

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WEERACHAI CHAIWONG,

Plaintiff,

v.

HANLEES FREMONT, INC., et al.,

Defendants.

Case No. 16-cv-04074-HSG

**ORDER GRANTING MOTIONS TO
DISMISS**

Re: Dkt. No. 21, 36

Pending before the Court is Defendant Ally Financial, Inc.’s (“Ally”) motion to dismiss Plaintiff Weerachai Chaiwong’s (“Plaintiff”) first amended complaint, Dkt. No. 21, as well as Ally’s motion to dismiss the cross-claims of its co-Defendant Hanlees Fremont, Inc. (“Hanlees”), Dkt. No. 36. Having carefully considered the parties’ arguments and papers, the Court **GRANTS** both motions for the reasons set forth below.

I. BACKGROUND¹

The following facts are undisputed unless otherwise noted. Plaintiff leased a Chevrolet Equinox from Fremont Chevrolet on June 22, 2010. Dkt. No. 19 ¶¶ 20, 22, & Ex. 3. The lease agreement listed the “Scheduled Lease End Date” as September 21, 2013. Id. ¶ 20, & Ex. 3 at 4.²

¹ Plaintiff seeks judicial notice of excerpts of the legislative history of California Senate Bill 1291. See Dkt. No. 28. The Court declines to take judicial notice of the excerpts, as the Court does not rely on them in resolving this motion. See *Molex v. City and County of San Francisco*, No. 11-cv-01282-YGR, 2012 WL 3042256, at *1 (N.D. Cal. July 25, 2012).

² Under the incorporation by reference doctrine, a court may consider a document extrinsic to the complaint in deciding a Rule 12(b)(6) motion if the document’s “authenticity is not contested and the plaintiff’s complaint necessarily relies on” it. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (citing *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998)); see also *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (document may be incorporated by reference “if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff’s claim”). When a document is incorporated by reference, “the district court may treat such a document as part of the complaint, and thus may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *Ritchie*, 342 F.3d at 908. The Court thus deems Exhibits 1-4 to the First Amended Complaint incorporated by reference.

1 However, the lease also stated that “[i]f this lease ends on or after the last scheduled payment is
2 due, we will treat the lease as if it ended as scheduled and not as if it ended early” (the “Treat As”
3 clause). *Id.*, Ex. 3 at 4. The lease also stated that at lease end Plaintiff would owe “any excess
4 mileage charge, any lease end daily extension charge, and [Ally’s] estimated or actual cost of
5 repairing excess wear, plus any tax,” but that Plaintiff was free to terminate the lease “anytime”
6 prior to its scheduled end date, though early termination fees would then apply. *Id.*, Ex. 3 at 4.

7 Prior to Plaintiff’s termination of the lease, Ally accepted assignment of the contract. *Id.*
8 ¶ 22. On September 19, 2013, Plaintiff attempted to “trade” the vehicle in to Defendant Hanlees, a
9 third party dealership, in connection with the lease of a Hyundai Santa Fe, rather than returning the
10 vehicle to Ally directly. *Id.* ¶ 24. Plaintiff claims that Hanlees “represented to Plaintiff that it was
11 authorized to accept the [Equinox] as a trade-in vehicle.” *Id.* ¶ 27. Plaintiff also claims that as a
12 result of his alleged “trade-in” of the vehicle, Hanlees became responsible for paying Ally the
13 \$17,543.50 balance owed on the lease but only issued a check to Ally in the amount of
14 \$15,736.00. *Id.* ¶ 32.

15 While Hanlees initially indicated that it wished to purchase the Equinox, Ally mistakenly
16 repossessed the vehicle in October 2013 causing Hanlees to change its mind, and Ally issued
17 Hanlees a refund of the \$15,736.00 check. Dkt. No. 25 ¶¶ 65, 66; Dkt. No. 19, Ex. 2. Because
18 Plaintiff relinquished the Equinox two days prior to the “Scheduled Lease End Date” listed in the
19 contract, Plaintiff believed he was terminating his lease with Ally early. Dkt. No. 19 ¶ 26.
20 However, because Plaintiff had already made the final payment on the lease, Ally treated the lease
21 as if it had ended as scheduled, and charged Plaintiff \$9,712.76 for excess wear and mileage and
22 related sales/use taxes. *Id.* ¶ 37; Dkt. No. 21 at 3.

23 Within a few months of “trading” the vehicle in, “Plaintiff began receiving calls from Ally
24 “stating that he was delinquent on payments for the lease of the Chevrolet.” Dkt. No. 19 ¶ 33.
25 Plaintiff “notified [] Ally that he had traded in the Chevrolet to [] Hanlees.” *Id.* In addition,
26 Plaintiff “immediately” notified Hanlees of the issue and “requested that [] Hanlees fulfill its
27 contractual obligation to pay off any remaining lease balance on the Chevrolet” to Ally. *Id.*

28 Plaintiff filed suit against Ally and Hanlees in the Superior Court of California on May 25,

1 2016. Dkt. No. 1, Ex. 1. On July 20, 2016, the action was removed to this Court under the Class
2 Action Fairness Act. Id. at 1. Plaintiff filed a First Amended Individual and Class Action
3 Complaint on September 1, 2016 (“FAC”). Dkt. No. 19. The FAC alleges three claims against
4 Ally, including (1) violation of the Unfair Competition Law (“UCL”) Business and Professions
5 Code § 17200 by committing unfair and unlawful acts, id. ¶¶ 80-90; (2) violation of the Rosenthal
6 Fair Debt Collection Practices Act (“FDCPA”), id. ¶¶ 91-108; and (3) declaratory relief, id.
7 ¶¶ 109-115. The FAC also asserts claims against Hanlees arising out of Hanlees’ alleged
8 misrepresentation to Plaintiff that it would pay off the balance of the Equinox after Plaintiff traded
9 the vehicle in for the Hyundai. Id. ¶¶ 54-79.

10 In addition, in its answer to the FAC, Hanlees asserted several cross-claims against Ally,
11 including (1) violation of the UCL Business and Professions Code § 17200 by committing
12 unlawful, unfair, and deceptive acts; (2) equitable indemnity; (3) intentional interference with
13 prospective economic advantage; and (4) slander and disparagement of title. Dkt. No. 25. Ally
14 now moves to dismiss both Plaintiff’s and Hanlees’ claims. See Dkt. Nos. 21, 36.

15 **II. LEGAL STANDARD**

16 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain
17 statement of the claim showing that the pleader is entitled to relief[.]” A defendant may move to
18 dismiss a complaint for failing to state a claim upon which relief can be granted under Federal
19 Rule of Civil Procedure 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the
20 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.”
21 *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule
22 12(b)(6) motion, a plaintiff must plead “enough facts to state a claim to relief that is plausible on
23 its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible
24 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that
25 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

26 In reviewing the plausibility of a complaint, courts “accept factual allegations in the
27 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.”
28 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nonetheless,

1 Courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of
2 fact, or unreasonable inferences.” *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
3 2008).

4 Federal Rule of Civil Procedure 9(b) heightens these pleading requirements for all claims
5 that “sound in fraud” or are “grounded in fraud.” *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1125
6 (9th Cir. 2009) (citation omitted); Fed. R. Civ. P. 9(b) (“In alleging fraud or mistake, a party must
7 state with particularity the circumstances constituting fraud or mistake.”). “[The Ninth Circuit]
8 has interpreted Rule 9(b) to require that allegations of fraud are specific enough to give defendants
9 notice of the particular misconduct which is alleged to constitute the fraud charged so that they can
10 defend against the charge and not just deny that they have done anything wrong.” *Neubronner v.*
11 *Milken*, 6 F.3d 666, 671 (9th Cir. 1993) (quotation marks and citation omitted).

12 **III. ANALYSIS**

13 **A. Ally’s Motion to Dismiss the FAC**

14 Each of Plaintiff’s claims against Ally rests on the same flawed contention: that Plaintiff
15 terminated his lease with Ally early when he “traded” his Equinox in for a Hyundai two days prior
16 to the scheduled lease end date. As an initial matter, the Court notes that Plaintiff’s argument is
17 counterintuitive—were Ally to treat the lease as though it had been terminated early, Plaintiff
18 would be liable for \$17,534.50 in early termination fees rather than the \$9,187.76 Ally charged
19 him in excess wear and mileage fees. Dkt. No. 19 ¶¶ 30, 40. Nevertheless, Plaintiff requests that
20 the Court find that he terminated the lease early, presumably so that Plaintiff may pass off the
21 early termination fees to Hanlees, while at the same time avoiding liability for the excess wear and
22 mileage fees he incurred prior to termination. Not only would such a finding be untenable, but it
23 would directly contradict the express terms of the lease agreement, which provide that surrender of
24 the Equinox after the date of Plaintiff’s final payment would be treated “as if [the lease had] ended
25 as scheduled and not as if it ended early.” *Id.*, Ex. 3 at 4.

26 While both Plaintiff and Hanlees contend that the Treat As clause is unfair and unlawful,
27 the Court disagrees. To state a claim based on unlawful business practices under the UCL, a
28 plaintiff must allege that a defendant violated an underlying law. *Finuliar v. BAC Home Loans*

1 Serv. Corp, LLP, No. C-11-02629 JCS, 2011 WL 4405659, at *9 (N.D. Cal. Sept. 21, 2011).
2 Plaintiff here alleges that Ally violated the Vehicle Leasing Act (“VLA”) §§ 2987(a) and (f)(2),
3 and the FDCPA. Dkt. No. 19 ¶ 84. Section 2987(a) specifies that “[a] lessee has the right to
4 terminate a lease contract at any time prior to the scheduled expiration date specified in the lease
5 contract,” while § 2987(f)(2) applies only “if, prior to the scheduled expiration date specified in
6 the lease contract, the lessee terminates the lease and purchases the vehicle or trades in the vehicle
7 in connection with the purchase or lease of another vehicle.” Veh. License Act Sections 2987(a),
8 (f) (emphasis added). The parties offer differing interpretations of the phrase “scheduled
9 expiration date specified in the lease contract.” While Plaintiff contends that the “Scheduled
10 Lease End Date” of September 21, 2013 is the sole scheduled expiration date, Dkt. No. 27 at 5-7,
11 Ally contends that the Treat As clause in the lease provides alternative scheduled end dates: either
12 September 21, 2013, or any date before September 21, 2013 but after final payment, Dkt. No. 21
13 at 8. The Court agrees with Ally. Because nothing in the VLA prevents a lessor from specifying
14 multiple potential scheduled end dates, the Court finds that the Treat As clause in the lease
15 established alternative scheduled end dates, such that Plaintiff’s September 19, 2013 return of the
16 vehicle did not constitute an early termination. Sections 2987(a) and (f)(2) therefore do not apply.
17 Plaintiff thus has not plausibly alleged that Ally’s conduct was unlawful.

18 However, even if §§ 2987(a) and (f)(2) did apply, the lease agreement did not violate those
19 terms. Nothing in the lease agreement—including the Treat As clause—prevented Plaintiff from
20 purchasing or returning the Equinox at any time during the rental period. Instead, the Treat As
21 clause merely protected Plaintiff from being charged early termination fees in the event he wished
22 to return the vehicle between the date he made his final payment on the Equinox and September
23 21, 2013. That Plaintiff now wishes to sidestep a provision that seeks to prevent lessees from
24 being forced to pay substantial early termination fees illustrates the irrationality of Plaintiff’s
25 claims.

26 Plaintiff’s FDCPA claim also fails. Specifically, Plaintiff contends that Defendant violated
27 the FDCPA by making “false representations to Plaintiff of the character, amount, or legal status
28 of the alleged debt of \$9,187.76,” making false representations to the Law Offices of Patenaude &

1 Felix of the character, amount, or legal status of the alleged debt,” and “[a]ttempt[ing] to collect
2 the alleged debt . . . owed by Plaintiff that was not permitted by the California VLA.” FAC ¶ 101.
3 As Ally states, “[t]he gravamen of Plaintiff’s Rosenthal Act claim is that Ally’s charging of and
4 collection of the excess wear and mileage fees were improper because the charges themselves
5 were improper” due to Plaintiff having allegedly terminated the lease early. Dkt. No. 21 at 6.
6 However, in light of the Court’s finding that Plaintiff has not adequately alleged that he terminated
7 the lease early, Plaintiff’s claim that Ally improperly charged and attempted to collect those fees
8 fails.

9 Furthermore, while California Courts are currently split as to the definition of “unfair”
10 under the UCL, because Defendant was complying with the express terms of the contract when it
11 treated Plaintiff’s return of the vehicle as a scheduled termination, Plaintiff has alleged no facts
12 that could establish that Ally’s conduct was unfair.³ See *Davis v. HSBC Bank Nevada, N.A.*, 691
13 F.3d 1152, 1169-1170 (9th Cir. 2012) (holding that while “the proper definition of ‘unfair’
14 conduct against consumers ‘is currently in flux’ among California courts,” Plaintiff’s “fail[ure] to
15 read the terms and conditions before agreeing to them, and . . . [his] refus[al] to cancel his card
16 within 90 days” begged the conclusion that “any harm he suffered was the product of his own
17 behavior, not the advertisements” at issue.).

18 Finally, and for the same reasons discussed above, the Court declines to consider
19 Plaintiff’s declaratory relief claim, which requests that the Court use its discretion to declare,
20 among other things, that he terminated the lease early, and is not liable for the excess wear and
21 mileage owed under the lease. Dkt. No. 19 ¶ 114(b), (g), (h); *Leadsinger, Inc. v. BMG Music*
22 *Publ’g*, 512 F.3d 522, 533 (9th Cir. 2008) (citations omitted) (“Federal courts do not have a duty

23 _____
24 ³ California Courts have contemplated three tests to determine whether a practice was “unfair” in
25 consumer-filed UCL actions. A practice is considered unfair when (1) “the consumer injury is
26 substantial, is not outweighed by any countervailing benefits to consumers or to competition, and
27 is not an injury the consumers themselves could reasonably have avoided,” *Daugherty v. Am.*
28 *Honda Motor Co., Inc.*, 144 Cal. App. 4th 824, 839 (2006); (2) the practice “offends an
established public policy or when the practice is immoral, unethical, oppressive, unscrupulous, or
substantially injurious to consumers,” *Smith v. State Farm Mutual Auto. Ins. Co.*, 93 Cal. App. 4th
700, 719 (2001) (citations omitted); or (3) “the public policy which is a predicate to the action [is]
tethered to specific constitutional, statutory or regulatory provisions,” *Scripps Clinic v. Superior*
Court, 108 Cal. App. 4th 917, 940 (2003) (internal quotation marks omitted).

1 to grant declaratory judgment; therefore, it is within a district court’s discretion to dismiss an
2 action for declaratory judgment.”). The Court thus **GRANTS** Ally’s first motion in full.

3 **B. Ally’s Motion to Dismiss Hanlees’ Cross-Claims**

4 Each of Hanlees’ cross-claims against Ally also fails. First, Hanlees asserts a UCL claim
5 against Ally for unlawful, unfair, and fraudulent business practices based on Ally’s alleged
6 violation of §§ 2987(a) and (f) of the VLA. Dkt. No. 25 ¶¶ 88-92. Ally contends that Hanlees
7 lacks standing to bring such a claim, arguing that Hanlees failed to identify any injury in fact.
8 Dkt. No. 36 at 7-9. However, the Court need not reach that issue since, even assuming that
9 Hanlees does have standing to assert these claims, which the Court does not now decide, Hanlees
10 fails to plead facts sufficient to establish that Ally’s conduct was unlawful for the same reasons
11 discussed above.

12 Nor was Ally’s conduct unfair as alleged. To demonstrate unfairness as a competitor,
13 Hanlees would have to allege facts that show that Ally’s conduct “threaten[ed] an incipient
14 violation of an antitrust law, or . . . violate[d] the policy or spirit of one of those laws because its
15 effects [were] comparable to a violation of the law, or [] otherwise significantly threaten[ed] or
16 harm[ed] competition.” *Cel-Tech Commn’cs, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal. 4th
17 163, 180, 183 (1999). Hanlees argues that “Ally’s practices as alleged in the cross-claim were
18 ‘unfair,’ in that they burdened both Hanlees [] and plaintiff with burdens and costs the only
19 purpose of which was to limit competition and drive trade-ins to Ally and away from Hanlees [].”
20 Dkt. No. 46 at 10. The Court disagrees. Since Ally was well within its right to collect the excess
21 wear and mileage fees based on the express terms of the contract, Hanlees fails to allege facts
22 sufficient to establish that Ally’s attempt to collect fees that were owed to it either violated an
23 antitrust law, violated the spirit of any such law, or “otherwise significantly threaten[ed] or
24 harm[ed] competition.” *Cel-Tech Commn’cs*, 20 Cal. 4th at 183.

25 Finally, in order to establish that Ally’s acts were fraudulent under the UCL, Hanlees must
26 plead facts that establish that Ally’s conduct was likely to deceive members of the public. *Bank of*
27 *the West v. Superior Court*, 2 Cal. 4th 1254, 1267 (1992). Hanlees contends that Ally’s acts
28 served to “[s]ystematically misrepresent[] to potential customers of Hanlees that they cannot trade

1 in their vehicles leased from Ally without mileage and condition penalties, in violation of the
2 VLA.” Dkt. No. 25 ¶ 89(a); see also Dkt. No. 46 at 11. However, because Plaintiff has not
3 adequately alleged that he terminated the lease early and the lease agreement explicitly states that
4 Ally’s customers may be charged for excess wear or mileage at lease end, this claim also fails.
5 See Walker v. Countrywide Home Loans, Inc., 98 Cal. App. 4th 1158, 1178 (2002) (affirming
6 finding that Plaintiffs were not “likely to be deceived” under the UCL where “deed of trust
7 contained language sufficient to notify the [plaintiffs] that such fees could be imposed on them”).

8 Hanlees next asserts claims for equitable indemnity and indemnification under the UCL,
9 contending that because Plaintiff’s claims “in the [FAC] arise from a series of related transactions
10 in which both Hanlees and Ally are alleged to have been involved, . . . to the extent that Hanlees
11 and Ally may be found to be jointly and severally liable . . . Ally should be determined to be
12 entirely responsible and liable for all damages that plaintiff may be found to have suffered.” Dkt.
13 No. 25 ¶¶ 95, 96; see also id. ¶ 87. “Although the body of law defining and applying principles of
14 equitable indemnity has not fully gelled but is still evolving, one thing is clear: The doctrine
15 applies only among defendants who are jointly and severally liable to the plaintiff.” BFGC
16 Architects Planners, Inc. v. Forcum/Mackey Constr., Inc., 119 Cal. App. 4th 848, 852 (2004).
17 “[J]oint and several liability in the context of equitable indemnity is fairly expansive. We agree it
18 is not limited to ‘the old common term joint tortfeasor. . . .’ It can apply to acts that are concurrent
19 or successive, joint or several, as long as they create a detriment caused by several actors.” Id.
20 (quotation marks omitted). In addition, and “[w]ith limited exception, there must be some basis
21 for tort liability against the proposed indemnitor . . . [which is generally] based on a duty owed to
22 the underlying plaintiff.” Id. While the parties dispute whether they are jointly and severally
23 liable for Plaintiff’s alleged injury, Hanlees’ claims nevertheless fail because Hanlees does not
24 allege facts sufficient to establish that Ally violated a duty to Plaintiff when it followed the
25 express terms of the lease agreement in treating Plaintiff’s September 19, 2013 “trade-in” of the
26 Equinox as a scheduled termination.

27 Finally, Hanlees asserts a claim for slander and disparagement of title. Dkt. No. 25 ¶¶ 105-
28 111. Slander of title is a “tortious injury to property resulting from unprivileged, false, malicious

1 publication of disparaging statements regarding the title to property owned by plaintiff, to
2 plaintiff's damage," and requires the pleading of facts establishing: "(1) a publication; (2) which is
3 without privilege or justification; (3) which is false; and (4) which causes direct and immediate
4 pecuniary harm." *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1051
5 (2009). Hanlees contends that "Ally published false statements concerning Hanlees' legal and
6 equitable title to the Chevrolet" and "has a pattern and practice of publishing false statements
7 concerning Hanlees' legal and equitable title to vehicles that it acquires by sale or trade from
8 lessees and former lessees of Ally." Dkt. No. 25 ¶¶ 106, 107. However, Hanlees fails to specify
9 the allegedly slanderous statements, how or when they were published, how they were false, or
10 what type of pecuniary loss it might suffer as a result. See *id.* ¶¶ 105-111. Such bare assertions
11 are thus too conclusory to withstand a motion to dismiss. See *In re Gilead Scis. Secs. Litig.*, 536
12 F.3d at 1055.⁴

13 **IV. CONCLUSION**

14 For the foregoing reasons, the Court **GRANTS** both of Ally's motions to dismiss. As a
15 general rule, leave to amend a complaint that has been dismissed should be freely granted. Fed. R.
16 Civ. Proc. 15(a). However, leave to amend may be denied when the Court "determines that the
17 pleading could not possibly be cured by the allegation of other facts." *Lopez v. Smith*, 203 F.3d
18 1122, 1127 (9th Cir. 2000). Given the Court's interpretation of the lease agreement, the Court is
19 skeptical that Plaintiff or Hanlees will be able to plead new facts that would change the above
20 analysis. Nevertheless, because the Court cannot conclusively say at this point that the pleadings

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22 ⁴ Ally also moves to dismiss Hanlees' claim for intentional interference with prospective
23 economic advantage as time-barred, which Hanlees does not address in its opposition. See Dkt.
24 Nos. 36 at 14-17, 46. Accordingly, the Court finds that Hanlees has abandoned that claim. *Low v.*
25 *LinkedIn Corp.*, 900 F. Supp. 2d 1010, 1031 (N.D. Cal. 2012) (deeming Plaintiff's claim
26 "abandoned" when "Plaintiffs' opposition failed to address their claim for unjust enrichment"); *In*
27 *re TFT-LCD Antitrust Litig.*, 586 F. Supp. 2d 1109, 1131 (N.D. Cal. 2008). However, even if the
28 claim were not abandoned, Hanlees could not save it, as the statute of limitations for intentional
interference claims is two years and Hanlees waited until May 25, 2016 to file claims arising out
of a 2013 alleged violation. Cal. Code Civ. Proc. Section 339; Dkt. No. 1, Ex. 1; *Ledesma v. Jack*
Stewart Produce, Inc., 816 F.2d 482, 484 n.1 (9th Cir. 1987) (holding that a statute of limitations
defense may be raised by a motion to dismiss "[if] the running of the statute is apparent on
the face of the complaint.").

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“could not possibly be cured,” id., Plaintiff and Hanlees are granted an opportunity to amend the complaint and cross-complaint by September 30, 2017.

IT IS SO ORDERED.

Dated: 9/1/2017


HAYWOOD S. GILLIAM, JR.
United States District Judge