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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PASCUAL TRUJILLO, LETICIA TRUJILLO, and GREGORY TRUJILLO,

Plaintiffs,

v.

NATIONWIDE INSURANCE COMPANY OF AMERICA, NATIONWIDE MUTUAL INSURANCE COMPANY, NATIONWIDE SALES SOLUTIONS, INC., and DOES 1-50, INCLUSIVE,

Defendants.

No. 2:12-cv-02958-MCE-CMK

MEMORANDUM AND ORDER

Through this action, Plaintiffs Pascual Trujillo, Leticia Trujillo and Gregory Trujillo (collectively, "Plaintiffs") seek redress from Defendants Nationwide Insurance Company of America, Nationwide Mutual Insurance Company and Nationwide Sales Solutions, Inc. (collectively, "Defendants"). Plaintiffs claim their policy of umbrella insurance issued by Nationwide improperly failed to provide uninsured/underinsured motorist coverage.

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1 Plaintiffs' Complaint asserts common law claims of breach of contract; fraud; negligent
2 misrepresentation; breach of the covenant of good faith and fair dealing; violation of
3 Business & Professions Code § 17200, et seq.; declaratory relief; and reformation of
4 contract. The jurisdiction of this Court is premised on diversity of citizenship pursuant to
5 28 U.S.C. § 1332.

6 Presently before the Court is Defendants' Motion to Dismiss pursuant to Federal
7 Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be
8 granted.¹ (Defs.' Mot. Dismiss, Jan. 31, 2013, ECF Nos. 10, 10-1.)

9 For the reasons set forth below, Defendants' Motion to Dismiss is GRANTED IN
10 PART and DENIED IN PART.²

11 12 **BACKGROUND**³

13
14 In August 2006, Plaintiffs obtained a "Nationwide Mutual Insurance Company
15 Policy" (Pls.' Compl., Dec. 7, 2012, ECF No. 1 at ¶ 13) (the "Nationwide Policy") that
16 contained coverage for "Uninsured and Underinsured Motorist coverage." (Id., ¶ 12.) "In
17 or about August 2008[,] the [Nationwide Policy] was re-issued with a different nationwide
18 affiliate company, Nationwide Insurance Company of America (the "NICOA Policy")."
19 (Id., ¶ 16.) Plaintiffs were allegedly notified of this reissuance through a notice sent by
20 Defendants (the "nonrenewal notice"). (Defs.' Mot. Dismiss, 9.) Defendants allege – but
21 Plaintiffs dispute – that the nonrenewal notice provided adequate notification to Plaintiffs
22 that the reissued NICOA Policy did not contain uninsured and underinsured motorist
23 coverage.

24 _____
25 ¹ All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless
otherwise noted.

26 ² Because oral argument will not be of material assistance, the Court ordered this matter
submitted on the briefs. E.D. Cal. Local R. 78-230(g).

27 ³ Unless otherwise noted, the following recitation of facts is taken, sometimes verbatim, from
28 Plaintiffs' Complaint. (Pls.' Compl.) While Plaintiffs' and Defendants' subsequent filings include additional
factual allegations, only the facts alleged in the Complaint are included herein.

1 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555).

2 “Factual allegations must be enough to raise a right to relief above the speculative level.”

3 Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal

4 Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain

5 something more than “a statement of facts that merely creates a suspicion [of] a legally

6 cognizable right of action.”)).

7 Furthermore, “Rule 8(a)(2) . . . requires a showing, rather than a blanket

8 assertion, of entitlement to relief.” Twombly, 550 U.S. at 556 n.3 (internal citations and

9 quotations omitted). Thus, “[w]ithout some factual allegation in the complaint, it is hard

10 to see how a claimant could satisfy the requirements of providing not only ‘fair notice’ of

11 the nature of the claim, but also ‘grounds’ on which the claim rests.” Id. (citing 5 Charles

12 Alan Wright & Arthur R. Miller, supra, at § 1202). A pleading must contain “only enough

13 facts to state a claim to relief that is plausible on its face.” Id. at 570. If the “plaintiffs . . .

14 have not nudged their claims across the line from conceivable to plausible, their

15 complaint must be dismissed.” Id. However, “[a] well-pleaded complaint may proceed

16 even if it strikes a savvy judge that actual proof of those facts is improbable, and ‘that a

17 recovery is very remote and unlikely.” Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S.

18 232, 236 (1974)).

19 A court granting a motion to dismiss a complaint must then decide whether to

20 grant leave to amend. Leave to amend should be “freely given” where there is no

21 “undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice

22 to the opposing party by virtue of allowance of the amendment, [or] futility of the

23 amendment” Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.

24 Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to

25 be considered when deciding whether to grant leave to amend). Not all of these factors

26 merit equal weight. Rather, “the consideration of prejudice to the opposing party . . .

27 carries the greatest weight.” Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183,

28 185 (9th Cir. 1987).

1 Dismissal without leave to amend is proper only if it is clear that “the complaint could not
2 be saved by any amendment.” Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048,
3 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005);
4 Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) (“Leave need
5 not be granted where the amendment of the complaint . . . constitutes an exercise in
6 futility”)).

8 ANALYSIS

10 Defendants seek dismissal of all seven of Plaintiffs’ Causes of Action.

12 A. Incorporation of Documents

14 Defendants attach three documents to the Motion to Dismiss. (Defs.’ Doc.,
15 Jan. 31, 2013, ECF No. 10-2.) “Ordinarily, a court may look only at the face of the
16 complaint to decide a motion to dismiss.” Van Buskirk v. Cable News Network, Inc.,
17 284 F.3d 977, 980 (9th Cir. 2002). However, the Ninth Circuit has held “that documents
18 whose contents are alleged in a complaint and whose authenticity no party questions,
19 but which are not physically attached to the pleading, may be considered in ruling on a
20 Rule 12(b)(6) motion to dismiss.” Branch v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994),
21 overruled on separate grounds by Galbraith v. Cnty. of Santa Clara, 307 F.3d 1119
22 (9th Cir. 2002). A document “may be incorporated by reference into a complaint if the
23 plaintiff refers extensively to the document or the document forms the basis of the
24 plaintiff’s claim.” United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003).
25 Furthermore, “such consideration does ‘not convert the motion to dismiss into a motion
26 for summary judgment.’” Branch, 14 F.3d at 454 (9th Cir. 1994) (quoting Romani v.
27 Shearson Lehman Hutton, 929 F.2d 875, 879 n.3 (9th Cir. 1991).

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1 **1. Nonrenewal Notice**

2

3 Defendants attach the alleged nonrenewal notice to the Motion to Dismiss.

4 (Defs.’ Doc., 5-6.) In the original Complaint, Plaintiffs allege that “[i]n or about August of

5 2008 the Nationwide Mutual Umbrella Policy was re-issued with a different nationwide

6 affiliate company . . . without any new application being filled out by the [Plaintiffs],” and

7 Plaintiffs “were not required to sign or return any acknowledgement regarding any

8 changes to the policy.” (Pls.’ Compl., ¶ 16.) Plaintiffs also quote from the nonrenewal

9 notice throughout the Complaint. (Id., ¶¶ 24, 38, 40, 47.) Furthermore, Plaintiffs Second

10 and Third Causes of Action – fraud and negligent misrepresentation, respectively – are

11 based solely on the nonrenewal notice. However, Plaintiffs do not attach this letter to

12 the Complaint. In the Complaint, Plaintiffs do not concede that Defendants sent the

13 nonrenewal notice to Plaintiffs – “[i]f Nationwide is correct that it sent a notice to

14 [Plaintiffs]” (Id. at ¶ 24, emphasis added.) In their Opposition, Plaintiffs further

15 allege that the nonrenewal notice “[is] not admitted to be [a] true and correct cop[y]” (Pls.’

16 Opp’n, Mar. 21, 2013, ECF No. 19 at 6) and Plaintiffs “question the authenticity of” the

17 nonrenewal notice. (Id., 11.)

18 In a similar case, the Ninth Circuit approved incorporation by reference where the

19 plaintiff had substantially relied on the documents at issue in articulating his claim, even

20 though the plaintiff questioned the veracity of those documents. See In re Silicon

21 Graphics Inc. Sec. Litig., 183 F.3d 970, 986 (9th Cir. 1999), superseded by statute on

22 other grounds. Similarly, as two of Plaintiffs’ claims rely solely on the contents of the

23 nonrenewal notice and Plaintiffs allege the contents of the nonrenewal notice in both the

24 original complaint and the opposition, the notice can be incorporated into Plaintiffs’

25 original pleading without converting the current motion to dismiss into a motion for

26 summary judgment.

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2. Certificate of Mailing & Mail Register

Defendants attach an alleged certificate of mailing and an alleged mail register. (Def.’ Doc., 8-9.) At no point in Plaintiffs’ Complaint, however, do Plaintiffs allege the contents of a certificate of mailing or mail register, nor do Plaintiffs rely on this certificate of mailing or mail register to “form the basis of [Plaintiffs’] claim.” Ritchie, 342 F.3d at 908. Thus, the Court declines to incorporate either the alleged certificate of mailing or the mail register because to do so would convert the current motion to dismiss into a motion for summary judgment.

3. NICOA Umbrella Policy

Defendants attach the NICOA Umbrella Policy, policy No. PENC2723454722 (the “NICOA Policy”), that allegedly covered Plaintiffs from August 2008 forward. (Def.’ Doc., 12-39.) In the original Complaint, Plaintiffs allege the NICOA Policy “affords coverage in excess of the policy’s ‘retained limits,’ which include ‘the total limits of any underlying insurance or any other insurance that applies to an occurrence or offense which . . . are available to an insured” (Pls.’ Compl., ¶ 31.) Plaintiffs go on to quote from the NICOA Policy further along in Paragraph 31, and Plaintiffs also quote directly from the NICOA Policy in Paragraph 22. Plaintiffs also rely on the NICOA Policy as one basis for their First Cause of Action of breach of contract against the Defendants. (Id., ¶¶ 30-34.) However, Plaintiffs do not attach the NICOA Policy to the Complaint, and, in their Opposition, Plaintiffs further allege that the NICOA Policy “[is] not admitted to be [a] true and correct cop[y],” (Pls.’ Opp’n, 6) and Plaintiffs “question the authenticity of” the NICOA Policy provided by Defendants. (Id., 11.)

Again, the fact that Plaintiffs’ Complaint discusses the NICOA Policy at some length points towards incorporation by reference. In re Silicon Graphics Inc. Sec. Litig., 183 F.3d at 986.

1 One aspect of Plaintiffs' breach of contract claim relies solely on the contents of the
2 NICOA Policy, and Plaintiffs allege the contents of the NICOA Policy in both the original
3 complaint and the opposition. Therefore, the NICOA Policy is properly incorporated for
4 purposes of the present motion to dismiss without converting the current motion to
5 dismiss into a motion for summary judgment.

6 7 **B. Breach of Contract**

8
9 In California, "[a] cause of action for breach of contract requires proof of the
10 following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for
11 nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the
12 breach." CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226, 1239 (2008).

13 14 **1. Nationwide Sales is not a Party to the Contract**

15
16 Defendants move to dismiss both Nationwide Mutual and Nationwide Sales from
17 Plaintiffs' breach of contract Cause of Action. As Nationwide Mutual was the insurance
18 carrier and underwriter of the policy that allegedly expired in August 2008, it cannot be
19 dismissed at this stage. However, the Ninth Circuit has held that "[u]nder California law,
20 an insurance agent cannot be held liable for breach of contract . . . because he is not a
21 party to the insurance contract." Minnesota Mut. Life Ins. Co. v. Ensley, 174 F.3d 977,
22 981 (9th Cir. 1999); see also American Steel & Stairways, Inc. v. Lexington Ins. Co.,
23 No. C 12-3103 SI, 2012 WL 4097711, at *2 (N.D. Cal. Sep. 17, 2012). Plaintiffs allege in
24 the Complaint that "at all times mentioned herein Nationwide Sales was and is an agent
25 of NICOA and/or Nationwide Mutual, and sold and/or distributed policies in the State of
26 California." (Pls.' Compl., ¶ 6). Thus, as Plaintiffs concede that Nationwide Sales is an
27 insurance agent, Nationwide Sales was not a party to either insurance policy and cannot
28 be held liable for breach of contract.

1 Defendants' Motion to Dismiss Nationwide Mutual from the breach of contract
2 claim is denied, and Defendants' Motion to Dismiss Nationwide Sales from the breach of
3 contract claim is granted.

4 5 **2. The Court Cannot Otherwise Rule Out a Viable Contract Claim**

6
7 In their Cause of Action for breach of contract, Plaintiffs allege that the NICOA
8 Policy "indisputably provides uninsured/underinsured motorist coverage," or,
9 alternatively, Plaintiffs allege that if the NICOA Policy does "not afford
10 [u]ninsured/[u]nderinsured coverage, then the terms of the Nationwide Mutual Umbrella
11 Policy apply to afford that coverage for the December 9, 2010 accident." (Id., ¶ 31.)
12 Plaintiffs' alternate claim alleging that the Nationwide Policy applies to afford coverage is
13 predicated on an allegedly insufficient nonrenewal notice sent by Defendants to
14 Plaintiffs. Plaintiffs allege that they "have duly performed all of the obligations . . . under
15 [the NICOA Policy and Nationwide Policy] . . . [and] Nationwide has breached and
16 continues to breach the [NICOA Policy and Nationwide Policy] by failing to acknowledge
17 coverage for the damages resulting from the December 9, 2010 accident." (Id., ¶ 33.)

18 Addressing first the adequacy of the nonrenewal notice, Defendants argue in the
19 Motion to Dismiss that Plaintiffs' "argument is specious since Nationwide complied with
20 all applicable and required notice requirements" in the nonrenewal notice. (Defs.' Mot.
21 Dismiss, 15.) Defendants allege that the nonrenewal notice "stated unequivocally" and
22 provided "sufficient notice in 'plain, clear, and conspicuous writing' that [Plaintiffs']
23 coverage was changing, i.e. that the [uninsured and underinsured motorist] coverage
24 was being eliminated." (Id., 16.)

25 "It is a long-standing general principle applicable to insurance policies that an
26 insurance company is bound by a greater coverage in an earlier policy when a renewal
27 policy is issued but the insured is not notified of the specific reduction in coverage."

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1 Fields v. Blue Shield of Cal., 163 Cal. App. 3d 570, 579 (Ct. App. 1985) (citing Indus.
2 Indem. Co. v. Indus. Accident Comm'n, 34 Cal. 2d 500, 506 (1949)). Changes to or
3 limits of coverage must be “conspicuous, plain[,] and clear” in order to be enforceable.
4 Id. “Thus, any such limitation must be placed and printed so that it will attract the
5 reader's attention. Such a provision also must be stated precisely and understandably, in
6 words that are part of the working vocabulary of the average layperson.” Haynes v.
7 Farmers Ins. Exch., 32 Cal. 4th 1198, 1204 (2004). Courts have previously interpreted
8 these principles to express that the limitation must be in an expected section of the
9 notice and emphasized in some manner. See Fields, 163 Cal. App. 3d at 579; Allstate
10 Ins. Co. v. Fibus, 855 F.2d 660, 663-64 (9th Cir. 1988); Davis v. United Servs. Auto
11 Assn., 223 Cal. App. 3d 1322, 1332-33 (Ct. App. 1990) (holding that the exclusions were
12 not conspicuously placed when the exclusions were under the ‘Clarification’ section
13 rather than in the ‘Reduction’ section).

14 Applying these principles, it cannot be said as a matter of law that the alleged
15 nonrenewal notice provided conspicuous notice of the reductions in coverage to
16 Plaintiffs. On the first page of the nonrenewal notice, there are two bolded headers that
17 state “**What’s Changing?**” and “**How Does This Affect You?**.” (Defs.’ Doc., 5.) As in
18 Davis, it cannot be said as a matter of law that the reduction in coverage notice was
19 conspicuously placed since it was not under the “**What’s Changing?**” heading that
20 would presumably list the changes or reduction in coverage. Rather, the notice of the
21 reduction in uninsured motorists coverage is found under the second “**How Does This**
22 **Affect You?**” heading.

23 The pertinent text in the nonrenewal notice reads “. . . the NICOA [P]olicy does
24 not provide coverage for Uninsured or Underinsured Motorist coverage.” (Defs.’ Doc.,
25 5.) Defendants underline this reduction language in their Motion to Dismiss. However, it
26 is not emphasized in any manner in the text of the original nonrenewal notice. The text
27 is not underlined, italicized, bolded, or otherwise pronounced to make the change in
28 coverage conspicuous.

1 Rather, the reduction language is found in the middle of a sentence halfway through the
2 second of three paragraphs under this heading.

3 Looking at the facts and the nonrenewal notice in the light most favorable to
4 Plaintiffs, the breach of contract claim cannot be dismissed because the alleged
5 nonrenewal notice does not, as a matter of law, provide conspicuous notice of the
6 change in coverage. Plaintiffs therefore have stated a viable claim, and Defendants'
7 Motion to Dismiss Plaintiffs' First Cause of Action is denied.

8 9 **C. Fraud and Negligent Misrepresentation**

10
11 Defendants do not allege that Plaintiffs' claims for fraud and misrepresentation, as
12 set forth in Plaintiffs' Second and Third Causes of Action, fail because the Complaint
13 lacks the specificity required under Rule 9(b). Rather, Defendants allege that the "claims
14 fail because the [the claims] are all based on the [nonrenewal notice], which on its face
15 clearly states that [uninsured/underinsured motorist] Coverage was being eliminated."
16 (Defs.' Mot. Dismiss, 19.) Defendants further rely on Everett v. State Farm Gen. Ins.
17 Co., 162 Cal. App. 4th 649 (Ct. App. 2008) in averring that if a change in coverage
18 notice is conspicuous, plain, and clear there can be no fraud or negligent
19 misrepresentation resulting from that notice. Defendants therefore conclude that
20 "Plaintiffs fail to state a claim for fraud or negligent misrepresentation because the
21 [nonrenewal notice], on its face, does not contain either a negligent or intentional
22 misrepresentation." (Defs.' Mot. Dismiss, 20.)

23 However, the court in Everett affirmed a summary judgment adjudication whereas
24 the instant motion is a motion to dismiss. Furthermore, for the reasons set forth above,
25 the nonrenewal notice is not, as a matter of law, conspicuous, plain, or clear. Since
26 Defendants rely solely on the nonrenewal notice "clearly and accurately provid[ing]
27 notice to" Plaintiffs of the change in coverage, Defendants' Motion to Dismiss Plaintiffs
28 claims for fraud and negligent misrepresentation fail. (Defs.' Mot. Dismiss, 19.)

1 Plaintiffs have therefore stated a claim upon which relief can be granted, and
2 Defendants' Motion to Dismiss Plaintiffs' Second and Third Causes of Action are denied.

3
4 **D. Breach of Implied Covenant of Good Faith and Fair Dealing**

5
6 Defendants allege that Plaintiffs' Fourth Cause of Action, for breach of the implied
7 covenant of good faith and fair dealing, fails "against NICOA and Nationwide Mutual...
8 because there was no breach of contract" (Id. at 20) and because "Nationwide Mutual
9 was not a party to the policy that was in effect at the time of the [a]ccident." (Id., 21.)
10 Again, however, as noted above, Plaintiffs have in fact stated a viable claim for breach of
11 contract. The Court cannot rule out a breach given the fact that "an insurance company
12 is bound by a greater coverage in an earlier policy when a renewal policy is issued but
13 the insured is not notified of the specific reduction in coverage." Fields, 163 Cal. App. 3d
14 at 579.

15 As a result, Defendants' Motion to Dismiss Plaintiffs' Fourth Cause of Action, for
16 Breach of the Implied Covenant of Good Faith and Fair Dealing, is denied.

17
18 **E. California Business & Professions Code § 17200, et seq.**

19 Business and Professions Code § 17200, et seq., California's unfair competition
20 law (the "UCL"), prohibits any "unfair competition" which includes "any unlawful, unfair, or
21 fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200; see Cel-Tech
22 Commc'ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999). "Its
23 coverage is 'sweeping, embracing anything that can properly be called a business
24 practice and that at the same time is forbidden by law.'" Id. (quoting Rubin v. Green,
25 4 Cal. 4th 1187, 1200 (1993)). "By proscribing 'any unlawful' business practice, 'section
26 17200 borrows violations of other laws and treats them as unlawful practices' that the
27 [UCL] makes independently actionable."

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1 Cel-Tech Commc'ns, Inc., 20 Cal. 4th at 180 (quoting State Farm Fire & Casualty Co. v.
2 Super. Ct., 45 Cal. App. 4th 1093, 1103 (Ct. App. 1996)). "Conduct is considered
3 fraudulent under the UCL if the conduct is 'likely to deceive'" (Pinel v. Aurora Loan
4 Services, LLC, 814 F. Supp. 930, 941 (N.D. Cal. 2011)), and the fraudulent prong under
5 the UCL does not require the specificity required for fraud allegations under Rule 9(b).
6 Morgan v. AT&T Wireless Services, Inc., 177 Cal. App. 4th 1235, 1256 (Ct. App. 2009).

7 In arguing that Plaintiffs' Complaint fails to state a claim under the UCL, defense
8 counsel states that "Defendants explicitly notified Plaintiffs[] of the changes, and thus its
9 practices were not" fraudulent. (Defs.' Mot. Dismiss, 23.) Defendants' argument again
10 relies on the nonrenewal notice as adequate to notify Plaintiffs of the changes to
11 Plaintiffs' policy. However, as set forth above, the Court cannot conclude as a matter of
12 law that the nonrenewal notice provides adequate notice of the changes to Plaintiffs'
13 policy.

14 Plaintiffs' fraud and misrepresentation claims can potentially be a predicate to
15 Plaintiffs' UCL claim. See Morgan, 177 Cal. App. 4th at 1256-57; McKell v. Washington
16 Mut., Inc., 142 Cal. App. 4th 1457, 1471-72 (Ct. App. 2006). As such, Plaintiffs have
17 stated a claim upon which relief can be granted, and Defendants' Motion to Dismiss
18 Plaintiffs' Fifth Cause of Action, for violation of California Business & Professions Code
19 § 17200, is denied.

20

21 **F. Declaratory Relief**

22

23 In the Motion to Dismiss, Defendants argue that, "[b]y determining the breach of
24 contract claim, the Court will have also determined the issue under the declaratory relief
25 claim. Thus, . . . since the other claims against the insurers fail, the declaratory relief
26 claim should similarly be decided in Defendants' favor." (Defs.' Mot. Dismiss, 25.)
27 Defendants' argument again relies on the nonrenewal notice as adequate for the
28 dismissal of Plaintiffs' declaratory relief claim.

1 For the reasons set forth above, Plaintiffs have in fact stated a claim upon which relief
2 can be granted, and, consequently, Defendants' Motion to Dismiss Plaintiffs' Sixth
3 Cause of Action, for Declaratory Relief, also fails.

4

5 **G. Reformation**

6

7 In their Motion to Dismiss, Defendants argue that "the [n]on-[r]enewal [l]etter does
8 not contain a misrepresentation and 'negates' any viable claim for reformation." (Id., 27,
9 quoting Mercury Ins. Co. v. Pearson, 169 Cal. App. 4th 1064, 1074 (Ct. App. 2008).)

10 Defendants' argument therefore relies on the nonrenewal notice as adequate.

11 Defendants' Motion to Dismiss Plaintiffs' Seventh Cause of Action, for Reformation, fails
12 because the Court cannot determine as a matter of law at this juncture that the
13 nonrenewal notice was adequate. Absent such a determination, the Court cannot rule
14 out a viable reformation claim.

15

16

CONCLUSION

17

18 For the reasons set forth above, Defendants' Motion to Dismiss (ECF No. 10) is
19 GRANTED IN PART and DENIED IN PART. Defendants' Motion to Dismiss Nationwide
20 Sales from Plaintiffs' First Cause of Action is GRANTED. The Motion, however, is
21 DENIED in all other respects.

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1 Because the Court does not believe that Plaintiffs' failure to state a valid breach of
2 contract claim against Nationwide Sales can be rectified through amendment, no leave
3 to amend the First Cause of Action in that regard will be permitted.

4 IT IS SO ORDERED.

5 Dated: July 2, 2013

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MORRISON C. ENGLAND, JR., CHIEF JUDGE
UNITED STATES DISTRICT COURT

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