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2  
3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 AHO ENTERPRISES,  
6  
7 Plaintiff,

No. C 08-4133 SBA

**ORDER AND JUDGMENT**

8 v.

[Docket Nos. 21, 25, 29, 30]

9 STATE FARM MUTUAL AUTOMOBILE  
10 INSURANCE CO.,  
11 Defendant.

12 Before the Court is Plaintiff's "Motion Seeking Leave to File Motion for Reconsideration,"  
13 [Docket No. 29], Defendant's Motion for Judgment on the Pleadings [Docket No. 25] and  
14 Defendant's request for Formal Publication of this Court's Order dated November 4, 2008. [Docket  
15 No. 21].

16 Having read and considered the arguments presented by the parties in the papers submitted to  
17 the Court, the Court finds this matter appropriate for resolution without a hearing. For the reasons  
18 given below, the Court DENIES the plaintiff's motion for leave to file a motion for reconsideration,  
19 GRANTS the motion for judgment on the pleadings and DENIES the Defendant's request to  
20 Publish.

21 **BACKGROUND**

22 **I. Factual Background**

23 This case begins with Mrs. Hopper's truck, which was damaged in an accident. Mrs. Hopper's  
24 truck was insured by State Farm, and she had it towed to Plaintiff's business, Superior Auto Body  
25 ("Superior") for a repair estimate. The original estimate was \$8,992.94, and State Farm authorized repair  
26 and issued a check to Mrs. Hopper in that amount, less her deductible. It turned out that the damage was  
27 greater than originally anticipated and Superior revised its estimate to \$12,723.16. State Farm told  
28 Superior to stop making further repairs because the truck was deemed a "total loss." Mrs. Hopper came

1 to Superior to retrieve belongings she had left in the truck, and released the truck to State Farm.  
2 Superior billed State Farm \$2,467 for 27 days of storage of the truck and State Farm disputed the  
3 charges. Superior adjusted the storage charge to \$2,220. The truck remained at Superior and the storage  
4 charges continued to accumulate until Superior put a lien on the truck. State Farm ultimately paid  
5 Superior \$1,200 for storage and \$3,878 for undisputed towing and repair charges. Superior contends  
6 State Farm still owes it storage fees from the date State Farm took title of the truck on April 19, 2008  
7 up through when it filed the complaint, for a total of \$7,280. State Farm maintains it has paid all the  
8 storage fees it was required to by law.

9 Superior believes that the dispute over Mrs. Hopper's truck is part of an unlawful "pattern and  
10 practice of unreasonably and unlawfully disputing Superior's ordinary and reasonable repair and storage  
11 fees." [Plaintiff's Motion at 4]. Superior sued State Farm in state court for: (1) Breach of Implied  
12 Contract to Pay Storage and Repair Bill; (2) Intentional Interference with Prospective Economic  
13 Advantage; (3) Negligent Interference with Prospective Economic Advantage; (4) Unfair Business  
14 Practices pursuant to Section 17200 of the California Business and Professional Code; and (5)  
15 declaratory relief.

## 16 **II. Procedural Background**

17 On September 9, 2008, pursuant to Fed. R. Civ. Proc. 12(b)(6), State Farm filed a  
18 motion to dismiss Superior's claims for intentional interference with prospective economic  
19 advantage, negligent interference with prospective economic advantage, and unfair business  
20 practices. On October 28, 2008, this Court held a hearing on State Farm's motion to dismiss, and  
21 entered an order granting that motion on November 4, 2008. [Docket No. 20].

22 Specifically, the Court granted the motion *without* leave to amend as to the third and fourth  
23 causes of action. The Court gave the plaintiff *limited* leave to amend the second cause of action, only  
24 if it could, in good faith, plead additional facts showing that it was entitled to more than the 15 days of  
25 storage fees permitted by law. *See* California Vehicle Code, § 10652.5 (limiting a claim for storage fees  
26 to 15 days unless certain requirements are met). No amended complaint was filed on or before the  
27 deadline.

28 On December 15, 2008, State Farm filed a motion for judgment on the pleadings with respect

1 to the two remaining actions, breach of an implied contract and declaratory relief. On the same day,  
2 Superior filed this Motion for Leave to File a Motion for Reconsideration.

3 **LEGAL STANDARD**

4 **I. Reconsideration**

5 Under Civil Local Rule 7-9(b), before leave to file a motion for reconsideration is granted, the  
6 moving party must specifically show:

7 (1) that at the time of the motion for leave, a material difference in fact or law exists from that  
8 which was presented to the Court before entry of the interlocutory order for which reconsideration is  
9 sought. The party also must show that in the exercise of reasonable diligence the party applying for  
10 reconsideration did not know such fact or law at the time of the interlocutory order; or

11 (2) The emergence of new material facts or a change of law occurring after the time of such  
12 order; or

13 (3) A manifest failure by the Court to consider material facts or dispositive legal arguments  
14 which were presented to the Court before such interlocutory order.

15 **II. Judgment on the Pleadings**

16 Under Federal Rule of Civil Procedure 12(c), any party may move for judgment on the pleadings  
17 at any time after the pleadings are closed but within such time as not to delay the trial. Fed. R. Civ. P.  
18 12(c). “For the purposes of the motion, the allegations of the non-moving party must be accepted as  
19 true, while the allegations of the moving party which have been denied are assumed to be false.” *Hal*  
20 *Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir.1990). Judgment on  
21 the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no  
22 material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” *Id.*  
23 When brought by the defendant, a motion for judgment on the pleadings under Federal Rule of Civil  
24 Procedure 12(c) is a “means to challenge the sufficiency of the complaint after an answer has been  
25 filed.” *New.Net, Inc. v. Lavasoft*, 356 F.Supp.2d 1090, 1115 (C.D.Cal.2004). A motion for judgment  
26 on the pleadings is therefore similar to a motion to dismiss. *Id.* When the district court must go beyond  
27 the pleadings to resolve an issue on a motion for judgment on the pleadings, the proceeding is properly  
28 treated as a motion for summary judgment. Fed. R. Civ. P. 12(c); *Bonilla v. Oakland Scavenger Co.*,

1 697 F.2d 1297, 1301 (9th Cir.1982).

2 **ANALYSIS**

3 **I. Reconsideration**

4 **A. Failure to apply dispositive legal authority.**

5 Superior incorrectly contends that the Court overlooked key legal authority, namely, Judge  
6 Jenkins' analysis in *G&C Auto Body, Inc v. GEICO Gen. Ins. Co.*, 2007 U.S. Dist. LEXIS 91327  
7 (N.D. Cal. Dec. 12, 2007) on the issue of standing to assert an unfair competition claim under Cal.  
8 Bus. & Prof. Code § 17200 et seq. Decisions of district courts are not binding on one another.  
9 Therefore, the *Geico* order is not dispositive legal authority. And a district court's decision is only  
10 binding on itself if it establishes the law of the case as it pertains to rulings for same parties based on  
11 same patterns of facts or events. Therefore, this Court did not improperly contradict one of its own  
12 decisions. The Court simply made a different ruling based on case-specific facts and with respect to  
13 different parties.

14 **B. Mistake of Fact**

15 Superior argues the Court improperly considered a letter that was attached to the State Farm  
16 reply brief and then relied on a false oral representation by State Farm about the letter when deciding  
17 to dismiss the claim for intentional interference with prospective economic damage.

18 The Court dismissed this claim because Superior failed to demonstrate it had pleaded an  
19 "independent wrong", which is a requirement of the tort. Superior, at the hearing, argued that it  
20 clearly alleges Section 17200 as the required "independent wrong." The trouble with that allegation  
21 is that Section 17200 "borrows" violations from other laws by making them independently  
22 actionable as unfair competitive practices. Korea Supply, 29 Cal.4th at 1143. Having already  
23 announced its inclination to dismiss the Section 17200 claim for lack of standing, the Court inquired  
24 whether other "independent wrongs" could be alleged to support the tort claim. The Court  
25 considered Superior's argument with respect to alleged violations of §22524.5(a) of the Vehicle  
26 Code. [Compl. para. 51] and found it deficient to withstand the motion to dismiss. The Court  
27 granted Superior leave to amend the complaint as to claim for intentional interference with  
28 prospective economic damage if it could allege, in good faith, any other independent wrong.

1 Superior has not amended the complaint to date. The claim is dismissed because the underlying  
2 allegations fail to state a claim for which the Court may grant relief.

3 **II. Judgment on the Pleadings.**

4 The motion is limited to the first cause of action for implied breach of contract and the fifth  
5 for declaratory relief.

6 **A. Implied breach of contract.**

7 The essential elements of an implied-in-fact contract and an express contract are the same,  
8 namely, mutual assent and consideration. *Chandler v. Roach*, 156 Cal.App.2d 435, 440,  
9 (Cal.App.1957). Mutual assent is essential to an implied contract, the distinction from an express  
10 contract being merely that the promise is implied by conduct rather than expressed in words.  
11 *Warner Bros. Intern. Television Distribution v. Golden Channels & Co.*, 522 F.3d 1060, 1069 (9<sup>th</sup>  
12 Cir. 2008). Superior asks the Court to view the implied contract as one between the repair shop  
13 and an ordinary customer. State Farm asks the Court to analyze an implied contract as it may arise  
14 between an insurer and a third-party vendor.

15 Superior contends that there was an implied contract between the two parties from the  
16 moment they first met to determine the preliminary estimate of damage. [Opp'n at 11]. State Farm  
17 stepped into the insured's shoes and became an ordinary customer, rather than the insurer of its  
18 insured's vehicle. Thus, State Farm, as an ordinary customer, must be held to any agreement it  
19 made with Superior to pay for services.

20 Their particular bargain was that Superior agreed to conduct the repairs in the preliminary  
21 estimate for the agreed-upon price, which was negotiated by State Farm. When the contract was  
22 made, State Farm knew that Superior had a policy of charging for the storage of vehicles, and knew  
23 that should the truck require storage at the repair shop, it would incur storage costs. State Farm  
24 insured's have been bringing cars to Superior for a decade. [Opp'n at 12]. State Farm also knew  
25 that Vehicle Code § 22524.5 required it – as an insurer – to pay “ordinary and reasonable costs,” so  
26 it knew that it was incurring an obligation to pay to store Mrs. Hopper's truck. However once State  
27 Farm took title to the truck, on April 19, 2008, State Farm was obligated to pay Superior's storage  
28 fees beginning on that date, as an ordinary customer, no longer as an insurer.

1 State Farm argues that no implied contract was formed to pay Superior for the storage fees it  
2 requested. First, the only contractual duty State Farm has is to its insured. And State Farm  
3 discharged its duty when it paid Mrs. Hopper \$8,742.94 for the damaged truck. Second, insofar as  
4 Superior contends that State Farm had a duty, contractual or otherwise, to pay storage fees that are  
5 “industry scale,” State Farm does not have a duty to its insured, let alone Superior, who is more  
6 appropriately characterized as a third-party vendor. *Levy v. State Farm Mut. Auto. Ins. Co.*, 150  
7 Cal.App.4th 1,(Cal.App. 4 Dist. 2007) (holding, in a class action brought by insured automobile  
8 owners, that the policy obligating the insurer to repair the insured's damaged vehicle to pre-accident  
9 condition did not require the insurer to provide repairs based on the insured's view of “industry  
10 standards”); *see also Joaquin v. Geico Gen'l Ins. Co.*, 2008 WL 53150 (N.D. Cal. 2008).

11 Finally, insofar as any assent was alleged in the complaint, it was the approval of the  
12 preliminary estimate to repair damage, which was paid. There is no allegation in the complaint that  
13 State Farm agreed to pay the disputed storage charge, while at the same time, there is evidence that  
14 State Farm paid a statutorily required amount.

15 There is no implied contract for two reasons under State Farm’s theory. First, there is no  
16 duty, as a matter of law, for State Farm to pay its insured what the insured thinks are “industry  
17 standard” rates. Thus, there can be no duty, as a matter of law, for State Farm to pay a third-party  
18 what the third-party thinks are “ordinary and reasonable” rates. Second, there are no allegations in  
19 the complaint that State Farm assented, though its conduct, to pay Superior’s advertised outdoor and  
20 indoor storage rates. Without mutual assent, there can be no implied contract.

21 As for Superior’s “ordinary customer” theory, it is unpersuasive when taken in context to the  
22 overall framework of the complaint. Superior brings causes of actions aimed at State Farm’s  
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1 allegedly unfair business practices. If the gravamen of the complaint is that State Farm, as a  
2 insurance company with power in the marketplace, engages in a pattern and practice that results in  
3 unfair competition, then it must be a business, and arguably a competitor (which it is not), and not an  
4 ordinary customer.

5 The cause of action for breach of implied contract is dismissed.

6 **B. Declaratory relief.**

7 The fifth cause of action requests a declaration and judgment that Superior is entitled to the  
8 monies it is owed for the repair and storage of the truck and that Superior is entitled to conduct a lien  
9 sale of the truck. [Compl. ¶ 56]. Superior has not expressly opposed dismissal of this claim.  
10 Because the claim requires the Court to find that State Farm has a duty to pay Superior for the  
11 disputed storage fees, as a matter of contract law – and the Court does not – it is dismissed for the  
12 same reasons the Court dismisses the implied contract claim.

13 **C. Remaining causes of action**

14 Given the foregoing, and because the Court’s November 4, 2008 order dismissed  
15 Superior’s second, third and fourth causes of action, the Complaint is dismissed in its entirety and  
16 judgment shall be entered in State Farm’s favor.

17 **CONCLUSION**

18 Plaintiff’s motion for leave to file motion for reconsideration [Docket No. 29] is DENIED.  
19 Defendant’s motion for judgment on the pleadings [Docket No. 25] is GRANTED. In accordance  
20 with this Order on the defendant’s motion for judgment on the pleadings and the November 4, 2008,  
21 Order on the motion to dismiss [Docket No. 20 ], judgment is granted in favor of Defendant on all  
22 claims brought by Plaintiff. In addition, Defendant’s request for formal publication [Docket No. 21]  
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1 is DENIED.

2 All matters calendared in this action are VACATED. The Clerk shall close the file and  
3 terminate any pending matters.

4 IT IS SO ORDERED.

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8 Dated: 2/10/09



SAUNDRA BROWN ARMSTRONG

United States District Judge

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