1. REDEFINING ORGANICS, LLC v. LIBERTY UTILITIES (CALPECO ELECTRIC), LLC, 23CV0684

Demurrer to Plaintiff's First-Amended Complaint

Before the court is Liberty Utilities (CALPECO Electric), LLC's ("defendant") demurrer to Redefining Organics, LLC's ("plaintiff") verified First-Amended Complaint ("FAC").

1. Background

Plaintiff is a licensed cannabis business. (FAC, ¶ 2.) On June 2, 2020, plaintiff and defendant entered into a "Utility Facility Agreement" (the "Agreement") wherein defendant agreed to provide electrical service to plaintiff's place of business located in South Lake Tahoe, California. (FAC, ¶ 8 & Ex. 1.) Defendant determined it was necessary to extend and modify its facilities on plaintiff's premises to provide said service. (FAC, ¶ 9.)

Pursuant to the Agreement, in August 2020, plaintiff paid a deposit of $71,283 to setup its utility service (FAC, ¶¶ 10, 11 & Ex. 1 at § III.A.) The FAC alleges, upon information and belief, that defendant agreed to refund this deposit after electrical service was initiated; and that defendant agreed to pay interest at an undefined rate for its delays in refunding said deposit. (FAC, ¶ 10.) The Agreement, however, provides in relevant part, "[a]ll advances and/or contributions made by [plaintiff] under the provisions of this Agreement, which are not classified as a non-refundable by [defendant], shall be subject to refund, to the party or parties entitled thereto as set forth in this section." (FAC, Ex. 1, § V.A.1.) The Agreement also provides, "[e]xcept as indicated in Section V.A.1(b) of this Agreement, all refunds shall be made without interest." (FAC, Ex. 1, § V.A.1(a).)

In December 2020 or January 2021, after performing construction work and installing extra equipment, defendant initiated electrical service at plaintiff's business. (FAC, ¶ 12.) Shortly thereafter, plaintiff began requesting defendant to refund or credit the advanced deposit. (FAC, ¶ 13.) This included phone calls, electronic communications, and personal trips to defendant's South Lake Tahoe office. (FAC, ¶ 13.)

In July 2022, defendant allegedly told plaintiff it needed a completed "vendor request" form to issue a refund. (FAC, ¶ 18.) And in September 2022, a representative of

defendant said that its accounting person had just told him that "she is processing the refund now." (FAC, ¶ 19.)

By November 2022, however, plaintiff still had not received its refund. (FAC, ¶ 25.) As a result, plaintiff decided to withhold payment to defendant for electrical service until the amount of the refund was applied to any outstanding bills, or at least until defendant was able to tell plaintiff what the outstanding bills, if any, would be after offsetting the amount with the refund. (FAC, ¶ 26.)

In April 2023, defendant billed plaintiff for three service accounts maintained by plaintiff that all support its business. (FAC, ¶ 28.) Defendant did not credit any of plaintiff's accounts based on the refundable deposit. (FAC, ¶ 28.) Defendant stated that the balance on the accounts was due on April 24, 2023. (FAC, ¶ 28.)

On April 24, at approximately 9:00 a.m., defendant terminated electrical service for the account that serviced plaintiff's cultivation area without any prior notice or warning. (FAC, ¶ 29.) Plaintiff alleges that the first time it received a notice or warning of termination of service was May 1, 2023 – a full week after the power was shut off. (FAC, ¶ 31.) This notice stated that "[f]ailure to make your payment before April 19, 2023, may result in termination of your electrical service." (FAC, ¶ 31.)

On April 25, 2023, plaintiff communicated with an in-house attorney for defendant who indicated that plaintiff was owed a refund but that defendant needed additional time to calculate the amount. (FAC, ¶ 35.)

On April 26, 2023, in an attempt to have its service restored, plaintiff offered to pay defendant a lump sum of $20,000. (FAC, ¶ 36.) Defendant did not respond to this offer. (FAC, ¶ 36.)

On May 5, 2023, plaintiff received an email from defendant entitled, "Construction Advance Refund Process." (FAC, ¶ 38.) The email explained that, based on defendant's calculations, plaintiff was owed approximately $18,000 as of July 2022. (FAC, ¶ 39.) Defendant also stated that no interest applies to plaintiff's refund. (FAC, ¶ 39.)

Plaintiff filed suit on May 5, 2023. Its FAC asserts causes of action against defendant for (1) fraudulent concealment; (2) breach of contract; (3) breach of implied covenant of good faith and fair dealing; (4) negligence; (5) nuisance; and (6) violation of Public Utilities Code section 2106.[1]

2. Requests for Judicial Notice

A public utility's tariffs filed with the Commission have the force and effect of law. (*Dyke Water Co. v. Public Utilities Com.* (1961) 56 Cal.2d 105, 123, cert. denied 368 U.S. 939.) A court may take judicial notice of the provisions of a tariff. [Citations.]" (*Dollar-A-Day Rent-A-Car Systems, Inc. v. Pacific Tel. & Tel. Co.* (1972) 26 Cal.App.3d 454, 457.) Pursuant to Evidence Code section 452, subdivision (b), the court grants defendant's request for judicial notice of Exhibit A (Tariff Rule 15 that was in effect as of July 15, 2013), Exhibit B (Tariff Rule 15 that was in effect as of February 3, 2021), Exhibit C (Tariff Rule 10 that was in effect as of January 4, 2023), and Exhibit D (Tariff Rule 11 that was in effect as of October 26, 2022).[2]

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations. (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions, or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable

[1] Further undesignated statutory references are to the Public Utilities Code.

[2] Plaintiff also requests that the court take judicial notice of its Exhibit 1 (Tariff Rule 11 that was in effect as of October 26, 2022). Having granted defendant's request for judicial notice of the same document, the court will deny plaintiff's request.

interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

Defendant's primary contention is that the Public Utilities Commission has exclusive jurisdiction over plaintiff's claims. Plaintiff, on the other hand, claims that the court and the Commission have concurrent jurisdiction over the matter. (Opp. at 1:28–2:1.)

" 'The [C]omission is a state agency of constitutional origin with far-reaching duties, functions and powers. (Cal. Const., art. XII, §§ 1–6.) The Constitution confers broad authority on the [C]omission to regulate utilities, including the power to fix rates, establish rules, hold various types of hearings, award reparation, and establish its own procedures.' " (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 914–915 (*Covalt*)[3]; accord, *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, 264 (*Hartwell*).)

Further, under the Public Utilities Act, the Commission has "broad authority to 'supervise and regulate every public utility in the State' (§ 701) and grants the commission numerous specific powers for the purpose…. [T]he Legislature further authorized the commission to 'do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient' in the exercise of its jurisdiction over public utilities. [Citation.]" (*Covalt*, *supra*, 13 Cal.4th at p. 915.)

As part of its grant of broad power to the Commission, "the Legislature has chosen to limit the jurisdiction of judicial review of the [Commission's] decisions." (*Hartwell*, *supra*, 27 Cal.4th at p. 265.) Specifically, section 1759, subdivision (a) provides: "No court of this state, except the Supreme Court and the court of appeal, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision

[3] Later courts have referred to the decision in *San Diego Gas & Electric* as the "*Covalt*" case because *Covalt* was a real party in interest in the case. (See, e.g., *People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1145; *Hartwell Corp. v. Superior Court* (2002) 27 Cal.4th 256, 264.)

of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the commission in the performance of its official duties, as provided by law and the rules of the court."

The courts have attempted to reconcile the limits on judicial review in section 1759 with the grant of jurisdiction to the superior court under section 2106. Section 2106 provides: "Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby or resulting therefrom. If the court finds that the act or omission was willful, it may, in addition to the actual damages, award exemplary damages. An action to recover such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person."

Under our Supreme Court's decision in *Covalt*, to determine whether section 1759 bars a superior court action for damages, the court considers (1) whether the Commission has the authority to adopt a regulatory policy; (2) whether the Commission has exercised that authority; and (3) whether the superior court action would hinder or interfere with the Commission's exercise of regulatory authority. (*Covalt*, *supra*, 13 Cal.4th at pp. 924, 926; accord, *Hartwell*, *supra*, 27 Cal.4th at p. 266.)

In *Hartwell*, our Supreme Court applied *Covalt* 's three-part test in finding that some of the plaintiffs' claims were barred under section 1759 in a civil action alleging that water utilities had provided them unsafe drinking water. (*Hartwell*, *supra*, 27 Cal.4th at pp. 275–278.) Specifically, the court found that the challenge to the adequacy of the drinking water standards was barred because it would interfere with a " 'broad and continuing supervisory or regulatory program' of the [Commission]…." (*Id.* at pp. 275, 276.) However, the court held that the plaintiffs could proceed on a theory that the drinking water failed to meet the federal and state drinking water standards because the claims would not

interfere with the Commission's regulatory policy that water utilities comply with the standards. (*Ibid.*)

Other courts since *Covalt* have found civil actions barred under section 1759 where the action would interfere with the Commission's authority or policies (See e.g., *Guerrero v. Pacific Gas & Electric Co.* (2014) 230 Cal.App.4th 567, 576–577 [§ 1759 barred civil suit following pipeline explosion alleging utility misappropriated $100 million in ratepayer money that should have been spent on pipeline safety because lawsuit would interfere with the Commission's ongoing administrative proceedings following the explosion]; *Sarale v. Pacific Gas & Electric Co.* (2010) 189 Cal.App.4th 225, 242–243 [lawsuit alleging excessive tree trimming by utility around power lines above minimum standards set by the Commission found within exclusive jurisdiction of the Commission]; *Anchor Lighting v. Southern Cal. Edison Co.*, *supra*, 142 Cal.App.4th at pp. 549–550 [§ 1759 barred civil suit by commercial business against SCE for refusal to provide it 10 percent discount provided to other commercial customers]; *Schell v. Southern Cal. Edison Co.* (1988) 204 Cal.App.3d 1039, 1042–1043 [§ 1759 barred suit against utility by owner of recreational vehicle park alleging discrimination by utility for charging him commercial electricity rate where determination of appropriate rate was properly in exclusive purview of the Commission].)

By contrast, in cases where the courts have found that the Commission does not have exclusive jurisdiction, the lawsuits have typically not required interpretation of Commission-approved rules. (See, e.g., *People ex rel. Orloff v. Pacific Bell*, supra, 31 Cal.4th at p. 1145 [court had jurisdiction over false advertising claims brought by district attorneys where suit would not undermine Commission policy or interfere with its regulatory authority]; *Mata v. Pacific Gas & Electric Co.* (2014) 224 Cal.App.4th 309, 320 [lawsuit by heirs of decedent who was electrocuted by a power line while trimming a tree not barred, finding that damage action "complements and reinforces" utility rule requiring utility to exercise reasonable care in trimming trees to ensure that its power

lines are safe];[4] *Cundiff v. GTE Cal. Inc.* (2002) 101 Cal.App.4th 1395, 1411 [damage action against utility for deceptive billing disclosure practices not barred by § 1759]; *Wise v. Pacific Gas & Electric Co.* (1999) 77 Cal.App.4th 287, 295 [finding no exclusive jurisdiction over unfair competition and fraud claims alleging utility failed to replace old valves after charging ratepayers for the cost of its replacement program because lawsuit would not interfere or otherwise impede any Commission regulatory policy]; *Cellular Plus, Inc. v. Superior Court* (1993) 14 Cal.App.4th 1224, 1246 [allowing civil suit against two cellular telephone service companies under Cartwright Act (Bus. & Prof. Code, § 16700 et seq.) for price fixing, finding that suit would not " 'hinder or frustrate' " the Commission's supervisory or regulatory powers].)

The court next turns to application of the *Covalt* test to plaintiff's claims. Plaintiff does not dispute that the Commission has the authority to adopt tariffs governing the rights and liabilities between a public utility and its customers. (See Opp. at 4:23–26.) The Commission has exercised that authority by its approval of Tariff Rules 10 ("Disputed Bills"), 11 ("Termination, Restoration and Refusal of Service"), and 15 ("Electric Line Extensions"). (See Request for Judicial Notice ("RJN"), Exs. A–D.) The central question here, therefore, is whether plaintiff's action "would hinder or interfere with the [Commission's] exercise of regulatory authority." (*Hartwell*, *supra*, 27 Cal.4th at p. 266.) The court concludes that it would.

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[4] Both *Mata* and *Sarale* involved actions against utilities for their tree trimming practices. The First District in *Mata* distinguished the Third District's ruling in *Sarale* on the basis that *Mata* involved whether the utility company used reasonable care in keeping its power lines safe above the minimum mandated by the Commission; *Sarale* involved a claim by landowners that the utility company trimmed the trees beyond what was mandated by the Commission's rule. (See *Mata v. Pacific Gas & Electric Co.*, *supra*, 224 Cal.App.4th at pp. 319–320; *Sarale v. Pacific Gas & Electric Co.*, *supra*, 189 Cal.App.4th at p. 242.) The court in *Mata* noted that "recognition of the landowners' claims [in *Sarale*] would have effectively countermanded the authorization that the [Commission] granted the utility to make that determination and to extend clearance beyond the minimum when necessary to ensure service reliability or public safety." (*Mata*, *supra*, at p. 319.)

Section E.4 of Tariff Rule 15 provides, in relevant part, "[c]ustomers who advance the entire cost of a project under Section D.4. will receive refunds based on revenues from their service in the first ten years following the date their service is connected, unless the Utility and Customer agree that a shorter refund period should be utilized." (RJN, Ex. B, § E.4.)

Section F.7 of Tariff Rule 15 provides, in relevant part, "[i]n case of disagreement or dispute regarding application of any provision of this rule, or in circumstances where application of this rule appears unreasonable to either party, Utility or Applicant may refer the matter to the Public Utilities Commission of the State of California for determination." (RJN, Ex. B, § F.7.)

Tariff Rule 10 provides specific procedures for its customers to dispute electricity bills. "When a customer and the company fail to agree on a bill for electric service: [¶] 1. In lieu of paying the disputed bill the customer may deposit with the California Public Utilities Commission…the amount claimed by the company to be due. …[¶] 3. Upon receipt of the deposit the Commission will notify the company, will review the basis of the billed amount, and will advise both parties of its findings and disburse the deposit in accordance therewith. [¶] 4. Service will not be terminated for nonpayment of the disputed bill when a deposit has been made with the Commission pending the outcome of the Commission's review." (RJN, Ex. C, § D.)

The gravamen of plaintiff's action is that defendant failed to comply with Rule 15 regarding how construction deposit refunds are calculated and when they are issued, as well as Rules 10 and 11 regarding disputed bills and procedures for terminating service. In its opposition, plaintiff states that defendants violated its tariffs and that such violations damaged plaintiff. (Opp. at 2:6–7, 4:23–5:11, 7:15–17.) The court finds that each of plaintiff's causes of action will require interpretation of these tariff rules, which determinations "would hinder or interfere with the [Commission's] exercise of regulatory authority" with respect to construction deposit refunds and termination of service.

Therefore, the demurrer is sustained. Based on plaintiff's allegations that defendant violated Tariff Rules 10, 11, and 15, it appears from the face of the complaint that the Commission has exclusive jurisdiction over the matter and the pleading is incapable of amendment. As such, the court denies leave to amend. (See *Tarrar Enterprises, Inc. v. Associated Indemnity Corp.* (2022) 83 Cal.App.5th 685, 688–689.)

TENTATIVE RULING # 1: THE DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. GABLER v. SOUTH LAKE TAHOE PUBLIC UTILITY DIST., 23CV1396

(1) Demurrer

(2) Motion to Strike

On April 18, 2024, plaintiff submitted a request to continue the hearing on defendant South Lake Tahoe Public Utility District's demurrer and motion to strike for 60 days on the ground that plaintiff suffered a cardiac emergency on March 26, 2024, and again on March 28, 2024. Plaintiff claims that due to these incidents, he was unable to submit an opposition to defendant's motions. The request is granted. The matter is continued to June 21, 2024.

TENTATIVE RULING # 2: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 21, 2024, IN DEPARTMENT FOUR.

3. STATE FARM GEN. INS. CO. v. BSH HOME APPLIANCES CORP., ET AL., SC20210006

Motion for Determination of Good-Faith Settlement

Defendants BSH Home Appliances Corporation ("BSH") and The Home Depot U.S.A., Inc. ("The Home Depot") move for a finding that their proposed settlement with plaintiff State Farm General Insurance Company ("State Farm") is in good faith pursuant to Code of Civil Procedure section 877.6.[1] No opposition has been filed.

1. Background

State Farm filed this lawsuit against BSH, The Home Depot, and others for damages arising out of a water loss that allegedly occurred at a residence located at 3330 Becka Drive in South Lake Tahoe, California. BSH and The Home Depot indicate that the parties agreed to a settlement under which BSH and The Home Depot would pay State Farm $3,000 in exchange for a full release of all claims related to this action. (Oneto Decl., ¶¶ 9, 10.)

2. Legal Standard

Section 877.6 provide provides in part: "(b) The issue of good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing. [¶] (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. [¶] (d) The party asserting the lack of good faith shall have the burden of proof on that issue." (§ 877.6, subds. (b)–(d).)

In evaluating a settlement, the court may take into account: (1) whether the settlement is "within the reasonable range of the settling tortfeasor's proportional share

[1] Further statutory references are to the Code of Civil Procedure.

of comparative liability"; (2) "the amount paid in settlement"; (3) "the allocation of settlement proceeds among plaintiffs"; (4) "a recognition that a settlor should pay less in settlement than he would if he were found liable after a trial"; (5) "the financial conditions and insurance policy limits of settling defendants"; and (6) "existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants." (*Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.* (1985) 38 Cal.3d 488, 499.) The factors are nonexclusive. (*Cahill v. San Diego Gas & Elec. Co.* (2011) 194 Cal.App.4th 939, 959.) The court's evaluation must "be made on the basis of information available at the time of settlement." (*Tech-Bilt*, *supra*, at p. 499.)

3. Discussion

Because no party to the action has filed an opposition, the court does not need to evaluate the settlement under the *Tech-Bilt* factors. (See Code Civ. Proc., § 877.6, subd. (d) [indicating presumption of good faith].) Nevertheless, the court concludes that the *Tech-Bilt* factors favor granting the motion. Several of the *Tech-Bilt* factors do not apply here. There is no evidence of collusion, fraud, or tortious conduct and no reason to question the allocation of the funds.

The remaining salient *Tech-Bilt* factors are the amount paid, BSH's and The Home Depot's proportionate liability, and the availability of insurance. After a review of the declaration submitted by BSH and The Home Depot in support of this motion, the court finds that the settlement amount is proportionate to BSH's and The Home Depot's alleged liability under the complaint. Further, there is no basis from which the court can conclude that the settlement amount is not well within the "ballpark" of BSH's and The Home Depot's potential liability. The court concludes that the settlement amount is fair and reasonable under the circumstances. The court therefore concludes that BSH's and The Home Depot's settlement with plaintiff was made in good faith.

For the foregoing reasons, BSH's and The Home Depot's motion for determination of good-faith settlement is granted.

TENTATIVE RULING # 3: MOTION IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.