IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH VADELLA and ANN VADELLA,	:	**Civil No. 3:19-CV-73**
Plaintiffs,	:	**(Judge Mariani)**
v.	:	**(Magistrate Judge Carlson)**
AMERICAN STATES INSURANCE COMPANY,	:	
Defendant.	:	

REPORT AND RECOMMENDATION

I. Statement of Facts and of The Case

This case, which comes before us for consideration of two motions to dismiss the bad faith claim set forth in the plaintiffs' complaint, (Docs. 4 and 5),[1] involves a dispute relating to a claim under an automobile insurance policy and began its life as an action filed in state court that was later removed to federal court. The plaintiffs' initial complaint, which was filed in the Court of Common Pleas of Lackawanna County, names American States Insurance Company as the defendant and brings

[1] While American States has filed two motions to dismiss this bad faith claim, the motions are substantively identical, raise the same legal issues relating to the sufficiency of the complaint, and have inspired a joint response from the plaintiffs. Therefore the motions will be jointly addressed in this Report and Recommendation.

seven legal claims against American States, including a claim of breach of an insurance contract between the parties, (Doc. 2, Count 1), and a companion claim of breach of a state statutory duty of good faith in investigating and paying this insurance claim in violation of 42 Pa. Cons. Stat. § 8371. (Doc. 2, Count 2.)

In support of these legal claims, the plaintiff's complaint contains a 26-paragraph factual recital. (Id., ¶¶ 1-26.) These well-pleaded allegations guide us in assessing the legal sufficiency of the complaint, and allege as follows:

> 5. Defendant, AMERICAN, issued a policy of insurance No. K2495825 to Plaintiffs, JOSEPH VADELLA and ANN VADELLA, covering their two automobiles a 2011 GMC Sierra K1500 Pick-up truck and a 2011 BMW 525I. A copy of the policy is attached hereto and marked as Exhibit "A".
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> 6. Defendant, AMERICAN, charged and collected a premium for underinsured motorist coverage on said policy.
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> 7. Plaintiffs, JOSEPH VADELLA and ANN VADELLA, paid all premiums requested by Defendant, AMERICAN.
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> 8. The same policy was in full force and effect on August 30, 2015.
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> 9. On or about August 30, 2015, Plaintiff, JOSEPH VADELLA, was involved in a motor vehicle crash which directly caused him to sustain serious and severe life-threatening injuries some of which are permanent.
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> 10. On August 30, 2015, Plaintiff, JOSEPH VADELLA, was insured for underinsured coverage in the amount of $250,000.00, with stacking (two cars), by Defendant, AMERICAN, under policy K2495828.
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> 11. As a result of the collision, Plaintiff, JOSEPH VADELLA, suffered severe and permanent injuries including, but not limited to, the following:

(a) neck sprain with severe pain and injuries to his cervical spine, more specifically identified as narrowing of disc space at the C4-C5, C5-C6 and C6-C7 with anterior and posterior osteophytes formation and narrowing of intervertebral foramina at the corresponding bilaterally with nerve root compression. Persistent multilevel degenerative spondylosis, degenerative bilateral facet edema at the C7-T1, bilateral foraminal stenosis at the C3-4, bilateral foraminal stenosis at the C4-5 and C5-6, bilateral foraminal stenosis with left foraminal disc protrusion at the C6-7, all of which pain radiates into his upper extremities;

(b) low back pain and injuries to his lumbar spine including degenerative disc disease with sharp shooting pain radiating into his left lower extremity and sciatica pain;

(c) radiculopathy and nerve injuries to the C8-T1 area;

(d) muscle spasms throughout his cervical, thoracic and lumbar spine;

(e) severe headaches;

(f) right hip pain;

(g) left ankle pain;

(h) right elbow pain;

(i) ongoing pain management, physical therapy and chiropractic treatment;

(j) ongoing and persistent pain aggravated by standing, sitting, walking, sexual activity, physical activities and elevating his arms;

(k) sleep disruption.

12. Defendant, AMERICAN, was promptly notified of Plaintiff, JOSEPH VADELLA's injuries.

13. As a result Defendant, AMERICAN, after and only after litigation against its parent company Safeco Insurance was initiated, began to pay and continues to pay medical payments to Plaintiff, JOSEPH VADELLA.

14. As a result of the aforesaid incident, Plaintiff, JOSEPH VADELLA, was offered the policy limits by the operator of the 3rd party vehicle.

15. Plaintiff, JOSEPH VADELLA, made a claim for underinsured motorist coverage with Defendant, AMERICAN.

16. Plaintiff, JOSEPH VADELLA, submitted all the pertinent medical records and bills to Defendant, AMERICAN, indicating the serious physical and economic injuries that he sustained as a result of the crash.

17. Defendant, AMERICAN, refused payment to Plaintiff, JOSEPH VADELLA, of underinsured motorist benefits.

18. Plaintiff, JOSEPH VADELLA, has performed everything required of him under the policy and is entitled to underinsured motorist benefits from Defendant, AMERICAN.

19. Defendant, AMERICAN's denial of underinsured motorist benefits was made without any reasonable basis of fact.

20. Defendant AMERICAN, acted in bad faith in that it did not have a reasonable basis for denying underinsured motorist benefits under the policy and the Defendant, AMERICAN, knew and/or recklessly disregarded its lack of reasonable basis in denying that claim that Defendant:

(a) Failed to give equal consideration to paying the claim as to not paying the claim.

(b) Failed to objectively and fairly evaluate Plaintiff, JOSEPH VADELLA's claim;

(c) Failed to raise a reasonable defense to not pay Plaintiff, JOSEPH VADELLA's claim;

(d) Compelling Plaintiff, JOSEPH VADELLA, to institute arbitration to obtain underinsured motorist benefits;

(e) Defendant, AMERICAN, engaged in dilatory and abusive claim's handling;

(f) Unreasonably evaluating Plaintiff, JOSEPH VADELLA's injuries and loss in the face of overwhelming evidence to the contrary;

(g) Failed to keep Plaintiff, JOSEPH VADELLA fairly and adequately advised as to the status of the claim;

(h) Acting unreasonably and unfairly in response to Plaintiff, JOSEPH VADELLA's claim;

(i) Failed to promptly provide a reasonable factual explanation of the basis for the denial of Plaintiff, JOSEPH VADELLA's claim;

(j) Failed to conduct a fair and reasonable investigation and evaluation to Plaintiff, JOSEPH VADELLA's claim;

(k) Defendant, AMERICAN, violated the Unfair Claims Settlement Practice Act §146.5, 146.6, 146.7;

(l) Defendant, AMERICAN, violated the Unfair Insurance Practice Act 40 P.S. §1171.5(10) (ii) (iii) (iv) (v) (vi) (vii) (viii) (xi) (xii) (xiv).

. . . . . .

COUNT II
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AMERICAN STATES INSURANCE COMPANY
BAD FAITH

> 24. Plaintiff incorporates by reference Paragraphs one (1) through twenty-three as though fully set forth herein.
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> 25. Plaintiff, JOSEPH VADELLA, has satisfied all of his obligations under the policy.
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> 26. By failing to make payment to Plaintiff, JOSEPH VADELLA, in the amount of $500,000.00 (with stacking), Defendant AMERICAN, breached its contractual obligation to Plaintiff, JOSEPH VADELLA, under the policy.

(Id. ¶¶ 5-26.)

Presented with this state court complaint, American States removed this action to federal court, (Doc. 1), and moved to dismiss this statutory bad faith claim in its entirety, arguing that this Count of the complaint fails to state claim upon which relief may be granted. (Docs. 4 and 5.) For their part, the plaintiffs have responded to these motions to dismiss by arguing that this complaint sufficiently states a statutory bad faith claim under Pennsylvania law, and by asserting that any challenge to the sufficiency of the complaint would be premature in this case since full discovery has not yet been conducted. These motions are fully briefed by the parties

and are, therefore, ripe for resolution. For the reasons set forth below, we recommend that the motions to dismiss be denied without prejudice to submission of a motion for summary judgment upon a fully developed factual record.

II. Discussion

A. Motion to Dismiss–Standard of Review

A motion to dismiss tests the legal sufficiency of a complaint. Rule 12(b)(6) of the Federal Rule of Civil Procedure provides for the dismissal of a complaint, in whole or in part, if the plaintiff fails to state a claim upon which relief can be granted. The moving party bears the burden of showing that no claim has been stated, Hedges v. United States, 404 F.3d 744, 750 (3d Cir. 2005), and dismissal is appropriate only if, accepting all of the facts alleged in the complaint as true, the plaintiff has failed to plead "enough facts to state a claim to relief that is plausible on its face," Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007). The facts alleged must be sufficient to "raise a right to relief above the speculative level." Twombly, 550 U.S. 544, 555. This requirement "calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence" of necessary elements of the plaintiff's cause of action. Id. at 556. Furthermore, in order to satisfy federal pleading requirements, the plaintiff must "provide the grounds of his entitlement to relief," which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of

action will not do. Phillips v. County of Allegheny, 515 F.3d 224, 231 (3d Cir. 2008) (brackets and quotation marks omitted) (quoting Twombly, 550 U.S. at 555).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis: "First, the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.' Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, 'because they are no more than conclusions, are not entitled to the assumption of truth.' Id. at 1950. Finally, 'where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.' Id." Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

As the Court of Appeals has observed: "The Supreme Court in Twombly set forth the 'plausibility' standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege 'enough facts to state a claim to relief that is plausible on its face.' Twombly, 550 U.S. at 570, 127 S. Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings 'allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S. Ct. 1955). This standard requires showing 'more than a sheer possibility that a defendant has acted unlawfully.' Id. A complaint which pleads facts

'merely consistent with' a defendant's liability, [ ] 'stops short of the line between possibility and plausibility of "entitlement of relief." ' " Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011) cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007). The court may also consider "undisputedly authentic document[s] that a defendant attached as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] documents." Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, "documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered." Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 560 (3d Cir. 2002); see also, U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 382, 388 (3d Cir. 2002) (holding that "[a]lthough a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss in one for summary judgment."). However, the court may not rely on other parts of the record in determining a motion to dismiss. Jordan v. Fox, Rothschild, O'Brien & Frankel, 20

F.3d 1250, 1261 (3d Cir. 1994).

B. Legal Standards Governing Statutory Bad Faith Claims Under 42 Pa. Cons. Stat. § 8371

Pennsylvania law provides for a cause of action by insurance customers against insurance companies that engage in bad faith claims handling, stating that:

> In an action arising under an insurance policy, if the court finds that the insurer has acted in bad faith toward the insured, the court may take all of the following actions: (1) Award interest on the amount of the claim from the date the claim was made by the insured in an amount equal to the prime rate of interest plus 3%; (2) Award punitive damages against the insurer; (3) Assess court costs and attorney fees against the insurer.

42 Pa. Cons. Stat. § 8371.

Under Pennsylvania law, "[b]ad faith is a frivolous or unfounded refusal to pay, lack of investigation into the facts, or a failure to communicate with the insured." Frog, Switch & Mfg. Co., Inc. v. Travelers Ins. Co., 193 F.3d 742, 751 (3d Cir. 1999) (citing Coyne v. Allstate Ins. Co., 771 F.Supp. 673, 678 (E.D. Pa. 1991) (bad faith is failure to acknowledge or act promptly on the claims or refusing to pay without reasonable investigation of all available information); Romano v. Nationwide Mut. Fire Ins. Co., 646 A.2d 1228 (1994)). "Ultimately, in order to recover on a bad faith claim, the insured must prove: (1) that the insurer did not have a reasonable basis for denying benefits under the policy; and (2) that the insurer knew of or recklessly disregarded its lack of a reasonable basis in denying the claim."

Nw. Mut. Life Ins. Co. v. Babayan, 430 F.3d 121, 137 (3d Cir. 2005). Case law sets exacting standards for any bad faith claim. As the Court of Appeals has observed:

> In the primary case construing bad faith under 42 Pa.C.S.A. § 8371, Terletsky v. Prudential Property & Casualty Co., the Superior Court of Pennsylvania explained:
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> > "Bad faith" on [the] part of [an] insurer is any frivolous or unfounded refusal to pay proceeds of a policy; it is not necessary that such refusal be fraudulent. For purposes of an action against an insurer for failure to pay a claim, such conduct imports a dishonest purpose and means a breach of a known duty (i.e., good faith and fair dealing), through some motive of self-interest or ill will; mere negligence or bad judgment is not bad faith.
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> 437 Pa.Super. 108, 125, 649 A.2d 680, 688 (Pa. Super. Ct.1994) (quoting Black's Law Dictionary 139 (6th ed.1990)). Terletsky held that, "to recover under a claim of bad faith," the insured must show that the insurer "did not have a reasonable basis for denying benefits under the policy and that the insurer knew of or recklessly disregarded its lack of reasonable basis in denying the claim." Id. Thus, an insurer may defeat a claim of bad faith by showing that it had a reasonable basis for its actions. Horowitz v. Federal Kemper Life Assurance Co., 57 F.3d 300, 307 (3d Cir.1995). Our Court has described "the essence of a bad faith claim" as "the unreasonable and intentional (or reckless) denial of benefits." UPMC Health Sys. v. Metro. Life. Ins. Co., 391 F.3d 497, 506 (3d Cir.2004). Bad faith "must be proven by clear and convincing evidence and not merely insinuated." Terletsky, 649 A.2d at 688 (collecting cases). As the

> District Court noted, this heightened standard requires the insured to provide evidence "so clear, direct, weighty and convincing as to enable a clear conviction, without hesitation, about whether or not the defendants acted in bad faith." Bostick v. ITT Hartford Grp., 56 F.Supp.2d 580, 587 (E.D. Pa. 1999) (citations omitted).

Amica Mut. Ins. Co. v. Fogel, 656 F.3d 167, 179 (3d Cir. 2011).

These same exacting standards apply to assessing the sufficiency of complaints alleging bad faith claims under § 8371. When considering whether a proposed statutory bad faith claim under § 8371 fails as a matter of law,

> Many federal district courts have recently been called upon to evaluate bad faith complaints in light of Iqbal and Twombly. Under these Supreme Court decisions, plaintiffs must plead sufficient facts to make out a plausible claim for relief against the defendant. See Iqbal, 129 S. Ct. at 1949 (quoting Twombly, 550 U.S. at 557). In the bad faith context, district courts have required more than "conclusory" or "bare-bones" allegations that an insurance company acted in bad faith by listing a number of generalized accusations without sufficient factual support. See e.g., Liberty Ins. Corp. v. PGT Trucking, Inc., Civ. A. No. 11−151, 2011 WL 2552531, at *4 (W.D.Pa. Jun. 27, 2011); Pfister v. State Farm Fire & Cas. Co., Civ. A. No. 11−799, 2011 WL 3651349 (W.D.Pa. Aug. 18, 2011); Atiyeh, 742 F.Supp.2d at 599 ("However, these averments are merely conclusory legal statements and not factual averments.").

Palmisano v. State Farm Fire & Cas. Co., CIV.A. 12-886, 2012 WL 3595276 (W.D. Pa. Aug. 20, 2012). See Yohn v. Nationwide Ins. Co., 1:13-CV-024, 2013 WL 2470963 (M.D. Pa. June 7, 2013) (collecting cases).

Thus, the assessment of the sufficiency of a particular complaint often turns

on the specificity of the pleadings and calls for recital of specific factual allegations from which bad faith may be inferred in order to defeat a motion to dismiss. Compare Sypeck v. State Farm Mut. Auto. Ins. Co., 3:12-CV-324, 2012 WL 2239730 (M.D. Pa. June 15, 2012) with Zimmerman v. State Farm Mut. Auto. Ins. Co., 3:11-CV-1341, 2011 WL 4840956 (M.D. Pa. Oct. 12, 2011).[2] Where a complaint's § 8371 bad faith claim simply relies upon breach of contract allegations, coupled with a conclusory assertion that the failure to pay under an insurance policy was "unreasonable" or made in bad faith, courts have dismissed such claims, but typically have afforded litigants an opportunity to further amend and articulate their bad faith claims. See e.g., Wanat v. State Farm Mut., Auto. Ins. Co., 4:13-CV-1366,

[2] The parties' briefs aptly illustrate the fact specific and factually intensive nature of this inquiry as the defendants cite two cases from this court which granted motions to dismiss bad faith claims which were cast in terms similar to some of the averments set forth in this complaint, Rickell v. USAA Cas. Ins. Co., No. 1:18-CV-1279, 2018 WL 5809865, at *1 (M.D. Pa. Nov. 6, 2018); Westfield Ins. Co. v. Icon Legacy Custom Modular Homes, No. 4:15-CV-00539, 2016 WL 4502456, at *1 (M.D. Pa. Aug. 29, 2016), while the plaintiffs have relied upon cases from this district which have found that some additional factual averments like those made here are legally sufficient at the pleading stage to state a claim upon which relief may be granted. Long v. Hartford Life & Accident Ins. Co., No. 4:16-CV-00138, 2016 WL 4502462, at *1 (M.D. Pa. Aug. 29, 2016).

2014 WL 220811 (M.D. Pa. Jan. 21, 2014); Cacciavillano v. Nationwide Ins. Co. of Am., 3:12-CV-530, 2012 WL 2154214 (M.D. Pa. June 13, 2012).

C. The Defense Motion Should be Denied Without Prejudice to Renewal of Any Dispositive Motion at the Close of Discovery.

Judged against these legal benchmarks, while we regard this as a close case, we recommend that American State's motions to dismiss be denied without prejudice to renewal as a motion for summary judgment upon the completion of discovery. In its motions to dismiss, American States asserts that the plaintiff's complaint fails to meet the exacting standard of pleading required for a statutory bad faith claim under § 8371. However, at this stage of the proceedings, where our review is cabined by the well-pleaded facts in the complaint, we are constrained to disagree.

In reaching this conclusion, we find that complaint, taken as a whole, goes beyond a mere boilerplate recital of the elements of the statute. Rather, as we construe the complaint, it provides the following chronology detailing a failure by American States to honor this UIM claim: First, the plaintiffs allege that Joseph Vadella suffered a host of serious injuries in August of 2015 when he was struck by an underinsured motorist. (Doc. 2, ¶¶ 7-9,11.) According to the Vadellas, at the time of the accident, their UIM policy with American States was in effect and they had

paid all applicable premiums. (Id., ¶¶ 6-8.) The underinsured motorist who had injured Vadella in this accident offered the plaintiffs the policy limits on the tortfeasor's policy, (Id., ¶ 14), but Joseph Vadella had suffered injuries and losses in this 2015 accident that exceeded those policy limits. Accordingly, the plaintiffs made a claim for underinsured motorist coverage with American States. (Id., ¶ 15.) Despite providing American States with all pertinent medical records and bills, and fulfilling all of their policy obligations, the plaintiffs assert that American States has unreasonably refused to honor its policy obligations. (Id., ¶¶ 16-19.) The plaintiffs couple these averments with what they assert was further proof of bad faith on the defendant's part, alleging that there was an unreasonable delay by American in beginning to make medical payments in their case. Specifically, according to the plaintiffs: "Defendant, AMERICAN, was promptly notified of Plaintiff, JOSEPH VADELLA's injuries [but] Defendant, AMERICAN, after and only after litigation against its parent company Safeco Insurance was initiated, began to pay and continues to pay medical payments to Plaintiff, JOSEPH VADELLA." (Id., ¶¶12-13.)

In our view, these averments, while spare, go beyond the type of mere boilerplate allegations that courts have found to be too conclusory to sustain a bad faith claim. On this score, we recognize that a bad faith denial of an insurance claim

may constitute a violation of § 8371, but in this setting, "[i]n order to show bad faith, a claimant must ultimately establish by clear and convincing evidence both that: 1) 'the insurer lacked a reasonable basis for denying benefits;' and 2) 'the insurer knew or recklessly disregarded its lack of reasonable basis.' Klinger v. State Farm Mut. Auto. Ins. Co., 115 F.3d 230, 233 (3d Cir.1997) (discussing Terletsky v. Prudential Property and Cas. Ins. Co., 437 Pa.Super. 108, 649 A.2d 680, 688 (1994))." Padilla v. State Farm Mut. Auto. Ins. Co., 31 F. Supp. 3d 671, 675 (E.D. Pa. 2014).

While this is an exacting burden of proof, these bad faith determinations are often fact-bound decisions that are not amenable to resolution on the pleadings alone. Instead, "[i]n deciding whether an insurer had a reasonable basis for denying benefits, a court should examine what factors the insurer considered in evaluating a claim. See Terletsky, 649 A.2d at 688–89. 'Bad faith claims are fact specific and depend on the conduct of the insurer *vis à vis* the insured.' Condio v. Erie Ins. Exchange, 899 A.2d 1136, 1143 (Pa. Super. 2006) (citing Williams v. Nationwide Mutual Ins. Co., 750 A.2d 881, 887 (Pa. Super. 2000))." Padilla, 31 F. Supp. 3d at 675. Thus, while American States vigorously disputes these averments of bad faith and argues that the facts alleged by the plaintiffs support a prudent effort on its part to thoroughly examine and resolve a potentially meritless claim, this argument invites us to go beyond the pleadings themselves and resolve essentially factual

questions. This is a task which, in our view, may not be performed on consideration of a motion to dismiss, where we must simply assess the adequacy of the pleadings. Accordingly, we should decline American State's invitation to resolve this bad faith claim as a matter of law on the pleadings but deny this motion without prejudice to renewal of any summary judgment motion at the close of discovery. See Baltzley v. State Farm Mut. Auto. Ins. Co., No. 3:18-CV-00959, 2018 WL 6977709, at *1 (M.D. Pa. Dec. 11, 2018), report and recommendation adopted, No. 3:18-CV-959, 2019 WL 122990 (M.D. Pa. Jan. 7, 2019) (denying motion to dismiss bad faith claim without prejudice to summary judgment consideration) (Mariani, J.)

III. Recommendation

For the foregoing reasons, IT IS RECOMMENDED that American State's Motions to Dismiss, (Docs. 4 and 5), be DENIED without prejudice to renewal through a motion for summary judgment upon a fully developed factual record.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. ' 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing

requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 19th day of July 2019.

S/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge