CEB®

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BREACH OF FIDUCIARY DUTY LITIGATION

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What Recent Cases Reveal About the Prosecution and Defense of Breach of Fiduciary Duty Claims

- Why are breach of fiduciary duty claims significant today?
- What facts permit the plaintiff to assert a breach of fiduciary duty claim?
- How should a defendant respond to breach of fiduciary duty claims at the pleading stage?
- What options are available to a plaintiff who cannot plead a fiduciary relationship?

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Plaintiff's Benefits in Asserting a Breach of Fiduciary Duty Claim

- If a fiduciary duty is alleged, it is difficult to have claims dismissed at the pleading stage
- A fiduciary duty claim provides the plaintiff with additional substantive claims
- Less burdensome burden of proof
- Imposes burdens on the defendant
- Potential for punitive damages

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A Relationship Based on Confidence and Loyalty

A fiduciary relationship refers to any relationship existing between the parties to a transaction in which one of the parties has "a duty to act with the utmost good faith for the benefit of the other party."

Gilman v. Dalby, 176 Cal.App.4th 606, 614 (2009)

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The Creation of a Fiduciary Relationship

A fiduciary duty may be created by law or arise when a person with justification places trust and confidence in the integrity and fidelity of another.

Boulton v. American Transfer Servs., Inc., 2015 U.S.Dist.Lexis 94994 (S.D. Cal. 2015)

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Relationships That Traditionally Create a Fiduciary Duty

- Corporate officers and directors
- Attorney-client relationship
- Business partners
- Trustees

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Relationships That Traditionally Do Not Create A Fiduciary Duty

- Insurer-insured
- Borrower-lender
- Lessor-lessee
- Licensor-licensee
- Other ordinary business relationships

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Elements of a Breach of Fiduciary Duty Claim

The elements of a cause of action for breach of fiduciary duty are (1) the existence of a fiduciary duty, (2) breach of the fiduciary duty, and (3) damage proximately caused by the breach.

Hasso v. Hapke, 227 Cal.App.4th 107, 140 (2018)

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The Significance of the Existence or Non-Existence of a Fiduciary Relationship at the Pleading Stage

- The plaintiff must allege facts establishing a fiduciary relationship, either based on a traditional fiduciary relationship or facts showing the relationship is based on trust and confidence.
- At the pleading stage, the defendant may challenge the breach of fiduciary duty claim based on the lack of a fiduciary relationship.

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Is the Lack of a "Traditional" Fiduciary Relationship Determinative?

A homeowners' association alleged the developers breached a license agreement and fiduciary duties owed to the homeowners by diluting the homeowners' parking rights. The Court of Appeal held the complaint properly alleged breach of contract and fiduciary duty claims against the developers.

Market Lofts Community Ass'n v. 9th St. Market Lofts, LLC, 222 Cal.App.4th 924 (2014)

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Is a “Traditional” Non-Fiduciary Relationship Determinative?

The Court found a fiduciary relationship in the insurer-insured context. The defendants acted as “insurers-plus” and the complaint alleged defendants “present[ed] themselves as expert financial advisors who provided objective financial advice....”

Sanchez v. Aviva Life & Annuity Co., 2010 U.S.Dist.Lexis 64264 (E.D. Cal. 2010)

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The Absence of a Fiduciary Relationship is the Basis for Dismissal of the Breach of Fiduciary Claim

Rufini v. CitiMortgage, Inc., 227 Cal.App.4th 299 (2014) (plaintiff's real property was sold by the county at a tax sale, the Court affirmed the county's demurrer because the Revenue and Taxation Code did not create a fiduciary relationship)

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The Presence of a Fiduciary Relationship Will Avoid Dismissal at the Pleading Stage

When facts are alleged that a partner in a partnership failed to act in good faith in connection with the partnership's business, a claim for breach of fiduciary duty is stated and a motion to dismiss will be denied.

Treefrog Devs., Inc. v. Seidio, Inc., 2013 U.S.Dist.Lexis 110760 (S.D. Cal. 2013)

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How Should Plaintiff Respond to a Demurrer or Motion to Dismiss Challenging the Existence of a Fiduciary Relationship?

Rule 12(b)(6) motion denied: “Here, Plaintiff alleges that it was in a fiduciary relationship with PG&E because PG&E was its agent … with regard to the collections and billing practices. … because the existence of a fiduciary relationship is a matter of fact, Plaintiff has adequately alleged that PG&E was its fiduciary....”

North Star Gas. Co. v. Pacific Gas and Electric Co., 2016 U.S.Dist.Lexis 131684 (N.D. Cal. 2016)

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What If Plaintiff Cannot Allege a Fiduciary Relationship With Defendant?

Plaintiff need not have a fiduciary relationship with the defendant to allege a claim for aiding and abetting breach of fiduciary duty.

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The Elements of an Aiding and Abetting Breach of Fiduciary Duty Claim

(1) A third party's breach of fiduciary duty owed to plaintiff, (2) defendant's (the aider and abettor's) actual knowledge of the breach of fiduciary duty, (3) substantial assistance or encouragement by defendant to the third party's breach, and (4) defendant's conduct being a substantial factor in causing harm to plaintiff.

Nasrawi v. Buck Consultants LLC, 231 Cal.App.4th 328 (2014).

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There Must be an Underlying Fiduciary Relationship

While a fiduciary relationship is not required between plaintiff and defendant, there must be an underlying fiduciary relationship between plaintiff and a third party.

Genfit S.A. v. Cymabay Therapeutics, Inc., 2022 U.S.Dist.Lexis 11460 (N.D. Cal. 2022).

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There Must be an Underlying Fiduciary Relationship (continued)

Genfit S.A. v. Cymabay Therapeutics, Inc., 2022 U.S.Dist.Lexis 11460 (N.D. Cal. 2022)

- Genfit developed a liver disease treatment
- Dr. defendant developed protocol for FDA approval, signed NDA
- Dr. allegedly disclosed protocol to a competitor, Cymabay
- Genfit sued Cymabay for aiding and abetting breach of fiduciary duty based on the Genfit/Dr. fiduciary relationship

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There Must be an Underlying Fiduciary Relationship (continued)

Genfit S.A. v. Cymabay Therapeutics, Inc., 2022 U.S.Dist.Lexis 11460 (N.D. Cal. 2022)

A Rule 12(b)(6) motion was granted and the aiding and abetting claim was dismissed because there was no underlying fiduciary relationship between Genfit and the Dr. defendant.

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There Must be an Underlying Fiduciary Relationship (continued)

Genfit S.A. v. Cymabay Therapeutics, Inc., 2022 U.S.Dist.Lexis 11460 (N.D. Cal. 2022)

"'The mere fact that [GENFIT] reposed trust and confidence in [Dr. Hirschfield] does not impose any corresponding fiduciary duty,' *see Worldvision Enters., Ins. v. Am. Broad. Cos., Inc.*, 142 Cal.App.3d 589, 595...(1983) (finding no fiduciary duty despite 'on-going relationship which required confidence between the parties')...."

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“Substantial Assistance” Must be Alleged

A Rule 12(b)(6) motion was granted and aiding and abetting claim dismissed when the complaint alleged defendant’s actual knowledge of breach of fiduciary duty between plaintiff and third party, but the complaint failed to allege “substantial assistance or encouragement” by the defendant.

Su v. Henry Global Consulting Group, 2022 U.S.Dist.Lexis 736 (C.D. Cal. 2022)

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Aiding and Abetting Claim Upheld at the Pleading Stage

Beaver v. Omni Hotels Mgmt. Corp., 2021 U.S.Dist.Lexis 59805 (S.D. Cal. 2021)

- Omni Hotels and its affiliates developed a resort
- Purchasers/Plaintiffs sued brokers for aiding and abetting breach of fiduciary duty
- Fiduciary duty found between Plaintiffs and Omni/Affiliates, but not between brokers and Plaintiffs

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Broker-Defendants' Motion to Dismiss Aiding and Abetting Claim Denied

"The complaint also alleges that Broker Defendants enabled the alleged self-dealing scheme 'by lending their licenses to LC Brokerage...' The complaint goes on to state that as brokers of record, Broker Defendants 'were specifically aware that LC Brokerage was the signatory to the RMA, yet they did nothing to manage or supervise the rental program. Instead, they ignored their professional responsibilities and enabled Omni to perpetrate its scheme to self-deal.'"

Beaver v. Omni Hotels Mgmt. Corp., 2021 U.S.Dist.Lexis 59805 *15-6 (S.D. Cal. 2021)

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Key Takeaways From Recent Cases — Plaintiff's Perspective

- A breach of fiduciary duty claim may be stated based on facts alleged in the complaint.
- A breach of fiduciary duty claim may be stated in a traditionally non-fiduciary context.
- An aiding and abetting breach of fiduciary duty claim may be stated in spite of the absence of a fiduciary relationship between the plaintiff and defendant .

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Key Takeaways From Recent Cases — Defendant's Perspective

- A breach of fiduciary duty claim will be dismissed at the pleading stage in the absence of a traditional fiduciary relationship or facts establishing a special relationship.
- In a non-traditional setting, the plaintiff bears the burden of proving facts establishing the basis for a fiduciary relationship.

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Q&A

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