SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

Ricky Stephens Plaintiff/Petitioner(s) vs. Tesla Insurance Services, Inc. Defendant/Respondent (s)	No. 23CV031800 Date: 12/01/2023 Time: 9:30 AM Dept: 23 Judge: Brad Seligman ORDER re: Hearing on Demurrer and Motion to Strike the Complaint; filed by Tesla Insurance Services, Inc. (Defendant) filed by Tesla Insurance Services, Inc. (Defendant) on 11/22/2023

Matter was not contested. The tentative ruling set forth below is affirmed.

The Demurrer filed by Tesla Insurance Services, Inc. on 10/30/2023 is Sustained in Part.

The Motion to Strike (not initial pleading) DEFENDANTS NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF PLAINTIFFS FIRST AMENDED COMPLAINT filed by Tesla Insurance Services, Inc. on 10/30/2023 is Granted in Part.

DEMURRER

Defendant's Demurrer is OVERRULED in part and SUSTAINED in part. The Court declines to dismiss Plaintiff's complaint based on judicial abstention.

· Defendant's Demurrer is OVERRULED as to the first cause of action (UCL).

· The Demurrer is SUSTAINED WITH LEAVE to amend as to Plaintiff's second cause of action (breach of contract) and third cause of action (ICFA).

· The Demurrer is SUSTAINED WITHOUT LEAVE to amend as to Plaintiff's fourth cause of action (unjust enrichment).

BACKGROUND

Plaintiff, an Illinois resident, sues Defendant, a California corporation, on behalf of himself and a putative class of individuals in Arizona, Colorado, Illinois, Maryland, Minnesota, Nevada, Ohio, Oregon, Texas, Utah, and Virginia "who purchased usage-based insurance from Defendant for their Tesla vehicle." (9/27/23 FAC, ¶¶ 26, 33.)

Defendant's "usage-based safety discount insurance" calculates premiums based on the insured's "driving habits," using five "safety factors" including "Forward Collision Warning alerts." (FAC, ¶¶ 1, 5.) Plaintiff alleges that "numerous Tesla drivers" report "sporadic and random Forward Collision Warnings" and "other Tesla drivers" report Forward Collision Warnings reflected in their "Safety Score without ever experiencing any warnings while driving their vehicle." (FAC, ¶¶ 19, 20.) These "false Forward Collision Warnings result in immediate downgrades of Defendant's insureds' Safety Scores. This in turn results in higher premiums." (FAC, ¶ 21.)

Plaintiff asserts causes of action for violation of California's Business and Professions Code § 17200 (the UCL), breach of contract, violation of Illinois' Consumer Fraud and Deceptive Business Practices Act, and unjust enrichment. (FAC, p. 1.)

LEGAL FRAMEWORK

The standard for construing a complaint on demurrer is long settled: "We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed. [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

DISCUSSION

Defendant demurs to each cause of action and argues that the Court should dismiss Plaintiff's claims under the doctrine of judicial abstention.

A. <u>California's Unfair Competition Law (UCL)</u>

Defendant argues the UCL claim fails because the UCL does not apply outside of California, Plaintiff does not allege "unlawful" or "unfair" business practices, and a lack of standing. Here, the Court finds that Plaintiff states a claim.

As to the first argument, "state statutory remedies may be invoked by out-of-state parties when they are harmed by wrongful conduct occurring in California." (*Norwest Mort., Inc. v. Superior Court* (1999) 72 Cal.App.4th 214, 224-225, citing *Diamond Multimedia Systems, Inc. v. Superior Court* (1999) 19 Cal.4th 1036.) Here, Plaintiff alleges that Defendant is a California corporation with its principal place of business in California. (Complaint, ¶ 9.) Further, Plaintiff alleges that "all metrics used to calculate drivers' Safety Scores were sent and analyzed" in California, and

"all advertisements and disclosures as to the real-time driving insurance services were created and disseminated from" California. (*Ibid.*) Therefore, to the extent based upon extraterritorial application of the UCL, Defendant's Demurrer is OVERRULED.

Second, "[b]ecause Business and Professions Code section 17200 is written in this disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." (*Cal-Tech Comms., Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 [internal quotations omitted].) To state a claim "based on false advertising or promotional practices, 'it is necessary only to show that "members of the public are likely to be deceived."'" (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 951, quoting *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.) The Court finds that Plaintiff states a claim under the UCL based on false advertising (i.e., the fraud prong).

On reply, Defendant argues that Plaintiff fails to allege fraud with the requisite particularity. (Reply, p. 5.) Assuming *arguendo* a heightened pleading standard applies to Plaintiff's UCL claim (*see, e.g.*, *Alborzi v. University of Southern California* (2020) 55 Cal.App.5th 155, 184 ["Particularized fact pleading is not required for a UCL claim."]), the Court finds it sufficiently pleaded. The FAC alleges where the subject statements were developed and disseminated from (FAC, ¶ 5), and it cites specific representations (FAC, ¶ 15 & fn. 3; ¶ 31; ¶ 45 & fn. 4) and how those statements were allegedly deceptive (FAC, ¶¶ 16-22). Therefore, the Demurrer is OVERRULED insofar as it is based on failure to sufficiently state a claim.

Third, Defendant argues that Plaintiff has not identified any putative class member, "other than himself," with standing to bring a UCL claim. (MPA, p. 6.) In a putative class action based upon a UCL claim, only the class representative must establish standing. (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 324.) Therefore, to the extent Defendant argues Plaintiff must identify (at the pleading stage) other putative class members with standing, the Demurrer is OVERRULED.

Defendant's Demurrer to the first cause of action (UCL) is OVERRULED.

B. <u>Breach of Contract</u>

Defendant argues that the FAC fails to sufficiently allege the terms of the contract. In opposition, Plaintiff argues that the FAC does not allege "an express breach of contract," rather it "alleges a breach of the implied covenant of good faith and fair dealing." (Opposition, p. 9.) On reply, Defendant attempts to construe the claim as a bad faith insurance claim. (Reply, pp. 6-7.)

Under both California and Illinois law, a claim for breach of the implied covenant "is limited to assuring compliance with the express terms of the contract, and cannot be extended to create obligations not contemplated in the contract." (*Racine & Laramie, Ltd. v. Dept. of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1032; *see also Gore v. Indiana Ins. Co.* (Ill. App. Ct. 2007) 376 Ill.App.3d 282, 286.)

Here, Plaintiff alleges that the insurance agreement disclosed it would be based upon "Forward

Collision Warning alerts." (FAC, ¶ 5.) Plaintiff alleges that Defendant "abus[ed] its discretion to adjust insurance premiums" by "adjusting such premiums based on false Forward Collision Warnings." (FAC, ¶ 23.) While Plaintiff asserts that there were "ghost" Forward Collision Warnings (FAC, ¶ 6), it is unclear whether such an allegation is sufficient to state a claim absent the underlying agreement.

Therefore, Defendant's Demurrer to the second cause of action (breach of contract) is SUSTAINED WITH LEAVE to amend.

C. Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA)

Defendant argues that Plaintiff's ICFA claim is a nonactionable restatement of Plaintiff's breach of contract claim, that it does not meet the heightened pleading standard, and that non-Illinois putative class members lack standing. Defendant cites *Avery v. State Farm Mut. Auto Ins. Co.* (2005) 216 Ill.2d 100, which held that "a plaintiff may pursue a private cause of action under the Consumer Fraud Act if the circumstances that relate to the disputed transaction occur primarily and substantially in Illinois." (*Id.*, p. 187.)

In response, Plaintiff explains that the ICFA claim is brought on behalf of Plaintiff, as an individual, and "an Illinois subclass of individuals located in Illinois who purchased Defendant's insurance." (Opposition, p. 12.) However, the FAC does not allege any relevant circumstances occurred in Illinois. As noted above, Plaintiff alleges that the deceptive representations were developed in and disseminated from California. (FAC, ¶ 9.) Further, Plaintiff alleges insurance premiums were calculated in and sent to California. (*Ibid.*) Aside from being an Illinois resident, Plaintiff does not allege that any conduct occurred in Illinois.

Further, in the briefing, Plaintiff affirmatively argues that the "locus" of Plaintiff's consumer fraud claims occurred in California. (Opposition, p. 5 ["Defendant's argument that Illinois was where performance of contract took place is unavailing because…the crux of Plaintiff's allegations is about Defendant's advertising and billing practices that originated from and occurred in California."].)

Therefore, Defendant's Demurrer to the third cause of action (ICFA) is SUSTAINED. The Court sustains the demurrer with leave to amend, but it is not inclined to find the same plaintiff can state a claim under both the UCL and ICFA based upon the same conduct.

D. Unjust Enrichment

Unjust enrichment is synonymous with restitution, which is one of the limited remedies under the UCL. (*Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231; *see also* Bus. & Prof. Code, §§ 17203, 17535; *Fletcher v. Security Pac. National Bank* (1979) 23 Cal.3d 442, 449 ["The general equitable principles underlying § 17535 as well as its express language arm the trial court with the cleansing power to order restitution to effect complete justice."].)

Plaintiff cites *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583 and *Hirsch v. Bank of America* (2003) 107 Cal.App.4th 708, for the proposition that "[s]ome courts" recognize unjust enrichment as a standalone cause of action. (Opposition, p. 13.) To the extent *Peterson* analyzed the claim for unjust enrichment as an independent cause of action, it found the trial court properly sustained a demurrer to the claim without leave to amend. (*Id.*, p. 1596.)

Hirsch found that the plaintiffs stated a claim; however, the claim was based upon conduct that was separate from plaintiff's UCL claim (i.e., excessive fees). (*Id.*, pp. 721-722.) Here, Plaintiff concedes that the "unjust enrichment claims is based on the same conduct as his UCL and ICFA claim—Defendant's overcharging of Plaintiff and the other class members for driving events that never occurred." (Opposition, p. 13.)

Therefore, the Demurrer to Plaintiffs fourth cause of action (unjust enrichment) is SUSTAINED WITHOUT LEAVE to amend.

E. Judicial Abstention

Judicial abstention may be appropriate if "granting the requested relief would require a trial court to assume the functions of an administrative agency, or to interfere with the functions of an administrative agency." (*Hambrick v. Healthcare Partners Medical Group, Inc.* (2015) 238 CalA.pp.4th 124, 147 [citations omitted].) Abstention may also be appropriate if a lawsuit involves complex economic policy or ongoing injunctive relief with alternative means of redress. (*Ibid.*)

Here, the Court declines to dismiss Plaintiff's claims on the basis of abstention. First, Defendant has not identified an alternative means of redress. (*Hambrick*, *supra*, p. 148 ["In addition, as we held in *Klein*, 'abstention is generally appropriate only if there is an alternative means of resolving the issues raised in the plaintiff's complaint.'"], citing *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1369.)

Second, the core of Plaintiff's allegations is false advertising (i.e., Defendant misrepresented that insurance premiums would be based on "driving habits," not "ghost" Forward Collision Warnings). (FAC, ¶¶ 1, 5, 6.) At this point in the proceedings, Plaintiff's claims do not implicate insurance regulations or complex economic policy to a degree that would warrant abstention.

Therefore, the Court declines to dismiss Plaintiff's claims based upon judicial abstention.

MOTION TO STRIKE

Defendant's Motion to Strike is GRANTED in part and DENIED in part.

The Motion is GRANTED as to Plaintiff's punitive damage allegations. The Motion is otherwise DENIED.

BACKGROUND

Plaintiff, an Illinois resident, sues Defendant, a California corporation, on behalf of himself and a putative class of individuals in Arizona, Colorado, Illinois, Maryland, Minnesota, Nevada, Ohio, Oregon, Texas, Utah, and Virginia "who purchased usage-based insurance from Defendant for their Tesla vehicle." (9/27/23 FAC, ¶¶ 26, 33.)

Defendant's "usage-based safety discount insurance" calculates premiums based on the insured's "driving habits," using five "safety factors" including "Forward Collision Warning alerts." (FAC, ¶¶ 1, 5.) Plaintiff alleges that "numerous Tesla drivers" report "sporadic and random Forward Collision Warnings" and "other Tesla drivers" report Forward Collision Warnings reflected in their "Safety Score without ever experiencing any warnings while driving their vehicle." (FAC, ¶¶ 19, 20.) These "false Forward Collision Warnings result in immediate downgrades of Defendant's insureds' Safety Scores. This in turn results in higher premiums." (FAC, ¶ 21.)

Plaintiff asserts causes of action for violation of California's Business and Professions Code § 17200 (the UCL), breach of contract, violation of Illinois Consumer Fraud and Deceptive Business Practices Act, and unjust enrichment. (FAC, p. 1.)

LEGAL FRAMEWORK

The Court may, on any terms it deems proper, strike from any pleading "irrelevant, false, or improper matter" inserted into the pleading, as well as "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

DISCUSSION

Defendant moves to strike allegations regarding Plaintiff's claims for punitive damages, attorneys' fees, and breach of contract.

A. Punitive Damages

As for punitive damages, Plaintiff concedes that he "only seeks punitive damages pursuant to his ICFA claim." (11/14/23 Opposition, p. 3.) Because the Court sustains Defendant's demurrer to the ICFA claim, the Motion to Strike is GRANTED with respect to punitive damages.

B. Attorneys' Fees

"Although the UCL does not provide for attorney fees, a prevailing plaintiff may seek attorney fees as a private attorney general under Code of Civil Procedure section 1021.5." (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 371, fn. 4, citing *Davis v. Ford Motor Credit Co. LLC* (2009) 179 Cal.App.4th 581, 600.)

Here, the FAC seeks attorneys' fees pursuant to Code of Civil Procedure § 1021.5. (FAC, ¶ 55.) Therefore, Defendant's Motion to Strike is DENIED with respect to attorneys' fees.

C. Breach of Contract

Defendant argues that "claims of insurance bad faith in the context of a class action are entirely inappropriate because each putative class member must still litigate the particular facts, issues and disputes as to their individual grievances in order to recover damages as to such claims." (MPA, p. 7.) A reasonable reading of the FAC does not suggest that Plaintiff is asserting a claim for wrongful denial of policy benefits (i.e., a bad faith claim). Thus, *Newell v. State Farm General Ins. Co.* (2004) 118 Cal.App.4th 1094 is distinguishable, as is *Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, upon which *Newell* relied.

Defendant's Motion to Strike is DENIED with respect to Plaintiff's breach of contract claims.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Dated : 12/01/2023

Brad Seligman / Judge