IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S281510

KATHERINE ROSENBERG-WOHL,
Plaintiff and Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant and Respondent.

Court of Appeal of California
First District, Division Two
No. A163848

Superior Court of California
San Francisco County
No. CGC20587264
Hon. Anne-Christine Massullo

REPLY BRIEF ON THE MERITS

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I. Plaintiff's Sole Claim Is That State Farm's Claims Adjudication Process Constitutes an Unfair Business Practice in Violation of Business and Professions Code section 17200 that Should Be Declared Unlawful and Enjoined.

A. Plaintiff's complaint contains a single cause of action under section 17200 of the California Business and Professions Code.

Plaintiff alleges that State Farm's claims adjudications process is unfair; she wants it declared unfair and State Farm enjoined from conducting its business this way in California. The material paragraphs of the Complaint are as follows [CT 28–30 and 31]:

> 20. Under California law, Defendant is to give at least as much consideration to the welfare of its insured as it gives to its own interests when determining whether to settle a claim.
>
> 21. Compliance with that obligation requires procedures that assure that Defendant is complying with the law.
>
> a. Compliance with that obligation requires sufficient transparency in claim determination that Defendant, for its part, can know whether it is in compliance.
>
> b. Compliance with that obligation requires sufficient transparency in claim determination that an insured, for his/her/its part, can evaluate the actual basis for Defendant's denial of a claim, whether in whole or in

part, and develop an informed and accurate decision as to the factors considered and weighed in the decision.

22. Defendant, by way of the example of how it interacted with Plaintiff, as recounted above in paragraphs 2–17, does not have any procedures in place to assure that Defendant gives at least as much consideration to the welfare of its insured as it gives to its own interests when determining whether to settle a claim submitted to it by an insured

23. There are many straightforward ways in which Defendant can take steps to comply with the law, among which are these:

a. Defendant could advise its adjusters of the proper legal standard to apply.

b. Defendant could task its adjusters with making the case, in a written memo subject to review, for coverage as well as for no coverage, before making a recommendation setting forth the full basis for the ultimate determination.

c. Defendant could task its supervisors with the responsibility for reviewing whether its adjusters met the legal standard in any claim that has been adjudicated.

24. The lack of procedures in place to assure that Defendant gives at least as much consideration to the welfare of its insured as it gives to its own interests when determining whether to settle a claim submitted to it by an insured constitutes, under the common law of California, an unfair business practice

and therefore constitutes unfair competition under California Business and Professions Code section 17200 et seq.

25. The failure of Defendant to identify (and properly) the excluded cause in its (initial) denial of Plaintiff's claim for property damage under her homeowner's policy constitutes, under the common law of California, an unfair business practice and therefore constitutes unfair competition under California Business and Professions Code section 17200 et seq.

26. The failure of Defendant to ask for more information than that provided by Plaintiff before denying Plaintiff's claim for property damage under her homeowner's policy constitutes, under the common law of California, an unfair business practice and therefore constitutes unfair competition under California Business and Professions Code section 17200 et seq.

27. Without this Court's intervention, Defendant will continue the procedures it has employed that have failed to assure that it gives at least as much consideration to the welfare of its insured as it gives to its own interests when determining whether to settle a claim.

32. Plaintiff alleges, on information and belief, that Defendant is the insurer with the largest market share of homeowner's policies in California (17.6%), with Farmers Insurance Group in close second (16.0%) and all others training in single digits. Any change made by Defendant is certain to affect not just nearly one-fifth of the market but quite likely to affect the entire marketplace.

33. Plaintiff is informed, and on that basis alleges that relief addressing the procedures that are the

> subject of this claim will provide a significant benefit, both pecuniary and nonpecuniary, on the general public; that the necessity for and financial burden of private enforcement are such as to make an award of attorneys' fees appropriate – for how else would an attorney ever go the effort and expense of bringing an action simply focused on requiring Defendant to change its policies to comply with the law; and such fees would not be paid out of any recovery for plaintiff, as plaintiff here seeks no damages at all.

B. Plaintiff makes no claim for damages under the policy or any form of relief particular to her, so the 1-year statutory limit for policy claims does not apply.

This isn't a challenge to the handling of Plaintiff's claim itself – it's a challenge to how State Farm has treated and continues to treat all of its policy holders' claims; plaintiff's claim is relevant, to be sure: it is a necessary predicate to this action – it means she has standing – and it will certainly be evidence in this action – but one data point among many. But this is not a suit about Plaintiff's claim or how State Farm handled her claim specifically. It's about State Farm's claims administration practice generally.

Plaintiff doesn't say State Farm has breached its contract *with her*. Plaintiff doesn't seek payments *under her policy*, whether through breach of contract or tort claims (ABOM at 36–37).[1] Nor

[1] *See, e.g., (in alphabetical order): Abari v. State Farm Fire & Cas. Co.* (1988) 205 Cal.App.3d 530, *CBS Broad. Inc. v. Fireman's Fund Ins. Co.* (1999) 70 Cal.App.4th 1075, *Jang v. State Farm Fire & Cas. Co.* (2000) 80 Cal.App.4th 1291, *Lawrence v. Western Mut. Ins. Co.* (1988) 204 Cal.App.3d 565, *Magnolia Square Homeowners Assn. v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049,

does Plaintiff seek equitable relief *concerning her policy* in particular, whether by having a court restore her premium payments or compel State Farm to reopen and decide her own claim personally. Plaintiff doesn't seek a declaration that she has certain rights *under her policy language* (ABOM at 37); nor does she seek an injunction that benefits *only her*, requiring State Farm to investigate a future claim she might make differently.

All equitable claims involving insurance company conduct are not, as State Farm seems to intimate, claims "on the policy." Yes, Insurance Code section 2071 speaks of actions in equity, as well as in law (see ABOM at 36), but this is no declaratory relief action to interpret policy terms; this is not an action "on this policy for the recovery of any claim." § 2071.

Is the absence of damages determinative? By itself, no. But the absence of damages, combined with the absence of any equitable relief targeted to the relationship between State Farm and Plaintiff under her policy is determinative. This is a case about how State Farm administers its policies with consumers, not one particular policy. It is about State Farm's unfair business practices, not "on the policy" itself.

Sullivan v. Allstate Ins Co. (C.D. Cal. 1997) 964 F.Supp. 1407, *Prieto v. State Farm Fire & Cas. Co.* (1990) 225 Cal.App.3d 1188, and *Velasquez v. Truck Ins. Exch.* (1991) 1 Cal.App.4th 712.

In these claims for policy benefits, tort claims aimed to impose punitive damages for what the insurer allegedly did *to the claimant* in administering *the claimant's policy*. Here, Plaintiff seeks to use what happened to her, namely a summary denial without investigation, as a basis for attacking an unfair practice that should be declared unlawful and enjoined so it doesn't happen to anyone else. It is not a claim "on" her policy but about all such policies issued by State Farm.

The "right sued upon" is the right that "determines the applicability of the statute of limitations under our code." *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 22–23 (citing *Maguire v. Hibernia S.& L. Soc.* (1944) 23 Cal.2d 719, 733. The right asserted by Plaintiff here (on behalf of all other consumers who are similarly situated) is the right to be free from State Farm's unfair business practices, not the right to contracted-for policy benefits.[2]

In this respect, State Farm fails to distinguish *20th Century Ins. Co. v. Sup. Ct.* (2001) 90 Cal.App.4th 1247 (ABOM at 38–39). State Farm recognizes that the court distinguished breach of contract claim (*i.e.*, "20th Century's failure to perform under the policy") from the fraud claim (*i.e.,* "alleged acts of deceit and

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[2] State Farm's argument that the facts involved in Plaintiff's UCL claim overlap with the bad faith claim she hasn't made (but is commonly made along with breach of contract claims, *see* note 1, *supra*) (ABOM at 28-31) forgets what it means to state a cause of action: "a plaintiff is generally permitted to allege different causes of action – with different statutes of limitations—upon the same underlying facts." *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 605. The fact that *if* Plaintiff had stated a bad faith claim based upon the handling of her claim, it would have been barred under the 1-year statute (a point Plaintiff freely concedes) does not mean that where she has stated a UCL claim based on State Farm's claims handling practices generally that the 4-year statute under Business and Professions Code section 17208. *See id. See generally Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1172 ("A cause of action for unfair competition under the UCL may be established independent of any contractual relationship between the parties") (internal quotations omitted). *Cf. Zhang v. Superior Court* (2013) 57 Cal.4th 364, 374–76 (discussing rejection of argument that UCL claims were a way to circumvent private enforcement of the UIPA).

deception that go well beyond simple nonperformance"), but State Farm does not explain why that distinction is not relevant here. As here, the claims in *20th Century* were claims about the insurer's claims-handling process generally, not problems specific to the plaintiff: "20th Century's claims handling practices were improper, … knowingly "lowball[ed]," mishandled and improperly denied hers and numerous other claims pertaining to the Northridge earthquake." 90 Cal.App.4th at 1256.

State Farm certainly does not argue that because it's in the business of writing insurance policies it cannot be held to act unfairly. Nor is it arguing that the State legislature somehow granted all claims against State Farm subject to a 1-year statute. By relegating *Broberg* and *North Star Reinsurance* to a footnote (ABOM 39 at n. 8) and flicking them away as irrelevant, it's clear that State Farm has no argument that one can state an unfair competition claim against an insurer *even where a policy is involved*. *Broberg* in particular presented a claim which targeted "the marketing, promotion and sale of the vanishing premium policy" generally, not how it was handled vis-à-vis the claimant alone. *See Broberg v. The Guardian Life Ins. Co. of Am.* (2009) 171 Cal.App.4th 912, 917, 920. *See also Aryeh v. Canon Bus. Solutions, Inc.* (2013) 55 Cal.4th 1185, 1190 (complaint alleging unfair practice of charging for test copies seeking injunctive relief and class action) (ignored entirely by State Farm).

Hershenson Rosenberg-Wohl, APC

Respectfully submitted

Dated: March 11, 2024

By: /s/ David Rosenberg-Wohl

David M. Rosenberg-Wohl

Counsel for Plaintiff/ Appellant

CERTIFICATE OF COMPLIANCE

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The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Hershenson Rosenberg-Wohl, APC

Respectfully submitted

Dated: March 11, 2024

By: /s/ David Rosenberg-Wohl

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Hershenson Rosenberg-Wohl, APC

Respectfully submitted

Dated: March 11, 2024

By: /s/ David Rosenberg-Wohl

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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S281510**
Lower Court Case Number: **A163848**

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