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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

MICHAEL A. KAUFMAN, M.D., an)
individual,)
)
Plaintiff,)
)
v.)
)
CAMBIA HEALTH SOLUTIONS, INC., an)
Oregon Nonprofit Corporation, REGENCE)
BLUECROSS BLUESHIELD OF OREGON,)
an Oregon Nonprofit Corporation, and)
CSABA MERA, M.D., an individual resident)
and citizen of Oregon,)
)
Defendants.)

Case No. 14cv06430

**DEFENDANTS’ MOTION FOR
SUMMARY JUDGMENT**

Oral Argument Requested

**Hearing Date and Time: September 2, 2015,
3:30pm**

Judge: Charles Corrigan

Room: TBD

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Page 3 – Defendants’ Motion for Summary Judgment

1 **MOTION**

2 Pursuant to ORCP 47, defendants move for summary judgment on each of
3 plaintiff’s claims. This motion is based on the following points and authorities, the deposition
4 testimony, exhibits and declarations submitted herewith, and the record herein.

5 Defendants estimate that one hour is needed for oral argument. Defendants do not
6 request official court reporting services.

7
8 **POINTS AND AUTHORITIES**

9 **I. Introduction**

10 This case is about an employer’s right to terminate an underperforming, at-will
11 employee. Defendant Cambia Health Solutions, Inc. (“Cambia”) discharged plaintiff (Kaufman),
12 an Executive Medical Director, for failing to follow through on his commitment to lead a cost-
13 saving project of critical importance to the company. Kaufman challenges Cambia’s right to
14 discharge him at-will, alleging that Cambia had impliedly promised not to terminate him without
15 cause and without first providing him with corrective action.

16 Kaufman asserts claims against Cambia and Regence BlueCross BlueShield of
17 Oregon for breach of implied contract, breach of implied duty of good faith and fair dealing, and
18 promissory estoppel. He also asserts an intentional interference with economic relations claim
19 against his former supervisor, Csaba Mera, M.D. (“Mera”). All claims should be dismissed. The
20 evidence establishes as a matter of law that Cambia employed Kaufman at-will, did not enter into
21 any contract modifying the at-will status of his employment, and did not breach any duty to him.
22 Regence BlueCross BlueShield of Oregon did not employ Kaufman and Kaufman’s claims
23 against it therefore fail as a matter of law. Lastly, there is also no evidence to support an
24 intentional interference against Mera.

1 **II. Material Facts**

2 **1. Kaufman’s pre-Cambia background**

3 Kaufman is an Ivy League educated physician and lawyer. Deposition of Michael
4 Kaufman (“Kaufman Dep.”) at 50:1-13.¹ The resume he submitted to Cambia represents that he
5 had extensive experience in health care management. Kaufman Dep. at 56:12-19; Exhibit 2.
6 Kaufman, however, has had difficulty sustaining employment both as a lawyer and in the
7 medical management field. Before he was hired by Cambia, he had been involuntarily terminated
8 from or asked to leave at least six positions. Kaufman Dep. at 63:12-25; 64:1-25; 65:1; 68:13-16;
9 69:4-12; 74:15-16; 77:18-25; 85:9-20; 105:23-25; 124:8-10. Indeed, Towers Watson, Kaufman’s
10 last employer before Cambia, terminated Kaufman’s employment on July 1, 2011, with no
11 notice. Kaufman Dep. at 124:8-22; 128:21-25; 129:1-5; Exhibit 20.

12 Prior to Cambia, Kaufman had been employed “at-will” in several positions and
13 fully understood the meaning of the term. Kaufman Dep. at 89:7-23; 101:17-25; 102:21-25;
14 103:1-5; 115:23-25; 116:1-12; 117:10-22. In fact, in 2010, he initiated litigation against a prior
15 employer in which he alleged, among other things, that the company had promised to terminate
16 him only for good cause proven and only after providing him progressive discipline. Kaufman
17 Dep. at 111:3-10; Exhibit 15. The complaint was dismissed on summary judgment because the
18 evidence established that Kaufman was employed at-will, and the employer was legally entitled
19 to discharge Kaufman at any time and for any legal reason or for no reason. See Exhibit 111
20 (Order on Motion for Summary Judgment).

21 **2. Kaufman applies for employment at Cambia and is hired as an at-will**
22 **employee**

23 In or around mid-June 2011, Kaufman initiated contact with Ralph Prows, M.D.
24 (“Prows”), Cambia’s Chief Medical Officer (“CMO”), to inquire about and ultimately apply for

25 _____
26 ¹ Unless stated otherwise, all deposition excerpts and exhibits are attached to Defendants’ Motion for Summary Judgment.

1 the Executive Medical Director position with Regence BlueCross BlueShield of Utah.² Kaufman
2 Dep. at 56:12-16; 145:7-22; 148:1-25; 149:1-5; Deposition of Ralph Prows (“Prows Dep.”) at
3 19:13-25; 20:1-17. At this time, Regence BlueCross BlueShield of Utah (the “Utah Plan”) was a
4 subsidiary of The Regence Group. Declaration of Mark Stimpson. On November 11, 2011, The
5 Regence Group changed its name to Cambia Health Solutions, Inc. (The Regence Group and
6 Cambia are referred to hereafter collectively as “Cambia”). In addition to the Utah Plan, Cambia
7 also operates the following Regence health plans: Regence BlueCross BlueShield of Oregon,
8 Regence BlueCross BlueShield of Idaho, and Regence BlueCross BlueShield of Washington
9 (collectively, the “Regence Plans”). Stimpson Declaration.

10 Under the Cambia corporate umbrella, the Regence plans offer a variety of health
11 insurance products and services, including medical and dental health insurance for individuals,
12 employer groups, and Medicare eligible individuals. In addition, the Regence Plans perform a
13 number of clinical management services to assist enrollees/insureds and to control costs with the
14 aim of keeping health care affordable. Declaration of Csaba Mera. Each Regence Plan has an
15 assigned Executive Medical Director (“EMD”). Stimpson Declaration.

16 In July 2011, Kaufman began communicating with Alison Durkee, a Cambia
17 recruiter, about the Utah Plan’s EMD position. Kaufman Dep. at 150:11-18; Deposition of
18 Alison Durkee (“Durkee Dep.”) at 6:15-16; 28:20-25; 29:1-2; Exhibit 25. In their initial
19 telephone conversation, Durkee queried Kaufman about his willingness to relocate to Utah
20 because that is where the job was located. Durkee Dep. at 15:21-25; 16:1-17. Kaufman assured
21 Durkee that if offered the job, he was willing to make a permanent move to Utah. Durkee Dep. at
22 19:5-21; 29:23-25; 30:1-15.

23 On or about September 7, 2011, Cambia offered Kaufman employment with an
24 annual salary of \$275,000. Kaufman Dep. at 152:1-14; Exhibit 26. The offer included a \$25,000

25 _____
26 ² At this time, Kaufman had just recently moved into his Manhattan Beach, California residence, which he had
purchased in November 2009 and spent 13 months remodeling. Kaufman Dep. at 38:19-25; 39:1-25; 40:1-8.

1 sign-on bonus (“bonus”) and professional relocation services.³ The offer letter made clear that
2 receipt of the bonus was subject to the terms and conditions set forth in a separate Sign-On
3 Bonus Agreement. Kaufman Dep. Exhibit 26, p. 2. The offer letter also stated that Cambia had a
4 Severance Pay Plan for Senior Leaders. Exhibit 26.

5 On September 8, 2011, Kaufman requested a copy of the severance plan and
6 learned that Cambia provided severance pay only when an employee’s position is eliminated.
7 Kaufman Dep. at 154:6-23; 155:8-19. Kaufman discussed with Prows his concern about the lack
8 of severance in other types of terminations. On September 13, 2011, Prows told Kaufman via
9 email that Cambia would not enter into a special severance agreement with him. Prows Dep. at
10 47:5-25; 48:1-4; Exhibit 30. Prows then described for Kaufman his perception of Cambia’s
11 approach to performance management, telling Kaufman that he had “never seen a case where
12 anyone here was just fired without cause” and what he had “seen commonly is performance-
13 related corrective actions, and if expectations are not met, then the persons are ‘managed out.’”
14 Kaufman Dep. at 156:25; 157:1-4; Exhibit 28; Prows Dep. at 57:3-25; 58:1-21. Within hours of
15 Kaufman receiving Prows’s September 13 email, Durkee sent Kaufman a separate email about
16 the company’s severance policy, informing him that “Regence is an ‘At Will’ employer.”
17 Kaufman Dep. at 164:20-23; Exhibit 29. Prows testified that Durkee’s written statement to
18 Kaufman – that his employment was at-will – was consistent with Prows’s understanding and
19 that, in fact, Prows also told Kaufman that he would be employed at-will. Prows Dep. at 144:6-
20 24.

21 Upon receipt of Durkee’s email, Kaufman asked Prows for a copy of Cambia’s
22 corrective action policy and also asked for more money to cover his relocation:

23 “Alison saying that no executive has a contract? It seems that there is a legitimate
24 distinction between a local hire and a transplant hire that goes beyond the
25 relocation allowance. * * * Can we sweeten the signing bonus – that would at
least give me some financial cushion.” Exhibit 28.

26 ³ The Regence Group Enhanced Relocation Policy is attached as Exhibit 112 to the Declaration of Alison Durkee.

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1 Kaufman continued to negotiate with Cambia on relocation benefits. Kaufman
2 Dep. at 167:2-12, Exhibit 31, Prows Dep. at 48:6-14; 142:6-19; 158:23-25; 159:1-25; 160:1-6.
3 Cambia expected Kaufman to relocate on a permanent basis to Utah. Prows Dep. at 173:5-17;
4 Durkee Dep.” at 16:13-25; 17:1-5. Kaufman told Durkee that Cambia’s executive relocation
5 package was insufficient to cover the cost of moving his California household goods to Utah,
6 which included expensive artwork for which he would have to hire a specialized moving truck,
7 and multiple vehicles. Declaration of Alison Durkee; see also Durkee Dep. at 27:18-25; 28:1-8.
8 In an effort to satisfy Kaufman’s demands for more compensation, Prows sent Kaufman an email
9 on September 16, 2011 offering him an annual salary of \$305,000, with a \$100,000 bonus, net of
10 taxes, that was intended to cover Kaufman’s relocation expenses. Kaufman Dep. at 167:22-25;
11 168:1, Exhibit 32. Prows also sent Kaufman a copy of the Sign-On Bonus Agreement, which
12 included a statement that Kaufman’s employment was at-will. Prows Dep. at 145:25; 146:1-25;
13 147:1-8.

14 Kaufman continued to negotiate to maximize the bonus. Kaufman Dep. at 178:7-
15 12. On September 19, 2011, Cambia offered Kaufman a bonus of \$125,000. Kaufman Dep. at
16 170:7-16, Exhibit 33. On September 22, 2011, Kaufman accepted Cambia’s offer of
17 employment. Kaufman Dep. at 178:24-25; 179:1; Exhibit 37. Four days later, on September 26,
18 2011, Kaufman signed a separate Sign-On Bonus Agreement. Kaufman Dep. at 183:24-25;
19 184:1-7, Exhibit 39. The Sign-On Bonus Agreement includes an acknowledgment by Kaufman
20 of his at-will employment:

21 “As a condition of accepting the Offer of Employment as Executive Medical
22 Director with The Regence Group (‘Regence’ or ‘the Company’), I agree to the
23 terms of this Sign-On Bonus Agreement as follows:

24 * * *

- 25 • I understand this Agreement is not a contract of employment and it does
26 not modify my at-will employment relationship with Regence.” Exhibit 39.

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1 Kaufman’s first day of employment was October 10, 2011. Kaufman Dep. at
2 186:18-22. His office was located in Utah. Deposition of Mark Stimpson (“Stimpson Dep.”) at
3 68:20-22. Prior to his start date, Durkee gave Kaufman information about forms that Cambia
4 required him to complete on his first day of employment, including an acknowledgment form.
5 Durkee Declaration, Exhibit 113. Durkee also provided Kaufman a link to the company’s
6 internal website so that he could review Cambia’s Employee Handbook prior to his start date,
7 telling him that it was his responsibility to be familiar with the policies in the Employee
8 Handbook. Exhibit 113.

9 On October 10, 2011, Kaufman signed Cambia’s acknowledgment form, which
10 included the following relevant statements:

11 “1. I have received instruction on how to access the online copy of the Regence
12 Employee Handbook and HR Reference Guide I acknowledge I have the
13 ability and responsibility to be familiar with and follow the policies set forth in
14 those Guides. * * * I understand that these Guides are not employment contracts
or guarantees of specific treatment in specific situations, nor do they give me any
express or implied right of continued employment....

15 3. I understand that unless otherwise stated in a written employment contract,
16 Regence has the right to change (modify, add to, substitute, or eliminate),
17 interpret and apply, in its sole discretion, the policies rules and benefits described
in these Guides. ***

18 4. *I understand that Regence or I may terminate my employment relationship*
19 *with Regence, for any reason, with or without cause or notice at any time, unless*
otherwise stated in a written employment contract.

20 5. I understand that the Regence CEO is the only person who has the authority to
21 enter into an employment contract, and that all such contracts must be in writing
and signed by both parties to be valid.” Kaufman Dep. at 186:6-20, Exhibit 40
(emphasis added).

22 Cambia is an at-will employer. Stimpson Declaration. Its Employee Handbook,
23 which Kaufman had access to prior to his first day of work, includes the following statements
24 and policies in relevant part:

- 25 • At-Will Employment: “You have a mutual relationship with Regence,
26 which is called “employment at will.” This means that you have come to work for

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1 us voluntarily and are free to terminate your employment at any time, with or
2 without cause or reason, with or without advance notice. Similarly, Regence
3 reserves the right to terminate your employment at any time with or without cause
4 or reason, with or without advance notice. *In accepting or continuing employment
with us, you agree that our employment relationship is strictly voluntary and ‘at-
will’ on both sides.*” Stimpson Declaration, Exhibit 41, p. 3 (emphasis added).

5 • Corrective Action. “At its discretion and on a case-by-case basis, Regence
6 believes that constructive, positive corrective action may be of assistance in
7 helping to improve employee performance. * * * *It is not necessary that a verbal
warning or any written warning precede termination.*” Id., Exhibit 41, p. 6
(emphasis added).

8 In his deposition, Kaufman admitted that he understood that he was not entering
9 into a contract of employment with Cambia for a particular length of time and that no one told
10 him he would be employed for a defined duration. Kaufman Dep. at 159:11-21.

11 **3. Kaufman’s job**

12 Executive Medical Directors are highly compensated, senior-level employees who
13 are expected to be knowledgeable and accountable and to take initiative. See Deposition of
14 Csaba Mera (“Mera Dep.”) at 147:3-5; 166:4-7; Deposition of Jennifer Brion (“Brion Dep.”) at
15 57:5-7; 12-16. Kaufman’s job description is set forth in Exhibit 43. Prows Dep. at 169:9-25;
16 170:2-25; 171:1-25; 172:1-17. Each EMD is responsible for supporting the sales, network and
17 provider contracting, legislative and community engagement teams in his or her respective state.
18 In addition, each EMD is expected to lead and support senior leadership initiatives and Cambia
19 enterprise-wide functions and activities, which include medical management, member and
20 provider appeals panels, accountable health strategy, vendor management, medical and
21 medication policy, quality of care, quality improvement and health plan accreditation.⁴ Mera
22 Declaration; Kaufman Dep. at 194:10-23; 195:8-20; 200:10-25; 202:20-25; 203:1-16; 233:15-
23 17; Prows Dep. at 64:22-25; 65:1-25; 66:1-8; 68:15-23; 69:1-25; Exhibit 250; see also Mera Dep.
24 at 64:16-25; 65:1-13.

25 _____
26 ⁴ Accountable health strategy was a Cambia enterprise initiative to transform the delivery and reimbursement of
healthcare from a fee for service model to a budget and quality matrix driven model. Mera Declaration.

1 From October 10, 2011 through March 30, 2012, Kaufman reported to CMO
2 Prows. Kaufman Dep. at 271:5-10; Prows Dep. at 19:24-25; 20:1-13; 87:24-25; 88:1-2. On
3 March 30, 2012, Cambia involuntarily terminated the employment of Prows.⁵ Prows Dep. at
4 9:15-16; 176:6-24. Effective April 1, 2012, Kaufman began reporting to Csaba Mera, M.D.,
5 Executive Medical Director of Oregon. Mera Dep. at 18:11-13; 20:21-25; 21:1-2; 59:18-24.
6 Cambia asked Mera to fill the interim CMO role while it searched for a replacement for Prows.
7 Mera Dep. at 18:5-20. Prior to assuming the interim CMO role, Mera was Kaufman's peer.
8 Prows Dep. at 91:5-9; Mera Dep. at 14:5-8; 17:13-14. As interim CMO, Mera initially reported
9 to Steve Gaspar, interim Senior Vice President for Health Care Services. Mera Dep. at 20:11-25;
10 21:1-2.⁶ Gaspar, Cambia's Chief Actuarial Officer, had assumed the interim responsibilities
11 when the incumbent, Jon Stellmon, retired, coincident with Prows' termination. Mera Dep. at
12 18:21-25; 19:1-5; 20:5-14, 21-25; Declaration of Steve Gaspar. Gaspar reported to Jared Short,
13 President of Health Insurance Services. Gaspar Declaration.

14 **4. Kaufman fails to follow through on a critical "strategic imperative"**
15 **assignment from Cambia senior leadership and is discharged**

16 On March 22, 2012, President Jared Short sent an email to all Executive Medical
17 Directors, including Kaufman, informing them of a key initiative to improve "our overall cost
18 position in all four markets" and stating that he had appointed Gaspar "to lead the development
19 of a roadmap to share with our board at the end of April." Kaufman Dep. at 261:22-25; Exhibit
20 60; Declaration of Jared Short. Short told Kaufman and others that 1) there was much work to be
21 done over the next two weeks and 2) Gaspar would be reaching out to them shortly. Exhibit 60.
22 Short asked Kaufman to give Gaspar his support. Exhibit 60.

23

24

⁵ Prows did not receive corrective action, a performance improvement plan, counseling, or any warning or notice prior to his termination. Prows Dep. at 176:6-19; 177:4-7.

⁶ Mera currently reports to Richard Popiel, MD, who Cambia hired to fill both positions vacated by Stellmon and Prows. Mera Dep. at 21:3-11.

1 That same day, Gaspar sent an email to Kaufman and the other three Executive
2 Medical Directors emphasizing that the project was a “strategic imperative” and while the work
3 would be challenging, it was “[o]ur job to make it happen.” Kaufman Dep. at 263:10-17; 264:8-
4 14, Exhibit 60, Gaspar Declaration. Gaspar followed up with a more detailed email, again
5 stressing the project’s importance:

6 “Our executive team has given us a challenging assignment which is critical to the
7 future success of this company. Please bring your ‘A’ game. Our members, your
8 fellow employees, and the company are all counting on it.” Kaufman Dep. at
9 264:16-19; Exhibit 61.

10 As part of the strategic imperative project, Gaspar appointed Mera and Joan Byrd,
11 Vice President-Integrated Care Management, to lead an Integrated Care Management (“ICM”)
12 steering team.⁷ Gaspar Declaration; Deposition of Joan Byrd (“Byrd Dep.”) at 13:10-17; 20:13-
13 18. ICM is the joint effort of the Regence Plans medical, behavioral and pharmacy clinical staff
14 to coordinate and more efficiently manage the delivery of quality health care to members as a
15 means of reducing claims costs in areas such as outpatient and inpatient services, supplies and
16 medications. Mera Declaration. Kaufman was a member of the ICM team. Kaufman Dep. at
17 277:10-25; 278:1-6; 283:13-19; Exhibits 65 & 68; Byrd Dep. at 20:13-24.

18 On April 18, 2012, the ICM team met and divided work amongst five subgroups
19 or Focus Teams, one of which Kaufman volunteered to lead. Mera Dep. at 74:1-7; 88:1-10; Byrd
20 Dep. at 20:13-19. This was the Inpatient Medical Management Focus Group (“Inpatient Team”),
21 which was charged “*with establishing the elements and approach to inpatient medical*
22 *management and identifying optimal interdepartmental collaboration* on e.g. facility and ASC
contracts, patient safety, etc.”⁸ Exhibit 68, p. 3 (emphasis added). Kaufman’s Inpatient Team

23 ⁷ Byrd had just started work at Cambia at the end of March 2012 and was new to the company. Deposition of Joan
24 Byrd at 13:7-9; Mera Dep. at 77:25; 78:2-12. Byrd reported to Short and had a dotted line relationship to Gaspar.
Byrd Dep. at 14:5-18.

25 ⁸ Kaufman had medical management experience and medical management was part of his job. Prows Dep. at
26 122:24-25; 123:1-16. In his deposition testimony, Prows described Kaufman as an expert in medical management.
Prows Dep. at 124:10-16.

1 members included Byrd, Alison Goldwater, Vice President of Network Management, and Bob
2 Herr, Executive Medical Director for Washington. Byrd Dep. at 32:13-19; Mera Dep. at 21:25;
3 22:1-2.

4 Mera asked each Focus Team to share research, comments, and feedback with the
5 entire group by the end of business on April 26, 2012 so that he could include it in a report to
6 Gaspar due on April 30. Exhibit 68. On April 18, 2012, Mera directed Kaufman, as team lead, to
7 reach out to his respective Inpatient Team members to discuss and seek information. Mera
8 advised Kaufman and the other ICM steering team members that

9 “We are on a short timeline for deliverables” and the Focus Teams should “collect
10 all feedback and recommendations by April 26.” Exhibit 65.

11 On April 23, 2012, Mera sent out another reminder, asking the leads to share any
12 information, comments and documents on their assignments no later than April 26, 2012. Byrd
13 Dep. at 49:16-21; Exhibit 68. Included with the reminder was an attachment once again
14 identifying the leads and the members of their respective teams. Exhibit 68, p. 3.

15 Mera and Byrd received no information from Kaufman prior to the April 26
16 deadline. Byrd Dep. at 65:2-15; see also Mera Dep. at 76:4-11. On May 8, 2012, Byrd reached
17 out to Kaufman by email, sending him the following message:

18 “Michael K – I am concerned we are falling behind in our assignment. We were
19 charged with looking at approaches to inpatient medical management. [I]s there a
20 series of discussions set up for us to make forward movement?” Kaufman Dep. at
21 305:24-25, 306:1-19, Exhibit 71.

22 Byrd attached to her message the email from Mera setting the April 26 deadline for leads to
23 furnish the information from their teams. Exhibit 71, p. 2.

24 Kaufman responded to Byrd as follows:

25 “Not that I am aware of. I was hoping that we could kick start this process and put
26

1 it in high gear at our meeting on Friday [May 11].” Kaufman Dep. at 307:16-23,
2 Exhibit 71.⁹

3 On May 8, 2012, Byrd expressed concern to Mera that Kaufman did not
4 understand the urgency of the Inpatient Team’s work because the assignment was already well
5 past due and Kaufman was just now talking about “kick starting” it. Byrd Dep. at 64:13-25; 65:2-
6 15; 71:3-8, 25; 72:1-25; 73:1-4; Exhibit 71.

7 To help Kaufman with the Inpatient Team’s work, Byrd furnished the following
8 information to him:

- 9 • May 8, 2012: Byrd forwarded an email from another Focus Team lead,
10 Rich Rainey, M.D., and recommended that Kaufman consult with Rainey to
11 determine the “best way to lead through to recommendations on the inpatient
12 side.” Kaufman Dep. at 310:9-21; Exhibit 72. Byrd’s email again identifies the
13 members of Kaufman’s inpatient sub-group. Kaufman does not remember if he
14 followed up on Byrd’s recommendation. Kaufman Dep. at 310:22-23.
- 15 • May 15, 2012: Byrd forwarded information to Kaufman concerning
16 inpatient management recommendations and asked the Inpatient Team to evaluate
17 them. She reminded Kaufman that “[t]ime is of the essence” and asked for an
18 update from Kaufman “in the next 10 days [May 25].” Kaufman Dep. at 312:19-
19 25; 313:1-10; Byrd Dep. at 75:24-25; 76:1-2; 10-14, 24-25; 77:1-7; Exhibit 74;
20 Mera Dep. at 170:11-19. In his deposition, Kaufman testified that he had no
21 recollection of what progress his inpatient team had made by May 15. Kaufman
22 Dep. at 313:1-10.¹⁰

23 In addition, Byrd met individually with Kaufman over lunch on April 26, 2012
24 and by telephone on May 11, 2012 to discuss the inpatient work.¹¹ Byrd Dep. at 21:9-24; 55:5-
25 13; 56:5-19, 60:6-25; 61:1; 65:18-24; Exhibit 222.

26 ⁹ In his deposition, Kaufman blamed the lack of progress on the unavailability of other members of his sub-group. Kaufman Dep. at 308:15-24. However, there is no evidence that he made much, if any, attempt to engage his team members. In fact, on June 2, 2012, well over a month after the April 26 deadline, Kaufman sent an email to team member Goldwater saying “I was looking at an old email and realize that you are on my committee that is supposed to make recommendations around inpt med management.” Declaration of Alison Goldwater, Exhibit 110.

¹⁰ On her own initiative, Byrd forwarded to Mera her emails with Kaufman because she questioned Kaufman’s understanding of the urgency of the project and his need to lead the sub-group. Byrd Dep. at 43:15-25.

¹¹ Byrd also met individually with Kaufman on April 16, 2012. Byrd Dep. at 60:1-5; Exhibit 222. During this meeting, Kaufman told Byrd that he did not intend to relocate to Utah. Byrd Dep. at 16:20-25; 17:9-24.

1 On May 15, 2012, nearly three weeks after the deadline for Kaufman to report his
2 team's research, comments, and feedback, Kaufman contacted Mera by email, saying:

3 *"I know I assumed the inpt md responsibility.* Joan references a subgroup working
4 on this below. I was not aware of any group. Who is involved? What are we
5 supposed to be doing? This should really be a partnership with Joan? Why is there
6 a separate entity? Please advise." Kaufman Dep. at 313:16-25; 314:1-5; Exhibit
7 75 (emphasis added); Mera Dep. at 124:19-24.

8 Kaufman followed up with another email to Mera the same morning saying, "As
9 far as I know I am a group of one." Kaufman Dep. at 315:20-25, Exhibit 77; Mera Dep. at 127:4-
10 12.

11 Mera was very concerned with Kaufman's professed ignorance of his
12 responsibility to lead the Inpatient Team. Mera Dep. at 127:13-23. On May 15, 2012, Mera
13 responded to Kaufman by again providing the documentation and sub-group team information he
14 had previously sent to Kaufman on April 18. Mera also reminded Kaufman that Kaufman

15 "had agreed to be the lead on the inpatient Focus Team" and that the "expectation
16 was that the Focus Team Leads would set up discussion, data gathering,
17 recommendations, etc. Because of your significant experience and comments
18 about our needs in this area, you were going to work on this."¹² Kaufman Dep. at
19 317:6-23, Exhibit 78; see also Mera Dep. at 125:23-25; 126:1-9.

20 Kaufman testified that he understood the expectation of the leads. Kaufman Dep.
21 at 317:17-23; 318:11-15. Mera also invited Kaufman to pull others in for assistance if needed.
22 Exhibit 78. Kaufman does not recall whether he did so. Kaufman Dep. at 320:10-13.

23 On May 16, 2012, Kaufman acknowledged to Mera that he had "misunderstood
24 the charge" and committed to setting up a team meeting and proceeding "expeditiously."
25 Kaufman Dep. at 320:15-23, Exhibit 79. Despite Kaufman's commitment to Mera, the team
26 never met. Kaufman Dep. at 331:4-9; Byrd Dep. at 36:17-20. Moreover, neither Mera nor Byrd
received any recommendations or information from Kaufman by May 25.

¹² Kaufman was qualified to analyze and develop an inpatient medical management strategy and, indeed, had performed such work in prior roles. Prows Dep. at 182:2-4, 14-17. In fact, Prows hired Kaufman to perform medical management consulting work after they both had left Cambia's employ. Prows Dep. at 184:2-25; 185:1-14.

1 Around the third week of May 2012, Mera expressed concern to Gaspar and Byrd
2 about Kaufman’s failure to lead the Inpatient Team. Mera Dep. at 74:25; 75:1-19; 76:1-25; 77:1-
3 11; 121:22-25; 122:1-2; 127:24-25; 128:1-5; 129:16-19. Gaspar was upset by Kaufman’s failure
4 to meet the assigned strategic imperative task, expressed frustration that Kaufman had fallen
5 asleep in strategic imperative meetings, and recommended Kaufman’s immediate termination.
6 Mera Dep. at 76:20-25; 77:1-11; 79:23-25; 80:1-25; 81:1-7; Gaspar Declaration; see also Short
7 Declaration. Mera suggested to Gaspar that they first consult human resources. Mera Dep. at
8 77:17-24. Mera then contacted personnel in the human resources department. Mera Dep. at 79:1-
9 12; 82:18-23; 99:1-16.

10 Mera consulted with Senior Employee Relations Consultant Jennifer Brion and
11 Vice-President and Chief Human Resources Officer Mark Stimpson about next steps. Mera Dep.
12 at 86:5-10; 101:16-24; Stimpson Dep. at 7:1-7; 26:5-16; 27:10-25; 28:1-7; 60:11-20; Brion Dep.
13 at 7:2-12. Mera was advised to put his concerns in writing, which he did. Mera Dep. at 86:5-25;
14 Exhibit 88; Brion Dep. at 72:15-25; 73:1-4.

15 On or around May 22, 2012, Mera met with Byrd, Brion and Human Resources
16 Business Partner Debbie Bishop to discuss Kaufman’s failure to fulfill his responsibilities as lead
17 of the inpatient management sub-group. Byrd Dep. at 30:7-20; 31:18-25; 32:1-12; Brion Dep. at
18 16:15-19; 18:14-20; 21:2-16; Mera Dep. at 98:7-15. Kaufman’s Inpatient Team was the only one
19 of the five Focus Teams that had not moved forward. Byrd Dep. at 36:21-25; 37:2-7. Mera
20 expressed concern that Kaufman was not performing on the inpatient cost project, forgot key
21 facts, lost emails, and had been observed falling asleep in meetings.¹³ Declaration of Debbie

22

23 ¹³ Mera initially experienced concerns about Kaufman’s performance in late February or March 2012. As Kaufman’s
24 peer at that time, he spoke with Kaufman multiple times weekly and observed from these interactions that Kaufman
25 lacked basic medical knowledge that he should have possessed based on his resume. Mera Dep. at 49:9-25; 50:1-25;
26 51:1; 53:16-25; 54:1-13; 55:2-14. He also had observed Kaufman sleeping in meetings. Mera Dep. at 57:23-25;
58:1-6; 62:2-19. After Mera assumed the interim CMO role, his concerns increased significantly when Kaufman
failed to follow-through on the lead responsibilities for the Inpatient Team. Mera Dep. at 71:13-25; 72:1-25; 73:1-8.
He also heard from others that Kaufman had been missing meetings. Mera Dep. at 118:2-12, 18-25; 119:1-8.

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1 Bishop, Exhibit 238; see also Brion Dep. at 21:21-25; 22:1-17; 25:25; 26:1-7. Brion assumed
2 responsibility for interviewing others who worked with Kaufman to determine if they had
3 experienced similar issues. Mera Dep. at 95:5-14; Brion Dep. at 31:8-14.

4 Brion then spoke with and/or received information from Rich Rainey, M.D.,
5 Executive Medical Director for Idaho; Stimpson; Byron Clawson, Vice President of Provider
6 Services – Utah; and Jennifer Danielson, Utah Market Vice President. Brion Dep. at 32:9-25;
7 33:1-13; 34:13-25; 35:1; 38:11-24; Deposition of Jennifer Danielson (“Danielson Dep.”) at 5:20-
8 25; 7:1-3; 49:7-21. Brion learned the following:

- 9 • Rainey: Rainey said that he had trained Kaufman, that Kaufman did some things
10 well, but that he did not appear interested in a project Rainey transitioned to him;
11 had missed a subsequent telephone call with Rainey; was not doing anything to
12 advance the work of the ICM steering team, which should have been a high
13 priority; attended only half of the panel meetings he was scheduled to attend; and
14 complained about things at Regence to the point of whining. Rainey expressed
15 disappointment in what Kaufman could deliver and his level of engagement.
16 Brion Dep. at 39:17-25; 40:1-12; 46:20-25; 47:1-4; Exhibit 204.
- 17 • Stimpson/Danielson: Stimpson, who has an office in Utah near Kaufman’s, told
18 Brion that Kaufman was often not around and that they did not interact much.¹⁴
19 Stimpson Dep. at 51:15-25; 52:1-25; 105:25; 106:1-13. Danielson told Brion that
20 she had concerns about Kaufman’s work ethic and level of engagement.¹⁵
21 Danielson Dep. at 28:13-19; 49:15-21; 50:3-16; see Exhibit 204.
- 22 • Clawson: Clawson was initially very positive about Kaufman’s performance, but
23 ultimately said that Kaufman had missed meetings, forgot what they had
24 discussed, and required more care and handling than he expected; Clawson did
25 what he (Clawson) needed to do to get things done. Brion Dep. at 42:4-25; 43:1-3;
26 25; 44:1-11; Exhibit 204.

27 Brion shared the results of her interviews with Mera. Mera Dep. at 102:3-5, 19-
28 25; 103:1-10. Human resources, Stimpson, Gaspar and Short approved Kaufman’s termination.

¹⁴ Stimpson also had some concern that Kaufman had not planted permanent roots in Utah. Stimpson Dep. at 51:15-
25 25; 52:1-25; Exhibit 204.
¹⁵ Danielson had concerns that Kaufman was often gone, was not engaged in the marketplace and, when in the
26 office, spent much of his time behind a closed door. Danielson Dep. at 54:1-25; 55:1-4; 56:6-17.

1 Mera Dep. at 90:3-8; Stimpson Dep. at 78:23-25; 79:1-10; Gaspar Declaration; Short
2 Declaration.

3 On May 30, 2012, Mera contacted Kaufman by telephone to discuss the
4 performance issues and discern whether Kaufman could offer any information that would
5 indicate his employment was potentially salvageable. Kaufman Dep. at 327:14-17; 348:16-21;
6 Mera Dep. at 88:19-24; 90:1-14. Kaufman did not take ownership for his performance failures
7 and Mera heard nothing from Kaufman that caused Mera to believe that Kaufman possessed the
8 initiative and accountability necessary to perform the job. Mera Dep. at 91:5-16; 92:3-20. Mera
9 reported the substance of his conversation with Kaufman to Brion. Mera Dep. at 107:11-25;
10 108:1-25; 109:1-6.

11 Kaufman anticipated from his conversation with Mera that Cambia intended to
12 terminate his employment. Kaufman Dep. at 359:18-23. He finally began working in earnest on a
13 white paper to address inpatient medical management, telling Mera it would be great. Kaufman
14 Dep. at 359:18-25; 360:1-2; 456:11-19; Mera Dep. at 133:19-25.

15 On May 31, Byrd again followed up with Kaufman on the inpatient project,
16 sending him the following inquiry:

17 “Michael – our time is running short on making recommendations for our plans to
18 enhance our medical management capabilities. When do you anticipate you will
19 have the recommendations to [Mera] and I from the work your group is doing on
inpatient management? I need to have recommendations rolled up and ready for
review by June 15.” Kaufman Dep. at 322:24-25; 323:1-18, Exhibit 82.

20 In his deposition, Kaufman testified that he did not remember exactly, but
21 believes he “may have been surprised” by this email because, according to him, Byrd told him in
22 their May 11 telephone call that she was bringing in an outside vendor to do a larger element of
23 inpatient medical management and thus did not have time to participate in internal efforts to
24 address the issue. Kaufman Dep. at 322-323. Kaufman’s professed excuse for not following
25 through on his assignment is not rational because *after* May 11 – on May 16 – Kaufman
26

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1 committed to Mera that he would proceed “expeditiously” on the Inpatient Team project. Exhibit
2 79; see also Mera Dep. at 171:1-24. Moreover, Byrd continued to forward information to
3 Kaufman for the Inpatient Team’s work after May 11. See e.g. Exhibit 74. Significantly,
4 Kaufman did not profess any such surprise to Byrd in response to her May 15 or May 31 emails.
5 For example, Kaufman replied to Byrd on May 31 as follows:

6 “I will have recommendations by the end of next week. From your meetings with
7 your staff, do you have any insights or information that you could share with me
8 that might facilitate the process?” Kaufman Dep. at 327:3-13; Exhibit 83.

9 After business hours on Wednesday, June 5, 2012, Kaufman sent a draft “white
10 paper” to the other members of the Inpatient Team, telling them that he had committed to having
11 it done by the following day and requesting their “last minute” input. Kaufman Dep. at 329:22-
12 25; 330:1-8, Exhibit 85. This was the first and only assignment he provided to his team
13 members. Kaufman Dep. at 330:23-25; 331:1-14. Kaufman submitted the white paper the next
14 morning to Mera and others. Kaufman Dep. at 333:12-21, Exhibit 87. The white paper was sub-
15 standard and did not meet Mera’s expectations: it consisted of known concepts that anyone could
16 have copied and pasted out of a medical management book and failed to include specific
17 recommendations on the approach and collaboration necessary amongst departments to
18 implement the concepts, which had been the assigned task. Byrd Dep. at 85:21-25; 86:1-6; Mera
19 Dep. at 134:9-20; 138:3-14; 154-162. Cambia did not make any use of the white paper. Byrd
20 Dep. at 89:22-25; 90:1-5.

21 Had Kaufman’s work product met Mera’s expectations, Mera would have
22 revisited the termination decision with Gaspar and may have reconsidered. Mera Dep. at 133:19-
23 25; 134:1-8. It did not and, on June 8, 2012, Mera traveled to Utah and terminated Kaufman’s
24 employment for lack of performance. Kaufman Dep. at 367:16-25; 368:1-20; Mera Dep. at
25 143:11-25; 146:2-24. Stimpson also attended the termination meeting. Mera Dep. at 144:1-3;
26 Stimpson Dep. at 33:17-21.

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1 **5. Supplemental facts relating to Kaufman’s expressed interest in other**
2 **positions**

3 On April 16, 2012, Kaufman sent an email to Short asking to be considered as a
4 candidate for the recently vacated position of Senior Vice President of Health Care Services.
5 Kaufman Dep. at 274:22-25; 275:1-2; Exhibit 64. Kaufman admitted in his deposition that he has
6 never claimed Mera had an interest in this vice president position. Kaufman Dep. at 456:2-6.
7 Kaufman also admitted in his deposition that he never discussed with anyone an interest in, or
8 asked to be considered for, the CMO position vacated by Prows. Kaufman Dep. at 275:5-11;
9 276:18-25; 277:1-2. Mera did not know of Kaufman’s interest in the Senior Vice-President
10 Position and was never a candidate for the position. Mera Dep. at 22:15-25; 23:1-16. He also had
11 no involvement with the recruitment process for the position. Mera Dep. at 25:2-14.

12 **III. Legal Discussion**

13 **1. Choice of law**

14 Cambia employed Kaufman in Utah and terminated his employment in Utah.
15 Moreover, Kaufman lived in Utah rental housing during the work week and paid Utah income
16 taxes on his wages. Kaufman Dep. at 40:15-23; 41:8-10; 43:6-18; 45:14-23. Because Utah has
17 the most significant relationship with Kaufman’s employment, Utah law applies to this case to
18 the extent it conflicts with Oregon law. See *Frosty v. Textron, Inc.*, 891 F. Supp. 551, 556 (D. Or.
19 1995); *Rice v. United Parcel Serv. Gen. Servs. Co.*, 43 F.Supp.2d 1134, 1140-41 (D. Or. 1999).¹⁶

20 **2. Breach of implied contract**

21 Kaufman claims he was not employed at-will and that Cambia could terminate his
22 employment only for cause and only after first providing him with corrective action. He does not
23 allege an express contract containing these terms. Instead, he relies heavily on Prows’s
24 September 13 email observations of Cambia’s termination practices as the basis for an implied-
25 in-fact contract to this effect. However, the evidence is conclusive that Cambia did not share

26 ¹⁶ To the extent there is no conflict, the principles enunciated by the Utah cases discussed below would still apply because, by definition, Oregon law would not differ.

1 Kaufman’s subjective belief concerning his employment status and employed him at-will.
2 Kaufman’s claim fails as a matter of law because, even assuming (for purposes of this motion
3 only) that Prows’s email observations are definite enough to operate as implied contract
4 provisions, Kaufman’s proffered subjective belief concerning his employment status was
5 immediately corrected and rejected by Cambia upon each of the following subsequent events:

- 6 1. Durkee’s September 13 written notice to Kaufman that his employment at
7 Cambia was “at-will” (Exhibit 29);
- 8 2. Kaufman’s receipt on September 16 of a copy of the Sign-on-Bonus
9 Agreement, which reiterates that his employment at Cambia is at-will;
- 10 3. Kaufman’s September 26, 2011 acceptance of the \$125,000 sign-on-bonus
11 and execution of the Sign-on-Bonus Agreement, which again reiterates that
12 his employment is at-will (Exhibit 39); and
- 13 4. Kaufman’s signed acknowledgment, on his first day of work, of his
14 understanding that *his employment could be terminated for any reason,*
15 *without notice, at any time,* unless stated otherwise in a written agreement
16 signed by Cambia’s Chief Executive Officer (Exhibit 40, emphasis added).

17 Cambia is an at-will employer and Kaufman admits he knew he was not
18 employed for a specific duration or definite term. Exhibit 41, p. 3; Kaufman Dep. at 159:11-21.
19 Utah law presumes "that all employment relationships entered into for an indefinite period of
20 time are at-will, which means that an employer may terminate the employment for any reason (or
21 no reason) except where prohibited by law," and at any time. *Nelson v. Target Corp.*, 2014 UT
22 App. 205 (2014); *Brehany v. Nordstrom, Inc.*, 812 P.2d 49, 55 (Utah 1991). To overcome the
23 presumption of at-will employment, there must be evidence of a “manifestation of intent that is
24 communicated to the employee and sufficiently definite to operate as a contract provision [so
25 that] the employee can reasonably believe the employer is making an offer of employment other
26 than employment at will.” *Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997, 1002 (Utah 1991).
“[T]he existence of an employment agreement not terminable at will must be established by
more than subjective understandings or expectations.” *Rose v. Allied Development Co.*, 719 P.2d
83 (Utah 1986). As stated by the Utah Supreme Court; “[A] cardinal rule in construing ... a

1 contract is to give effect to the intentions of the parties...." *Buehner Block Co. v. U.W.C. Assocs.*,
2 752 P.2d 892, 895 (Utah 1988). Here, Cambia told Kaufman in writing that it was an at-will
3 employer and had Kaufman twice acknowledge in writing that his employment was at-will. No
4 reasonable juror could conclude that Cambia offered Kaufman anything other than at-will
5 employment.

6 In addition, the employment relationship is viewed as a unilateral contract, in that
7 the employer offers employment under certain terms and the employee accepts by performance.
8 *Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997, 1001 (Utah 1991). Thus, the general rule is that
9 an employer may change the nature and terms of the employment unilaterally and the employee
10 accepts the changes by continuing to work for the employer after communication of the
11 modification. See *Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306 (Utah App. 1994). As set forth
12 above, Kaufman accepted employment and began working for Cambia, and then continued to
13 work for Cambia, after Cambia made it unmistakably clear to him that his employment was at-
14 will, the understanding of which he acknowledged twice in writing.

15 This case is analogous to *Trembly*, in which the court affirmed the grant of
16 summary judgment to the employer. In *Trembly*, the plaintiff applied for employment with Mrs.
17 Fields Cookies, an at-will employer. During the hiring process, the Regional Director of
18 Operations told the plaintiff he "would be allowed 'X amount of mistakes' and that certain stages
19 of discipline would be followed before he would be 'disciplined' (terminated)." After he was
20 hired, the plaintiff received an employee handbook stating that Mrs. Fields is an at-will employer
21 and, notwithstanding its progressive discipline policies, it reserved the right to terminate an
22 employee immediately. 884 P.2d at 1309. In affirming summary judgment for the employer, the
23 court stated:

24 "Trembly claims that the statements made to him by [the Director of
25 Operations] are sufficiently definite to operate as a 'contract provision.' However,
26 even if we agree with Trembly, if an employee has knowledge of a distributed
handbook that changes a condition of the employee's employment, and the

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1 employee remains in the company’s employ, the modified conditions become part
of the employee’s employment contract. ***

2 “Further, ‘[i]n this manner, an original employment contract may be
3 modified or replaced by a subsequent unilateral contract; by continuing to stay on
4 the job, although free to leave, the employment supplies the necessary
consideration for the offer.’” 884 P.2d at 1312-1313 (internal citations omitted).

5 Cambia’s defense is even more compelling. Durkee immediately
6 eliminated any possible confusion concerning Kaufman’s employment status when she
7 told him in writing that “Regence is an ‘At-Will’ employer.” Exhibit 29. Durkee sent this
8 email within hours of the email from Prows and before Kaufman accepted Cambia’s
9 employment offer. Kaufman subsequently agreed in writing that he understood he had an
10 at-will employment relationship when he executed the Sign-on-Bonus Agreement on
11 September 26, 2011, in return for which Cambia paid him substantial consideration -
12 \$125,000. Kaufman again acknowledged his understanding of his at-will employment
13 status on his very first day of work when he signed the acknowledgment form, the
14 execution of which was a condition of working at Cambia. See Durkee Declaration,
15 Exhibit 113, p. 2 (“You will be required to sign an acknowledgement form on your first
16 day of employment...”). Kaufman’s written acknowledgment of his at-will employment
17 status – on two distinct occasions – is controlling and entitles Cambia to summary
18 judgment. See *Anderson v. Larry H. Miller Commc’ns Corp.*, 2015 UT App. 134 (2015)
19 (affirming summary judgment to employer on breach of contract and covenant of good
20 faith and fair dealing claims where employee signed an acknowledgment that he was
21 employed at-will).

22 Based on these facts, no reasonable juror could find that Kaufman, a
23 lawyer who fully understood the meaning of at-will employment, had entered into an
24 implied contract with Cambia requiring cause and corrective action before Cambia could
25 terminate his employment. His breach of implied contract claim fails as a matter of law.

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1 **3. Breach of implied duty of good faith and fair dealing**

2 Because Cambia employed Kaufman at-will, as discussed above, his claim for
3 breach of the covenant of good faith and fair dealing fails as a matter of law. Under Utah law
4 “the covenant of good faith and fair dealing cannot be construed to change an indefinite-term, at-
5 will employment contract into a contract that requires an employer to have good cause to justify
6 a discharge.” *Nelson v. Target Corp.*, 2014 UT App 205 (2014) (denying employee’s motion to
7 amend to add claim because employee was employed at-will); see also *Oakwood Vill. LLC v.*
8 *Albertsons, Inc.*, 104 P.3d 1226, 1240 (Utah 2004) (noting that the covenant of good faith and
9 fair dealing “cannot be read to establish new, independent rights or duties to which the parties
10 did not agree ex ante”). As a matter of law, Kaufman, an at-will employee, cannot use the
11 covenant of good faith and fair dealing to restrict Cambia’s right to terminate him for any reason
12 (or no reason) at any time. See *Brehany* 812 P.2d at 55; *Nelson*, 2014 UT App 205. The court
13 should grant Cambia summary judgment on this claim.

14 **4. Promissory estoppel**

15 Kaufman attempts to use the equitable doctrine of promissory estoppel to
16 circumvent his at-will employment. Because Cambia employed Kaufman at-will, his claim for
17 promissory estoppel fails absent evidence that he provided consideration to Cambia sufficient to
18 prevent an at-will termination. Such consideration must be in addition to the services for which
19 he was employed and must result in a detriment to Kaufman and a benefit to Cambia. See *Rose v.*
20 *Allied Development Co.*, 719 P.2d 83, 86 (Utah 1986). Kaufman cannot offer such evidence and
21 his claim should be dismissed as a matter of law.

22 The elements of a promissory estoppel claim are that (1) plaintiff acted with
23 prudence and in reasonable reliance on a promise made by defendant; (2) defendant knew that
24 plaintiff had relied on a promise that defendant should reasonably expect to induce action or
25 forbearance on the part of plaintiff or a third person; (3) defendant was aware of all material
26

1 facts; and (4) the reliance resulted in a loss to the plaintiff. *Skanchy v. Calcados Ortope SA*, 952
2 P.2d 1071 (Utah 1998). Such a claim requires more than Kaufman’s subjective belief that
3 Prows’s observations of Cambia’s termination and performance management practices
4 constituted a promise not to terminate him without cause and without prior corrective action. It
5 requires finding that Kaufman was justified in assuming that Cambia had promised not to
6 terminate him at-will, that he incurred a detriment by relying on this assumption, and that
7 Cambia incurred some benefit beyond his services as an employee. *Rose*, 719 P.2d at 86. No
8 reasonable juror could so conclude.

9 Kaufman’s alleged subjective belief that Cambia could not terminate him without
10 cause and without first providing him corrective action is not reasonable. He was told in writing
11 by Cambia’s recruiter that Cambia was an at-will employer. He received a substantial bonus, in
12 return for which he acknowledged his understanding that Cambia employed him at-will. He then
13 signed an acknowledgment form in which he professed his understanding that Cambia could
14 terminate his employment at any time without any prior notice.

15 Kaufman also cannot show that he incurred a detriment by accepting Cambia’s
16 lucrative employment offer and substantial sign-on bonus. He did not permanently relocate to
17 Utah or sell his California home and had been unemployed for several months at the time he
18 accepted Cambia’s offer. Kaufman’s situation is even less compelling than that in *Bullock v.*
19 *Deseret Dodge Truck Center, Inc.*, 354 P.2d 559 (Utah 1960), in which the Utah Supreme Court
20 declined to apply the estoppel doctrine to modify the plaintiff’s at-will employment. In *Bullock*,
21 the plaintiff accepted a job offer and, in reliance upon his understanding of the employment
22 contract, sold his house, moved from Texas to Utah, incurred travel expenses, and took a
23 reduction in salary and other benefits. He contended that the employer, in exchange for his
24 sacrifices, had impliedly promised not to terminate him for eight years. On these facts, the Utah
25 Supreme Court refused to override the at-will doctrine to imply a term of employment in the

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1 contract to which the employer had not expressly agreed. *Id*; see also *Rose*, 719 P.2d 83
2 (affirming summary judgment to employer on promissory estoppel claim because evidence did
3 not suggest plaintiff was justified in assuming that employer had promised not to terminate him
4 at-will.).

5 Similarly, Kaufman cannot establish that he was justified in assuming that his
6 employment with Cambia was other than at-will, let alone establish that he suffered a detriment
7 by accepting employment with Cambia, employment for which he was highly compensated. He
8 also cannot offer evidence of a benefit to Cambia beyond his employment. This claim fails as a
9 matter of law and the court should grant summary judgment to Cambia.

10 **5. Intentional interference with economic relationship (“IIER”)**

11 Kaufman claims that Mera intentionally interfered with Kaufman’s employment
12 relationship with Cambia for purely personal reasons in that Mera wanted to secure the CMO
13 position vacated by Prows for himself. He further asserts that because of this improper motive,
14 Mera made material misrepresentations to justify Kaufman’s termination and exerted undue
15 influence on Byrd to cooperate in causing Kaufman’s termination. The evidence does not support
16 Kaufman’s allegations and his claim against Mera fails as a matter of law.

17 To establish an IIER claim, Kaufman must offer evidence that Mera 1)
18 intentionally interfered with Kaufman’s contract with a third party; 2) employed improper
19 means; and 3) caused injury to Kaufman. *Eldridge v. Johndrow*, 345 P.2d 553 (Utah 2015);
20 *Leigh Furniture and Carpet Co. v. Isom*, 657 P.2d 293 (Utah 1982). Utah law does not recognize
21 IIER claims premised on an improper motive or purpose. *Eldridge*, 345 P.2d 553.¹⁷ Here,
22 Kaufman’s IIER claim against Mera cannot be sustained because Kaufman cannot show that

23

24

25 ¹⁷ Even if a claim could proceed based on an improper purpose, there is no evidence of one in this case. Kaufman
26 admits he never expressed an interest in the CMO position to anyone. No reasonable juror could find that Mera
terminated Kaufman to prevent Kaufman from competing for a role in which Kaufman never expressed interest.

1 Mera 1) used improper means or 2) interfered with Kaufman’s contract with a third party.
2 Cambia is entitled to summary judgment if Kaufman fails to establish either element.

3 To establish improper means, Kaufman must offer evidence that Mera acted
4 contrary to a statute, regulation or common law or violated an established standard of a trade or
5 profession. *Ferguson v. Williams & Hunt, Inc.*, 221 P.3d 205 (Utah 2009). Kaufman cannot offer
6 evidence sufficient to meet this standard. While Kaufman may not agree with Mera’s assessment
7 of his performance, Mera did nothing more than exercise traditional supervisory responsibilities.
8 In doing so, he did not violate any laws or established standards of the health insurance
9 profession.

10 Moreover, Mera did not interfere with a third party’s contract. The general rule is
11 that corporate employees who act within the scope of their corporate authority take such actions
12 as agents of the corporation and thus cannot be liable for interfering with the contractual
13 relationship of which the employee is a necessary part. See *Battista v. Lebanon Trotting Ass’n*,
14 538 F.2d 111 (6th Cir. 1976); *Pace v. Garcia*, 631 F.Supp. 1417 (W.D. Tex. 1986); *Stratford*
15 *Group, Ltd. v. Interstate Bakeries*, 590 F.Supp. 859 (S.D.N.Y.1984); *Allison v. American*
16 *Airlines*, 112 F.Supp. 37 (N.D. Okla. 1953); *Rozell v. Stieffermann*, 726 S.W.2d 342 (Mo. Ct.
17 App. 1987); *Murtha v. Yonkers Child Care Ass’n*, 45 N.Y.2d 913, 383 N.E.2d 865, 411 N.Y.S.2d
18 219 (1978); *Wampler v. Palmerton*, 250 Or. 65, 439 P.2d 601 (1968); *Houser v. City of*
19 *Redmond*, 91 Wash.2d 36, 586 P.2d 482 (1978); *Kvenild v. Taylor*, 594 P.2d 972 (Wyo. 1979); *K*
20 *& K Management, Inc. v. Lee*, 557 A.2d 965, 316 Md. 137 (Md. 1987). Here, Mera did nothing
21 more than raise concerns about Kaufman’s demonstrated, and admitted, lack of leadership of the
22 Inpatient Team and share his perception of Kaufman’s lack of engagement and job-related
23 knowledge. Mera’s conduct was no different than that exercised by supervisors every day on
24 behalf of corporate employers and clearly was within the scope of his authority as Kaufman’s

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1 supervisor. Mera acted on behalf of Cambia and thus his actions did not interfere with a third-
2 party's contract as a matter of law.

3 The claim against Mera should be dismissed because Kaufman cannot show
4 improper means or interference with Kaufman's contract with a third party.

5 **IV. Conclusion**

6 For the foregoing reasons, the court should dismiss Kaufman's complaint in its
7 entirety, which includes all claims against Cambia and Regence BlueCross BlueShield of Oregon
8 and the IIER claim against Mera.

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10 Dated this 24th day of July, 2015.

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DRUCKMAN & BLATT, P.C.

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s/Jeffrey J. Druckman
Jeffrey J. Druckman
OSB No. 792148
jeff@jjdlaw.com

14

15

16

s/Janine C. Blatt
Janine C. Blatt
OSB No. 922323
janine@jjdlaw.com

17

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Attorneys for Defendant

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