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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

PRUCO LIFE INSURANCE  
COMPANY, an Arizona Corporation,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA ENERGY  
DEVELOPMENT, INC., a dissolved  
California Corporation, TIMOTHY  
BRYSON, an individual, MICKEY  
NICHOLSON, an individual, JOHN J.  
WALSH, an individual, EDWARD  
SPOONER, trustee of the LIVING  
TRUST OF EDWARD SPOONER, LIFE  
ADVANCE, LLC, a Nevada corporation,  
DOES 1-10,,  
  
Defendants.

Case No.: 18cv2280 DMS (AHG)

**ORDER GRANTING IN PART AND  
DENYING IN PART LIFE  
ADVANCE, LLC’S MOTION TO  
DISMISS CROSS AND THIRD-  
PARTY CLAIMS OF MICKEY  
NICHOLSON AND JASON  
VOELKER**

AND ALL RELATED CROSS CLAIMS  
AND THIRD PARTY CLAIMS.

This case returns to the Court on Life Advance, LLC’s motion to dismiss the Cross and Third-Party Claims of Mickey Nicholson and Jason Voelker. Nicholson and Voelker

1 filed an opposition to the motion, and Life Advance filed a reply.<sup>1</sup> For the reasons  
2 discussed below, the motion is granted in part and denied in part.

3 **I.**

4 **DISCUSSION**

5 Nicholson and Voelker each have seven claims pending against Life Advance: (1)  
6 declaratory relief, (2) rescission of transfer, (3) equitable lien, (4) inducing breach of  
7 contract, (5) intentional interference with prospective economic advantage, (6) negligent  
8 interference with prospective economic advantage, and (7) constructive trust. Nicholson  
9 and Voelker do not oppose Life Advance’s request to dismiss their rescission claims. The  
10 Court addresses the remaining claims below.

11 **A. Legal Standard**

12 In *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009), and *Bell Atlantic Corp. v.*  
13 *Twombly*, 550 U.S. 544 (2007), the Supreme Court established a more stringent standard  
14 of review for 12(b)(6) motions. To survive a motion to dismiss under this standard, “a  
15 complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief  
16 that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 570).  
17 “A claim has facial plausibility when the plaintiff pleads factual content that allows the  
18 court to draw the reasonable inference that the defendant is liable for the misconduct  
19 alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

20 “Determining whether a complaint states a plausible claim for relief will ... be a  
21 context-specific task that requires the reviewing court to draw on its judicial experience  
22 and common sense.” *Id.* at 679 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)).  
23 In *Iqbal*, the Court began this task “by identifying the allegations in the complaint that are  
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26 <sup>1</sup> After the motion was submitted, Nicholson and Voelker filed a motion for leave to file a  
27 surreply brief, to which Life Advance filed an opposition and Nicholson and Voelker filed  
28 a reply. The Court finds the surreply unnecessary to the resolution of the present motion,  
and therefore denies the request to allow that filing.

1 not entitled to the assumption of truth.” *Id.* at 680. It then considered “the factual  
2 allegations in respondent’s complaint to determine if they plausibly suggest an entitlement  
3 to relief.” *Id.* at 681.

4 In this case, the Court approaches its task of deciding the motion to dismiss while  
5 keeping in mind the admonition from the Supreme Court that “[a] document filed *pro se* is  
6 ‘to be liberally construed,’ and ‘a *pro se* complaint, however inartfully pleaded, must be  
7 held to less stringent standards than formal pleadings drafted by lawyers[.]” *Erickson v.*  
8 *Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97,106 (1976))  
9 (internal citations omitted). That Nicholson and Voelker are proceeding *pro se* does not  
10 relieve Life Advance of its burden to show that dismissal is appropriate. *See Abbey v.*  
11 *Hawaii Employers Mutual Ins. Co.*, No. 09-000545 SOM/BMK, 2010 WL 4273111, at \*4  
12 (D. Hawaii Oct. 22, 2010) (stating that although *pro se* complaint “is not a model of  
13 clarity,” defendant bears burden of persuading court that dismissal is warranted).  
14 Furthermore, “a motion to dismiss is not the appropriate procedural vehicle to test the  
15 merits of Plaintiff’s FAC and the claims asserted therein.” *Walker v. City of Fresno*, No.  
16 1:09-cv-1667-OWW-SKO, 2010 WL 3341861, at \*4 (E.D. Cal. Aug. 23, 2010) (citing  
17 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). Rather, on a motion to dismiss the  
18 Court’s review is limited to determining whether the factual allegations in the complaint  
19 state a plausible claim for relief.

## 20 **B. Standing**

21 Before turning to the individual claims, the Court first addresses Life Advance’s  
22 argument that Nicholson and Voelker lack standing. Life Advance raises a number of  
23 arguments here. First, it argues Nicholson and Voelker lack standing because they claim  
24 to be owners or equity stake holders of California Energy Development Company, not  
25 California Energy Development, Inc. Nicholson and Voelker explain this was merely a  
26 “scrivener’s error[.]” (Opp’n at 2), which the Court accepts. Thus, this argument does not  
27 warrant dismissal for lack of standing.  
28

1 Second, Life Advance argues Nicholson and Voelker lack standing because neither  
2 was a party to nor beneficiary of the Policy. However, Life Advance fails to explain how  
3 that affects Nicholson or Voelker's standing to bring the particular claims asserted. Its  
4 conclusory assertion, without any analysis of the particular claims asserted, is insufficient  
5 to warrant dismissal.

6 Third, Life Advance suggests that even if Nicholson and Voelker were shareholders  
7 of California Energy, their status as shareholders would be insufficient to confer standing.  
8 However, Nicholson and Voelker do not bring their claims solely as alleged shareholders.  
9 Rather, they appear to be alleging claims on their own behalves, as well.

10 To that extent, Life Advance argues that Nicholson and Voelker are unable to satisfy  
11 the causation element of the standing test. Specifically, Life Advance asserts that any  
12 injuries suffered by Nicholson and Voelker were the result of actions taken by Roberts and  
13 Pruco. However, Nicholson and Voelker allege that Life Advance was aware of concerns  
14 and potential problems with transfers of the Policy before the Policy was transferred, but  
15 proceeded with the transfer anyway. (*See, e.g.*, Cross and Third-Party Claims ¶¶90-92,  
16 ECF No. 152.) Based on those allegations, Life Advance is not entitled to dismissal of  
17 Nicholson and Voelker's claims based on a failure to prove the causation element of the  
18 standing test. In sum, Life Advance is not entitled to dismissal of Nicholson and Voelker's  
19 claims on the ground they lack standing.

### 20 **C. Equitable Lien**

21 Turning to the individual claims, the first of those claims is for an equitable lien.  
22 This is not the first time the Court has addressed a claim for equitable lien in this case. The  
23 issue first arose on John Walsh's motion to set aside his default on Life Advance's Cross  
24 Claim. (*See* ECF No. 100.) In granting that motion, the Court found Mr. Walsh could  
25 have an equitable lien on the Policy proceeds because he allegedly paid certain of the  
26 premiums on the Policy. Nicholson and Voelker assert they, too, paid certain premiums  
27 on the Policy, and thus they have also stated a claim for equitable lien. Life Advance  
28 disagrees.

1 As set out in the Court’s order on Mr. Walsh’s motion, a claim for equitable lien on  
 2 policy proceeds may lie where the claimant has paid premiums on the policy. Life Advance  
 3 argues neither Nicholson nor Voelker did so, therefore their claims for equitable lien must  
 4 be dismissed. Whether Nicholson and Voelker actually paid any premiums, however, goes  
 5 to the merits of their claims, not whether the claims have been properly pleaded. In  
 6 considering whether the claims have been properly pleaded, the Court looks only to the  
 7 allegations of the Cross and Third-Party Claims. There, Nicholson alleges that he  
 8 “voluntarily paid the premiums” on the Policy. (Cross and Third-Party Claims ¶121.)<sup>2</sup>  
 9 There are no similar allegations as to Voelker, however, Accordingly, the Court grants the  
 10 motion to dismiss Voelker’s claim for equitable lien, and denies the motion to dismiss  
 11 Nicholson’s claim for equitable lien.

#### 12 **D. Inducing Breach of Contract**

13 The next claim at issue is for inducing breach of contract. The elements of this claim  
 14 are: (1) that there was a contract between Nicholson and Voelker and a third party, (2) that  
 15 Life Advance knew of the contract, (3) that Life Advance intended to cause the third party  
 16 to breach the contract, (4) that Life Advance’s conduct caused the third party to breach the  
 17 contract, (5) that Nicholson and Voelker were harmed, and (6) that Life Advance’s conduct  
 18 was a substantial factor in causing Nicholson and Voelker’s harm. CACI 2200. Life  
 19 Advance argues Nicholson and Voelker have failed to allege sufficient facts to support  
 20 these elements, therefore the claim should be dismissed.

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 23 <sup>2</sup> In defending against Life Advance’s motion for summary judgment, Nicholson submitted  
 24 evidence to support his allegation that he paid at least one of the Policy premiums. (*See*  
 25 ECF No. 151-2 at 37.) Although the Court does not consider that evidence in ruling on the  
 26 present motion, the Court notes that evidence, on its face, does not support Nicholson’s  
 27 allegation. Rather, that check was paid from the account of Ameross, Inc. (*Id.*) Nicholson  
 28 (and Voelker) are reminded of their obligations under Federal Rule of Civil Procedure 11  
 to ensure that “the factual contentions have evidentiary support or, if specifically so  
 identified, will likely have evidentiary support after a reasonable opportunity for further  
 investigation or discovery[.]” Fed. R. Civ. P.11(b)(3).

1           The Cross and Third-Party Claims allege there was a contract between Nicholson,  
2 Roberts and California Energy. (Cross and Third-Party Claims ¶123.) The subject matter  
3 and specifics of that contract are unclear. There is also an allegation of a contract “between  
4 Roberts, PRUCO, Nicholson, and California Energy Development Company in which a  
5 key-man policy was purchased for the benefit of the Company and shareholders of which  
6 Voelker is an equity holder by way of assignment.” (*Id.* ¶124.) This allegation provides  
7 slightly more information about the subject matter of the contract, but is still short on  
8 specifics. It is also unclear whether these allegations are referring to the same contract or  
9 two different contracts. What does seem clear, from the Cross and Third-Party Claims and  
10 Nicholson and Voelker’s opposition to the present motion, is that the contract or contracts  
11 at issue in this claim do not include the Policy. Aside from that, however, it is unclear  
12 exactly what contract Nicholson and Voelker are relying on. The Court agrees with Life  
13 Advance that there are insufficient factual allegations to support this claim, and thus it must  
14 be dismissed.

15 **E. Interference with Economic Advantage Claims**

16           The next two claims allege intentional and negligent interference with prospective  
17 economic advantage. The elements of a claim for intentional interference are: (1)  
18 Nicholson and Voelker were in an economic relationship with a third party that probably  
19 would have resulted in economic benefit to them, (2) Life Advance knew of that  
20 relationship, (3) Life Advance engaged in wrongful conduct, (4) by engaging in this  
21 conduct, Life Advance intended to disrupt the relationship or knew that disruption of the  
22 relationship was certain or substantially certain to occur, (5) the relationship was disrupted,  
23 (6) Nicholson and Voelker were harmed, and (7) Life Advance’s conduct was a substantial  
24 factor in causing Nicholson and Voelker’s harm. CACI 2202. The elements of a  
25 claim for negligent interference are similar, with adjustments to the state of mind  
26 requirement and the conduct requirement. *See* CACI 2204 (setting out “knew or should  
27 have known” requirement, and requirement that defendant “failed to act with reasonable  
28 care[.]”) Life Advance argues the intentional interference claim should be dismissed

1 because it did not engage in any wrongful conduct, and that the negligent interference claim  
2 should be dismissed because Life Advance owed no duty to Nicholson and Voelker.

3 The Court agrees these claims should be dismissed, but not for the reasons set forth  
4 by Life Advance. Rather, the claims are subject to dismissal because Nicholson and  
5 Voelker do not allege that they were in an economic relationship with a third party that  
6 inured to their benefit. Rather, the economic relationship that appears to serve as the basis  
7 for these claims is the economic relationship between California Energy and Pruco. (Cross  
8 and Third-Party Claim ¶131) (“There was an economic relationship between California  
9 Energy Development Company and PRUCO which was meant to benefit California Energy  
10 Development and its shareholders, including Nicholson and Voelker in the event of Jim  
11 Robert’s Death.”) Because that relationship did not involve Nicholson or Voelker  
12 personally, the first element of the claims is not satisfied, and therefore the claims must be  
13 dismissed.<sup>3</sup>

14 **F. Constructive Trust**

15 The final claim at issue here is for constructive trust. To prevail on this claim,  
16 Nicholson and Voelker must satisfy the following three conditions: “(1) the existence of  
17 a res (property or some interest in property); (2) the right of a complaining party to that  
18 res; and (3) some wrongful acquisition or detention of the res by another party who is not  
19 entitled to it.” *Communist Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 990, 41 Cal.  
20 Rptr. 2d 618 (1995) (citations omitted).

21 Life Advance argues this claim should be dismissed because Nicholson and  
22 Voelker have failed to establish they have any right to the Policy proceeds or that Life  
23 Advance acquired the Policy through wrongful means. As with certain of Life Advance’s  
24 other arguments, however, these arguments go to the merits of the claim, not whether the  
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27 <sup>3</sup> To the extent Nicholson and Voelker base these claims on their alleged status as third  
28 party beneficiaries of the economic relationship between California Energy and Pruco, they  
have failed to cite any legal authority to support such a theory.

1 claim has been properly pleaded, which is the issue in the present motion. Absent a  
2 showing that the claim is not properly pleaded, Life Advance’s motion to dismiss this  
3 claim is denied.

4 **II.**

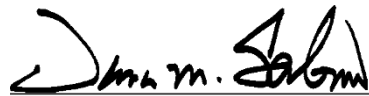
5 **CONCLUSION AND ORDER**

6 For the reasons set out above, Life Advance’s motion to dismiss the Cross and  
7 Third-Party Claims of Nicholson and Voelker is granted in part and denied in part.  
8 Specifically, the Court grants the motion to dismiss the claims for rescission, Voelker’s  
9 claim for equitable lien, the claims for inducing breach of contract, intentional  
10 interference with prospective economic advantage and negligent interference with  
11 prospective economic advantage. The motion is denied as to Nicholson’s claim for  
12 equitable lien and the claims for constructive trust. The Court also reject Life Advance’s  
13 argument that Nicholson and Voelker lack standing.

14 Although Life Advance requests that the Court dismiss Nicholson and Voelker’s  
15 claims without further leave to amend, the Court declines to do so. Instead, the Court  
16 grants Nicholson and Voelker leave to amend their claims to cure the pleading  
17 deficiencies set out above.<sup>4</sup> If Nicholson and Voelker choose to amend their claims, they  
18 shall file their amended pleading on or before **December 18, 2020**.

19 **IT IS SO ORDERED.**

20 Dated: December 8, 2020

21   
22 Hon. Dana M. Sabraw  
23 United States District Judge  
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27 <sup>4</sup> There is one exception to the grant of leave to amend: The rescission claim. Because  
28 Nicholson and Voelker did not oppose the request to dismiss that claim, that claim is  
dismissed with prejudice and without leave to amend.