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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

CRAIG STREIT, et al., Plaintiffs and Appellants, v. FARMERS GROUP, INC., et al., Defendants and Respondents.	B231285 (Los Angeles County Super. Ct. No. BC434852)

APPEAL from a judgment of the Superior Court of Los Angeles County. William F. Highberger, Judge. Affirmed in part, reversed in part and remanded for further proceedings.

Eppsteiner & Fiorica, Stuart M. Eppsteiner and Andrew P. Fiorica; The Kralowec Law Group, Kimberly A. Kralowec and Elizabeth I. Newman for Plaintiffs and Appellants.

Consumer Watchdog, Harvey Rosenfield and Pamela Pressley as Amicus Curiae for Plaintiffs and Appellants.

United Policyholders and Amy Bach; Kerr & Wagstaffe, Ivo Labar and Maria Radwick as Amicus Curiae for Plaintiffs and Appellants.

Locke Lord, Stephen A. Tuggy and Silvia Huang for Defendants and Respondents.

INTRODUCTION

Two homeowners' insurance policyholders canceled their insurance policies before the expiration of their respective one-year policy terms. Both expected to receive a refund of their policy premiums proportional to the length of time their policies were in effect prior to termination; instead they received a smaller amount which the insurer identified as the "short rate" unused share of the policyholders' premiums under the policy. The policyholders filed a complaint on behalf of themselves and a class of those similarly situated, alleging claims against their insurer for unlawful, unfair and fraudulent business practices in violation of Business and Professions Code section 17200, breach of the covenant of good faith and fair dealing and unjust enrichment. As exhibits to their complaint, the policyholders attached copies of their insurance policies which they noted contained no definition of the term "short rate," no explanation of the method of calculation of the "short rate unused share of the premium" and no copy of the "short rate" table the insurer later said it had relied upon in calculating the "short rate" refund amount.

According to the policyholders, the policies were unlawful because the insurer charged a "short rate" premium higher than the original premium rate in violation of subdivision (f) of Insurance Code section 381 by failing to specify the premium or a statement of the basis and rates upon which the premium was to be determined and paid, and even if the insurer's charge of a "short rate" did not constitute a failure to state the premium as required by Insurance Code section 381, the insurer's practice of failing to define the term "short rate" and failure to disclose or explain the method of its computation was unfair, unlawful and fraudulent under a number of other Insurance Code and Civil Code provisions.

The insurer demurred, arguing the policyholders could not state a claim as the "short rate return of premium" was not a "premium," and the policies contained language

"substantially similar" to the form language authorized by Insurance Code section 2071 and were lawful.

The trial court sustained without leave to amend the insurer's demurrer and entered a judgment of dismissal. The policyholders appeal. We affirm the trial court's order to the policyholders' claims predicated on the insurer's alleged violation of Insurance Code section 381 (and with respect to the claims for unconscionability and unjust enrichment). However, we conclude the insurer's demurrer to the policyholders' claims relating to the "short rate" as a penalty were improperly sustained without leave to amend and therefore reverse as to these causes of action.

FACTUAL AND PROCEDURAL BACKGROUND

According to the allegations of the operative (first amended) complaint (as this is an appeal from the trial court's ruling on demurrer), Craig Streit is a longtime Farmers Group Insurance policyholder.[1] Every year from 1979 to 2008, he bought homeowners and/or landlord insurance coverage from Farmers for property he owned in Clayton, California.

On December 8, 2008, Streit paid Farmers a premium of $1,159.24 to renew his "Landlords Protector Package Policy" from December 8, 2008 through December 8, 2009—an effective rate of $3.18 per day. As his latest premium was higher than Streit had paid in the past, he shopped around for a more competitive rate and soon found a better deal. He notified Farmers he was cancelling the policy effective January 16, 2009—39 days into the policy period.

At the effective daily rate of $3.18 per day, Streit expected to receive a refund in the amount of $1,034.83, reflecting his original premium payment of $1,159.24 minus 39

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[1] According to the complaint, the named defendants are Farmers Group, Inc., dba Farmers Underwriters Association, Fire Insurance Exchange, Mid-Century Insurance Company. We include all defendants in our references to Farmers.

days of coverage at $3.19 per day ($124.41). Instead, on March 27, Farmers refunded $915.80 and retained $243.44, representing a new premium rate of $6.24 per day for the 39 days of coverage—a 96 percent increase above the original quoted premium. In other words, Farmers charged Streit an extra $119.03 for cancelling his policy. The sum represented (a) a cancellation fee or (b) a new, higher premium rate for the 39 days the policy was in effect.

Either way, Farmers never disclosed to Streit that the sum would be charged upon cancellation. To the contrary, for the 30 years Streit was a Farmers policyholder, no Farmers agent or employee ever disclosed that cancelling the policy would result in a cancellation fee or premium increase. Further, the renewal solicitation Streit received from Farmers with a premium rate quote did not disclose these facts. Moreover, the cancellation notice itself did not explain how Farmers had calculated the $915.80 refund or disclose the fact a cancellation fee or increased premium rate had been charged.

When he realized he had apparently been charged a cancellation fee or increased premium, Streit contacted his licensed Farmers insurance agent (Terri Heath) to ask why he had been charged this additional amount and how the amount had been calculated. She responded that she could "not speak to the policies [and] procedures of [Farmers]," nor could she explain how the amount was calculated; she could only quote the terms of the policy: "If the return premium is not refunded with the notice of cancellation or when the policy is returned to us, we shall return it within a reasonable time after the date cancellation takes effect. (1) If you cancel this policy, we shall return the *short rate* unused share of the premium. (2) If we cancel this policy, we shall return the prorated unused share of the premium." (Italics added.) According to Heath, "[t]he *short-rate table* is based on the number of days the policy was in force. *As the number of days in force increases, the percentage decreases*." (Italics added.)

Streit did not know what this meant because no "short-rate table" or "percentage" had ever been disclosed to him. Although the policy defined 16 different terms, it did not

define "short rate." No short rate table, formula or percentage is stated anywhere in the policy or appended to it. The declarations page disclosed only the original premium rate. Farmers never gave Streit any oral or written explanation of "short rate," and none of the policies Streit bought from Farmers since 1978 had ever defined or explained the term "short rate."

Heath said "the amount you were short-rated is about 10 [percent] of your annual premium," but the overcharge of $243.44 was more than twice that—21 percent of the annual premium. Heath's explanation made no sense and Streit was never told he would be charged any 10 percent cancellation fee or "short rate."

Streit contacted Farmers' billing department, but Farmers' employees there could not explain how the "short rate" was calculated. Finally, after multiple calls, letters and emails, and after filing a complaint with the California Department of Insurance, Streit received a letter from Annandra Grace, a Farmers Customer Relations Manager.

In the letter, Farmers acknowledged that it had not disclosed any "short rate" procedure to Streit: "*It is not our normal business practice to explain our cancellation procedure upon issuance of a policy.*" (Emphasis added.) Streit was informed: "A mid-term cancellation *disrupts the basis of the calculated term premium* and prompts charges for *additional premium dollars*. We refer you to pages 13 and 14 of the policy contract, which outline our cancellation procedure. [¶] The earned premium is based on your policy's annual term premium from the date of renewal to the date of cancellation, multiplied by the decimal derived from the 'RONOCO Six and Twelve Month Calculator.' The 'RONOCO Six and Twelve Month Calculator' is published by the Rough Notes Co., Inc., located in Indianapolis, Indiana. The formula for the cancellation of [Streit's] homeowner policy . . . is as follows:

"$1,159.24 Term premium from December 8, 2008-December 8, 2009

"x .79 Short-rate unearned factor for 326 days left from [01/16/09]-[12/08/09]

"$915.80 Short-rate unearned premium" (Italics added.)

Beginning in 2006 and through February 10, 2010, Eric Lucan insured himself and his home in Novato, California though Farmers.

Before renewing his Farmers homeowners insurance policy for the period November 21, 2009 through November 21, 2010, Lucan received a solicitation from Farmers to renew his policy for the original premium amount of $743.85 ($2.04 per day). Lucan renewed his policy and paid one installment payment in the amount of $360.76 for the first six months of his policy. On February 10, 2010, Lucan cancelled his policy 81 days into the policy period.[2] Lucan received a refund of $118.38 of the $360.76 because Farmers collected a short rate penalty of $77.14. Therefore, Lucan paid a short rate premium of $242.38 ($360.76 for the half-year premium less $118.38), or $2.99 per day. Using the original premium rate, Lucan's premium for 81 days would have been $165.24.

When Lucan contacted his authorized and exclusive Farmers insurance agent for an explanation of the $77.14 overcharge or penalty, the agent said he did not know how Farmers determined the amount of his returned unused portion of premium. Lucan also called Farmers' "general help" telephone number, but none of Farmers' personnel responding to his call knew what "short rate" meant or how Farmers determined the amount returned.

The Farmers agent requested that Farmers' Policy Services Department provide Lucan with an explanation of the computation of the sum returned to him. Farmers replied by email as follows: "Thank you for your request. Please note that when the policy was cancelled, the system processed a 'short-rate' of the cancellation as it was a mid-term cancellation. Calculation as follows: 81 days the policy was in force from

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[2] Under the heading "Cancellation," subdivision (d) of paragraph 7 of Lucan's policy provided as follows: "Return of premium. Cancellation of or changes in this policy may result in a premium refund. If so, we will send it to you within 25 days after the cancellation or change takes effect. If you cancel this policy we will return the short rate unused share of the premium. If we cancel this policy, we will return the pro-rated unused share of the premium."

renewal to cancellation multiplied by .33 (rate decimal in manual page 10/40) .33*726.34 (premium) = 239.69. So 726.34-239.69=486.65 (total credit for cancellation)."

Lucan did not understand the reference to "manual page 10/40" and called Farmers Policy Services Department to inquire. Farmers said the premium rate it charged on Lucan's mid-term termination was not stated in his policy but rather in the manual, which was an internal document that was not distributed to customers.

On behalf of themselves and a class of those similarly situated, Streit and Lucan asserted the following causes of action against Farmers: (1) unlawful business acts and practices in violation of Business and Professions Code section 17200 et seq., based on violations of Insurance Code sections 381, subdivision (f); 330 and 332 (prohibiting insurers from concealing material facts from policyholders) and Civil Code sections 1573; 1671, subdivision (d); 1709 and 1710 (prohibiting fraud and deceit and illegal liquidated damages provisions); (2) unfair business acts and practices in violation of Business and Professions Code section 17200 et seq.; (3) fraudulent business acts and practices in violation of Business and Professions Code section 17200 et seq.; (4) breach of the implied covenant of good faith and fair dealing and (5) unjust enrichment.[3]

Streit and Lucan defined the class as all consumers who purchased Farmers policies that insure or insured consumers' real and personal property and motor vehicles in California who, upon their election to terminate their policies midterm, were charged a "short rate" which was higher than the premium rate originally charged for their policies or, alternatively, those consumers Farmers charged a short rate penalty for their election

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[3] All preceding allegations were incorporated by reference into each subsequent cause of action. The complaint also included a separate (fifth) cause of action for "unconscionability." However, this appeal does not challenge the trial court's order sustaining Farmers' demurrer to this cause of action (and further abandons reliance on Civil Code section 1670.5 (unconscionability) among the list of Farmers' alleged statutory violations).

to effect a midterm termination of their Farmers policies within the statute of limitations period.

According to the complaint, the "short rate" was an insurance premium higher than the rate stated in Farmers solicitations, quotes and policies. The result of using the short rate to compute the amount of premium returned upon mid-term termination was a short rate penalty. Farmers policies do not explain the phrase "return the short rate unused share of the premium," define the term "short rate," or communicate that "return[ing] the short rate unused share of the premium" means Farmers will recompute the policy premium using a higher premium rate than used to compute the original premium stated in the initial quote, initial solicitation and renewal solicitations and Farmers will charge the short rate penalty to class members who exercise the right to effect a mid-term termination.

Further, the terms "short rate" and "return the short rate unused share of the premium" in the policy are ambiguous, unclear and misleading. The terms are "insurance terms of art" known only to a subset of insurance professionals (not including its own employees) and not known by the public at large or Streit, Lucan or class members. Farmers knew the plaintiffs did not know what Farmers meant by these terms and used these obscure terms of art intentionally. Farmers recomputes premiums using the "RONOCO Six and Twelve Month Calculator" published by the Rough Notes Company in Indianapolis, Indiana, but does not provide this calculator to its insureds or its own agents.

In the event of a mid-term termination, Farmers charges a different and higher short rate premium which is not stated in the policy as required under Insurance Code section 381, subdivision (f)(1), and because the short rate premium is calculated using the short rate, the insurance "is of a character where the exact premium is only determinable upon the termination of the contract," and as such, "a statement of the basis and rates upon which the final premium is to be determined and paid" is required under subdivision

(f)(2)—an unlawful practice under Business and Professions Code section 17200 et seq.; the difference between the original premium rate and the short rate causes each class member to pay a short rate penalty.

Moreover, the dramatically higher premium and rates charged in the event of a mid-term cancellation constitute significant and material facts Farmers had a duty to disclose because it had exclusive knowledge of the basis and rates but actively conceals and fails to explain the short rate terms. Insurance Code section 330 specifies that "[n]eglect to communicate that which a party knows, and ought to communicate, is concealment," and such acts violated Insurance Code section 332 which states: "Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." Accordingly, Farmers is liable for its violations of Insurance Code sections 330, 332 and 381 under Business and Professions Code section 17200 et seq. as its conduct is unlawful, unfair and fraudulent.

The harm Farmers causes is not outweighed by any benefit and the cost of disclosure is very slight while the harm to the class is great. Farmers' acts are anti-competitive and give Farmers an unfair advantage because class members who know they will or may wish to effect a mid-term termination do not know to select a competitor's policy. Similarly, if class members had been aware of Farmers' policy, they could have kept the policy in place until expiration of the term to avoid paying a penalty before obtaining new insurance elsewhere.

State Farm, one of Farmers' major competitors in California, does not charge a short rate premium or short rate penalty if its insureds effect a mid-term termination. Due to Farmers' nondisclosure, insureds cannot make an informed decision in choosing between Farmers and a competitor's policy. Had Farmers defined "short rate" or explained in words or in an exemplar table or stated in quotes, solicitations or policies

what the short rate penalty would be during the policy term, plaintiffs and class members would not have entered into the contract, would not have made a mid-term termination or at least would have been able to properly compare Farmers' premium with premiums charged by competing insurers—especially since many of the insurers most popular in California do not charge a short rate premium or penalty when its insureds effect a mid-term termination.

Farmers' insureds only discover the short rate penalty after they have decided to terminate their policy and have communicated the decision to Farmers; Farmers' belated disclosure deprives the insured of keeping the policy in place to the end of the term or using the knowledge to make an accurate assessment of whether another insurer's policy is still cost-effective. The penalty is compounded because many insurers, including Farmers, offer reduced premium rates when multiple policies are purchased from a single insurer. Further, the short rate penalty is unavoidable when property is sold or destroyed during the policy period; had they known of Farmers' practice, insureds may have chosen a different insurer at the outset or waited until the end of the term before selling the property.

Farmers' notices of cancellation did not state that the policyholder was charged a short rate, and the words "short rate" and "penalty" did not appear in the notices. Rather, the notices simply stated the amount of premium returned.

According to the complaint, Farmers' practice of charging an undisclosed penalty upon mid-term termination is "so pervasive and problematic" that the California Legislature has proposed Assembly Bill 2404 seeking to amend Insurance Code section 481 "to require disclosure and transparency of the short rate penalty both at the time of formation of the insurance contract, as well as at the time of renewal."[4] The California

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[4] AB 2404 was subsequently enacted (2009-2010 Reg. Sess.) and is reflected in amendments to Insurance Code section 481, subdivisions (c), (e) and (f) which we will address.

Department of Insurance, the sponsor of AB 2404, publicly stated that "based on the number of consumers contacting DOI annually to complain about unknown penalties/fees for canceling a policy, the existing disclosure method for some lines of insurance appears inadequate." According to the legislative history of AB 2404, "the author and this bill's sponsor and supporters believe Section 1 of the bill addresses *a basic unfairness, the lack of advance notice of policy cancellation fees and penalties*. . . ." (Italics added.)

Farmers filed a demurrer, arguing it owed the plaintiffs no duties that could give rise to any alleged claim because the cancellation provisions in its policies were lawful and followed Insurance Code section 2071.

After hearing argument and taking the matter under submission, the trial court adopted its tentative ruling as its final ruling, and entered a judgment of dismissal.

As framed by the trial court, "The detailed pleading and its attachments make clear the factual and legal premise for plaintiffs' putative class action: Short-rate premiums are not allowed by the law unless the policy goes beyond mere reference to the use of a 'short-rate premium' calculation." In the trial court's view, "The core problem with plaintiffs' logic is that at all relevant times, the use of a 'short-rate premium' calculation was authorized by Insurance Code [section] 2071: When mid-term cancellation occurs, the insurer 'shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time.' Given this, the use of such a term by the insurer in the policy is sufficient disclosure contrary to plaintiffs' hindsight request for greater disclosure."

"Further, the pleading itself shows that [the] California legislature has recently passed a statute of prospective application requiring that insurance policies include greater detail going forward about the application of the 'short-rate premium' calculation if the insurer does not use straight pro[]ration to calculate the refund. *The very fact that legislation was deemed necessary and suitable tends to demonstrate that the prior*

conduct of Farmers and similarly situated carriers who used the 'short-rate premium' approach was lawful at the time." (Italics added.)

In the trial court's assessment, "'Short-rate premium' is simply jargon being permissibly used in the insurance contract documents. Its use in these standard form policies was expressly permitted by law. [(]Ins[.] Code[,] § 2071.[)] Each named plaintiff had a licensed broker and could have explored the meaning of trade jargon with this adviser if he wished. Apparently neither of them did, for which reason the amount of the refund was considered a surprise. This does not make the use of well-established jargon by the carrier in its contract unfair, illegal, unconscionable or any of the other negative adjectives which plaintiffs would apply to the calculation. It makes perfect business sense as there are real administrative costs in the making of any contract, particularly an insurance contract, and voluntary premature termination of the contract mid-term generates its own additional effort, which is worthy of recompense.

"Plaintiffs' legal argument is stitched together with general platitudes from cases not involving the lawfulness of well-established, statutorily adopted jargon in insurance contracts. Accordingly, it is unpersuasive as to the actual facts giving rise to the dispute before this Court." Finding the present record "quite sufficiently developed" and "no value in delaying a merits ruling on plaintiffs' theory until some later day when the same question is presented after wasted time and expense have been incurred in the interim," the trial court found no reason to grant leave to amend, sustained the demurrer without leave to amend and entered judgment of dismissal.[5]

Streit and Lucan appeal.[6]

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5 The complaint was amended once as a matter of right in response to Farmers demurrer.

6 We include Lucan in our further references to Streit unless otherwise indicated.

DISCUSSION

On appeal from an order dismissing an action after the sustaining of a demurrer, we independently review the pleading to determine whether the facts alleged state a cause of action under any possible legal theory. (*McCall v. PacifiCare of Cal., Inc*. (2001) 25 Cal.4th 412, 415; *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) We may also consider matters that have been judicially noticed. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) "We give the complaint a reasonable interpretation, 'treat[ing] the demurrer as admitting all material facts properly pleaded,' but do not 'assume the truth of contentions, deductions or conclusions of law.'" (*Sandler v. Sanchez* (2012) 206 Cal.App.4th 1431, 1436, citations omitted.) We liberally construe the pleading with a view to substantial justice between the parties. (*Ibid.*, citations omitted.)

"Where the complaint is defective, '[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his [or her] complaint . . . .' [Citation.] We determine whether the plaintiff has shown 'in what manner he [or she] can amend [the] complaint and how that amendment will change the legal effect of [the] pleading.' [Citation.] '[L]eave to amend should not be granted where . . . amendment would be futile.' [Citation.]" (*Sandler v. Sanchez, supra,* 206 Cal.App.4th at pp. 1436-1437, citations and further internal quotations omitted.)

According to Streit, the trial court erred in sustaining Farmers' demurrer for two reasons: (1) Streit adequately alleged claims on the basis that the short rate is a premium rate imposed for a particular policy term, and Farmers violated Insurance Code section 381, subdivision (f)(2), by failing to state in the policy the "basis and rates upon which" the "short rate" premium "is to be determined and paid;" and (2) even if the short rate is not a premium within the meaning of section 381, Streit has alleged claims based on Farmers' nondisclosure of a "short rate" penalty, in violation of multiple Insurance and

Civil Code provisions as well as Business and Professions Code section 17200 (the unfair competition law, UCL).[7]

As we stated in *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342 (*Klein*), "The purpose of the UCL 'is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.' (*Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 949 [119 Cal. Rptr. 2d 296, 45 P.3d 243].) The UCL prohibits any 'unlawful, unfair or fraudulent business act or practice.' (§ 17200.) 'Because [the UCL] is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent.' (*Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647 [58 Cal. Rptr. 2d 89].)" (*Klein, supra,* 202 Cal.App.4th at p. 1374.) "'In other words, a practice is prohibited as "unfair" or "deceptive" even if not "unlawful" and vice versa.'" (*Podolsky v. First Healthcare Corp., supra,* 50 Cal.App.4th at p. 647 (*Podolsky*).)

The First Cause of Action for "Unlawful" Business Practices under the UCL.

Relying on *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305 as "indistinguishable," Streit says he stated a violation of the unlawful prong of Business and Professions Code section 17200 predicated on Farmers' violation of section 381, subdivision (f), because that subdivision required Farmers to disclose its short rate *premium*. In Streit's view, like the service charges in *Troyk*, the "short rates" Farmers required him to pay for "a 39-day policy" and Lucan to pay for "an 81-day policy" are necessarily included within the term "premium" as used in subdivision (f) of section 381. We disagree.

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[7] Undesignated statutory references are to the Insurance Code.

Section 381, enacted in 1935, provides:

"*A policy shall specify*:

"(a) The parties between whom the contract is made.

"(b) The property or life insured.

"(c) The interest of the insured in property insured, if he is not the absolute owner thereof.

"(d) The risks insured against.

"(e) The period during which the insurance is to continue.

"(f) Either:

"(1) *A statement of the premium, or*

"(2) *If the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid*." (Ins. Code, § 381, italics added.)

Recently, citing *Troyk, supra,* 171 Cal.App.4th at page 1324 as well as *Insurance Exchange of the Automobile Club v. Superior Court* (2007) 148 Cal.App.4th 1218, 1230, (*Auto Club*), the Fourth District reiterated the meaning of the term "premium" under section 381, subdivision (f), is a question of law for our independent determination, and "'[i]t is commonly understood that a premium is the amount paid for certain insurance for a certain period of coverage.'" (*In re Ins. Installment Fee Cases* (2012) 2012 Cal. App. LEXIS 1271, 10 & 17, fn. 9; *Troyk, supra,* 171 Cal.App.4th at pp. 1322-1323 ["Neither section 381 nor any other provision of the Insurance Code defines the term 'premium'"; "'Our task in interpreting a statute is to ascertain and effectuate legislative intent'"].) "In both *Auto Club* and *Troyk,* this court, in considering whether the insurance installment fees at issue in those cases were premium within the meaning of section 381, subdivision (f), applied the rule that when the language of a statute is clear and unambiguous, there is no need for construction." (*In re Ins. Installment Fee Cases, supra*, 2012 Cal. App. LEXIS 1271, at pp. 10-11.)

"In *Auto Club*, the insurer, Interinsurance Exchange of Automobile Club (Exchange) gave policyholders the option of paying premiums for automobile insurance in nine monthly installments, subject to additional charges for interest at a rate of about 18 percent per year. (*Auto Club, supra*, 148 Cal.App.4th at p. 1222.) The *Auto Club* court concluded that 'the fee Exchange charges for making payments of the annual premium in installments is interest for the time value of money and the plain and ordinary meaning of the term "premium," as used in section 381, subdivision (f), does *not* include interest charged for the time value of money.' (*Id*. at p. 1230.) The court explained: 'It is commonly understood that a premium is the amount paid for certain insurance for a certain period of coverage. For example, in this case Exchange charged [the plaintiff] an annual premium of $986 for renewal of her automobile insurance coverage for the period from January 2004 through January 2005. As section 480 confirms, a premium is to be paid on commencement of the period of insurance coverage. Section 480 provides: "An insurer is entitled to payment of the premium as soon as the subject matter insured is exposed to the peril insured against." Therefore, in the case of an annual period of renewal of insurance coverage, an insurer is entitled to payment of the annual premium in one lump sum at the beginning of the policy period. (§ 480.) To the extent an insurer provides an insured with the option of paying that one lump sum in installments of partial premium payments together with interest on the unpaid premium balance, the interest charged for the time value of money for the option of making payments of premium over time is not considered part of the premium paid for insurance coverage.' (*Auto Club, supra*, 148 Cal.App.4th at pp. 1230-1231, fns. omitted.) Accordingly, the *Auto Club* court concluded that the interest charged by Exchange for the use of its installment payment option was not required to be disclosed in the declarations page or elsewhere in its insurance policy. (*Id*. at p. 1231.)

"The same panel of this court considered a different type of insurance installment fee in *Troyk*, a certified class action. The insurer in Troyk, Farmers Group, Inc. and related entities (collectively Farmers), offered automobile insurance with terms of either

six months or one month. The premium for a six-month term was payable in either one lump sum or two installments, but if the insured chose a one-month term, Farmers converted 'its six-month policy into a one-month policy by issuing an endorsement called the "Monthly Payment Agreement". . . .' (*Troyk, supra*, 171 Cal.App.4th at pp. 1315-1316.) To obtain the one-month policy, the insured was required to enter into an agreement with Prematic Service Corporation (Prematic), a subsidiary of Farmers, under which Prematic would send a monthly premium bill to the insured and, on receipt of the premium payment plus a five dollar service charge, forward the payment less the service charge to Farmers. (*Id*. at p. 1316.)

"The *Troyk* court concluded that 'the clear and unambiguous meaning of the term "premium," as used in section 381, subdivision (f), includes a service charge imposed for payment in full of the stated insurance premium for a one-month term policy.' (*Troyk, supra*, 171 Cal.App.4th at pp. 1323-1324.) The court reasoned that '[b]ecause section 381 "presumably is a consumer protection statute" [citation], the meaning of "premium," as used in section 381, subdivision (f), is interpreted from the perspective of the consumer (i.e., the insured). In the circumstances of this case, *Troyk* and the other class members were *required* to pay a service charge in addition to the stated premium to obtain and pay for a one-month term of insurance coverage. They could not obtain or pay for that one-month term policy by paying only the premium stated on the declarations page or elsewhere in the policy. Therefore, from the *insureds'* perspective in this case, "premium," for purposes of section 381, subdivision (f), is the total amount the insureds were required to pay to obtain insurance coverage for a one-month term (i.e., the stated premium plus the service charge imposed for payment in full of that stated premium).' (*Troyk, supra*, at p. 1324.)

"The *Troyk* court further explained: 'The service charges [Farmers] required Troyk and the other class members to pay were *not* imposed for the privilege of paying the premium for a six-month term policy in monthly installments or otherwise over time. Rather, as shown by the Monthly Payment Agreement endorsement . . . , the policy

issued to the class members was for a one-month term, not a six-month term. . . . The fact the Monthly Payment Agreement provided that class members had the right to extend the term of the one-month policy "for successive monthly periods if the premium is paid when due" supports, rather than weighs against, our conclusion. That language shows "the premium" is payable for the policy's one-month term. That agreement also provided: "*The premium* is due no later than on the expiration date of the then current monthly period." (Italics added.) That language likewise shows "the premium" is payable for the policy's one-month term. Furthermore, we note the Monthly Payment Agreement does not use the term "installment" or any other language that would suggest an insured will be paying each month only part of a greater premium for a period of coverage longer than one month (e.g., six months).' (*Troyk, supra*, 171 Cal.App.4th at p. 1326.) The court concluded that 'the policy documents are reasonably susceptible of only one interpretation—that each class member had a policy for a *one-month*, and not a six-month, term.' (*Id*. at p. 1327.)" (*In re Ins. Installment Fee Cases, supra,* 2012 Cal. App. LEXIS 1271, 11-16.)

In this case, unlike *Troyk,* the policy documents are reasonably susceptible of only one interpretation—both Streit and Lucan had renewable *one-year* policies (not one-day policies with daily premiums of $3.18 per day for Streit and $2.04 per day for Lucan). Beginning in 1978 "and every year since," through January 16, 2008, Streit alleged, Farmers provided the homeowners and/or landlord insurance coverage on his property. The policy Streit attached to the complaint as the "final Farmers policy" is described as a "Superseding Policy" effective "From 12-30-2002" "To 12-08-2003" "12:01 A.M. Standard Time" with an "*Annual* Premium" of $722.13. (Italics added.) Beneath the specified policy period, the following statement appears: "**This policy will continue *for successive policy periods*, if:** (1) we elect to continue this insurance, and (2) if you pay the renewal *premium* for each successive *policy period* as required by our premiums, rules and forms then in effect." (Italics added, further emphasis in original.) According to the allegations of the complaint, Streit "renewed his Farmers policy for an *annual*

premium of $1,159.24 for the period 12/08/08-12/08/09." (Italics added.) Both policies specified an "*Annual* Premium," covered a specified *year* for each, and provided those policies would "continue for successive *policy periods*" if Farmers elected to continue the insurance and Streit (and Lucan) paid the respective "renewal *premium* for each successive *policy period*." (Italics added.)

It follows that Streit has failed to state a violation of section 381, subdivision (f), because a "premium" is "'the amount paid for certain insurance *for a certain period of coverage*.'" (*In re Ins. Installment Fee Cases, supra*, 2012 Cal. App. LEXIS at p. 10, italics added.) "'Section 480 provides: "An insurer is entitled to payment of the premium as soon as the subject matter insured is exposed to the peril insured against." Therefore, in the case of an annual period of renewal of insurance coverage, an insurer is entitled to payment of the annual premium in one lump sum at the beginning of the policy period. (§ 480.)'" (*Id.* at p. 12.) Pursuant to section 480, Farmers was entitled to payment of the annual premium at the outset of each policy period. The stated *annual* premium in this case was the total amount Streit was required to pay to obtain insurance coverage for the specified *one-year* term; nothing in the policy contemplated or authorized advance payments of $3.18 per day for each day of intended coverage. For purposes of section 381, subdivision (f), Streit was not required to pay any charge in addition to the stated premium to obtain a one-year term of insurance coverage, and Farmers did not require payment over and above the stated premium for payment in full of that stated premium.

In enacting separate provisions relating to "premium" disclosures (§ 381, subd. (f)) and "*return* of premium" obligations (§ 481), the Legislature has apparently distinguished between these two types of charges.[8] This differentiation is reinforced by

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[8] Indeed, pursuant to section 383, subdivision (a), failure to comply with subdivision (f) of section 381 is a misdemeanor. Meanwhile, pursuant to AB 2404, the *added* disclosure requirements for calculations of "return of premium" other than on a pro rata basis (described as fees or penalties to be applied) now required under subdivision (c) of section 481 are "prospective and shall apply only to policies issued or renewed on or after January 1, 2012." According to the legislative history, time would be

the organization of the standard form fire insurance policy (§ 2071, subd. (a)) which calls for the disclosure of "premium" at the beginning of the policy but has a separate heading "Cancellation of policy" several paragraphs deep into the policy that refers to a refund of "the excess of paid premium above the customary short rates for the expired time."[9] Similarly, in the policies attached to the complaint in this case, the "premium" is set forth on the declarations page of the policy while the policy itself contains provisions entitled "Return of premium."

Although we conclude the "short rate" at issue in this complaint is not a "premium" for purposes of section 381, subdivision (f), Streit alleged, even if the "short rate" is not a "premium" within the meaning of section 381, Farmers' nondisclosure of its "short rate" penalty violated Insurance Code sections 330 (concealment) and 332 (communication of material facts) and Civil Code sections 1573 (constructive fraud), 1709 (deceit) and 1710 (what constitutes deceit) for purposes of the "unlawful" prong of

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needed for insurance companies to prepare to make the required disclosures in the manner specified so, as the trial court observed, to recognize a disclosure requirement for purposes of section 381 in this case would undermine the "prospective . . . only" provision in the amendment.

[9] Section 2071 (standard form fire insurance policy) includes the following language: "This policy shall be canceled at any time at the request of the insured, in which case this company shall, upon demand and surrender of this policy, refund the excess of paid premium above *the customary short rates for the expired time.*" (Italics added.) Of course, Farmers did not use the form language contained in Insurance Code section 2071; if the policy merely paraphrases statutory language, any ambiguity will be interpreted in favor of the insured and against the insurer. (*National Auto. & Cas. Ins. Co. v. Frankel* (1988) 203 Cal.App.3d 830, 836, disapproved on other grounds in *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743, fn. 11.) Notably, where Farmers referred only to "the short rate" (with no mention that it arose out of any "custom") and in fact Farmers acknowledges Farmers had a choice of more than one "short rate" computation, its reliance on section 2071 is misplaced.

the UCL so the first cause of action should have withstood Farmers' demurrer.[10] "Virtually any state, federal or local law can serve as the predicate for an action under Business and Professions Code section 17200." (*Podolsky, supra*, 50 Cal.App.4th at p. 647.)

In *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, the plaintiffs alleged the trial court had erred in sustaining without leave to amend the defendant's demurrer to their cause of action for violation of the "unlawful" prong of Business and Professions Code section 17200. The plaintiffs had alleged on information and belief the insurer defendants knew of impending material changes to their insurance policies when the plaintiffs purchased them but failed to disclose the information to the plaintiffs until after they purchased the policies in violation of sections 330, 331, 332, 334, and 361. Accepting the allegations as true for purposes of demurrer and given the alleged statutory

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10 "Neglect to communicate that which a party knows, and ought to communicate, is concealment." (§ 330.)

"Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." (§ 332.)

"Constructive fraud consists: [¶] 1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or, [¶] 2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud." (Civ. Code, § 1573.)

"One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." (Civ. Code, § 1709.)

"A deceit, within the meaning of the last section, is either: [¶] 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; [¶] 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; [¶] 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, [¶] 4. A promise, made without any intention of performing it." (Civ. Code, § 1710.)

violation, the *Pastoria* court determined, "there is an unlawful act upon which to base an unfair competition claim under Business and Professions Code section 17200." (*Id.* at p. 1497.)

In this case, under the heading "Return of premium," Streit's policy specified: "If you cancel this policy, we shall [will, in Lucan's policy] return the short rate unused share of the premium. If we cancel this policy, we shall [will] return the prorated unused share of the premium. Yet, although Streit's policy contained two pages of definitions and Lucan's contained *six*, the term "short rate" is used in the policies without definition, explanation, mention of any table or any other means to confirm the term is anything other than a synonym for the "pro rata" rate, in parallel sentences addressing the return of premium whether the insured or insurer terminates the policy, as Streit and Lucan say they understood. The term was not placed within quotation marks, capitalized or given any other indication of its particular significance as imposing a higher rate than the pro rata or proportional rate the stated premium would indicate. "Short rate" is not found in either Webster's or Black's Law Dictionary. Moreover, according to the complaint, Farmers' own representatives did not know how the "short rate" was calculated; when Streit ultimately heard back from Farmers as to the calculation, Farmers expressly stated it was *not* its business practice to explain the cancellation procedure in issuing its policies and the short rate was calculated by using a decimal derived from the "RONOCO Six and Twelve Month Calculator" in Streit's case and "manual page 10/40" in Lucan's case, an internal document not provided to customers.

Since 1935 (long before the prospective amendments adding *further* disclosure requirements to this statute), section 481 has always specified that "[*u*]*nless the insurance contract otherwise provides*, a person insured is *entitled* to a return of his or her premium if the policy is canceled, rejected, surrendered, or rescinded as follows: [¶] . . . [¶] Where the insurance is made for a definite period of time and the insured surrenders his or her policy, *to such proportion of the premium as corresponds with the unexpired*

time. . . ."[11] (§ 481, subd. (a)(2), italics added.)

Unlike cases in which the parties to the insurance contract "otherwise" agreed (see *Lambros v. Metropolitan Life Ins. Co.* (2003) 111 Cal.App.4th 43; *Jennings v. Prudential Ins. Co.* (1975) 48 Cal.App.3d 8), Streit alleged, consistent with its business practice *not* to do so as alleged in the complaint, Farmers did not communicate any information whatsoever as to the meaning of "short rate" or its calculation, but nevertheless withheld a portion of the premium greater than the amount corresponding with the unexpired time as required under section 481, subdivision (a)(2). It is true that an insured is bound by "clear and conspicuous provisions in the policy even if . . . the

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[11] The amendments to section 481 (pursuant to AB 2404) are set forth in subdivisions (c), (e) and (f) as follows:

"(c)

"(1) *Any insurance policy that includes a provision to refund premium other than on a pro rata basis, including the assessment of cancellation fees, shall disclose that fact in writing*, including the actual or maximum fees or penalties to be applied, which may be stated in the form of percentages of the premium. The disclosure shall be provided *prior to, or concurrent with, the application and prior to each renewal to which the policy provision applies*. For purposes of this subdivision, an insurer offering workers' compensation insurance, as defined in Section 109, may provide the disclosure with the quote offering insurance to the consumer prior to the consumer accepting the quote in lieu of disclosure prior to or concurrent with the application. Disclosure shall not be required if the policy provision permits, but does not require, the insurer to refund premium other than on a pro rata basis, and the insurer refunds premium on a pro rata basis.

"(2) If an application is made by telephone, the disclosure shall be mailed to the applicant or insured within five business days.

"(3) The disclosure may be made electronically pursuant to Section 38.5 in lieu of being mailed.

"(4) This section does not apply to cancellations that are calculated subject to paragraph (2) of subdivision (g) of Section 673. [¶] . . . [¶]

"(e) The disclosure requirements *of subdivision (c)* shall be prospective and shall apply only to policies issued or renewed on or after January 1, 2012.

"(f) Nothing in this section shall require any *additional* disclosure of a fee or penalty for early cancellation *if that disclosure is required by any other provision of law*." (Italics added.)

insured did not read or understand them." (*Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.* (2009) 177 Cal.App.4th 624, 638.) Here, however, according to the allegations, Farmers' return of premium formula was contained in an internal document in Lucan's case and in a table not provided to the insured when the policy originates in Streit's case. "Neglect to communicate that which a party knows, and ought to communicate, is concealment." (§ 330.) "Each party to a contract of insurance shall communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract and as to which he makes no warranty, and which the other has not the means of ascertaining." (§ 332.)

"Constructive fraud consists: [¶] 1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; or, [¶] 2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud." (Civ. Code, § 1573.)

The words in an insurance policy must be interpreted "according to the plain meaning which a layman would ordinarily attach to them" and not as a lawyer or an insurance expert would read them.[12] (1 Cal. Liability Insurance Practice: Claims and Litigation (Cont.Ed.Bar 2011) § 3.48, p. 107, citing *Reserve Ins. Co. v. Pisciotta* (1982) 30 Cal.3d 800, 807; additional citations omitted; and see *Boghos v. Certain Underwriters at Lloyd's of London* (2005) 36 Cal.4th 495, 505 ["insurers must draft policy language with an eye to how insureds will likely understand it"].) Where a term is "in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor (i.e., the insurer) believed, at the time of making it that the promisee understood it" (i.e., by giving effect to "the objectively reasonable expectations of the insured"), and ambiguity is to be resolved against the insurer. (1 Cal. Liability Insurance Practice: Claims and Litigation, *supra*, § 3.47, p. 106, citing *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254,

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12 See footnote 9, *ante*.

1264, citation omitted; see also *E.M.M. I., Inc. v. Zurich Am. Ins. Co.* (2004) 32 Cal.4th 465, 470, additional citations omitted.) Reference to another document "'must be clear and unequivocal, the reference must be called to the attention of the other party and he must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting party.'" (*Troyk, supra,* 171 Cal.App.4th at p. 1331; *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54.)

We disagree that the recent amendments to section 481 mean that any Farmers' policy predating these changes was necessarily lawful, fair and nonfraudulent in every respect as a matter of law. Notwithstanding the *added* disclosure requirements as to the timing and further detail required as a result of the amendments, we see nothing inconsistent between the allegations of Streit's complaint and the disclosures required under the statutory provisions in existence *prior* to these amendments, beginning with section 481, subdivision (a), as it has existed since 1935 as well as sections 330 and 332.

The issue is not whether a "short rate" penalty as Farmers uses the term may ever be collected, but rather whether, given the alleged nondisclosure of such a practice, Farmers collection of this "short rate" under the circumstances presented here is actionable. Farmers conflates the authority for the collection of a short rate penalty with the multiple statutory requirements for *disclosure* of any such penalty and specification of the means of calculating such an amount.

Accepting the allegations as true, Streit alleged statutory violations supporting his cause of action for violation of the "unlawful" prong of the UCL. (*Pastoria v. Nationwide Ins., supra,* 112 Cal.App.4th at p. 1497.) Streit should have the opportunity to conduct discovery as to whether plaintiffs and Farmers agreed that, in the event of cancellation by an insured, Farmers would calculate the return of premium pursuant to a particular formula other than the pro rata formula to which an insured is otherwise entitled under section 481, subdivision (a).

The Second Cause of Action for "Unfair" Business Practices under the UCL.

Streit has alleged the meaning of "short rate" and the actual cost of cancelling the policy mid-term have been concealed. In particular, he alleged the lack of disclosure coupled with the confusing formula for calculating the "short rate" made it impossible to know that it would actually be more expensive to switch to another insurer offering a less expensive insurance premium, after Farmers' deduction for the short rate penalty, until after the decision to cancel had been made. No more is required. "In consumer cases arising under the UCL, a business practice is 'unfair' if (1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) the injury could not reasonably have been avoided by consumers themselves." (*Klein v. Chevron U.S.A., Inc., supra,* 202 Cal.App.4th at p. 1376.) At the pleading stage, we cannot presume that the harms Streit has alleged are not "substantial" or otherwise outweighed by countervailing benefits; these are questions of fact and inappropriate to resolve on demurrer. (*Ibid.)* "'Whether a practice is . . . unfair is generally a question of fact which requires "consideration and weighing of evidence from both sides" and which usually cannot be made on demurrer. [Citations.]'" (*Ibid.*)

The Third Cause of Action for "Fraudulent" Business Practices under the UCL.

"A business practice is 'fraudulent' within the meaning of [Business and Professions Code] section 17200 if it is 'likely to deceive the public. [Citations.] It may be based on representations to the public which are untrue, and "'also those which may be accurate on some level, but will nonetheless tend to mislead or deceive. . . . A perfectly true statement couched in such a manner that it is likely to mislead or deceive the consumer, such as by failure to disclose other relevant information, is actionable under'" the UCL. [Citations.] The determination as to whether a business practice is deceptive is based on the likely effect such practice would have on a reasonable consumer. [Citation.]' (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471 [49 Cal. Rptr. 3d 227] (*McKell*).)

"Generally, the question of '[w]hether a practice is deceptive or fraudulent "cannot be mechanistically determined under the relatively rigid legal rules applicable to the sustaining or overruling of a demurrer." [Citation.] Rather, the determination is one question of fact, requiring consideration and weighing of evidence from both sides before it can be resolved.' (*McKell, supra*, 142 Cal.App.4th at p. 1472.) '"[U]nless we can say as a matter of law that contrary to the complaint's allegations, members of the public were *not* likely to be deceived or misled by [the defendant's alleged conduct], we must hold that [plaintiffs] stated a cause of action."" (*Morgan v. AT&T Wireless Services, Inc.* (2009) 177 Cal.App.4th 1235, 1257 [99 Cal. Rptr. 3d 768].)" (*Klein, supra,* 202 Cal.App.4th at pp. 1380-1381.)

Streit has alleged that if Farmers ever communicates to its insureds that they were charged a short rate penalty, it is only after the insured has made the uninformed decision to terminate the policy midterm. (According to Streit's allegations, many other insurers do not charge a short rate.) This practice deprives the insured of the choice of keeping the policy in force to avoid the short rate penalty and using the knowledge of the short rate penalty to accurately calculate whether and how much they will save if they are to effect a midterm policy termination to purchase insurance from another insurer. At the pleading stage, we cannot say, as a matter of law, that consumers are not likely to be deceived in the manner Streit has alleged. (*Klein, supra,* 202 Cal.App.4th at p. 1381.) Accordingly, we conclude that Streit has adequately stated a claim under the fraudulent prong of the UCL.

The Fourth Cause of Action for Implied Breach of Covenant of Good Faith and Fair Dealing.

In *Acree v. General Motors Acceptance Corp.* (2001) 92 Cal.App.4th 385, the plaintiffs purchased cars on credit, and if they did not buy property damage insurance, the financing company GMAC bought insurance for the car (called "collateral protection insurance") and charged the purchaser. These policies were often canceled when the car

purchasers got their own insurance. (*Id.* at p. 391.) The dispute was over how GMAC calculated the refund of the premium the car purchasers "paid." The court stated that because the contract "does not *expressly* cover the method for calculating premium reimbursement but leaves that method to GMAC's *discretion*, the issue of whether GMAC beached the standard sales agreement involves whether GMAC breached the *implied* covenant of good faith and fair dealing." (*Id.* at p. 393, emphases in original.) In light of *Acree*, *supra*, 92 Cal.App.4th 385, and section 481, subdivision (a), "[i]f the policy does not specify the method for calculating the unearned premium refunds, the insurer is bound by the implied covenant of good faith and fair dealing to use an *objectively reasonable* method." (Croskey, et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2012) ¶ 5:45.5, emphasis in original.)

Similarly, in this case, Streit has alleged Farmers' failure to disclose the meaning and method of calculating the "short rate" return of premium. Streit should be afforded leave to amend this cause of action as he requested.

The Fifth Cause of Action for Unconscionability.

Streit does not challenge the trial court's order sustaining the demurrer to the fifth cause of action for unconscionability without leave to amend.

The Sixth Cause of Action for Unjust Enrichment.

Because unjust enrichment is not an independent cause of action (see *Levine v. Blue Shield of California* (2010) 189 Cal.App.4th 1117, 1138; and see *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134), the demurrer was properly sustained. However, in amending the complaint, Streit should have the opportunity to add allegations to the extent he means to seek restitution of money paid to Farmers.

DISPOSITION

The judgment and order sustaining without leave to amend Farmer's demurrer to Streit's first, second, third and fourth causes of action are reversed. The matter is remanded to the trial court with directions to enter a new order overruling Farmer's demurrer to all causes of action except the fifth and sixth causes of action and conduct further proceedings consistent with this opinion. Streit and Lucan are entitled to their costs of appeal.

WOODS, J.

We concur:

PERLUSS, P. J.

SEGAL, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.