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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MELIKA, INC., a California corporation; ELHAM SHAFIEE, an individual,)	Case No. CV 11-00825 DDP (RZx)
)	
)	
Plaintiffs,)	ORDER DENYING MOTION TO DISMISS IN PART AND GRANTING IN PART
v.)	
)	
BANK OF AMERICA CORPORATION, a Delaware corporation,)	
)	[Motion filed on 2/3/11]
Defendant.)	
)	

Presently before the court is Defendant Bank of America Corporation ("the bank")'s Motion to Dismiss. Having reviewed the parties' moving papers and heard oral argument, the court denies the motion in part, grants in part, and adopts the following order.

I. Background

Plaintiff Elham Shafiee ("Elham") is the principal of Melika, Inc. ("Melika"), which operates an automobile dealership. (First Amended Complaint ("FAC") ¶ 1.) In 2000, Melika opened a checking account with Bank of America. (FAC ¶ 7.) Elham was the only individual authorized to write checks drawn upon Melika's checking account. (FAC ¶ 8.)

1 On August 22, 2007, Elham discovered that Mahmoud Shafiee
2 ("Mahmoud") had written a \$100,000 check on the Melika account.
3 Elham contacted the bank to inquire about the unauthorized check.
4 (FAC ¶ 17.) The bank informed Elham that Mahmoud's signature was
5 on the account's signature card, and that Mahmoud was authorized to
6 make transactions upon the account. (Id.) (FAC ¶ 9.) Between
7 August 21, 2001 and August 28, 2007, the bank paid four checks
8 written by Mahmoud on the Melika account, totaling \$277,000. (FAC
9 ¶ 10.)

10 Also during August 2007, the same month that he wrote four
11 checks drawn upon the Melika account, Mahmoud intercepted at least
12 sixteen checks payable to Melika, endorsed them, and deposited them
13 with the bank into his own separate accounts. (FAC ¶¶ 38-39.) The
14 endorsed checks totaled approximately \$215,000. (FAC ¶ 38.) Elham
15 did not become aware of the diverted checks until August 9, 2010.
16 (FAC ¶ 43.)

17 After informing Elham on August 22, 2007 that Mahmoud had
18 access to the Melika account, the bank reiterated that fact "[f]rom
19 time to time thereafter" until May 2010. (FAC ¶ 18.) In May 2010,
20 however, the bank informed Elham that Mahmoud was not a signatory
21 on the Melika account. (FAC ¶ 19.) Plaintiffs filed a complaint
22 against the bank in California state court on August 27, 2010, and
23 amended the complaint on December 20. (Opp. at 4; Dkt. No. 1).
24 The First Amended Complaint alleges causes of action for (1)
25 Unauthorized Drawer's Signature, (2) Breach of Contract, (3)
26 Failure to Honor Stop Payment Order, (4) Unauthorized Endorsement -
27 Conversion, (5) Negligence, (6) Fraud, and (7) Civil Conspiracy.

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1 The bank removed to this court on January 27, 2011, and now moves
2 to dismiss all claims.¹

3 **II. Legal Standard**

4 A complaint will survive a motion to dismiss when it
5 "contain[s] sufficient factual matter, accepted as true, to state a
6 claim to relief that is plausible on its face." Ashcroft v. Iqbal,
7 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly,
8 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6)
9 motion, a court must "accept as true all allegations of material
10 fact and must construe those facts in the light most favorable to
11 the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir.
12 2000). Although a complaint need not include "detailed factual
13 allegations," it must offer "more than an unadorned, the-defendant-
14 unlawfully-harmed-me accusation." Iqbal, 129 S. Ct. at 1949.
15 Conclusory allegations or allegations that are no more than a
16 statement of a legal conclusion "are not entitled to the assumption
17 of truth." Id. at 1950. In other words, a pleading that merely
18 offers "labels and conclusions," a "formulaic recitation of the
19 elements," or "naked assertions" will not be sufficient to state a
20 claim upon which relief can be granted. Id. at 1949 (citations and
21 internal quotation marks omitted).

22 "When there are well-pleaded factual allegations, a court should
23 assume their veracity and then determine whether they plausibly
24 give rise to an entitlement of relief." Id. at 1950. Plaintiffs
25 must allege "plausible grounds to infer" that their claims rise

27 ¹ Plaintiffs do not oppose the bank's motion to dismiss
28 Elham's individual claims and Plaintiffs' "Stop Order" claims
(Third Cause of Action). Accordingly, those claims are dismissed.

1 "above the speculative level." Twombly, 550 U.S. at 555-
2 56. "Determining whether a complaint states a plausible claim for
3 relief" is "a context-specific task that requires the reviewing
4 court to draw on its judicial experience and common sense." Iqbal,
5 129 S. Ct. at 1950.

6 **III. Discussion**

7 As an initial matter, the court must address the bank's
8 contention, upon which several of the bank's arguments depend, that
9 this is a case about forgery. See, e.g. Mot. at 5 n.5 ("A checked
10 lacking a required signature is a forged check for these
11 purposes.") The court disagrees. A forgery is a "material
12 alteration of a writing with intent to defraud anyone, so as to
13 make the writing appear to be different from what it was originally
14 intended to be." Union Tool Co. v. Merchants' Nat'l Bank of Los
15 Angeles, 192 Cal. 40, 52 (1923). "Unauthorized signature, in
16 contrast, "means a signature made without actual, implied, or
17 apparent authority. The term includes a forgery." Cal. Com. Code §
18 1201(41). Contrary to the bank's assertion, the difference between
19 a forgery and an unauthorized signature is not a "hyper-technical"
20 one. (Reply at 7.) A forgery is made without authority, and
21 therefore qualifies as a subset of "unauthorized signature." Cal.
22 Com. Code § 1201(41). This does not mean, however, that all
23 unauthorized signatures, however, are material alterations of
24 writing made with the intent to defraud. As is evident from the
25 facts of this case, the realm of unauthorized signatures made
26 "without actual, implied, or apparent authority" is far more
27 expansive than the narrow scope of the definition of "forgery."
28 Here, Mahmoud did not alter any writing or make any writing appear

1 different from what it was intended to be. Instead, Mahmoud signed
2 his own name to the Melika checks, despite his lack of
3 authorization to draw on the Melika account. This is not a case
4 about forgery.²

5 A. Timeliness of Melika's Claims

6 The bank argues that Melika's claims are barred by the one-
7 year statute of limitations set out by California Code of Civil
8 Procedure Section 340(c). The one-year limitation applies
9 to actions "by a depositor against a bank for the payment of a
10 forged or raised check, or a check that bears a forged or
11 unauthorized endorsement." Cal. Code Civ. P. § 340(c) (emphasis
12 added). Thus, it would appear that Section 340(c) does apply to
13 Melika's claims regarding Mahmoud's unauthorized endorsement of
14 checks payable to Melika.

15 Nevertheless, the court concludes that Section 340(c) does not
16 bar any of Melika's claims. Section 340(c), "like other statutes
17 of limitation, is subject to principles of waiver and estoppel."
18 Roy Supply, Inc. v. Wells Fargo Bank, 39 Cal.App.4th 1051, 1066
19 n.16 (1995). Where a bank has been notified of an unauthorized
20 transaction "and the bank induces the customer to forego filing
21 suit, the bank will not be permitted to rely upon the statute of
22 limitations." Id.

23 Here, Mahmoud wrote and endorsed the checks in August 2007.
24 Elham received statements from the bank "reflecting the monies
25 stolen via forged/unauthorized signatures and endorsements."

26
27 ² Accordingly, the court does not address the bank's arguments
28 that California's Uniform Commercial Code's loss distributive
scheme for "forged signatures and forged endorsements" bars
Plaintiffs claims. (Mot. at 7.)

1 (Defendant's request for Judicial Notice; Reply at 5.)³ Elham
2 immediately contacted the bank to inquire about the unauthorized
3 transactions. The bank repeatedly informed Elham that Mahmoud was
4 authorized to access Melika's account. The bank did not disclose
5 that Mahmoud was in fact not authorized to make transactions until
6 roughly three years later in 2010, well after the one-year statute
7 of limitations had expired. Because the bank induced Elham to
8 forego filing suit for almost three years by leading her to believe
9 that there had been no unauthorized activity on the account, the
10 bank cannot now rely upon the one-year statute of limitations to
11 bar Melika's claims.

12 B. Sufficiency of the Pleadings

13 The bank also argues that Melika's fraud and civil conspiracy
14 claims fail to meet the requirements of Federal Rules of Civil
15 Procedure 8(a) and 9(b). (Mot. at 12-13.) Federal Rule of Civil
16 Procedure 8(a) provides that a complaint need only contain "(1)a
17 short and plain statement of . . . jurisdiction, . . . (2) a short
18 and plain statement of the claim showing that the pleader is
19 entitled to relief, and (3) a demand for judgment for the relief
20 the pleader seeks. A complaint must contain "factual content that
21 allows the court to draw the reasonable inference that the
22 defendant is liable for the misconduct alleged." Iqbal, 129 S.Ct.
23 at 1949. The FAC's allegations of fraud and civil conspiracy are
24 sufficient to satisfy these minimal pleading standards.

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27 ³It is unclear whether Elham learned of the endorsements in
28 2010 or in 2007. Construing the facts in the light most favorable
to Plaintiffs, the bank induced Elham to believe that Mahmoud was
authorized both to write and endorse Melika checks.

1 Federal Rule of Civil Procedure 9(b) provides that the
2 "circumstances constituting fraud or mistake shall be stated with
3 particularity" in a complaint. To comply with Rule 9(b), a
4 complaint alleging fraud must state the time, place, and specific
5 content of misrepresentations, as well as the misrepresenting
6 parties. Sanford v. MemberWorks, Inc., 625 F.3d 550, 558 (9th Cir.
7 2010). The complaint must be sufficiently specific "to give
8 defendants notice of the particular misconduct so that they can
9 defend against the charge." Id. (quotation, alteration, and
10 citation omitted). Rule 9(b)'s requirements apply not only to
11 fraud claims, but also to claims that rely entirely on a fraudulent
12 course of conduct. Kearns v. Ford Motor Co., 567 F.3d 1120, 1125
13 (9th Cir. 2009).

14 Melika has plead its fraud and civil conspiracy claims with
15 sufficient detail. The complaint alleges that the bank
16 misrepresented Mahmoud's status on a specific date, August 22,
17 2007, and that the misrepresentations continued through May of
18 2010. (FAC ¶ 18.) The complaint makes clear the specific content
19 of the misrepresentations: that Mahmoud was a signator on the
20 Melika account and had the authority to transact upon it. (Id.)
21 These allegations give the bank sufficient notice to defend against
22 Melika's charges.

23 **IV. Conclusion**

24 For the reasons stated above, the Motion to Dismiss is DENIED
25 in part and GRANTED in part.

26 IT IS SO ORDERED.

27 Dated: September 30, 2011


DEAN D. PREGERSON

28 United States District Judge