S281510

IN THE SUPREME COURT OF CALIFORNIA

KATHERINE ROSENBERG-WOHL,
Plaintiff and Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant and Respondent.

AFTER A DECISION BY THE COURT OF APPEAL,
FIRST APPELLATE DISTRICT, DIVISION TWO • CASE NO. A163848
SAN FRANCISCO COUNTY SUPERIOR COURT • ANNE-CHRISTINE MASSULLO, JUDGE
CASE NO. CGC-20-587264

ANSWER BRIEF ON THE MERITS

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ANSWER BRIEF ON THE MERITS

INTRODUCTION

Is a homeowner's action challenging her insurer's handling of a claim for policy benefits subject to a contract term under which all actions on the policy must be brought within one year of the property loss? The simple answer is yes. The standard one-year suit provision in homeowner's insurance policies gives insureds one year to sue on any theory arising out of the insurer's handling of claims for policy benefits. That contractual requirement applies regardless whether the insured is suing for breach of contract, breach of the covenant of good faith, or violation of the Unfair Competition Law (UCL). As the Court of Appeal here correctly held, neither the label of a claim nor the scope of remedies sought vitiates the contractual condition.

Plaintiff Katherine Rosenberg-Wohl asked her homeowner's insurer for $52,000 in policy benefits to replace an exterior staircase that, over time, had apparently developed a change in pitch or slope. The insurer denied the claim, noting that the policy covers only accidental direct physical losses, not gradual deterioration such as a settling structure may experience. Plaintiff waited more than a year to sue her insurer over that denial.

The trial court properly dismissed the action as time-barred—not by any statute of limitations, but by the plain terms of plaintiff's insurance contract. That provision reads, "**Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be

started within one year after the date of loss or damage." (1 CT 92.)

Plaintiff does not deny that any breach of contract or bad faith claims would be time-barred. She nonetheless argues that the one-year suit provision does not bar her action for injunctive relief under California's UCL, contending that such actions are not subject to Insurance Code section 2071. That statute approves policy provisions like the one at issue here, under which actions "on the policy" must be brought within one year of the loss.

The Court of Appeal rejected plaintiff's argument and so should this Court. The legal question here is not which of two competing statutes applies. Rather, it's a straightforward question of contract construction. No one disputes that one-year suit provisions are common (even outside of insurance policies) and enforceable, so the only issue is whether the language of the provision here encompasses plaintiff's UCL claim. It does.

Specifically, plaintiff alleges that State Farm fails to "investigate all claims made in a good faith and reasonable manner" and denies claims with "no reasonable basis" for doing so. (1 CT 197.) Whether plaintiff relies on her own claim, or claims made by other policyholders, a fact-finder resolving her allegations must analyze State Farm's handling of claims for policy benefits. Construing the contract to encompass such claims is consistent with the Legislature's purpose in endorsing the one-year suit provision: ensuring that challenges to the denial of insurance claims are promptly litigated while evidence of the

insured's loss, and the carrier's handling of the insurance claim, is still fresh.

Cortez v. Purolator Air Filtration Products Co. (2000) 23 Cal.4th 163 (*Cortez*) is not to the contrary. There, this Court held that between a general three-year statute of limitations for claims asserting statutory violations and the four-year statute of limitations for UCL claims, the latter applied to a UCL claim premised on the violation of another statute. This Court did not, however, confront the effect of a *contractual* limitations provision that has been enforced for over a century. *Cortez* does not require that courts ignore parties' freedom of contract, and no authority supports invalidating the parties' contractual agreement by replacing it with a more general statute of limitations, as plaintiff effectively seeks to do.

Finally, the Attorney General is wrong in asserting that enforcing the one-year suit provision as written may unduly restrict actions challenging unfair insurance practices. Such actions can and do proceed when properly filed within one year of a loss. Moreover, such actions will not be subject to the one-year suit provision at all if they challenge unfair practices that are not on the policy, such as deceptive underwriting or predatory sales tactics. And, of course, the Attorney General and other government officials are not bound by the contractual provision at all, and they are free to challenge any unfair practices, including those involving claims handling, either through a UCL action or an administrative proceeding.

For the above reasons and those that follow, this Court should hold that plaintiff's suit is "on the policy" and time-barred.

STATEMENT OF THE CASE

A. Plaintiff's insurance policy includes a standard provision requiring insureds to file any action on the policy within one year of the claimed loss.

Plaintiff's homeowner's insurance policy issued by State Farm contains standard coverages, exclusions and conditions. (1 CT 63–106.) One of those conditions places a time limit on actions against the insurer: "**Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage." (1 CT 92.)

This common contractual limitations provision is coextensive with and authorized by Insurance Code section 2071. That statute approves policies with the following provision: "No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, and unless commenced within 12 months next after inception of the loss." (Ins. Code, § 2071.) Courts construe the one-year period in such policies as being tolled between the time a claim on the loss is presented and the time the claim is denied. (*Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 683–684 (*Prudential*).)

B. Plaintiff replaces a sloping staircase in front of her home and asks State Farm for policy benefits to cover the cost, which State Farm denies.

Plaintiff alleges that, in late 2018 or early 2019, one of her elderly neighbors fell on two occasions while descending the front staircase of plaintiff's home. (1 CT 185.) Plaintiff concluded that, at some point, the pitch of the staircase had changed. (*Ibid.*)

On April 23, 2019, plaintiff authorized the replacement of the front staircase. (1 CT 185.) She spent $52,600 to replace the staircase. (*Ibid.*) A few months later, on August 9, 2019, plaintiff submitted a claim to State Farm for reimbursement under her homeowner's policy. (*Ibid.*) On August 26, 2019, State Farm unequivocally denied plaintiff's claim, explaining that she provided " 'no evidence of a covered cause or loss nor any covered accidental direct physical loss to the front exterior stairway.' "[1] (1 CT 186.)

Plaintiff alleges that, on August 10, 2020—i.e., over a year after the claimed loss and just under a year after State Farm

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[1] Plaintiff's policy covers "accidental direct physical loss" to her home, including losses caused by fires, explosions, and falling objects. (1 CT 84–86.) Plaintiff's policy also covers "the sudden, entire collapse of a building or any part of a building." (1 CT 83.) The policy excludes wear and tear, deterioration, and latent defects; settling, cracking, shrinking, and bulging; earth movement, including subsidence; and defective and inadequate maintenance of the home. (1 CT 87–88.) A loss caused by such problems is not covered under the policy "regardless of whether the loss occurs suddenly or gradually." (1 CT 86.)

denied her claim—she initiated a "follow-up inquiry" to determine "what, if anything, could be done." (1 CT 188.) Plaintiff alleges that State Farm "reopened" her claim in response to the "follow-up inquiry." (1 CT 188.)

On August 24, 2020, State Farm reiterated its decision to deny plaintiff's claim. (1 CT 191–192.) State Farm explained again that, " 'Based on the investigation findings, there was no evidence of a covered cause for accidental direct physical damage to the property.' " (*Ibid.*)

C. Well over a year after the staircase replacement, and over a year after the unequivocal denial of policy benefits, plaintiff sues State Farm. The trial court dismisses the action as time-barred.

Plaintiff sued State Farm in two actions filed on October 22, 2020, nearly a year and a half after she authorized the replacement of her staircase. (1 CT 12.) In one complaint, she asserted causes of action for breach of contract and breach of the implied covenant of good faith and fair dealing. (1 CT 107–110.) That action was removed to federal court. (1 CT 112–118.) The federal district court found that plaintiff's claims were time-barred and, after plaintiff voluntarily dismissed her appeal, that decision is now final. (See *Rosenberg-Wohl v. State Farm Fire and Casualty Company* (N.D.Cal., Mar. 28, 2022, No. 20-cv-09316) 2022 WL 901545, at p. *8 [nonpub. opn.]; 12/7/23 Docket Entry: Stipulated Motion to Dismiss Appeal, *Rosenberg-Wohl v. State Farm Fire and Casualty Company* (9th Cir., Dec. 7, 2023, No. 22-15616).)

The complaint in the second action asserted three causes of action: (1) a violation of the UCL, (2) declaratory relief, and (3) injunctive relief. (1 CT 13–19.) Plaintiff amended her complaint to allege that State Farm mishandled her claim in violation of the "unfair" prong of the UCL. (1 CT 24–32.) State Farm demurred, arguing plaintiff's case was time-barred under the one-year suit provision in the policy. (1 CT 45–46, 156–157.)

The trial court sustained State Farm's demurrer. (1 CT 171–180.) The court reasoned that because plaintiff's loss occurred no later than April 23, 2019—i.e., the date she authorized the replacement of her staircase—that is the latest date the contractual limitations period began to run. (1 CT 176.) The limitations period was tolled for 17 days between August 9, 2019, and August 26, 2019, while State Farm considered plaintiff's claim. (1 CT 176–177.) Accordingly, the one-year contractual limitations period expired on May 10, 2020, several months before this lawsuit was filed. (1 CT 177.) The court, however, stopped short of dismissing plaintiff's claim and granted leave to amend.

Plaintiff filed a second amended complaint, which is the operative pleading. (1 CT 182.) Notwithstanding the requirement that an equitable claim for injunctive relief requires a showing that remedies at law (such as for breach of contract and bad faith) are inadequate, she sought an injunction under the UCL and under Business and Professions Code section 17200. (1 CT 196–198.) Plaintiff also asserted a claim for false advertising. (1 CT 194–196.)

In support of those claims, plaintiff details her "experience with how State Farm adjudicate[d]" her insurance claim. (1 CT 184–192, formatting omitted.) Plaintiff alleges that State Farm "had no basis for its decision" to deny her claim, did not interview relevant parties, and "did not take any measurements" of the stairs or "evaluate the appropriateness" of the replacement. (1 CT 186.) Plaintiff further alleges that State Farm denied her claim only "because the claim did not state that something had fallen onto and damaged the staircase." (1 CT 187.)

Plaintiff also alleges that State Farm "regularly summarily denies property insurance claims unless State Farm believes the particular claim falls into a category of likely coverage." (1 CT 186.) Plaintiff then details several alleged wrongful claim-handling practices, including depriving policyholders of a reasonable opportunity to challenge the denial of claims, failing to give as much consideration to the interests of the insured as it gives to its own interests, failing to conduct a good faith investigation, and failing to identify the applicable reasons for denial. (1 CT 187–197.)

State Farm demurred on the ground that plaintiff's suit was time-barred. (1 CT 200–220.) During a hearing on State Farm's demurrer, plaintiff withdrew her false advertising claim. (2 CT 337.)

Following that hearing, on July 29, 2021, the trial court reaffirmed its initial finding that plaintiff's suit was time-barred. (2 CT 335–342.) The trial court found that the one-year limitations period barred the UCL claim, and that State Farm

did not waive that defense by reevaluating plaintiff's claim after the one-year period had expired. (2 CT 337–342.)

D. The Court of Appeal affirms and this Court grants review.

Plaintiff appealed and the Court of Appeal affirmed in a published opinion. (*Rosenberg-Wohl v. State Farm Fire and Casualty Company* (2023) 93 Cal.App.5th 436, 456 (*Rosenberg-Wohl*).) The Court of Appeal held that the policy's one-year suit provision bars plaintiff's UCL claim, and State Farm did not waive the one-year suit provision. (See *id.* at pp. 449, 454–456.) A dissent argued that plaintiff's UCL claim for injunctive relief does not fall within the scope of the one-year suit provision and is instead subject only to the four-year statute of limitations for UCL claims. (See *id.* at pp. 456–465 (dis. opn. of Stewart, P.J.).)

Plaintiff filed a petition for review and the Attorney General requested depublication of the Court of Appeal's opinion. This Court denied the Attorney General's request for depublication but granted plaintiff's petition for review.

STANDARD OF REVIEW

This Court reviews de novo an order sustaining a demurrer without leave to amend. (*Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010.) The Court " 'treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law.' " (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.)

LEGAL ARGUMENT

I. Courts regularly enforce contractual conditions like the one-year suit provision in plaintiff's policy.

A. A contractual provision limiting the time to file lawsuits is consistent with public policy as expressed by the Legislature.

Under the "fundamental principle of freedom of contract," courts will enforce an agreement between parties as long as it does not violate public policy. (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 677 (*Foley*).) That freedom extends to placing limits on the time to file a lawsuit, which is "not a right protected under the rule of public policy, but a mere personal right for the benefit of the individual." (*Tebbets v. Fidelity & Cas. Co. of New York* (1909) 155 Cal. 137, 139.) Indeed, the Legislature "has expressly recognized that statutory limitations periods are not imbued with any element of nonwaivable 'public policy,' " and has thus decreed "that parties have a contractual right to opt out of the statutorily mandated limitations periods" for civil actions. (*Brisbane Lodging, L.P. v. Webcor Builders, Inc.* (2013) 216 Cal.App.4th 1249, 1262 (*Brisbane*), citing Code. Civ. Proc. § 360.5.)

It is therefore "well-settled" that parties to a contract can agree to a limitations period shorter than that provided by statute, as long as the contractual limitations period is reasonable. (*Beeson v. Schloss* (1920) 183 Cal. 618, 622; see *Moreno v. Sanchez* (2003) 106 Cal.App.4th 1415, 1430.) Courts applying that rule regularly enforce contract provisions under which a plaintiff's claim is time-barred. (See *Zalkind v.*

Ceradyne, Inc. (2011) 194 Cal.App.4th 1010, 1017 ["we conclude the Zalkinds and Quest's complaint was time-barred because it was not filed within the 24-month limitations period in [the contract]"]; *Soltani v. Western & Southern Life Ins. Co.* (9th Cir. 2001) 258 F.3d 1038, 1045 [enforcing six-month limitations provision under California law and holding some plaintiffs' wrongful termination claims were time-barred].) Courts enforce limitations provisions that are as short as three months. (See, e.g., *Capehart v. Heady* (1962) 206 Cal.App.2d 386, 391.)

Insurance Code section 2071 embodies legislative approval of a one-year suit provision in certain insurance policies, like the one at issue in this case. But other policies not governed by section 2071 also contain enforceable one-year suit provisions.[2] Even in cases involving untimely claims under all-risk policies or homeowner's policies—both of which are fire insurance policies within the meaning of section 2071—some courts address the effect of the contractual one-year suit provision without referencing section 2071 at all. (See *Magnolia Square Homeowners Assn. v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049,

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[2] See, e.g., *Fageol Truck & Coach Co. v Pacific Indem. Co.* (1941) 18 Cal.2d 731, 735 [one-year limitations provision in automobile policy held valid]; *CBS Broadcasting Inc. v. Fireman's Fund Ins. Co.* (1999) 70 Cal.App.4th 1075, 1085–1086 (*CBS*) [one-year limitation in policy issued to television production company to insure against business interruption held valid and enforceable]; *C & H Foods Co. v. Hartford Ins. Co.* (1984) 163 Cal.App.3d 1055, 1064 [one-year limitations provision in marine insurance policy held valid].

1058, fn. 2 (*Magnolia Square*) [one-year limitation provision in all-risk policy held valid and enforceable].)

These cases are a reminder that the provision here is, at bottom, a contractual limitations provision. It is "precisely the arrangement to which [plaintiff] agreed." (*Brisbane*, *supra*, 216 Cal.App.4th at p. 1263.) "Limitations periods in insurance policies are not 'statutes' of limitation; they are contractual limitations on the insurer's liability." (*Great American West, Inc. v. Safeco Ins.* (1991) 226 Cal.App.3d 1145, 1151.) Contractual limitations periods "operate distinct and apart from the *statutory* limitations period set by the state legislature," and by enacting a statute regarding limitations provisions in insurance policies, "California has taken the limitation off the law library shelves and made it a matter of contract." (*Wetzel v. Lou Ehlers Cadillac Group Long Term Disability Ins. Program* (9th Cir. 2000) 222 F.3d 643, 648.)

Thus, where a contractual limitations provision exists, it operates *alongside* applicable statutes of limitations. In particular scenarios, application of one may moot application of the other. Moreover, one may be forfeited or otherwise unenforceable, leaving operation of the other intact. But the question is not a binary one, as the provisions are not mutually exclusive. (See *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 535 & fn. 2 (*Abari*) [noting plaintiff's suit was untimely under one-year suit provision in insurance policy *and* four-year statute of limitations for breach of contract].)

The issue here, therefore, is not which of two statutory limitations period applies, but whether plaintiff's UCL claim falls within the scope of the parties' *agreed-to* contractual limitations provision.

B. The history of the one-year suit provision confirms the importance of preventing litigation of stale claims—under any label—that turn on evidence about underlying property losses and insurers' adjustment of those losses.

The one-year suit provision in the policy here has its genesis in provisions dating back well more than a century. (See *Riddlesbarger v. Hartford Ins. Co.* (1868) 74 U.S. 386, 390–391 [19 L.Ed. 257] (*Riddlesbarger*) [holding contractual limitations provision valid and enforceable].) Such provisions have since been endorsed by Insurance Code section 2071, a form fire insurance policy that was intended to collect standard terms in one place and harmonize different carriers' verbiage describing those terms. (See *Prudential*, *supra*, 51 Cal.3d at p. 682.)

The form policy was first enacted in 1909. (See Stats. 1909, ch. 267, § 1; see also Ins. Code, § 2071.) After the governor vetoed the enactment of a different standard form in 1908, he requested that interested stakeholders meet with the Insurance Commissioner to prepare a new proposal. (See Assem. J. (1909 Reg. Sess.) p. 29.) As a result of those "many meetings," consumer groups and insurers agreed to a "carefully and thoroughly considered" standard form. (*Ibid.*) In 1949, the Legislature changed the limitations period in the standard form

policy from 15 to 12 months. (See Stats. 1949, ch. 556, § 2, p. 960; see also Ins. Code, § 2071.)

"The purpose behind the shortened limitations period required by section 2071 is to relieve insurance companies of the burden imposed by defending old, stale claims." (*Aliberti v. Allstate Ins. Co.* (1999) 74 Cal.App.4th 138, 145; see *Bollinger v. National Fire Ins. Co. of Hartford, Conn.* (1944) 25 Cal.2d 399, 407 (*Bollinger*) [" 'the purpose of [section 2071] is to obtain the advantage of an early trial of the matters in dispute and to make more certain and convenient the production of the evidence upon which the rights of the parties may depend,' " quoting *Genuser v. Ocean Acc. & Guarantee Corp.* (1943) 57 Cal.App.2d 979, 986 (*Genuser*)], superseded by statute on another ground as stated in *American Broadcasting Companies, Inc. v. Walter Reade-Sterling, Inc.* (1974) 43 Cal.App.3d 401, 406; cf. *Riddlesbarger*, *supra*, 74 U.S. at p. 390 [explaining one-year suit provision ensures that dispute is resolved while "the proofs respecting it are accessible"].) Because the one-year suit provision is statutorily authorized, "it is deemed consistent with public policy as established by the Legislature," and it "should not be construed strictly against the insurer (unlike ambiguous or uncertain policy language)." (*Prudential*, *supra*, 51 Cal.3d at p. 684.)

II. The one-year suit provision bars plaintiff's UCL action.

A. An action under any legal theory that challenges the insurer's handling of a policyholder's claim for benefits is an action on the policy and is subject to the one-year suit provision.

Where an insured's action "is based on allegations relating to the handling of a claim or the manner in which it is processed, it is an action 'on the policy' and therefore subject to the limitations bar" found in contractual one-year suit provisions. (*Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.App.4th 712, 719 (*Velasquez*).) By contrast, actions based on "activities by the insurer that had nothing to do with the initial claim under the policy" are not actions "on the policy." (*Id.* at p. 720, citing *Murphy v. Allstate Ins. Co.* (1978) 83 Cal.App.3d 38, 46.) Applying that standard, *Velasquez* held that the insureds' lawsuit—which challenged the carrier's basis for denying their claim (*id.* at p. 717)—was time-barred. "None of the actions alleged by [the insureds] as bad faith relate to events subsequent to initial policy coverage." (*Id.* at p. 722.)

Other courts likewise hold that an insured must comply with the policy's condition for bringing suit whenever the action challenges the insurer's handling and resolution of claims. (See *CBS*, *supra*, 70 Cal.App.4th at p. 1086 [one-year limitation provision in insurance policy barred plaintiff's breach of good faith claim because it alleged, in part, that carrier "refus[ed] to make adequate investigation" and "fail[ed] to provide a justifiable basis for denying coverage"]; *State Farm Fire & Casualty Co. v.*

Superior Court (1989) 210 Cal.App.3d 604, 609 [reviewing case law and explaining that actions based on carrier's "handling [of] the claim or related causes based on the manner of processing of the claim" are "on the policy" under section 2071]; *Lawrence v. Western Mutual Ins. Co.* (1988) 204 Cal.App.3d 565, 574–575 (*Lawrence*) [plaintiff's "action for alleged tortious bad faith in handling his claim because of purported misrepresentations in the policy concerning coverage" was barred by one-year suit provision because it "relates to the complete denial of the claim [under the] policy"].)

The language of Insurance Code section 2071 reinforces the focus on claims handling. The statutory form policy states that a suit on the policy must be brought "within 12 months next *after inception of the loss*." (Ins. Code, § 2071, emphasis added.) Thus, the provision operates when the insured suffers a "loss" and then files a lawsuit against the carrier. Because the provision covers suits stemming from an insured's "loss," it naturally covers any suits challenging the carrier's handling of actual losses.

Given the emphasis on claims handling, it is not surprising that courts have held that Insurance Code section 2071 limits the time to bring bad faith lawsuits. A bad faith action "examines the reasonableness of the insurer's conduct" in handling a claim. (*Graciano v. Mercury General Corp.* (2014) 231 Cal.App.4th 414, 425 (*Graciano*).) "An insurer's good or bad faith must be evaluated in light of the totality of the circumstances surrounding its actions." (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 723 (*Wilson*).) "Just what conduct will [constitute

bad faith] must be determined on a case by case basis." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.)

Courts therefore regularly conclude that bad faith actions are "on the policy." (See *Velasquez*, *supra*, 1 Cal.App.4th at pp. 720–721 [explaining that because "the gravamen of [a] bad faith action pertain[s] to the insurer's handling of the initial claim for loss," it is an action "on the policy"].) Indeed, courts reach that conclusion even when the plaintiff asserts claims under different legal theories that at bottom arise out of claim handling conduct. (*Prieto v. State Farm Fire & Cas. Co.* (1990) 225 Cal.App.3d 1188, 1196 (*Prieto*) [holding plaintiff's emotional distress cause of action time-barred because it was "merely a theoretical restatement" of a bad faith claim].)

Whether labeled as a bad faith action or otherwise, lawsuits that turn on evidence regarding an insured's loss and an insurer's conduct in processing that loss are claims "on the policy." Evidence relevant to proving or defending against such claims is fresh and readily accessible while the claim is being processed, or shortly after the claim is denied, but it grows stale over time. Applying the one-year suit provision to actions challenging the handling of a claim for policy benefits therefore advances the Legislature's purpose in enacting Insurance Code section 2071, i.e., " 'mak[ing] more certain and convenient the production of evidence upon which the rights of the parties may depend.' " (*Bollinger*, *supra*, 25 Cal.2d at p. 407, quoting *Genuser*, *supra*, 57 Cal.App.2d at p. 986.)

B. Plaintiff's action challenges—and will require an analysis of—State Farm's handling of specific claims, and it is therefore subject to the contractual condition for bringing actions "on the policy."

The allegations in plaintiff's complaint confirm that she is challenging State Farm's handling of specific claims, so her lawsuit is "on the policy."

In paragraphs 6 through 40 of the operative complaint, plaintiff details her "experience with *how State Farm adjudicates*" her own insurance claim. (1 CT 184–192, emphasis added.) Plaintiff describes the scope of her policy (1 CT 184–185); the issues with her staircase that led her to belatedly seek coverage for replacing the stairs (1 CT 185); and State Farm's reasoning for denying her claim (1 CT 185–188). Plaintiff alleges that State Farm "had no basis for its decision" to deny coverage, did not interview relevant parties, and "did not take any measurements" of the stairs or "evaluate the appropriateness" of the replacement. (1 CT 186.) Plaintiff further alleges that State Farm denied her claim only "because the claim did not state that something had fallen onto and damaged the staircase." (1 CT 187.)

These are precisely the same allegations that would form the basis of a bad faith claim. (See, e.g., *Frommoethelydo v. Fire Ins. Exchange* (1986) 42 Cal.3d 208, 214–215 [carrier acts in bad faith if it gives more consideration to its own interests than those of insured]; *Wilson*, *supra*, 42 Cal.4th at pp. 716, 723 [carrier acts in bad faith if it denies claim "without a reasonable basis for genuine dispute," or if it breaches "obligation to thoroughly and

fairly investigate, process and evaluate the insured's claim"]; *Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1623 [carrier acts in bad faith if it ignores evidence that supports the plaintiff's claim].) Indeed, they mirror the allegations underlying plaintiff's bad faith action that a federal court dismissed as time-barred under the one-year suit provision. (1 CT 117 [alleging that State Farm denied plaintiff's claim "without reasonable basis in fact or law" and "fail[ed] to sufficiently investigate Plaintiff's claim, whether objectively or with Plaintiff's interests sufficiently in mind"].) Because plaintiff's allegations challenge State Farm's handling of her claim, plaintiff's action is "on the policy."

That holds true for plaintiff's allegations about State Farm's purported "unfair practices." Plaintiff asserts in conclusory fashion that she is challenging "wrongdoing that affects society as a whole," i.e., unfair practices that are not unique to specific claims. (OBOM 12–13.) But the actual allegations in her operative complaint reveal that resolution of her UCL action will require an analysis of State Farm's handling of specific claims.

For example, plaintiff alleges that "State Farm has a practice of summarily denying and regularly summarily denies property insurance claims *unless State Farm believes the particular claim falls into a category of likely coverage*." (1 CT 186, emphasis added.) To prove this allegation, plaintiff will need to produce fact-intensive evidence and analysis of, at the very least, (1) the incident or loss underlying her insurance claim;

(2) the process by which State Farm evaluated that incident or loss in light of the policy terms; and (3) the merits of State Farm's conclusion as to whether the incident or loss "falls into a category of likely coverage" (*ibid.*) under the policy. That is true whether plaintiff relies on State Farm's handling of her own insurance claim to prove her allegations, or State Farm's handling of other policyholders' claims.[3] Either way, the case will turn on State Farm's handling of the initial claim for loss and its conclusion as to whether the specific claim "falls into a category of likely coverage." (1 CT 186.) And if plaintiff relies on multiple policyholders' insurance claims to prove an "unfair practice," the relevant evidence will vary from policyholder to policyholder, as each person will have a different policy, a unique loss or incident, and a claim-specific experience with State Farm.[4]

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[3] Plaintiff's complaint all but concedes that a fact-intensive inquiry into other policyholders' claims will occur, alleging that "many (most?) (*discovery will tell*) [ ] policyholders will be denied coverage without an investigation and without being provided a clear understanding of why." (1 CT 194, emphasis added.) And that fact-specific inquiry will extend beyond claims under homeowner's policies to "automobile policies, personal property policies, or otherwise." (1 CT 193.)

[4] To be clear, this is not an argument about "the possible difficulty of proving the plaintiff's allegations," which is improper at the demurrer stage. (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 383 (*Zhang*) [rejecting argument on demurrer that litigation of the plaintiff's UCL claim based on insurer's bad faith "will be unmanageable, requiring the examination of its claims handling practices in thousands of cases"].) Rather, State Farm emphasizes the proof that will be required to demonstrate that, at its core, plaintiff's action challenges State Farm's handling of specific claims.

A similar analysis will be required for all of the alleged "unfair practices." Plaintiff alleges that State Farm denies claims with "no reasonable basis" for doing so (1 CT 187); cites reasons for denial that are "not a requirement under the policy" (*ibid.*); fails to provide policyholders "any reasonable opportunity to question or challenge the basis of the denial" (1 CT 187–188); fails to "give at least as much consideration to the interests of its insured as it gives to its own interests when adjudicating a claim" (CT 196); fails to "investigate all claims" (1 CT 197); and fails to "identify the applicable reasons for its denial" (*ibid.*). These are quintessential challenges to claims handling.

In short, plaintiff's UCL action is "merely a theoretical restatement" of a "bad faith cause of action." (*Prieto*, *supra*, 225 Cal.App.3d at p. 1196.) And as with a bad faith claim, a fact-finder resolving these allegations *must* analyze State Farm's handling of specific claims for policy benefits. There is no way around that. "[P]laintiff will not be able to establish her [UCL] claims against [State Farm] without demonstrating" a defect in State Farm's handling of specific insurance claims. (*Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 292 (*Foxen*).) "There is no other fair reading of the pleading" (*ibid.*), and the contractual one-year suit provision therefore bars plaintiff's UCL action.

C. In a contest between the limitations provision endorsed by Insurance Code section 2071 and the general UCL statute of limitations, the former would control based on the gravamen of plaintiff's claims.

State Farm's foregoing position that the parties' contract determines their respective rights here harmonizes the terms of Insurance Code section 2071 and the UCL statute of limitations in situations where an insured's action is untimely under the former, but not under the latter. However, if this Court finds that a conflicts exists between the two statutes, it should resolve any such conflict by giving effect to the one-year provision approved by the Legislature in section 2071.

To decide which of two statutory limitations periods will apply, "it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action." (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22 (*Hensler*).) That is because " '[t]he nature of the right sued upon and not the form of action nor the relief demanded determines the applicability of the statute of limitations under our code.' " (*Id.* at p. 23.)

Under this rule, a plaintiff cannot use artful pleading to invoke a longer statute of limitations. For example, in *Giffin v. United Transportation Union* (1987) 190 Cal.App.3d 1359, 1361–1362, a bus driver for a unionized transit company sued the union for breach of contract around three and a half years after the relevant events, and argued that the four-year statute of limitations for contract claims applied. However, the court held that, "despite [the bus driver's] label of breach of contract," the allegations in the complaint established that the relevant

limitations period was that for a claim against the union for breaching its duty of fair representation. (*Id.* at p. 1362.) Applying the limitations period for that claim—three years—*Giffin* held that the bus driver's claim was time-barred. (*Id.* at pp. 1366–1367.)

Courts in other cases have likewise analyzed allegations in complaints to hold that, despite the plaintiff's labeling of a claim, the gravamen of the claim presents a time-barred cause of action.[5]

Courts are especially wary when artful pleading undermines legislative policy goals. For example, in *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1365–1366 the plaintiff sued his attorney nearly four years after the attorney allegedly engaged in professional misconduct. Though the

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[5] See, e.g., *Foxen*, *supra*, 6 Cal.App.5th at p. 292 [plaintiff's breach of contract and implied covenant claims were subject to professional malpractice limitations period because "plaintiff will not be able to establish her contract claims against defendants without demonstrating they breached professional duties owed to her," and there was "no other fair reading of the pleading"]; *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 412–413 [rejecting plaintiff's attempt to avoid time bar by labeling action a willful misconduct claim, because gravamen of complaint was claim for professional negligence]; *Hydro-Mill Co., Inc. v. Hayward, Tilton & Rolapp Ins. Associates, Inc.* (2004) 115 Cal.App.4th 1145, 1159 ["Hydro–Mill's causes of action, regardless of appellation, amount to a claim of professional negligence" and "Hydro–Mill cannot prolong the limitations period by invoking a fiduciary theory of liability"]; *Curtis v. Kellogg & Andelson* (1999) 73 Cal.App.4th 492, 503 ["Since the gravamen of the breach of contract and breach of fiduciary duty claims are the purported malpractice, the two-year statute of limitations applies"].

plaintiff styled his claim as one for breach of fiduciary duty, which has a four-year limitations period, *Stoll* held that the plaintiff's claim was time-barred under the one-year statute of limitations for legal malpractice claims. (*Id.* at p. 1368.) *Stoll* reasoned, "The Legislature intended to enact a comprehensive, more restrictive statute of limitations" to reduce the cost of malpractice insurance, and "because much attorney malpractice may be considered a fiduciary breach," an exception for claims labeled breach of fiduciary duty "reinstates a lengthy limitations period" that the Legislature sought to eliminate. (*Ibid.*)

Thus, the relevant limitations period turns not on "the form of [plaintiff's] action" or "the relief [plaintiff] demand[s]," but on the fact that the gravamen of plaintiff's allegations is a challenge to State Farm's handling of claims for policy benefits. (*Hensler*, *supra*, 8 Cal.4th at p. 23.) Accordingly, the limitations provision in Insurance Code section 2071 applies to plaintiff's UCL claim.

Plaintiff, citing *Enger v. Allstate Insurance Company* (N.D.Cal., Apr. 5, 2016, No. 16-cv-00136) 2016 WL 10829363 [nonpub. opn.], argues that courts will apply a longer statute of limitations period "where the goal of the litigation is a change of policy benefiting the public." (OBOM 13) But *Enger* doesn't say that. *Enger* in fact found that all of the plaintiff's causes of action, *including her claims for unfair business practices and injunctive relief*, were barred by the one-year suit provision. (*Enger*, at p. *6.) And *Enger* specifically rejected, as "unsupported by any authority," the plaintiff's argument that, because the defendant's alleged unlawful conduct was ongoing,

her cause of action for injunctive relief was timely. (*Ibid.*; see *Keller v. Federal Insurance Company* (C.D.Cal., Feb. 13, 2017, No. CV 16-3946) 2017 WL 603181, at p. *15 [nonpub. opn.] [where the plaintiff's breach of contract was time-barred under one-year suit provision, related causes of action for equitable relief must also be dismissed].)

In any event, Insurance Code section 2071 was enacted specifically to balance competing interests in the insurance industry, and the one-year suit provision in particular promotes the prompt and fair resolution of insurance claims. The more general UCL may also form the basis for certain claims against insurers, but the gravamen of the UCL claims *in this case* concerns claims handling practices covered by Insurance Code section 2071, as outlined above. (See, e.g., *Miller v. Superior Court* (1999) 21 Cal.4th 883, 895 [specific statutory provision relating to a particular subject will govern over a general provision, although the latter, standing alone, would be broad enough to include the subject]; *Foxen*, *supra*, 6 Cal.App.5th at p. 296 [applying foregoing principle and holding plaintiff's UCL action based on attorney malpractice subject to specific statute of limitations for attorney malpractice claims].)

III. The arguments presented by plaintiff and the dissent are unavailing.

A. Plaintiff cannot circumvent the contractual limitations period by forgoing damages and seeking only injunctive relief.

Plaintiff argues that her action is not "on the policy" because she is not seeking damages. (OBOM 10–11.) The

dissenting opinion in this case also emphasized the absence of a damages demand in plaintiff's complaint, suggesting that the key thread running through the relevant case law enforcing the one-year suit provision is that the plaintiff sought the remedy of policy benefits. (See *Rosenberg-Wohl*, *supra*, 93 Cal.App.5th at pp. 461–462 (dis. opn. of Stewart, P.J.).)

This emphasis on the remedy sought is misplaced.

First, Insurance Code section 2071 expressly states that actions in "any court of law *or equity*" are subject to the one-year suit provision. (Emphasis added.) Thus, under the plain text of the statute, it does not matter whether plaintiff seeks legal damages or an injunction—if her action is "on the policy," it is time-barred.

Second, and contrary to the dissent's argument, the consistent thread through the caselaw is not a demand for damages, but rather, allegations that challenge the carrier's handling of the plaintiff's insurance claim.[6] The fact that

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[6] See *Velasquez*, *supra*, 1 Cal.App.4th at p. 717 [plaintiff alleged carrier engaged in bad faith by denying claim on grounds that policy had been cancelled]; *Lawrence*, *supra*, 204 Cal.App.3d at pp. 574–575 [plaintiff "alleged tortious bad faith in [carrier's] handling [of] his claim because of purported misrepresentations in the policy concerning coverage"]; *CBS*, *supra*, 70 Cal.App.4th at p. 1086 ["CBS's complaint alleges that Fireman's breached the covenant of good faith and fair dealing by refusing to pay benefits under the policy, refusing to make adequate investigation and by failing to provide a justifiable basis for denying coverage"]; *Sullivan v. Allstate Ins. Co.* (C.D.Cal. 1997) 964 F.Supp. 1407, 1415 ["All of the alleged acts which form the basis of these purported claims occurred during the claim handling process and

language in some cases refers to the plaintiff's demand for damages in the amount of policy benefits is of no moment.[7] The references to policy benefits are no more than a recognition that an action seeking policy benefits as damages inherently challenges the insurer's handling of a claim for policy benefits. But it would be illogical to infer from those remarks that *other* actions that *also* challenge the insurer's handling of a claim for policy benefits are *not* "on the policy." Indeed, it is common for an insured to seek declaratory relief before it is known whether there will or will not be a suit for damages. Such actions are obviously "on the policy" even though they seek no damages.

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resulted in Plaintiffs' alleged failure to receive proper policy benefits"]; *Prieto*, *supra*, 225 Cal.App.3d at pp. 1190–1191 [plaintiff alleged that carrier engaged in bad faith by denying claim on grounds that plaintiff intentionally set fire despite carrier's knowledge that plaintiffs did not intentionally set fire]; *Abari*, *supra*, 205 Cal.App.3d at pp. 533–534 [plaintiff alleged that carrier improperly denied claim on timeliness grounds]; *Jang v. State Farm Fire & Cas. Co.* (2000) 80 Cal.App.4th 1291, 1295 (*Jang*) [plaintiff "contend[ed] that the manner in which [the carrier] negotiated [a] settlement agreement gave rise to a cause of action for civil conspiracy and bad faith"]; *Magnolia Square*, *supra*, 221 Cal.App.3d at p. 1055 [plaintiff alleged carrier engaged in tortious bad faith after carrier sought declaratory relief that plaintiff's insurance claim was untimely].

[7] See *Jang*, *supra,* 80 Cal.App.4th at p. 1303 ["Because the cross-complaint sought damages recoverable under the policy for a risk insured under the policy, we agree with the trial court that the cross-complaint is an action under the policy"]; *Abari*, *supra*, 205 Cal.App.3d at p. 536 [noting that plaintiff alleged he was " 'damaged in an amount equal to the benefits payable under the policies' "]; *Magnolia Square*, *supra*, 221 Cal.App.3d at p. 1063 [noting plaintiff sought " '[d]amages for failure to provide benefits under subject contract of insurance' "].

Third, this Court has made clear that, to the extent there are competing limitations periods, choosing the applicable one turns on "[t]he nature of the right sued upon and not the form of action nor the relief demanded." (*Hensler*, *supra*, 8 Cal.4th at pp. 22–23.) Here, "the nature of the cause of action, i.e., the 'gravamen' of the cause of action" (*id.* at p. 22) is a challenge to State Farm's handling of claims for policy benefits. Accordingly, plaintiff's action is "on the policy," regardless of the relief she seeks.

Finally, plaintiff's reliance on *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247 (*20th Century*) is unavailing. There, the question before the court was the scope of a statute (Code Civ. Proc., § 340.9) reviving any otherwise time-barred " 'insurance claim for damages arising out of the Northridge earthquake of 1994.' " (*20th Century*, at pp. 1264–1267.) Several years after the insurer denied the plaintiff's insurance claim on fraudulent grounds, the plaintiff brought tort claims for bad faith and fraud. (*Id.* at pp. 1255–1256.) The Court of Appeal held that Code of Civil Procedure section 340.9 applied to revive the plaintiff's bad faith claim because it was a quintessential " 'insurance claim for damages' " under the statute. (See *id.*, at p. 1280.) But it did not apply to the fraud claim because that claim "alleged acts of deceit and deception," i.e., "an entirely separate act of misconduct" that went "well beyond simple nonperformance" of the contract, and sought relief based on harm untethered from the withholding of policy benefits. (*Id.* at pp. 1280–1281.)

Plaintiff argues that she, too, is not " 'seeking damages recoverable under the policy,' " so her claim must not be one "on the policy" within the meaning of the one-year-suit provision. (OBOM 10–11.) This logic skips a step: as noted above, the nature of the challenged conduct, not the remedy sought for that conduct, determines whether a claim is on the policy. *20th Century* reinforces that point by highlighting that the particular affirmative misrepresentation fraud claim alleged there went well beyond negligent or even unreasonable adjusting of a claim, and the fraud claim therefore was not an " 'insurance claim' " under the statute (OBOM 11.)

Moreover, *20th Century* was construing Code of Civil Procedure section 340.9, which is expressly limited to " 'insurance claim[s] for damages,' " and the court's reasoning thus explained why the plaintiff's fraud claim was not "an '*insurance claim for damages*' as that term is used in section 340.9." (*20th Century*, *supra*, 90 Cal.App.4th at pp. 1280–1281, emphasis omitted.) Here, neither the parties' contractual limitation provision nor section 2071 applies to only "insurance claims for damages." Accordingly, plaintiff's focus on the remedy she seeks as an end-run around the one-year provision in her insurance contract finds no support in *20th Century*.[8]

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[8] Plaintiff cites two cases that are of no import because they did not involve a contractual limitations provision or even a dispute about which of two competing statutes of limitations applied. (See OBOM 12–13, citing *Broberg v. The Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 915–919; *North Star Reinsurance Corp. v. Superior Court* (1992) 10 Cal.App.4th 1815,

B. Nothing in the UCL or in this Court's *Cortez* opinion renders the contractual one-year suit provision unenforceable here.

1. UCL claims are not exempt from contractual limitations provisions.

The dissent in this case argued that, "whatever the limitations period may be for an action 'on' the insurance policy, whether mandated by contract or by operation of Insurance Code section 2071, a claim brought under the UCL is distinct, and it is governed by the UCL's four-year limitations period." (*Rosenberg-Wohl*, *supra*, 93 Cal.App.5th at p. 459 (dis. opn. of Stewart, P.J.).) In advancing that argument, the dissent relied on this Court's decision in *Cortez*, *supra*, 23 Cal.4th 163. In *Cortez*, the plaintiff asserted a UCL claim based on her employer's failure to pay wages in violation of the Labor Code. (*Id.* at p. 169.) The employer argued that the plaintiff's action was time-barred under the three-year statute of limitations for claims asserting a violation of the Labor Code. (See *id.* at p. 168, citing Code Civ. Proc. § 338, subd. (a).) *Cortez* rejected that argument and held that the UCL's four-year statute of limitations applied to the plaintiff's claim. (See *id.* at pp. 178–179.)

The dissent's argument based on *Cortez* ignores a fundamental problem: *Cortez* did not address contractual limitations provisions. The limitations periods that this Court

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1818–1821.) Instead, the cases addressed whether undisputedly applicable statutes of limitations were triggered (see *Broberg*, at pp. 920–925), and whether they were tolled (see *North Star Reinsurance Corp.*, at p. 1818).

considered in *Cortez* are general statutes of limitations that are "not imbued with any element of nonwaivable 'public policy.' " (*Brisbane*, *supra*, 216 Cal.App.4th at p. 1262.)

Here, by contrast, we do not have a binary choice between two conflicting statutes of limitations. We have a contract with a one-year suit provision that requires insureds to file particular types of actions within one year. Plaintiff agreed to that limitations provision, and it *is* imbued with an "element of nonwaivable 'public policy' "—namely, the "longstanding established public policy in California which respects and promotes the freedom of private parties to contract." (*Brisbane*, *supra*, 216 Cal.App.4th at p. 1262; see *California Union Ins. Co. v. Poppy Ridge Partners* (1990) 224 Cal.App.3d 897, 903 [policy's limitations period "is a bargained-for contractual one" and "is more personal than a statutory period of limitations"].)

Of course, that contractual provision operates in tandem with any other statute of limitations that might apply. An insured who brings an action on the policy for breach of contract must comply with the one-year suit provision *and* with the four-year statute of limitations for breach of contract, which may become relevant if, for example, the insurer is estopped from relying on the contract clause. Likewise, if an insured brings an action for bad faith, infliction of emotional distress, or breach of fiduciary duties, the contract condition and the statutory limitations period may each present independent hurdles to the lawsuit.

But, at bottom, the general UCL statute of limitations does not vitiate the *contractual* provision that plaintiff agreed to and that the Legislature specifically authorized. In short, *Cortez* does not require that courts ignore parties' freedom of contract or the longstanding enforcement of contractual limitations provisions. (See *ante*, Part I.A.)

That does not mean, as the Attorney General argues, that enforcing the one-year suit provision here would "create confusion by suggesting that courts can disregard the letter of the [UCL] in any case where (as is common) a consumer has a contractual relationship with a defendant business." (9/7/23 Docket Entry: Request for Depublication.) In making this argument, the Attorney General stresses *Cortez*'s language that the UCL's four-year statute of limitations " 'admits of no exceptions.' " (*Ibid.*, citing *Cortez*, *supra*, 23 Cal.4th at p. 179].)

But enforcement of a contract is not an exception to a statute. A contractual limitations period is a *limitation* on the right to sue. And other limitations on the right to sue—such as a contractual release, a statutory restriction on immunity, or a constitutional restriction on standing—operate in tandem with statutes of limitations.

State Farm is not suggesting that there is any "exception" to the UCL's statute of limitations, but State Farm does expect that independent conditions on a party's right to sue—including the one-year suit provision in the insurance policy here—will be enforced, as they regularly are. For example, contractual forum selection and choice-of-law clauses are enforced in the context of

UCL claims. (See *Net2Phone, Inc. v. Superior Court* (2003) 109 Cal.App.4th 583, 587). Enforcing those clauses does not create an "exception" to venue rules that otherwise govern UCL cases. Similarly, if a party to a contract agrees to arbitrate all claims against the other party, then a UCL claim seeking restitution or private injunctive relief must be arbitrated as well. (See *Clifford v. Quest Software Inc.* (2019) 38 Cal.App.5th 745, 751.) Enforcing that arbitration agreement is not an "exception" to the rule that a UCL claim "shall be prosecuted exclusively in a court of competent jurisdiction." (Bus. & Prof. Code, § 17204). The same is true of a notice-and-cure provision. (E.g., *Wilde v. Flagstar Bank FSB* (S.D.Cal., Mar. 8, 2019, No. 18-cv-1370-LAB) 2019 WL 1099841, at p. *3 [nonpub. opn.] [dismissing UCL claim for failure to comply with contractual notice-and-cure provision].)

In any event, enforcement of the one-year suit provision here would not affect all future UCL claims involving contractual relationships because most contracts have no suit limitations provisions. If a contract lacks such a provision, then any UCL claim—regardless whether the predicate unlawful act sounds in tort, contract, or statute—will be subject to the four-year limitations provision for UCL claims. (See Bus. & Prof. Code, § 17208; *Cortez*, 23 Cal.4th at p. 179.)

Moreover, the scope of a given contractual limitations provision may be limited to particular claims, thereby excluding—from the shorter limitations provision—a UCL claim. That is true here: only actions on the policy are subject to the one-year-suit provision, and there can be UCL claims in the

insurance context that are not "on the policy," as discussed below. (See Part IV, *post*.)

Finally, this is not a case where a contract clause categorically bars *any* opportunity to present a claim. There is no waiver by the policyholder of the right to seek public injunctive relief or any other statutory right under the UCL. Rather, the contract places a condition on filing a lawsuit, and the reasonableness of that condition is amply demonstrated by the fact that the Legislature specifically endorsed it when it enacted Insurance Code section 2071.

Thus, plaintiff's action is not exempt from the contractual one-year suit provision simply because it is labeled a UCL claim.

2. Compliance with the UCL statute of limitations does not guarantee a claim will lie if the plaintiff does not meet *other* applicable conditions or restrictions.

Our courts have readily dismissed UCL claims when the plaintiff fails to comply with a requirement found *outside of* the UCL, particularly where that requirement is legislatively endorsed. That is consistent with this Court's recognition that not every instance of an unfair, fraudulent, or deceptive business practice is cognizable as a UCL claim if a private right of action is otherwise barred. (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 182 (*Cel-Tech*) [if "the Legislature has permitted certain conduct or *considered a situation and concluded no action should lie*, courts may not override that determination" and allow the plaintiff to recast the barred-action as a UCL claim," (emphasis added)].)

Courts applying *Cel-Tech* have dismissed procedurally barred claims cloaked as a UCL claim. For example, in *In re Vaccine Cases* (2005) 134 Cal.App.4th 438, 444 (*In re Vaccine*), the plaintiffs alleged that vaccine manufacturers violated The Safe Drinking Water and Toxic Enforcement Act of 1986 (the Act) by exposing consumers to toxic substances without providing warnings. But the plaintiffs failed to provide the 60-day pre-suit notice required under The Act. (*In re Vaccine*, at p. 445.) The court held that procedural deficiency was an "absolute bar" to the plaintiff's UCL claim based on a violation of the Act. (*In re Vaccine*, at p. 458) "[T]he Legislature did specifically conclude that 'no action should lie' unless plaintiffs provided a 60-day notice required by [the Act]," and the plaintiffs could not evade that requirement "by repleading their cause of action as one for violation of the Unfair Competition Law." (*Id.* at pp. 458–459.) The court emphasized the Legislature's policy purpose in requiring a 60-day pre-suit notice—providing an opportunity for the manufacturers to cooperate with agency enforcement proceedings, thereby avoiding litigation—and explained that "allow[ing] plaintiffs to bring a UCL action against these three defendants without complying with [the pre-suit notice requirement] would frustrate the purpose of this requirement and would nullify its enactment." (*Id.* at p. 459.)

Similarly, in *Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 364, 367 (*Blanks*), the " ' " 'absolute bar to relief' " ' " was an exhaustion doctrine with a limitations period: under the Talent Agencies Act (TAA), before suing in court, a

plaintiff is required to file a claim with the Labor Commissioner within a one-year statute of limitations period. The plaintiff who failed to comply with that "procedural predicate-filing requirement" could not pursue a UCL claim based on a violation of the TAA because the requirement "cannot be circumvented by recasting a TAA cause of action as a UCL cause of action." (*Id.* at p. 365.) Like *In re Vaccine*, *Blanks* emphasized the Legislature's purpose in enacting that "procedural predicate-filing requirement" (*ibid.*), and concluded that allowing the plaintiff to proceed under the UCL would "circumvent the comprehensive statutory scheme in which the Legislature has given exclusive original jurisdiction to the Labor Commissioner with regard to TAA claims" (*id.* at p. 364).

Blanks and *In re Vaccine* each expressly acknowledged *Cortez* and distinguished it by emphasizing the specific procedural requirements that the Legislature imposed for the procedurally barred claims at issue. (See *Blanks*, *supra*, 171 Cal.App.4th at pp. 364–369; *In re Vaccine*, *supra*, 134 Cal.App.4th at p. 458.) In other words, the UCL creates no guarantee of a right of action and remedy when the Legislature imposes a procedural requirement, tailored to specific claims, in order to advance a specific policy purpose. (See *Blanks*, at pp. 364–369; *In re Vaccine*, at pp. 458–459.)[9]

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[9] Indeed, in an analogous context, this Court has rejected efforts to plead around a procedurally barred bad faith claim by recasting it as a UCL claim. In *Moradi-Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 292 (*Moradi-Shalal*), this

That rule bars plaintiff's UCL claim on the undisputed facts here. Like the procedural requirements in *Blanks* and *In re Vaccine*, the contractual limitation provision here conditionally bars claims "on the policy" if the insured does not perform as required under the contract by bringing a timely claim, regardless whether the insured asserts a claim for breach of contract or a claim under the UCL. (*Cel-Tech*, *supra*, 20 Cal.4th at p. 182.) Moreover, the Legislature specifically endorsed plaintiff's contractual limitation provision when it enacted Insurance Code section 2071. (See *In re Vaccine*, *supra*, 134 Cal.App.4th at p. 458, quoting *Cel-Tech*, at p. 182 ["the Legislature did specifically conclude that 'no action should lie' " if the procedural bar is not satisfied].) Thus, permitting plaintiff to bring a UCL claim without complying with the one-year suit provision "would frustrate the purpose of this requirement" (*In re Vaccine*, at p. 459): ensuring that carriers can defend against challenges to their handling of claims when the evidence

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Court held that Insurance Code section 790.03 did not include an implied private right of action based on violations of that statute. Later, in *Rubin v. Green* (1993) 4 Cal.4th 1187, 1201–1202 (*Rubin*)—which held that a plaintiff could not revive a claim barred under Civil Code section 47, subdivision (b) by recasting it as a UCL claim—this Court favorably discussed Court of Appeal decisions holding, under *Moradi-Shalal*, that plaintiffs could not overcome the absence of a private right of action under section 790.03 by recasting their bad faith claims under the UCL. *Rubin* emphasized "[t]he reasoning underlying these results": if a statute bars certain actions to achieve a particular policy purpose, that purpose " 'should not be frustrated by putting a new label on the complaint.' " (*Rubin*, at p. 1202.) That reasoning applies with equal force here.

underlying that claim and its handling are fresh (see *ante*, Part I.B).

Under this line of reasoning, a holding that plaintiff's claim is time-barred would not impact most cases involving contractual limitations provisions. Instead, it would impact only those cases in which the parties contractually agreed to a shorter limitations provision; the scope of that provision encompasses UCL claims; *and* that provision is specifically endorsed by the Legislature.

C. Plaintiff's assertion that her policy does not prohibit State Farm's alleged conduct is irrelevant and wrong.

In an effort to bring her claim outside of the policy, plaintiff asserts that she is not alleging State Farm breached "anything promised or agreed upon." (OBOM 11.) She argues that State Farm's alleged unfair conduct is not prohibited by her policy contract. (OBOM 12.)

This argument is both irrelevant and wrong. It is irrelevant because whether an action is "on the policy" does not turn on whether the plaintiff asserts a breach of a contractual obligation. Rather, if the gravamen of the plaintiff's allegation is a challenge to the handling of a claim for policy benefits, then the action is "on the policy," regardless of the label of the plaintiff's action, as noted above.

Plaintiff's argument is also wrong. As explained above, plaintiff's allegations are essentially that State Farm breached its promise of good faith and fair dealing. (See *ante*, Part II.C.) That promise is "implied in every insurance contract." (*Safeco*

Ins. Co. of America v. Parks (2009) 170 Cal.App.4th 992, 1003; *Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1766, 1771 ["the obligation of 'good faith' conduct does not exist independent of an express contractual obligation" and "must be appurtenant to express contractual duties"].) The implied covenant "is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purposes." (*Foley*, *supra*, 47 Cal.3d at p. 690.) Plaintiff's allegations of bad faith practices, even when couched in the language of a UCL claim, therefore focus directly on an alleged breach of contractual obligations. (See OBOM 11; see also *Rosenberg-Wohl*, *supra*, 93 Cal.App.5th at p. 454 [noting plaintiff's allegation that plaintiff has standing to bring her claim for injunctive relief only because she has a homeowner's policy under which she seeks or expects benefits]; *ibid.* [in the context of the claims pleaded here, "plaintiff must prove 'policy benefits' " to have standing].)

D. Cases construing Civil Code section 1717 provide no support for narrowly interpreting the one-year suit provision.

The dissent below cited two cases holding that a UCL action for injunctive relief may not be an action "on a contract" as that term is used in Civil Code section 1717. (See *Rosenberg-Wohl*, *supra*, 93 Cal.App.5th at p. 463 (dis. opn. of Stewart, P.J.), citing *Shadoan v. World Savings & Loan Assn.* (1990) 219 Cal.App.3d 97, 107–108 (*Shadoan*); *Walker v. Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1179–1181 (*Walker*).)

But Civil Code section 1717 has nothing to do with limitations periods or construction of conditions on contract performance. Rather, it simply implies a new term into parties' contracts by turning one-way attorney fee shifting provisions into mutual provisions where the parties are pursuing contract claims. And notably, application of section 1717 does not turn on whether contract damages are sought. (*In re Tobacco Cases I* (2011) 193 Cal.App.4th 1591, 1602 ["even when only equitable relief is sought," an action can be "on a contract" within the meaning of section 1717].)

Additionally, *Shadoan* and *Walker* address only trial courts' discretion to apportion fee awards among claims that are and are not subject to fee shifting. (See *Shadoan*, *supra*, 219 Cal.App.3d at pp. 107–109; *Walker*, *supra*, 98 Cal.App.4th at pp. 1180–1181.) That discretionary inquiry is a far cry from the legal review of the plaintiff's allegations that is required here. *Shadoan* and *Walker* therefore say nothing that undermines the majority's conclusion here that UCL claims resting on allegations of improper claims handling are fundamentally claims on the policy within the meaning of Insurance Code section 2071, and thus are subject to the contractual one-year suit provision.

E. The Connecticut Supreme Court decision that the dissent relied on is inconsistent with California law.

The dissenting opinion below cited the Connecticut Supreme Court in *Lees v. Middlesex Ins. Co.* (Conn. 1991) 594 A.2d 952 (*Lees*). (See *Rosenberg-Wohl*, *supra*, 93 Cal.App.5th at

pp. 464–465 (dis. opn. of Stewart, P.J.).) *Lees* held that a one-year suit provision in an insurance policy did not apply to a claim under Connecticut's unfair practices statute. (See *Lees,* at pp. 954–957.) For two reasons, the reasoning in *Lees* falls short under California law.

First, *Lees*'s reasoning emphasizes " 'the form of action,' " which is not the inquiry under California law. (*Hensler*, *supra*, 8 Cal.4th at pp. 22–23.) *Lees* noted that, by asserting an unfair competition claim, the plaintiff was asserting a breach of a "duty imposed by statute," rather than a duty imposed by the insurance policy. (*Lees*, *supra*, 594 A.2d at p. 956.) In other words, *Lees* did not analyze the plaintiff's allegations, but instead focused on the label of the plaintiff's claim—an action under the unfair competition statute. From that fact alone the court reasoned that, because the statute imposes different duties and allows for different relief than an action "on the policy," the contractual limitation provision was inapplicable. (See *id.* at pp. 956–957.) That reasoning fails under well-established California law because it emphasizes " 'the form,' " rather than "the 'gravamen' of the cause of action." (*Hensler*, *supra*, 8 Cal.4th at pp. 22–23.)

Second, *Lees* erroneously suggests that the factual inquiry underlying an unfair competition claim is always distinct from the factual inquiry underlying an action "on the policy." *Lees* asserts that, while the inquiry underlying an action "on the policy" turns on "the nature of the loss, the coverage of the policy and whether the parties have complied with all of the terms of the policy," an unfair competition claim analyzes "the conduct of

the insurer." (*Lees*, *supra*, 594 A.2d at p. 956.) But under California law, "the conduct of the insurer" is generally a central focus of actions "on the policy." That is why California courts regularly hold that a bad faith action is "on the policy": because it "examines the reasonableness of the insurer's conduct" in handling the claim. (*Graciano*, *supra*, 231 Cal.App.4th at p. 425.)

Because *Lees* is inconsistent with California law, this Court should not follow it.

IV. Enforcing the contractual limitations period here would not unduly restrict challenges to an insurer's unfair practices.

In his depublication request, the Attorney General asserted a broader concern that enforcement of the contractual limitations provision in plaintiff's policy "poses a serious threat to consumer protection actions." (9/7/23 Docket Entry: Request for Depublication.) No such threat exists.

First, this Court has already held that bad faith allegations challenging a carrier's handling of an insurance claim—much like plaintiff's allegations here—can be grounds for a UCL cause of action. (See *Zhang*, *supra*, 57 Cal.4th at p. 369 [holding plaintiff adequately pled UCL claim based on "a litany of bad faith practices" by carrier, including "unreasonable delays" and "refusal to consider" certain evidence].) Though such an action is "on the policy," an insured can still assert it—as long as she does so within the one-year contractual limitations period. There is no shortage of sophisticated legal talent to bring just such a claim in a timely manner.

Second, if an action does not challenge the insurer's handling of a claim for policy benefits, then it is not "on the policy" and will not be subject to the contractual limitations provision. For example, if an insured were to challenge an unfair practice untethered from a specific claim or "loss" (Ins. Code, § 2071)—e.g., a practice related to the underwriting or sale of a policy—that action would not be subject to the one-year suit provision.

Third, there are other avenues to challenge an insurer's unfair practices related to claims handling. In this sense, *Moradi-Shalal* and *Rubin* are instructive. While holding that there is no private right of action to challenge an insurer's unfair conduct under Insurance Code section 790.03, *Moradi-Shalal* emphasized that "our opinion leaves available the imposition of substantial administrative sanctions by the Insurance Commissioner." (*Moradi-Shalal*, *supra*, 46 Cal.3d at p. 304.) Similarly, *Rubin*'s rejection of the "plaintiff's tack of pleading his claim under the unfair competition statute" was "reinforced by the fact that the policy underlying the unfair competition statute can be vindicated by multiple parties other than plaintiff" and by administrative agencies. (*Rubin*, *supra*, 4 Cal.4th at p. 1204.)

The same holds true here. An insurer's unfair practices can be challenged under the UCL by multiple parties other than a policyholder whose claim is time-barred. This includes non-policyholders, "the Attorney General, district attorneys, and certain city attorneys." (*Rubin*, *supra*, 4 Cal.4th at p. 1204) And administrative agencies play a critical role as well. Indeed, many

of the unfair practices that plaintiff alleges are expressly prohibited by Insurance Code section 790.03, including "[f]ailing to adopt and implement reasonable standards for the prompt investigation" of claims (Ins. Code, § 790.03, subd. (h)(3)), and failing to provide a "reasonable explanation of the basis relied on in the insurance policy . . . for the denial of a claim" (*id.*, subd. (h)(13)). The Insurance Commissioner has the authority to investigate such practices, issue cease and desist orders, and order sanctions, including tens of thousands of dollars in fines and the suspension of the carrier's insurance license. (See *Moradi-Shalal*, *supra*, 46 Cal.3d at p. 304, citing Ins. Code, §§ 790.05–790.09.) The Insurance Commissioner can even challenge practices not specifically defined in Insurance Code section 790.03, including by enlisting the Attorney General's assistance to challenge such practices in court. (See Ins. Code, § 790.06.)

Thus, enforcing the contractual limitation provision in plaintiff's policy does not pose a "serious threat to consumer protection actions." (9/7/23 Docket Entry: Request for Depublication.) It would not affect timely UCL actions based on the same allegations as plaintiff's here. It would not affect UCL actions that do not challenge the insurer's handling of specific claims for policy benefits. And it leaves the door wide open for non-policyholders and government officials to challenge an insurer's unfair practices, either through a UCL action or an administrative proceeding.

By contrast, "Permitting plaintiff to proceed would produce other distortions." (*Rubin*, *supra*, 4 Cal.4th at p. 1203.) Indeed, there is a substantial risk that failing to enforce the one-year suit provision and applying only the UCL's statute of limitations to plaintiff's action will undermine legislative purpose by allowing stale challenges of carriers' handling of claims that may well be meritless. The risk of a restitution or attorneys' fees award could force carriers to either litigate or overpay on claims that have become unduly difficult and expensive to defend—the exact result the Legislature sought to avoid.

CONCLUSION

For the foregoing reasons, this Court should hold that plaintiff's action is "on the policy" and is therefore barred by the contractual limitations provision in her policy.

February 16, 2024

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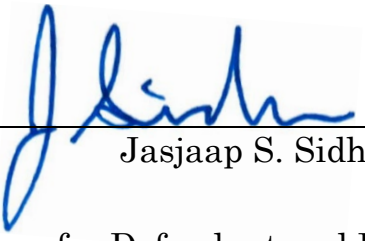
By: 
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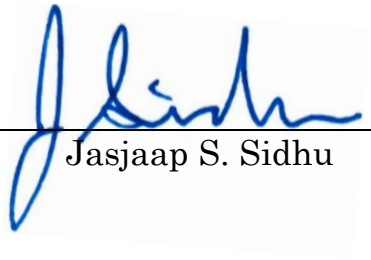

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Rosenberg-Wohl v. State Farm Fire and Casualty Company
Case No. S281510

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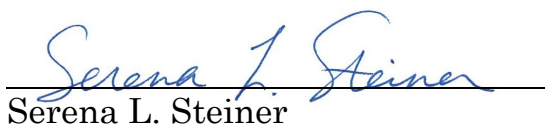

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Case No. S281510

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STATE OF CALIFORNIA
Supreme Court of California

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/s/Jasjaap Sidhu

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