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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No.	CV 08-7750 PA (FFMx)	Date	July 2, 2009
Title	American General Life Insurance Co. v. Leonard Wright, <u>et al.</u>		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
Paul Songco	Not Reported		N/A
Deputy Clerk	Court Reporter		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	
Proceedings:	IN CHAMBERS – COURT ORDER		

Before the Court is a motion to dismiss (“Motion”) (Docket No. 21) filed by defendants Leonard Wright and Kazia Wright, each individually and as co-trustees of the Patricial Freeman-Wright Trust dated March 1, 2001 (“2001 Trust”) (collectively “Defendants”) against plaintiff American General Life Insurance, Co. (“Plaintiff”). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing scheduled for June 29, 2009 is vacated, and the matter taken off calendar.

## **I. Background**

Plaintiff alleges that Defendants are the beneficiaries of two life insurance policies insuring Patricia Freeman-Wright (“Decedent”). (Compl. ¶¶ 12, 13.) Decedent disappeared on or about March 21, 2005, and her body was located on February 8, 2007. (*Id.* at ¶ 19.) The police and coroner determined that Decedent had died on March 21, 2005, in a single-car accident. (*Id.*) When Defendants made claims on the life insurance policies, Plaintiff undertook a claims analysis and allegedly discovered that Decedent had made material misrepresentations on her life insurance applications. (*Id.* at ¶¶ 20–24.) Plaintiff then filed its complaint (“Complaint”) for declaratory relief and to rescind the policies.

Defendants move to dismiss the Complaint on the grounds that Plaintiff’s action is time-barred.

## **II. Motion to Dismiss Standard**

Generally, plaintiffs in federal court are required to give only “a short and plain statement of the claim showing that the pleader is entitled to relief[.]” Fed. R. Civ. P. 8(a). While the Federal Rules allow a court to dismiss a cause of action for “failure to state a claim upon which relief can be granted,” they also require all pleadings to be “construed so as to do justice.” Fed. R. Civ. P. 12(b)(6), 8(e). The purpose of Rule 8(a)(2) is to “‘give the defendant fair notice of what the . . . claim is and the grounds

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upon which it rests.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964, 167 L. Ed. 2d 929 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957)). The Ninth Circuit is particularly hostile to motions to dismiss under Rule 12(b)(6). See, e.g., Gilligan v. Jamco Dev. Corp., 108 F.3d 246, 248-49 (9th Cir. 1997) (“The Rule 8 standard contains a powerful presumption against rejecting pleadings for failure to state a claim.”) (internal quotation omitted).

However, in Twombly, the Supreme Court rejected the notion that “a wholly conclusory statement of a claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some set of undisclosed facts to support recovery.” Twombly, 550 U.S. at 561, 127 S. Ct. at 1968, 167 L. Ed. 2d 929 (internal quotation omitted). Instead, the Court adopted a “plausibility standard,” in which the complaint must “raise a reasonable expectation that discovery will reveal evidence of [the alleged infraction].” Id. at 556, Id. at 1965, 167 L. Ed. 2d 929. For a complaint to meet this standard, the “[f]actual allegations must be enough to raise a right to relief above the speculative level . . .” Id. (citing 5 C. Wright Miller, Federal Practice and Procedure §1216, pp. 235-36 (3d ed. 2004) (“[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action”)); Daniel v. County of Santa Barbara, 288 F.3d 375, 380 (9th Cir. 2002) (“All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.”) (quoting Burgert v. Lokelani Bernice Pauahi Bishop Trust, 200 F.3d 661, 663 (9th Cir. 2000)). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” Twombly, 550 U.S. at 555, 127 S. Ct. at 1964-65, 167 L. Ed. 2d 929 (internal quotations omitted).

### III. Analysis

Defendants argue that Plaintiff’s claims for declaratory relief and rescission of the policies are governed by California Code of Civil Procedure section 366.2. Section 366.2 states:

If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable statute of limitations period, and the cause of action survives, an action may be commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

Cal. Code of Civ. P. § 366.2(a). It further states that the one-year limitations period “shall not be tolled or extended for any reason[.]” except in circumstances not applicable here. Id. § 366.2(b). Defendants assert that Plaintiff’s declaratory relief claim does not create federal subject matter jurisdiction. See Stock West, Inc. v. Confederated Tribes of Colville Reservations, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, jurisdiction must be based on an independent cause of action. Defendants also argue that

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Plaintiff's rescission claim is not a cause of action, but is merely a remedy. See Nakash v. Superior Court, 196 Cal. App. 3d 59, 70, 241 Cal. Rptr. 578, 584 (1987). Thus, according to Defendants, Plaintiff's real claim is for fraud or misrepresentation against the person who filled out the policy applications, which in this case was Decedent.

As an initial matter, the Court notes that claims for rescission under California law are subject to a four-year statute of limitations. Cal. Code of Civ. P. § 337(3) (establishing statute of limitations for rescission of contracts in general, including insurance contracts); Cal. Ins. Code § 359 (an insurer may rescind up to four years after the representation becomes false). However, claims for fraud or mistake must be asserted within three years. Cal. Code of Civ. P. § 338(d). Thus, whether rescission is a remedy or a cause of action, rescission claims are distinct from fraud claims under California law.

Moreover, the one-year statute of limitations under section 366.2 "pertains to debts, that is, to claims resulting from the relationship between the debtor and the creditor." Estate of Yool v. Yool, 151 Cal. App. 4th 867, 876, 60 Cal. Rptr. 3d 526, 532 (2007); see also id. (stating that this section "was 'intended to apply in any action on a debt of the decedent . . .'" (quoting Revised Recommendation Regarding Litigation Involving Decedents (Apr. 1992) 20 Cal. Law Revision Com. Rep. (1991-92) p. 512) (emphasis is the California Court of Appeal's)). Here, Plaintiff's claims do not involve any debt of Decedent, Decedent's estate, Defendants, or anyone else.

Section 366.2 also applies only to actions "brought on a liability of the person[.]" Cal. Code of Civ. P. § 366.2(a). "Liability of the person, or 'personal liability' means '[l]iability for which one is personally accountable and for which a wronged party can seek satisfaction out of the wrongdoer's personal assets.'" Estate of Yool, 151 Cal. App. 4th at 875, 60 Cal. Rptr. 3d at 532 (quoting Black's Law Dictionary 933 (8th ed. 2004)). Here, Plaintiff does not seek satisfaction of its claims out of Decedent's personal assets. Indeed, Plaintiff seeks to recover nothing from Decedent, her estate, or Defendants. Rather, Plaintiff seeks to be absolved of its liability on Defendants' claims made under the policies. (See Compl. ¶ 24 ("AMERICAN GENERAL seeks a declaration that it may rescind THE POLICIES (subject to a return of premiums to the Owners of THE POLICIES or their legal representatives) and that it has no liability to MR. WRIGHT or MS. WRIGHT under the POLICIES").) Thus, Plaintiff's claims are not "brought on the liability of" Decedent, and section 366.2 does not apply. Cal. Code of Civ. P. § 366.2(a).

Finally, the Court notes that Defendants provided no authority in which a court applied section 366.2 to a contracting party's claim for rescission. If section 366.2 did apply to such cases, beneficiaries of a life insurance policy could preclude the insurance company from rescinding the policy merely by waiting a year after the insured's death before filing a claim. Moreover, in cases where the death of the insured is not discovered for over a year, such as here, insurance companies would always be precluded from rescinding. The Court doubts that the California legislature intended for section 366.2 to apply in such situations.

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**Conclusion**

For the foregoing reasons, Defendants' Motion is denied.

IT IS SO ORDERED.

Initials of Preparer

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