Stuart Chandler v. State Farm Mutual Automobile I Doc. 920100317

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

STUART CHANDLER, individually and on behalf of a class of others similarly situated, *Plaintiff-Appellant,* v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, *Defendant-Appellee.*	No. 09-55123 D.C. No. 2:08-cv-03184-GAF-E Central District of California, Los Angeles ORDER

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Argued and Submitted
March 5, 2010—Pasadena, California

Filed March 17, 2010

Before: Pamela Ann Rymer and Kim McLane Wardlaw, Circuit Judges, and Stephen M. McNamee,* Senior District Judge.

*The Honorable Stephen M. McNamee, Senior United States District Judge for the District of Arizona, sitting by designation.

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COUNSEL

Don Howarth, Howarth & Smith, Los Angeles, California, for the plaintiff-appellant.

Kevin J. Dunne, Sedgwick, Detert, Moran & Arnold LLP, San Francisco, California, (argued); Kirk C. Jenkins, Sedgwick, Detert, Moran & Arnold LLP, Chicago, Illinois, for the defendant-appellee.

ORDER

We affirm for the reasons stated by the district court in its published opinion at 596 F.Supp.2d 1314 (C.D. Cal. 2008), attached as Appendix A.

AFFIRMED.

APPENDIX A

JS-6
LINK: 19

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

Stuart Chandler, Plaintiff, v. State Farm Mutual Automobile Insurance Company, Defendant.	Case No. CV 08-03184 GAF (Ex) ORDER & MEMORANDUM REGARDING MOTION TO DISMISS

I. INTRODUCTION

This putative class action presents the Court with the question whether an insurer is permitted to recoup a payout from a third-party tortfeasor's insurance company before the insured has sued the third-party tortfeasor, and without first making the insured whole. Plaintiff Stuart Chandler purchased from defendant State Farm Mutual Auto Insurance Company an automobile insurance policy that reimburses policyholders for 80% of their out-of-pocket rental car costs while their automobiles are being repaired following covered accidents. Plaintiff suffered such an accident in March 2007 when his car was rear-ended by the driver of another car. Plaintiff rented a car, which cost him approximately $300, and State Farm reimbursed him 80% of those costs. Then, State Farm, as a partial subrogee of Plaintiff, sought reimbursement from the third-party tortfeasor's insurer, which questioned the charge

1 and paid State Farm only $70. State Farm apparently accepted the $70 payment.
2 Plaintiff then likewise sought reimbursement of his out-of-pocket rental costs from the
3 third-party tortfeasor's insurer, which refused to pay. Rather than institute a lawsuit
4 against the driver who rear-ended him, Plaintiff demanded that State Farm pay him
5 his out-of-pocket costs from the $70 it had received from the driver's insurance
6 company because, according to Plaintiff, he is entitled to reimbursement from State
7 Farm under the "made whole" rule, which purportedly bars State Farm from
8 recovering any of its expenses until Plaintiff's rental car expenses are paid in full.
9 Plaintiff candidly admits that his position could defeat a carrier's ability to
10 recoup from tortfeasors and their insurers the full amount of its payments to its
11 policyholders, and that it would, in effect and to that extent, require an insurer to pay
12 more than its contractual obligation to the policyholder. Plaintiff claims to find support
13 for his position in a variety of public policy arguments. But in the end, these
14 arguments are not persuasive because Plaintiff's position undermines the most
15 fundamental public policy at play in this and other cases—the principle that the
16 person ultimately responsible for causing the damage should pay for it. In situations
17 like the one presented here, the imposition of an obligation on an insurer to pay the
18 insured out of proceeds obtained as reimbursement for its out-of-pocket costs in
19 paying the policyholder's claim would confer greater rights on the policyholder than
20 provided in the policy and eliminate any incentive on the part of the policyholder to
21 seek reimbursement from the tortfeasor. The policyholder's carrier would end up
22 short changed, and the tortfeasor would be off the hook even though the tortfeasor
23 caused the damage in the first place. Although no California case addresses this
24 question, a case from New York provides that a carrier may pursue reimbursement
25 and has no obligation to make the policyholder "whole" out of reimbursement
26 proceeds unless and until the policyholder attempts and fails to recover from the
27 tortfeasor. Winkelmann v. Excelsior Ins. Co., 650 N.E.2d 841, 843–45 (N.Y. 1995).
28 The Court finds the reasoning in Winkelmann persuasive and consistent with the

1 fundamental notion that, whenever possible, the tortfeasor should bear responsibility
2 for losses resulting from her conduct.
3 For these reasons, which are discussed in greater detail below, the Court
4 concludes that Plaintiff lacks standing to proceed with his lawsuit, and that Plaintiff's
5 claims are unripe. Defendant's motion to dismiss is therefore **GRANTED**, and
6 Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**.

7 **II. BACKGROUND**

8 In March 2007, Plaintiff suffered damage to his car when he was rear-ended
9 by the driver of another car. (First Am. Compl. ("FAC") ¶ 23.) At the time, Plaintiff
10 owned automobile insurance through Defendant. (See FAC, Ex. 1 [Policy].) While
11 his car was being repaired, Plaintiff rented a car and incurred $317.45 in expenses.
12 (FAC ¶ 24.) Pursuant to the terms of Plaintiff's insurance policy, Defendant paid 80%
13 of Plaintiff's rental car expenses, or $253.96, and Plaintiff paid $63.49. (FAC ¶ 24;
14 see FAC, Ex. 1 [Policy at 18–19].) Subsequently, Defendant demanded
15 reimbursement from the third-party insurer of its $253.96 payment. (FAC ¶ 25.)
16 Defendant did not demand reimbursement of the $63.49 paid by Plaintiff. (Id.) The
17 third-party insurer disputed the propriety of the duration of the car rental and the
18 rental rate, and paid Defendant only $70.00 as payment-in-full for Plaintiff's rental car
19 expenses. (FAC ¶ 26.)
20 Subsequently, Plaintiff contacted the third-party insurer and requested
21 reimbursement of his $63.49. (FAC ¶ 27.) The third-party insurer rejected Plaintiff's
22 demand for reimbursement of the $63.49, claiming that it had already paid Defendant
23 the full amount of reimbursement owed on the car rental. (Id.) This prompted
24 Plaintiff to seek reimbursement from Defendant of the $63.49. (FAC ¶ 28.) After
25 Defendant also rejected Plaintiff's demand, Plaintiff initiated the present putative
26 class action lawsuit against Defendant, asserting claims of (1) violation of California's
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1 Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq.; (2) conversion, (3)
2 unjust enrichment; and (4) declaratory relief.

3 **III. DISCUSSION**

4 Defendant seeks to dismiss Plaintiff's suit on a number of procedural grounds,
5 including lack of standing, unripe claims, and failure to state a claim for which relief
6 may be granted. All of Defendant's arguments, however, boil down to one central
7 legal issue: the "made-whole" rule's applicability under the present circumstances.

8 California courts are silent on the issue of the made-whole rule's applicability
9 to situations in which an insured has not yet sued the third-party tortfeasor, but the
10 insurer has already obtained reimbursement of the policy payout from the third-party
11 tortfeasor's insurer. Accordingly, to resolve the matter before it, the Court must look
12 to the general principles governing the doctrine of subrogation and the made-whole
13 rule, as well as persuasive authority and public policy considerations.

14 **A. SUBROGATION AND THE MADE-WHOLE RULE**

15 **1. GENERAL PRINCIPLES**

16 Subrogation is an equitable doctrine that permits an insurance company to
17 assert the rights and remedies of an insured against a third party tortfeasor. Allstate
18 Ins. Co. v. Mel Rapton, Inc., 92 Cal. Rptr. 2d 151, 156 (Ct. App. 2000) (citing
19 Rossmoor Sanitation, Inc. v. Pylon, Inc., 532 P.2d 97, 104 (Cal. 1975)). The
20 doctrine's purpose is "to prevent the insured from obtaining a double recovery (and
21 thus being unjustly enriched) and to place the responsibility for paying the loss on the
22 party who caused the loss." Allstate Ins. Co. v. Superior Court, 60 Cal. Rptr. 3d 782,
23 787 (Ct. App. 2007), appeal docketed on other grounds, No. S154790. "When an
24 insurance company pays out a claim on a first-party insurance policy to its insured,
25 the insurance company is subrogated to the rights of its insured against any
26 tortfeasor who is liable to the insured for the insured's damages." Progressive West
27 Ins. Co. v. Superior Court, 37 Cal. Rptr. 3d 434, 441 (Ct. App. 2006). In other words,
28 an insurer "step[s] into the shoes of the insured and assert[s] the insured's rights

1 against the third party." Id. at 442. Subrogation is thus a purely derivative doctrine:
2 "An insurer entitled to subrogation is in the same position as an assignee of the
3 insured's claim, and succeeds only to the rights of the insured. . . . Thus, an insurer
4 cannot acquire by subrogation anything to which the insured has no rights, and may
5 claim no rights which the insured does not have." Transcon. Ins. Co. v. Ins. Co. of
6 Pennsylvania, 56 Cal. Rptr. 3d 491, 498 (Ct. App. 2007) (internal quotation marks
7 omitted) (quoting Fireman's Fund Ins. Co. v. Maryland Cas. Co., 77 Cal. Rptr. 2d
8 296, 303 (Ct. App. 1998)).
9 The made-whole rule is a common law exception to insurers' right of
10 subrogation. Allstate Ins., 60 Cal. Rptr. 3d at 788. In general, the doctrine
11 "precludes an insurer from recovering any third party funds unless and until the
12 insured has been made whole for the loss." Id. (emphasis omitted). "The
13 applicability of the doctrine generally depends on whether the insured has been
14 completely compensated for all the elements of damages, not merely those for which
15 the insurer has indemnified the insured." Id. at 789. California courts recognize two
16 general limitations on the applicability of the made-whole rule. See id. at 789–90.
17 First, an insurer may disclaim the made-whole rule in an insurance contract by using
18 clear and specific language that indicates the parties' intent to permit the insurer to
19 seek reimbursement even if the insured has not been made whole. Id. at 789 (citing
20 Progressive West, 37 Cal. Rptr. 3d at 443; Sapiano v. Williamsburg Nat'l Ins. Co., 33
21 Cal. Rptr. 2d 659, 661–62 (Ct. App. 1994)). Second, the made-whole rule does not
22 apply if the insurer participates in prosecuting the claim against the third-party
23 tortfeasor. Id. at 790 (citing Progressive West, 37 Cal. Rptr. 3d at 442; Travelers
24 Indem. Co. v. Ingebretsen, 113 Cal. Rptr. 679, 685 (Ct. App. 1974)). Neither
25 limitation applies here because Defendant's policy agreement does not contain clear
26 and specific language that would indicate the parties' intent to abrogate the made-
27 whole rule (see FAC ¶ 14; Ex. 1 [Policy at 24]), and Defendant has not had the
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1 opportunity to participate in the prosecution of Plaintiff's claim against the third-party
2 tortfeasor because Plaintiff has not initiated any such lawsuit.
3 **2. APPLICATION**
4 As noted above, California courts have not squarely addressed the core issue
5 presently before the Court, namely, whether an insurer must make the insured whole
6 before pursuing a subrogation claim against the third-party tortfeasor's insurer where
7 the insured herself has not yet sued the third-party tortfeasor. A case decided by the
8 New York Court of Appeals, however, is directly on point.
9 In Winkelmann v. Excelsior Ins. Co., 650 N.E.2d 841 (N.Y. 1995), the plaintiffs
10 were property owners whose building was severely damaged by a fire allegedly
11 caused by the negligence of a roof repairman, which resulted in nearly $320,000 in
12 property damage. Id. at 842. The defendant insurance company, Excelsior
13 Insurance Company ("Excelsior"), paid the plaintiffs over $221,000, thereby fully
14 satisfying its obligation under the plaintiffs' policy. Id. Subsequently, the plaintiffs
15 sought to recover damages for the remaining amount from the roof repairman, while
16 Excelsior sought to recoup its payout. Id. The third-party insurer, Colonial Indemnity
17 Insurance Company ("Colonial"), offered over $188,000 to the parties to settle their
18 claims, only $9,500 of which would go to the plaintiffs. Id. The plaintiffs refused to
19 settle, but Excelsior agreed to receive $180,000 in exchange for releasing its
20 subrogation claim. Id. The plaintiffs then sued the roof repairman, and several
21 months later, also sued Excelsior. Id. at 842–43. The plaintiffs claimed that, by
22 accepting Colonial's settlement offer, Excelsior had acted in derogation of the
23 plaintiffs' rights, because the settlement hindered their ability to prosecute and settle
24 their claim against the roof repairman. Id. at 843.
25 Before reaching the merits of the plaintiffs' claim against Excelsior, the
26 Winkelmann court explained that the plaintiffs' claim against Excelsior was
27 "premature" because the plaintiffs
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> may yet recover the balance of their losses in the action against [the third-party tortfeasor]. There is no evidence that [the tortfeasor's] policy with Colonial has been exhausted or that his personal assets are insufficient to satisfy any additional liability to plaintiffs. Accordingly, Excelsior has not caused its insureds any damages yet. Insofar as plaintiffs allege that Excelsior's conduct "forced" them to litigate rather than settle their claim against [the third-party tortfeasor], that claim, even if true, does not state a cause of action against Excelsior for impairing plaintiffs' rights.

Id. The court then addressed the merits of the plaintiffs' claim by tackling the main issue in the case: "whether an insurer who has paid its insured the full amount due under a fire policy, but less than the insured's loss, may proceed against the third-party tortfeasor responsible for the loss before the insured has been made whole by the tortfeasor." Id. at 842. The court held that an equitable subrogee need ***not*** delay seeking recovery from a third-party tortfeasor until the insured has exhausted her efforts to collect therefrom. Id. at 845. In reaching this conclusion, the court first recognized that the "dual objective" of the subrogation doctrine is to prevent double-recovery by the insured and "to require the party who has caused the damage to reimburse the insurer for the payment the insurer has made." Id. at 844. The court then acknowledged that "[an] insurer's obligation runs to its insured, and then only to the extent of the policy limits." Id. "Thus, an insurer's action based on partial subrogation through its insured will not necessarily interfere with the insured's right to be made whole by the tortfeasor and . . . the insurer need not delay its subrogation claim against the third party to avoid impairing the insured's rights." Id. In addition, the court discounted the possibility that an insurer's recoupment of its payout might result in "unequal bargaining positions" between the insured and the third-party tortfeasor's insurer by taking away the incentive of the latter to engage in settlement negotiations. Id. at 845. Finally, the court reasoned that "i[f] the insurer is required to forego its rights while the insured delays in asserting its claim against the third party, . . . the delay may compel the insurer to litigate a stale claim, or worse, may result in its action being time barred." Id.

1 The Court finds Winkelmann's holding and reasoning to be persuasive and
2 adopts the rule enunciated therein in the absence of direct California authority.
3 Moreover, the Court concludes that Winkelmann does not conflict with California
4 case law on subrogation or the relevant public policy considerations underlying the
5 made-whole rule.

6 The right of subrogation is, in essence, a means of balancing the equities as
7 between the insurer, the insured, and the third-party tortfeasor. An insured who has
8 suffered an injury has a legal right to be made whole; the made-whole rule is the
9 legal doctrine that prevents insurers from interfering with that right. But where the
10 insured has been fully compensated for his injury, subrogation ensures that the
11 insured is not unjustly enriched by receiving a windfall. Subrogation's primary
12 purpose, therefore, is to prevent the insured from obtaining double recovery. See
13 Allstate Ins., 60 Cal. Rptr. 3d at 789. Additionally, the subrogation doctrine is
14 founded upon the equitable principle that, "as between the insurer and insured, it is
15 fair to place the burden for any nonrecovery of damages on the insurer," whom the
16 insured pays, and who is in a better position, to bear the loss. Id. (citing cases from
17 other jurisdictions); see also Lee R. Russ & Thomas F. Segalla, Couch on Insurance
18 § 223:136, at 223-152 to -153 (3d ed. 2000). Subrogation is also a "principle of
19 priority: where the wrongdoer has a fixed amount of assets, it is fair that the insured
20 has the priority of rights to collect the full amount of compensation before the insurer
21 may seek to collect from the wrongdoer." Allstate Ins., 60 Cal. Rptr. 3d at 789.

22 These public policy considerations do not compel a result contrary to that
23 which the Court reaches today. First, one must keep subrogation claims against
24 insureds separate from subrogation claims against third-party tortfeasors. As
25 between insureds and insurers, California law is clear that an insurer may seek
26 subrogation ***from an insured*** only if the insured's recovery exceeds that to which he
27 is entitled, i.e., only after the insured has been made whole. See Sapiano, 33 Cal.
28 Rptr. 2d at 660. This is to prevent situations in which an insured is not made whole,

1 but the insurer, who has already received premium payments from the insured, is
2 able to recoup the proceeds of its payout. However, this rationale is inapposite
3 where, as here, the insured has not yet sought to recover from the third-party
4 tortfeasor and the insurer seeks subrogation directly from the tortfeasor's insurer,
5 because under such circumstances, there is no indication that the insured will not be
6 made whole if he sues the third-party tortfeasor. Cf. Muller v. Society Ins., 750
7 N.W.2d 1, 15 (Wis. 2008) ("[T]he made whole doctrine . . . does not apply when the
8 inequitable prospect of an insurer competing with its own insured for limited
9 settlement funds is absent."). Rather, the insurer should bear the risk of loss only
10 where it is clear that "the loss of one of the two must go unsatisfied." Winklemann,
11 650 N.E.2d at 845.

12 Furthermore, the fundamental purpose of the doctrine of subrogation is to hold
13 third-party tortfeasors accountable for the injuries they inflict: "'Subrogation is the
14 insurer's right to be put in the position of the insured, ***in order to recover from third***
15 ***parties who are legally responsible to the insured for a loss paid by the***
16 ***insurer***.'" Plut, 102 Cal. Rptr. 2d at 40 (emphasis added) (quoting Barnes v. Indep.
17 Auto. Dealers of California, 64 F.3d 1389, 1392 (9th Cir. 1995)). A rule that would
18 prevent an insurer from recouping its payout until after the insured has been made
19 whole would place the risk of loss on the insurer whenever the insured does not
20 attempt to recover from the third-party tortfeasor, even when the insured could obtain
21 a full recovery from the third-party tortfeasor. Just as an insurer may not sit back and
22 allow the insured to recover against the third-party tortfeasor, and then demand all
23 the proceeds for itself, Sapiano, 33 Cal. Rptr. 2d at 662, an insured may not sit back
24 and do nothing to assert its rights against the responsible party, and then expect to
25 be made whole by the insurer who enforces its right of subrogation.

26 Finally, a rule requiring insurers to make insureds whole before subrogating
27 themselves to insureds' claims would remove virtually any incentive the insured might
28 have to pursue her claims against the third-party tortfeasors, because the insured

1 could simply take her share from the amount recouped in subrogation by the insurer.
2 Thus, in effect, the insurer would be obligated to compensate the insured in full for
3 the latter's injuries if the insurer sought to recoup any portion of its payout, even
4 where, as here, the express terms of the insurance policy required something less.
5 Under the present circumstances, Plaintiff's position would ultimately frustrate the
6 parties' objective intent in entering into the agreement, by requiring Defendant to pay
7 100% of Plaintiff's rental expenses when Plaintiff plainly agreed that Defendant was
8 obligated to pay only 80% of such expenses.

9 Plaintiff contends that Defendant's position in this case opens the door to an
10 anomaly whereby the made-whole rule will not apply where an insured has not yet
11 sued the third-party tortfeasor, but will apply to an insured who sues the tortfeasor
12 and settles for $1.00. Plaintiff also argues that Defendant's position would permit
13 insurers to grab the "lower-hanging fruit," leaving the insured to have to reach higher
14 for a smaller recovery. As explained above, Winkelmann addressed and dismissed
15 Plaintiff's latter argument, which is essentially a reformulation of the Winkelmann
16 plaintiffs' "unequal bargaining position" argument. With respect to Plaintiff's anomaly
17 argument, the Court is not convinced that an insured could circumvent the rule
18 espoused by the Court today so easily. First, as a practical matter, it is highly
19 unlikely that an insured would settle its claim against a third-party tortfeasor—the
20 source of the insured's injury—for $1.00 just so it could then be made whole by her
21 own insurer, especially where there is a chance that the insured might be made
22 whole by the third-party tortfeasor. Moreover, at least in cases in which the insurer is
23 representing both the insurer and insured, it is unlikely that the insurer's attorney
24 would settle a claim for $1.00 where it was clear that the purpose of so settling would
25 be to preclude the insurer from subrogating to the insured's claims before the latter
26 was made whole. See Unigard Ins. Group v. O'Flaherty & Belgum, 45 Cal. Rptr. 2d
27 565, 568 (Ct. App. 1995) ("[W]hen, pursuant to insurance policy obligations, an
28 insurer hires and compensates counsel to defend an insured, provided that the

1 interests of the insurer and insured are not in conflict, the retained attorney owes a
2 duty of care to the insurer . . . ."). Thus, Plaintiff's arguments do not compel a
3 different conclusion than that reached by the Court today.

4 **B. DEFENDANT'S MOTION TO DISMISS UNDER RULE 12(B)(1)**

5 With the foregoing analysis in mind, the Court now directly addresses the
6 merits of Defendant's motion to dismiss. On a motion to dismiss for lack of standing,
7 a district court must accept as true all material allegations in the complaint, and must
8 construe the complaint in the nonmovant's favor. Bernhardt v. County of Los
9 Angeles, 279 F.3d 862, 867 (9th Cir. 2002). The Court may not speculate as to the
10 plausibility of the plaintiff's allegations. See id.

11 As noted above, Defendant moves to dismiss Plaintiff's lawsuit under Rule
12 12(b)(1) of the Federal Rules of Civil Procedure on the ground that Plaintiff lacks
13 standing, and that his claims are unripe. The Article III case or controversy
14 requirement limits federal courts' subject matter jurisdiction by requiring, inter alia,
15 that plaintiffs have standing and that claims be "ripe" for adjudication. Allen v. Wright,
16 468 U.S. 737, 750 (1984). The party asserting federal subject matter jurisdiction
17 bears the burden of proving its existence. See Kokkonen v. Guardian Life Ins. Co.,
18 511 U.S. 375, 377 (1994). Standing addresses whether the plaintiff is the proper
19 party to bring the matter to the court for adjudication. Erwin Chemerinsky, Federal
20 Jurisdiction § 2.3.1, at 57 (5th ed. 2007); see also Allen, 468 U.S. at 750–51. The
21 related doctrine of ripeness is a means by which federal courts may dispose of
22 matters that are premature for review because the plaintiff's purported injury is too
23 speculative and may never occur. Chemerinsky, supra, § 2.4.1, at 117. Because
24 standing and ripeness pertain to federal courts' subject matter jurisdiction, they are
25 properly raised in a Rule 12(b)(1) motion to dismiss. See St. Clair v. City of Chico,
26 880 F.2d 199, 201 (9th Cir. 1989); see also White v. Lee, 227 F.3d 1214, 1242 (9th
27 Cir. 2000).
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1 "[T]he irreducible constitutional minimum of standing contains three elements,"
2 all of which the party invoking federal jurisdiction bears the burden of establishing.
3 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61 (1992). First, the plaintiff must
4 prove that he suffered an "injury in fact," i.e., an "invasion of a legally protected
5 interest which is (a) concrete and particularized, and (b) actual or imminent, not
6 conjectural or hypothetical." Id. at 560 (citations, internal quotation marks, and
7 footnote omitted). Second, the plaintiff must establish a causal connection by proving
8 that her injury is fairly traceable to the challenged conduct of the defendant. Id. at
9 560–61. Third, the plaintiff must show that her injury will likely be redressed by a
10 favorable decision. Id. at 561.
11 In the present case, Plaintiff lacks standing because he has not alleged, and
12 indeed, cannot allege at this juncture, sufficient facts to establish that his injury is
13 fairly traceable to Defendant's conduct. The challenged conduct underlying Plaintiff's
14 lawsuit consists of Defendant's act of obtaining partial reimbursement of the $253.96
15 it paid Plaintiff from the third-party tortfeasor's insurer without first making Plaintiff
16 whole. To have standing to sue under the made-whole rule, Plaintiff must show that
17 he was foreclosed from recovering from the tortfeasor because of Defendant's act of
18 seeking and obtaining reimbursement of the rental car expenses. See Winkelmann,
19 650 N.E.2d at 843. At this time, the allegation that Defendant caused Plaintiff to lose
20 $63.49 has no basis because, as explained in detail above, Plaintiff has not yet
21 attempted to recover that sum from the third-party tortfeasor. In other words, without
22 first attempting to recover the $63.49 from the tortfeasor, Plaintiff cannot show that
23 Defendant has done anything to impair Plaintiff's ability to assert his rights and
24 recover the $63.49. Accordingly, Plaintiff cannot establish that his injury is fairly
25 traceable to Defendant.
26 For essentially the same reasons, Plaintiff's claims are unripe. "[T]he question
27 of ripeness turns on the fitness of the issues for judicial decision and the hardship to
28 the parties of withholding court consideration." Pac. Gas & Elec. Co. v. State Energy

1 Res. Conservation & Dev. Comm'n, 461 U.S. 190, 201 (1983) (internal quotation
2 marks omitted) (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148–49 (1967),
3 overruled on other grounds by Califano v. Sanders, 430 U.S. 99 (1977)). "The
4 'central concern [of the ripeness inquiry] is whether the case involves uncertain or
5 contingent future events that may not occur as anticipated, or indeed may not occur
6 at all.'" Richardson v. City and County of Honolulu, 124 F.3d 1150, 1160 (9th Cir.
7 1997) (quoting 13A Charles Alan Wright et al., Federal Practice and Procedure §
8 3532, at 112 (2d ed. 1984)).
9 Here, Plaintiff's lawsuit is unripe because Plaintiff has not sufficiently
10 established that he cannot recover the $63.49 from the third-party tortfeasor. Unless
11 and until Plaintiff sues the third-party tortfeasor and is unable to recover the amount
12 he claims he is owed, Plaintiff cannot claim that Defendant has prevented him from
13 recovering that amount. Thus, at this stage, Plaintiff's claims involve future events
14 that are too uncertain and speculative to permit Plaintiff to proceed with his lawsuit.
15 **IV. CONCLUSION**
16 For the foregoing reasons, the Court concludes that Plaintiff lacks standing
17 and that his claims are unripe. Accordingly, Defendant's Rule 12(b)(1) motion to
18 dismiss is **GRANTED**, and Plaintiff's claims are **DISMISSED WITHOUT**
19 **PREJUDICE.**[1]
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21 **IT IS SO ORDERED.**
22
23 DATED: December 29, 2008

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25
26 Judge Gary Allen Feess
United States District Court
27
28 [1]Because the Court concludes that Plaintiff lacks standing to pursue his claims, it does not address Defendant's motion to dismiss for failure to state a claim.