IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

YVAN JAYNE, *Plaintiff,*	§	
	§	
	§	**6:22-CV-00564-ADA-JCM**
v.	§	
	§	
HEALTH CARE SERCIE CORP., A MUTUAL LEGAL RESERVE CO., D/B/A BLUE CROSS AND BLUE SHIELD OF TEX., et al, *Defendant.*	§	

ORDER ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION

Before the Court is the Report and Recommendation of United States Magistrate Judge Jeffrey C. Manske. ECF No. 25. The report recommends that this Court grant Defendant Health Care Service Corporation's Rule 12(b)(6) Partial Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 15). The report and recommendation was filed on March 1, 2023.

A party may file specific, written objections to the proposed findings and recommendations of the magistrate judge within fourteen days after being served with a copy of the report and recommendation, thereby securing *de novo* review by the district court. 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). As of today, neither party has filed objections.

When no objections are timely filed, a district court reviews the magistrate judge's report and recommendation for clear error. *See* Fed. R. Civ. P. 72 advisory committee's note ("When no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation."). The Court has reviewed the report and recommendation and finds no clear error.

IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge Manske (ECF No. 25) is **ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Partial Motion to Dismiss (ECF No. 15) is **GRANTED** and that Plaintiff's breach of the duty of good faith and fair dealing claim and Plaintiff's claim under Chapter 541 of the Texas Insurance Code be dismissed as barred by limitations. Plaintiff's breach of contract and Chapter 542 of the Texas Insurance Code claims remain.

SIGNED this 16th day of March, 2022.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

YVAN JAYNE,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO. 6:22-CV-00564-ADA-JCM**
	§	
HEALTH CARE SERVICE CORP., A MUTUAL LEGAL RESERVE CO., D/B/A BLUE CROSS AND BLUE SHIELD OF TEX., et al,	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE

TO: THE HONORABLE ALAN D ALBRIGHT, UNITED STATES DISTRICT JUDGE

This Report and Recommendation is submitted to the Court pursuant to 28 U.S.C. § 636(b)(1)(C), Fed. R. Civ. P. 72(b), and Rules 1(f) and 4(b) of Appendix C of the Local Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges. Before the Court is Defendant Health Care Service Corporation's Rule 12(b)(6) Partial Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 15) and the response and reply thereto. For the reasons described below, the Court **RECOMMENDS** that Defendant's Motion be **GRANTED**.

I. BACKGROUND

Plaintiff was treated at Brooke Army Medical Center at Fort Sam Houston on April 28, 2018. Pl.'s Second Am. Compl. (ECF No. 24) at ¶ 8. At the time, Plaintiff was insured by Health Care Service Corporation ("Defendant"). *Id.* at ¶ 11. Plaintiff's bill from his treatment at the

Medical Center was $85,458.54. *Id.* at ¶ 15. The Medical Center submitted the bill to Defendant. *Id.* at ¶ 16.

Defendant alleges that it processed and partially denied Plaintiff's claims on July 30, 2018. Def.'s Mot., Ex. A-1. Plaintiff asserts that the Medical Center notified Plaintiff that Defendant paid part of the bill, leaving Plaintiff with a balance. Pl.'s Second Am. Compl. at ¶ 17. The Medical Center resubmitted the claim to Defendant, and Defendant again refused to pay the remaining balance. *Id.* at ¶ 19–20. Plaintiff filed an internal appeal with Defendant in early 2020 which Defendant denied. *Id.* at ¶ 22.

Plaintiff sued Defendant on April 29, 2022, for breach of contract, violations of Chapter 541 of the Texas Insurance Code, violations of Chapter 542 of the Texas Insurance Code, common law bad faith, and deceptive trade practices in the 18th Judicial District Court, Somervell County, Texas. *See* Def.'s Notice of Removal (ECF No. 1), Ex. A-2. Defendant filed a notice of removal on April 1, 2022. Def.'s Notice of Removal. Plaintiff filed an Amended Complaint, pleading only causes of action for breach of contract, violations of Chapter 541 of the Texas Insurance Code, violations of Chapter 542 of the Texas Insurance Code, and common law bad faith. Pl.'s Am. Compl. (ECF No. 12). Defendant filed the present motion, asking the Court to dismiss Plaintiff's common law bad faith and Chapter 541 claims. Def.'s Mot. at 2. Plaintiff filed a Motion for Leave to File Second Amended Complaint, which the Court granted. Pl.'s Mot. for Leave (ECF No. 13); Order (ECF No. 23).

II. LEGAL STANDARD

To avoid dismissal for failure to state a claim pursuant to Rule 12(b)(6), a plaintiff must plead 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). The court accepts all well-pleaded facts as true, viewing

them in the light most favorable to the plaintiff. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007).

The court determines whether the plaintiff has stated both a legally cognizable and plausible claim; the court should not evaluate the plaintiff's likelihood of success. *Lone Star Fund V. (U.S.), LP v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010). Based upon the assumption that all the allegations in the complaint are true, the factual allegations must be enough to raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555. A court, however, need not blindly accept each and every allegation of fact; properly pleaded allegations of fact amount to more than just conclusory allegations or legal conclusions masquerading as factual conclusions. *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002); *see Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009).

When the plaintiff pleads factual content that allows the court to reasonably infer that the defendant is liable for the alleged misconduct, then the claim is plausible on its face. *Iqbal*, 556 at 678. The plausibility standard, unlike the "probability requirement," requires more than a sheer possibility that a defendant acted unlawfully. *Id.* A pleading offering "labels and conclusions" or "a formulaic recitation of the elements of a cause of action" will not suffice. *Twombly*, 550 U.S. at 555.

III. DISCUSSION

Defendant moved to dismiss Plaintiff's bad-faith breach and Chapter 541 causes of action, arguing that they are barred by the statute of limitations. Defendant has the burden of proving its affirmative defense, including the date on which limitations commenced. *Provident Life and Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 220 (Tex. 2003) (citations omitted).

A person must bring an action under Chapter 541 before the second anniversary of the date the unfair or deceptive act or practice happened, or the date the person discovered or should have discovered that the unfair or deceptive act or practice occurred. Tex. Ins. Code Ann. § 541.162(a). A cause of action under the Texas Insurance Code for unfair or deceptive acts or practices based on a denial of insurance coverage accrues when the insurer denies coverage. *Celtic Life Ins. Co. v. Coats*, 885 S.W.2d 96, 100 (Tex. 1994).

A cause of action for breach of the duty of good faith and fair dealing must be brought within two years of the date on which the cause of action accrued. *Provident Life and Accident Ins. Co.*, 128 S.W.3d at 221 citing Tex. Civ. Prac. & Rem. Code § 16.003(a). Under Texas law, a cause of action for bad-faith breach of a first-party insurance contract accrues when the insurer denies the insured's claim. *Id.* (citation omitted). When there is no outright denial of a claim, the exact date of accrual is a question of fact. *Murray v. San Jacinto Agency, Inc.*, 800 S.W.2d 826, 828 n. 2 (Tex. 1990).

Defendant argues that both causes of action accrued on July 30, 2018, when Defendant processed the denial of Plaintiff's claim and mailed it to Plaintiff. Def.'s Mot. at 2. To support this accrual date, Defendant submitted a Declaration of Suzanne Livorsi, a senior project coordinator. Def.'s Ex. A. Ms. Livorsi asserted that Plaintiff's claim determination was "processed on July 30, 2018 and mailed to [Plaintiff] on or about the same day." *Id.* at 1. Defendant also submitted a copy of the explanation of benefits ("EOB"). Def.'s Ex. A. The EOB lists the processing date as July 30, 2018. *Id.* Under this theory, the challenged claims are clearly barred by limitations since Plaintiff filed suit nearly four years later.

Plaintiff argues that Defendant has failed to conclusively establish its affirmative defense because Defendants "July 2018 EOB did not authorize [Plaintiff] to seek a judicial remedy."

Pl.'s Resp. (ECF No. 16) at 4. Plaintiff argues that he "was not authorized to seek a judicial remedy until [Defendant] denied his appeal in early 2020." *Id.* at 5. Plaintiff further argues that the EOB "was not an outright denial of a claim." *Id.* at 4. Plaintiff contends that it was reasonable for him to "contact his medical provider to find out if he owed more than the allowed amount, not pursue a judicial remedy." *Id.*

Plaintiff's arguments are unavailing. Texas law does "not require an insurer to include 'magic words' in its denial of a claim if an insurer's determination regarding a claim and its reasons for the decision are contained in a clear writing to the insured." *Provident Life and Accident Ins. Co.*, 128 S.W.3d at 222. The EOB clearly stated the amount covered and uncovered under the plan. Def.'s Ex. A. Thus, Plaintiff's causes of action under the Texas Insurance Code and for common law breach of the duty of good faith and fair dealing accrued on July 30, 2018, when Plaintiff's claim was processed and denied.

Plaintiff appears to argue that the availability of internal and external review procedures prevented Plaintiff from filing suit. *See* Pl.'s Resp. at 5. Plaintiff cites no case law supporting this argument. Case law governing reviews of coverage denials holds the opposite. The "law governing reinvestigation situations requires that, in order to restart the limitations clock, the insurance company must expressly or impliedly withdraw or change their position with regard to a claim by an action such as making a new payment or taking another action inconsistent with their previous decision." *Ruelas v. State Farm Lloyds*, No. CV B-10-286, 2012 WL 13059192, at *4 (S.D. Tex. July 6, 2012) (citations omitted). Plaintiff agrees that Defendant never changed its position on the denial. Pl.'s Resp. at 2. There is also no indication that Defendant took any action inconsistent with its prior decision. Thus, the limitations clock did not restart, and Plaintiff's causes of action are barred by limitations.

Plaintiff also argues that Defendant's Motion to Dismiss is premature because Plaintiff had filed a Motion for Leave to File a Second Amended Complaint. *Id.* at 5. Plaintiff explains that the Second amended Complaint, which asserted a claim for declaratory judgment against the Medical Center, would supplant his First Amended Complaint. Plaintiff's argument is generally correct; however, Plaintiff's Second Amended Complaint contains the same claims against Defendant. Thus, Defendant's arguments in its Motion to Dismiss are equally applicable to the Second Amended Complaint.

IV. CONCLUSION

For the reasons outlined above, the undersigned **RECOMMENDS** that the Defendant's Motion (ECF No. 15) be **GRANTED** and that Plaintiff's breach of the duty of good faith and fair dealing claim and Plaintiff's claim under Chapter 541 of the Texas Insurance Code be dismissed as barred by limitations. Plaintiff's breach of contract and Chapter 542 of the Texas Insurance Code claims remain.

V. OBJECTIONS

The parties may wish to file objections to this Report and Recommendation. Parties filing objections must specifically identify those findings or recommendations to which they object. The District Court need not consider frivolous, conclusive, or general objections. *See Battle v. U.S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the District Court of the proposed findings and recommendations in the Report. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v Arn*, 474 U.S. 140, 150–53 (1985); *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

Except upon grounds of plain error, failing to object shall further bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas*, 474 U.S. at 150–53; *Douglass*, 79 F.3d at 1415.

SIGNED this 1st day of March 2023.

JEFFREY C. MANSKE
UNITED STATES MAGISTRATE JUDGE