Tentative Rulings for September 24, 2021
Department 403

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Rulings for Department 403

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Tentative Ruling

Re: ***Melkonian Enterprises, Inc. v. Sun-Maid Growers of California***
Superior Court Case No. 19CECG03936

Hearing Date: September 24, 2021 (Dept. 403)

Motions (x2): Demurrer and Motion to Strike to the Second Amended Complaint, by Defendant Sun-Maid Growers

Tentative Ruling:

To grant the motion to strike, with respect to Jue, L.L.C. dba Six Jewels. To decline to rule on defendant's motion to strike the peremptory challenge. The issue is moot in light of the court's ruling on the pending demurrer.

To sustain the demurrer to the second amended complaint, in its entirety. No leave to amend is granted. (See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349-350.) Defendant shall submit a judgment of dismissal within 5 days of the clerk's service of this minute order.

Explanation:

I. Motion to Strike

On January 11, 2021, the court sustained Sun-Maid's demurrer as to all nine counts of plaintiffs' First Amended Complaint. The court allowed plaintiffs leave to file a Second Amended Complaint to attempt to address the Amended Complaint's deficiencies. On February 19, 2021, plaintiff served its Second Amended Complaint ("SAC"). It included a new party (Jue, L.L.C. dba Six Jewels) and five new counts.

Plaintiffs' effort to add a new party to this case without leave of the court violates California law. Under California Code of Civil Procedure section 473, subdivision (a), a plaintiff must seek the court's leave to add a new party to an existing case. (See *e.g., People By & Through Dep't of Pub. Works v. Clausen* (1967) 248 Cal.App.2d 770, 785–86.) And to be clear, plaintiffs did not seek or receive permission to add Six Jewels to the litigation. Moreover, the court finds that Six Jewels' claims are very much a different case, including fraud claims about a failed effort to sell a dehydrator to Sun-Maid.

In opposition, plaintiffs argue that the addition of new parties after a demurrer is sustained is permissible. Plaintiff rely on *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995. *Patrick* does permits a party to add new claims, but only in limited circumstances where they "directly respond" to the court's reason for sustaining the earlier demurrer. (*Id.* at p. 1015.) This is not the case here. Six Jewels and its claims for breach of contract, fraud, breach of the implied covenant, and tortious interference have little, if anything, to do with the court's reason for sustaining the earlier demurrer. In fact, plaintiffs did not even add any new claims of their own—all of the new claims were Six Jewels'. In any case, *Patrick* does not permit adding new parties without leave of the court. Binding precedent

confirms the same. (See *e.g., Shapell Indus., Inc. v. Superior Court* (2005) 132 Cal.App.4th 1101, 1107; *Phoenix of Hartford Ins. Cos. v. Colony Kitchens* (1976) 57 Cal.App.3d 140, 146-47.)

Accordingly, Jue, L.L.C. dba Six Jewels is stricken from the litigation.[1]

II. *Demurer*

A demurrer is appropriate "[w]hen any ground for an objection to a complaint . . . appears on the face thereof, or from any matter of which the court is required to or may take judicial notice . . . ." (Code Civ. Proc., § 430.30, subd. (a).) A court should sustain a demurrer where a complaint fails to state "facts sufficient to constitute a cause of action." (*Id.* at § 430.10, subd. (e).) To survive a demurrer, a plaintiff must assert the ultimate factual allegations—not contentions, deductions, or conclusions of fact or law—that establish all essential elements of the alleged causes of action. (*Rakestraw v. Cal. Physicians' Serv.* (2000) 81 Cal.App.4th 39, 42-3; see also *Zumbrun v. Univ. of S. Cal.* (1972) 25 Cal.App.3d 1, 8 ["Facts, not conclusions, must be pleaded," and "[g]eneral and indefinite assertions of liability are not sufficient. . . ."].)

Cause of Action no. 1: Breach of Contract – Written Agreement

Here, plaintiffs (again) allege that Sun-Maid breached a written contract by closing the pool for golden raisins in 2019, refusing to accept golden raisins from Melkonian Enterprises, and by instead purchasing green grapes and processing them into golden raisins itself. (SAC, ¶ 74.) The basis for this allegation is a series of written agreements between the parties, as well as contracts between Sun Maid and a non-party Suren Melkonian. (*Id*. at, ¶¶ 21-22, 69.)

Sun Maid demurs to cause of action one – written agreement, arguing: (1) the parol evidence rule bars the claim because plaintiffs' applications to join Sun-Maid are fully integrated; (2) Melkonian has not pleaded assignment properly; (3) Melkonian's interpretation would render provisions in the Annual Golden Contracts superfluous; and (4) There is no claim regarding the 1990 Note. Sun-Maid's first argument is determinative.

Sun Maid argues that the parol evidence rule bars this claim because plaintiffs' applications to join Sun-Maid are fully integrated. In support thereof, Sun Maid cites to plaintiffs' signed membership agreements (dated 1997 and 1999, respectively), that long post-date the 1976 Agreement and 1990 Note. (See SAC, Exh. A.) Sun-Maid then cites to the fact that the parties agree that these membership applications are contractual, and are part of the written contracts between the parties. (See SAC, ¶ 15.) Finally, Sun-Maid cites to the fact that both of these membership agreements contain an identical integration clause, which provides that plaintiffs:

> Agrees that the Articles of Incorporation, the By-Laws now or hereafter in effect, this Membership Agreement, and any rules and regulations of SUN-MAID, constitute the entire agreement between SUN-MAID and the undersigned.

[1] For this reason, none of Jue/Six Jewels' claims will be considered in the demurrer analysis.

(See SAC, Exh. A [Membership Agreement, ¶ 3].)

Sun Maid's argument is compelling. The integration clause bars any argument that the earlier 1976 Agreement or 1990 Note is part of a contract between plaintiffs and Sun Maid. Per Code of Civil Procedure section 1856:

> (a) Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement.
>
> (b) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by evidence of consistent additional terms unless the writing is intended also as a complete and exclusive statement of the terms of the agreement. (Code Civ. Proc., § 1856.)

Additionally, Civil Code section 1625 holds, "[t]he execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." (Civ. Code, § 1625.)

In opposition, plaintiffs argue that Sun Maid's Bylaws (one of the documents listed in the Membership Agreement integration clause) incorporates another integration clause (§ 7.01), which then incorporates the 1976 Agreement between Sun Maid and Suren. In pertinent part, Section 7.01 provides:

> This Article together with the relevant Articles of Incorporation, other provisions of these bylaws, each member's Application for Membership and Membership agreements, rules and regulations adopted by the Board of Directors **and any supplemental agreement dealing with the marketing of raisins**, all as may be amended from time to time, in lieu of separate marketing agreement, constitute an agreement between the Association and each member as to the sale, delivery and marketing of his raisins. (SAC, Exh. C [Bylaws, § 7.01 [**Emphasis Added**].)

Plaintiffs' argument is not compelling. The parties may incorporate by reference into their contract the terms of some other document. However, for the terms of another document to be incorporated, the reference must be "clear and unequivocal" and "called to the attention of the other party and he must consent thereto." *Id.* at 1194. (*Avidity Partners, LLC v. State* (2013) 221 Cal.App.4th 1180, 1194; see also *Avery v. Integrated Healthcare Holdings, Inc*. (2013) 218 Cal.App.4th 50; *DVD Copy Control Ass'n Inc. v. Kaledescope, Inc*. (2009) 176 Cal.App.4th 697; and *Troyk v. Farmers Grp. Inc*. (2009) 171 Cal.App.4th 1305.) And here, Section 7.01 of the Bylaws says nothing about marketing agreements between different members (*e.g.*, Suren) and Sun Maid in the past.

Thus, because neither the 1976 Agreement nor the 1990 Note are incorporated, they are parol evidence. For this reason, cause of action one fails for the reasons stated above.

On reply, plaintiffs seek to distinguish the cases now relied upon by the court, which were also cited in the court's previous tentative. (See Reply, 18:16-19:10.) These arguments will not be addressed. Plaintiffs failed to move for reconsideration pursuant to Code of Civil Procedure section 1008. (See *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108 [A party's motion asking the court to reconsider a ruling on its own motion after the 10-day period is ineffective; the court is not obliged to rule on it and opposing counsel need not respond].)

Plaintiffs argue that section 1008 deos not apply when a party files a demurrer to an amended cause of action (citing *Goncharov v. Uber* (2018) 19 Cal.App.5th 1157, 1166 and *Kruss v. Booth* (2010) 185 Cal.App.4th 699, 712). Plaintiffs misapply the holdings from both *Goncharov* and *Kruss*.

Goncharov involved an initial demurrer that was overruled. Later, the Court granted the defendant's motion for judgment on the pleadings, and then permitted an amended complaint. (*Goncharov v. Uber, supra,* 19 Cal.App.5th at pp. 1163-65.) The question before the Court was whether the defendants were barred from applying their successful legal arguments in a demurrer to the amended complaint. (*Id.* at pp. 1165-67.) The *Goncharov* Court held that section 1008 did not apply to the defendant's second demurrer because following the denial of the first demurrer, the court had granted a motion for judgment on the pleadings, dismissing all of the causes of action. (*Id.* at p. 1166.) *Goncharov* did not disturb existing law providing that section 1008 applies to successful demurrers. In relevant part, *Goncharov* holds:

> "[R]espondents were not obliged to comply with Code of Civil Procedure section 1008, subdivision (b), in bringing their second demurrer. That statute, which provides that any subsequent application for an order which was previously refused must be supported by an affidavit setting forth particulars concerning the initial motion and stating the new or different state of facts claimed to exist, is simply not relevant under the facts of this case. Respondents' second demurrer was an appropriate responsive pleading to a new complaint." (*Id*. at p. 1232, 271 Cal.Rptr. 72, fn.omitted.) "[W]hen a plaintiff files an amended pleading ..., the amended cause of action is treated as a new pleading and a defendant is free to respond to it by demurrer on any ground." (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1035, 100 Cal.Rptr.3d 875 (*Berg & Berg*).) Here, the trial court dismissed all causes of action contained in the prior complaint. The SAC was then filed, and Uber demurred to the SAC. Uber did not file a "renewed demurrer" to the prior complaint. Instead, Uber's demurrer was "an appropriate responsive pleading to a new complaint."
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> (*Goncharov v. Uber, supra,* 19 Cal.App.5th at p. 1166.)

Kruss is likewise unpersuasive. The case does not even reference section 1008 or the concept of reconsideration.

Cause of Action no. 1: Breach of Contract – Oral Agreement

Here, plaintiffs (again) allege that Sun-Maid breached oral agreements made by former Sun-Maid CEO Barry Kriebel and current CEO Harry Overly. (See SAC, ¶¶ 70, 74.)

Plaintiffs assert that these oral agreements required Sun-Maid to purchase and pool their golden raisins in 2019. (See SAC, ¶ 70-71.)

This count fails because the court has previously dismissed it, and plaintiffs now reassert it almost verbatim with new legal arguments in support thereof, without having satisfied Code of Civil Procedure section 1008.

The claim fails for the additional reason that the parties' integrated contract requires *written* permission for golden raisins, and modifications of the contract must also be *written*. (See SAC Ex. B §§ 7.03, 10.06.) Plaintiffs argue that the purported 'oral' contract is a new contract about golden raisins, not a modification of the existing written one. This argument too fails. Except under an estoppel theory (which is addressed below), a later oral agreement cannot modify an integrated written contract that limits amendments to those in writing, no matter whether the later oral agreement is described as a 'new' contract or an amendment to the old one. (Civ. Code, §§ 1624, 1698.)

Cause of Action no. 2: Breach of the Covenant of Good Faith and Fair Dealing

Here, plaintiffs allege that Sun Maid's liability for breaching the implied covenant of good faith arises from their wrongful interference with plaintiffs' rights as a member of the cooperative, namely, the closure of the golden pool without prior notice or warning. (SAC, ⁋ 84.)

Sun-Maid's demurrer is sustained for the reasons previously provided. (See Ten., adopted: 6/30/20 & 1/11/21.) To recap: the 1976 Agreement is parol evidence and the oral agreements are invalid. Thus, the court cannot now write a new *express* provision into the parties' Agreement, under the implied covenant of good faith and fair dealing. Plaintiffs invoke the implied covenant to ask this court to erase section 7.03, and substitute a provision that says the opposite—that Sun-Maid must accept plaintiffs' golden raisins. But, the express terms of the Agreement contradict the new implied obligation that plaintiffs propose this court read into the Agreement (*see* § 7.03).

The court also finds this causes of action to be superfluous. "A plaintiff cannot prevail on a separate breach of the covenant claim when such a claim is coextensive with its breach of contract claim and seeks the same damages." (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395; see also *Yi v. Circle K Stores, Inc.* (C.D. Cal. 2017) 258 F. Supp. 3d 1075, 1086 [same].)

Cause of Action no. 5: Promissory Estoppel

Here, plaintiffs allege that between 1986 and 1990, Sun Maid promised to continue to pool and sell plaintiffs' golden raisins if they agreed to remain members of Sun Maid (in the midst of a mass exodus). (SAC, ¶ 100c.) Plaintiffs further allege that beginning in 2006, Sun Maid promised plaintiffs that if they forewent the planting of a more lucrative crop, Sun Maid would continue to pool and sell plaintiffs' golden raisins. (SAC, ¶ 100d.) And indeed in 2012, plaintiffs did redevelop their land pursuant to that promise. (*Ibid.*) Finally, plaintiffs allege that in 2018, Sun Maid's current CEO promised additional golden raisin business well into the future, which caused plaintiffs to install four additional drying tunnels for handling excess capacity. (SAC, ¶ 32.)

Sun-Maid demurs to cause of action three. Sun-Maid argues that the claim fails because: (1) the Second Amended Complaint still fails to plead a clear and unambiguous promise; (2) the amended complaint still fails to plead facts showing reasonable reliance; and (3) the amended complaint still fails to plead facts showing breach. Sun-Maid's arguments are persuasive.

First, as noted by the court previously, the amended complaint fails to plead a clear and unambiguous promise, as Sun Maid's alleged promises of future business have no terms about duration, price, or quantity. And promissory estoppel requires: (1) a promise, clear and unambiguous in its terms; (2) reliance; (3) that its reliance was both reasonable and foreseeable; and (4) it was injured by its reliance. (*Flintco Pac., Inc. v. TEC Mgmt. Consultants, Inc*. (2016) 1 Cal.App.5th 727, 734.) Particularly, promises of future business without specifics as to price, duration, or quantity are not enforceable under a promissory estoppel claim. (See *B & O Mfg., Inc. v. Home Depot U.S.A., Inc.*, No. C 07-02864 JSW, 2007 WL 3232276, at *6 (N.D. Cal. Nov. 1, 2007) [a purported promise to provide "substantial quantities of future business," with no specific terms or duration, is too vague]; *see also Jetpack Enterprises LLC v. Jetlev LLC*, No. SACV1502113CJCJCGX, 2017 WL 10560614, at *6 (C.D. Cal. Aug. 18, 2017) [promise of future business was "too vague to be enforceable"]; *GoEngineer, Inc. v. Autodesk, Inc.,* No. C 00-4595 SI, 2002 WL 243603, at *7 (N.D. Cal. Feb. 14, 2002) [defendant's statements encouraging plaintiff "to make investments that would ensure that the two companies would be mutually profitable" were "not clear and unambiguous promises . . . sufficient to support a promissory estoppel claim."]; *Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, 770.) For this reason, the amended complaint also fails to plead facts showing reasonable reliance. (See *Aguilar v. Int'l Longshoremen's Union Local No. 10* (9th Cir. 1992) 966 F.2d 443, 447 [Where a purported promise is not specific and clear, reliance is unreasonable and unforeseeable.].)

Plaintiffs cite to *Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 692 for the proposition that a price term is not actually required here. *Toscano* is factually distinguishable. It is true that in *Toscano*, the Court held that a promise of future employment was adequate to support an estoppel claim, despite the fact that the details regarding the employment were uncertain. But, the crux of the *Toscano* holding was that plaintiff had been promised a job and had relied on that promise to his detriment. In other words, the issue was whether or not plaintiff had relied upon the promise of a job. The details regarding the job were not necessary to the finding. This is unlike the case at bar. Here, the price term is at the center of the case. In fact, price is entire reason for the litigation. Plaintiffs are suing Sun Maid because they were not awarded the dehydration contract based upon an above market bid. Thus, in this instance, price is not some extraneous issue that need not be alleged in order to find reliance.

Finally, the amended complaint fails to plead facts showing breach. This is because, as before, in the absence of specific terms of the alleged promise, plaintiffs do not explain how Sun-Maid's decision to purchase grapes and dehydration services separately violates the purported agreement. In other words, because the purported promises contain no terms establishing price or quantity, there is no way to confirm whether rejecting plaintiffs' bid was a breach.

Cause of Action no. 6: Intentional Interference with Prospective Economic Relations

Plaintiffs allege that they had an "advantageous economic relationship with other member growers who historically delivered their grapes to Plaintiffs for dehydrating." (SAC, ¶ 107.) They then allege that Sun-Maid somehow interfered with those relationships when it closed the golden pool and told these growers that "Plaintiffs would not have a contract with Defendant for processing and dehydrating grapes into raisins for the 2019 crop year." (*Id.* at ¶ 109.)

Plaintiffs' allegations are insufficient for the reasons previously stated. (See Ten., adopted 1/11/21.) To recap, plaintiffs' allegations are insufficient to show that Sun-Maid interfered with its prospective economic advantage through conduct that is wrongful or actionable independent of the alleged interference. To state a claim for intentional interference with prospective economic advantage, plaintiffs must plead facts showing intentional, independently wrongful acts on Sun-Maid's part "designed to disrupt the relationship" between plaintiffs and the other growers. (*Boland, Inc. v. Rolf C. Hagen Corp*. (2010) 685 F.Supp.2d 1094, 1111 [applying Calif. Law].) Put differently, plaintiffs must plead facts showing that Sun-Maid "engaged in conduct that was wrongful by some legal measure other than the fact of interference itself." (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393.) An act is independently wrongful if it is "proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Boland, Inc. v. Rolf C. Hagen Corp*., *supra,* 685 F.Supp.2d at p. 1111.) Plaintiffs have not met this standard. In fact, plaintiffs have failed to allege any facts suggesting that Sun-Maid's decision to close the golden raisin pool was independently wrongful. And even if plaintiffs were able to show that Sun-Maid breached its contractual obligations (and they do not), such conduct—without more—cannot give rise to an interference claim. (See *e.g., JRS Prods., Inc. v. Matsushita Electric Corp*. (2004) 115 Cal.App.4th 168, 183 ["[A] breach of contract claim cannot be transmuted into tort liability by claiming the breach interfered with the promisee's business."].)

Cause of Action no. 7: Negligent Interference with Prospective Economic Relations

To state a claim for negligent interference with prospective economic relations, plaintiffs must plead facts to show negligent conduct that is "independently wrongful," and "fall[s] outside the boundaries of fair competition." (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1079–80.)

For the reasons stated above, this claim too fails.

Cause of Action no. 11: Breach of Fiduciary Duty

A breach of fiduciary duty claim requires showing: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1149.)

Here, plaintiffs invoke the concept of fiduciary duty, to again argue that Sun-Maid was required to continue operating a golden raisin pool and to accept plaintiffs' golden raisins in 2019. Specifically, plaintiffs allege that the Sun-Maid's Board of Directors was made up exclusively of natural raisin producers who acted in concert to "strip the traditionally more profitable business of Golden raisin production from the minority Golden raisin members," and to re-allocate the profit to themselves. (SAC, ⁋ 142.)

Alternatively, plaintiffs allege that Sun-Maid breached its fiduciary duty by failing "to undergo a reasonable investigation by reviewing its own records and/or seeking out information known by current and former employees relating to the promises made to Plaintiffs." (SAC, ⁋ 142.) In sum, plaintiffs allege that Sun-Maid acted so as to favor the "business desires and needs" of the co-op and the natural raisin producers over those of plaintiffs. (*Id*. at ¶ 147.)

Plaintiffs' allegations are insufficient to overcome the business judgment rule presumption. As previously noted by the court,

> California's business judgment rule does not shield "actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest," but a plaintiff must allege "sufficient facts to establish these exceptions. . . [M]ore is needed than 'conclusory allegations of improper motives and conflict of interest.'" (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1028.) It requires "affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." (*Ibid.*) "Interference with the discretion of directors is not warranted in doubtful cases." (*Id*. at p. 1046.)
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> "California courts [also] require a high degree of specificity with respect to the factual allegations needed to establish a director's unreasonable failure to investigate. Indeed, a plaintiff must plead facts showing that the director's actions would have been proven 'irrational, unsound, or unreasonable' if the director had actually conducted an adequate investigation." (*Scouler & Co., LLC v. Schwartz* (N.D. Cal., Apr. 23, 2012, No. 11-CV-06377 NC) 2012 WL 1502762, at *4 [citing *Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 899].)
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> (See Ten., adopted 1/11/21 at pp 17-18.)

Plaintiffs argue that two exceptions apply to the business judgment rule. First, plaintiffs allege conflict of interest. Again, plaintiffs allege that the Sun-Maid's Board of Directors was made up exclusively of natural raisin producers who acted in concert to "strip the traditionally more profitable business of Golden raisin production from the minority Golden raisin members," and to re-allocate profits to themselves. (SAC, ⁋ 142.) These allegations are insufficient. The only factual allegation offered in support of this point is that the Board, like "the majority" of members, was composed of natural raisin producers. (*Id*. at ¶¶ 139-140.) But again, "more is needed than 'conclusory allegations of improper motives and conflict of interest.'" (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1045.)

In the alternative, plaintiffs allege that Sun-Maid and its Board "failed to undergo a reasonable investigation by reviewing its own records and/or seeking out information known by current and former employees relating to the promises made to Plaintiffs." (SAC, ¶ 142.) These allegations are likewise insufficient. To meet the standard, a plaintiff must plead facts showing that the director's actions would have been proven irrational, unsound, or unreasonable if the director had actually conducted an adequate investigation. (*Scouler & Co., LLC v. Schwartz* (N.D. Cal. Apr. 23, 2012) No. 11-CV-06377 NC, 2012 WL 1502762, at *4 [applying Calif. Law].) Plaintiffs have failed to do so, particularly because plaintiffs allege the decision to close the golden raisin pool made Sun-Maid better off. Plaintiffs also fail to offer any facts to suggest what the Board should have investigated or done, or what that would have changed.

Thus, in the absence of sufficient facts suggesting that the decision to close the golden raisin pool was inconsistent with the organization's best interest, and in the absence of sufficient facts to show a conflict of interest by management, the business judgment rule again precludes plaintiffs' claim for breach of fiduciary duty.

Plaintiffs also argue that whether the business judgment rule applies or not, is a question of fact that should be left to a trier of fact. Plaintiffs miss the mark with this argument. To be clear, the business judgment rule applies *unless* plaintiffs can allege sufficient facts in the complaint to rebut it, and this issue is properly raised at the demurrer stage: as the Court of Appeal explained in *Berg,* "the failure to sufficiently plead facts to rebut the business judgment rule or establish its exceptions may be raised on demurrer, as whether sufficient facts have been so pleaded is a question of law." (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1046; *see also Lee v. Interinsurance Exchange* (1996) 50 Cal.App.4th 694, 711–17 [judgment of dismissal following sustaining of demurrer affirmed on appeal for complaint's failure to plead facts establishing exception to business judgment rule]; *Barnes v. State Farm Mut.* (1993) 16 Cal.App.4th 365, 378–79 [same].)

Finally, plaintiffs argue that Sun Maid's actions were prohibited pursuant to *Jones v. Ahmason* (1969) 1 Cal.3d 93, 108. (SAC, ¶ 140.) However, the duty which is derived from *Jones* "exists only between majority and minority shareholders." (*McCormick v. Fund Am. Companies, Inc*. (9th Cir. 1994) 26 F.3d 869, 884 [apply. Calif. law].) And here, no controlling shareholders are alleged to have been involved. In fact, Sun Maid has no "controlling majority" or "minority" member. Each member is entitled to one vote. (See SAC, Exh. B ¶4.) Sun Maid's Articles and Bylaws do not even create different classes of membership. (See SAC, Exh. B.) This legal theory is therefore inapplicable.

Plaintiffs cite to *Coley v. Eskaton* (2020) 51 Cal.App.5th 943, 953 in an attempt to show that the reasoning articulated in *Ahmason* applies here. It does not. In *Coley,* one entity—the real estate development company—held control of more than 50% of the vote in a non-profit homeowners' association and appointed its own directors to its captive board seats. (*Id.* at p. 949.) The developer then used its majority interest to steal corporate assets, waive the association's attorney-client privilege, and to generally oppress the broad group of minority owners. (*Id.* at 958.) The minority recovered damages against the developer and its employee-directors, not the association—the association was a victim. Here, no single entity owns more than 50%, there are no captive

board seats, and there is no claim against the purported majority shareholder/group—only a lawsuit against Sun-Maid.

Cause of Action no. 12: Unfair Business Practices

In the SAC, plaintiffs allege that Sun-Maid's decision to close the golden raisin pool and to not accept golden raisins in 2019, amounts to a violation of Business and Professions Code section 17200. Specifically, plaintiffs allege that the Sun-Maid's Board violated the statue by conspiring to put the golden raising producers out of business, so that the golden raisin market could be cornered by Sun-Maid itself. (SAC, ¶ 150.)

Sun-Maid demurs. Sun-Maid argues: (1) plaintiffs have not pleaded the elements for an "unlawful" UCL claim; (2) plaintiffs have not pleaded the elements for and "unfair" UCL claim; and (3) plaintiffs have not pleaded the elements for a "fraudulent" UCL claim. Sun-Maid's arguments are compelling.[2]

1. Plaintiffs have not pleaded the elements for an "unlawful" UCL claim

A practice is "unlawful" if it violates a law other than the UCL itself. "A breach of contract, and by extension, a breach of the implied covenant of good faith and fair dealing, is not itself an unlawful act for purposes of the UCL." (*Boland, Inc. v. Rolf C. Hagen Corp., supra,* 685 F.Supp.2d at p. 1110; *Yi v. Circle K Stores, Inc.* (2017) 258 F.Supp.3d 1075, 1087–88 ["contractual duties are not the state or federal law violations that section 17200 concerns"].) The same is true as to alleged breaches of fiduciary duty. (See *Prostar Wireless Grp., LLC v. Domino's Pizza, Inc.* (N.D. Cal. Jan. 6, 2017) No. 3:16-CV-05399-WHO, 2017 WL 67075, at *6.) Further, "actions which are reasonable exercises of business judgment, are not forbidden by law, and fall within the discretion of the directors of a business under the business judgment rule cannot constitute unlawful business practices." (*Lee v. Interinsurance Exch*. (1996) 50 Cal. App. 4th at 713-14.)

Here, plaintiffs again recite a slew of statutes and common-law causes of action, and allege that Sun-Maid violated the UCL by acting: "contrary to the statutory purpose of a cooperative (pursuant to Food & Agric. Code § 54031);" "contrary to the intent of § 54038;" in violation of the Cartwright Act (Bus. and Prof Code Sec. 16700, et. seq.), Robinson-Patman Act, Sherman Act and Clayton Antitrust Act; "unlawfully as a cooperative governed by the California Corporations Code (pursuant to California Food and Agric. Code section 54040);" and "in violation of Corp. Code section 309 by breaching its fiduciary duty." (SAC, ¶ 157.) However, plaintiffs do not plead facts or explain how Sun-Maid violated any of these laws (except for Corp. Code 309 based upon a breach of fiduciary duty theory, which for the reasons explained above is not viable), and none of the statutes are applicable on their face as the court has already ruled. (See Ten., adopted 6/30/20.)

[2] While the SAC alleges that Sun-Maid engaged in "unlawful," "unfair," and "fraudulent" business practices under Business & Professions Code § 17200, plaintiffs have now withdrawn their "fraudulent" UCL claim. (See Opp. at p. 28.) Thus, it will not be addressed.

2. Plaintiffs have not pleaded the elements for an "unfair" UCL claim

The standard for "unfairness" is whether a business practice "threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." (*Cel-Tech v. Los Angeles Cellular* (1999) 20 Cal.4th 163, 187.)

With respect to this "unfairness" prong, plaintiffs plead the same facts as above, as well as add allegations that Sun Maid's executives and directors conspired to put plaintiffs out of business. (SAC ¶¶ 152-153.)

Plaintiffs' allegations are insufficient. To establish a violation of antitrust laws, plaintiffs must identify some harm, or threat to harm, to competition as a result of Sun Maid closing the golden raising pool. (See *Chavez v. Whirlpool Corp*. (2001) 93 Cal.App.4th 363, 375 ["Antitrust laws are designed to prohibit only unreasonable restraints of trade, meaning conduct that unreasonably impairs competition and harms consumers."].) Here, there are no facts showing any harm to consumers or that the alleged conduct impaired competition. And with regard to the conspiracy allegations, such a claim fails as a matter of law. (See *Hoefer v. Fluor Daniel, Inc*. (C.D. Cal. 2000) 92 F.Supp.2d 1055, 1057 [A corporation cannot conspire with its own employees or agents.].)

In opposition, plaintiffs argue that the standard set forth in *Cel-Tech* does not apply. According to plaintiffs, the unfair prong applies to any "unfair business practice" which is why the statute "is intentionally broad to give the court maximum discretion to control whatever new schemes may be contrived, even though they are not yet forbidden by law." (Citing *Nat'l Rural Telecommunications Co-op v. DIRECTV, Inc*. (C.D. Cal. 2003) 319 F.Supp.2d 1059, 1075.) The court does not find this argument compelling. The UCL was intended to apply where there are allegations of unfair competition or harm to consumers. Neither is alleged here.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued by: KCK on 09/23/21.
(Judge's initials) (Date)

(30)

Tentative Ruling

Re: ***Melkonian Enterprises, Inc. v. Sun-Maid Growers of California***
Superior Court Case No. 19CECG03936

Hearing Date: September 24, 2021 (Dept. 403)

Motion: Motion to Compel Furthers, by Plaintiffs

Tentative Ruling:

To deny.

Explanation:

In an effort to overcome the business judgment rule, plaintiffs now seek an order compelling further responses from Sun Maid: (1) to plaintiffs' Request for Production of Documents, Set 4, Request No. 58; and (2) to plaintiffs' Special Interrogatories, Set 2, Interrogatory No. 45.

> Request for production No. 58 seeks "Any DOCUMENTS relating to the calculation and payment of Harry Overly's salary, including bonus and/or other incentive pay from 2018 through the present."
>
> Interrogatory No. 45 asks, "Since 2018, has Harry Overly received any sort of compensation from YOU as an incentive based on profits of Sun Maid."

In opposition, Sun Maid argues that plaintiffs' requests should be denied because the breach of fiduciary duty theory is not viable in the first place, and the information sought is also protected from disclosure under the California Constitution. The court finds Sun Maid's arguments compelling.

Discussion

I. Plaintiffs' Breach of Fiduciary Duty Claim is NOT Viable

A breach of fiduciary duty claim requires showing: (1) the existence of a fiduciary duty; (2) breach of that duty; and (3) damage proximately caused by the breach. (*Jameson v. Desta* (2013) 215 Cal.App.4th 1144, 1149.)

Here, plaintiffs invoke the concept of fiduciary duty, to again argue that Sun-Maid was required to continue operating a golden raisin pool and to accept plaintiffs' golden raisins in 2019. Specifically, plaintiffs allege that the Sun-Maid's Board of Directors was made up exclusively of natural raisin producers who acted in concert to "strip the traditionally more profitable business of Golden raisin production from the minority Golden raisin members," and to re-allocate the profit to themselves. (SAC, ¶ 142.) Alternatively, plaintiffs allege that Sun-Maid breached its fiduciary duty by failing "to undergo a reasonable investigation by reviewing its own records and/or seeking out

information known by current and former employees relating to the promises made to Plaintiffs." (*Id.* at ⁋ 142.) In sum, plaintiffs allege that Sun-Maid acted so as to favor the "business desires and needs" of the co-op and the natural raisin producers over those of plaintiffs. (*Id*. at ¶ 147.)

Plaintiffs' allegations are insufficient to overcome the business judgment rule presumption. As previously noted by the court,

> California's business judgment rule does not shield "actions taken without reasonable inquiry, with improper motives, or as a result of a conflict of interest," but a plaintiff must allege "sufficient facts to establish these exceptions. . . [M]ore is needed than 'conclusory allegations of improper motives and conflict of interest.'" (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1028.) It requires "affirmative allegations of facts which, if proven, would establish fraud, bad faith, overreaching or an unreasonable failure to investigate material facts." (*Ibid.*) "Interference with the discretion of directors is not warranted in doubtful cases." (*Id*. at p. 1046.)
>
> "California courts [also] require a high degree of specificity with respect to the factual allegations needed to establish a director's unreasonable failure to investigate. Indeed, a plaintiff must plead facts showing that the director's actions would have been proven 'irrational, unsound, or unreasonable' if the director had actually conducted an adequate investigation." (*Scouler & Co., LLC v. Schwartz* (N.D. Cal., Apr. 23, 2012, No. 11-CV-06377 NC) 2012 WL 1502762, at *4 [citing *Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 899].)
>
> (See Ten., adopted 1/11/21 at pp. 17-18.)

Plaintiffs argue that two exceptions apply to the business judgment rule. First, plaintiffs allege conflict of interest. Again, plaintiffs allege that the Sun-Maid's Board of Directors was made up exclusively of natural raisin producers who acted in concert to "strip the traditionally more profitable business of Golden raisin production from the minority Golden raisin members," and to re-allocate profits to themselves. (SAC, ⁋ 142.) These allegations are insufficient. The only factual allegation offered in support of this point is that the Board, like "the majority" of members, was composed of natural raisin producers. (*Id*. at ¶¶ 139-140.) But again, "more is needed than 'conclusory allegations of improper motives and conflict of interest.'" (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1045.)

In the alternative, plaintiffs allege that Sun-Maid and its Board "failed to undergo a reasonable investigation by reviewing its own records and/or seeking out information known by current and former employees relating to the promises made to Plaintiffs." (SAC, ¶ 142.) These allegations are likewise insufficient. To meet the standard, a plaintiff must plead facts showing that the director's actions would have been proven irrational, unsound, or unreasonable if the director had actually conducted an adequate investigation. (*Scouler & Co., LLC v. Schwartz* (N.D. Cal. Apr. 23, 2012) No. 11-CV-06377 NC, 2012 WL 1502762, at *4 [applying Calif. Law].) Plaintiffs have failed to do so, particularly because plaintiffs allege the decision to close the golden raisin pool made

Sun-Maid better off. Plaintiffs also fail to offer any facts to suggest what the Board should have investigated or done, or what that would have changed.

Thus, in the absence of sufficient facts suggesting that the decision to close the golden raisin pool was inconsistent with the organization's best interest, and in the absence of sufficient facts to show a conflict of interest by management, the business judgment rule again precludes plaintiffs' claim for breach of fiduciary duty.

Plaintiffs also argue that whether the business judgment rule applies or not, is a question of fact that should be left to a trier of fact. Plaintiffs miss the mark with this argument. To be clear, the business judgment rule applies *unless* plaintiffs can allege sufficient facts in the complaint to rebut it, and this issue is properly raised at the demurrer stage: as the Court of Appeal explained in *Berg,* "the failure to sufficiently plead facts to rebut the business judgment rule or establish its exceptions may be raised on demurrer, as whether sufficient facts have been so pleaded is a question of law." (*Berg & Berg Enterprises, supra,* 178 Cal.App.4th at p. 1046; *see also Lee v. Interinsurance Exchange* (1996) 50 Cal.App.4th 694, 711–17 [judgment of dismissal following sustaining of demurrer affirmed on appeal for complaint's failure to plead facts establishing exception to business judgment rule]; *Barnes v. State Farm Mut.* (1993) 16 Cal.App.4th 365, 378–79 [same].)

Finally, plaintiffs argue that Sun Maid's actions were prohibited pursuant to *Jones v. Ahmason* (1969) 1 Cal.3d 93, 108. (SAC, ¶ 140.) However, the duty which is derived from *Jones* "exists only between majority and minority shareholders." (*McCormick v. Fund Am. Companies, Inc*. (9th Cir. 1994) 26 F.3d 869, 884 [apply. Calif. law].) And here, no controlling shareholders are alleged to have been involved. In fact, Sun Maid has no "controlling majority" or "minority" member. Each member is entitled to one vote. (See SAC, Exh. B ¶4.) Sun Maid's Articles and Bylaws do not even create different classes of membership. (See SAC, Exh. B.) This legal theory is therefore inapplicable.

Plaintiffs cite to *Coley v. Eskaton* (2020) 51 Cal.App.5th 943, 953 in an attempt to show that the reasoning articulated in *Ahmason* applies here. It does not. In *Coley,* one entity—the real estate development company—held control of more than 50% of the vote in a non-profit homeowners' association and appointed its own directors to its captive board seats. (*Id.* at p. 949.) The developer then used its majority interest to steal corporate assets, waive the association's attorney-client privilege, and to generally oppress the broad group of minority owners. (*Id.* at 958.) The minority recovered damages against the developer and its employee-directors, not the association—the association was a victim. Here, no single entity owns more than 50%, there are no captive board seats, and there is no claim against the purported majority shareholder/group—only a lawsuit against Sun-Maid.

II. *The Information Sought is Protected from Disclosure under the California Constitution*

"When compelled disclosure intrudes on constitutionally protected areas, it cannot be justified solely on the ground that it may lead to relevant information." (*Fults v. Superior Court* (1979) 88 Cal.App.3d 899, 904-905, see also *Shelton v. Tucker* (I960) 364 U.S. 479, 483, 485.) In *Williams v. Superior Court* (2017) 3 Cal.5th 531, the High Court

affirmed the test for evaluating potential invasions of privacy (as expressed in *Hill v. National Collegiate* (1994) 7 Cal.4th 1). In sum, the *Williams* Court ruled that the party asserting a privacy right must establish a legally protected privacy interest, an objectively reasonable expectation of privacy in the given circumstances, and a threatened intrusion that is serious. (*Hill, supra,* 7 Cal.4th at pp. 35–37; see also *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 338.) The party seeking information may raise in response whatever legitimate and important countervailing interests disclosure serves, while the party seeking protection may identify feasible alternatives that serve the same interests or protective measures that would diminish the loss of privacy. A court must then balance these competing considerations. (*Id*. at pp. 37–40; see *Williams, supra,* 3 Cal.5th at 555.)

Here, plaintiffs argue that they are entitled to the information that they seek because California maintains an extremely liberal discovery standard and information sought is reasonably calculated to lead to the discovery of admissible evidence. This argument is not compelling, primarily because plaintiffs seek private information. (See *City of Carmel-by-the-Sea v. Young* (1970) 2 Cal.3d 259, 268 [A right of privacy exists as to a party's confidential financial affairs, even when the information sought is admittedly relevant to the litigation.]; *Fortunato v. Sup.Ct.* (2003) 114 Cal.App.4th 475, 480-481 [same]; see also *Valley Bank of Nevada v. Sup.Ct.* (1975) 15 Cal.3d 652, 658 [the confidential financial affairs of third persons (nonparties) are also entitled to privacy protection].)

Under the analysis applicable to private information, plaintiffs fail to make an adequate showing. Since plaintiffs' breach of fiduciary duty claim fails, there is no legitimate or important countervailing interests which disclosure would serve. And reaching into Overly's private affairs in the hopes of finding supporting facts is not sufficient.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued by: KCK on 09/23/21.
(Judge's initials) (Date)