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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 DENYING LIFE ADVANCE,
LLC’S MOTION TO DISMISS
CROSSCLAIM OF CALIFORNIA
ENERGY DEVELOPMENT, INC.
AND MOTION FOR A MORE
DEFINITE STATEMENT**

AND ALL RELATED CROSS CLAIMS
AND THIRD PARTY CLAIMS.

This case returns to the Court on Life Advance, LLC’s motion to dismiss the
Crossclaim filed by California Energy Development, Inc. (“CEDI”). CEDI filed an

1 opposition to the motion, and Life Advance filed a reply. For the reasons discussed
2 below, the motion is denied.

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4 **I.**
DISCUSSION

5 CEDI alleges eight claims in its Crossclaim: (1) declaratory relief, (2) slander of
6 title, (3) intentional interference with contractual advantage, (4) negligent interference
7 with prospective economic advantage, (5) conversion, (6) declaratory relief, (7)
8 constructive trust, and (8) third party tort of another. Life Advance moves to dismiss all
9 of these claims for lack of subject matter jurisdiction and failure to state a claim, and also
10 moves for a more definite statement.¹

11 **A. Motion to Dismiss – Subject Matter Jurisdiction**

12 Life Advance’s first argument in support of dismissal is that CEDI did not allege a
13 basis for the Court’s subject matter jurisdiction over the Crossclaim. This argument is
14 not well taken. The Court clearly had subject matter jurisdiction over Pruco’s original
15 Complaint in this case under 28 U.S.C. § 2201. (See ECF No. 1 ¶1.) CEDI’s Crossclaim
16 arises out of the subject matter of Pruco’s original Complaint and involves the same
17 parties and issues. CEDI’s Crossclaim is therefore ancillary to the original case, and “no
18 independent basis of jurisdiction for the cross-claim ... need be alleged or proved.” *Glens*
19 *Falls Indem. Co. v. U.S. ex rel. & to Use of Westinghouse Elec. Supply Co.*, 229 F.2d 370,
20 374 (9th Cir. 1955) (citations omitted). Accordingly, Life Advance’s motion to dismiss
21 for lack of subject matter jurisdiction is denied.

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26 ¹ The factual background of this case is set out in the Court’s previous orders, in particular,
27 the Court’s order denying Life Advance’s motion for summary judgment. (See ECF No.
28 168.) These facts are well-known to the parties and CEDI’s Crossclaim alleges claims
arising out of these well-known events.

1 **B. Motion to Dismiss - Failure to State a Claim**

2 Next, Life Advance moves to dismiss CEDI's claims under Federal Rule of Civil
3 Procedure 12(b)(6). In *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937 (2009), and *Bell*
4 *Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the Supreme Court established a more
5 stringent standard of review for 12(b)(6) motions. To survive a motion to dismiss under
6 this standard, "a complaint must contain sufficient factual matter, accepted as true, to 'state
7 a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550
8 U.S. at 570). "A claim has facial plausibility when the plaintiff pleads factual content that
9 allows the court to draw the reasonable inference that the defendant is liable for the
10 misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556).

11 "Determining whether a complaint states a plausible claim for relief will ... be a
12 context-specific task that requires the reviewing court to draw on its judicial experience
13 and common sense." *Id.* at 679 (citing *Iqbal v. Hasty*, 490 F.3d 143, 157-58 (2d Cir. 2007)).
14 In *Iqbal*, the Court began this task "by identifying the allegations in the complaint that are
15 not entitled to the assumption of truth." *Id.* at 680. It then considered "the factual
16 allegations in respondent's complaint to determine if they plausibly suggest an entitlement
17 to relief." *Id.* at 681.

18 1. Declaratory Relief

19 In claims one and six, CEDI requests declaratory relief from the Court. Specifically,
20 CEDI seeks "a declaration that ROBERTS illegally converted the KEY-MAN POLICY
21 when he transferred the ownership and beneficial interest in this policy from CEDI to
22 himself[.]" (Crossclaim ¶93) (claim one), and "a declaration that purported transferees
23 EDWARD SPOONER, trustee of the LIVING TRUST OF EDWARD SPOONER is an
24 agent of ROBERTS; and Life Capital and LIFE ADVANCE are not bonafide purchasers
25 of the KEY-MAN POLICY." (*Id.* ¶127) (claim six). Life Advance argues these claims
26 must be dismissed in light of the dismissal order in Pruco's 2017 case against CEDI, James
27 Roberts, Timothy Bryson, and Eric Porter and Robin Simon (purported directors of the
28 CEDI). This argument (that CEDI's claims are barred by claim preclusion) is similar to

1 the collateral estoppel argument Life Advance raised in its motion for summary judgment
2 against Mickey Nicholson and Jason Voelker. That argument failed on summary
3 judgment, and Life Advance’s argument here fails, as well.

4 As the party raising claim preclusion, Life Advance “must carry the burden of
5 establishing all necessary elements.” *Garity v. APWU Nat’l Lab. Org.*, 828 F.3d 848, 855
6 (9th Cir. 2016) (quoting *Taylor v. Sturgell*, 553 U.S. 880, 907 (2008)). Life Advance has
7 not set out the elements of claim preclusion in its motion, much less shown that any of
8 those elements are met here. Thus, this argument does not warrant dismissal of any of
9 CEDI’s claims.

10 2. Slander of Title

11 CEDI’s second claim alleges slander of title. “To state a claim for slander of title,
12 [CEDI] must allege ‘(1) a publication, (2) which is without privilege or justification, (3)
13 which is false, and (4) which causes direct and immediate pecuniary loss.’” *Simmons First*
14 *National Bank v. Lehman*, No. 13-cv-02876-DMR, 2015 WL 1503437, at *3 (N.D. Cal.
15 Apr. 1, 2015) (quoting *Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th
16 1040, 1051 (2009)).

17 Life Advance argues this claim must be dismissed because CEDI failed to identify
18 “who allegedly made false statements on behalf of Life Advance, to whom at Pruco the
19 statements were allegedly made and when the statements were allegedly made.” (Mem. of
20 P. & A. in Supp. of Mot. at 13.) CEDI has alleged that Life Advance has an unfounded
21 claim to an interest in property stolen by Roberts, and that was the cause of CEDI’s
22 pecuniary loss. That is sufficient to meet the notice pleading standard of Federal Rule of
23 Civil Procedure 8(a). Life Advance’s motion to dismiss this claim is denied.

24 3. Intentional Interference with Contractual Advantage

25 CEDI’s third claim is for intentional interference with contractual relations. To state
26 a claim for intentional interference with contractual relations, CEDI must plead:

- 27 (1) the existence of a valid contract between the plaintiff and a third party; (2)
28 the defendant’s knowledge of that contract; (3) the defendant’s intentional

1 acts designed to induce a breach or disruption of the contractual relationship;
2 (4) actual breach or disruption of the contractual relationship; and (5) resulting
3 damage.

4 *Reeves v. Hanlon*, 33 Cal. 4th 1140, 1148 (2004) (citing *Pacific Gas & Electric Co. v. Bear*
5 *Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990)). Here, Life Advance appears to be focusing
6 on the third element, and argues the claim should be dismissed because “there are no
7 allegations regarding what the conduct was, who specifically engaged in what conduct and
8 when the conduct took place.” (Mem. of P. & A. in Supp. of Mot. at 14.)

9 As with the arguments on CEDI’s slander of title claim, Life Advance fails to cite
10 any authority to support its argument that CEDI must allege who engaged in the allegedly
11 wrongful conduct or when that conduct took place. CEDI must allege an intentional act
12 designed to induce a breach or disruption of the contractual relationship on the part of Life
13 Advance, and to the extent Life Advance challenges that element, the Court rejects that
14 challenge. CEDI has alleged Life Advance proceeded to purchase the Policy after learning
15 that Roberts acquired the Policy through unlawful means. Those allegations are sufficient
16 to withstand Life Advance’s motion to dismiss.²

17 4. Constructive Trust

18 CEDI’s sixth claim is for constructive trust. To prevail on this claim, CEDI must
19 satisfy the following three conditions: “(1) the existence of a res (property or some
20 interest in property); (2) the right of a complaining party to that res; and (3) some wrongful
21 acquisition or detention of the res by another party who is not entitled to it.” *Communist*
22 *Party v. 522 Valencia, Inc.*, 35 Cal. App. 4th 980, 990 (1995) (citations omitted).

23 Life Advance argues this claim should be dismissed because CEDI has failed to
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26 ² Life Advance raises similar arguments on CEDI’s claims for negligent interference with
27 prospective economic advantage, conversion, and third party tort of another, namely, that
28 CEDI failed to allege the “who,” “what,” and “when” surrounding Life Advance’s conduct.
(*See id.* at 15, 16.) For the reasons set out above, the Court rejects those arguments as
against these other claims, as well.

1 allege Life Advance’s acquisition of the Policy was wrongful “given the court’s prior
2 ruling determining that Roberts was the owner of the Policy.” (Mem. of P. & A. in Supp.
3 of Mot. at 16.) However, Life Advance fails to cite which of the Court’s prior rulings so
4 held. To the extent Life Advance is relying on the dismissal order in Pruco’s 2017 case,
5 this Court has set out the problems with that order and thus far declined to give it
6 preclusive effect. Thus, Life Advance is not entitled to dismissal of CEDI’s claim for
7 constructive trust.

8 **C. Motion for More Definite Statement**

9 Life Advance’s final request here is for a more definite statement. Federal Rule of
10 Civil Procedure 12(e) states: “A party may move for a more definite statement of a
11 pleading to which a responsive pleading is allowed but which is so vague or ambiguous
12 that the party cannot reasonably prepare a response. The motion ... must point out the
13 defects complained of and the details desired.” Fed. R. Civ. P. 12(e). “Motions for a more
14 definite statement are viewed with disfavor and are rarely granted because of the minimal
15 pleading requirements of the Federal Rules.” *Sagan v. Apple Computers, Inc.*, 874 F.Supp.
16 1072, 1077 (C.D. Cal. 1994) (citing *In re American Int’l Airways, Inc.*, 66 B.R. 642, 645
17 (E.D. Pa. 1986)). “A Rule 12(e) motion is more likely to be granted where the complaint
18 is so general that ambiguity arises in determining the nature of the claim or the parties
19 against whom it is being made.” *Id.* (citing *Van Dyke Ford, Inc. v. Ford*, 399 F.Supp. 277,
20 284 (E.D. Wis. 1975)). A Rule 12(e) motion “is likely to be denied where the substance
21 of the claim has been alleged, even though some of the details are omitted.” *Id.* (citing
22 *Boxall v. Sequoia High School Dist.*, 464 F.Supp. 1104, 1113-14 (N.D. Cal. 1979)).

23 Life Advance’s motion for a more definite statement repeats and realleges the
24 arguments raised on the motion to dismiss. For the reasons set out above, the Court rejects
25 those arguments here, as well. The Court also notes this case has been pending for nearly
26 three years, and the parties’ disputes began many years before this case was filed. Surely,
27 after all that time, Life Advance knows what the parties’ positions are and understands
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1 what conduct is at issue here. Accordingly, Life Advance’s motion for a more definite
2 statement is denied.

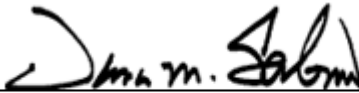
3 **II.**

4 **CONCLUSION AND ORDER**

5 For the reasons set out above, Life Advance’s motion to dismiss CEDI’s
6 Crossclaim and motion for more definite statement is denied.

7 **IT IS SO ORDERED.**

8 Dated: August 4, 2021

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11 Hon. Dana M. Sabraw, Chief Judge
12 United States District Court
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