoln Benefit Life (Potovsky II)*, Case No. 23-cv-02235-WHO, 2023 WL 8461171, at *5, *8, *10-*11 (N.D. Cal. Dec. 6, 2023)
- *Brehm v. 21st Century Ins. Co.*, 83 Cal. Rptr. 3d 410, 417 (Cal. App. Ct. 2008)
- *Crawford v. Continental Cas. Ins. Co.*, Case No. SACV 14-00968-CJC (JCGx), 2014 WL 10988334, at *2 (C.D. Cal. July 24, 2014)
- *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc)
- *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008)
- *Davis v. Sentinel Ins. Co.*, Case No. 17-CV-1845 W (JLB), 2018 WL 50847839, at *4 (S.D. Cal. Oct. 18, 2018)
- *Orellana v. Mayorkas*, 6 F.4th 1034, 1042-43 (9th Cir. 2021)

OPINION

Rollin v. Transamerica Life Insurance Company
PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 CAROL A. ROLLIN, No. 1:25-cv-00194-KES-HBK

12 Plaintiff,

13 v. ORDER GRANTING DEFENDANT’S

MOTION TO DISMISS AND DISMISSING

14 TRANSAMERICA LIFE INSURANCE FIRST AMENDED COMPLAINT WITH

COMPANY, LEAVE TO AMEND

15 Defendant. Doc. 24 16 17 18 Plaintiff Carol A. Rollin brings this claim against defendant
Transamerica Life Insurance 19 Company (“Transamerica”) alleging breach of contract, breach of
the implied covenant of good 20 faith and fair dealing, and financial elder abuse in violation of the
Elder Abuse and Dependent 21 Adult Civil Protection Act, California Welfare and Institutions
Code, section 15600 et seq.

22 Doc. 21. Transamerica moves to dismiss for failure to state a claim. Doc. 24. The parties’ briefs
23 have been considered and, for the reasons set forth below, Transamerica’s motion to dismiss is
24 granted and Rollin’s first amended complaint is dismissed with leave to amend. 25 I.
Procedural History 26 Rollin initiated this action by filing a complaint on February 13, 2025. Doc.
1. On

27 April 3, 2025, Transamerica moved to dismiss the complaint for failure to state a claim. Doc.
13.

28 In lieu of opposing the motion, Rollin filed a first amended complaint. Doc. 21 (“FAC”). 1 On
May 1, 2025, Transamerica again moved to dismiss for failure to state a claim, arguing 2 that the
first amended complaint does not set forth sufficient facts that, if true, would state a claim 3 upon
which relief could be granted.¹ Doc. 24. In support of its motion, Transamerica filed a 4
declaration and request for judicial notice of the long-term care insurance policy at issue for 5
Rollin’s claims. Docs. 25, 26. On May 15, 2025, Rollin filed an opposition to the motion to 6
dismiss.² Doc. 27. On May 22, 2025, the Court granted Transamerica’s ex parte application for 7
an extension of time to file a reply in support of its motion, Doc. 30, and on June 2, 2025, 8
Transamerica filed its reply, Doc. 32. 9 II. Facts³ 10 In her first amended complaint, Rollin alleges
Transamerica issued to her a long-term care 11 policy and that she paid all premiums due under
the policy.⁴ FAC ¶¶ 6–7. The policy lists “[t]he 12 13 1 Transamerica brings its motion under Rule
12(b)(6) as to all claims and separately also moves to dismiss Rollin’s third cause of action, for
financial elder abuse, under Rule 9(b). Doc. 24 at 15. 14 As this Order resolves the motion to
dismiss on Rule 12(b)(6) grounds, the Court need not 15 address Transamerica’s contention that
Rule 9(b) applies and that Rollin failed to meet its requirements. 16 2 Rollin does not oppose
Transamerica’s request for judicial notice nor dispute the authenticity of 17 the attached policy.
See Doc. 27. The request for judicial notice, Doc. 26, is therefore granted. Moreover, the insurance
policy is rightfully considered in connection with Transamerica’s motion 18 to dismiss because it
is incorporated by reference into the first amended complaint. See *Kniesel 19 v. ESPN*, 393 F.3d

1068, 1076 (9th Cir.2005) (“[T]he incorporation by reference doctrine [applies] to situations in which the plaintiff’s claim depends on the contents of a document, the 20 defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of 21 that document in the complaint.”). See *Engers v. Allstate Ins. Co.*, 682 F. Supp. 2d 1094, 1097 (E.D. Cal. 2009) (considering defendant’s request for judicial notice of long-term care policy in 22 similar case and finding policy incorporated by reference into complaint). 23 3 The Court presumes the factual allegations in the first amended complaint to be true for 24 purposes of evaluating the motion to dismiss. See *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023). As noted, the terms of the insurance policy at issue are also properly considered, and 25 are therefore recited herein, given that the policy is incorporated by reference into the first amended complaint. 26 27 4 In its motion to dismiss, Transamerica clarifies that the policy was issued by Transamerica’s predecessor. See Doc. 24 at 4; see also Doc. 25-1 at 46 (merger endorsement). 28 1 benefits . . . [Rollin] elected” to be included in her coverage, including nursing facility benefits; 2 residential care facility benefits; home health care, adult day care, homemaker services and 3 personal care benefits; hospice care benefits; and an alternative payment benefit, among others.

4 Doc. 25-1 at 5–6. The policy provides in relevant part:

5 BENEFIT ELEGIBILITY

6 To be eligible for benefits provided under this Policy, [Transamerica] must receive a Plan of Care that specifies what care is needed, unless a benefit specifically states 7 that a Plan of Care is not required. The care must be needed because the Insured Person has been certified within the last 12 months by a Licensed Health Care 8 Practitioner as: 9 (1) requiring continual supervision, which may include cueing by verbal prompting, gestures, or other demonstrations, by another 10 person to protect the Insured Person from threats to his or her health or safety, due to Cognitive Impairment; or 11

(2) requiring the presence of another person within arm’s reach due

12 to the inability to perform at least 2 of the 6 Activities of Daily Living, for a period that is expected to last at least 90 days. The 13 other person must be present within arm’s reach in order to assist, supervise or prevent injury by physical intervention.⁵ 14 Doc. 25-1 at 23. The policy lists general exclusions and limitations, including that it “will not 15 pay benefits when an Insured Person is eligible for confinement, treatment, services or care . . . 16 rendered by a member of an Insured Person’s Immediate Family” or benefits “that are not 17 included in an Insured Person’s Plan of Care, unless a benefit specifically states that a Plan of 18 Care is not required.”⁶ Id. at 15. 19 The Policy further provides that the “Alternative Payment Benefit,” one of the benefits 20 included in the policy, will be paid “[o]nce an Insured Person has been certified to meet the 21 requirements found in the Benefit Eligibility provision for Cognitive Impairment or the inability 22 to perform at least 2 of the 6 Activities of Daily Living and [Transamerica] ha[s] received a Plan 23 of Care.” Id. at 35. It provides that the Alternative Payment Benefit will be paid “in lieu of

all 24 other benefits for care or services provided under this Policy.” Id. “The exclusions regarding a 25 26 5 “Plan of Care,” “Insured Person,” “Licensed Health Care Practitioner,” “Cognitive Impairment,” 27 and “Activities of Daily Living” are defined terms in the policy. Doc. 25-1 at 16, 21–22. 28 6 “Immediate Family” is also a defined term in the policy. Doc. 25-1 at 16. 1 member of an Insured Person’s Immediate Family . . . will not apply to the Alternative Payment 2 Benefit provision.” Id. at 15. 3 Rollin alleges that she “became eligible to receive benefits under the terms of her policy” 4 and that she “has initiated and submitted all necessary documentation” to Transamerica “such that 5 her claim should have been approved and paid.” FAC ¶ 8. She claims that, despite this, 6 Transamerica denied the payment of benefits on July 22, 2024. FAC ¶ 8. She appealed, but 7 Transamerica did not respond to the appeal. FAC ¶ 8. She further alleges that Transamerica 8 denied the claim “on specious grounds, predicated on the fact that she has family 9 members who are able to provide the care which would otherwise be covered and paid for under 10 the terms of her policy.” FAC ¶ 9. Rollin asserts that she “is entitled to benefits under the 11 Alternative Payment Benefit provision [of the Policy] for which the exclusion regarding a 12 member of an Insured Person’s Immediate Family does not apply.” FAC ¶ 9. She states that she 13 “has performed all obligations under the Policy on her part to be performed,” that “[a]s a direct 14 and proximate result of [Transamerica’s] improper conduct, [she] has been deprived of the right 15 to obtain benefits under the terms of the Policy,” and that “[t]he denial of benefits constitutes a 16 breach of the insurance contract” between the parties. FAC ¶ 10. 17 She further alleges that Transamerica “breached its respective duty of good faith and fair 18 dealing” owed to her by “[u]nreasonably withholding coverage from [her] in bad faith at a time 19 when [Transamerica] knew [she] was entitled to said coverage under the Policy;” “[u]nreasonably 20 and in bad faith failing to provide a prompt and reasonable explanation of the basis relied on 21 under the terms of the Policy, in relation to the applicable facts and policy provisions, for the 22 failure to pay valid claims under the terms” of Rollin’s coverage; “[i]ntentionally and 23 unreasonably applying pertinent policy provisions to limit [Transamerica’s] financial exposure 24 and contractual obligations and to maximize profits;” and “[u]nreasonably compelling [Rollin] to 25 institute litigation to recover her coverage due under the Policy to further discourage [her] from 26 pursuing her full policy benefits.” FAC ¶ 12. Rollin claims that Transamerica’s “conduct . . . was 27 intended by [Transamerica] to cause injury to [Rollin], was despicable conduct carried on by 28 [Transamerica] with a willful and conscious disregard of the rights of [Rollin], subjected [Rollin] 1 to cruel and unjust hardship in conscious disregard of her rights, and was an intentional 2 misrepresentation, deceit, or concealment of a material fact known to [Transamerica] with the 3 intention to deprive [Rollin] of property and/or legal rights or to otherwise cause injury, such as to 4 constitute malice, oppression, or fraud.” FAC ¶ 17. 5 Finally, Rollin alleges that she is an “elder” as defined by the Elder Abuse and Dependent 6 Adult Civil Protection Act, because she was born on February 5, 1941, and is currently 84 years 7 old. FAC ¶ 20. She claims that Transamerica’s “conduct constituted [f]inancial abuse as defined 8 by the Act.” FAC ¶ 21. Specifically, she alleges

that “[g]iven the nature of the insurance policy 9 and the insurance coverage at issue herein, [Transamerica] knew, or should have known that the 10 failure to pay benefits owed to [her] was a harmful breach of duty, and [Transamerica] should 11 have been aware of the harm caused to [her] by all of its actions and most importantly by its 12 failure and refusal to pay her long term care benefits when due under the terms of her coverage.” 13 FAC ¶ 22. 14 III. Legal Standard 15 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal 16 sufficiency of the complaint. *N. Star Int’l v. Ariz. Corp. Comm’n*, 720 F.2d 578, 581 (9th Cir. 17 1983). “Dismissal can be based on the lack of a cognizable legal theory or the absence of 18 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 19 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough facts to state a claim to 20 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A 21 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw 22 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. 23 Iqbal*, 556 U.S. 662, 678 (2009). The complaint must contain facts that “nudge [the plaintiff’s] 24 claims across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. 25 In determining whether a complaint states a claim on which relief may be granted, the 26 Court accepts as true the allegations in the complaint and construes the allegations in the light 27 most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, 28 the Court need not assume the truth of legal conclusions cast in the form of factual allegations. 1 *Iqbal*, 556 U.S. at 680. While Rule 8(a) does not require detailed factual allegations, “it demands 2 more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* at 678. A 3 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic recitation of the 4 elements of a cause of action.” *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678 5 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory 6 statements, do not suffice.”). Moreover, it is inappropriate to assume that the plaintiff “can prove 7 facts that it has not alleged or that the defendants have violated the . . . laws in ways that have not 8 been alleged.” *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 9 U.S. 519, 526 (1983). 10 IV. Analysis 11 To state a claim for breach of contract, Rollin must allege “(1) the existence of the 12 contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and 13 (4) the resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 51 Cal.4th 811, 14 821 (2011). Transamerica does not dispute that Rollin has adequately alleged the existence of the 15 contract between the parties—that is, the long-term care policy. Rather, Transamerica contends 16 that Rollin has failed to adequately allege both Transamerica’s breach and the resulting damages.

17 Doc. 24 at 9. Transamerica also argues that Rollin failed to adequately allege her performance, or

18 excuse for nonperformance, under the contract. Doc. 24 at 9–10. 19 Regarding Rollin’s performance under the contract and any potential breach of the policy 20 by Transamerica,

Rollin’s central allegations include only that she “became eligible to receive 21 benefits under the terms of her policy,” that she “has initiated and submitted all necessary 22 documentation to [Transamerica] such that her claim should have been approved and paid,” that 23 she “is entitled to benefits under the Alternative Payment Benefit provision [of the policy] for 24 which the exclusion regarding a member of an Insured Person’s Immediate Family does not 25 apply.” FAC ¶¶ 8–9. She alleges that Transamerica wrongfully “denied the payment of benefits” 26 because “she has family members who are able to provide the care which would otherwise be 27 covered and paid for under the terms of her policy.” FAC ¶ 9. 28 To be eligible to recover under the policy, including under the general terms regarding 1 benefit eligibility and under the terms governing the Alternative Payment Benefit, Rollin must 2 “ha[ve] been certified within the last 12 months by a Licensed Health Care Practitioner” as 3 “requiring continual supervision . . . by another person to protect [her] from threats to [her] health 4 or safety, due to Cognitive Impairment” or “requiring the presence of another person within arm’s 5 reach due to the inability to perform at least 2 of the 6 Activities of Daily Living.” Doc. 25-1 at 6 23, 35. Rollin must also have provided Transamerica with a Plan of Care that specifies what care 7 is needed. Doc. 25-1 at 23, 35. The Plan of Care must be written; be based on the insured’s 8 comprehensive assessment; be required because the person is either Cognitively Impaired or 9 unable to perform two of the six Activities of Daily Living, as those terms are defined by the 10 policy; and have been “prescribed, approved, and signed by a Licensed Health Care Practitioner.”

11 Doc. 25-1 at 21.

12 Rollin does not allege that she was certified as either requiring continual supervision due 13 to a Cognitive Impairment or having an inability to perform two or more of the six Activities of 14 Daily Living such that she required the presence of another person within arm’s reach. See 15 generally FAC. Rollin’s allegations that she “became eligible” and that she “has initiated and 16 submitted all necessary documentation” do not demonstrate a plausible claim for relief for breach 17 of contract under *Twombly* and *Iqbal*. See *Brown v. Hancock Life Ins. Co.*, Case No. EDCV-15- 18 01249-MWF (AGRx), 2015 WL 12781205, at *3 (C.D. Cal. Oct. 6, 2015) (dismissing same 19 claims—breach of contract, breach of the duty of good faith and fair dealing, and financial elder 20 abuse—in similar case with leave to amend for failure to state a claim); see also *Potovsky v. 21 Lincoln Benefit Life (Potovsky II)*, Case No. 23-cv-02235-WHO, 2023 WL 8461171, at *5 (N.D. 22 Cal. Dec. 6, 2023) (noting that the court had previously found allegations that plaintiff was 23 “chronically ill” and had “provided [all] information” to insurer insufficient to state a claim). 24 In *Brown*, like here, the plaintiff was denied benefits under her long-term care policy. 25 *Brown*, 2015 WL 12781205, at *1. Also, like here, under the plaintiff’s policy, benefits were 26 “due on proof of the insured’s inability to perform at least two Activities of Daily Living . . . 27 without human assistance.” *Id.* at *2. The plaintiff’s central allegation was that “due to her 28 blindness and fractures, at all times from the inception of the claim to the present, [the plaintiff] 1 has been unable to perform two or more activities of daily living as defined in the Policy.” *Id.* at 2

*3. The court dismissed the plaintiff's complaint for failure to state a claim, holding that the 3 complaint's "primary allegation is properly characterized as a conclusion on the ultimate issue of 4 this case—i.e., whether [the plaintiff's] injuries render it impossible 'to perform two or more 5 activities of daily living as defined in the Policy.'" Id. That is, the court found that plaintiff 6 "ha[d] not shown her inability to perform two or more [Activities of Daily Living] but only 7 conclusively asserted that she cannot do so." Id. The court described her allegation as 8 "formulaic" given it "merely restate[d] the language of the Policy without asserting any facts 9 showing that [the plaintiff's] claim for relief [was] plausible." Id. 10 Here Rollin alleges even fewer facts regarding her eligibility for benefits than the plaintiff 11 did in Brown. Rollin's central allegations that she "became eligible" and that she submitted "all 12 necessary documentation" showing her eligibility, are conclusory statements on the ultimate issue 13 of the case—that is, whether Rollin became eligible for benefits such that Transamerica's denial 14 of benefits constituted a breach of the parties' agreement. See *id.*; see also *Potovsky II*, 2023 WL 15 8461171, at *5. Given their conclusory nature, these allegations need not be considered true. See 16 *id.*; see also *Twombly*, 550 U.S. at 555; see also *Iqbal*, 556 U.S. at 678. 17 Even if this Court were to find that, liberally construed, Rollin's allegation that she 18 submitted "all relevant documents" were sufficient to allege that she submitted to Transamerica a 19 prescribed and signed Plan of Care and a certification by a licensed medical professional that she 20 was either Cognitively Impaired or unable to perform two of the six Activities of Daily Living, as 21 defined in and required by the policy, Rollin's allegations would still fail to state a claim. The 22 policy provides that it "will not pay benefits when an Insured Person is eligible for confinement, 23 treatment, services or care . . . that are not included in an Insured Person's Plan of Care, unless a 24 benefit specifically states that a Plan of Care is not required." Doc. 25-1 at 15. Rollin does not 25 allege what benefits were included in any potentially submitted Plan of Care nor what benefits 26 she requested, so it is impossible to determine from her allegations if she requested and was 27 denied benefits that were in her Plan of Care. That is, if she submitted a Plan of Care, and if she 28 requested benefits that were not included in her Plan of Care, Transamerica's denial of those 1 benefits would not appear to be a breach of the agreement. This described potential factual 2 scenario as well as its converse (that is, that she submitted a Plan of Care and that she requested 3 benefits included within it) are both equally consistent with the minimal allegations in the first 4 amended complaint. Therefore, for this independent reason, the first amended complaint fails to 5 plausibly state a claim for breach of contract. See *Iqbal*, 556 U.S. at 678 (holding that "[w]here a 6 complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the 7 line between possibility and plausibility of entitlement to relief." (cleaned up)). 8 Similarly, Rollin does not allege that she requested benefits under the Alternative Payment 9 Benefit provision, again failing to move her claim over the line from "possibility" to 10 "plausibility." See *id.* The policy provides that it "will not pay benefits when an Insured Person 11 is eligible for confinement, treatment, services or care . . . rendered by a member of an Insured 12 Person's Immediate Family," unless

the benefit that the insured seeks is the Alternative Payment 13 Benefit. Doc. 25-1 at 15. As Rollins does not allege that she sought benefits under the 14 Alternative Payment Benefit, it remains unclear from the face of the first amended complaint 15 whether an alleged denial of benefits based on a family member's ability to care for her breached 16 the policy. 17 Rollin's breach of contract claim also fails because Rollin has failed to adequately plead 18 damages. Rollin requests over \$500,000 in damages under the policy. FAC, Request for Relief 19 1. But she provides no indication of how she arrived at this figure. See generally FAC. The first 20 amended complaint must plausibly "articulate what expenses or other damages [Rollin] incurred 21 as a result of [Transamerica]'s purported breach." See *Potovsky v. Lincoln Benefit Life* (Potovsky 22 I), Case No. 23-cv-02235-WHO, 2023 WL 5663087, at *4 (N.D. Cal. Aug. 31, 2023); see also 23 *Potovsky II*, 2023 WL 8461171, at *8 (finding plaintiffs had not adequately pleaded damages 24 because the policy was a reimbursement policy, and plaintiffs did not allege they submitted a 25 claim for reimbursement). Rollin argues her general allegation that she submitted "all necessary 26 documentation" necessarily includes submitting requests for reimbursement, but that argument 27 fails for the reasons already discussed. Additionally, even if submitting "all necessary 28 documentation" was interpreted to include requests for reimbursement, Rollin does not allege 1 what costs she submitted for reimbursement and therefore still fails explain what damages she 2 actually incurred. 3 Because Rollin has failed to plausibly allege that she was due benefits under the policy 4 that were wrongfully withheld by Transamerica, she also fails to plausibly allege her claims of 5 breach of the implied covenant of good faith and fair dealing and financial elder abuse.⁷ See, e.g., 6 *Brehm v. 21st Century Ins. Co.*, 83 Cal. Rptr. 3d 410, 417 (Cal. App. Ct. 2008) ("[T]here can be 7 no breach of the implied covenant of good faith and fair dealing if no benefits are due under the 8 policy."); *Crawford v. Continental Cas. Ins. Co.*, Case No. SACV 14-00968-CJC (JCGx), 2014 9 WL 10988334, at *2 (C.D. Cal. July 24, 2014) (noting elder abuse claim is contingent on bad 10 faith claim); see also, e.g., *Potovsky II*, 2023 WL 8461171, at *10–11 (N.D. Cal. Dec. 6, 2023) 11 (finding that where plaintiff failed to adequately allege breach, plaintiff's claims for good faith 12 and fair dealing and elder abuse also must fail). Moreover, Rollin's bad faith and financial elder 13 abuse claims fail independently of her failure to allege a breach of contract, given that she does 14 not provide factual support for either and makes only conclusory allegations. See *Potovsky I*, 15 2023 WL 5663087, at *5–6 (finding nearly identical allegations conclusory and insufficient to 16 state a claim for either bad faith or elder abuse). 17 If a court dismisses a complaint for failure to state a claim, it should "freely give leave" to 18 amend "when justice so requires." Fed. R. Civ. P. 15(a)(2). The "underlying purpose of Rule 15 19 [is] to facilitate decisions on the merits, rather than on the pleadings or technicalities." *Lopez v. 20 Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (cleaned up). However, a court has 21 discretion to deny leave to amend due to "undue delay, bad faith or dilatory motive on the part of 22 the movant, repeated failure to cure deficiencies by amendment previously allowed, undue 23 24 7 Rollin's opposition includes additional factual allegations that are not in her first amended

complaint regarding these claims, including that “[Rollin]’s family lived next door” and that Transamerica “ignored relevant evidence” and “withheld approval of proposed caregivers and schedule.” Doc. 27 at 11–12. Because these allegations are not included in her first amended complaint, the Court does not consider them in resolving the motion to dismiss. See, e.g., *Orellana v. Mayorkas*, 6 F.4th 1034, 1042–43 (9th Cir. 2021) (“[T]he district court generally may not consider material outside the pleadings at the motion to dismiss stage.”) (citation omitted). 1 | prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of 2 | amendment.” *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008). 3 | Transamerica argues that leave to amend should not be granted because Rollin was on 4 | notice of the deficiencies of her first amended complaint by virtue of Transamerica’s previous 5 | motion to dismiss her original complaint. Doc. 32 at 4,7. Transamerica cites no case for the 6 | proposition that, where a first amended complaint filed in response to a motion to dismiss is 7 | deficient, it constitutes a “repeated failure to cure deficiencies by amendment previously 8 | allowed,” *Leadsinger*, 512 F.3d at 532, such that dismissal without further leave to amend is 9 | warranted. Rather, such a circumstance typically occurs when the Court has previously identified 10 | deficiencies and allowed an amendment. In the only case Transamerica cites to support its 11 | position that leave to amend should not be granted, the court dismissed a second amended 12 | complaint without further leave to amend only after previously issuing an order dismissing the 13 | substantially similar first amended complaint with leave to amend. See Doc. 32 at 4 (citing *Davis* 14 | *v. Sentinel Ins. Co.*, Case No.: 17-CV-1845 W (JLB), 2018 WL 50847839, at *4 (S.D. Cal. Oct. 15 18, 2018)). This is the first time that the Court has reviewed a complaint in this action and 16 | identified Rollin’s allegations as deficient, and here leave to amend is warranted. 17 | V. Conclusion and Order 18 Based upon the foregoing, defendant’s motion to dismiss, Doc. 24, is GRANTED, and the 19 | first amended complaint, Doc. 21, is DISMISSED with leave to amend. Within fourteen (14) 20 | days from the date of this Order, Rollin shall file either a second amended complaint or a notice 21 | of her intent not to do so. If a second amended complaint is filed by Rollin, Transamerica shall 22 | file a responsive pleading thereto within fourteen (14) days of its filing. 23

94 | ☐ ☐ SO ORDERED. _

25 Dated: _ July 2, 2025 4h

UNITED STATES DISTRICT JUDGE

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