

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LANCE BAIRD,

Plaintiff,

v.

WELLS FARGO BANK, N.A., et al.,

Defendants.

Case No. 25-cv-05959-VC

**ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS**

Re: Dkt. No. 24

The motion to dismiss is granted in part and denied in part. This ruling assumes the reader’s familiarity with the facts, the applicable legal standards, and the arguments made by the parties.¹

1. *Wells Fargo & Company*. The motion to dismiss is granted as to Wells Fargo & Company. A parent company can be held liable for the alleged wrongdoing of its subsidiary when it directly participates in the conduct, directs the conduct, or the conduct can otherwise be traced to its own actions. *Hagstrom v. Safeway Inc.*, 2020 WL 6826736, at *3 (W.D. Wash. Nov. 20, 2020). Baird does not adequately allege any of that. He alleges that WFC “exercises specific and financial control over the operations” of Wells Fargo Bank, N.A.; “dictates the policies, procedures, and practices” of WFBNA; “exercises power and control over the specific activities upon which the claims herein are based”; and “is the ultimate recipient of the ill-gotten gains.” Complaint ¶ 9. These allegations are pure boilerplate. They are confined to the paragraph that identifies WFC as a defendant; they include no specifics about what WFC actually did; and the

¹ The request for judicial notice of Baird’s promissory note and deed of trust, Dkt. No. 25 is granted.

rest of the complaint simply asserts that the “defendants” or “Wells Fargo” are responsible for the wrongdoing. That is not enough to go forward against WFC.

2. *Statutes of Limitations.* The motion to dismiss on statute-of-limitation grounds is denied in part and granted in part. Because the statute of limitations is an affirmative defense, a motion to dismiss on those grounds cannot be granted if the complaint alleges facts consistent with the “potential applicability” of a tolling doctrine that would allow the suit to proceed. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1277 (9th Cir. 1993).

The allegations in the complaint do not categorically preclude application of California’s “discovery rule,” which delays the start of the limitations period until the plaintiff gains information that would put a reasonable person on notice. *Gutierrez v. Mofid*, 39 Cal. 3d 892, 896-97 (1985). In particular, the allegations leave open the possibility that the mortgage origination process was so confusing that a reasonable person in Baird’s position would not have suspected that they had been overcharged until receiving a letter informing them. And if the limitations period were tolled up to that point, then almost none of Baird’s claims would be barred by the applicable statutes of limitations.² *See May v. Google LLC*, 2024 WL 4681604, at *9 (N.D. Cal. Nov. 4, 2024) (three-year limitations period for claims seeking actual damages under Cal. Penal Code Section 496(a)); Cal. Civil Procedure Code § 338(c) (three-year limitations period for conversion claims); *Federal Deposit Insurance Corp. v. Dintino*, 167 Cal. App. 4th 333, 348 (2008) (three-year limitations period for unjust enrichment claims); Cal. Business & Professional Code § 17208 (four-year limitations period for UCL claims). Of course, discovery might reveal evidence showing that, in fact, a reasonable person should have noticed the alleged wrongdoing long before Baird received his letter from WFBNA, but such factual

² To the extent that certain aspects of Baird’s claims are based on WFBNA’s sending of the allegedly misleading letter, rather than WFBNA’s initial charging of the RTFFs, the statute of limitations as to those claims would not begin to run until, at earliest, Baird received the letter. *See, e.g.*, Complaint ¶ 48 (alleging that WFBNA’s letter was deceptive under the UCL). And given that this suit was filed less than three years after Baird received the allegedly misleading letter, it appears that no statute of limitations would bar those claims, even if tolling were unavailable.

disputes are not properly decided at the pleading stage.³

But Baird's claim for treble damages under California Penal Code 496(c) is clearly time-barred. Under California law, statutory causes of action providing for damages that exceed actual losses are considered penal in nature and are governed by a one-year limitations period. *May v. Google LLC*, 2024 WL 4681604, at *8 (N.D. Cal. Nov. 4, 2024) (citing Cal. Civil Procedure Code § 340). Here, even if the entire period between Baird's paying the RTFF and his receipt of WFBNA's letter were tolled, his claim for treble damages would exceed the one-year limitations period because he waited approximately two-and-a-half years to file suit. *See* Complaint ¶ 35.

3. *California Penal Code Section 496(a)*. The motion to dismiss is granted as to Baird's claim for actual damages under California Penal Code Section 496(a). To state a claim under that provision, the plaintiff must plead that the defendant took possession of property that the defendant knew was stolen or otherwise obtained through theft or extortion. *See Lacagnina v. Comprehend Systems, Inc.*, 25 Cal. App. 5th 955, 970 (2018). But Baird does not allege that his money was "stolen." Baird alleges that WFBNA improperly charged certain fees and that such conduct was functionally equivalent to theft. But the Court is aware of no caselaw adopting such an expansive reading of the penal code, and the plain text of Section 496 itself does not support that reading either. Even if the statute were sufficiently ambiguous to render Baird's interpretation plausible, the rule of lenity cautions against expanding criminal liability where there is such textual ambiguity. *See Doe v. Eating Recovery Center LLC*, 2025 WL 2971090, at *6 (N.D. Cal. Oct. 17, 2025) (quoting *Harrott v. County of Kings*, 25 Cal. 4th 1138, 1154 (2001)).

4. *Conversion*. The motion to dismiss is granted as to Baird's conversion claim. "[C]ourts in the Ninth Circuit have not hesitated to dismiss claims for conversion when the claim amounted to no more than a demand for reimbursement of a payment." *Haas v. Travelex*

³ Because it is conceivable that Baird's allegations might warrant tolling under the discovery rule, there is no need to discuss whether the limitations period might also be tolled under the fraudulent concealment doctrine.

Insurance Services Inc., 555 F. Supp. 3d 970, 982 (C.D. Cal. 2021). Such is the case here: Baird alleges that he paid fees that were never owed and that WFNAB should reimburse him with interest. That is not a conversion claim. See *Romero v. Securus Technologies, Inc.*, 216 F. Supp. 3d 1078, 1094 (S.D. Cal. 2016) (rejecting a conversion claim because the plaintiffs alleged only that the defendants charged them “for services they otherwise would not have used, or at a minimum, overcharged them”). Baird argues that the RTFFs that he paid were not mere “overcharges” because they were entirely separate and invalid fees, rather than surplus amounts added onto existing and valid fees. But that is a distinction without a difference. Regardless of whether an improper fee is framed as an addition to an existing fee or a completely separate fee, excess money paid as part of a transaction is effectively an overcharge, and overcharges are not actionable as conversion.

5. *Unjust Enrichment.* The motion to dismiss is denied as to the unjust enrichment claim. The Ninth Circuit has held that unjust enrichment claims brought under California law can be construed as quasi-contract claims for restitution. *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1038 (9th Cir. 2016). To state such a claim, a plaintiff must plead that the defendant received and unjustly retained a benefit at the plaintiff’s expense. *Id.* Here, Baird alleges that WFBNA improperly charged fees that he never owed and that WFBNA used those fees to profit at his expense. That amounts to unjust enrichment.

The defendants argue that Baird’s unjust enrichment claim is barred by his mortgage contract because quasi-contract claims can be brought only in the absence of an express contract. But a claim for unjust enrichment is barred by an express agreement between the parties only if the alleged wrongdoing is covered by that agreement. See *Shum v. Intel Corp.*, 2008 WL 4414722, at *11 (N.D. Cal. Sept. 26, 2008). Baird does not allege that WFBNA’s conduct was already covered by an express agreement. To the contrary, WFBNA alleged conduct is problematic precisely because Baird never expressly agreed to paying RTFFs. There is accordingly—at least, based on the allegations in the complaint and the materials submitted by the parties in connection with this motion—no contract covering the conduct that gives rise to

Baird's unjust enrichment claim.⁴

6. *Unfair Competition Law*. The motion to dismiss is denied as to Baird's UCL claim. As a threshold matter, the defendants argue that Baird cannot seek equitable relief under the UCL because he does not plead that he lacks an adequate remedy at law. But plaintiffs are allowed to plead in the alternative—even if the alternatives are mutually exclusive. The Ninth Circuit's decision in *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020), does not hold otherwise and “should not be understood as a categorical bar to pleading claims for equitable relief under the UCL and damages . . . in a single complaint.” *Cepelak v. HP Inc.*, 2021 WL 5298022, at *2 (N.D. Cal. Nov. 15, 2021).

Baird states a claim under each of the UCL's three prongs. To state a claim under the “unlawful” prong, a plaintiff may plead that the defendant violated “virtually any law or regulation—federal or state, statutory or common law.” *Yellowcake, Inc. v. Morena Music, Inc.*, 522 F. Supp. 3d 747, 772 (E.D. Cal. 2021) (quoting *Candelore v. Tinder, Inc.*, 19 Cal. App. 5th 1138, 1155 (2018)). Baird's unjust enrichment claim meets that requirement. *Waldrup v. Countrywide Financial Corp.*, 2014 WL 4978437, at *6 (C.D. Cal. Oct. 6, 2014) (citing *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1143 (2003)).

Baird also states a claim under the “unfair” prong. Under that prong, courts apply any one of three tests: “(1) whether the challenged conduct is tethered to any underlying constitutional, statutory or regulatory provision”; “(2) whether the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;” or “(3) whether the practice's impact on the victim outweighs the reasons, justifications and motives of the alleged wrongdoer.” *Doe v. CVS Pharmacy, Inc.*, 982 F.3d 1204, 1214-15 (9th Cir. 2020). Baird's allegations that WFBNA overcharged customers, failed to return any money for over a decade, and then returned only a fraction of the money owed after already profiting an undisclosed amount using said funds

⁴ Perhaps there is something in the contract between Baird and WFBNA that could allow Baird to plead that WFBNA breached the contract by charging a RTFF. But the parties have not pointed to anything along those lines.

suffices under any of those tests.

Finally, although it's a close question, Baird states a claim under the "fraudulent" prong. The "fraudulent" prong of the UCL requires "only a showing that members of the public are likely to be deceived and does not require allegations of actual deception, reasonable reliance, and damage." *Barboza v. Mercedes-Benz USA, LLC*, 2022 WL 17978408, at *6 (E.D. Cal. Dec. 28, 2022) (cleaned up). Although the traditional elements of fraud need not be alleged, the complaint must still meet Rule 9(b)'s heightened pleading standards. *Id.* Here, Baird alleges that WFBNA improperly charged RTFFs and waited over a decade to notify borrowers. Baird further alleges that when WFBNA finally did send a letter to notify borrowers of the improper RTFFs, WFBNA implied that the enclosed check fully compensated them despite knowing that the amount enclosed was inadequate and that customers would have no way of verifying. Complaint ¶¶ 24-27. In other words, Baird alleges that WFBNA sent the letter to deceive customers into foregoing a full refund. Although these allegations are somewhat sparse and the Court is skeptical of them, this is not a reason to dismiss the claim. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The defendants argue that they owed no special duty to disclose to any of their borrowers, so they cannot be liable for fraud merely because they withheld information. But under California law, "even where no duty to disclose would otherwise exist, where one does speak, he must speak the whole truth to the end that he does not conceal any facts which materially qualify those stated. One who . . . volunteers information must be truthful, and the telling of a half-truth calculated to deceive is fraud." *Vega v. Jones, Day, Reavis & Pogue*, 121 Cal. App. 4th 282, 292 (2004) (analyzing a common law fraud claim). There is no reason to believe that the same principle does not apply equally to the "fraudulent" prong of the UCL, which is even more expansive than common law fraud. Here, Baird alleges that WFBNA chose to send letters containing incomplete information to minimize its own liability and that WFBNA did so to mislead customers into thinking that they had been fully compensated. Complaint ¶¶ 24-27.

7. *Accounting and Other Remedies.* Under California law, accounting "is not an

independent cause of action but merely a type of remedy, an equitable remedy at that.” *Rose v. J.P. Morgan Chase, N.A.*, 2012 WL 892282, at *5 (E.D. Cal. Mar. 14, 2012) (quoting *Batt v. City & County of San Francisco*, 155 Cal. App. 4th 65, 82 (2007)). And “the appropriateness of the various remedies sought in the complaint need not be addressed until, if ever, the proceedings reach a point where liability is established and relief ordered.” *Hofstetter v. Chase Home Finance, LLC*, 751 F. Supp. 2d 1116, 1131 (N.D. Cal. 2010). Whether actual damages, restitution, disgorgement, and/or accounting are owed in connection to each of Baird’s claims is therefore not necessary to decide at the pleading stage.

* * *

Dismissal is without leave to amend as to Baird’s claim for treble damages under Penal Code Section 496(c) because any amendment on that point would be futile. In an abundance of caution, dismissal is with leave to amend as to the other claims. Any amended complaint must be filed within 14 days of this order. If no amended complaint is filed by that deadline, dismissal as to those claims will be with prejudice.

IT IS SO ORDERED.

Dated: November 12, 2025



VINCE CHHABRIA
United States District Judge