2019 WL 1109682
Only the Westlaw citation is currently available.
United States District Court, C.D. California.

UNITED STUDIOS OF SELF DEFENSE, INC.
v.
Kristopher RINEHART et al.

Case No. 8:18-CV-01048-DOC-DFM
|
Filed 02/22/2019

Attorneys and Law Firms

Adam P. Harris, Bryan Linh Ngo, Eric J. Hardeman, Fortis LLP, Costa Mesa, CA, for United Studios of Self Defense, Inc.

Daniel C. DeCarlo, Leo A. Bautista, Lewis Brisbois Bisgaard and Smith LLP, Los Angeles, CA, for Kristopher Rinehart et al.

PROCEEDINGS (IN CHAMBERS): ORDER DENYING PLAINTIFF'S MOTION TO STRIKE AMENDED COUNTERCLAIMS; GRANTING IN PART PLAINTIFF'S MOTION TO DISMISS; GRANTING IN PART MOTION TO STRIKE AMENDED ANSWER [36] [37] [38]

DAVID O. CARTER, JUDGE

***1** Before the Court are Plaintiff-Counterdefendant's Motion to Strike Amended Counterclaims (Dkt. 37), Motion to Strike Amended Answer (Dkt. 36), and Motion to Dismiss Counterclaims (Dkt. 38). The Court finds this matter appropriate for resolution without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1. Factual Background

The Court draws the following facts from the First Amended Counterclaim ("FACC") (Dkt. 33).

In 1988, Charles Mattera ("Mattera") founded United Studios of Self Defense, Inc. ("USSD"), a California corporation with its principal place of business in Orange County, California. FACC ¶¶ 7, 15. In 1992, Mattera began licensing and franchising its system for operating marital arts studios under the USSD brand name. *Id.* ¶ 15. USSD requires its franchisees and licensees to use its affiliate United Studios Billing, Inc. ("USB") for all student billing contracts. *Id.* ¶ 72.

On April 3, 1996, the California Commissioner of Corporations ("Commissioner") revoked USSD's franchise registration for failing to disclose in its Franchise Disclosure Document a June 25, 1990 desist and refrain order issued against Mattera for offering and selling securities without qualification or exemption. *Id.* ¶¶ 16-17. Thereafter, on May 30, 1996, the Commissioner filed a complaint against Mattera and USSD for violations of California franchise laws, entitled *People of the State of California v. United Studios of Self Defense, Inc. and Charles Mattera*, Case No. BC 150948. *Id.* ¶ 18.

On June 13, 1996, USSD and Mattera entered into a stipulation to final judgment for injunctive and ancillary relief ("Permanent Injunction"). *Id.* Under the Permanent Injunction, USSD, Mattera and their officers, directors, successors in interest, controlling persons, agents, employees, attorneys in fact and all other persons acting in concert or participating with them were permanently enjoined from:

> offering, selling, arranging for the sale, leasing, engaging in the business of selling, negotiating the sale of or otherwise dealing in the offer or sale of franchises unless they are registered and exempt, or of securities unless they are qualified or exempt, filing any application, notice or report with the Commissioner that contains an untrue statement of a material fact or omits to state a material fact, offering or selling a franchise or security by means of an oral communication that contains an untrue statement of material fact or omits to state a material fact and destroying certain documents for four years.

Id.

Following the Permanent Injunction, USSD and Mattera began entering into "license" agreements, which granted the right to use the registered marks UNITED STUDIOS OF SELF DEFENSE, USSD, UNITED STUDIOS and UNITED STUDIOS OF SELF DEFENSE OF AMERICA in connection with the business of operating a martial arts studio. *Id.* ¶¶ 34, 66. Under these so-called "license" agreements, licensees are required to follow USSD pricing guidelines, attend USSD meetings and training programs, adhere to USSD operations manuals and guidelines, participate in USSD tournaments, and make monthly payments and process credit card transactions at a cost through USB. *Id.* ¶¶ 29, 36, 70.

***2** Counterclaimants allege that "although many of the agreements are called 'license agreements' and disclaim being franchises, USSD has always treated licensees as it does franchisees and the relationships established by the license agreement meet the criteria of franchises under California law." *Id.* ¶ 30. As such, Counterclaimants allege each of the agreements at issue are illegal and unenforceable because they violate the Permanent Injunction and California Franchise Investment Law ("CFIL"). *Id.* ¶¶ 90, 95, 100.

2. Procedural History

USSD filed the original complaint against Kristopher Rinehart, M.D. ("Rinehart"), South Bay Self Defense Studios, LLC ("SBSSD"), and Los Angeles Studios of Self Defense, LLC ("LASSD") on June 13, 2018 (Dkt. 1). Before filing an answer, the parties filed a joint stipulation seeking leave to file a first amended complaint ("FAC") and to extend Defendants' responsive pleading deadline to September 19, 2018 (Dkt. 15). The Court granted the joint stipulation on August 15, 2018 (Dkt. 16).

On September 14, 2018, USSD filed a FAC against Rinehart, Brent Murakami ("Murakami"), SBSSD, LASSD, and SB Ninja, LLC ("SB Ninja") (collectively, "Defendants" or "Counterclaimants") (Dkt. 17). The FAC alleges twelve claims: (1) breach of the Redondo Beach Franchise Agreement against Rinehart and SBSSD; (2) breach of the Beverly Hills Franchise Agreement against Rinehart and LASSD; (3) declaration of no formation of SB Ninja License Agreement against SB Ninja, Murakami, Rinehart and SBSSD; (4) intentional interference with contractual relations against SB Ninja and Murakami; (5) false designation under 15 U.S.C. § 1125(a) against all defendants; (6) trademark dilution under 15 U.S.C. 1125(c) against all defendants; (7) trademark infringement under 15 U.S.C. § 1114(1) against Rinehart, SBSSD, SB Ninja and Murakami; (8) common law trademark infringement against Rinehart, SBSSD, SB Ninja and Murakami; (9) unfair business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. against all defendants; (10) accounting against all defendants; (11) declaration that transfers to Murakami are null and void against Rinehart, Murakami, LASSD and SBSSD; and (12) declaration on right to terminate franchise agreements against Rinehart, LASSD and SBSSD. *See generally* FAC.

On October 4, 2018, Defendants concurrently filed an answer (Dkt. 20) and the original counterclaim against USSD, Mattera, and USB (collectively, "USSD" or "Plaintiffs") (Dkt. 21).

On November 2, 2018, Defendants concurrently filed their Amended Answer, asserting fourteen affirmative defenses ("Amended Answer") (Dkt. 32) and their FACC against USSD, Mattera, and USB (Dkt. 33). The FACC alleges eight counterclaims: (1) declaratory relief as to right to rescind the Redondo Beach Franchise Agreement; (2) declaratory relief as to right to rescind the Beverly Hills Franchise Agreement; (3) declaratory relief as to the right to rescind the Torrance and Rolling Hills License Agreements; (4) declaratory relief as to the lack of formation of the Redondo Beach Franchise Agreement; (5) breach of the Beverly Hills Franchise Agreement; (6) conversion; (7) violation of California Corporations Code § 31220; and (8) unfair business practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. *See generally* FACC.

Plaintiffs filed three separate motions on November 26, 2018, seeking (1) to dismiss seven of the eight counterclaims; (2) to strike portions of the FACC; and (3) to strike thirteen of the fourteen affirmative defenses in the Amended Answer. *See* Dkts. 36–38. Defendants opposed each motion on December 21, 2018 *See* Dkts. 45–47. Plaintiffs replied on December 31, 2018. *See* Dkts. 48–50.

3. Legal Standard

A. Motion to Dismiss for Failure to State a Claim

***3** Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed when a plaintiff's allegations fail to set forth a set of facts which, if true, would entitle the complainant to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (holding that a claim must be facially plausible in order to survive a motion to dismiss). The pleadings must raise the right to relief beyond the speculative level; a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). On a motion to dismiss, a court accepts as true a plaintiff's well-pleaded factual allegations and construes all factual inferences in the light most favorable to the plaintiff. *See Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). A court is not required to accept as true legal conclusions couched as factual allegations. *Iqbal*, 556 U.S. at 678.

In ruling on a motion to dismiss, the court need not accept as true allegations contradicted by judicially noticeable facts, *See Schwarz v. United States*, 234 F.3d 428, 435 (9th Cir. 2000), and it "may look beyond the plaintiff's complaint to matters of public record" without converting the motion into a motion for summary judgment. *Shaw v. Hahn*, 56 F.3d 1128, 1229 n.1 (9th Cir. 1995).

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments and, thus, leave to amend should be freely granted. *See, e.g., DeSoto v. Yellow Freight System, Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See, e.g., Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

B. Motion to Strike

Under Rule 12(f), a court may "strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f)(2). "[T]he function of a 12(f) motion to strike is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial ...." *Sidney-Vinstein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). " 'Immaterial' matter is that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517 (1994) (quoting 5 Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1382, at 706–07 (1990)). " 'Impertinent' matter consists of statements that do not pertain, and are not necessary, to the issues in question." *Id.*

4. Discussion

A. Motion to Strike Portions of FACC

As a preliminary matter, the Court must address Plaintiffs' Motion to Strike portions of the FACC (Dkt. 37-1). Plaintiffs move to strike two categories of allegations: (1) allegations referencing *United Finance, LLC and Jody Neal v. William Silliker* ("*Silliker* Allegations"); and (2) allegations referencing *People of the State of California v. United Studios of Self Defense, Inc. and Charles Mattera* ("Permanent Injunction Allegations"). Plaintiffs contend these allegations "have no essential or important relationship to the claim[s] for relief or the defenses being pleaded" and "do not pertain, and are not necessary, to the issues in question." Mot. to Strike FACC at 4.

1. Permanent Injunction Allegations

***4** Federal Rule of Civil Procedure 12(f) provides that a court "may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Motions to strike are disfavored and "are generally not granted unless it is clear that the matter to be stricken could have no possible bearing on the subject matter of the litigation." *LeDuc v. Ky. Cent. Life Ins. Co.*, 814 F. Supp. 820, 830 (N.D.Cal.1992).

The Ninth Circuit has defined "immaterial" matter as "that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fogerty*, 984 F.2d at 1527.

The Permanent Injunction Allegations are essential to the majority of the counterclaims. Under the Permanent Injunction, USSD and Mattera are permanently enjoined from "offering, selling, arranging for the sale, leasing, engaging in the business of selling, negotiating the sale of or otherwise dealing in the offer or sale of franchises unless they are registered or exempt..." FACC ¶ 18. The crux of Counterclaimants' argument is that the purported license and franchise agreements are unlawful, and thus unenforceable, because USSD and Mattera entered into contracts that violated franchise laws in contravention of the Permanent Injunction. Opp'n to Mot. to Strike FACC at 6. Therefore, the Permanent Injunction Allegations will not be stricken because they have a possible bearing on the subject matter and plaintiffs have not made out that they are redundant, immaterial, impertinent, or scandalous.

2. *Silliker* Allegations

Counterclaimants argue the *Silliker* Allegations are necessary to show that USSD violated the Permanent Injunction. The *Silliker* Allegations relate to a previous lawsuit, entitled *United Finance LLC and Jody Neal v. William Silliker*, Case No. 1343414. FACC ¶ 20. The FACC alleges, on information and belief, that Mattera and Jody Neal formed United Finance, LLC for the express purpose of acquiring a USSD license to operate a martial arts studio in Carpinteria, California. *Id.* ¶¶ 19, 21. Once United Finance acquired a USSD license, it transferred its rights to William Silliker ("Silliker"). *Id.* On May 6, 2010, United Finance filed suit against Silliker to collect money owed under an installment note. *Id.* ¶ 20. The case was referred to arbitration. *Id.* ¶ 21. The arbitrator determined that the license agreement transferred to Silliker had all of the elements of a "franchise" set forth within Corporations Code § 31005. *Id.* ¶ 22. The arbitrator concluded that the transaction constituted an illegal sale of an unregistered franchise and found that Silliker was entitled to rescission. *Id.* ¶ 24. On July 30, 2012, the parties entered into a private settlement and the judgment was vacated. *Id.* ¶ 25.

The Court finds the Silliker Allegations are relevant to the counterclaims. The Court will determine the effect of these allegations at a later stage in this litigation. Accordingly, the motion to strike the counterclaim is DENIED.

B. Motion to Dismiss FACC

1. Statute of Limitations

USSD argues that Counterclaimants' first, second, and third counterclaims are barred by the applicable statute of limitations.[1] In response, Counterclaimants argue the statute of limitations does not apply because it is seeking a declaratory finding of illegality, which is a defense to which the statute of limitations does not apply.

***5** Before assessing USSD's particular statute of limitations arguments, the Court finds it necessary to address which statute of limitations applies to Counterclaimants' claims. In regards to the first and third counterclaims, USSD argues these claims are time barred under California's four-year statute of limitations for actions based on rescission of a written contract and California. *See* Cal. Code Civ. Proc. § 337(3). However, with respect to the second counterclaim, USSD argues the applicable statute of limitations is Cal. Corp. Code § 31303, which establishes the time limitations for filing a suit under Cal Corp. Code § 31300 based on violations of Cal. Corp. Code § 31110.

Pursuant to California law, "[t]o determine the statute of limitations which applies to a cause of action it is necessary to identify the nature of the cause of action, i.e., the 'gravamen' of the cause of action." *Marin Healthcare Dist. v. Sutter Health*, 103 Cal.App.4th 861, 874–75 (2002). "The 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.* Relevant to this case, district courts have applied the statute of limitations prescribed in Cal. Corp. Code § 31303 to declaratory relief and rescission actions arising out of defendants' alleged violations of the CFIL. *See Degla Grp. for Investments, Inc. v. BoConcept USA, Inc.*, 2009 WL 10673164, at *6 (C.D. Cal. Oct. 15, 2009) (applying Cal. Corp. Code § 31303 where plaintiff was seeking a declaration that the franchise

agreement was void due to its illegal nature); *Stocco v. Gemological Inst. of Am., Inc.*, 975 F. Supp. 2d 1170, 1181 (S.D. Cal. 2013) (dismissing plaintiff's claim to rescind the franchise agreement because it was barred by Cal. Corp. Code § 31303 four-year statute of limitations).

Here, the gravamen of the first, second and third counterclaim is USSD's alleged violations of the CFIL. In seeking declaratory relief as to the right to rescind the Redondo License Agreement, the Counterclaimants allege that the license agreement constitutes an offer and sale of an unregistered offer of franchises in violation of Cal. Corp Code § 31110. Counterclaimants further allege that the Redondo License Agreement is "unlawful as a violation of the California Franchise Investment Law and the Permanent Injunction (indeed any violation by USSD of the Franchise Investment Law is necessarily a violation of the Permanent Injunction as the Permanent Injunction requires USSD to abide by such laws) and is void and subject to rescission." FACC ¶ 90. Counterclaimants repeat these similar allegations in the second and third counterclaims. *Id.* ¶ 95 (alleging the Beverly Hills Franchise Agreement is "unlawful as a violation of the California Franchise Law and the Permanent Injunction and is void and subject to rescission"); *Id.* ¶ 100 (alleging the Torrance Agreement and the Rolling Hills Agreements are "unlawful as a violation of the California Franchise Law and the Permanent Injunction and are void and subject to rescission"). Accordingly, the Court concludes the statute of limitations provided for in Cal. Corp. Code § 31303 applies.

2. First Counterclaim: Declaration as to Right to Rescind the Redondo License Agreement

In the first counterclaim, SB Ninja seeks a declaration that that it has the right to rescind the Redondo License Agreement. FACC ¶¶ 87–91. USSD argues this counterclaim is barred by the four-year limitation under Cal. Corp. Code § 31303, which provides:

> No action shall be maintained to enforce any liability created under Section 31300 unless brought before the expiration of four years after the act or transaction constituting the violation, [or] the expiration of one year after the discovery by the plaintiff of the fact constituting the violation ... whichever shall first expire.

***6** Cal. Corp. Code § 31303.

"A claim may be dismissed under Rule 12(b)(6) on the ground that it is barred by the applicable statute of limitations only, however, when 'the running of the statute is apparent on the face of the complaint.' " *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010). "[A] complaint cannot be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts that would establish the timeliness of the claim." *Id.*

The FACC alleges that SB Ninja and USSD entered into the Redondo License Agreement on March 16, 2011. FACC ¶ 39. The attached copy of the Redondo License Agreement supports this allegation. Dkt. 33-1 (Ex. A). As such, approximately seven years have passed before Counterclaimants filed their counterclaim on October 4, 2018 (Dkt. 21). Therefore, the Court finds the first counterclaim is barred by the four-year statute of limitations. *People ex rel. Dep't of Corps. v. Speedee Oil Change Systems, Inc.*, 95 Cal.App.4th 709, 727 (2002) ("Once the four-year ... period expires, a plaintiff's belated discovery of the fact constituting the violation cannot serve to extend the statute of limitations. In other words, the four-year ban in section 31303 ... [is] absolute.").

Accordingly, Plaintiff's motion to dismiss the first counterclaim is GRANTED.

3. Second Counterclaim: Declaration as to Right to Rescind the Beverly Hills Franchise Agreement

In the second counterclaim, LASSD and Rinehart seek a declaration as to the right to rescind the Beverly Hills Franchise Agreement entered into on July 16, 2015. USSD argues this counterclaim is time barred because Cal. Corp. Code § 31303's one-year "discovery" period applies and runs from the date the parties entered into the Beverly Hills Franchise Agreement. In response, Counterclaimants argue that "nothing in the allegations indicates that

Counterclaimants discovered the violation within one year." Opp'n to Mot. to Dismiss at 11.

Pursuant to § 31303, "no such action shall be maintained to enforce any liability created under § 31300 unless brought before the ... expiration of one year after the discovery by the plaintiff of the facts constituting such violation." The one-year "discovery" period of limitations begins to run from the date that a claimant knows of the facts constituting a violation. *Powell v. Coffee Beanery*, Ltd., 932 F. Supp. 985, 988 (E.D. Mich. 1996) (interpreting California franchise law). This is true even if the claimant is unaware that a violation has actually occurred. *Id.*; *see also Perez v. McDonald's Corp.*, 60 F. Supp. 2d 1030, 1036 (E.D. Cal. 1998).

Counterclaimants assert that the Beverly Hills Franchise Agreement constitutes an unlawful offer and sale of a franchise in violation of Cal. Corp. Code 31110 because it contained materially different terms from the application for registration. FACC ¶¶ 57, 95. Counterclaimants allege that Mattera offered Rinehart the choice of either paying the franchise fee by executing a promissory note in the amount of $50,000 for the benefit of a third-party, Pirooz Nourizad, or transferring a 15% ownership interest in the franchise to USSD. However, the terms of the Beverly Hills Franchise Agreement that were submitted to the California Department of Business Oversight provided that Rinehart pay USSD an initial franchise fee in the amount of $75,000. Notwithstanding, Rinehart executed the promissory note on July 16, 2015. FACC ¶ 60.

***7** Based on these allegations, the Court finds that the one-year limitation period applies because Rinehart was aware of the facts that constituted a violation when he executed the promissory note on July 16, 2015. Counterclaimants, however, did not file this counterclaim until October 4, 2018, almost three and a half years after the discovery of such facts. Therefore, the second counterclaim is barred by the one-year "discovery" rule.

Accordingly, Plaintiff's motion to dismiss the second counterclaim is GRANTED.

4. Third Counterclaim: Declaration as to Right to Rescind the Torrance Agreement

In the third counterclaim, SB Ninja and RHSSD seek a declaration as to the right to rescind the Torrance Agreement. FACC ¶¶ 97-101. USSD argues this counterclaim, with respect to the Torrance Agreement, is barred by the four-year limitation period under Cal. Corp. Code § 31300. The Court agrees. The FACC alleges that SB Ninja was transferred all of the rights under the Torrance Agreement on October 1, 2009, almost ten years prior to filing this action. Therefore, the third counterclaim with respect to the Torrance Agreement is time barred.

Accordingly, Plaintiff's motion to dismiss the third counterclaim with respect to the Torrance Agreement is GRANTED.

5. Third Counterclaim: Declaration as to Right to Rescind the Rolling Hills Agreement

In the third counterclaim, SB Ninja and RHSSD also seek a declaration as to the right to rescind the Rolling Hills Agreement. USSD argues the third counterclaim fails to state a claim with respect to the Rolling Hills Agreement.

As grounds for rescission, RHSSD alleges that the Rolling Hills Agreement constitutes an offer and sale of an unregistered offers of franchises in violation of Cal. Corp. § 31110, which provides that "it shall be unlawful for any person to offer or sell any franchise in this state unless the offer of the franchise has been registered." FACC ¶ 100. USSD argues RHSSD has failed to allege sufficient facts that the Rolling Hills Agreement was the sale of a "franchise" as defined within Cal. Corp. Code § 31005(a).

Under the CFIL, a "franchise" means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

> (1) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor; and

(2) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate; and

(3) The franchisee is required to pay, directly or indirectly, a franchise fee.

Cal. Corp. Code § 31005.

With regard to the first element, RHSSD alleges that on March 19, 2018, USSD offered and issued RHSSD a license for a thirty-six-month term for the operation of a USSD martial arts studio in Rolling Hills, California. FACC ¶ 65. RHSSD alleges that pursuant to the Rolling Hills Agreement, it was required to follow USSD pricing guidelines, attend USSD training sessions and meetings, participate in USSD marketing efforts and follow USSD operations manuals and guidelines. *Id.* ¶ 70. Moreover, USSD requires RHSSD to provide each student with a copy of USSD's student manual, which prescribes that the martial arts training courses and procedures offered and taught will include USSD's Shaolin Kempo System combined with USSD's "proven methods of professional instruction." *Id.* ¶ 68. In sum, these allegations establish that RHSSD was granted the right to operate a USSD martial arts school under the training system prescribed by USSD pursuant to the Rolling Hills Agreement. Therefore, the Court finds these allegations sufficient to establish the first element.

***8** The second element requires that the operation of the franchisee's business pursuant to the franchisor's system is substantially associated with the franchisor's trademark or other commercial symbols. RHSSD alleges the Rolling Hills Agreement granted RHSSD the right to use the USSD Marks in connection with the business of operating a licensed school for training martial arts. FACC ¶ 66. The Court finds RHSSD has alleged sufficient facts to establish the second element.

The third element requires payment of a franchise fee. Under the CFIL, a "franchise fee" means any fee or charge that a franchisee or sub-franchisor is required to pay or agrees to pay for the right to enter into a business under a franchise agreement, including, but not limited to, any payment for goods and services. Cal. Corp. Code § 31011. The payment must exceed $100 on an annual basis or it is not a "franchise fee." Cal. Bus. & Prof. Code § 20007(d). Here, RHSSD alleges that the Rolling Hills Agreement requires it to pay USSD a monthly fee of $750.00 during the term of the contract. FACC ¶ 67. Thus, RHSSD has alleged sufficient facts to establish the third element. Therefore, the Court finds these allegations sufficient to establish, at this stage, that the Rolling Hills Agreement is a "franchise" as defined within Cal. Corp. Code § 31005(a).

Accordingly, Plaintiff's motion to dismiss the third counterclaim is DENIED with respect to the Rolling Hills Agreement.

6. Fifth Counterclaim: Breach of Contract

The fifth counterclaim for breach of contract alleges USSD breached the Beverly Hills Franchise Agreement by affirmatively and materially depriving LASSD of the contractual right to participate in USSD events. FACC ¶ 109. Plaintiff maintains this counterclaim fails because the FACC fails to plead precisely what provisions of the Beverly Hills Franchise Agreement afforded LASSD the "contractual right to participate in USSD events" and fails to properly allege damages.

To state a claim for breach of contract under California law, Plaintiff must allege must show "(1) the existence of the contract, (2) [claimant's] performance or excuse for nonperformance, (3) [counterdefendant's] breach, and (4) the resulting damages to the [claimant]." *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). Under Federal Rule of Civil Procedure 8(a), a "short and plain statement of the claim" suffices. The forms appended to the Federal Rules of Civil Procedure note that "plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect." Fed. R. Civ. P. Official Form 3, 12; *Securimetrics, Inc. v. Hartford Cas. Ins. Co.*, 2005 WL 1712008, at *2 (N.D. Cal. July 21, 2005) (concluding federal law does not require a claimant to recite the contract terms verbatim).

Here, Defendants attached a copy of the Beverly Hills Franchise Agreement to the FACC. *See* Dkt. 17-2, Ex. D. Moreover, Defendants have plead the "legal effect" of the

contract as required by Federal Rule of Civil Procedure 8. The FACC alleges that USSD materially breached the contract when "USSD, through its counsel advised that Rinehart and Murakami are not welcome at USSD events." FACC ¶ 108. The fact Defendants did not plead precisely the provision that afforded LASSD the right to participate in USSD events is of no consequence. Therefore, Defendants have plead sufficient facts to enable Plaintiff to understand and respond this counterclaim.

***9** Accordingly, Plaintiff's motion to dismiss the fifth counterclaim is DENIED.

7. Sixth Counterclaim: Conversion

The sixth counterclaim alleges conversion against USB and Mattera. FACC ¶¶ 114-125. Plaintiff insists this counterclaim fails because the FACC does not allege a specific, identifiable sum, whereas Counterclaimants argue that they only need to plead an amount that is capable of later identification.

Contrary to Plaintiff's contention, greater specificity is not required under Rule 8. *Natomas Gardens Inv. Group, LLC v. Sinadinos*, 710 F.Supp.2d 1008 (E.D. Cal. 2010), is instructive in this regard. There, defendant argued that "plaintiffs [we]re required to plead a specific, identifiable sum whereas plaintiffs argue[d] that they only need[ed] to plead an amount that [wa]s capable of later identification." *Id.* at 1019. The court noted that defendant "ha[d] provided no authority" justifying dismissal of a conversion claim on the basis that plaintiff had failed "to identify a specific, identifiable sum of money." It concluded that, "[c]onsidering the liberal pleading requirements in federal court, ... at the pleading stage it [was] only necessary for plaintiffs to allege an amount of money that is 'capable of identification.' However, at summary judgment plaintiffs will be required to prove a specific, identifiable sum." *Id.* at 1019–20 (citing *PCO, Inc.*, 150 Cal.App.4th at 397).

Like the defendant in *Natomas*, USSD has cited no authority for the proposition that Defendants must plead the specific sum of money that has been allegedly converted. The court agrees with *Natomas* that, at this stage, Defendants need only describe the property allegedly converted sufficiently that defendants can answer and develop a defense. Under the putative franchise agreements, LASSD, SBSSD and SB Ninja were required to use USB for billing and processing of credit card transactions. FACC ¶¶ 115, 117. Defendants allege that "USB was required to submit the transactions to the bank for payment, and then remit the payments to LASSD, SBSSD, and SB Ninja to compensate [them] for the services provided, minus a 5% fee." *Id.* ¶ 117. However, "instead of remitting the funds to LASSD, SBSSD and SB Ninja, USB placed the money in its general account and used the money to pay for its own expenses." *Id.* ¶ 118. In doing so, USB and Mattera "exercised dominion control over LASSD's, SBSSD's, and SB Ninja's funds from these various credit card transactions and substantially interfered with Counterclaimants right of possession in those funds." *Id.* ¶ 120. These allegations sufficiently allege an amount that is capable of identification at this stage.

Accordingly, Plaintiffs' motion to dismiss the sixth counterclaim is DENIED.

8. Seventh Counterclaim: Violation of Cal. Corp. Code § 31220

The seventh counterclaim alleges USSD violated Cal. Corp. Code § 31220 by expelling Murakami from the monthly franchisee meeting and forbidding Murakami and Rinehart from attending USSD events during the pendency of this litigation. FACC ¶¶ 128-130. Cal. Corp. Code § 31220 provides that a franchisor may not "restrict or inhibit the right of franchisees to join a trade association or to prohibit the right of free association among franchisees for any lawful purposes." USSD argues that prohibiting Murakami and Rinehart from attending franchise meetings does not violate their "right of association" under Cal. Corp. Code § 31220 because they can otherwise communicate with the other franchisees.

***10** *Overturf v. Rocky Mountain Chocolate Factory, Inc.*, 2009 WL 10675269, at *5 (C.D. Cal. Feb. 13, 2009) is the only case the Court is aware of that has dealt with this issue at the pleading stage. In *Overturf*, the court dismissed plaintiffs' § 31220 claim because the defendants merely asked plaintiff franchisees to refrain from making disparaging comments about the franchise online. The court

further noted that "at no time did [d]efendants prohibit [p]laintiffs from associating with other franchisees." *Id.* at *5.

Here, Counterclaimants allege that on September 7, 2018, Murakami attended a meeting at USSD's headquarters "to meet with other instructors and franchisees in attendance to discuss franchise business." FACC ¶ 128. At the meeting, USSD's counsel demanded Murakami leave because of this ongoing litigation. *Id.* ¶ 129. Thereafter, USSD's counsel instructed Murakami's counsel that if Murakami or Rinehart attended a USSD-sponsored event that they will be considered trespassing. *Id.* ¶ 130. USSD's counsel further stated that they were "aware of Dr. Rinehart's and Mr. Murakami's ongoing efforts to solicit and/or encourage other USSD franchisees to attempt to leave the system." *Id.* The Court finds USSD's actions do not violate Defendants' "right of association" under Cal. Corp. Code § 31220. Although Murkami and Rinehart are prohibited from attending franchise meetings, this does not forbid them from otherwise communicating with another franchisee outside of the franchise meeting or joining a franchisee association. Therefore, similar to *Overturf*, USSD did not prohibit Murakami or Rinehart from associating with the other franchisees.

Accordingly, Plaintiff's motion to dismiss the seventh counterclaim is GRANTED.

9. Eighth Counterclaim: UCL

The eighth counterclaim alleges USSD, USB and Mattera engaged in deceitful, deceptive, unfair, and unlawful practices in violation of Cal. Bus. & Prof. Code § 17200 et seq. The UCL prohibits "any unlawful, unfair or fraudulent business act or practice" and permits suit by an individual "who has suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof. Code §§ 17200, 17204.

Counterclaimants base their UCL claim on alleged misrepresentations USSD made to Rinehart and USB's conversion of Counterclaimants' funds for USSD purposes. FACC ¶¶ 135-150. USSD concedes that these allegations provide a basis for a UCL claim, but nonetheless fail because there are no allegations that the parties "lost money or property" as a result of the unfair competition. Motion to Dismiss at 10.

The "lost money or property" element can be satisfied in "innumerable" ways, such as when a plaintiff is made to: "(1) surrender in a transaction more, or acquire in a transaction less, than he or she otherwise would have; (2) have a present or future property interest diminished; (3) be deprived of money or property to which he or she has a cognizable claim; or (4) be required to enter into a transaction, costing money or property, that would otherwise have been unnecessary." *Kwikset Corp v. Super. Ct.*, 51 Cal. 4th 310, 322 (2011).

The "lost money or property" element is satisfied as to both bases of Counterclaimants' UCL claim. In regards to USSD's misrepresentations, Counterclaimants allege that USSD seeks to hold Rinehart and SBSSD liable under the terms of a non-existent franchise agreement, which would therefore hold Rinehart liable to damages if USSD prevails on their breach of contract claim. FACC ¶ 140. These allegations show that USSD's misrepresentations caused Rinehart to enter into a transaction that may cost Rinehart money damages if USSD prevails on their claim. Further, with respect to USSD's alleged conversion, Counterclaimants allege that USSD's actions have caused Counterclaimants to incur additional expenses and delays in processing of transactions with its students and receiving payment for the services they provided. *Id.* ¶ 145. These allegations show Counterclaimants have been deprived of money to which they have a cognizable claim.

***11** Accordingly, Plaintiff's motion to dismiss the eighth counterclaim is DENIED

C. Motion to Strike Affirmative Defenses

Defendants assert fourteen purported affirmative defenses in their Amended Answer: (1) Failure to State a Claim; (2) Waiver; (3) Acquiescence; (4) Estoppel; (5) Laches; (6) License; (7) Unclean Hands; (8) Duress; (9) Fraud; (10) Illegality; (11) Violations of California Franchise Investment Law; (12) Violations of **California Franchise Relations Act** and the Permanent Injunction; (13) Rescission; and (14) Additional Defenses. (Dkt. 32.) USSD asks the Court to

strike the second through the fourteenth affirmative defenses. *See generally* Mot. to Strike Am. Answer, Dkt. 36-1.

Fed. R. Civ. P. 8(b)(1)(A) requires a party responding to a pleading to "state in short and plain terms its defenses to each claim asserted against it." "An affirmative defense may be stricken as insufficient either as a matter of law or as a matter of pleading." *ADP Commer. Leasing, Inc. v. M.G. Santos, Inc.*, 2013 WL 3863897, at *9 (E.D. Cal. July 24, 2013) (citing *Kohler v. Islands Restaurants, LP*, 280 F.R.D. 560, 564 (S.D. Cal. 2012)). "In pleading an affirmative defense, a party must give 'fair notice of what the [affirmative defense] is and the grounds upon which it rests.' To meet this requirement, each affirmative defense must be supported by factual allegations." *Id.* (citing *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, (2007)). In the motion to strike context, "[l]eave to amend will be freely granted so long as no prejudice results to the moving party." *ADP Commercial Leasing, Inc.*, 2013 WL 3863897, at *9.

As an initial matter, the parties disagree as to the pleading standard applicable to affirmative defenses. USSD urges the Court to apply the heightened pleading standard articulated in *Twombly* and *Iqbal* to evaluate the sufficiency of Defendants' affirmative defenses, rather than the "fair notice" pleading standard set forth by the Ninth Circuit in *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 826–27 (9th Cir. 1979). While the Ninth Circuit has not explicitly considered whether *Twombly* and *Iqbal* have any impact on the pleading standard for affirmative defenses, the Court observes that the Ninth Circuit has continued to apply the *Wyshak* "fair notice" standard in the wake of *Twombly* and *Iqbal*. *See, e.g.*, *Kohler v. Flava Enterprises, Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015) (holding that the " 'fair notice' required by the pleading standards only requires describing defense[s] in 'general terms' "). The Court follows the *Wyshak* fair notice standard here.

USSD moves to strike the second through fourteenth affirmative defenses arguing they are all insufficiently plead because they fail to include factual allegations supporting the affirmative defenses within the Amended Answer. Mot. to Strike Am. Answer at 5. In its opposition, Defendants concede that the Amended Answer itself fails to set forth specific allegations. According to Defendants, it "seemed inefficient and redundant to have provided this Court with an insert of the exact factual allegations" within each section of the affirmative defense because Defendants filed the Amended Answer and the FACC concurrently. Opp. To Mot. to Strike Am. Answer at 5. In doing so, Defendants essentially ask the Court to pick and choose the specific factual allegations from the thirty-six-page FACC and determine which facts support their affirmative defenses. The Court declines to match the factual allegations in the FACC to each affirmative defense in order for Defendants to meet the fair notice pleading standard. Therefore, the Court STRIKES Defendants' second through fourteenth affirmative defenses.

***12** Notwithstanding, leave to amend is proper here because the factual allegations in the FACC make it clear that Defendants can allege specific factual allegations relevant to each of their affirmative defenses. Accordingly, the Court GRANTS Plaintiff's Motion to Strike the Amended Answer with leave to amend.

1. Disposition

For the reasons discussed above, Plaintiffs' Motions are GRANTED IN PART and DENIED IN PART as follows:

- Plaintiffs' Motion to Strike the Permanent Injunction Allegations is DENIED.
- Plaintiffs' Motion to Strike the *Silliker* Allegations is DENIED.
- Plaintiffs' Motion to Dismiss the first counterclaim is GRANTED.
- Plaintiffs' Motion to Dismiss the second counterclaim is GRANTED.
- Plaintiffs' Motion to Dismiss the third counterclaim is GRANTED IN PART with respect to the Torrance Agreement and DENIED IN PART with respect to the Rolling Hills Agreement.
- Plaintiffs' Motion to Dismiss the fifth counterclaim is DENIED.
- Plaintiffs' Motion to Dismiss the sixth counterclaim is DENIED.

- Plaintiffs' Motion to Dismiss the seventh counterclaim is GRANTED.
- Plaintiffs' Motion to Dismiss the eighth counterclaim is DENIED.
- Plaintiffs' Motion to Strike the Amended Answer is GRANTED. The Court STRIKES the second through fourteenth affirmative defenses WITH LEAVE TO AMEND.

The Clerk shall serve this minute order on the parties.

All Citations

Not Reported in Fed. Supp., 2019 WL 1109682

Footnotes

[1] Alternatively, USSD asks the Court to refuse to exercise its discretion under the Declaratory Judgment Act, 28 U.S.C. § 2201(a) and dismiss the first, second, and third counterclaim. The Court rejects USSD's request. "Parties may seek declaratory judgment to determine disputed rights and legal relations under contract." *Gizmo Beverages, Inc. v. Park*, 2017 WL 6941362, at *3 (C.D. Cal. Sept. 18, 2017). Here, USSD and Counterclaimants dispute the enforceability of the Redondo License Agreement (first counterclaim), the Beverly Hills Franchise Agreement (second counterclaim), and the Torrance and Rolling Hills Agreement (third counterclaim). Therefore, the Court may exercise its discretion to declare the rights and legal relations of the parties under these agreements, and Counterclaimants may properly seek declaratory relief on these issues. Accordingly, the Court denies USSD's request to dismiss these counterclaims on these grounds.