

WILLIAM CHAMBERLAIN,

Plaintiff,

v.

PACIFIC GAS & ELECTRIC COMPANY,

Defendant.

TENTATIVE RULING

This matter arises out of a dispute regarding solar credits and alleged damage to property brought by William Chamberlain ("Plaintiff") against Pacific Gas & Electric ("PG&E").

Now before the Court is PG&E's demurrer to the First Amended Complaint ("FAC.")

The demurrer is unopposed and the Court notes that this failure may be "deemed a consent to the granting of the motion." (Cal. Rules of Court, 8.54(c).)

PG&E's Request for Judicial Notice ("RJN") is granted.

I. BACKGROUND

PG&E owns, operates, and maintains overhead high voltage lines and poles that cross Chamberlain's property. (RJN, Ex. F.) PG&E holds easement rights via a grant from the prior owners of Plaintiff's property. (*Ibid.*) PG&E's easement rights at Chamberlain's property include "rights of ingress and egress, rights to construct, inspect, maintain, and use electric distribution facilities, including poles, conductors, transformers, and other appurtenances along the route described in the easement." (*Ibid.*)

On December 23, 2022 Plaintiff installed solar panels on his property pursuant to the Inflation Reduction Act. (FAC ¶ 7.) Plaintiff alleges he qualified under the Act "due to living in a high fire danger zone and suffering exorbitant electricity bills through PG&E, averaging \$800 monthly and reaching as high as \$3,000." (*Id.* ¶ 8.) PG&E agreed to connect the solar system and apply solar credits. (*Id.* ¶ 9.) Plaintiff alleges that he performed his obligations "by operating his solar panels from May 11, 2023 until August 18, 2023, producing zero electric bills and providing surplus power. Plaintiff transferred approximately \$1,000 worth of power back to PG&E." (*Id.* ¶ 10.)

Plaintiff alleges that pursuant to "California's Net Energy Metering program, [PG&E] receives 75% of unused solar power without proper credit to Plaintiff. [PG&E] wrongfully

denied Plaintiff the ability to apply true-up credits toward his outstanding balance.” (FAC ¶ 11.) Thereafter, PG&E apparently shut off Plaintiff’s solar panels. (*Id.* ¶ 12.)

On September 19, 2023, the plaintiff contacted PGE to remove power poles from the Plaintiff’s property. (FAC ¶ 13.) Plaintiff alleges that he couldn’t get homeowner’s insurance with the poles in place and could also not receive the battery for his panels because of the conflict with PG&E. (*Id.* ¶ 14.) However, PG&E has refused to remove the poles. (*Ibid.*)

Finally, Plaintiff alleges that on May 20, 2024 PG&E flew a helicopter over his property at an unsafe height and caused damages. (FAC ¶ 15.)

Plaintiff’s FAC contains the following causes of action: 1) breach of contract, 2) breach of the covenant of good faith and fair dealing, 3) negligence, 4) trespass, 5) private nuisance, and 6) violation of multiple federal laws.

II. LEGAL STANDARD FOR DEMURRER

“A demurrer tests the sufficiency of a complaint and admits all facts properly pleaded.” (*Setliff v. E.I. Du Pont de Nemours & Co.* (1995) 32 Cal. App. 4th 1525, 1533.) The court assumes the truth of the allegations asserted but does not assume the truth of “contentions, deductions, or conclusions of law.” (*California Logistics, Inc. v. State of California* (2008) 161 Cal. App. 4th 242, 247.) The court can further look at those facts that “reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken.” (*MKB Management, Inc. v. Melikian*, (2010), 184 Cal.App.4th 796, 802.) If a complaint does not sufficiently state a cause of action, “but there is a reasonable probability that a defect can be cured by amendment, leave to amend must be granted.” (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal. 4th 26, 38.)

“A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed.” (*SKF Farms v. Superior Court* (1984) 153 Cal.App.3d 902, 905.) “The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.” (Hahn, *supra*, at p. 747.)

Defendant asserts that the Plaintiff’s Complaint is subject to demurrer pursuant to Civ. Code 430.10 (a)(lack of subject matter jurisdiction) and (e) (failure to state a claim).

PG&E has presented evidence of its meet and confer attempts. (Declaration of Gayle L. Gough (“Gough Decl.”) ¶ 2.)

III. Analysis

A. Subject Matter Jurisdiction

PG&E asserts that the FAC is subject to demurrer pursuant to Code of Civil Procedure section 430.10(a) for lack of subject matter jurisdiction because the California Public Utilities Commission (“CPUC”) has exclusive jurisdiction to adjudicate customer disputes regarding billing, export of solar power to PG&E’s distribution system, and termination of electric services, and the CPUC has established requirements for inspection of electric facilities and procedures for customer requests to relocate PG&E’s facilities. (RJN, Exs. A-E, G-I.) PG&E further argues that adjudication of Plaintiff’s FAC would require the Court to “impermissibly interfere with the CPUC’s regulations, authority, and supervision of customer billing, solar power interconnection agreements, termination of service, and inspections and maintenance of the electric facilities. “ (MPA p. 5.)

Cal. Public Utility Code section 1759 (“Section 1759”) carves out an exclusive jurisdiction for the adjudicatory and rulemaking jurisdiction of the CPUC. (*Cundiff v. GTE California Inc.* (2002) 101 Cal.App.4th 1395, 1405 [“Section 1759 defines and limits the power of courts to pass judgment on, or interfere with, what the commission does”]; Pub. Util. Code § 1759(a).) The CPUC has very broad authority to regulate numerous aspects of utilities. (*San Diego Gas & Electric Co. v. Superior Court* (“*Covalt*”) (1996) 13 Cal.4th 893, 915.) However, it does not establish an immunity to civil suit for public utilities merely because they are regulated under the CPUC’s authority. (*People ex rel. Orloff v. Pacific Bell* (2003) 31 Cal.4th 1132, 1144.) Instead, the Court has express statutory jurisdiction to hear and remedy claims arising from injuries caused by a public utility. (See Pub. Util. Code § 2106.)

Covalt set a three part test for whether Section 1759 bars this Court’s exercise of jurisdiction in the face of Section 2016. Pursuant to that test, the Court must first determine 1) whether the CPUC has authority to adopt regulatory policy on the issue in question; 2) whether the CPUC has exercised that regulatory authority; and (3) whether the superior court action would hinder or interfere with the CPUC’s exercise of that regulatory authority. (*Goncharov v. Uber Techs., Inc.* (2018) 19 Cal.App.5th 1157, 1170 [citing *Covalt*, supra, 13 Cal.4th at pp. 923, 926, 935].)

1. Whether the CPUC has Authority to Adopt Regulatory Policy on the Issue in Question and Whether it Has Exercised that Regulatory Authority (*Covalt* test parts 1 and 2)

The CPUC has the authority to adopt tariffs and other rules governing applications to connect solar systems to a utility’s electricity grid. (*Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, 642.) It further has the authority to regulate, establish rules, establish procedures, and adjudicate matters concerning customer billing, solar interconnection agreements, termination of electric service, and inspection and maintenance of electric facilities. Thus, the first part of the *Covalt* test is met.

The CPUC has also adopted numerous policies and procedures applicable to the matters at issue in this case including: billing disputes (RJN, Exs. A, B, and D [Tariff, Electric Rules 9, 10, 17.1.]), interconnection of solar power (RJN, Ex. E [Tariff, Electric Rule 21]); termination of service (RJN, Ex. C [Tariff, Electric Rule 11]); and inspection and maintenance of PG&E facilities (RJN, Exs., G, H, I, L [Wild Fire Mitigation Plan, General Order 165, Tariff, Electric Rules 15 and 16.]) Thus, as CPUC has also exercised that regulatory authority, the second part of the *Covalt* test is met.

2. Whether the Action in This Case Would Hinder or Interfere with the CPUC's Exercise of Regulatory Authority (*Covalt* test part 3.)

The Court next examines whether the specific claims brought by Plaintiff, if adjudicated by this Court, would hinder or interfere with CPUC's exercise of regulatory authority.

a. Breach of Contract/Breach of Covenant of Good Faith and Fair Dealing Arising From Solar Credits and Termination of Service

In the first and second causes of action for breach of contract and breach of the covenant of good faith and fair dealing, Chamberlain alleges that PG&E failed to apply solar credits to his electric bill and terminated his service. As an initial matter, to allege a breach of the implied covenant, the claim must be for something "beyond breach of the contractual duty itself." (*Careau & Co. v. Security Pacific Business Credit, Inc.*, (1990) 222 Cal. App. 3d 1371, 1394.) Here, the allegations giving rise to the breach of contract are identical to the claims for breach of the implied covenant of good faith and fair dealing. There are no additional factual allegations beyond the breach of the contractual duty itself. (See eg. *Moore v. Wells Fargo Bank, N.A.* (2019), 39 Cal.App.,5th 280, 292 [breach of the implied covenant requires allegations beyond simply breach of contract].)

Thus, the demurrer as to the claim for breach of the covenant of good faith and fair dealing is sustained, with leave to amend.

As regards the breach of contract claim, Plaintiff alleges that PG&E breached an implied contract with him because PG&E disconnected the solar panels and refused to honor the solar credits owed to Plaintiff. (FAC ¶¶ 16, 18.) It is questionable whether there is even a "contract" between PG&E and Plaintiff that can arise solely by virtue of the existence of the Inflation Reduction Act or PG&E's system of net metering electric use. However, even if a contract existed, adjudication of Plaintiff's claims would require the Court to hinder or interfere with CPUC's authority.

For instance, CPUC has exercised its authority to set the procedures for utility billing and customer payment of bills for electric service. (Electric Rule 9.) CPUC has

established policies and procedures for customers to dispute electric bills, the consequences of failing to follow those specific procedures, and liability for PG&E for terminating service. (Electric Rules 10, 11.) PG&E also has set regulations for handling billing disputes. (Electric Rule 17.) CPUC has also established its own regulations for interconnection of solar systems to the grid and how that connection is maintained and operated. (Electric Rule 21; *Davis v. Southern California Edison Co.* (2015) 236 Cal.App.4th 619, 642.)

Thus, for the Court to weigh in on the fairness or appropriateness of CPUC's billing and dispute system would substantially interfere with CPUC's regulatory authority. Accordingly, the demurrer to the breach of contract claim is sustained, with leave to amend.

b. Causes of Action for Negligence, Trespass, and Private Nuisance

Plaintiff's causes of action for negligence, trespass and private nuisance all stem from the same factual allegations: 1) that PG&E allegedly flew a helicopter in an unsafe manner or improper distance from Plaintiff's property and caused damages and 2) PG&E needs to remove the power poles on Plaintiff's property or pay rent.

Public Utility Code section 2016 provides:

Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby for all loss, damages, or injury caused thereby or resulting therefrom.

However, Section 2016 "must be construed as *limited* to those situations in which an award of damages would not hinder or frustrate the commission's declared supervisory and regulatory policies." (*Covalt*, 13 Cal.4th at 917-918 [italics in original].)

Here, PG&E has all necessary land rights to access, operate, inspect, and maintain the electric facilities in the easement that crosses Chamberlain's property. (RJN, Ex. F [easement].) Thus, the existence of the power poles on Plaintiff's property is done pursuant to Easement and as part of CPUC's broad authority to provide and maintain its electrical systems. Nothing in the FAC suggests that the poles have been placed or left there without authority. For the Court to weigh in on the propriety of the poles' location would hinder CPUC's authority.

As regards the helicopter causing damages, Plaintiff's sole allegation of causation is that the helicopter flew lower than allowed by federal law. First, CPUC has authority to, and does in fact, use helicopters to inspect and maintain its electrical lines. (RJN G [Wildfire Mitigation Plan].) Second, PG&E has pointed out that the federal law cited by

Plaintiff for the proposition that the helicopters flew to low, has a specific exception for helicopters. (See 14 C.F.R. §91.119(d)(1) [“A helicopter may be operated at less than the minimums prescribed ... provided each person operating the helicopter complies with any routes or altitudes specifically prescribed for helicopters by the FAA”].)

The allegations giving rise to the causes of action for negligence, trespass and private nuisance are entirely based on PG&E’s conduct authorized and regulated by the CPUC. Thus, for the Court to adjudicate these claims, it would interfere or hinder with CPUC policy. Accordingly, the demurrers as to the causes of action for negligence, trespass, and private nuisance are sustained, with leave to amend.

3. Causes of Action for Violations of Federal Law

Plaintiff’s sixth cause of action is for violation of multiple federal laws. However, there are no factual allegations giving rise to any of those violations. Plaintiff merely makes a legal conclusion that PG&E violated those laws. As such, Plaintiff has failed to state a claim and demurrer is appropriate as to the sixth cause of action as well.

The Court grants the demurrer as to the sixth cause of action, with leave to amend.

IV. Conclusion

The demurrer is sustained, with leave to amend. While leave to amend is generally freely granted, the opportunity to amend is not limitless. (See e.g., *Goodman v. Kennedy* (1976) 18 Cal.3d 335.) Accordingly, Plaintiff is on notice that future requests to amend may be denied or limited without a showing how an amendment could be made to save his claims.