Alice Lin v. JPMorgan Chase Bank, N.A.

United States District Court for the Central District of California

August 15, 2024, Decided; August 15, 2024, Filed

CASE NO. 2:24-cv-01837-JLS-E

Reporter
2024 U.S. Dist. LEXIS 146868 *

ALICE LIN, Plaintiff, v. JPMORGAN CHASE BANK, N.A., CHERYL MCMURRAY, and DOES 1 THROUGH 25, inclusive, Defendants.

Prior History: Alice Lin v. JPMorgan Chase Bank N.A., 2024 U.S. Dist. LEXIS 90340, 2024 WL 2272387 (C.D. Cal., May 19, 2024)

Counsel: **[*1]** For Alice Lin, individually, Plaintiff: Anne Marie Murphy, LEAD ATTORNEY, Blair V. Kittle, Cotchett Pitre and McCarthy LLP, Burlingame, CA; Theresa Vitale, Cotchett Pitre and McCarthy LLP, Santa Monica, CA.

For Cheryl McMurray, an individual, JPMorgan Chase Bank N.A., a Delaware Corporation, Defendants: Julia Strickland, LEAD ATTORNEY, Alice Kwak, David W Moon, Steptoe LLP, Los Angeles, CA.

Judges: HON. JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE.

Opinion by: JOSEPHINE L. STATON

Opinion

ORDER DENYING DEFENDANTS' MOTION TO DISMISS (Doc. 22)

Before the Court is a motion to dismiss filed by Defendants JPMorgan Chase Bank N.A. and Cheryl McMurray. (Mot., Doc. 22.) Plaintiff Alice Lin opposed, and Defendants replied. (Opp., Doc. 23; Reply, Doc. 25.) Having reviewed the papers and held a hearing, the Court DENIES Defendants' motion to dismiss.

I. BACKGROUND

Plaintiff brought this action against Defendants in California state court. (*See* Compl., Doc. 1-1, Ex. A.) An unknown non-party defrauded Plaintiff, a then-seventy-nine-year-old woman, out of $721,500 of her retirement savings. (*Id.* ¶ 4.) The non-party perpetuated the fraud by having Plaintiff wire money out of her Chase bank account. (*See id.* ¶ 13.) Plaintiff sued **[*2]** Defendants—Chase and McMurray, a Chase Branch Manager—under California's Financial Eder Abuse Law and California's Unfair Competition Law for processing Plaintiff's transfers rather than flagging and reporting them as suspicious, speaking with Plaintiff about the nature of the transactions, and/or calling Plaintiff's daughter, who is a joint accountholder. (*See id.* ¶¶ 37-38, 72-94.)

The underlying fraud is what Plaintiff refers to as a "***pig butchering*** scheme" in which the fraudster, over a period of time, "gain[ed] the trust and confidence" of Plaintiff before taking advantage of that trust. (*Id.* ¶¶ 1, 33.) Here, the fraudster "convince[d] Plaintiff over time that he was her friend and that he had experienced success with cryptocurrency investments that Plaintiff could also benefit from." (*Id.* ¶ 34.) Eventually, the fraudster "instructed Plaintiff to download [a] fake investment application on her phone and to transfer her money" into her supposed investment account on that application. (*Id.*) Over the course of less than three weeks, Plaintiff sent $721,500 via seven wire transfers to the fake account on the fake application. (*See id.* ¶ 50.)

Defendants timely removed this action to federal **[*3]** court; Plaintiff moved to remand; and the Court concluded that it has subject-matter jurisdiction under the Edge Act, 12 U.S.C. § 632. (NOR, Doc. 1 ¶ 2; Mot. to Remand, Doc. 14; Order Denying Remand, Doc. 19.) Defendants now move to dismiss both of Plaintiff's claims. (*See* Mot.)

II. LEGAL STANDARD

A. Rule 12(b)(6) Motion to Dismiss

In deciding a motion to dismiss under Rule 12(b)(6), courts must accept as true all "well-pleaded factual allegations" in a complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009). However, "courts are not bound to accept as true a legal conclusion couched as a factual allegation." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (cleaned up). The complaint must contain "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal*, 556 U.S. at 678 (cleaned up).

B. Interpretation of State Substantive Law

When applying California law, a federal court's "duty . . . is to ascertain and apply the existing California law." *AGK Sierra De Montserrat, L.P. v. Comerica Bank*, 2024 U.S. App. LEXIS 17782, 2024 WL 3464426, at *3 (9th Cir. July 19, 2024) (quoting *Alvarez v. Chevron Corp.*, 656 F.3d 925, 932 (9th Cir. 2011)). "'In the absence of a pronouncement by the highest court of a state, the federal courts must follow the decision of the intermediate appellate courts of the state unless there is convincing evidence that the highest court of the state would decide differently.'" *Id.* (quoting *Owen ex rel. Owen v. United States*, 713 F.2d 1461, 1464 (9th Cir. 1983)). "In other words, [a federal court] use[s] [its] 'own best judgment in **[*4]** predicting how the state's highest court would decide the case.'" *Id.* (quoting *T-Mobile USA Inc. v. Selective Ins. Co. of Am.*, 908 F.3d 581, 586 (9th Cir. 2018)).

A published Ninth Circuit decision on federal law "is binding absent a decision of the Supreme Court or [the Ninth Circuit] sitting en banc that 'undercut[s] the theory or reasoning underlying the prior circuit precedent in such a way that the cases are ***clearly irreconcilable***.'" *Id.* (emphasis added) (quoting *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc)). However, Ninth Circuit precedent on state law is subject to a "more permissive" form of *stare decisis.* 2024 U.S. App. LEXIS 17782, [WL] at *9 (Miller, J., concurring). Such a decision is binding only "in the absence of ***any subsequent indication*** from the California courts that our interpretation was incorrect." 2024 U.S. App. LEXIS 17782, [WL] at *1 (emphasis added) (quoting *Owen*, 713 F.2d at 1464); *accord* 2024 U.S. App. LEXIS 17782, [WL] at *3 (quoting *Alvarez*, 656 F.3d at 932).

III. FINANCIAL ELDER ABUSE LAW

Plaintiff asserts a claim for financial-elder abuse under California Welfare & Institutions Code § 15610.30(a)(2), which imposes liability on a person or entity that "assists" another in "tak[ing] . . . real or personal property of an elder." The relevant portion of section 15610.30 reads as follows:

> (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
>
> > (1) ***Takes***, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent **[*5]** adult for a wrongful use or with intent to defraud, or both.
> >
> > (2) ***Assists in taking***, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with

> intent to defraud, or both....
>
> (b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity ***takes***, secretes, appropriates, obtains, or retains the property and the person or entity ***knew or should have known that this conduct is likely to be harmful to the elder or dependent adult***.

Cal. Welf. & Inst. Code § 15610.30(a)(1)-(2), (b) (emphasis added). The statute expressly specifies the mental state required to impose liability on a direct taker under subsection (a)(1) (*i.e.*, the person or entity that obtains the property). A direct taker must "kn[o]w or should . . . know[] that" their "conduct is likely to be harmful to the elder." *Id.* § 15610.30(b). However, as both parties agree, the statute does not expressly address what mental state is required to impose liability on a subsection (a)(2) person or entity who "assists in taking" the property but does not directly obtain it. (*See* Mot. at 15 (the subsection (b) standard "applies only for" direct takings); Opp. at 12 ("[w]hether **[*6]** the" subsection (b) standard "applies equally to those who assist the taker[] was not explicitly clarified" by the 2009 amendment to the statute).

The parties take different positions on this question that the statutory text does not expressly address, namely: What mental state is required for an assisting claim under subsection (a)(2)? Plaintiff argues that it is sufficient that an assister have constructive knowledge—that the assister ***should have reasonably known*** their conduct was assisting a third-party take an elder's property. (Opp. at 17-18.) Defendants argue that constructive knowledge is insufficient and that, according to a California Court of Appeal decision, liability attaches only upon a showing of ***actual knowledge***. (Mot. at 15-19; Reply at 9-16.) Defendants further argue that Plaintiffs have not and cannot plead actual knowledge, such that the Court should dismiss Plaintiff's claim without leave to amend. (Mot. at 19.) The Court agrees with Defendants on the question of statutory interpretation but disagrees with Defendants' evaluation of the allegations in Plaintiff's complaint.

A. Actual Knowledge Is Required

An assister-liability claim under California's Financial Elder Abuse Law requires the plaintiff **[*7]** to show that the assister had actual knowledge that the non-party was engaging in direct financial elder abuse.

1. California Precedent

The only published state-court decision to address the mental-state requirement for subsection (a)(2) assisters is the California Court of Appeal's decision in *Das v. Bank of America*, 186 Cal. App. 4th 727, 112 Cal. Rptr. 3d 439 (2010).[1] *Das* held that "when, as here, a bank provides ordinary services that effectuate financial abuse by a third party, the bank may be found to have 'assisted' the financial abuse only if it ***knew*** of the third party's wrongful conduct." *Id.* at 745 (emphasis added). And *Das* clarified that this holding requires actual knowledge: "'[O]n demurrer [*i.e.*, the California analog to a motion to dismiss], a court must carefully scrutinize whether the plaintiff has alleged the bank had actual knowledge of the underlying wrong it purportedly aided and abetted.'" *Id.* (quoting *Casey v. U.S. Bank, N.A.*, 127 Cal. App. 4th 1138, 1152, 26 Cal. Rptr. 3d 401 (2005)).

Das's holding flowed from two premises: (1) that "the Legislature is presumed to be aware of existing judicial decisions when it enacts or amends statutes," and (2) that, as announced in decisions

[1] Defendants also cite several unpublished California Court of Appeal decisions. (Mot. at 15-16.) However, "an opinion of a California Court of Appeal or superior court appellate division that is not certified for publication or ordered published must not be cited or relied on by a court or a party in any other action." Cal. R. Ct. 8.1115. Therefore, the Court does not rely on those decisions in this Order.

predating the Financial Elder Abuse Law's enactment, California had "[g]enerally" adopted the rule that "'[l]iability may . . . be imposed on one who aids and abets the commission **[*8]** of an intentional tort if the person [] knows the other's conduct constitutes a breach of duty.'" *Id.* at 744 (quoting *Casey*, 127 Cal. App. 4th at 1144; citing *Bradley v. Breen*, 73 Cal. App. 4th 798, 804, 86 Cal. Rptr. 2d 726 (1999)). Thus, *Das* interpreted the statute's use of "assist[]" to mean "aid and abet" and to be imbued with the meaning California courts had "[g]enerally" ascribed to that latter phrase.

Because *Das* is a decision of a California intermediate appellate court, the Court "must follow the decision . . . unless there is convincing evidence that the highest court of the state would decide differently." *AGK Sierra*, 2024 U.S. App. LEXIS 17782, 2024 WL 3464426, at *3 (quoting *Owen*, 713 F.2d at 1464).

2. Federal Precedent

Numerous federal courts—including the Ninth Circuit in two unpublished dispositions[2]—have followed the *Das* holding and required actual knowledge to state a claim against a subsection (a)(2) assister. *See, e.g.*, *Gray v. JPMorgan Chase Bank, N.A.*, 2024 U.S. App. LEXIS 7461, 2024 WL 1342619, at *1 & n.1 (9th Cir. Mar. 29, 2024) ("There is no convincing evidence that the California Supreme Court would overrule *Das*."); *Bortz v. JP Morgan Chase Bank, N.A.*, 2023 U.S. App. LEXIS 18750, 2023 WL 4700640, at *1 (9th Cir. July 24, 2023) (holding that there is not "convincing evidence" that, as the plaintiffs there argued, the California Supreme Court would read subsection (a)(2) to impose "strict liability"); *Kanter-Doud v. Wells Fargo Bank, N.A.*, 2024 U.S. Dist. LEXIS 17904, 2024 WL 382325, at *6 (E.D. Cal. Feb. 1, 2024) (concluding that substantially similar arguments as those advanced by Plaintiff here do not amount to "convincing evidence" that *Das* would be overturned); *Ma v. Bank of Am.*, 2023 U.S. Dist. LEXIS 235328, 2023 WL 9644851, at *3 (C.D. Cal. Dec. 20, 2023) ("This Court again reviewed *Bortz*, *Das*, and *Casey* [cited in *Das*] following the **[*9]** hearing....[T]here is simply no reason to reject the clear reasoning of these cases."). Though these decisions are not binding, their uniform conclusion weighs against there being "convincing evidence" that the California Supreme Court would overturn *Das*'s requirement of actual knowledge for assister liability.

3. Plaintiff's Arguments

Moreover, the Court does not find Plaintiff's arguments to amount to "convincing evidence" that the California Supreme Court would overrule *Das*.

a. ***Comparison to Other Statutes***. First, Plaintiff notes that "assists," when unaccompanied by any modifiers, must necessarily require a lesser mental state than knowledge or intent because the California legislature has elsewhere modified "assists" with "knowingly" and "willfully." (Opp. at 16 (citing Cal. Civ. Code § 1714.4 ("knowingly assists"); Cal. Pen. Code § 109 ("willfully assists").) This comparison, under a rule-against-superfluity logic, might provide some support for Plaintiff's reading: If "assists" necessarily implies knowledge, then the "knowingly" and "willfully" modifiers in the cited statutes would be superfluous. *See Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074, 1087, 216 Cal. Rptr. 3d 889, 393 P.3d 375 (2017) ("[T]he Legislature does not engage in idle acts, and no part of its enactments should be rendered surplusage if a construction **[*10]** is available that avoids doing so."). But the more plausible interpretation of the comparator statutes is that the California legislature, when enacting those statutes, "was entitled to take a belt-and-suspenders approach," *People v. Padilla*, 13 Cal. 5th 152, 169, 293 Cal. Rptr. 3d 623, 509 P.3d 975 (2022), and included

[2] "Unpublished dispositions" from the Ninth Circuit "are not precedent." 9th Cir. R. 36-3(a).

the modifiers to make the mental state required for those prohibitions clear. At a minimum, comparing the elder abuse statue to the two statutes Plaintiff cited does not provide the "convincing evidence" needed to depart from *Das*.

b. ***Dictionary Definition***. Second, Plaintiff notes that a dictionary definition describes "assist" as "to give aid or support." (Opp. at 17.[3]) But Plaintiff then begs the question of whether "to give aid or support" implies any sort of knowledge or intentionality. (*See id.*) The Court concludes that the dictionary definition, like the statute, is ambiguous as to the mental-state question and, therefore, does not provide "convincing evidence" that the California Supreme Court would overrule *Das*.

c. ***Legislative History***. Third, Plaintiff argues that recent legislative materials support her position that assister liability attaches where a financial institution "reasonably suspect[s]" elder abuse is occurring. (Opp. at **[*11]** 17-18.) In particular, Plaintiff cites a February 1, 2023, version of a bill that would have imposed treble damages on financial institutions that failed to "delay, by three business days" certain transactions by elder accountholders if the "entity should reasonably suspect the transaction is the result of financial abuse." (SB 278 (Feb. 1, 2023 version), Doc. 24-2 at 4.[4]) Plaintiff also cites an accompanying press release in which the bill's sponsor stated that the bill "would clarify that victims of financial elder abuse can continue to hold institutions accountable when they should have known of the fraud." (Feb. 1, 2023 Press Release, Doc. 24-1 at 1-2.) As an initial matter, the California Supreme Court has held that "[u]npassed bills, as evidence[] of legislative intent, have little value." *Dyna-Med, Inc. v. Fair Emp. & Hous. Comm'n*, 43 Cal. 3d 1379, 1396, 241 Cal. Rptr. 67, 743 P.2d 1323 (1987). Moreover, the legislative history of the Financial Elder Abuse Law and SB 278 actually cuts against Plaintiff—not in her favor.

As Defendants note, Plaintiff provides an incomplete snapshot of the proposed bill. Since the February 1, 2023, version was introduced, it has undergone significant revisions. The most recent version of the bill is not retroactive—undermining any notion that it **[*12]** is simply a clarification of existing law.[5] Nor does the bill impose liability whenever an entity "reasonably suspects" elder abuse is occurring. Instead, the bill now establishes a specific regime under which civil penalties of up to $5,000 may be imposed where a financial institution fails to take the following enumerated actions when faced with a suspicious transaction: contacting a joint account holder; contacting an emergency contact; and delaying the transaction for three days.[6]

Thus, a more complete view of the legislative history shows the following. For over a decade after *Das*, the California legislature has allowed that court's interpretation of assister liability to stand. And now, specifically addressing the topic of financial institutions' role in preventing elder abuse, the legislature has not shown any desire to displace *Das*'s actual-knowledge requirement for assister liability.

d. ***Das*'s Continued Viability**. Fourth, Plaintiff argues that *Das* "no longer applies." (Opp. at 18 (capitalization standardized).) To start, Plaintiff

[3] For this proposition, Plaintiff cited *People v. Rodriguez*, 55 Cal. 4th 1125, 1132, 150 Cal. Rptr. 3d 533, 290 P.3d 1143 (2012). But *Rodriguez* was simply quoting a lower-court decision that, in turn, was quoting a dictionary. *See id.*; *see also id.* at 1132 n.6 ("Defendant relies on the Oxford English Dictionary for similar definitions.").

[4] The Court takes judicial notice of the legislative-history materials offered by both Plaintiff and Defendants. *See Anderson v. Holder*, 673 F.3d 1089, 1094 n.1 (9th Cir. 2012) ("Legislative history is properly a subject of judicial notice.").

[5] SB 278 (as amended June 26, 2024), *available at* https://legiscan.com/CA/text/SB278/id/3012180 ("This article shall become operative on January 1, 2026.").

[6] *Id.* (sections 15667, 15668, 15669.1).

notes that *Das* interpreted the version of the statute that predated the 2009 amendment. (*Id.*) But Plaintiff does not attempt to explain how the 2009 **[*13]** amendment affected, let alone undercut, *Das*'s holding. Instead, the Court is persuaded by the Ninth Circuit's conclusion in the unpublished *Bortz* decision: "Although *Das* interpreted a previous version of the California Financial Elder Abuse Law, subsequent amendments did not materially alter subdivision (a)(2)." 2023 U.S. App. LEXIS 18750, 2023 WL 4700640, at *1 n.1. Next, Plaintiff points to two California Court of Appeal decisions that purportedly diverged from *Das*. (Opp. at 18-19 (citing *Bonfigli v. Strachan*, 192 Cal. App. 4th 1302, 122 Cal. Rptr. 3d 447 (2011); *Stebley v. Litton Loan Servicing, LLP*, 202 Cal. App. 4th 522, 134 Cal. Rptr. 3d 604 (2011). But as the district court explained in *Kanter-Doud*, "Plaintiff's reliance" on those decisions is "misplaced . . . because [P]laintiff's argument is based upon language used by those courts in discussing direct financial elder abuse claims, not indirect assistance claims." 2024 U.S. Dist. LEXIS 17904, 2024 WL 382325, at *6.

e. ***State Trial-Court Orders***. Fifth, Plaintiff cites two state trial-court orders that departed from *Das*. Neither provides "convincing evidence" that the California Supreme Court would overrule *Das*. The first—from *Donfray v. Wells Fargo Bank, N.A.*—relies on the same amendment argument rejected above, again without explaining how the 2009 amendment impacted *Das*'s holding.[7] The second—from *Smith v. Bank of America, N.A.*—is one-paragraph long and lacks any citation to legal authority.

* * *

[7] Plaintiff did not include the trial-court orders in her request for judicial notice. However, the Court was able to review the full orders, as they were included in the appellate record in *Bortz*. (*See William Bortz, et al v. JP Morgan Chase Bank, N.A.*, et al, Case No. 22-55582, 2023 U.S. App. LEXIS 18750 (9th Cir. July 14, 2024), Doc. 19 at 34-36.)

For the foregoing **[*14]** reasons, Plaintiff has not presented "convincing evidence" to depart from *Das*'s actual-knowledge requirement. Therefore, to survive a motion to dismiss her financial elder abuse claim, Plaintiff must plausibly plead that Defendants had actual knowledge.

B. Plaintiff Has Plausibly Pleaded Actual Knowledge

The Court concludes that Plaintiff has met her burden of plausibly pleading that Defendants had actual knowledge that Plaintiff was the victim of a fraud perpetrated by the non-party recipient of Plaintiff's $721,500 in wire transfers.

Neither *Das*, which evaluated a complaint drafted by a plaintiff proceeding *pro se*, nor the non-binding federal decisions cited above substantively discuss what allegations are sufficient to plead actual knowledge under the Financial Elder Abuse Law. *See Das*, 186 Cal. App. 4th at 745 ("Because appellant has not alleged that respondent knew about the schemes that victimized her father, she has failed to allege that respondent assisted in financial abuse ..."); *Gray*, 2024 U.S. App. LEXIS 7461, 2024 WL 1342619, at *1 ("Plaintiffs do not plead facts establishing that Chase had actual knowledge of or intentionally assisted in carrying out the fraudulent scheme. This claim thus fails"); *Bortz*, 2023 U.S. App. LEXIS 18750, 2023 WL 4700640, at *2 ("Plaintiffs do not allege that Chase had actual knowledge of **[*15]** the scammers' wrongful conduct. They instead contend that subdivision (a)(2) imposes strict liability ...."); *Kanter-Doud v. Wells Fargo Bank, N.A.*, 2024 U.S. Dist. LEXIS 17904, 2024 WL 382325, at *6 (concluding the plaintiff failed to plausibly allege actual knowledge because the "plaintiff has not alleged that she told defendant's agents about the conduct of the third party scam artists before the wire transfers were processed"); *Ma v. Bank of Am.*, 2023 U.S. Dist. LEXIS 235328, 2023 WL 9644851, at *3 ("Plaintiff does not allege that BANA 'had

actual knowledge of the scammers' wrongful conduct.'").

Therefore, the Court looks to other California civil-liability contexts in which actual knowledge is a requirement. *See Das*, 186 Cal. App. 4th at 744 ("the Legislature is presumed to be aware of existing judicial decisions when it enacts or amends statutes"). Across such contexts, California courts apply the *Uccello* standard for assessing whether a plaintiff has made a showing of actual knowledge:

> We point out, however, that a defendant's actual knowledge may be shown, not only by direct evidence, but also by ***circumstantial evidence***. Hence, [a defendant's] denial of such knowledge will not, per se, prevent liability. However, actual knowledge can be inferred from the circumstances only if, in the light of the evidence, such inference is not based on speculation or conjecture. ***Only where the [*16] circumstances are such that the defendant 'must have known' and not 'should have known' will an inference of actual knowledge be permitted***.

Uccello v. Laudenslayer, 44 Cal. App. 3d 504, 514 n.4, 118 Cal. Rptr. 741 (1975) (citations omitted) (emphasis added) (actual knowledge of dog's vicious nature); *see also Yuzon v. Collins*, 116 Cal. App. 4th 149, 163, 10 Cal. Rptr. 3d 18 (2004) (same); *Donchin v. Guerrero*, 34 Cal. App. 4th 1832, 1838, 41 Cal. Rptr. 2d 192 (1995) (same); *People v. ConAgra Grocery Prod. Co.*, 17 Cal. App. 5th 51, 83-84, 227 Cal. Rptr. 3d 499 (2017) (actual knowledge of lead paint's hazards); *RSB Vineyards, LLC v. Orsi*, 15 Cal. App. 5th 1089, 1097-98, 223 Cal. Rptr. 3d 458 (2017) (real estate seller's actual knowledge of facts with "a significant and measurable effect on [the] market value" of a property); *Lucas v. Pollock*, 7 Cal. App. 4th 668, 674-75, 8 Cal. Rptr. 2d 918 (1992) (actual knowledge of dangerous property condition); *Bisetti v. United Refrigeration Corp.*, 174 Cal. App. 3d 643, 648, 220 Cal. Rptr. 209 (1985) (same); *Chaney v. Superior Ct.*, 39 Cal. App. 4th 152, 157, 46 Cal. Rptr. 2d 73 (1995) (actual knowledge of spouse's dangerousness in negligent-parental-supervision action); *Romero v. Superior Court*, 89 Cal. App. 4th 1068, 1081-82, 107 Cal. Rptr. 2d 801 (2001) (similar); *cf. People v. Azevedo*, 218 Cal. App. 2d 483, 490, 32 Cal. Rptr. 748 (1963) (knowledge in a criminal prosecution for receipt of stolen property can be inferred from, among other things, the defendant's lack of explanation or "unsatisfactory explanation" as to why he or she believed the property was lawfully obtained).[8]

As the emphasis in the above quote from *Uccello* demonstrates, the "distinction between what a defendant must have known and what a defendant should have known is crucial." *ConAgra*, 17 Cal. App. 5th at 84. Determining where exactly this line lies in a particular case will, however, sometimes be difficult. *Cf. In re A.L.*, 38 Cal. App. 5th 15, 24-25, 250 Cal. Rptr. 3d 572 (2019) ("We note that while actual knowledge is a higher standard than criminal negligence, **[*17]** both standards are proven in much the same way: Circumstantial evidence tending to show that a reasonable person would have known [a fact] will likewise tend to show that a particular defendant was aware of that fact."). And while "must have known" sets a rather demanding bar, it is not one that is impossible to clear at the successive stages of litigation. *See, e.g*, *ConAgra*, 17 Cal. App. 5th at 85 (affirming finding of actual knowledge following bench trial);

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[8] Similarly, courts sometimes rely on the principle of willful blindness to impute knowledge to an individual who "knew there was a high probability" of a fact but took steps to avoid definitively confirming that fact. *See Matter of Carver*, 2016 Calif. Op. LEXIS 9, 2016 WL 9649875, at *4 (Cal. Bar Ct. Apr. 12, 2016) (citing *Glob.-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 766, 131 S. Ct. 2060, 179 L. Ed. 2d 1167 (2011) ("It is also said that persons who know enough to blind themselves to direct proof of critical facts in effect have actual knowledge of those facts."); *Levy v. Irvine*, 134 Cal. 664, 672, 66 P. 953 (1901) ("[W]illing ignorance is to be regarded as equivalent to actual knowledge")); *see also In the Matter of Albert*, 2024 Calif. Op. LEXIS 4, 2024 WL 1231293, at *12 (Cal. Bar Ct. Mar. 11, 2024) ("Willful blindness is 'tantamount to having actual knowledge.'" (quoting Carver, 2016 Calif. Op. LEXIS 9, 2016 WL 9649875, at *4)).

Donchin, 34 Cal. App. 4th 1832, 1843-44, 41 Cal. Rptr. 2d 192 (concluding at summary judgment there was a genuine dispute as to actual knowledge).

Indeed, *Das* relies on a decision—*Wood v. Jamison*—that is consistent with the above principles. *Das*, 186 Cal. App. 4th at 745 n.11 (citing *Wood v. Jamison*, 167 Cal. App. 4th 156, 83 Cal. Rptr. 3d 877 (2008)). In *Wood*, "an attorney represented an elderly client and a third party posing as the elderly client's nephew in a series of transactions that enriched the third party at the expense of the elderly client." *Id.* (citing *Wood*, 167 Cal. App. 4th at 158-59). "[T]he attorney contended that . . . there was no evidence that he had 'knowingly assisted' the third party's financial abuse." *Id.* (citing Wood, 167 Cal. App. 4th at 164-64.) But the *Wood* court "concluded there was sufficient evidence" of knowledge, namely, that "[a]ny attorney would know it was an inappropriate use of the [elder's] funds." *Id.*; *Wood*, 167 Cal. App. 4th at 165. In other words, *Das*—through its discussion of *Wood*—seemingly contemplated **[*18]** that actual knowledge could be shown through circumstantial evidence that a party must have known he or she was assisting in elder abuse.

Here, the Court concludes that Plaintiff has plausibly pleaded that Chase, as imputed to it through one of its agents, had actual knowledge that Plaintiff was the victim of a financial elder-abuse scheme.[9] In particular, Plaintiff has plausibly pleaded that the same employee (Ivan Lo) at the same branch processed six of Plaintiff's highly unusual, quick-succession wire transfers, such that he must have known Plaintiff was the victim of an elder-abuse scheme that was being perpetuated via the wire transfers.

Plaintiff is a long-time Chase customer, and records reflect that, prior to the events at issue in this action, Plaintiff had not sent a wire transfer for at least seven years. (*Id.* ¶ 40 & nn.12-13.) And prior to August 2022 when the fraud occurred, Plaintiff's average monthly balance for that year was $7,600. (*Id.* ¶ 42.) But then in August, Plaintiff's banking behavior dramatically changed. (*See id.* ¶ 53.) Plaintiff transferred or deposited huge sums of money into her account and then, either the same day or shortly thereafter, transferred **[*19]** those sums out of her account. (*Id.* ¶¶ 50-51.) As the chart below shows, Plaintiff transferred $721,500 out of her account in less than three weeks.

Go to table1

As the chart also shows, it was Ivan Lo who processed all but one of these seven unusual wire transfers. Indeed, on back-to-back days (August 10th and 11th), Lo processed three of Plaintiff's wire transfers totaling $351,000.

As Plaintiff plausibly alleges, this series of high-amount, quick-succession transfers had the hallmark signs of financial elder abuse. (*Id.* ¶¶ 57-68.) In support of this allegation, Plaintiff relies on the "Interagency Guidance on Privacy Laws and Reporting Financial Elder Abuse of Older Adults," which was jointly promulgated by the Federal Reserve, the Consumer Financial Protection Bureau, and several other federal agencies. (*Id.* ¶ 57.[10]) That Guidance identifies the following as a "possible sign of abuse": "erratic **[*20]** or unusual banking transactions," such as "[u]ncharacteristic attempts to wire large sums of money." (*Id.* ¶ 59 (quoting Interagency Guidance at 4).) And Plaintiff

[9] "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other." Cal. Civ. Code § 2332; *see also In re Marriage of Cloney*, 91 Cal. App. 4th 429, 439, 110 Cal. Rptr. 2d 615 (2001) ('The general rule is well settled that the knowledge of the agent in the course of his or her agency is the knowledge of the principal." (cleaned up)).

[10] Available for download at https://www.consumerfinance.gov/compliance/supervisory-guidance/interagency-guidance-reporting-financial-abuse-older-adults/.

also points to the reaction of an unnamed employee at the South Pasadena Branch to allege the obviousness of the fraud that was occurring. When presented with just ***one*** attempt by Plaintiff to transfer a large sum of money, that employee was immediately suspicious and warned Plaintiff that "another customer who wired money had 'lost it.'" (*Id.* ¶ 50.)

Based on the unique factual circumstances presented here—***six*** large wire transfers processed by the ***same*** employee at the ***same*** branch over the course of ***less than three weeks***—Plaintiff has plausibly pleaded that Lo "must have known" that financial elder abuse was occurring, not just that he "should have known." *E.g.*, *Uccello*, 44 Cal. App. 3d at 514 n.4. Defendants characterize the above-described allegations as relevant to only "constructive rather than actual knowledge." (Mot. at 19; *see also* Reply at 9 ("Plaintiff alleges that Defendants 'should have known' that Plaintiff was suffering financial elder abuse due to the allegedly 'suspicious nature' of the wires, which 'suggested' financial elder abuse may have been **[*21]** occurring.").) But the same evidence can be relevant to showing both constructive and actual knowledge: "Circumstantial evidence tending to show that a reasonable person would have known [a fact] will likewise tend to show that a particular defendant was aware of that fact." *In re A.L.*, 38 Cal. App. 5th at 24-25. Indeed, Defendants seem to treat as dispositive the fact that Plaintiff did not allege "any direct evidence of defendants' knowledge." *RSB Vineyards*, 15 Cal. App. 5th at 1097, But failing to allege direct evidence of actual knowledge "is not unusual." *Id.* Nor are such allegations required, as scores of California courts have held that "a defendant's actual knowledge may be shown, not only by direct evidence, but also by circumstantial evidence." *E.g.*, *Uccello*, 44 Cal. App. 3d at 514 n.4. Here, Plaintiff has plausibly pleaded facts that support a reasonable inference that Lo must have known financial elder abuse was occurring.

IV. UNFAIR COMPETITION LAW

California's Unfair Competition Law ("UCL") allows private plaintiffs to seek injunctive relief and restitution arising out of "any [1] unlawful, [2] unfair or [3] fraudulent business act or practice." Cal. Bus. & Prof. Code §§ 17200, 17203. Defendants argue that Plaintiff cannot seek either of the UCL's equitable remedies (Mot. at 20-22), and that Plaintiff cannot state a claim under any of the UCL's three prongs **[*22]** (*id.* at 22-24). The Court addresses each of these arguments in turn.

A. Ability to Seek Restitution

Defendants argue that Lin cannot seek restitution under the UCL for two reasons; the Court is not persuaded by either. First, Defendants argue that Defendants received no money by virtue of their alleged unlawful competition. (Mot. at 21); *see* Cal. Bus. & Prof. Code § 17203 (court may "restore to" the plaintiff "any money or property, real or personal, which may have been acquired by means of such unfair competition"). But Plaintiff seeks as restitution "all earnings, profits, and compensation" Defendants "obtained from Plaintiff," *i.e.*, the wire-transfer fees they received for processing the transactions. (Compl. ¶ 92; Opp. at 24). That the restitution award may be rather small compared to the damages potentially available under the Financial Elder Abuse Law does not mean that Plaintiff is unable to seek restitution under the UCL.

Second, Defendants argue that Plaintiff has failed to plead that she has inadequate legal remedies, as is required to seek equitable relief. (Mot. at 21-22); *see Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020) (holding that "traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal **[*23]** remedies, apply when a party requests restitution under the UCL" in federal court). But *Sonner* "did not purport to disturb the well-

established rule that equitable and damages claims may coexist when they are based on different theories." *Brown v. Natures Path Foods, Inc.*, 2022 U.S. Dist. LEXIS 42760, 2022 WL 717816, at *6 n.5 (N.D. Cal. Mar. 10, 2022); *see also Elgindy v. AGA Serv. Co.*, 2021 U.S. Dist. LEXIS 61269, 2021 WL 1176535, at *15 (N.D. Cal. Mar. 29, 2021) (rejecting adequate-legal-remedies argument because "Plaintiffs' claims under the unlawful and unfair prongs of the UCL are rooted in a different theory than Plaintiffs' common-law fraud[] . . . claim[]"). As explained below, Plaintiff states a claim under the UCL's unfair prong that depends on a theory materially different than Plaintiff's theory under the Financial Elder Abuse Law. Unlike Plaintiff's Financial Elder Abuse Law claim, Plaintiff need not show actual knowledge to prevail under the UCL's unfair prong; Plaintiff instead must show that the harms inherent in Defendants' alleged business practice of processing suspicious wire transfers without any inquiry or without contacting a joint accountholder outweigh any potential benefits. (*Infra* section IV.B.2.)

B. Merits of Plaintiff's UCL Claim

The Court concludes that, while Plaintiff cannot state a claim under the UCL's unlawful or fraudulent prongs, she has stated a claim under the UCL's **[*24]** unfair prong.

1. Unlawful Prong

Plaintiff alleges that Defendants violated the UCL's unlawful prong by "failing to fulfill their reporting requirements pursuant to Cal. Welf. & Inst. Code § 15630.1" (Compl. ¶ 88.) Subsection (d)(1) requires a financial institution that "reasonably suspects" financial elder abuse is occurring to file a report "as soon as practicably possible" to "the relevant "local adult protective services agency or . . . law enforcement agency." Subsection (f) makes violations of the reporting requirement subject to an up-to $1,000 civil penalty or an up-to $5,000 civil penalty if the violation is willful. But, important here, subsection (g) provides:

> (1) The civil penalty provided for in subdivision (f) shall be recovered only in a civil action brought against the financial institution by the Attorney General, district attorney, or county counsel. No action shall be brought under this section by any person other than the Attorney General, district attorney, or county counsel.
>
> (2) Nothing in the Financial Elder Abuse Reporting Act of 2005 [*i.e.*, this section] shall be construed to limit, expand, or otherwise modify any civil liability or remedy that may exist under this or any other law.

Defendants argue that subsection (g)(2) prohibits the use of a reporting violation as a predicate for a UCL violation. (Mot. at 22); **[*25]** *see California v. Altus Fin.*, 36 Cal. 4th 1284, 1303, 32 Cal. Rptr. 3d 498, 116 P.3d 1175 (2005) (a UCL claim is precluded only where "the statute itself provides that the remedy is to be exclusive"); *Das*, 186 Cal. App. 4th at 737-40 (holding subsection (g)(2) precludes use of a reporting violation as a predicate for a negligence per se theory of liability). Plaintiff does not respond to this argument in her opposition. (*See* Opp. at 22 (arguing only that the UCL claim is also based on "assisting in financial abuse, which is separate and distinct from the reporting violations"). Therefore, Plaintiff has waived or forfeited any argument that the reporting violations can be a valid UCL predicate. *See, e.g., Rasof v. Lyubovny*, 2023 U.S. Dist. LEXIS 92125, 2023 WL 4677027, at *5 (C.D. Cal. May 25, 2023) ("The failure to address an argument in opposition may constitute a waiver of that argument or an abandonment of the claim."); *see generally United States v. Sineneng-Smith*, 590 U.S. 371, 375, 140 S. Ct. 1575, 206 L. Ed. 2d 866 (2020) ("In our adversarial system of adjudication, [courts] follow the principle of party presentation.... [Courts] rely on the parties to frame the issues for decision

....").[11]

2. Unfair Prong

Since the California Supreme Court's decision in *Cel-Tech Communications Inc. v. Los Angeles Cellular Telephone. Co.*, 20 Cal. 4th 163, 83 Cal. Rptr. 2d 548, 973 P.2d 527 (1999), "a split of authority has developed in the [California] Courts of Appeal with regard to the proper test for determining whether a business practice is unfair under the UCL in consumer cases." *Nationwide Biweekly Admin., Inc. v. Superior Court*, 9 Cal. 5th 279, 303, 261 Cal. Rptr. 3d 713, 462 P.3d 461 (2020); *see Cel-Tech*, 20 Cal. 4th at 187 n.12 (limiting holding to suits brought by competitors). **[*26]** The California Supreme Court, however, "has not addressed the question" of which test or tests should be applied. *Id.*; *see also Zhang v. Superior Court*, 57 Cal. 4th 364, 380 n.9, 159 Cal. Rptr. 3d 672, 304 P.3d 163 (2013) ("The standard for determining what business acts or practices are "unfair" in consumer actions under the UCL is currently unsettled."). The California Courts of Appeal have, in the meantime, adopted "three different tests for determining unfairness in the consumer context" *Nationwide Biweekly*, 9 Cal. 5th at 303.

"One line of Court of Appeal decisions has held that a balancing test, which the *Cel-Tech* court declined to adopt in the competitor context, should nonetheless be applied in the consumer context," with courts "'weigh[ing] the utility of the defendant's conduct against the gravity of the harm to the alleged victim.'" *Id.* at 303 n.10 (quoting *Smith v. State Farm Mut. Auto. Ins. Co.*, 93 Cal. App. 4th 700, 718, 113 Cal. Rptr. 2d 399 (2001)). "A second line of Court of Appeal decisions has adopted" the "tethering test," which requires that a UCL claim be "'tethered' to specific constitutional, statutory or regulatory provisions in a manner similar to which *Cel-Tech* requires a competitor's cause of action to be tethered to the antitrust laws." *Id.* (quoting *Gregory v. Albertson's, Inc.*, 104 Cal. App. 4th 845, 854, 128 Cal. Rptr. 2d 389 (2002)). "A third line of Court of Appeal cases has adopted the three-part definition of unfairness applied under section 5 of the FTC Act since 1980, namely that: '(1) The consumer injury must **[*27]** be substantial; (2) the injury must not be outweighed by any countervailing benefits to consumers or competition; and (3) it must be an injury that consumers themselves could not reasonably have avoided.'" *Id.* (quoting *Camacho v. Auto. Club of S. Cal.*, 142 Cal. App. 4th 1394, 1403, 48 Cal. Rptr. 3d 770 (2006)); *see* 15 U.S.C. § 45(a), (n).

Given this split of authority, the parties unsurprisingly disagree over which test the Court should apply here. Defendants urge the Court to apply the three-step, FTC Act-based test from *Camacho*. (Mot. at 23.) Plaintiff, by contrast, urges the Court to apply the tethering test from *Cel-Tech*. (Opp. at 23.) The Court need not, at this stage of the case, exercise its "'own best judgment in predicting" which test or tests the California Supreme Court would conclude are applicable to consumer actions. *AGK Sierra*, 2024 U.S. App. LEXIS 17782, 2024 WL 3464426, at *3 (quoting *T-Mobile*, 908 F.3d at 586). The Court instead will apply the test advocated by Defendants, the moving party. Because the Court concludes that Plaintiff has plausibly pleaded the elements of a UCL unfair-prong claim under the *Camacho* test, Defendants have failed to meet their burden as the moving party.

[11] To the extent Plaintiff intended to replead her Financial Elder Abuse Law assister-liability claim as a violation of the UCL's unlawful prong, that theory of liability would be precluded by Defendants' adequate-legal-remedies argument. (*Supra* section IV.A.) Plaintiff's damages and equitable restitution would flow from the same exact past injury. And Plaintiff has not pleaded any facts suggesting that Plaintiff is faced with an "actual and imminent" threat of future harm that would support an award of prospective injunctive relief. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009). While Plaintiff seeks an injunction "preventing Defendants from collecting on any outstanding debts by Plaintiff to Defendants," Plaintiff does not allege that any such debts exist or that Defendants are poised to collect on any such debts. (*See* Compl. ¶ 93; Opp. at 24.)

Before applying the *Camacho* test, the Court acknowledges that a published Ninth Circuit decision disapproved of *Camacho*: "[W]e do not agree that the FTC test is appropriate in this circumstance," *i.e.*, a consumer action. **[*28]** *Lozano v. AT & T Wireless Servs., Inc.*, 504 F.3d 718, 736 (9th Cir. 2007). However, the Court concludes that *Lozano*'s holding is no longer binding in light of "subsequent indication from the California courts that [the Ninth Circuit's] interpretation was incorrect." *AGK Sierra*, 2024 U.S. App. LEXIS 17782, 2024 WL 3464426, at *1 (quoting *Owen*, 713 F.2d at 1464). Since *Lozano*, the California Supreme Court has looked to FTC guidance when fleshing out the contours of California's False Advertising Law and the "overlapping prohibition" contained in the UCL's fraudulent prong. *See Nationwide Biweekly*, 9 Cal. 5th at 309 n.13, 311-13. Such reliance in a consumer-based case (even if situated under a different prong) undermines *Lozano*'s briefly stated rationale for rejecting the FTC Act-based test for the unfair prong: that the California Supreme Court's citation of the FTC Act in *Cel-Tech* "as a source of 'guidance[]' . . . clearly revolves around anti-competitive conduct, rather than anti-consumer conduct." *Lozano*, 504 F.3d at 736. And though the California Supreme Court has not affirmatively decided which test or tests apply under the UCL's unfair prong, the California Supreme Court has not—as *Lozano* did—removed the *Camacho* test from the list of options. *See Nationwide Biweekly*, 9 Cal. 5th at 303 n.10 (overviewing all three options); *Zhang*, 57 Cal. 4th at 380 n.9 (same).

Moreover, since *Lozano*, California Courts have continued to apply the FTC test—either by itself or in addition to the other two tests. *Sepanossian v. Nat'l Ready Mix Co., Inc.*, 97 Cal. App. 5th 192, 206, 315 Cal. Rptr. 3d 373 (2023); *Rubenstein v. The Gap, Inc.*, 14 Cal. App. 5th 870, 880, 222 Cal. Rptr. 3d 397 (2017) (same); *Klein v. Chevron U.S.A., Inc.*, 202 Cal. App. 4th 1342, 1376, 137 Cal. Rptr. 3d 293 (2012) (same); *Davis v. Ford Motor Credit Co. LLC*, 179 Cal. App. 4th 581, 584-85, 101 Cal. Rptr. 3d 697 (2009) (same); **[*29]** *CADC/RADC Venture 2011-1 LLC v. Bradley*, 235 Cal. App. 4th 775, 793, 185 Cal. Rptr. 3d 684 (2015) (applying all three tests); *In re Ins. Installment Fee Cases*, 211 Cal. App. 4th 1395, 1418, 150 Cal. Rptr. 3d 618 (2012) (same); *Boschma v. Home Loan Ctr., Inc.*, 198 Cal. App. 4th 230, 253-54, 129 Cal. Rptr. 3d 874 (2011) (same); *Puentes v. Wells Fargo Home Mortg., Inc.*, 160 Cal. App. 4th 638, 648, 72 Cal. Rptr. 3d 903 (2008) (same). Indeed, the leading treatise on the UCL concludes that the "[t]rend seems in favor of [the] FTC test." William L. Stern, *California Practice Guide: Business & Professions Code Section 17200* ¶ 3:121.1 (Rutter Group 2023).

Finally, some unpublished Ninth Circuit decisions have applied the *Camacho*, FTC Act-based test, though they did so without acknowledging *Lozano*'s foreclosure of that test. *See Allen v. Hyland's, Inc.*, 2022 U.S. App. LEXIS 12874, 2022 WL 1500795, at *2 (unpublished); *Allen v. Hylands, Inc.*, 773 F. App'x 870, 874 (unpublished); *Smith v. Ford Motor Co.*, 462 F. App'x 660, 664 (9th Cir. 2011). This unacknowledged break from *Lozano* appears to the Court to be an "indirect[] acknowledge[ment]" that *Lozano*'s disapproval of the *Camacho* test "is inconsistent with California law." *AGK Sierra*, WL 3464426, at *6. For the above reasons, the Court concludes that, contrary to *Lozano*, the *Camacho* test remains one of the options a federal court may permissibly apply in a consumer action until the California Supreme Court provides further clarification of the UCL's unfair prong.

Applying that test to this case, the Court concludes that Plaintiff has plausibly stated a claim under it. Defendants make no argument under *Camacho*'s first two elements and argue only that Plaintiff has not plausibly pleaded the third element—that she could not have reasonably avoided her injury. (Mot. at 23-24.) The Court disagrees. To start, Plaintiff has pleaded **[*30]** that she was the victim of a long-term "***pig butchering***" fraud in which the

fraudster gained her trust over an extended amount of time and then exploited it. *Cf. Sepanossian v. Nat'l Ready Mix Co., Inc.*, 97 Cal. App. 5th 192, 206, 315 Cal. Rptr. 3d 373 (2023) (finding injury was not reasonably avoidable in light of "misleadingly labelled fees"). Moreover, Plaintiff has pleaded that she was seventy-nine at the time of the fraud. A reasonable consumer for purposes of California law is "the ordinary consumer acting reasonably ***under the circumstances***," *Colgan v. Leatherman Tool Grp., Inc.*, 135 Cal. App. 4th 663, 682, 38 Cal. Rptr. 3d 36 (2006) (emphasis added), and the circumstances here involve Plaintiff's membership in a demographic group that the California legislature, as reflected in its enactment of the Financial Elder Abuse Law, has found to be highly susceptible to fraud.[12] As such, Plaintiff has stated a claim under the UCL's unfair prong.[13]

3. Fraudulent Prong

Plaintiff does not plead anything that would support a fraudulent-prong violation—*i.e.*, a material misrepresentation by Defendants. (*See generally* Compl.) Nor does Plaintiff contend in her opposition that she has stated a claim under the UCL's fraudulent prong. (*See* Opp. at 22-24.) Therefore, Plaintiff has failed to state a claim under the UCL's fraudulent prong.

[12] These two factors—that Plaintiff was the victim of a long-term fraud and that Plaintiff was a member of a highly susceptible group—distinguish this case from this Court's decision in *Rabago*, where the plaintiff failed to explain why it "would have been unreasonable for him to investigate the interest rate, loan payment terms, and costs and fees" of the run-of-the-mill mortgage loan that he obtained. *Rabago v. Deutsche Bank Nat. Tr. Co.*, 2011 U.S. Dist. LEXIS 60262, 2011 WL 2173811, at *5 (C.D. Cal. June 1, 2011) (Staton, J.).

[13] The Court clarifies that, in holding that Plaintiff has stated a claim under the unfair prong, the Court does not base its holding on Defendants' alleged failure to report the transactions—as doing so would run afoul of Cal. Welf. & Inst. Code § 15630.1(g)(2). Instead, the Court bases its holding on Defendants' alleged failure to discuss the transactions either with Plaintiff herself or Plaintiff's daughter, a joint accountholder.

V. MCMURRAY'S LIABILITY

Finally, Defendants argue that **[*31]** McMurray cannot be held liable because her actions were taken as an agent of JPMorgan. (Mot. at 25.) In support of that argument, Defendants rely on the holding from *Mercado v. Allstate Insurance Co.* that, "unless an agent or employee acts as a dual agent . . ., she cannot be held individually liable as a defendant unless she acts for her own personal advantage." 340 F.3d 824, 826 (9th Cir. 2003). The Court rejects Defendants' broad reading of *Mercado*. The baseline rule under California law is that "[o]ne who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency . . . [w]hen his acts are wrongful in their nature." Cal. Civ. Code § 2343; *see also Bock v. Hansen*, 225 Cal. App. 4th 215, 230, 170 Cal. Rptr. 3d 293 (2014) ("An agent or employee is always liable for his or her own torts, whether the principal is liable or not, and in spite of the fact that the agent acts in accordance with the principal's directions." (cleaned up)). Given this baseline rule, the Court agrees with a court in the Northern District of California that *Mercado* is best understood as a limited exception to that rule reserved for insurance agents in actions "arising from contractual duties." *See Celestino v. JPMorgan Chase Bank, N.A.*, 2023 U.S. Dist. LEXIS 93031, 2023 WL 3607285, at *1 (N.D. Cal. Mar. 31, 2023).

VI. CONCLUSION

For the above reasons, Defendants' motion to dismiss is DENIED.

DATED: **[*32]** August 15, 2024

/s/ Josephine L. Staton

HON. JOSEPHINE L. STATON

UNITED STATES DISTRICT JUDGE

Table1 (*Return to related document text*)

Date	Amount	Branch	Employee
August 4, 2022	$20,000	South Pasadena	Ivan Lo
August 5, 2022	$41,500	Redondo Beach	Eddie Correa
August 8, 2022	$110,000	South Pasadena	Ivan Lo
August 10, 2022	$1,000	South Pasadena	Ivan Lo
	$200,000		
August 11, 2022	$150,000	South Pasadena	Ivan Lo
August 22, 2022	$199,000	South Pasadena	Ivan Lo
Total		**$721,500**	

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