

[Ninth Circuit Rules Complaint Must Specifically Allege Conduct Amounting To Fraud](#)

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In *Kearns v. Ford Motor Company*, --- F.3d ----, 2009 WL 1578535 (9thCir. June 8, 2009), plaintiff William Kearns sued Ford for alleged violations of California's Consumers Legal Remedies Act ("CLRA") and California's Unfair Competition Law ("UCL") arising out of Ford's Certified Pre-Owned ("CPO") vehicle program. Kearns's complaint generically alleged that Ford had made false and misleading statements concerning the safety and reliability of its CPO vehicles (without identifying who made the statements, the specific content of the statements, or when and how Kearns was exposed to such statements), and failed to disclose to consumers Ford's lack of actual oversight in determining whether used vehicles qualify for the CPO program. Kearns alleged that he was harmed by the foregoing conduct because he had paid a higher price for a CPO vehicle than he would have paid for a non-CPO vehicle, even though there was no difference between the two. While Kearns alleged that Ford's conduct constitutes an unfair business practice under California law, he did not assert any claims for fraud in the complaint.

In the district court, Ford brought a motion to dismiss Kearns's complaint for failure to comply with the heightened pleading standards of Federal Rule of Civil Procedure 9(b). The district court granted the motion and Kearns appealed, principally arguing that Rule 9(b) does not apply to California's consumer protection statutes because California courts have not applied Rule 9(b) to such statutes, and that Rule 9(b) does not apply to his CLRA and UCL claims because they are not grounded in fraud.

In rejecting Kearns's arguments, the Ninth Circuit held that it is well established that the Federal Rules of Civil Procedure – including Rule 9(b) – apply in federal court, “irrespective of the source of the subject matter jurisdiction, and irrespective of whether the substantive law at issue is state or federal.” The Court further noted that while a federal court examines state law to determine whether the elements of fraud have been sufficiently pled to state a cause of action, the Rule 9(b) requirement that fraud be pled with specificity is a federally imposed rule. The Court also held that, while fraud is not a necessary element of a claim under the CLRA or UCL, if the plaintiff nevertheless alleges a unified course of fraudulent conduct and relies entirely on that course of conduct as the basis of the CLRA or UCL claim, the CLRA or UCL claim is considered to be “grounded in fraud” or sounding in fraud such that the complaint as a whole must satisfy the particularity requirement of Rule 9(b).

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