

APPENDIX A

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 29 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SYLVIA J. MANOR,

Plaintiff-Appellant,

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

Defendant-Appellee.

No. 19-17346

D.C. No. 3:19-cv-02360-RS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Richard Seeborg, District Judge, Presiding

Submitted October 26, 2020**

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Sylvia J. Manor appeals pro se from the district court's judgment dismissing her diversity action alleging breach of contract and fraud claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of the applicable statute of limitations. *Huynh v. Chase Manhattan Bank*, 465 F.3d

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

992, 996 (9th Cir. 2006). We affirm.

The district court properly dismissed Manor's action as time-barred because Manor failed to file her action within the applicable statutes of limitations. *See* Cal. Civ. Proc. Code § 337(a) (four-year statute of limitations for breach of written contract cause of action), § 338(d) (three-year statute of limitations for fraud cause of action); *Fox v. Ethicon Endo-Surgery, Inc.*, 110 P.3d 914, 917 (Cal. 2005) (under the delayed discovery rule, cause of action accrues and statute of limitations begins to run "when the plaintiff has reason to suspect an injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for [the] cause of action").

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SYLVIA J MANOR,
Plaintiff,

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,
Defendant.

Case No. 19-cv-02360-RS

**ORDER GRANTING
MOTION TO DISMISS**

This action arises from disputes related to the term life insurance policy covering plaintiff Sylvia Manor's late husband. According to Manor, she made premium payments from 1998 until 2012, when defendant United of Omaha Life Insurance Company ("United") wrongfully cancelled the policy. Manor's husband passed away in October 2015; she then filed a claim for benefits, which United denied the following month.¹

Manor sued United in Superior Court in Mendocino County in March 2019, alleging two contracts and four torts causes of action.² United removed the case to federal court. Manor's original complaint was dismissed, but she was given leave to amend in order to plead facts sufficient to overcome the statutes of limitations. Manor filed a First Amended Complaint ("FAC"), which United now moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(6).

¹ A more comprehensive summary of the factual background in this case appears in the order dismissing Manor's previous complaint.

² In particular, Manor alleged breach of contract, breach of the implied covenant of good faith, two counts of fraudulent concealment, intentional misrepresentation, and promissory fraud.

Under the Federal Rules of Civil Procedure, a complaint must contain a short and plain statement of the claim showing the pleader is entitled to relief. Fed. R. Civ. P. 8(a). While “detailed factual allegations” are not required, a complaint must have sufficient factual allegations to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims alleged in the complaint. Dismissal under this rule may be based on either the “lack of a cognizable legal theory” or on “the absence of sufficient facts alleged” under a cognizable legal theory. *UMG Recordings, Inc. v. Shelter Capital Partners LLC*, 718 F.3d 1006, 1014 (9th Cir. 2013). When evaluating such a motion, courts “accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). Courts, however, need not accept legal conclusions as true. *Iqbal*, 556 U.S. at 678. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

Manor’s FAC is, unfortunately, almost a verbatim copy of her original complaint. In almost 200 pages, the only thing that has changed is the amount of damages which Manor is requesting; she has decreased the amount from \$2,505,000 to \$75,000. To the extent that the modification is an attempt to renew her motion to remand to Superior Court, that attempt is futile. The amount in controversy for diversity purposes is assessed at the time of removal, and a subsequent amendment decreasing the requested amount does not divest the federal court of jurisdiction. *See Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 417 (9th Cir. 2018).

While Manor’s FAC does not add any new information, her answer to United’s motion to dismiss does offer additional facts and arguments.³ First, as to her contracts causes of action, Manor asserts that United did not have the power unilaterally to cancel her policy, meaning it was still effect when she submitted her claim in 2015—although she did receive notice and “actually

³ These additions would need to be in the FAC to be pled properly. They are, however, addressed on the merits as the procedural defect does not affect the disposition of the present motion.

1 believe[.]” it was cancelled in 2012. *See* Sylvia J. Manor’s Response to Defendant’s Motion to
2 Dismiss Plaintiff’s First Amended Complaint, ECF No. 43, at 11 (“At least a dozen different
3 United employees had told Plaintiff that her policy was cancelled.”). She alleges that, in 2012, she
4 suffered headaches and insomnia as a result of United’s purported cancellation of her policy. The
5 statute of limitations on her contracts causes of action is four years. Cal. C. Civ. P. § 337(a).

6 .Unfortunately, even construing these facts in the light most favorable to Manor and
7 applying the delayed discovery rule⁴ does not rescue her contracts causes of action. Manor asserts
8 that, in 2012, she believed United did not have the power to cancel her policy, i.e. that the
9 cancellation was a breach, but not that she was unaware United was trying to exercise that power.
10 She herself asserts she had reason to believe *something* wrong had been done to her. Indeed that is
11 a factual basis for her contracts claims, in 2012—hence her physical and mental symptoms. *See*
12 *Norgart v. Upjohn Co.*, 21 Cal.4th 383, 397 (1999) (“[T]he plaintiff discovers the cause of action
13 when he at least suspects a factual basis, as opposed to a legal theory, for its elements, even if he
14 lacks knowledge thereof—when, simply put, he at least suspects...that someone has done
15 something wrong to him.” (internal citation and quotations omitted)). A reasonable person would
16 have suspected, as Manor did, that something wrong had been done when United cancelled the
17 policy without warning and a dozen United employees could not provide any explanation.⁵ Thus,
18 Manor had notice of the breach in 2012. While the injuries she alleges are certainly troubling, they
19 do not rescue her contracts causes of action from the statute of limitations.

20 Second, as to Manor’s tort causes of action, she does not allege that she discovered
21 United’s allegedly tortious conduct any later than December 2015. Accepting this as true, the
22 three-year statutes of limitations expired in December 2018, three months before she filed her
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24 ⁴ Manor refers to this as the “late discovery exception,” but invokes the same legal principle.

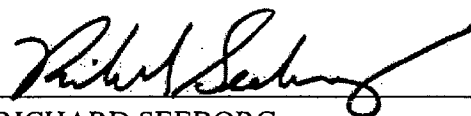
25 ⁵ Manor’s assertion that, despite being told her policy was cancelled in 2012, she only “now
26 knows the truth,” could be an attempt to plead that she did not understand the legal basis for her
27 causes of action until recently. Even so, they would be time barred as it is the discovery of the
28 factual, not the legal, basis for claims that underlies the delayed discovery rule.

1 complaint. Cal. C. Civ. P. § 338(d). Manor again suggests that the delayed discovery rule might be
2 applicable, as she had not conducted sufficient legal research to understand her causes of action
3 until 2018; however, the rule is based on when the factual, not the legal, basis for the claim was
4 discovered. *Norgart*, 21 Cal. 4th at 398. Thus, Manor had notice of United's allegedly tortious
5 conduct no later than 2015, and her causes of action are barred by the applicable statutes of
6 limitations.

7 Manor was given leave to amend her complaint and allege facts sufficient to support her
8 causes of action. The FAC made no such effort, and Manor's response to the present motion to
9 dismiss—which has effectively been treated as her third opportunity to plead her claims—does not
10 meet even the liberal pleading standard applicable to *pro se* plaintiffs. Manor has not demonstrated
11 that another opportunity to amend her complaint would yield different results. The FAC must thus
12 be dismissed, without further leave to amend. Pursuant to Civil Local Rule 7-1(b), the motion is
13 suitable for disposition without oral argument, and the hearing set for November 7, 2019 is
14 vacated.

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16 **IT IS SO ORDERED.**

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18 Dated: October 17, 2019

19 
20 RICHARD SEEBORG
21 United States District Judge
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APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 20 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SYLVIA J. MANOR,

Plaintiff - Appellant,

v.

UNITED OF OMAHA LIFE
INSURANCE COMPANY,

Defendant - Appellee.

No. 19-17346

D.C. No. 3:19-cv-02360-RS

U.S. District Court for Northern
California, San Francisco

MANDATE

The judgment of this Court, entered October 29, 2020, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Quy Le
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX D

Sylvia Manor
P.O. Box 609
Hopland, CA 95449
(707) 744 - 1367
IN Pro Per

November 24, 2020

Molly C. Dwyer,
Clerk of Court
Ninth Circuit Court of Appeals
P.O. Box 193939
San Francisco, CA 94119 - 3939

Re: FAILURE OF THE 9TH CIRCUIT CLERK TO NOTIFY APPELLANT
OF OCTOBER 29TH JUDGMENT

Dear Clerk Dwyer :

My name is Sylvia J. Manor. I am the Appellant of Case Number 19-17346.

On Monday afternoon November 23rd 2020, I received, in my Hopland P.O. box,
a "MANDATE " from your office.

This MANDATE states that The Court entered a judgment on October 29th 2020.

I was not aware that The Court had entered a judgment. I first found out about
the October 29th judgment when I read the MANDATE.

Your office inadvertently forgot to notify me of the judgment.

Page 2.

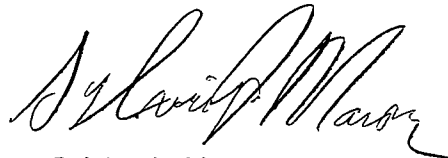
Many employees are either sick, quarantined, or caring for ailing loved ones.

The staffing shortages created by this pandemic have adversely affected
all court offices.

I'm sure that this omission was unintentional.

However, this unintentional omission has deprived me of my legal right to
file a petition for rehearing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sylvia J. Manor". The signature is written in black ink and is positioned above the printed name.

Sylvia J. Manor

APPENDIX E

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 1 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SYLVIA J. MANOR,

Plaintiff-Appellant,

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

Defendant-Appellee.

No. 19-17346

D.C. No. 3:19-cv-02360-RS
Northern District of California,
San Francisco

ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

We treat Manor's motion (Docket Entry No. 15) as a motion to recall the mandate, and grant the motion. The mandate is recalled for the limited purpose of considering a petition for rehearing. Any petition for rehearing is due on December 15, 2020.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 29 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SYLVIA J. MANOR,

Plaintiff-Appellant,

v.

UNITED OF OMAHA LIFE INSURANCE
COMPANY,

Defendant-Appellee.

No. 19-17346

D.C. No. 3:19-cv-02360-RS
Northern District of California,
San Francisco

ORDER

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Manor's petition for panel rehearing (Docket Entry No. 18) is denied.

Manor's request for oral argument (Docket Entry No. 17) is denied.

Non-party Lukashin's request for publication (Docket Entry No. 13) is
denied.

The mandate shall reissue forthwith.

~~No further filings will be entertained in this closed case.~~