

2ND CIVIL NO. A126539
SFSC CASE NO. CGC 07-463516

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FIVE

UNITED FARMERS AGENTS ASSOCIATION, INC.,

Plaintiff/Appellant,

v.

FARMERS GROUP, INC., ET AL.,

Defendants/Respondents

Appeal from the Superior Court of the County of San Francisco,
State of California
Hon. Paul H. Alvarado, Presiding
Hon. Patrick J. Mahoney, Presiding
Hon. Charlotte W. Woolard, Presiding
Case No. CGC 07-463516

RESPONDENTS' BRIEF

BARGER & WOLEN LLP
Royal F. Oakes (080480)
Richard B. Hopkins, II (190108)
633 West Fifth Street, 47th Floor
Los Angeles, California 90071
Telephone: (213) 680-2800

DOWLING, AARON & KEELER, INC.
Jeffrey P. Davis (166484)
8080 N. Palm, Third Floor
Fresno, California 93711
Telephone: (559) 432-4500

*Attorneys for Respondents
Farmers Group, Inc., Farmers Insurance
Exchange, Truck Insurance Exchange, Fire
Insurance Exchange, Mid-Century Insurance
Company and Farmers New World Life Insurance
Company*

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(California Rules of Court, Rule 8.208)

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Farmers Group, Inc. (Farmers Group, Inc. is a wholly owned indirect subsidiary of Zurich Financial Services Ltd., which is publicly traded on the Swiss Stock Exchange)

Farmers Insurance Exchange

Truck Insurance Exchange

Fire Insurance Exchange

Mid-Century Insurance Company

Farmers New World Life Insurance Company

Dated: April 22, 2010

BARGER & WOLEN LLP

By: Royal F. Oakes

ROYAL F. OAKES

RICHARD B. HOPKINS, II

Attorneys for Respondents

Farmers Insurance Exchange, Truck

Insurance Exchange, Fire Insurance

Exchange, Mid-Century Insurance

Company and Farmers New World Life

Insurance Company

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1. INTRODUCTION

UFAA's¹ appeal seeks to reject reality. The undeniable facts are that UFAA sued in 1992 and 2000 claiming its members were damaged by a breach of contract; that the causes of action at stake thus accrued in those years, if not before; that a four-year statute of limitations applies, because the "gist" of UFAA's declaratory relief counts is that a defendant breached a written contract; that the stale claims asserted in the dismissed 1992 and 2000 lawsuits were re-asserted by UFAA in the pending action, filed in 2007; and that three law and motion judges, hearing a total of three demurrers and a motion for judgment on the pleadings, unanimously came to the same conclusion: Each count in UFAA's 2007 complaint should be dismissed with prejudice for violation of the statute of limitations.

UFAA's only response to these facts is to further reject reality by advancing a patently false premise, namely, the notion that where an association files an action in its representative capacity, and thus did not experience damages itself, the statute of limitations governing a breach of contract count (and a declaratory relief count whose gist is a breach of contract) cannot apply to such an action. Not surprisingly, no reported case comes close to endorsing UFAA's theory, because the question of whether an element of a count has accrued as to the representative association is entirely irrelevant. Of course UFAA was not damaged – neither did UFAA perform contractual obligations, or experience a breach of an agreement to which it was a party. *UFAA's members allegedly experienced all required elements, however, and UFAA's rights are derivative of the rights of its members.* Once this reality is recognized – as it was by three law and

¹ Plaintiff and Appellant United Farmers Agents Association, Inc. will be referred to as "UFAA."

motion judges in the San Francisco Superior Court in this action – this case falls squarely under the general rule established in *Maguire v. Hibernia Sav. & L. Soc.*, 23 Cal. 2d 719, 733 (1944): A party who advances a claim for declaratory relief may not do so where the essence or gist of the claim is that the defendant committed a breach of contract, and where the declaratory relief count was filed beyond the four-year limitations period governing written breach of contract claims.

Here, the gist of the declaratory relief claim is that Respondents² breached the agents' contract, as asserted by UFAA in actions filed in 1992 and 2000, long before UFAA's reassertion of the identical arguments in its 2007 lawsuit. Indeed, UFAA concedes as much by repeatedly including the phrase "breach of contract" in each succeeding iteration of the complaint in the 2007 action, including the final version, which the trial court properly dismissed.

There is an excellent reason why no reported case has come close to holding the statute of limitations is inapplicable to a representative action filed by an association on behalf of its members: *By its own admission, UFAA's only rights are derivative of its members, who did have the right, when UFAA filed its 1992 and 2000 actions, to allege a breach of contract, and seek damages.* But for the rights of its member agents who entered into contracts with Respondents, UFAA would have no right to assert standing on any ground. Thus, to the extent UFAA's members were entitled to claim a breach of contract, UFAA filed its Texas litigation in 1992. Then, in 2007 UFAA advanced the identical argument in its first

² Defendants and Respondents Farmers Group, Inc., Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company and Farmers New World Life Insurance Company will be referred to as "Respondents."

cause of action. Likewise, UFAA filed an action in Alameda County Superior Court in 2000 and brought the identical claims found in the second through fifth causes of action in this, the 2007 case. UFAA claims to stand in the shoes of its members, as it must, to have any aspiration to standing; because UFAA thus seeks to derive its rights from parties unquestionably entitled to assert a breach of contract, the attempt by UFAA to circumvent the statute of limitations, by recasting those breaches of contract as declaratory relief counts whose essence is identical to a breach of contract, is improper.

UFAA cannot dispute that but for the agents' rights to sue on their own for breach of contract, UFAA would not be entitled to assert, as it does in its 2007 action, that Respondents' actions amount to a breach of contract. Instead, UFAA focuses, without justification, on *one* element of a breach of contract it says it could never assert on its own (damages), and claims that its inability to assert *that* element means the breach of contract cause of action thus never accrued as to UFAA.

In fact, there is nothing unique about the damages element of a breach of contract claim. *None of the elements of the breach of contract count could be asserted by UFAA, absent its right, courtesy of the doctrine of associational standing, to sue on behalf of its members.* UFAA's right to assert a breach is purely derivative of its members' rights to make that claim. Similarly, UFAA's right to assert the existence of *damages* is *also* derivative of its members' rights.

Finally, UFAA's insistence that its 1992 Texas lawsuit and 2000 Alameda Superior Court lawsuit have no collateral estoppel effect is a straw man argument. Respondents do not claim the *dismissal* of these prior

claims means the doctrines of collateral estoppel or res judicata bar their re-litigation. Instead, Respondents contend the *filing* of those suits, 18 and 10 years ago, is irrefutable proof that the cause of action in question accrued in 1992 and 2000, if not earlier, such that the re-filing of the identical claims in 2007 was time-barred.

Accordingly, Respondents urge this Court to affirm the trial court rulings dismissing, with prejudice, UFAA's 2007 Complaint.

2. PROCEDURAL HISTORY AND STATEMENT OF FACTS

A. The Trial Court Properly Granted Respondents' Demurrers To UFAA's Second Through Fifth Causes Of Action Because They Were Previously Asserted In The Alameda County Superior Court In 2000

On October 2, 2000, UFAA filed an action captioned *United Farmers Agents Association, Inc., et al. v. Farmers Insurance Exchange, Truck Insurance Exchange, Fire Insurance Exchange, Mid-Century Insurance Company and Farmers New World Life Insurance Company*, Superior Court of the State of California, for the County of Alameda, Case No. 831564-7 ("2000 Complaint"). Respondents' Appendix ("RA") at 5-18. The 2000 Complaint was dismissed on January 2, 2007 by order of the Honorable Stephen Dombink, pursuant to California Code of Civil Procedure Section 583.320. RA at 50-53. On May 18, 2007, UFAA filed

the Complaint for Declaratory Relief in the instant action (“2007 Complaint”).³

Both the 2000 Complaint and the 2007 Complaint were filed by UFAA against Respondents. Both the 2000 Complaint and the 2007 Complaint purport to be lawsuits based on “associational standing,” pursuant to which UFAA seeks declaratory relief with respect to several issues of contract interpretation regarding an Agent Appointment Agreement entered into by Respondents and their independent contractor insurance agents. Although not identical in wording, the vast majority of the allegations in the two actions are indistinguishable, and as to a substantial number of the allegations, the wording of the complaints is in fact identical.

The 2000 Complaint and the 2007 Complaint are each based on the claim that Respondents attempt to impose “improper” or “erroneous” contract interpretations on their agents. RA at 16; Appellants’ Appendix (“AA”) at 53. Most of the causes of action in the 2007 Complaint are substantially identical to the causes of action contained in the 2000 Complaint. The headings that appear under the numbered causes of action in the two lawsuits are, by and large, identical. For example:

- The second cause of action in the 2007 Complaint and the first cause of action in the 2000 Complaint are described identically, as “Demanding a ‘roll-over’ of previously rejected business.” AA at 35; RA at 37.
- The third cause of action in the 2007 Complaint and the second cause of action in the 2000 Complaint are described

³ Unless otherwise indicated, references to the various actions filed by UFAA will relate to the operative complaints in each case.

identically, as “Demanding that agents sell insurance products not underwritten by Farmers.” AA at 37; RA at 38.

- The fourth cause of action in the 2007 Complaint and the third as well as fourth causes of action in the 2000 Complaint are described identically, as “Pressuring agents to market and sell financial products.” AA at 38; RA at 39.
- The fifth cause of action in the 2007 Complaint and the fifth cause of action in the 2000 Complaint are described identically, as “Demanding that agents reject policyholders who are not eligible for Farmers products.” AA at 39; RA at 40.

In fact, UFAA conceded in its “Brief of Appellant,” at page 11, that the 2000 Complaint was “directed to the same essential claims” found in the second through fifth causes of action in the 2007 Complaint.

On January 31, 2008, the trial court sustained Respondents’ demurrer to the second through fifth causes of action on the basis that they were barred by the statute of limitations, as UFAA raised the identical claims in the 2000 Complaint. Despite the trial court’s belief that UFAA could not “effectively amend,” the Court, “out of an abundance of caution, and really for that reason and only that reason,” gave UFAA a chance to amend its second through fifth causes of action. RA at 62.

On March 27, 2008, UFAA filed its Amended Complaint in this action. The Amended Complaint is virtually identical to the original complaint, except for the additional claim that Respondents’ purportedly improper conduct continued into 2007. AA at 36-38.

These new allegations were made in support of UFAA's second through fourth causes of action against Respondents. However, these new "facts" were nothing more than assertions that Respondents continued to interpret the Agent Appointment Agreement in the same manner, before and after the filing of the 2000 Complaint. There were no new allegations in support of UFAA's fifth cause of action.

Finally, UFAA filed its Second Amended Complaint in the 2007 action, excising some language from the original 2007 Complaint that characterized Respondents' conduct as a "breach of contract" or "breach of the implied covenant of good faith and fair dealing." Instead, UFAA alleged in its Second Amended Complaint that Respondents' conduct was an "improper interpretation of the contract." AA at 53.

Respondents, however, asserted in their demurrer that UFAA was not entitled to ignore the inherent nature of its allegations, which consisted, as explicitly stated in the original 2007 Complaint, of asserting a breach of contract. "A plaintiff may not avoid a demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the original complaint or by suppressing facts which prove the pleaded facts false." *State ex rel. Metz v. CCC Information Services*, 149 Cal. App. 4th 402, 412 (2007) (citations omitted).

The trial court agreed and sustained, without leave to amend, Respondents' demurrer to UFAA's second through fifth causes of action.

B. The Trial Court Properly Granted Respondents' Motion For Judgment On The Pleadings And Demurrer As To UFAA's First Cause Of Action Because It Was A Rehash Of Claims Asserted By UFAA In 1992

Following the dismissal by the trial court of UFAA's second through fifth causes of action, only the Deteriorating Agency Rehabilitation Guidelines ("DARG") cause of action remained in the case. Respondents then filed a motion for judgment on the pleadings as to this remaining cause of action. RA at 65-79.

Respondents' motion argued that the DARG count in the 2007 Complaint was virtually identical to the claim UFAA filed, on behalf of its members, against Respondents in 1992 in the United States District Court, Western District of Texas, Austin Division Case No. A 92 CA 373, entitled *United Farmers Agents Association v. Farmers Insurance Exchange, et al.* ("1992 Complaint"). RA at 119.⁴

A side-by-side comparison of the DARG counts contained in the 2007 Complaint, and the 1992 Complaint, reveals the more recent action is simply a rehash of the earlier suit. At paragraphs 26-33 of the 2007 Complaint, and at paragraphs 38 and 46 of the 1992 Complaint, UFAA asserted DARG pressured agents to increase Defendants' profits. The language used in the two actions, filed fifteen years apart, was strikingly similar:

⁴ After a motion for summary judgment was filed by Respondents in the 1992 Action, the District Court dismissed these claims in 1995. RA 203-04.

--- DARG “contradicts” the terms of the Agent Appointment Agreement (2007 Complaint, para. 31; AA at 60); and is “in contravention of” the terms of the Agent Appointment Agreement (1992 Complaint, para. 38; RA at 135).

--- DARG unjustifiably imposed requirements regarding underwriting profit levels (2007 Complaint, para. 32; AA at 61); and regarding “unfavorable underwriting trends” (1992 Complaint, para. 38; RA at 135).

--- DARG imposed targets for “levels” of sales of policies (2007 Complaint, para. 31; AA at 60); (1992 Complaint, para. 38; RA at 135).

--- The failure to satisfy DARG requirements would lead to an agent’s termination (2007 Complaint, paragraph 27; AA at 59); (1992 Complaint, paragraph 38; RA at 135).

--- DARG imposed requirements on the number of “policies-in-force” (2007 Complaint, paragraph 29; AA at 60); (1992 Complaint, paragraph 38; RA at 135).

--- The Agent Appointment Agreement states that customer solicitation decisions “are solely upon the agents’ discretion” (2007 Complaint, para. 31; AA at 60); and the volume of production “rests solely upon the agent” (1992 Complaint, para. 38; RA at 135).

--- Finally – and tellingly, given UFAA’s peculiar assertion that it is somehow incapable of raising the issue of breach of contract given its inability to suffer damages – a breach of contract was expressly alleged by

UFAA in both actions: “The imposition of detailed performance levels through . . . the DARG program is a breach of the contract” (2007 Complaint, para. 33; AA at 61); and “Imposing new production requirements on the agents . . . constitutes a breach of the Agreement by Farmers” (1992 Complaint, para. 46; RA at 137). The prayer of the 1992 Complaint expressly sought relief in the form of an order “Determining . . . that . . . Farmers has breached the Agent Appointment Agreement of Plaintiff’s members.” (1992 Complaint, prayer, para. 12; RA at 141.)

Given the substantial similarity between the DARG counts in the 1992 and 2007 Complaints, it is not surprising UFAA conceded in its “Brief of Appellant” at page 9, that the 1992 DARG count “is analogous to the [DARG] Cause of Action in this [the 2007] case.”

Based on its determination that UFAA had asserted nearly identical claims against Respondents in the 1992 Complaint, the trial court in the 2007 lawsuit granted with leave to amend, Respondents’ motion for judgment on the pleadings, and thereafter sustained without leave to amend, Respondents’ demurrer, dismissing UFAA’s remaining cause of action. AA at 8.

C. The Trial Court Thus Dismissed UFAA’s Entire Action On The Identical Statute Of Limitations Grounds, By Means Of Three Demurrer Rulings And One Ruling On A Motion For Judgment On The Pleadings

The attempt by UFAA to re-litigate stale claims in the 2007 Complaint was rejected four times, by three judges. Two demurrers were granted as to the second through fifth causes of action – one with leave, and one without leave to amend; and as to the first (DARG) count, a motion for

judgment on the pleadings was granted with leave to amend, and following UFAA's filing of a Second Amended Complaint containing a revised DARG count, a demurrer as to that final remaining count was sustained without leave to amend:

--- On January 31, 2008 the Honorable Patrick J. Mahoney sustained Respondents' demurrer with leave to amend, on statute of limitations grounds. RA at 64.

--- On June 13, 2008, the Honorable Paul H. Alvarado sustained Respondents' demurrer without leave to amend, on statute of limitations grounds. AA at 10.

--- On March 27, 2009 the Honorable Charlotte W. Woolard granted Respondents' Motion for Judgment on the Pleadings as to the DARG (first) count with leave to amend, on statute of limitations grounds. RA at 80.

--- On June 5, 2009 the Honorable Charlotte W. Woolard sustained Respondents' demurrer to the amended DARG (first) count without leave to amend, on statute of limitations grounds. AA at 8.

3. THE TRIAL COURT PROPERLY DISMISSED UFAA'S COMPLAINT BECAUSE ALL OF ITS CAUSES OF ACTION WERE PREMISED ON TIME-BARRED BREACH OF CONTRACT CLAIMS

A. The 1992, 2000 and 2007 Actions Are Premised On Alleged Breaches of Contract

In its opening brief, UFAA argues that Respondents have not breached any contract, but that UFAA merely seeks in this action “a proper interpretation of those contracts.” Brief of Appellant at p. 16. Based on this erroneous premise, UFAA contends that the statute of limitations for contract claims is inapplicable to its causes of action, as the 2007 Complaint seeks no relief for an actual breach, but only prospective relief to govern the interpretation of the Agent Appointment Agreement.

UFAA’s reasoning is flawed, and lacks any applicable legal authority. UFAA’s pleading does not protect its declaratory relief causes of action from the limitations period for contract claims. Indeed, UFAA asserts in the 2007 Complaint that “The imposition of detailed performance levels through a device such as the DARG program is a *breach of the contract.*” AA at 61. (Emphasis added.) Moreover, on UFAA’s own website, UFAA described its first cause of action as seeking a ruling that the utilization of DARG is a breach of the Agent Appointment Agreement:

First Cause of Action: That the management company (FGI) has developed the DARG Program as a management tool to pressure agents toward increased production, with

particular emphasis on life insurance sales. *We are asking the court to find the imposition of detailed performance levels coupled with the threat of termination a breach of the AAA.*

(Emphasis added.) RA at 207.

Accordingly, regardless of how UFAA tried to recharacterize its claims, UFAA's declaratory relief causes of action were indisputably based in contract, and were therefore governed by the applicable four-year statute of limitations period for contract claims.

Indeed, the Ninth Circuit Court of Appeals, citing the United States Supreme Court, has held that it is improper for a plaintiff to attempt to escape the applicable statute of limitations merely by relabeling its claim as one for declaratory relief:

To prevent plaintiffs from making a mockery of the statute of limitations by the simple expedient of creative labeling -- styling an action as one for declaratory relief rather than for damages -- courts must necessarily focus upon the substance of an asserted claim as opposed to its form. It is settled, therefore, that where legal and equitable claims coexist, equitable remedies will be withheld if an applicable statute of limitations bars the concurrent legal remedy.

Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 688 (9th Cir. 1993), citing *Gilbert v. City of Cambridge*, 932 F.2d 51, 57-58 (1st Cir. 1991) (citing

Cope v. Anderson, 331 U.S. 461, 464, 67 S. Ct. 1340, 3141, 91 L. Ed. 1602 (1947), and *Russell v. Todd*, 309 U.S. 280, 289, 60 S. Ct. 527, 532, 84 L. Ed. 754 (1940)).

UFAA cites *Meyer v. Sprint Spectrum, L.P.*, 45 Cal. 4th 634 (2009) for the idea that a declaratory relief action need not assert a breach of contract, so long as it presents an “actual controversy.” This holding is of no assistance to UFAA, because UFAA explicitly injected the issue of breach of contract in each of its lawsuits against Respondents, and asserted that its member agents in fact have experienced each element of a breach of contract count – including damages – thus making it appropriate to apply the holding in *Maguire*, namely, that the limitations period applicable to the gist of the relief sought in a declaratory relief suit should govern.

Respondents do not dispute that declaratory relief may be appropriate to resolve controversies in the absence of an actual breach; however, that hardly leads to UFAA’s conclusion, that the Court should disregard the statute of limitations applicable to a declaratory relief count that is in fact based on a breach of contract.

Therefore, the four-year statute of limitations period precludes re-litigation, by means of the 2007 Complaint, of matters that were included in the 1992 or 2000 actions. These identical claims are time-barred and the trial court appropriately dismissed these claims.

The trial court properly rejected the idea that UFAA is free to re-file identical lawsuits again and again, decade after decade. The 2007 action was dismissed because, in filing a lawsuit, a plaintiff necessarily asserts that as of the date of that Complaint, the causes of action therein have accrued.

B. UFAA's Assertion That The Statute Of Limitations Has Not Run Because UFAA Cannot Assert Damages Contradicts UFAA's Own Allegations

In an attempt to avoid the conclusion that its claims are governed by a four-year statute of limitations period, UFAA argues that (1) UFAA is not a party to any agreement with Respondents (Brief of Appellant at p. 12) and (2) that "no breach of contract has ever accrued." Brief of Appellant at p. 1. These arguments conflict with UFAA's own factual allegations.

In the 1992 Complaint, UFAA expressly alleged that the utilization of DARG was a breach of the Agent Appointment Agreement. Specifically, UFAA argued in the 1992 Complaint that DARG constituted "a breach of the Agreement by Farmers" (RA at 137), and itself sought relief in the prayer of the 1992 Complaint in the form of a declaration that "Farmers has breached the Agent Appointment Agreement of [UFAA's] members." RA at 141.

Moreover, in the 2007 Complaint, UFAA also asserted that "The imposition of detailed performance levels through a device such as the DARG program is a *breach of the contract*." AA at 35. (Emphasis added.) Accordingly, since 1992 UFAA has argued that the utilization of DARG constitutes not a mere theoretical problem to its members, but an actual breach of contract.

C. The Fact UFAA's Rights Are Entirely Derivative Of The Rights Of Its Members Renders Irrelevant The Question Of Whether UFAA Experienced Damage, Or A Breach, Or Any Other Element Of the Breach Of Contract Count

UFAA's appeal is based on the flawed premise that as long as it, as an association, has not suffered any damages, it may re-file the same lawsuit against Respondents, year after year, decade after decade. This is simply not true.

UFAA brings this action based on the doctrine of associational standing. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members of the lawsuit." *Hunt v. Washington Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). Accordingly, based on the associational standing doctrine, the first requirement for UFAA to bring this action (or the 1992 or 2000 actions) is that its members would otherwise have standing to sue in their own right. UFAA's claims, therefore, are completely derivative of the rights of its members.

UFAA's appeal is based on its argument that its cause of action never accrued because *it* has never been harmed. However, because UFAA may only sue by standing in the shoes of its members, its claims are completely derivative of the claims of its members. Courts have repeatedly held that in such derivative actions, the plaintiff is subject to the same defenses as could be raised against those the plaintiff purports to represent. *See Travelers Casualty & Surety Co. v. American Equity Ins. Co.* 93 Cal.

App. 4th 1142, 1151-52 (2001) (purely derivative equitable subrogation claim subject to the same defenses that could be asserted against the insured). Likewise in analogous representative class actions, a prerequisite to the representation of absent third parties is that the same statute of limitations period must be applied to the claims of all parties, absent and present. *See Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429 (2000) (community of interest requirement requires that class representative have the claims or defenses typical of the class).

UFAA advances a claim, without benefit of any decisional law, that because an organization that purports to be representing the interests of its members cannot itself suffer damages, the imposition of a clearly applicable statute of limitations should somehow vanish. The flaw in UFAA's position is laid bare by examining the very nature of the cause of action it advances on behalf of its member agents: A count for breach of contract requires assertion of a contract between the defendant *and the plaintiff*; performance *by the plaintiff*; breach by defendant of a contract *with the plaintiff*; and damage *to the plaintiff*. In other words, all four required elements – not simply the requirement of damages – involve a plaintiff who is a party to the contract.

UFAA, however, as a non-party to the contract asserting associational standing, has no greater claim to *any* of the elements of the breach of contract count than it does to the damages element. With respect to every element, its rights are derivative – it has no rights whatsoever but for the experiences of its agents. As a result, it was not surprising that three law and motion judges found that *Maguire v. Hibernia Sav. & L. Soc.*, 23 Cal. 2d 719, 733 (1944) barred the re-litigation of this action, given the fact

it amounts to a reassertion of claims advanced in the 1992 and 2000 lawsuits.

The holding of *Maguire* thus applies to bar UFAA's 2007 Complaint, given the concession by UFAA in each version of the Complaint filed in that action, that on behalf of its members the association is asserting a breach of contract.

Nothing in *Maguire* suggests there is any validity to the notion that where an association's status as a non-party to a contract makes it incapable of experiencing damages itself, the rule of *Maguire* is inapplicable. In fact, the public policy reasons underlying a statute of limitations apply with equal force whether the plaintiff is capable of asserting a breach of contract on its own, or asserting it on behalf of its members, by the vehicle of associational standing. UFAA's rehash of the precise claims it advanced in 1992 and 2000 presents the classic case for enforcing a statute of limitations as to stale claims: Memories fade; witnesses become unavailable; and documents drift into musty, inaccessible corners of storage facilities. UFAA's action is thus a thinly-veiled attempt to relitigate claims barred by the applicable limitations period. The basis on which UFAA sued in 1992 was the purported breach of contract experienced by Respondents' agents; the basis on which UFAA sued in 2000 was the identical alleged conduct. Any claim UFAA has to a right to file a representative action flows from the rights of its members, and UFAA has expressly alleged those members were damaged, and that all elements of a breach of contract accrued as to those agents.

UFAA's reliance on cases suggesting the *Maguire* rule applies only where the breach of contract count has accrued are irrelevant, because

those cases have nothing to do with the doctrine of associational standing, which is the only basis on which UFAA has a claim to standing in this matter. The cases UFAA cites merely state the obvious, namely, that in order for a cause of action to be barred by the statute of limitations, it must have accrued. None of the cases hold that because an association is purporting to assert its members' rights, it is somehow exempt from *Maguire's* rule governing the operation of limitations periods generally.

In sum, the public policy justifications for imposing the statute of limitations against 1992 and 2000 claims apply with equal force, whether the allegations in question are being advanced by an association, or its members. That association cannot pretend its (alleged) standing does not derive from agents who were parties to the contract and thus entitled to advance a count for breach of contract.

D. UFAA Is Not Saved From Application Of The Statute Of Limitations By Virtue Of Respondents' Questioning of UFAA's Standing And Damages

UFAA claims that because Respondents have asserted UFAA lacks standing to bring this action, and because the 2003 reversal by the Court of Appeal of the trial court's grant of Respondents' motion for summary judgment stated an "actual controversy" can exist even without UFAA being a party to the agents' contracts, the applicable statute of limitations somehow should not govern UFAA's action.

In fact, the disposition of Respondents' motion for summary judgment in 2003 has absolutely no impact on the question of whether UFAA's *2007 action* is time-barred. The issue at stake in the summary judgment motion was extremely narrow: Did the fact UFAA was not a

signatory to the agents' contracts, in and of itself, prevent UFAA from pursuing its 2000 Complaint? The trial court said yes; the Court of Appeal said no, observing that theoretically, pursuant to associational standing principles there can be an "actual controversy" even though UFAA is not a party to the contract. *The fact a lawsuit theoretically has a right to proceed is in no way a referendum on whether it violates the applicable statute of limitations, an issue completely absent from the 2000 action.* Obviously, the Court of Appeal was not purporting to address the question, in 2003, of whether a 2007 action by UFAA, raising stale claims first asserted in 1992 and 2000, should be barred by the applicable limitations period pursuant to *Maguire*.

UFAA also argues that to the extent Respondents have questioned UFAA's standing, and suggested UFAA has not suffered damages, these positions undermine the applicability of the statute of limitations. UFAA's claims have no basis. The fact Respondents have consistently maintained that UFAA fails the associational standing test is no basis for finding the applicable limitations period should not govern. If this case were to be remanded to the trial court and discovery were to proceed, Respondents are confident the facts would establish that because participation of UFAA's members is necessary to the pursuit of this action, the suit fails at least one of the three tests for associational standing set forth in *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977) (where individualized proof is required to establish liability in a representative action, associational standing is lacking). That issue has not been addressed, however, and UFAA alleges it does have associational standing. *If* UFAA has standing, its efforts to rehash in 2007 the same arguments it raised in 1992 and 2000 are time-barred.

UFAA also claims that because Respondents have denied UFAA has suffered damages, the statute of limitations is inapplicable. UFAA cites, as though it were a smoking gun, Respondents' "admission" in their answer to the 2007 Complaint that UFAA has not suffered damages. The idea of a defendant asserting in its answer that a plaintiff has not suffered damages is hardly ground-breaking. Had UFAA's association members – certain of Respondents' agents – filed an action containing the identical arguments set forth in UFAA's Complaints, Respondents would have responded in the same way – that the agents are wrong in their view of the parties' duties and rights under the contract, and thus no damages have been inflicted. The fact a defendant predictably denies it has caused damages in no way exempts UFAA from the operation of an applicable statute of limitations.

E. UFAA's Argument That The 1992 And 2000 Complaints Were Not Dismissed On The Merits Is A Straw Man – Respondents Only Argue The Filing Of Those Actions Shows A Violation Of The Limitations Period, Not That UFAA's Claims Are Barred By Collateral Estoppel

UFAA asserts that because the 1992 Texas litigation and 2000 Alameda actions were dismissed without prejudice, Respondents therefore cannot claim the doctrine of collateral estoppel bars the filing of the 2007 Complaint. Of course, Respondents have never suggested collateral estoppel is relevant to this case. It is the filing of the 1992 and 2000 actions, containing allegations identical to the contentions in the 2007 lawsuit, that supports dismissal of the new suit on statute of limitations grounds. Collateral estoppel is not pertinent.

F. To The Extent UFAA Is Contending The DARG Allegations In The 1992 Complaint Were Actually Related To Illegal Tying Issues, And Not The DARG Program, UFAA Is Wrong

UFAA's Brief of Appellant is not entirely clear on the relationship of the DARG allegations in the 1992 Complaint to the "illegal tying" allegations in that action. To the extent UFAA is attempting to argue that the DARG allegations in reality were part and parcel of the tying claims and thus are distinct from the DARG claims asserted in the 2007 Complaint, that assertion lacks merit. The Magistrate in that action specifically found that the DARG-related claims were unrelated to the tying claims:

The Complaints made by UFAA with regard to the Agency Appointment Agreement have nothing to do with any of the other alleged illegal activities by Farmers. Many of the Complaints deal specifically with interpretation of the Agency Appointment Agreement with regard to termination of an agent, specifically whether Farmers can terminate an agent because the agent has fallen below a certain profit level. RN at 188.

This is the exact claim brought by UFAA in the present action.

G. UFAA's Assertion That The Filing Of A Declaratory Relief Action Does Not Trigger The Running Of A Statute Of Limitations Is Without Merit

UFAA also argues that the filing of a declaratory judgment action does not trigger a statute of limitations. In support of this notion, UFAA cites *Martin v. Henderson*, 40 Cal. 2d 583, 592 (1953). *Martin* does not express such a view – it simply observes that not every action for declaratory relief will set in motion a statute of limitations -- but the case is important, as it contains language confirming that *Maguire* requires the application, to a declaratory relief action, of the limitations period governing the underlying contract dispute. *Martin* states at page 593:

[T]he availability of such an action would in no way affect the period of limitations commencing upon the department's breach of its obligation to pay for accumulated overtime. As stated in *Maguire v. Hibernia Sav. & L. Soc.*, 23 Cal.2d 719 [146 P.2d 673, 151 A.L.R. 1062], "the period of limitations applicable to ordinary actions at law and suits in equity should be applied in like manner to actions for declaratory relief."

Thus, to the extent a breach of an obligation is alleged – and UFAA unquestionably alleged, in its 1992 Complaint in Texas, its 2000 Complaint before the Alameda County Superior Court, and in the instant case in 2007, that Respondents' alleged conduct was "a breach of contract" – California law is clear that the statute of limitations applicable to a count

for breach of written contract applies to a declaratory relief action asserting such a breach occurred.

H. UFAA's Assertion That The Filing And Dismissal Of An Action Without Prejudice Cannot Justify Applying A Limitations Period Is Without Merit

Finally, UFAA cites *Wood v. Elling*, 20 Cal. 3d 353, 359-60 (1977) for the proposition that the filing and dismissal of an action without prejudice has no impact whatsoever on the operation of a statute of limitations. In fact, *Wood* does not stand for the proposition urged by UFAA, that a plaintiff may simply file multiple actions, dismiss them without prejudice and pretend the actions were never filed. To the contrary, *Wood* held that the plaintiff's claims in that action *were* time-barred because the mere filing of a prior action did not toll the statute of limitations. The *Wood* court held that once the first action is dismissed without prejudice, the pertinent statute of limitations is *restored* as if no action had been brought: "In the absence of a statute, a party cannot deduct from the period of the statute of limitations applicable to his case the time consumed by the pendency of an action in which he sought to have the matter adjudicated, but which was dismissed without prejudice to him" (Citation omitted.) *Id.* at 359.

4. CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Court affirm the trial court's rulings and find that UFAA's claims are time-barred.

Respectfully submitted,

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BARGER & WOLEN LLP

By: Royal F. Oakes
ROYAL F. OAKES
RICHARD B. HOPKINS, II
Attorneys for Respondents
Farmers Insurance Exchange,
Truck Insurance Exchange, Fire
Insurance Exchange, Mid-Century
Insurance Company and Farmers
New World Life Insurance
Company

DOWLING, AARON & KEELER, INC.
Jeffrey P. Davis