No. S281510

In the Supreme Court of the State of California

KATHERINE ROSENBERG-WOHL,
Plaintiff and Appellant,

v.

STATE FARM FIRE AND CASUALTY COMPANY,
Defendant and Respondent.

First Appellate District, Case No. A163848
San Francisco County Superior Court, Case No. CGC-20-587264
The Honorable Anne-Christine Massullo, Judge

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April 11, 2024

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INTRODUCTION AND STATEMENT OF INTEREST

The Attorney General has a longstanding interest in judicial interpretation and application of the Unfair Competition Law. He routinely brings UCL public enforcement actions to protect consumers. (See, e.g., *People v. Ashford University, LLC* (2024) 100 Cal.App.5th 485; *People v. Johnson & Johnson* (2022) 77 Cal.App.5th 295.) He also regularly participates as amicus curiae in UCL actions filed by private plaintiffs, including in UCL cases pending before this Court. He filed a request for depublication of the Court of Appeal's decision here, and State Farm has responded to arguments in the depublication request in its answer brief. (ABM 13, 42, 52-55.)

This Court should hold that the UCL's four-year statute of limitations governs when a policyholder brings a UCL action against an insurer.[1] As this Court has explained, the UCL's expressly prescribed statute of limitations applies to *all* UCL causes of action. (*Cortez v. Purolater Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178-179.) That remains true even when the plaintiff's UCL cause of action resembles a different type of claim that the plaintiff could have asserted (or is asserting)

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[1] The Court framed the issue presented as concerning "an action . . . *for injunctive relief* under the Unfair Competition Law." (Italics added.) For simplicity, this brief generally refers to "UCL actions," as all or virtually all of the brief's analysis would apply equally to all UCL actions regardless of the remedy sought. The Attorney General also notes that, in keeping with the UCL's text—which draws no distinction between UCL actions based on the remedy sought (see, e.g., Bus. & Prof. Code, § 17203)—this Court has previously avoided making any such distinction.

against the same defendant. The UCL's four-year limitations period—longer than the period prescribed by the Legislature to bring many other types of actions—facilitates the ability of plaintiffs to enforce the statute and protect the public from unfair business practices. Indeed, the Court has consistently recognized the exceptional nature of the UCL within California's legal system: the Court has noted, for example, that the Legislature "deliberately traded the attributes of tort law for speed and administrative simplicity" to enable plaintiffs to challenge unfair business practices. (E.g., *Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1266-1267.)

Like the Court of Appeal majority, State Farm relies on Insurance Code section 2071.[2] That statute creates a one-year contractual limitations period that governs certain causes of action between policyholders and insurers—specifically, a "suit or action on th[e] policy for recovery of any claim."

In some contexts, this one-year contractual limitations period may override the statute of limitations that would otherwise apply to a given cause of action. For example, actions for breach of a written contract are generally subject to the longer limitations period prescribed by section 337 of the Code of Civil Procedure. But section 2071's one-year limitations period would govern a contract action in which a policyholder alleges that her

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[2] All further statutory references are to the Insurance Code unless otherwise indicated. Because section 2071's substantive policy terms all appear in subdivision (a) of the statute, we refer to the statute as "section 2071" without specifying the subdivision.

insurer breached the insurance policy by refusing to pay policy benefits for a loss covered under the policy. Such an action would be "on th[e] policy"—because it challenges the insurer's denial of the claim based on the terms of the policy—and "for recovery of a[] claim"—because it seeks to recover policy benefits for an insurance claim through an award of damages.

A UCL action, by contrast, falls outside section 2071. By definition, a UCL action cannot involve the recovery of damages for the denial of an insurance claim—and thus cannot be an action "for the recovery of a[] claim" under section 2071. And because UCL actions challenge conduct independently proscribed by the UCL—rather than relying on duties created or imposed by private-party insurance policies—such actions are not "on th[e] policy" under section 2071.

The statutory purpose behind section 2071 confirms why its one-year limitations period should not control here. Section 2071 is a response to insurers' concerns about fraudulent insurance claims: an unscrupulous policyholder might fabricate a claim about property damage and sue to recover policy benefits after evidence showing the true cause or extent of the damage has been lost. This concern is not implicated when a policyholder seeks relief under the UCL. A UCL action necessarily focuses on the insurer's business practices, not property damage pertaining to an insurance claim. And because a policyholder cannot use the UCL to obtain damages for a covered loss, there is no reason to fear fraud by the policyholder.

Because section 2071 is inapplicable, the UCL's four-year statute of limitations controls. This Court should reverse the contrary decision of the Court of Appeal.

LEGAL BACKGROUND

A. The UCL and its four-year limitations period

"The UCL's purpose 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.) As this Court has frequently recognized, "the scope of conduct covered by the UCL is broad." (E.g., *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1144.) The UCL prohibits "*any* unlawful, unfair or fraudulent business act or practice." (Bus. & Prof. Code, § 17200, italics added.) "[T]he Legislature . . . intended by this sweeping language to permit tribunals to enjoin on-going wrongful business conduct in whatever context such activity might occur" (*Abbott Laboratories v. Superior Court* (2020) 9 Cal.5th 642, 652, internal quotation marks omitted), including in the insurance industry (see, e.g., *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 380-381).

The UCL authorizes actions by both government officials and private plaintiffs. (Bus. & Prof. Code, § 17204.) "This court has repeatedly recognized the importance of . . . private enforcement efforts." (*Kraus v. Trinity Management Services Inc.* (2000) 23 Cal.4th 116, 126.) In a private enforcement action, "the primary form of relief available under the UCL to protect consumers from unfair business practices is an injunction, along with ancillary relief in the form of . . . restitution." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 319.) These equitable remedies

are expressly authorized under Business and Professions Code section 17203, and "are subject to the broad discretion of the trial court." (*Zhang*, *supra*, 57 Cal.4th at p. 371.) Restitution includes relief "necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (Bus. & Prof. Code, § 17203.) By contrast, "damages cannot be recovered." (*Korea Supply Co.*, *supra*, 29 Cal.4th at p. 1144.)

The UCL was "enacted for the specific purpose of creating new rights and remedies that were not available at common law." (*Nationwide Biweekly Administration, Inc. v. Superior Court* (2020) 9 Cal.5th 279, 322.) In comparison with common law claims, the UCL features "relaxed liability standards." (*Korea Supply Co.*, *supra*, 29 Cal.4th at p. 1151.) To prove a UCL cause of action under the statute's fraudulent prong, for example, the plaintiff "need not plead and prove the elements of a tort. Instead, one need only show that members of the public are likely to be deceived." (*Bank of the West*, *supra*, 2 Cal.4th at p. 1267, internal quotation marks omitted.)

The UCL also provides for "'distinct remedies'" that serve a different purpose than damages. (*Farmers Ins. Exchange v. Superior Court* (1992) 2 Cal.4th 377, 383.) "UCL remedies are cumulative to remedies available under other laws . . . [and] have an independent purpose—deterrence of and restitution for unfair business practices." (*Cortez*, *supra*, 23 Cal.4th at p. 179; see Bus. & Prof. Code, § 17205.) While a UCL cause of action may arise from the same facts that could support certain types of contract

or tort actions in the insurance context, the UCL "does not duplicate [such] contract and tort causes of action . . . , where damages are central." (*Zhang*, *supra*, 57 Cal.4th at p. 382.) Unlike actions for damages, UCL actions focus "on the defendant's conduct, rather than the plaintiff's damages, in service of the statute's larger purpose of protecting the general public against unscrupulous business practices." (*In re Tobacco II Cases*, *supra*, 46 Cal.4th at p. 312.)

A plaintiff has four years to bring "[a]ny action to enforce any cause of action" under the UCL. (Bus. & Prof. Code, § 17208.) This four-year statute of limitations "admits of no exceptions." (*Cortez*, *supra*, 23 Cal.4th at p. 179.)

B. Insurance Code section 2071's one-year limitations period

Subject to certain exceptions not at issue here, fire insurance policies in California must include a set of standard terms. (§ 2070.) Because homeowner's insurance policies often include coverage for fire-related damage (see, e.g., 1 CT 254), such policies generally include these standard terms, which appear in section 2071. In relevant part, section 2071 imposes a "statutorily mandated 'contractual' limitations period" by requiring the inclusion of a contract term providing that a "suit or action on this policy for the recovery of any claim" must be "commenced within 12 months next after inception of the loss." (*20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1274; § 2071.) In effect, section 2071 creates a one-year limitations period for actions by a policyholder that fall within its scope. (*20th Century*, at p. 1274.)

Section 2071's limitations period "is the result of long insistence by insurance companies that they have additional protection against fraudulent proofs." (*Bollinger v. National Fire Ins. Co.* (1944) 25 Cal.2d 399, 407.) Previously, insurers had worried that it could be difficult to defend lawsuits filed by unscrupulous policyholders "if claims could be sued upon within four years"—the usual limitations period for actions based on breach of a written contract. (*Ibid.*; see *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674, 682-683 [section 2071 has its origins in a 19th century New York statute that was intended "to prevent fraudulent fire claims"].)

STATEMENT OF THE CASE

Katherine Rosenberg-Wohl has a homeowner's insurance policy with State Farm. (1 CT 184, 234.) Consistent with section 2071, her policy features a limitations provision that generally requires actions against State Farm to be brought "within one year after the date of loss or damage." (1 CT 262.) State Farm has conceded that this provision is "coextensive with" section 2071. (ABM 14.)

After Rosenberg-Wohl paid for repairs at her home, State Farm denied her claim for reimbursement under the policy. (1 CT 185-186.) In a suit that was later removed to federal court, Rosenberg-Wohl sought damages for the denial of her insurance claim. (1 CT 112-118; see 1 CT 193.) The district court dismissed that action as untimely (*Rosenberg-Wohl v. State Farm Fire and Casualty Co.* (N.D.Cal. Mar. 28, 2022) 2022 WL 901545), and

Rosenberg-Wohl voluntarily dismissed her Ninth Circuit appeal of that dismissal (ABM 16).

In this separate state-court suit, Rosenberg-Wohl asserted a cause of action under the UCL. (1 CT 196-198.)[3] She alleged that State Farm engages in unfair business practices that include "summarily denying . . . property insurance claims" unless State Farm concludes that the claim is likely covered, as well as "a practice of obfuscating . . . what the basis is for its denials." (1 CT 186-187.) She disclaimed any breach of contract theory and made clear she was not seeking damages. (1 CT 193-194.) Instead, she sought a UCL injunction that would require State Farm to investigate property insurance claims in a reasonable manner and explain its reasons when it denies coverage. (1 CT 196-198.) She sought this relief to benefit "all existing and potential consumers of any property insurance policy sold by State Farm in California." (1 CT 193.)

State Farm demurred, asserting that Rosenberg-Wohl's UCL cause of action is untimely under the policy's one-year limitations provision. (1 CT 201-202.) The trial court acknowledged that Rosenberg-Wohl's action "does not seek to recover policy benefits." (2 CT 338.) Even so, the trial court held that the UCL cause of action is time-barred. (2 CT 337-339.)

A divided panel of the Court of Appeal affirmed. The majority held that Rosenberg-Wohl's UCL cause of action is

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[3] Rosenberg-Wohl also asserted a false advertising cause of action that is not at issue in this appeal. (See 1 CT 194-196; 2 CT 337, fn. 1.)

untimely under the one-year limitations provision authorized by section 2071. (Opn. 13-22.) The majority reasoned that section 2071 applies because the "crux" or "gravamen" of Rosenberg-Wohl's UCL cause of action "arises out of the contractual relationship" and "is 'grounded upon a failure to pay policy benefits.'" (Opn. 15, 19.)

Justice Stewart dissented. She argued that Rosenberg-Wohl's UCL action is not subject to the one-year limitations provision because the action "is not a disguised attempt[] to recover (or even litigate) any policy benefits," but instead "seeks only to compel State Farm to reform the way it conducts business with its customers." (Dis. opn. 7.)

Rosenberg-Wohl petitioned for review, and the Attorney General filed a request for depublication of the Court of Appeal's decision. This Court granted review.

ARGUMENT

"*Any* action to enforce *any* cause of action" under the UCL "shall be commenced within four years after the cause of action accrued." (Bus. & Prof. Code, § 17208, italics added; see *Cortez*, *supra*, 23 Cal.4th at pp. 178-179.) State Farm advances two principal arguments for departing from that "clear" statutory language (*Cortez*, at p. 178): first, that Rosenberg-Wohl's UCL cause of action should be recharacterized as a different type of claim under the "gravamen" test that courts apply in other contexts (see, e.g., ABM 32-35), and second, that section 2071's one-year bar trumps the UCL's four-year limitations period (see, e.g., ABM 25-31). Each argument fails.

I. THE UCL'S FOUR-YEAR STATUTE OF LIMITATIONS APPLIES TO ANY UCL CAUSE OF ACTION

1. "[T]he UCL does not serve as a mere enforcement mechanism." (*Rose v. Bank of America, N.A.* (2013) 57 Cal.4th 390, 397.) The UCL creates an "independent" cause of action with "its own distinct and limited equitable remedies." (*Id.* at pp. 396-397.) That remains true even in cases where the UCL borrows from other sources of law. (*Ibid.*; see *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1196 [describing the UCL as "a chameleon" because actions asserted under the UCL often borrow from other sources of law].)

Consistent with the UCL's independent status, the statute's four-year statute of limitations governs any type of UCL cause of action. Just as Business and Professions Code section 17203 prescribes the remedies a UCL plaintiff may obtain, section 17208 uniformly prescribes the time for filing the action. (See *Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 364 [UCL's statute of limitations applies "even if [a] borrowed statute has a shorter limitations statute"].) In other words, while the legal and factual predicates for a UCL cause of action may vary significantly from one case to the next, the statute of limitations remains constant.

This Court held in *Cortez*, for example, that a UCL cause of action based on unpaid wages could proceed under the UCL's four-year statute of limitations even though a related Labor Code cause of action would have been untimely under the shorter period for bringing such claims. (*Cortez*, *supra*, 23 Cal.4th at pp. 178-179.) This holding—that any UCL cause of action is

subject to the four-year statute of limitations—applies regardless of what source of substantive law the plaintiff might draw from. (See *Beaver v. Tarsadia Hotels* (9th Cir. 2016) 816 F.3d 1170, 1177-1178 & fn. 3 [*Cortez* "announc[ed] a general rule for all UCL claims regardless of the source of the law allegedly violated"].)

Cortez is consistent, not only with the plain text of section 17208, but also with this Court's recognition that the UCL occupies a special place within California's legal system. As this Court has often observed, the UCL serves interests of great public importance—and the Legislature took pains when crafting the statute to facilitate plaintiffs' abilities to pursue equitable remedies under the statute. (See, e.g., *Korea Supply Co.*, *supra*, 29 Cal.4th at p. 1150; *Bank of the West*, *supra*, 2 Cal.4th at pp. 1266-1267; see also dis. opn. 10 [describing "the UCL's unique scope and purpose"].)

2. State Farm contends that the UCL's statute of limitations is inapplicable "based on the gravamen of [Rosenberg-Wohl's] claims." (ABM 32.) State Farm proposes a "gravamen" test as a universally applicable bar against "artful pleading," under which courts must look beyond the way a plaintiff frames a cause of action in the complaint to determine the limitations period based on the essential "nature of the cause of action." (*Ibid.,* internal quotation marks omitted; see ABM 32-35.)

State Farm misapprehends the scope and role of the gravamen test. Properly understood, the gravamen test merely provides a way to fill gaps when no statutory law supplies the

applicable limitations period for a given cause of action.[4] It is not a tool for displacing an express statute of limitations that is an integral part of a statutory cause of action like the UCL.

Courts have traditionally used the gravamen test to sort common law claims and miscellaneous statutory claims into one of the general statutes of limitations enumerated in section 312 et seq. of the Code of Civil Procedure. Those sections of the Code of Civil Procedure prescribe limitations periods for, among other things, certain actions involving the recovery of real property (*id.*, §§ 315-330), actions based on personal injury (*id.*, § 335.1), actions based on contract (*id.*, §§ 337, 339), and a host of other types of actions. (See generally 3 Witkin, Cal. Procedure (6th ed. 2024) Actions § 474 [describing the role of the general statutes of limitations].)[5]

This Court's decision in *Leeper v. Beltrami* (1959) 53 Cal.3d 195, 207, illustrates the circumstances in which the gravamen test properly controls. In *Leeper*, the plaintiffs' "theory of recovery [was] not clear," and there was no clearly prescribed statute of limitations on point. The Court determined that "the

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[4] This brief's discussion of the gravamen test is limited to its application in the limitations-period context. The use of the same or similar standards in other contexts falls beyond the scope of this discussion.

[5] In keeping with this Court's practice, we refer to the "general statutes of limitations" (e.g., *Subsequent Injuries Fund v. Industrial Acc. Commission* (1952) 39 Cal.2d 83, 90), though some of the actions enumerated in the Code of Civil Procedure involve relatively specific factual scenarios (e.g., § 340.2 [actions based on exposure to asbestos]).

gravamen of [the] action is duress," and concluded that because duress bears strong resemblance to fraud, a cause of action based on duress is subject to the three-year statute of limitations for fraud set forth in Code of Civil Procedure section 338. (*Id.* at pp. 207-208.) Similarly, in *Jefferson v. J. E. French Co.* (1960) 54 Cal.2d 717, 718-719, because the primary purpose of plaintiff's accounting action was to recover money under an oral contract, the Court held that it was subject to the two-year statute of limitations for actions based on oral contract listed in Code of Civil Procedure section 339.

The general statutes of limitations in the Code of Civil Procedure do not determine the limitations period, however, if "a different limitation is prescribed by statute." (Code Civ. Proc., § 312.) The UCL includes such a prescription: it features a built-in statute of limitations that sets a limitations period for all UCL causes of action. (See *People v. Overstock.com, Inc.* (2017) 12 Cal.App.5th 1064, 1075-1076 [general statutes of limitations were inapplicable because "a different limitation for UCL actions is prescribed by [Business and Professions Code] section 17208"].)

If "gravamen" dictated the statute of limitations for a UCL action, the limitations period would vary from case to case depending on factors like which UCL prong the plaintiff has invoked, what source of substantive law the plaintiff is drawing from, and what other types of claims the UCL cause of action most closely resembles. (See *Aryeh*, *supra*, 55 Cal.4th at p. 1196 [recognizing that the nature of a UCL cause of action will depend on "the widely varying nature of the right invoked"].) That result

cannot be squared with the UCL's express command that a four-year limitations period applies to "[a]ny action to enforce any cause of action" under the statute. (Bus. & Prof. Code, § 17208.) And it would conflict with this Court's holding that the UCL's "clear" statute of limitations "admits of no exceptions." (*Cortez*, *supra*, 23 Cal.4th at pp. 178-179.)

Indeed, if State Farm's gravamen theory were correct, *Cortez* would have come out differently. There, the gravamen of plaintiff's UCL cause of action was a complaint about unpaid wages, which could have been asserted as a claim under the Labor Code. (*Cortez*, *supra*, 23 Cal.4th at pp. 178-179.) Yet this Court held that the plaintiff's UCL cause of action was governed by the UCL's four-year statute of limitations, not the shorter limitations period that applies to a Labor Code claim. (*Ibid.*)

Nor is there any need for State Farm's overbroad version of the gravamen test to guard against "artful pleading." There is nothing at all improper or anomalous about a plaintiff's decision to assert a cause of action with a relatively long limitations period to hedge against the risk that related claims may be time-barred. Plaintiffs do so routinely across a wide range of legal contexts. (See, e.g., *Thomson v. Canyon* (2011) 198 Cal.App.4th 594, 605 [if multiple claims are asserted based on same underlying facts, "one cause of action may survive even if another cause of action with a shorter limitations period is barred"].)

And, of course, a plaintiff's ability to avoid a limitations-based dismissal at the pleading stage is no guarantee of ultimate success on the merits. A plaintiff must still plead and prove the

UCL cause of action, the substantive content of which will depend on the plaintiff's particular theory. If a plaintiff is able to prove her claims, she has not circumvented or "artfully pled" around anything. The Legislature has made a judgment that plaintiffs should have four years to bring UCL actions. It would be inconsistent with that judgment to bar a plaintiff's suit merely because it could also have been brought under a different statute or on a different theory of relief. (See Bus. & Prof. Code, § 17205 ["remedies or penalties provided by this chapter are cumulative . . . to the remedies or penalties available under all other laws of this state"].)

The case law invoked by State Farm is not to the contrary. The only cited California decision that is arguably in tension with the foregoing analysis is *Foxen v. Carpenter* (2016) 6 Cal.App.5th 284, 296, in which the Court of Appeal suggested that the "more specific" limitations period for legal malpractice claims can sometimes trump the UCL's four-year limitations period. But that decision makes no mention of any gravamen test; it is irreconcilable with the Court's holding in *Cortez* (*ante*, pp. 19-20); and it is dicta because the court separately held that the plaintiff forfeited her UCL statute of limitations argument.

In *Hensler v. City of Glendale* (1994) 8 Cal.4th 1, this Court held that the general statutes of limitations did not apply to an inverse condemnation action because a separate statute prescribed a "'different limitation.'" (*Id.* at p. 22, quoting Code Civ. Proc., § 312.) Another case cited by State Farm, *Miller v. Superior Court* (1999) 21 Cal.4th 883, 895, merely recites the

basic principle that specific statutes control over general statutes when the two conflict; it does not involve limitations periods or the gravamen test. And the remaining California decisions on which State Farm relies involve claims that required application of one of the general limitations periods discussed above—not statutory causes of action like the UCL that have their own express statutes of limitations. (See ABM 32-35 & fn. 5 [citing, e.g., *Stoll v. Superior Court* (1992) 9 Cal.App.4th 1362, 1365-1366, 1368; *Giffin v. United Transportation Union* (1987) 190 Cal.App.3d 1359, 1361-1362, 1366-1367].)

State Farm also points to an affirmative defense that sometimes applies when UCL actions are based on theories foreclosed as a matter of law. (ABM 44-48; see generally *Zhang*, *supra*, 57 Cal.4th at p. 377.) But State Farm did not assert that defense in its demurrer (1 CT 200-219), its respondent's brief, or its answer to the petition for review.

Even if the issue were properly before this Court, the affirmative defense has no relevance here. For example, in *In re Vaccine Cases* (2005) 134 Cal.App.4th 438, the Court of Appeal held that plaintiffs' failure to comply with Proposition 65's prefiling notice requirement represented an "an absolute bar to relief" that precluded plaintiffs' UCL action based on an alleged violation of Proposition 65. (*Id.* at p. 458, internal quotation marks omitted; see also *Blanks*, *supra*, 171 Cal.App.4th at pp. 363-368 [similar].) The premise of such cases is that certain requirements in a "borrowed" statute are "fundamental parts" of "the substantive portion of the borrowed statute," such that

failure to comply with those requirements can bar an action under the UCL. (*Blanks*, at p. 364.) That premise is difficult to square with this Court's precedent.[6] And in any event, it has no relevance to the statute of limitations. As *Blanks* recognized, the limitations period is a purely "procedural" issue on which the UCL's four-year statute of limitations controls. (*Id.* at p. 364.) Any decision to the contrary would have been irreconcilable with this Court's reasoning in *Cortez*. (See, e.g., *Blanks*, at p. 364, citing *Cortez, supra*, 23 Cal.4th at pp. 178-179.)

3. The Court of Appeal majority rested its decision on a gravamen theory similar to State Farm's. The majority suggested that this Court's decision in *Aryeh*, *supra*, 55 Cal.4th 1185, instructs courts to identify the limitations period for a UCL cause of action based, not on "the claim's label as a UCL claim," but on "the nature of the obligation allegedly breached." (Opn. 15, internal quotation marks omitted.) Because the Court of Appeal majority viewed "the crux, the gravamen of [Rosenberg-Wohl's] claim [as] aris[ing] out of the contractual relationship," it concluded that the one-year limitations period in her insurance

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[6] This Court has long recognized that UCL plaintiffs are not bound by the requirements of a borrowed statute. For example, private plaintiffs may sue under the UCL even if the borrowed statute lacks a private right of action. (See *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 561-567; see also Stern, Cal. Practice Guide: Business & Professions Code Section 17200 Practice (The Rutter Group 2023) ¶¶ 7:7 to 7:8, 7:11.1 [discussing tension between *Blanks*, *In re Vaccine Cases*, and other UCL decisions].)

policy applies rather than the UCL's four-year statute of limitations. (*Ibid.*; see opn. 19 [similar reasoning].)

Nothing in *Aryeh* supports the Court of Appeal majority's approach. *Aryeh* held that the *accrual* of a UCL cause of action may vary depending on its essence or nature. (55 Cal.4th at p. 1196.) In *Aryeh*, for example, the plaintiff alleged that a copier company improperly charged customers for excess copies printed by the company's service representatives. (*Id.* at p. 1190.) No one disputed that the UCL's four-year statute of limitations applied, but it was unclear whether there was a single limitations period for the cause of action—which began to run when the plaintiff was first charged for the excess copies—or instead whether a new limitations period began every time the company imposed the allegedly improper charges. (See *id.* at p. 1197.)

Because the UCL is silent on the issue of accrual, the Court looked to "settled common law accrual rules" to fill the gap. (*Aryeh*, *supra*, 55 Cal.4th at p. 1193.) Those rules, in turn, can depend on the particular UCL theory the plaintiff is pursuing. (*Id.* at pp. 1196-1197.) The plaintiff in *Aryeh* alleged that the copier company breached "the duty not to impose unfair charges in monthly bills," a theory of liability that supported application of the continuing accrual doctrine. (*Id.* at p. 1200.) Because continuing accrual applied, the plaintiff could seek relief under the UCL for any excess charges imposed in the four-year period before the action was filed. (*Id.* at pp. 1200-1201.)

Aryeh's analysis of accrual is consistent with the rule that the UCL's four-year statute of limitations applies to any UCL

cause of action. Indeed, *Aryeh* accepts the four-year limitations period as a starting point for its analysis. (55 Cal.4th at pp. 1190, 1197, 1200.) Unlike with accrual, the UCL provides an express and universally applicable statute of limitations. There is no need to look beyond the statutory text to determine the applicable limitations period.

II. NOTHING IN INSURANCE CODE SECTION 2071 OVERCOMES THE UCL'S FOUR-YEAR STATUTE OF LIMITATIONS

State Farm asserts that, even if the UCL's statute of limitations applies to Rosenberg-Wohl's action in a general sense, it does not *control* because Rosenberg-Wohl contractually agreed to shorten the limitations period. (See, e.g., ABM 22, 40-42.) As State Farm concedes, however, the contractual limitations period "is coextensive with and authorized by Insurance Code section 2071." (ABM 14.)[7] For that reason, "the rules of statutory construction apply." (*Galanty v. Paul Revere Life Ins. Co.* (2000) 23 Cal.4th 368, 374; see *Prudential*, *supra*, 51 Cal.3d at p. 684.) Neither the text nor purpose of section 2071 supports State Farm's effort to truncate the UCL's limitations period.

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[7] While the language of the policy's limitations provision differs slightly from section 2071 (see 1 CT 262), State Farm agreed below that the provision relies on section 2071 (RB 12-13) and should be applied in a manner consistent with the statute (see dis. opn. 1, fn. 8). State Farm advances no argument that the policy language differs from section 2071 in any meaningful way. And for good reason: if this policy provision materially differed from section 2071 to the policyholder's detriment, it would likely be unenforceable. (See § 2070; *State Farm Fire & Casualty Co. v. Superior Court* (1989) 210 Cal.App.3d 604, 610.)

A. The plain text of section 2071 does not apply to UCL causes of action

1. Section 2071 applies only to actions that rely on the policy to recover damages for a disputed insurance claim

Section 2071's one-year limitations period applies only if the plaintiff's action is (1) "for the recovery of any claim" and (2) "on th[e] policy." Although these two phrases are closely related—and indeed, appear next to each other in the statute—we discuss them in turn to clarify the precise effect of each.

"[R]ecovery of any claim" refers to recovery of *insurance claims*—that is, claims for payment that policyholders submit to their insurers. The broader statutory context makes that clear: Beyond prescribing the one-year limitations period, section 2071 establishes a process for submitting and processing insurance claims. Policyholders must first notify the insurer about a loss covered under the policy, before submitting information to the insurer about the "amount of loss claimed." (§ 2071.) Insurers then take a series of steps to resolve the claim, which may include examination and appraisal. (*Ibid.*)

In setting out these steps for claim submission and resolution, section 2071 employs the word "claim" and its variants in the same insurance-specific sense in which it is used in the one-year limitations provision.[8] The phrase "any claim" in the limitations provision should be understood the same way—as

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[8] See, e.g., § 2071 (discussing tax documents that insurers deem "necessary to process or determine the claim," requirements for insurer's disclosure of "claim-related documents," and insurance adjusters "primarily responsible for a claim"); *ibid.* (referring to policyholders as "claimant[s]").

referring to any *insurance* claim rather than any *legal* claim asserted in court. (See *Murphy v. Allstate Ins. Co.* (1978) 83 Cal.App.3d 38, 44 [statute's use of "any claim" "plainly refer[s] to a claim for a loss covered by the policy"]; see generally *Kaanaana v. Barrett Business Services, Inc.* (2021) 11 Cal.5th 158, 175 ["'Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation'"].)[9]

The second phrase at issue—"on th[e] policy"—works together with "recovery of any claim" to refer to an action in which the policyholder invokes rights created by the policy to challenge the insurer's denial of a particular insurance claim. The one-year limitations period begins to run with "inception of the loss"—an adverse event that prompts a particular insurance claim. (§ 2071; see *Prudential*, *supra*, 51 Cal.3d at pp. 686-687.) By tying the limitations period to the inception of the loss, section 2071 contemplates an action in which the policyholder submits a claim for a covered loss, the insurer denies the claim, and the policyholder then sues to challenge that denial based on the theory that she is entitled to benefits under the policy.[10] This

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[9] The Legislature knows how to use the word "claim" to refer to legal claims asserted in court when it wishes to do so. (See, e.g., Code Civ. Proc., § 340.9, subd. (a) [referring to revival of "any insurance claim for damages" arising from the Northridge earthquake that was then barred by the statute of limitations, and equating a "claim" with a "cause of action"].)

[10] See, e.g., *Blue Shield of California Life & Health Ins. Co. v. Superior Court* (2011) 192 Cal.App.4th 727, 736-737, fn. 12 ("on

Court applied that understanding in *Prudential*, *supra*, 51 Cal.3d 674, in which it held that the one-year limitations period runs from the "'inception of the loss,'" but is tolled "from the time an insured gives notice of the damage to his insurer, pursuant to applicable policy notice provisions, until coverage is denied." (*Id.* at pp. 686-687, 693.)

By contrast, an action does not fall within section 2071 merely because it arises from an "event *related* to the policy." (*Lawrence v. Western Mutual Ins. Co.* (1988) 204 Cal.App.3d 565, 575, italics added.) For instance, an action is not on the policy if "the insured seeks damages that are not recoverable under the policy" (*Jang*, *supra*, 80 Cal.App.4th at p. 1302)—such as where the plaintiff seeks damages for the insurer's decision to hire incompetent contractors for necessary repairs in a manner that is not addressed by the policy (*Murphy*, *supra*, 83 Cal.App.3d at p. 46).

2. A UCL action cannot recover damages for a disputed insurance claim and turns on statutory prohibitions, not policy terms

A UCL action is neither "for recovery of a[] claim" nor "on th[e] policy" within the meaning of section 2071.

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the policy" means plaintiff's "essential aim is the recovery of benefits that were owed under the policy"); *Jang v. State Farm Fire & Casualty Co.* (2000) 80 Cal.App.4th 1291, 1301 (action is on the policy if it "seek[s] damages recoverable under the policy for a risk insured under the policy"); *Prieto v. State Farm Fire & Casualty Co.* (1990) 225 Cal.App.3d 1188, 1195 (same result if the action represents a "claim[] for policy benefits on account of covered losses").

a. In light of the UCL's "distinct and limited equitable remedies" (*Rose*, *supra*, 57 Cal.4th at p. 397), it would make little sense to apply section 2071's limitations period to UCL actions. As discussed above (*ante*, pp. 29-31), an "action on th[e] policy for recovery of a[ ] claim" under section 2071 means "an action seeking damages recoverable under the policy for a risk insured under the policy." (*Jang*, *supra*, 80 Cal.App.4th at p. 1301; see *Magnolia Square Homeowners Assn. v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049, 1063.) Damages, however, are unavailable under the UCL. (*Korea Supply Co.*, *supra*, 29 Cal.4th at p. 1144; see *ante*, p. 14.) Neither the Court of Appeal majority nor State Farm has articulated any realistic scenario in which a plaintiff could use the UCL to obtain damages or their practical equivalent—the retrospective payment of policy benefits for a particular insurance claim.

It is especially clear that Rosenberg-Wohl's UCL action, which sought only injunctive relief, cannot result in the "recovery of a[ ] claim" under section 2071. To obtain an injunction under the UCL, a plaintiff has to show that such relief is "necessary to prevent the use or employment by any person of any practice which constitutes unfair competition." (Bus. & Prof. Code, § 17203.) As in other contexts, injunctive relief under the UCL is prospective in nature. It may be granted where there is "a threat that the wrongful conduct will continue." (*Colgan v. Leatherman Tool Group, Inc.* (2006) 135 Cal.App.4th 663, 702; see *Cortez*, *supra*, 23 Cal.4th at pp. 173-174 [UCL injunctions prevent "'ongoing or threatened acts of unfair competition'"].) State Farm

has offered no theory of how a UCL injunction could constitute recovery of an insurance claim under section 2071.

Neither the Court of Appeal's majority opinion nor State Farm's answer brief makes any serious attempt to address section 2071's use of the phrase "recovery of a[] claim." To the contrary, State Farm disregards that aspect of the statute when it asserts that the remedy is irrelevant under section 2071. (See ABM 39.) State Farm's failure to grapple with the entirety of section 2071's text provides a sufficient basis for rejecting its request to apply the one-year limitations period.[11]

b. Even setting aside the statutory phrase "recovery of any claim," the closely related phrase "on th[e] policy" demonstrates why section 2071 does not apply to a UCL cause of action—regardless of the remedy sought. A UCL action hinges, not on a breach of the policy terms, but on the insurer's failure to refrain from unfair, fraudulent, or unlawful business practices proscribed by the UCL. (See *McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1487 [UCL actions are used "to

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[11] The dissent below emphasized that Rosenberg-Wohl requests only "public injunctive relief" and "does not seek any remedy intended to vindicate [her] private, individual rights." (Dis. opn. 14.) In the Attorney General's experience, however, it is not uncommon for a UCL plaintiff to benefit personally from a successful UCL action—as might be the case, for example, if a policyholder obtained restitution of policy premiums or an injunction reforming their insurer's business practices. For that reason, the Attorney General respectfully asks the Court to avoid any suggestion that the applicability of section 2071 turns on any case-specific analysis about whether Rosenberg-Wohl is likely to benefit individually from the injunction she seeks.

enforce general duties imposed on all businesses operating in California, i.e., the duties to refrain from fraudulent and unfair business practices"].) As this Court has "'long recognized,'" a UCL action has an "independent nature." (*Rose*, *supra*, 57 Cal.4th at p. 396; see *Farmers Ins. Exchange*, *supra*, 2 Cal.4th at p. 383.) It is "the UCL itself"—rather than outside sources of law that may form the predicate for a UCL action—that "confer[s] upon private plaintiffs specific power . . . to prosecute unfair competition claims." (*Rose*, at p. 396, internal quotation marks omitted.)

Rosenberg-Wohl's action is illustrative: as the dissent recognized below, it is "premised not on any contractual rights belonging to any insured under their policy of insurance but on a statutory remedy for 'unfair' business practices under the UCL." (Dis. opn. 14.) To put it another way: the ultimate success or failure of Rosenberg-Wohl's cause of action does not turn on whether she was entitled to recover benefits under the policy. Rather, her action will rise or fall on whether State Farm's business practices are unlawful, unfair, or fraudulent under the UCL. (Bus. & Prof. Code, §§ 17200, 17203.)

In that sense, Rosenberg-Wohl's UCL cause of action is similar to the plaintiff's fraud cause of action in *20th Century*, *supra*, a decision that treated section 2071's one-year period as inapplicable. (90 Cal.App.4th at pp. 1280-1281.) The cause of action at issue rested, not on the insurer's "failure to perform under the policy, but rather its alleged acts of deceit and deception that go well beyond simple nonperformance"—

purportedly lying to the plaintiff about earthquake damage to her home and the procedure for pursuing an insurance claim. (*Id.* at pp. 1256, 1280-1281.) As the court explained, "the purpose of [insurer's] alleged fraudulent behavior may have been to evade performance under the policy," but the plaintiff alleged "an entirely separate act of misconduct." (*Id.* at p. 1281.)[12]

To be sure, a UCL cause of action may arise from events that could also support a common law contract or tort action against an insurer. And a plaintiff may borrow from other sources of law to help prove an insurer's violation of the UCL. But no matter the evidentiary basis for a UCL cause of action or the particular legal theory behind it, the UCL requires a plaintiff to meet an independent statutory test: the plaintiff must prove that the defendant has "engage[d] in unfair competition" (Bus. & Prof. Code, § 17203), through an "unlawful, unfair or fraudulent business act or practice" (*id.*, § 17200).

For example, a "breach of contract may . . . form the predicate for Section 17200 claims"—but only *if* the plaintiff can show that the contractual breach "also constitutes conduct that is unlawful, or unfair, or fraudulent." (*Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645, italics and internal quotation marks omitted.) A "breach of contract is

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[12] *20th Century* addressed section 2071 in the course of applying Code of Civil Procedure section 340.9, which was intended to revive certain causes of action barred by section 2071. (See 90 Cal.App.4th at p. 1280.) The court held that section 340.9 was inapplicable because the fraud claim at issue was never subject to section 2071's one-year bar in the first place. (See *id.* at pp. 1280-1281.)

[alone] insufficient" to show "unlawful" conduct, but a breach may give rise to UCL liability if it is "forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made." (*Shroyer v. New Cingular Wireless Services, Inc.* (9th Cir. 2010) 622 F.3d 1035, 1044, quoting *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839; see *Puentes*, at p. 645.) A plaintiff could also point to additional facts showing that a breach of contract violates the UCL's unfair prong—for example if the defendant employs a practice of systemically breaching consumer contracts. (See, e.g., *Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1483.) What matters is that a UCL cause of action remains an independent cause of action with distinct requirements and remedies even if it bears some resemblance to other claims arising from the same events.

The Connecticut Supreme Court's decision in *Lees v. Middlesex Ins. Co.* (1991) 219 Conn. 644, provides additional "persuasive . . . reasoning" for viewing UCL causes of action as categorically falling beyond section 2071's ambit. (Dis. opn. 13.) *Lees* deemed Connecticut's version of section 2071 inapplicable to actions asserted under a UCL-like consumer protection statute. The court explained that in an action "'on [the] policy'"—that is, an action seeking damages for denial of an insurance claim—"the insurer's duty to comply with the policy provisions stems from the private insurance agreement and is contractual in nature." (219 Conn. at p. 653.) By contrast, for a statutory consumer protection action, "the insurer's duty stems not from the private insurance agreement but from a duty imposed by statute." (*Ibid.*)

The same distinction between private duties and statutory prohibitions exists under California law, and it underscores why a UCL action is not an action "on th[e] policy" under section 2071.

In holding otherwise, the Court of Appeal majority asserted that section 2071 governs any time that a cause of action "arises 'out of the contractual relationship.'" (Opn. 19; see opn. 15.) But that assertion finds no support in the statutory text. There "is a significant difference between 'arising out of the contractual relationship' and 'on the policy.'" (*Murphy*, *supra*, 83 Cal.App.3d at p. 49; see *Lees*, *supra*, 219 Conn. at p. 652; *ante*, pp. 29-31.)

State Farm's proposed standard is similarly unmoored from the statutory text. In State Farm's view, an action is "on th[e] policy" under section 2071 any time "the insured suffers a 'loss' and then files a lawsuit against the carrier," which includes "any suits challenging the carrier's handling of actual losses," regardless of what type of cause of action the plaintiff asserts and what remedies they seek. (ABM 26; see ABM 27 [arguing that section 2071 applies to actions "that at bottom arise out of claim handling conduct" or "turn on evidence regarding an insured's loss and an insurer's conduct in processing that loss"].)

Section 2071's one-year limitations provision, however, says nothing to imply that any suit related to a covered loss is subject to the limitations provision. While section 2071 provides that the one-year limitations period begins to run with the "inception of the loss," that does not mean that the provision covers any suit that bears some connection to an insured's loss. As discussed above, the phrases "on th[e] policy" and "for recovery of a[ ] claim"

define the scope of the limitations provision. (§ 2071.) Section 2071 thus applies only to actions that challenge the insurer's denial of a claim based on the terms of the policy and seek damages for that purportedly wrongful denial. (*Ante*, pp. 29-31.)

Both State Farm and the majority opinion below rely heavily on decisions involving allegations of bad faith conduct by insurers.[13] But such cases are materially distinct from UCL actions. In a typical bad faith action, the plaintiff invokes the covenant of good faith and fair dealing—which is impliedly incorporated into every insurance policy (see ABM 48-49)—to argue that the insurer owes damages recoverable *under the policy* for breaching that implied covenant. (See, e.g., *Prieto*, *supra*, 225 Cal.App.3d at p. 1195; *Abari v. State Farm Fire & Casualty Co.* (1988) 205 Cal.App.3d 530, 536.) For that reason, Court of Appeal decisions have sometimes treated bad faith actions as "action[s] on th[e] policy for recovery of [a] claim" under section 2071 when they seek damages based on an insurer's denial of an insurance claim. (See, e.g., *Prieto*, at pp. 1195-1196; *Abari*, at p. 536.) UCL actions, by contrast, do not depend on implied contractual policy terms, nor could they seek damages as compensation for benefits owed under the policy. The fact that

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[13] See opn. 19, citing *Jang*, *supra*, 80 Cal.App.4th at p. 1303, *Lawrence*, *supra*, 204 Cal.App.3d at p. 575, and *Sullivan v. Allstate Ins. Co.* (C.D.Cal. 1997) 964 F.Supp. 1407, 1414; see also ABM 25-27, citing, e.g., *Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.App.4th 712, 721 and *Prieto*, *supra*, 225 Cal.App.3d at p. 1196.

Rosenberg-Wohl's cause of action may bear some resemblance to a bad faith claim (cf. ABM 48) does not transform it into one.[14]

Finally, the Court of Appeal majority asserted that section 2071 applies because Rosenberg-Wohl might lack statutory standing under the UCL unless she proves that State Farm wrongfully denied her policy benefits. (See opn. 21-22.) State Farm makes only passing reference to that aspect of the majority's decision (see ABM 49), and it does not try to rebut Justice Stewart's response to the majority's standing analysis—in which she pointed out, among other things, that State Farm did not demur on this basis and that Rosenberg-Wohl need not prove entitlement to policy benefits to establish standing under the UCL. (Dis. opn. 11-13.) As Justice Stewart explained, there are "'innumerable ways'" for a policyholder to establish UCL standing, such as retaining an attorney to address an insurer's "opaque claims denial." (Dis. opn. 12, quoting *Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 323.) Even if Rosenberg-Wohl had to allege that she was entitled to policy benefits in

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[14] The Court need not weigh in here on whether and to what extent the Courts of Appeal have properly applied this aspect of section 2071 in the bad faith context. (Cf. *Prudential*, *supra*, 51 Cal.3d at p. 692 [referring to that body of lower-court case law in passing without definitively approving or disapproving it].) The relevant Court of Appeal decisions take different approaches to this issue (compare, e.g., *Murphy*, *supra*, 83 Cal.App.3d at pp. 48-49, with, e.g., *Jang*, *supra*, 80 Cal.App.4th at p. 1301), and courts in other jurisdictions have held that those States' versions of section 2071 do not apply to bad faith claims. (See, e.g., *Jones v. Secura Ins. Co.* (2002) 249 Wis.2d 623, 643, fn. 11; *Bullet Trucking, Inc. v. Glen Falls Ins. Co.* (Ohio Ct.App. 1992) 84 Ohio App.3d 327, 333.)

order to establish UCL standing, that would not transform her UCL action into an "action on th[e] policy for the recovery of any claim." (§ 2071.) She would not be seeking to enforce any legal duties arising from the policy or to recover any damages for the wrongful denial of a claim.

B. Section 2071's purpose confirms why the statute does not apply here

To the extent that the text of section 2071 leaves any room for doubt about its application here, the Court should look to the statute's purpose. (See, e.g., *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1122 [analyzing statute's purpose and legislative history as well as its text].)

State Farm contends that the purpose of section 2071 is to "ensur[e] that challenges to the denial of insurance claims are promptly litigated while evidence of the insured's loss, and the carrier's handling of the insurance claim, is still fresh." (ABM 12-13; see ABM 23-24, 27.) That is certainly *one* purpose motivating section 2071, but it is not particularly probative. The same abstract statement of purpose could be made about nearly any statute of limitations. (See, e.g., *Romano v. Rockwell Internat., Inc.* (1996) 14 Cal.4th 479, 488 ["Civil statutes of limitations protect defendants from the necessity of defending stale claims and require plaintiffs to pursue their claims diligently"]; *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 787.) Contrary to State Farm's implication (see ABM 27, 35, 55), the general goal of promptly adjudicating claims does not mean that every doubt must be resolved in favor of the shorter limitations period.

State Farm fails to address a more precise purpose that motivated enactment of section 2071. The one-year limitations period stems, at least in part, from a specific concern on the part of insurers: preventing lawsuits in which the policyholder tries to recover policy benefits several years after the claimed loss, and does so based on fraudulent assertions about the nature of the property damage. (See *Bollinger, supra*, 25 Cal.2d at p. 407.) As this Court has recognized, the limitations period "is the result of long insistence by insurance companies that they have additional protection against fraudulent proofs." (*Ibid.*)

Before the advent of standard form policies like section 2071, insurers inserted contractual limitations provisions into their policies. (See *Bollinger, supra*, 25 Cal.2d at p. 407.) Although some courts refused to enforce those provisions, other courts upheld them in response to insurance "companies' plea that the limitation was necessary as a protection against fraudulently proved losses." (Comment, *Enforcement of Provisions in Insurance Policies Limiting Time Within Which Action May Be Brought* (1932) 41 Yale L.J. 1069, 1069 & fn. 2.) In one such case, Justice Stephen Field (while riding circuit in California after his appointment to the U.S. Supreme Court) enforced a one-year limitations provision and explained that "[t]he greater the delay [in bringing suit] the greater will be the difficulty of detecting frauds on the part of the insured, or of ascertaining the actual extent of the losses incurred." (*Davidson v. Phoenix Ins. Co.* (C.C.N.D.Cal. 1866) 7 F.Cas. 37, 37-38.)

Eventually, States enacted standard form policies that enshrined in statute a shortened limitations period. The first to do so was New York, which in the 1880s enacted standard policy terms that included a one-year limitations provision intended "to prevent fraudulent fire claims." (*Prudential*, *supra*, 51 Cal.3d at pp. 682-683; see ABA Insurance Law Section, Annot. of 1943 N.Y. Standard Fire Insurance Policy (1953) p. 152 [reproducing this statutory language along with later amendments].) California enacted section 2071 in 1909. (*Prudential*, *supra*, 51 Cal.3d at p. 682.) Section 2071 was "fashioned after [the] New York statute." (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1148.) As initially enacted, though, section 2071 featured a 15-month limitations period rather than a one-year period. (*Prudential*, at p. 682.)

In 1949, the Legislature amended section 2071 "to conform more closely to the New York law, shortening the limitation period to the one-year period of that law." (*Vu*, *supra*, 26 Cal.4th at p. 1148; see Insurance Com. Rep. to Governor Warren (May 24, 1949) [amended version of section 2071 was "modeled after the form which was adopted by the State of New York in 1943, and which thereafter has been adopted in numerous other states"].) Section 2071 has remained substantially the same ever since. (*Prudential*, *supra*, 51 Cal.3d at p. 683.) In light of this history, courts have correctly concluded that section 2071 is intended, among other things, to "prevent fraud." (*Sullivan*, *supra*, 964

F.Supp. at p. 1411, citing *Prudential*, at p. 684 and *Magnolia Square*, *supra*, 221 Cal.App.3d at p. 1060.)[15]

Given this statutory purpose, it is doubtful the Legislature would have intended section 2071's one-year limitations period to apply to a UCL action. (See *ante*, pp. 31-40.) The UCL reflects an "overarching legislative concern . . . to provide a streamlined procedure for the prevention of *ongoing or threatened acts of unfair competition*." (*Solus Industrial Innovations, LLC v. Superior Court* (2018) 4 Cal.5th 316, 340, internal quotation marks omitted.) Accordingly, a UCL action focuses—much like actions under similar laws in other States—"not on the nature of the loss and the terms of the insurance contract, but on the conduct of the insurer." (*Lees*, *supra*, 219 Conn. at p. 653; see *In re Tobacco II Cases*, *supra*, 46 Cal.4th at p. 312 [UCL actions turn "on the defendant's conduct, rather than the plaintiff's

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[15] States with provisions equivalent to section 2071 have similarly recognized that they serve the purpose of preventing fraud. (See, e.g., *Stahl v. Preston Mut. Ins. Assn.* (Iowa 1994) 517 N.W.2d 201, 202 [apparent that Iowa's "legislature intended to allow insurers to protect themselves from the bringing of stale claims which involve the added dangers of fraud and mistake"]; *Borgen v. Economy Preferred Ins. Co.* (Wis.Ct.App. 1993) 176 Wis.2d 498, 509 [describing purpose as "protect[ing] the insurer from stale or fraudulent fire claims which could not be adequately investigated because of the passage of time"]; *Hicks v. British American Assur. Co.* (1900) 162 N.Y. 284, 291-292 [New York's late 19th century statute balanced terms favorable to policyholders with other terms "which experience has shown to be necessary in order to protect insurance companies from being victimized through fraud"].)

damages"].) And because policyholders cannot recover monetary damages in a UCL action, they have no apparent incentive to fabricate allegations about property damage.[16]

Instead, a UCL action will involve allegations about the insurer's acts or practices, evidence of which should be in the insurer's possession and which is not susceptible to manipulation by the policyholder. For example, Rosenberg-Wohl alleges that State Farm has a practice of "summarily denying . . . property insurance claims" unless State Farm concludes that the claim is likely covered, as well as "a practice of obfuscating . . . what the basis is for its denials." (1 CT 186-187.) The evidence may or may not support those allegations, but there is no reason to think that State Farm will be placed at an unfair disadvantage in responding to them just because Rosenberg-Wohl filed her action more than one year after the relevant loss. Insurers are already required to retain all claims-related documents from the current year and the preceding four years. (Cal. Code Regs., tit. 10, § 2695.3, subds. (a)-(b).) And if Rosenberg-Wohl *does* prove unfair business practices, there is every reason to think that the Legislature would have wanted that conduct enjoined under the UCL, given the statute's overarching goal of addressing "on-going wrongful business conduct in whatever context such activity

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[16] The availability of damages in insurance bad faith actions (see, e.g., CACI No. 2350) means that policyholders' incentives in that context could materially differ from incentives in the UCL context. That provides yet another basis for distinguishing bad faith actions from UCL cases. (See *ante*, pp. 38-39 & fn. 14.)

might occur." (*Abbott Laboratories*, *supra*, 9 Cal.5th at p. 652, internal quotation marks omitted.)

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Respectfully submitted,

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April 11, 2024

CERTIFICATE OF COMPLIANCE

I certify that the attached AMICUS CURIAE BRIEF uses a 13 point Century Schoolbook font and contains 9,424 words.

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/s/ Christopher D. Hu

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April 11, 2024

DECLARATION OF ELECTRONIC SERVICE

Case Name: ***Rosenberg-Wohl v. State Farm Fire & Casualty Company***
No.: **S281510**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practices at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On April 11, 2024, I electronically served all parties in the case, as well as the First District Court of Appeal, with the attached **AMICUS CURIAE BRIEF** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 11, 2024, at San Francisco, California.

Christopher D. Hu	*/s/ Christopher D. Hu*
Declarant	Signature