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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 ODYSSEY REINSURANCE
12 COMPANY,

13 Plaintiff

14 v.

15 UNISON AGREEMENT CORP.,
16 *et. al.*,

17 Defendants.

Case No.: 3:21-cv-011-BTM-
WVG

**ORDER GRANTING MOTION TO
DISMISS WITHOUT PREJUDICE**

[ECF No. 6]

18 Pending before the Court is Defendants Unison Agreement Corporation's,
19 Odin New Horizon Real Estate Fund LP's ("Odin LP"), and Odin New Horizon
20 General Partner, LLC's ("Odin GP") motion to dismiss. (ECF No. 6 ("Mot.")).¹ For
21 the reasons discussed below, the Court grants the motion to dismiss.

22
23 **BACKGROUND**

24 Odyssey Reinsurance Company is a property and casualty insurer and
25 reinsurer based and incorporated in Connecticut. (ECF No. 1 ("Compl."), 1 (¶ 1).)

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28 ¹ Citations refer to material in the Electronic Case File ("ECF"); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 Cal-Regent Insurance Company was a California insurance corporation based in
2 El Cajon. (*Id.* at 3 (¶ 8).) It was co-owned by Richard Nagby and his ex-wife
3 Dianne Dostalík. (*Id.* (¶ 7).)

4 After a series of reinsurance deals fell through and Cal-Regent refused to
5 pay its debt under the contracts, Odyssey sued Cal-Regent in the District of
6 Connecticut. (*Id.* (¶ 9).) The court entered judgments against Cal-Regent and for
7 Odyssey in the amount of \$3,200,000. (*Id.*) Around the same time, Nagby and
8 Dostalík transferred Cal-Regent's business to a new corporation, Pacific Brokers
9 Insurance Services . (*Id.* (¶ 10).) They thereafter sold Pacific Brokers to AmTrust
10 North America, Inc., an unrelated third party, in a deal that included a \$2,500,000
11 down payment to Dostalík. (*Id.*)

12 Odyssey then filed suit in this Court to enforce the District of Connecticut's
13 judgment. (*Id.* at 3–4 (¶ 11) (citing *Odyssey Reinsurance Company v. Nagby et.*
14 *al.*, Case No. 3:16-cv-03038-BTM-WVG).) It named, among others, Dostalík and
15 Pacific Brokers and claimed that the AmTrust deal was void as a fraudulent
16 transfer. (*Id.*)

17 During the course of those proceedings, Odyssey discovered Dostalík was
18 in the process of selling her home in El Cajon and sought a temporary restraining
19 order preventing her from selling the property. (*Id.* (¶ 14).) On November 7, 2018,
20 the Court granted the TRO and ordered that, if the El Cajon property is sold, all
21 sale proceeds must be deposited in the court registry after deducting the first
22 mortgage and certain taxes and fees. (*Id.* at 4–5 (¶ 15); Case No. 3:16-cv-03038,
23 ECF No. 194.)

24 In April 2019, while the TRO was in effect, unbeknownst to Odyssey, Dostalík
25 received a \$144,375 loan secured in the El Cajon property from Unison. (Compl.,
26 6 (¶ 19).) In exchange, Dostalík would repay that amount, plus half of any
27 appreciation in the value of the El Cajon property when sold. (*Id.*) Unison recorded
28 its agreement with Dostalík, a deed of trust and security agreement, and an

1 assignment with the San Diego County Recorder. (*Id.* at 6–7 (¶¶ 20–21).)

2 A few months later, after finding Dostalík in contempt for failing to pay certain
3 funds into the court registry, the Court converted the TRO into a preliminary
4 injunction. (Compl., 5 (¶ 16); Case No. 3:16-cv-03038, ECF Nos. 287, 288.)

5 On August 30, 2019, the Court entered its judgment awarding Odyssey
6 \$3,208,150.68 in damages against Dostalík and set forth the following conditions
7 on the sale of the El Cajon property:

8 3.2 Upon sale of the real property at 2201 Weld Boulevard, City of El
9 Cajon, County of San Diego, State of California, having APN 386-652-
10 33-00, the sales proceeds shall be paid to the registry of the United
States District Court, Southern District of California, after deducting:

- 11 3.2.1 Any unpaid real property taxes and assessments then due
12 and owing;
- 13 3.2.2 All sums secured by the existing first mortgage;
- 14 3.2.3 Brokerage commission;
- 15 3.2.4 Prorations, escrow fees, and closing costs

16 the proceeds of which shall be held pending a determination by the
17 Court as to what extent, if any, they should be applied to satisfaction
of this Judgment.

18 (Compl., 5 (¶ 17); Case No. 3:16-cv-03038, ECF No. 325.) Odyssey filed an
19 abstract of judgment with the San Diego County Clerk on September 9, 2019.
(Compl., 5 (¶ 17).)

20 In December 2019, after Dostalík absconded and the Court issued a warrant
21 for her arrest, she entered into a contract for the sale of the El Cajon property. (*Id.*
22 at 7–8 (¶ 22–27).) It appears that Dostalík did not disclose the TRO or injunctions
23 to the buyers. (*Id.* at 8 (¶ 25).) Odyssey permitted the sale to proceed, and on
24 March 17, 2020, sent a letter to escrow demanding that the net sale proceeds be
25 deposited to the Court’s registry and reserving its right to take action against
26 Unison if it received any sale proceeds. (*Id.* (¶ 26), 87–88 (Ex. 9).)

27 On April 7, 2020, escrow on the El Cajon property closed. (*Id.* (¶ 27).)
28

1 Odyssey alleges that Unison and/or one of its related entities, Odin LP or Odin GP,
2 received \$144,675 from escrow. (*Id.*) The remaining proceeds were disbursed to
3 the Court’s registry. (*Id.* ¶ 28.)

4 On January 5, 2021, initiated the present suit. Unison, Odin LP, and Odin
5 GP now move to dismiss the complaint for failure to state a claim. (Mot.) The
6 Court held oral argument on June 23, 2021.

7 8 **STANDARD OF REVIEW**

9 Under Federal Rule of Civil Procedure 8, each pleading must include “a short
10 and plain statement of the claim showing that the pleader is entitled to relief” and
11 “give the defendant fair notice of what the . . . claim is and the grounds upon which
12 it rests.” See *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting
13 Fed. R. Civ. P. 8(a)(2)). “Each allegation must be simple, concise, and direct.” *Id.*

14 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state
15 a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Dismissal
16 under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal
17 theory or sufficient facts to support a cognizable legal theory. See *Balistreri v.*
18 *Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1990).

19 A complaint may survive a motion to dismiss only if it contains enough facts
20 to “state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S.
21 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility
22 when the plaintiff pleads factual content that allows the court to draw the
23 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
24 “Threadbare recitals of the elements of a cause of action, supported by mere
25 conclusory statements, do not suffice.” *Id.* “In sum, for a complaint to survive a
26 motion to dismiss, the non-conclusory factual content, and reasonable inferences
27 from that content, must be plausibly suggestive of a claim entitling the plaintiff to
28 relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations

1 omitted). In reviewing a Rule 12(b)(6) motion, the Court accepts as true all facts
2 alleged in the complaint and draws all reasonable inferences in favor of the plaintiff.
3 *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th Cir. 2009).

4 Where a motion to dismiss is granted, “[l]eave to amend should be granted
5 unless the pleading ‘could not possibly be cured by the allegation of other facts.’”
6 *Velez v. Cloghan Concepts LLC*, 387 F. Supp. 3d 1072, 1078 (S.D. Cal. 2019)
7 (quoting *Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003)).

8 **DISCUSSION**

9 Unison contends that dismissal is warranted because (1) Odyssey did not
10 allege that either Odin party engaged in wrongdoing, (2) neither the TRO or
11 preliminary injunction prohibited Dostalík from entering into a contractual
12 relationship with Dostalík, and (3) Unision’s deed of trust had lien priority over
13 Odyssey’s abstract of judgment under California law because it was recorded first.
14 (Mot.) Odyssey opposes on the grounds that its claims are based on the Court’s
15 judgment and injunctions, which specifically enjoined “all those acting in concert”
16 with Dostalík and that California law gives its claim priority over Unision’s. (ECF
17 No. 12.)

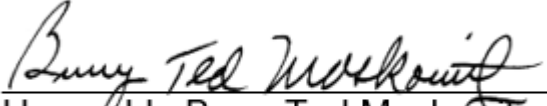
18 The Court grants the motion to dismiss. Though the factual allegations
19 underpinning Odyssey’s complaint are clear, the Court cannot decipher the
20 specific claims it is asserting. (Compl., 9–10 (¶¶ 29–36.) The Court is unsure what
21 claims Odyssey is asserting and oral argument did not resolve the ambiguity. At
22 oral argument, Odyssey argued that it is suing to enforce the judgment but then it
23 said it was suing for conversion. It also argued the second cause of action may
24 be moot because it is not moving for contempt. Accordingly, Odyssey has not
25 provided fair notice of its claims and dismissal without prejudice is warranted. See
26 *Twombly*, 550 U.S. at 555.

1 **CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS** the motion to
3 dismiss **WITHOUT PREJUDICE**. The Court **GRANTS** Odyssey leave to amend
4 its complaint within 30 days of the entry of this order. Unison, Odin LP, and Odin
5 GP shall file a response to the amended complaint within 21 days of the service
6 of any amended complaint.

7 **IT IS SO ORDERED.**

8 Dated: June 23, 2021

9 
10 Honorable Barry Ted Moskowitz
11 United States District Judge
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