

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STEPHANE SIANTOU,	§	No. 1:24-cv-00742-DAE
<i>Plaintiff,</i>	§	
	§	
vs.	§	
	§	
NSURE INSURANCE SERVICES,	§	
INC.,	§	
<i>Defendant.</i>	§	

ORDER (1) GRANTING IN PART DEFENDANT’S MOTION TO DISMISS WITH LEAVE TO AMEND AND (2) DENYING PLAINTIFF’S MOTION TO STRIKE

Before the Court are (1) Defendant NSure Insurance Services, Inc.’s (“Defendant” or “NSure”) Motion to Dismiss, filed on August 30, 2024 (Dkt. # 7), and (2) Plaintiff Stephane Siantou’s (“Plaintiff” or “Siantou”) Motion to Strike Defendant’s Motion to Dismiss, filed on September 23, 2024. (Dkt. # 10.) On September 30, 2024, Defendant filed its reply in support of its motion to dismiss and in response to Plaintiff’s motion to strike. (Dkt. # 11.) The Court finds these matters suitable for disposition without a hearing.

After careful consideration of the filings and relevant case law, the Court, for the following reasons, **GRANTS IN PART WITH LEAVE TO AMEND** Defendant’s Motion to Dismiss (Dkt. # 7) and **DENIES** Plaintiff’s Motion to Strike. (Dkt. # 11.)

BACKGROUND

This case involves the cancellation of a homeowner's policy based on an alleged failure to notify Plaintiff that his payments were not being received by the insurance company. In January 2022, Plaintiff purchased a home in San Antonio and was required to obtain homeowner insurance. (Dkt. # 1 at 4.) Plaintiff enlisted the services of NSure, as an alleged "insurance agent," to secure homeowner insurance for his home with an insurance company named Safeco Insurance Company ("Safeco"). (Id.)

As part of his Closing Disclosure agreement, Plaintiff allegedly was to monthly fund an escrow in North American Savings Bank, the mortgage servicer, for the purposes of paying property taxes, homeowner insurance with Safeco, and home mortgage insurance. (Id.) Plaintiff alleges that NSure was supposed to apprise itself of the Closing Disclosure, which contained said monthly payment information. (Id.)

As a result of a service provider change to Plaintiff's mortgage account in March or April 2022, Plaintiff's homeowner payments to his escrow account were allegedly no longer being sent to Safeco. (Id. at 5.) Consequently, Plaintiff's homeowner insurance premiums claimed by Safeco went unpaid for many months. (Id. at 6.) Plaintiff alleges that he did not receive any notice from Safeco that his insurance premiums had gone unpaid, but that NSure was receiving

notices from Safeco regarding this delinquency. (Id.) Plaintiff alleges that NSure failed to inform Plaintiff about those notices being received from Safeco. (Id.)

Because Plaintiff's homeowner insurance premiums by Safeco went unpaid, Safeco cancelled Plaintiff's homeowner insurance. (Id.) Thereafter, Plaintiff's home was allegedly uninsured, and his account was sent to a collection agency, which affected his credit. (Id.) Plaintiff was not made aware of his homeowner insurance cancellation until his credit had already been affected. (Id.)

On July 1, 2024, Plaintiff filed suit against Defendant. (Dkt. # 1.) Plaintiff asserts claims for promissory estoppel, breach of fiduciary duty, violation of the Texas Deceptive Trade Practices Act, and negligence. On August 30, Defendant filed its motion to dismiss. (Dkt. # 7.) On September 23, 2024, Plaintiff filed his motion to strike and response to the motion to dismiss. (Dkt. # 10.) On September 30, 2024, Defendant filed its reply. (Dkt. # 11.)

LEGAL STANDARD

I. 12(b)(1)

A motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure challenges a federal court's subject matter jurisdiction. See Fed. R. Civ. P. 12(b)(1). Under Rule 12(b)(1), a claim is properly dismissed for lack of subject matter jurisdiction when a court lacks statutory or constitutional authority to adjudicate the claim. Home Builders Assoc. of Mississippi, Inc. v. City of

Madison, 143 F.3d 1006, 1010 (5th Cir. 1998). When a Rule 12(b)(1) motion is filed in conjunction with other Rule 12 motions, courts should consider the “jurisdictional attack before addressing any attack on the merits.” Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001). The Court must first address subject matter jurisdiction because, without it, the case can proceed no further. Ruhrgas Ag v. Marathon Oil Co., 526 U.S. 574, 583 (1999); Ramming, 281 F.3d at 161.

In considering a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, “a court may evaluate (1) the complaint alone, (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” Den Norske Stats Oljeselskap As v. HeereMac Vof, 241 F.3d 420, 424 (5th Cir. 2001) (citation omitted).

II. 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) authorizes dismissal of a complaint for “failure to state a claim upon which relief can be granted.” Review is limited to the contents of the complaint and matters properly subject to judicial notice. See Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 322 (2007). In analyzing a motion to dismiss for failure to state a claim, “[t]he [C]ourt 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) (quoting Martin K. Eby Constr. Co. v. Dallas Area Rapid Transit, 369 F.3d 464, 467 (5th Cir. 2004)). To survive a Rule 12(b)(6) motion to dismiss, the 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). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

A complaint need not include detailed facts to survive a Rule 12(b)(6) motion to dismiss. See Twombly, 550 U.S. at 555–56. In providing grounds for relief, however, a plaintiff must do more than recite the formulaic elements of a cause of action. See id. at 556–57. “The tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions,” and courts “are not bound to accept as true a legal conclusion couched as a factual allegation.” Iqbal, 556 U.S. at 678 (internal quotations and citations omitted). Thus, although all reasonable inferences will be resolved in favor of the plaintiff, the plaintiff must plead “specific facts, not mere conclusory allegations.” Tuchman v. DSC Commc’ns Corp., 14 F.3d 1061, 1067 (5th Cir. 1994); see also Plotkin v. IP Axess Inc., 407 F.3d 690, 696 (5th Cir. 2005) (“We do not accept as true conclusory allegations, unwarranted factual inferences, or legal conclusions.”)

When a complaint fails to adequately state a claim, such deficiency should be “exposed at the point of minimum expenditure of time and money by the parties and the court.” Twombly, 550 U.S. at 558 (citation omitted).

DISCUSSION

Plaintiff first argues that Defendant’s motion to dismiss should be stricken as it was untimely. (Dkt. # 10 at 2.) The Court disagrees as Defendant’s motion to dismiss came before it filed an answer, which is allowed under Rule 12 of the Federal Rules of Civil Procedure. Under Rule 12(b)(6), a motion raising the defense of failure to state a claim upon which relief may be granted must be made before the service of a responsive pleading. Rule 12(h)(2) provides, however, that the defense may be raised as late as trial. Accordingly, Plaintiff’s motion to strike is **DENIED**. (Dkt. # 10.)

Turning to the motion to dismiss, Defendant argues Plaintiff fails to state any claim upon which relief can be granted because he fails to identify any specific monetary harm he has suffered, thereby depriving him of standing. (Dkt. # 7 at 3.) Defendant next argues Plaintiff’s individual causes of action fail to state a claim upon which relief can be granted. (Id. at 5.) Alternatively, Defendant seeks to compel arbitration. (Id. at 9.) Because standing is an essential and unchanging part of the case-or-controversy requirement, the Court addresses the standing issue first before turning to the motion to dismiss or compel arbitration.

See Hines v. Stamos, 111 F.4th 551, 560 (5th Cir. 2024); see also Moses H. Cone Memorial Hospital v. Mercury Const. Corp., 460 U.S. 1, 26 n. 32 (1983).

I. Standing

“Article III of the Constitution limits the jurisdiction of federal courts to ‘Cases’ and ‘Controversies.’” Murthy v. Missouri, 144 S.Ct. 1972, 1985 (2024).

“A proper case or controversy exists only when at least one plaintiff ‘establishes that [he or she] has standing to sue.’” Id. at 1986 (quoting Raines v. Byrd, 521 U.S. 811, 818 (1997)).

A plaintiff establishes standing by sufficiently alleging: “(1) an ‘injury in fact’ that is ‘concrete and particularized’ and ‘actual or imminent’; (2) is fairly traceable to the defendant’s actions; and (3) is likely to be redressed by a favorable decision.” Barilla v. City of Houston, 13 F.4th 427, 431 (5th Cir. 2021) (citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992)). The Court may decide whether to dismiss a claim for lack of standing based on “(1) the complaint alone; (2) the complaint supplemented by undisputed facts evidence in the record; or (3) the complaint supplemented by undisputed facts plus the court’s resolution of disputed facts.” Kling v. Hebert, 60 F.4th 281, 284 (5th Cir. 2023) (quoting Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001)).

It is undisputed that Plaintiff has not alleged any present financial losses or out of pocket expenses of any kind. Instead, Plaintiff alleges a decreased

credit score, credit limit decreases, or lost credit opportunities as a result of NSure's alleged failure to notify him that his insurance payments were not being received by Safeco. (Dkt. # 1 at 6–7.) In addition, Plaintiff alleges he was unable to make repairs to his home due to living in an uninsured home, which left him and his family “at the mercy of extreme weather.” (Id.)

Defendant argues Plaintiff alleges no real monetary harm he suffered from the alleged cancellation of his homeowners’ insurance policy with Safeco. (Dkt. # 7 at 4.) Defendant further asserts that none of Plaintiff’s alleged harms are tied to any act or omission of NSure, and they are also nonfalsifiable. (Id.) According to Defendant, Plaintiff’s credit rating “may have dropped for any number of reasons” and he “may not have been eligible to make an insurance claim because he may have suffered no loss, or whatever loss he may have suffered may not have been covered.” (Id.) Thus, Defendant claims these “harms” are not “fairly traceable” to the complaints Plaintiff makes about NSure.

The Court finds that the allegations regarding Plaintiff’s affected credit are sufficient to establish an injury in fact. See Clements v. Trans Union, LLC, No. 3:17-CV-00237, 2018 WL 4519196, at *4-5 (S.D. Tex. Aug. 29, 2018) (allegation of reduced credit score was sufficient to establish injury for standing purposes, even if insufficient to constitute actual damages under Fair Credit

Reporting Act) (R&R adopted by Clements v. Trans Union, LLC, 2018 WL 4502255 (S.D. Tex. Sept. 20, 2018)).

Having found that Plaintiff has alleged an injury in fact, the question now becomes whether the injury is “fairly traceable” to the challenged conduct. Lujan, 504 U.S. at 560. Where, as here, the “causal relation between the claimed injury and the challenged action depends upon the decision of an independent third party[,] standing is not precluded, but it is ordinarily substantially more difficult to establish.” Missouri v. Biden, 83 F.4th 350, 369 (5th Cir. 2023) (quoting California v. Texas, 593 U.S. 659, 675 (2021)). Traceability “does not require a party to establish proximate causation, but only requires that the injury be ‘fairly traceable’ to the defendant.” League of United Latin Am. Citizens, Dist. 19 v. City of Boerne, 659 F.3d 421, 431 (5th Cir. 2011).

Defendant contends that it is not NSure that possesses any power or authority over whether Plaintiff’s policy was cancelled. (Dkt. # 7 at 5.) Specifically, Defendant argues that the power to cancel Plaintiff’s homeowner insurance rests entirely with Safeco, Plaintiff’s insurance carrier and a third-party to this lawsuit. (Id.)

It is true that Plaintiff’s loss of insurance coverage is a direct result of Safeco cancelling the policy. However, as alleged, Plaintiff claims that Safeco sent notices to NSure, advising that Siantou’s homeowner premiums had gone unpaid,

but NSure still did not notify Plaintiff. (Dkt. # 1 at 6.) Further, Safeco allegedly advised NSure that if Plaintiff’s homeowner insurance premiums were not promptly paid, Safeco would cancel Plaintiff’s homeowner insurance. (Id.) Taking these facts as true and viewing them in the light most favorable to the plaintiff—as the Court must do at this stage, Plaintiff has alleged that Defendant had notice that Plaintiff’s homeowner insurance was going to be cancelled.

Moreover, as alleged, “[u]pon and by becoming Plaintiff’s agent as to Plaintiff’s homeowner insurance with Safeco, NSure promised Plaintiff, and in any event created the reasonable expectation, that it would defend the interests of Plaintiff as to Plaintiff’s homeowner insurance with Safeco.” (Id. at 5.) Therefore, Plaintiff plausibly alleges that the cancellation of his homeowner insurance is fairly traceable to Defendant.

The issue here is that Plaintiff’s alleged injury is he “suffered severe damages due to being unable to make repairs to their home, which severely exposed them to the wrath of nature in one of the harshest winters ever known in the Texas area in question.” (Id. at 7.) And with respect to the credit consequences, Plaintiff alleges Chase bank “drastically lowered credit lines on Plaintiff’s existing credit card” which in turn caused a further “severe drop in Plaintiff’s credit rating and credit score.” (Id.)

Defendant argues that whether “Plaintiff possessed a viable insurance claim that he was unable to make (and never in fact made?) depends on so many different variables that can never be proven. Likewise, Plaintiff’s credit rating is impacted by so many other factors outside of N[S]ure’s control.” (Dkt. # 7 at 5.) The Court agrees. Plaintiff’s allegations of injury rest on speculation about the decisions of third parties, which is insufficient for standing purposes. See Clapper v. Amnesty Int’l USA, 568 U.S. 398, 414 (2013) (courts are “reluctan[t] to endorse standing theories that rest on speculation about the decisions of independent actors.”)

Accordingly, the Court concludes Plaintiff has not sufficiently alleged standing to bring his claims against Defendant. However, the plaintiff should generally be given at least one chance to amend the complaint under Rule 15(a) before dismissal with prejudice, “unless it is clear that the defects are incurable[.]” Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co., 313 F.3d 305, 329 (5th Cir. 2002). Therefore, the Court will allow Plaintiff an opportunity to amend to address any deficiencies identified.

CONCLUSION

For the reasons stated above, the Court **GRANTS IN PART WITH LEAVE TO AMEND** Defendant’s Motion to Dismiss (Dkt. #7) and **DENIES** Plaintiff’s Motion to Strike. (Dkt. # 11.)

Plaintiff may amend his complaint **no later than April 23, 2025** to address the deficiencies in his pleadings as discussed in this Order. Failure to do so will result in the Court's dismissal of these claims without prejudice.

IT IS SO ORDERED.

DATED: Austin, Texas, April 9, 2025.



David Alan Ezra
Senior United States District Judge