UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-9198 JVS (RNBx)	Date	May 5, 2011
Title	Joyce Walker, et al. v. Life Insurance Company of the Southwest		

Present: The Honorable	James V. Selna

Karla Tunis	Not Present
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(In Chambers) Order Granting in Part and Denying in Part Defendant's Motion to Dismiss (Fld 12-21-10) and Denying Defendant's Motion to Strike (Fld 12-21-10)**

Defendant Life Insurance Company of the Southwest ("LSW") moves to dismiss the Complaint filed by Plaintiffs Joyce Walker, Kim Bruce Howlett, and Muriel Spooner ("Plaintiffs") because it does not meet the pleading requirements under Federal Rule of Civil Procedure 9(b).[1] Defendant also moves to strike the request for punitive damages contained on page 33:7-8 of the Complaint, pursuant to Federal Rule of Civil Procedure 12(f). Plaintiffs oppose both motions. The Court DENIES the motion to dismiss as to the theory of recovery for Policy costs under the claim for fraudulent concealment and as to the unlawful and fraudulent prongs of the claim for violations of California Business and Professions Code section 17200 and GRANTS all other claims with leave to replead. The Court DENIES the motion to strike.

The Court notes that this case is related to Krall v. Life Ins. Co. of the Southwest et al., Case No. 09-1043, JVS (RNBx), and to the extent issues overlap here with respect to substantive orders in Krall, the Court applies the same reasoning.

I. Background

In fall of 2007, each Plaintiff applied for an equity indexed universal life insurance policy, (the "Policy") from LSW. (Compl. ¶¶ 40, 45, 50.) The Policy provides a death

[1] LSW's Notice of Motion to Dismiss does not provide federal authority for which it seeks to dismiss. (Def.'s Notice Br. 2). The Court infers that the motion is based on a failure to state a claim under Federal Rule 12(b)(6).

benefit if the policyholder dies while the Policy is in force. While the policyholder is alive, the Policy earns interest ("Accumulated Value"). The Policy is subject to certain monthly costs, deducted from the accumulated value of the Policy each month. (See, e.g., Shapiro Decl., Ex. F, at 6, 22.) The Policy is subject to a surrender charge for the first ten years that the policyholder owns the Policy. (Id., at 9.) Prior to purchasing a Policy, each Plaintiff received a customized Illustration with summary information about values "guaranteed" or not guaranteed to accrue. (See id.)[2] Each Illustration contained the following language in capital letters and bold font:

> THIS IS AN ILLUSTRATION. AN ILLUSTRATION IS NOT INTENDED TO PREDICT ACTUAL PERFORMANCE. INTEREST RATES, DIVIDENDS, OR VALUES THAT ARE SET FORTH IN THE ILLUSTRATION ARE NOT GUARANTEED, EXCEPT FOR THOSE ITEMS CLEARLY LABELED AS GUARANTEED.

(Id., Ex. F, at 18.)

A putative class of persons who purchased "an indexed universal life insurance policy, including but not limited to persons who purchased a SecurePlus Provider [P]olicy or SecurePlus Paragon [P]olicy, from Life Insurance Company of the Southwest on or after September 24, 2006 and who resided in California at the time the [P]olicy was initially issued" brings this suit. (Compl. ¶ 57.) Plaintiffs bring causes of action for (1) for fraudulent concealment and (2) violation of California's Unfair Competition Law ("UCL"), Business and Professions Code section 17200. (Id. at ¶¶ 14, 65-70, 71-77.)

Plaintiffs allege that LSW engaged in "unfair, unlawful, and fraudulent business acts or practices" without "specifically disclos[ing] and identify[ing] the cost of buying and maintaining the policies" and instead "conceals these very substantial costs within the projected earnings of these policies." (Id. at ¶ 1.) Plaintiffs allege that as a result of both "misrepresentations and nondisclosures," they were induced to invest in LSW's policies and then were unable to take the money out of their policies "without paying enormous surrender charges." (Id.)

[2] Because each named Plaintiff's Policy and Illustration is substantially similar, the Court relies upon the Spooner Policy and Illustration (Shapiro Exs. C and F, respectively) for ease of reference.

II. Legal Standard

A. Motion to Dismiss

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has "facial plausibility" if the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, --- U.S. ----, 129 S. Ct. 1937, 1949 (May 18, 2009).

In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true, but "[t]hread-bare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. Nor must the Court "accept as true a legal conclusion couched as a factual allegation." Id. at 1949-50 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, the Court must "determine whether they plausibly give rise to an entitlement to relief." Id. at 1950. This determination is context-specific, requiring the Court to draw on its experience and common sense, but there is no plausibility "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." Id.

Under Federal Rule of Civil Procedure 9(b), a plaintiff must plead each of the elements of a fraud claim with particularity, i.e., a plaintiff "must set forth *more* than the neutral facts necessary to identify the transaction." Cooper v. Pickett, 137 F.3d 616, 625 (9th Cir. 1997) (emphasis in original). In other words, fraud claims must be accompanied by the "who, what, when, where, and how" of the fraudulent conduct charged. Vess v. Ciba-Geigy Corp., USA, 317 F.3d 1097, 1106 (9th Cir. 2003). A pleading is sufficient under Rule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations. Moore v. Kayport Package Express, Inc., 885 F.2d 531, 540 (9th Cir. 1989). While statements of the time, place, and nature of the alleged fraudulent activities are sufficient, mere conclusory allegations of fraud are insufficient. Id.

B. Motion to Strike

Under Rule 12(f), a party may move to strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. Fed. R. Civ. P. 12(f). The grounds for a motion to strike must appear on the face of the pleading under attack, or from matters which the Court may take judicial notice. SEC v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995). The essential function of a Rule 12(f) motion is to "avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993); Sidney-Vinstein v. A.H. Robins Co., 697 F.2d 880, 885 (9th Cir. 1983). In the class action context, a defendant may move to strike class allegations prior to discovery, provided that the complaint demonstrates that the class action cannot be maintained on the facts alleged. Sanders v. Apple, Inc., 672 F. Supp.2d 978, 990 (N.D. Cal. 2009).

III. Discussion

A. Motion to Dismiss

LSW has attached to its Motion copies of the Policies and Illustrations provided to Plaintiffs. (Shapiro Decl., Exs. A-F.) The Court considers the Policies because the Complaint refers to and incorporates them. U.S. v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2005) ("Even if a document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim."). Plaintiffs do not object to the Illustrations and Policies LSW has submitted but asks that the Court consider earlier Illustrations as well. (Pls.' Opp'n Br. 1, n.1.) The Court will do so, although it is not clear from the Complaint or Plaintiffs' briefing what the material differences are between these two sets of Illustrations.

1. Fraudulent Concealment

To state a claim for fraudulent concealment, Plaintiffs must allege " '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff,

(4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage." Kaldenbach v. Mut. of Omaha Life Ins. Co., 178 Cal. App. 4th 830, 850 (2009).

Plaintiffs allege a duty to disclose based upon California Insurance Code sections 330, 332, and 10509 et seq. (Compl. ¶ 66(a).)[3] LSW argues that these statutory provisions do not mandate the broad disclosures Plaintiffs allege are required. Having considered the parties' oral arguments, the Court finds that Plaintiffs have alleged a viable fraudulent concealment claim as to the theory of Policy costs, but the other theories are not viable as currently pled. The Court examines each theory of recovery in turn.

a. Policy Costs

Plaintiffs allege fraudulent concealment based on theories of fraudulent omission and affirmative misrepresentation. First, Plaintiffs allege that LSW "conceals the economic costs" of the Policies. (Compl. ¶¶ 6, 29, 66, 67.) They argue that LSW used a "bait and switch" approach by providing an Illustration that disclosed a "monthly administrative charge" but did not disclose other charges, such as the premium expense charge, the monthly cost of insurance, and the monthly Policy fee. (Pls.' Opp'n Br. 13-14, citing to Compl. ¶¶ 27-29, 39, 67 & 75(a).) Second, Plaintiffs argue that LSW affirmatively misled consumers with the words "One Policy Fee" in the Illustration. (Pls.' Opp'n Br. 14; see, e.g., Shapiro Decl., Ex. F.)

The Court finds that Plaintiffs allege the elements to support a fraudulent concealment claim based on Policy costs. LSW concealed or suppressed material facts. (Compl. ¶¶ 6, 29, 66, 67). Plaintiffs allege that LSW had a duty to disclose the facts to Plaintiffs (id. at ¶ 66) and that LSW intentionally concealed or suppressed the

[3] Section 330 states: "Neglect to communicate that which a party knows, and ought to communicate, is concealment." Section 332 states: "Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." Section 10509 imposes duties "not to use deceptive, misleading, or incomplete life insurance illustrations."

fact with the intent to defraud. (Id. at ¶¶ 66-67). Plaintiffs allege that they were unaware of these facts and would not have acted as they did if they had known about them (id. at ¶ 69), and Plaintiffs have sustained damages. (Id.)

LSW argues that it disclosed charges in the Policy and the Illustration. In the Policy, LSW disclosed the charges that comprise the "monthly deduction." (Shapiro Decl., Ex. C, at 30.) LSW also disclosed a monthly administrative charge of $5.00 as well as an "exercise percentage charge". (Id. at 9, 13.) The Illustration shows that for the first ten years of owning the Policy, the policyholder will pay a monthly administrative fee of $485.60. (Shapiro Decl., Ex. F, at 22.) LSW believes these disclosures are sufficient to stop a claim for affirmative misrepresentation or concealment.

It is clear that LSW disclosed the expense charge, the administrative charge, and the surrender charge for the policies. However, it is not clear that LSW disclosed generic charges or the premium expense charge. Plaintiffs are bound "by the clear and conspicuous provisions" in a policy even if they did not read or understand them, Guerard v. CNA Fin. Grp., No. 4: 09-cv-01801-SBA, 2009 WL 3152055, at *5 (N.D. Cal. Sept. 23, 2009), but not all charges were disclosed or explained to Plaintiffs.[4] In sum, the allegations in the Complaint are sufficient to meet the pleading standard under Rule 9(b) for a fraudulent concealment claim based on the theory of undisclosed Policy costs.

b. Guaranteed and Non-Guaranteed Illustrated Values

Plaintiffs allege that the "guaranteed values" in the Illustration (guaranteed minimum interest rates) are "misrepresented as annual guarantees when in fact they are calculated upon [P]olicy termination on the basis of average annual guarantees." (Compl. ¶¶ 9, 67(b).) Plaintiffs also allege that LSW misled policyholders into thinking, based on the Illustrations, that they would receive a guarantee (a "floor" for Policy growth) when sometimes they would not, and that gains in certain accounts are

[4] Plaintiffs argue in their Opposition Brief that "[i]t is true that the charges that were concealed in the [I]llustration are listed in the Data Section of the Policy" (Pls.' Opp'n Br. 17) but requests the Data Section "explain how these charges relate to the [P]olicy" or explain "the impact of these charges on the value of the [P]olicy." (Id.) The Court does not find a cause of action exists as to this allegation.

subject to a cap. (Id. at ¶ 9.)

The Court finds no actionable fraudulent concealment claim with respect to the guaranteed values because Plaintiffs have alleged no injury arising out of the depiction of guaranteed minimum interest rates. Indeed, each of the Plaintiffs alleges that he or she made payments to LSW and then "discovered that the [P]olicy was not the reasonably safe and secure retirement vehicle that it had been represented to be." (See, e.g., Compl. ¶¶ 11, 43, 48, 53.) Such allegations do not establish under Rule 9(b) what each Plaintiff expected based on LSW's representations and why LSW's policies failed to meet their expectations regarding what was represented to them.

What is more, the Court finds that the Complaint does not allege at paragraphs 43, 48, and 53 that each Plaintiff "lost at least $54,000 as a result of" his or her purchase," as Plaintiffs represent. (Pls.' Opp'n Br. 19.) The Plaintiffs suffered a loss because they surrendered their Policies and incurred surrender penalties, not because of representations of the guarantee rates. Accordingly, Plaintiffs do not allege an injury or damage because they received an amount less than what was labeled in the Illustrations as being "guaranteed."

Plaintiffs allege that LSW did not disclose certain risks associated with "non-guaranteed" values. (Compl. ¶ 66(b)(iii). Plaintiffs also allege that LSW misled them by assuming a "constant" as opposed to "volatile" rate of return when preparing the Illustrations. (Compl. ¶ 8.) As this Court held in Krall, reliance on the Illustration is not justified because the Illustration contained warnings that the "benefits and values are not guaranteed. The assumptions on which the illustrations are based are subject to change by the insurer. Actual results may be more or less favorable." (Order Granting Motion to Dismiss Case, Docket No. 29, at 2-3, March 3, 2010) (No. 09-1043). What is more, the Illustration was clear about what was assumed to create the non-guaranteed future values. (Shapiro Decl., Ex. F, at 11-12.)

During the hearing, counsel for Plaintiffs argued that the Policies contain an "internal structure" that, combined with market volatility, can cause a lapse in the Policy, and this is the mechanism for which Plaintiffs seek damages. (Ct. Tr., Feb. 14, 2011, at 13.) In response, LSW argued that these allegations were not made in the Complaint. (Id. at 35.) The Court agrees. However, Plaintiffs may replead to make additional allegations as to this theory of recovery. At present, the Court's holding in

Krall and the disclosures in the Illustration are sufficient to preclude a claim for fraudulent concealment of illustrated values.

c. Tax Consequences

Plaintiffs allege that LSW "concealed the tax consequences of [P]olicy lapse for policyholders who took out loans against the cash value of their [P]olicy." (Compl. ¶ 34, 66(b)(iv), 67(d), 75(d), 76(e)). Plaintiffs argue that LSW "concealed a material risk while touting the security of the policies" and that a retiree "who has been living off [P]olicy loans may have no money with which to pay the huge tax obligation that may immediately become due upon [P]olicy lapse." (Pls.' Opp'n Br. 21.) Plaintiffs have not stated a viable claim here. They have not alleged damage or injury and they do not allege they have misunderstood the income tax consequences of Policy lapse for policyholders. The Court finds no viable claim for fraudulent concealment based upon this theory.[5] During the hearing, Plaintiffs argued that they would appreciate an opportunity to replead on the injury issue; such an opportunity is granted.

In sum, Plaintiffs' fraudulent concealment claim meets the heightened pleading standard of Rule 9(b) only as to the theory based on Policy costs. Plaintiffs may amend these allegations to conform with the federal pleading standards.

2. UCL

Although this claim arises under state law, Plaintiffs' allegations must be pleaded according to the Federal Rules of Civil Procedure. Claims sounding in fraud, such as the UCL, are subject to Federal Rule of Civil Procedure 9(b)'s heightened pleading standard. Kearns v. Ford Motor Co., 567 F.3d 1120, 1122 (9th Cir. 2009) (applying Rule 9(b) standard to UCL and CLRA claims); Vess v. Ciba-Geigy Corp., USA, 317 F.3d 1097, 1103-04 (9th Cir. 2003) (where plaintiff identifies fraudulent course of conduct as basis for claim, pleading must satisfy particularity requirement).

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice

[5] Even if the tax concealment obligations are taken at face value, it is questionable whether failure to disclose the tax laws is actionable. See Cal. Ins. Code § 335.

and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. An act can be alleged to violate any or all of the three prongs of the UCL — unlawful, unfair, or fraudulent. Plaintiffs have alleged violations of all three prongs.

a. Unlawful

The UCL prohibits "unlawful" practices that are forbidden by any law. Saunders v. Superior Court, 27 Cal. App. 4th 832, 838 (Ct. App. 1994). The statute "borrows" violations of other laws and treats them as actionable. Cel-Tech Commc'ns v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999). Plaintiffs allege that LSW's unlawful acts or practices include violation of Insurance Code sections 330, 780, 10509.955(b)(1), (b)(2), (b)(3), (b)(4), (b)(6), and 10509.956(a)(13).

Plaintiffs cannot use section 10509.955 or 10509.956 as the basis for a UCL claim. As the Court explained in its earlier order in Krall, there is no private right of action under California Insurance Code section 10509. (Order Denying Motion to Dismiss and Strike, Docket No. 41, at 7, June 28, 2010 (No. 09-1043).) Plaintiffs have cited some of the formative cases in this area, including Stop Youth Addiction, Inc. v. Lucky Stores, Inc., 17 Cal. 4th 553, 561-67 (1998) and Chabner v. United of Omaha Life Ins. Co., 225 F.3d 1042, 1048-49 (9th Cir. 2000) (recognizing private right of action based on Insurance Code section 10144 and distinguishing it from other sections of the Insurance Code). Although Plaintiffs discuss this issue at length in their brief (Pls.' Opp'n Br. 2-4) and discussed it during the hearing, the case law does not support their position.[6]

The Court is not convinced that these authorities – as well as the those cited for the proposition that Moradi-Shalal v. Fireman's Fund Ins. Cos., 46 Cal. 3d 287, 304-05

[6] The Court recognizes that the Northern District of California addressed a similar issue in Rand v. Am. Nat'l Ins. Co., No. C 09-0639 SI, 2009 U.S. Dist. LEXIS 64781, at *9 (N.D. Cal. July 27, 2009), holding that because the plaintiff (who purchased an annuity and then alleged UCL claims against defendant) "does not allege any unfair claims settlement practices, the holding of *Moradi-Shalal* does not preclude plaintiff's UCL claim alleging other unfair acts in the business of insurance." The reasoning in Rand is not persuasive to the Court and thus the Court follows its decision in Krall.

(1988), and Textron Fin. Corp. v. Nat'l Union Fire Ins. Co. of Pittsburg, 118 Cal. App. 4th 1061, 1071 (Ct. App. 2004) need not apply "where the purported violation of the Insurance Code did not amount to an attempt to bring a third-party bad faith claim"– support Plaintiffs' arguments. (Pls.' Opp'n Br. 4.)

However, the allegations under Insurance Code section 330, which incorporates Plaintiffs' earlier allegations, are sufficient to state a claim for an unlawful business practice. (Compl. ¶ 74(h),(i).) That is, for the reasons explained above, Plaintiffs have pled a claim that LSW concealed material information (Policy costs). The Court finds that section 780, which prohibits misleading Policy Illustrations to be issued, cannot serve as the basis for an unlawful practice because the allegations about misrepresentations are insufficient to state a claim. Accordingly, Plaintiffs may pursue a claim for recovery based on unlawful business practices under the UCL.

b. Unfair

Unfair conduct is conduct "whose harm to the victim outweighs its benefits." Saunders, 27 Cal. App. 4th at 839. Plaintiffs allege that LSW's Illustrations "represented the [P]olicies as retirement or investment plans that would give [Plaintiffs] financial independence through streams of incomes, and this, rather than any life insurance benefit, was the primary basis on which these policies were sold." (Compl. ¶ 76(a).) Plaintiffs also allege that LSW "conceals the material risks that the [P]olicy will not perform as illustrated" and "conceals the adverse tax consequences that can occur if the [P]olicy lapses." (Id. at ¶ 76(c), (d).)

Plaintiffs argue that they have alleged a claim under the unfair prong because the conduct they allege "happens also to be condemned by statute, a fact which cuts strongly in favor of maintaining an unfairness claim . . . ." (Pls.' Opp'n Br. 5.) The Court finds that Plaintiffs have alleged this conduct is actually unfair. (For instance, as explained above, LSW has provided evidence that it did not disclose all of the material risks that the Policy would not perform as illustrated.) These are sufficient allegations to proceed on the unfair prong.

c. Fraudulent

To plead a claim under this prong, Plaintiffs must show LSW engaged in "fraudulent" conduct such that consumers are likely to be deceived. Daugherty v. Am. Honda Motor Co., Inc., 144 Cal. App. 4th 824, 839 (Ct. App. 2006) (finding auto manufacturer did nothing that was likely to deceive the general public under the UCL). Plaintiffs allege that LSW engaged in fraudulent practices by failing to inform, disclose, or advise policyholders of the costs of the Policies and by making "misleading partial disclosures." (Compl. ¶ 75(a)). In that paragraph, Plaintiffs allege that LSW does not disclose the generic charges contained in the Monthly Administrative Fee, including the "premium expense charge; the cost of insurance charges; the monthly percent of accumulated value charge . . .; and the monthly [P]olicy fee." (Id.) At the hearing, Plaintiffs' counsel emphasized that the premium expense charge "is ambiguously a fee or charge that is imposed on this [P]olicy." (Ct. Tr., Feb. 14, 2011, at 10, 26.) Counsel also argued that they had alleged a UCL claim based upon guaranteed minimum interest rates, citing to paragraphs 75(b) and 77 of the Complaint. (Id. at 11.) The Court does not agree, but it grants leave to amend.

During the hearing, Plaintiffs argued that the UCL "is far broader than common-law fraud in terms of the type of conduct that it prohibits," and that disclosures in the Policy would be insufficient "to cure deception in the [I]llustration." (Ct. Tr., Feb. 14, 2011, at 5.) This is a correct statement. Rubio v. Capital One Bank, 613 F.3d 1195, 1204 (9th Cir. 2010) ("This prong of the UCL is governed by the reasonable consumer test: a plaintiff may demonstrate a violation by showing that reasonable members of the public are likely to be deceived . . . . This deception need not be intended.") (internal citations and quotation marks omitted); Williams v. Gerber Prods. Co., 552 F.3d 934, 938 (9th Cir. 2008); Horne v. Harley-Davidson, 660 F.Supp. 2d 1152, 1162 (C.D. Cal. 2009) ("[T]o establish a fraudulent practice under the UCL, Plaintiffs need only show that the representations . . . were likely to deceive the public.") (holding that pleading standard satisfied and whether representations were likely to mislead is question best resolved on summary judgment). The Court finds no reason to distinguish between deception by affirmative misrepresentations and deception by fraudulent omissions. The discrepancy about the charges is likely to deceive consumers and therefore, the Court denies Defendants' motion as to the UCL claim based on this prong.

The Court also finds that partial disclosures do not resolve faulty initial

disclosures. Chern v. Bank of Am., 15 Cal. 3d 866, 876 (1976) (reversing summary judgment for defendant and finding that practice of calculating interest likely to deceive public) ("[T]he fact that defendant may ultimately disclose the actual rate of interest in its Truth in Lending Statement does not excuse defendant's practice of quoting a lower rate in its initial dealings with potential customers.") Accordingly, Plaintiffs have alleged a UCL claim under the third prong of the statute as well.

B. Motion to Strike

LSW wishes to strike allegations about punitive damages. However, Plaintiffs have provided sufficient allegations in paragraph 70 that LSW acted with a "willful and conscious disregard of the rights or safety of Plaintiffs and the class" and that "LSW authorized or ratified the wrongful conduct of its agents or employees." (Compl. ¶ 70.) The Court is satisfied that the punitive damages language provides a short and plain statement of the claim sufficient to meet the standards of the Federal Rules. The Court therefore denies the motion to strike.

IV. Conclusion

For the foregoing reasons, the Court GRANTS in part and DENIES in part the motion to dismiss with leave to amend. Plaintiffs shall have thirty days to replead their Complaint in accordance with the federal pleading standards above. The motion to strike is DENIED.

IT IS SO ORDERED.

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