IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DEBBIE SANDS,

Plaintiff,

v.

MIDLAND NATIONAL LIFE INSURANCE COMPANY,

Defendant.

MIDLAND NATIONAL LIFE INSURANCE COMPANY,

Counterclaim Plaintiff,

v.

DEBBIE SANDS,

Counterclaim Defendant.

MIDLAND NATIONAL LIFE INSURANCE COMPANY,

Third-Party Plaintiff,

v.

DANIEL NORMAN,

Third-Party Defendant.

DANIEL NORMAN,

Cross-Claim Plaintiff,

v.

DEBBIE SANDS,

Cross-Claim Defendant.

No. 4:22-cv-00259-RGE-WPK

ORDER GRANTING MOTION TO DISMISS CROSS-CLAIM

I. INTRODUCTION

Plaintiff and Cross-Claim Defendant Debbie Sands brought this action against Defendant and Counterclaim Plaintiff Midland National Insurance Company in August 2022. Compl., ECF No. 1. Sands alleges one count of breach of contract and seeks a declaratory judgment to

resolve a dispute regarding the death benefit proceeds from the life insurance policies of Eric Baxley. *Id.* ¶¶ 10, 13–20. Sands and Third-Party Defendant and Cross-Claim Plaintiff Daniel Norman have both made claims to Baxley's death benefit proceeds. *See* Midland's Answer, Defenses, Countercl., and Third-Party Compl. 6, 10, ECF No. 9. Midland filed an interpleader action pursuant to Federal Rule of Civil Procedure 22 to resolve the dispute. ECF No. 9 at 5–12. In December 2022, Norman filed a cross-claim against Sands, alleging Sands violated the California Elder Abuse and Dependent Adult Civil Protection Act. Norman's Answer and Cross-Claim, ECF No. 17. Sands moves to dismiss Norman's cross-claim. Sands's Mot. Dismiss, ECF No. 21. As explained below, Norman fails to state a claim against Sands upon which relief may be granted. The Court grants Sands's motion to dismiss.

II. BACKGROUND

The Court accepts the facts set forth in Norman's cross-claim as true for the purpose of analyzing Sands's motion to dismiss. *See Brown v. Medtronic, Inc.*, 628 F.3d 451, 459 (8th Cir. 2010).

Midland issued two life insurance policies to Eric Baxley in 2016. ECF No. 9 at 6; *see* ECF No. 17 at 6.[1] Between January 16 and February 11, 2022, Midland received a series of beneficiary change requests designating Sands as the sole primary beneficiary of Baxley's two policies. ECF No. 9 at 7–8. Baxley was in "poor health" and had been "in and out of the hospital" between July 2021 and March 2022. ECF No. 17 at 8. Baxley was hospitalized "in or about February and March" 2022. *Id.* On February 25, 2022, the insurance agent assigned to Baxley's policies contacted Midland to report suspected fraud. ECF No. 9 at 9. Midland subsequently opened an investigation into Baxley's beneficiary changes. *Id.* at 9–10. Local law enforcement officials opened an investigation into the same. *Id.* at 10. Baxley died on March 5, 2022, at the age of forty-five.

[1] Norman realleges the allegations asserted in Midland's countercomplaint. *See* ECF No. 17 at 6.

Id. at 6. At the time of his death, Sands was listed as the primary beneficiary for both of Baxley's policies. *See id.* at 7–10. Norman was listed as the contingent beneficiary for the policies. *See id.* at 8–10. After Baxley's death, Sands submitted a claim for his death benefit proceeds. *Id.*

Norman brings a claim against Sands under the California Elder Abuse and Dependent Adult Civil Protection Act. *See* ECF No. 17 at 6–12. Norman seeks to disqualify Sands from receiving death benefit proceeds from Baxley's life insurance policies due to her alleged violation of the Act. *Id.* at 6–12. He alleges Sands violated the act "by procuring the alleged change of beneficiary designation at a time when [Baxley] was suffering from health issues." *Id.* at 10–11. Sands moves to dismiss Norman's cross-claim under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. Sands's Mot. Dismiss Norman's Cross-Claim, ECF No. 21. Norman resists. Norman's Resist. Sands's Mot. Dismiss Cross-Claim, ECF No. 27. The parties did not request oral argument, and the Court declines to order it, finding the parties' briefing adequately presents the issues. *See* Fed. R. Civ. P. 78(b); LR 7(c). Having considered the parties' briefing and applicable law, the Court grants Sands's motion to dismiss.

Additional facts are set forth below as necessary.

III. LEGAL STANDARD

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *accord Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009). "The essential function of a complaint under the Federal Rules of Civil Procedure is to give the opposing party 'fair notice of the nature and basis or grounds for a claim, and a general indication of the type of litigation involved.'" *Topchian v. JPMorgan Chase Bank, N.A.*, 760 F.3d 843, 848 (8th Cir. 2014) (quoting *Hopkins v. Saunders*, 199 F.3d 968, 973 (8th Cir. 1999)). The Court must accept as true all factual allegations in the complaint, but not its legal conclusions. *Iqbal*, 556 U.S. at 678–79

(citing *Twombly*, 550 U.S. at 555–56). "In deciding a motion to dismiss under Rule 12(b)(6), a court assumes all facts in the complaint to be true and construes all reasonable inferences most favorably to the complainant." *United States ex rel. Raynor v. Nat'l Rural Utils. Coop. Fin., Corp.,* 690 F.3d 951, 955 (8th Cir. 2012).

A plausible claim for relief "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Plaintiffs must "nudge[ ] their claims across the line from conceivable to plausible, [else] their complaint must be dismissed." *Twombly*, 550 U.S. at 570. "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

IV. DISCUSSION

Sands moves to dismiss Norman's cross-claim on two grounds. First, Sands argues Baxley did not qualify as a protected person within the meaning of the California Elder Abuse and Dependent Adult Civil Protection Act. Sands's Br. Supp. Mot. Dismiss 2–5, ECF No. 21-1. Sands next argues Norman's cross-claim does not plead sufficient facts to support his cause of action. *Id.* at 5–6. The Court need not decide whether Baxley was a protected person within the meaning of the Act. Even if Baxley qualified as a "dependent adult" at the time of the alleged wrongdoing, Norman fails to allege sufficient facts to support a claim against Sands for financial abuse of a dependent adult under the Act. Accordingly, the Court grants Sands's motion to dismiss.

A. Failure to State a Plausible Claim for Relief

The California Elder Abuse and Dependent Adult Civil Protection Act protects two categories of persons: "elders" and "dependent adults." Cal. Welf. & Inst. Code § 15600. A person is considered an "elder" under the Act if the person is sixty-five years of age or older. *Id.*

§ 15610.27. The Act defines a "dependent adult" as a person "between the ages of 18 and 64 years who resides in [California] and who has physical or mental limitations that restricts his or her ability to carry out normal activities or to protect his or her rights." *Id.* § 15610.23(a). A dependent adult "includes any person between the ages of 18 and 64 years who is admitted as an inpatient to a 24-hour health facility." *Id.* § 15610.23(b).

Norman argues Baxley qualified for protection as a dependent adult at the time of Sands's alleged violation of the Act. *See* ECF No. 27 at 5–7. He contends Baxley qualified as a dependent adult because he was hospitalized "in or about" February and March 2022. ECF No. 17 at 8.[2] Between January 16 and February 21, 2022, Midland received a series of beneficiary change requests designating Sands as the sole beneficiary of Baxley's life insurance policies. ECF No. 9 at 7–9. Norman alleges Sands committed financial abuse by "trying to make herself the beneficiary" of Baxley's policies during a time when Baxley was hospitalized. ECF No. 17 at 9–11; *see also* ECF No. 27 at 5–6.

Sands contends Baxley does not qualify for protection as a dependent adult under the Act. ECF No. 21-1 at 2–5. She argues Baxley's hospitalization occurred "after the dates of the relevant policy change requests." *Id.* at 3–4. Assuming without deciding that Baxley was a dependent adult at the time of the relevant beneficiary change requests, Norman fails to allege sufficient facts to support a claim against Sands under the Act.

Norman alleges Sands violated the Act by committing financial abuse against Baxley. ECF No. 17 at 9–11; ECF No. 27 at 8. Financial abuse of a dependent adult occurs when a person does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an

[2] The Court notes Norman's resistance asserts his cross-claim alleges Baxley "was hospitalized in January and February 2022." ECF No. 27 at 6 (citing ECF No. 17 at 8). This is incorrect. Norman's cross-claim alleges Baxley was hospitalized "in or about February and March, 2022" and was "in and out of the hospital since July, 2021." ECF No. 17 at 8. Norman does not allege Baxley was hospitalized in January 2022.

> elder or dependent adult for a wrongful use or with intent to defraud, or both.
> (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
> (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in [California Welfare and Institutions Code] Section 15610.70.

Cal. Welf. & Inst. Code § 15610.30(a). Sands argues Norman's cross-claim does not contain sufficient factual allegations to state a plausible claim for relief. ECF No. 21-1 at 6 (citing *Iqbal*, 556 U.S. at 678). Sands further argues Norman fails to plead facts to support his cross-claim with the particularity required by Federal Rule of Civil Procedure 9(b).

Rule 9(b) dictates "[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake." Fed. R. Civ. P. 9(b). Federal courts are in agreement that "[w]hen the gravamen of an alleged [California] Elder Abuse [and Dependent Adult Civil Protection] Act violation is fraud, the plaintiff must comply with the heightened pleading requirements of Rule 9(b)." *Welsh v. Am. Home Mortg. Assets, L.L.C.*, No. 4:13-CV-04750 CW, 2014 WL 4954144, at *15 (N.D. Cal. Sept. 30, 2014) (citing *Trapp v. Chase Home Fin., L.L.C.*, No. 5:09-cv-01178-DEW-PJW, 2010 WL 4703864, at *6 (C.D. Cal. Nov. 12, 2010)).

Norman alleges Sands fraudulently procured changes to Baxley's life insurance policies. ECF No. 17 at 6–10. As such, the circumstances constituting Sands's alleged fraud must be "state[d] with particularity." Fed. R. Civ. P. 9(b). Norman, however, provides no such facts to support his cross-claim against Sands. He does not allege any specific facts describing what Sands did to violate the Act. *See generally* ECF No. 17 at 6–12. He merely alleges Sands is responsible for "taking, secreting, appropriating, obtaining, retaining, or assisting in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence" and "taking, secreting, appropriating, obtaining and/or retaining [Baxley's] beneficiary intentions, as property, including cash assets, personal property, by undue influence."

ECF No. 17 at 10.

These bare allegations simply track the statutory elements for financial abuse under California law. *See* Cal. Welf. & Inst. Code § 15610.30. Norman's "formulaic recitation of the elements of [the] cause of action" are insufficient to survive a motion to dismiss, and certainly do not allege financial abuse with the particularity required by Rule 9(b). *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555); *cf. Welsh*, 2014 WL 4954144, at *15. As such, Norman fails to state a claim for relief under the California Elder Abuse and Dependent Adult Civil Protection Act. The Court therefore grants Sands's motion to dismiss.

B. Leave to Amend

Norman requests leave to amend his cross-claim in a cursory manner. *See* ECF No. 27 at 8. Norman suggests there are "additional facts" relating to the timeline of Baxley's hospitalizations that will be obtained in discovery. *Id.* at 8–9. Norman's request does not comply with the local rules. "A party moving to amend or supplement a pleading . . . must describe in the motion the changes sought, and must electronically attach to the motion and file under the same docket entry the proposed amended or supplemented pleading." LR 15. Moreover, "[a] resistance to a motion may not include a separate motion or a cross-motion by the responding party. Any separate motion or cross-motion must be filed separately as a new motion." LR 7(e). As such, Norman's non-compliant motion to amend is denied.

V. CONCLUSION

For the foregoing reasons, Plaintiff Debbie Sands's Motion to Dismiss Cross-Claim, ECF No. 21, is **GRANTED.**

IT IS SO ORDERED.

Dated this 15th day of May, 2023.

REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE