

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 20-9804 JVS (AFMx) Date December 15, 2021

Title Andrea Humphrey Schmidt v. American Modern Home Insurance Co.

Present: The **James V. Selna, U.S. District Court Judge**  
Honorable

Elsa Vargas for Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

**Proceedings: [IN CHAMBERS] Order Regarding Motion for Summary Judgment**

Defendant American Modern Home Insurance Company (“American Modern”) filed a motion for summary judgment. Mot., Dkt. No. 30. Plaintiff Andrea Schmidt (“Schmidt”) opposed the motion. Opp’n, Dkt. No. 34. American Modern responded. Reply, Dkt. No. 35.

For the following reasons, the Court **GRANTS** the motion for summary judgment in full.

**I. BACKGROUND**

This case concerns an insurance coverage dispute. As the parties agree on the material facts at issue, the following factual background relies on the undisputed facts summarized in the Statement of Uncontroverted Facts (“SUF”). See SUF, Dkt. No. 36. American Modern insured a mobile home owned by Schmidt in Malibu, California. SUF ¶ 1. The insurance policy (“Policy”) included dwelling replacement cost coverage and personal property coverage. See Policy, Dkt. No. 32-1. The Policy includes a condition requiring the insured party to, “as often as [American Modern] reasonably require[s] . . . provide . . . records and documents” and “submit to examination under oath.” Policy at 19-20.

On November 15, 2018, Schmidt notified American Modern of a claim resulting from the Woolsey Fire, which damaged numerous structures in Los Angeles and Ventura Counties. SUF ¶ 3. Over the following year, Schmidt requested payments for smoke damage, lost personal property, and living expenses. SUF ¶¶ 4-43. American Modern ultimately paid more than \$77,000 in claims and arranged for a contractor to perform

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smoke remediation services at Schmidt's home. SUF ¶¶ 34, 43. Schmidt continued to seek reimbursement for additional claims and rejected American Modern's settlement offers. SUF ¶¶ 37-38, 44-45.

On October 17, 2019, Schmidt notified American Modern of a "theft" loss at the insured location. SUF ¶ 46. At the request of American Modern, Schmidt submitted two inventory lists documenting the allegedly stolen items. SUF ¶ 48, 51. The American Modern claims adjuster also requested the police report. SUF ¶¶ 47, 49. In the police report, Schmidt alleged that Pablo Venegas ("Venegas"), who she had previously hired as a handyman, had stolen the items from her home. SUF ¶ 52. American Modern subsequently contacted Venegas, who denied stealing any of Schmidt's belongings and informed the investigator that he had been hired by Schmidt to clean the residence after the fire and dispose of Schmidt's personal property. SUF ¶ 62. American Modern obtained screenshots of text messages and an invoice that supported Venegas' version of events. SUF ¶ 63.

On March 12, 2020, American Modern requested that Schmidt appear for an Examination Under Oath ("EUO") on March 26, 2020, and provide documents for review prior to the EUO on March 23, 2020. SUF ¶ 64. After the City of Los Angeles issued a stay at home order due to the COVID-19 pandemic, American Modern reset the EUO for April 23, 2020 and changed the deadline for document production to April 20, 2020. SUF ¶ 65. On April 21, 2021, Schmidt requested a continuance of EUO due to ongoing pandemic restrictions, and American Modern rescheduled the EUO to May 27, 2020 and requested document production by May 18, 2020. SUF ¶ 66. On May 26, 2020, Schmidt requested another continuance to the date of EUO because of the ongoing pandemic. SUF ¶ 67. Schmidt did not produce any documents before the March, April, or May deadlines. SUF ¶¶ 64-66.

In response to Schmidt's May request, American Modern continued the EUO to June 23, 2020, and requested document production by June 15, 2020. SUF ¶ 68. American Modern expressly notified Schmidt that she had not met prior document production deadlines and emphasized that production was necessary prior to the scheduled EUO. *See* Dkt. No. 31-59. Schmidt again did not produce any documents by the June 15, 2020 deadline. SUF ¶ 68. On June 22, 2020, American Modern notified Schmidt that it had not received any documents in response to the prior document requests and set a new date for the EUO of July 21, 2020, along with a new deadline for

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document production of July 14, 2020. SUF ¶ 69.

On June 30, 2020, Schmidt retained new counsel. SUF ¶ 74. That same day, Schmidt's new counsel sent a letter requesting claim-related documents from American Modern and expressly stating that "[a]ny dates set are no longer viable due to my recent retention." SUF ¶ 75. The letter also stated that after American Modern produced documents, Schmidt's counsel would work with her to respond to the document request and set a mutually convenient date for an EUO. SUF ¶ 75. Schmidt's counsel did not receive any documents from American Modern and sent follow-up letters on August 13, 2020 and August 24, 2020. SUF ¶¶ 76-78. On August 31, 2020, American Modern produced claim-related documents to Schmidt's counsel, but no new date for an EUO was ever proposed by either party. SUF ¶¶ 79-80.

Schmidt then brought this action against American Modern for breach of contract related to the fire claim, breach of contract related to the theft claim, and breach of the implied covenant of good faith and fair dealing. See generally Compl., Dkt. No. 1. American Modern moved for summary judgment on all claims. See Dkt. No. 30.

## II. LEGAL STANDARD

Summary judgment is appropriate where the record, read in the light most favorable to the nonmovant, indicates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986). Summary adjudication, or partial summary judgment "upon all or any part of [a] claim," is appropriate where there is no genuine dispute as to any material fact regarding that portion of the claim. Fed. R. Civ. P. 56(a); see also Lies v. Farrell Lines, Inc., 641 F.2d 765, 769 n.3 (9th Cir. 1981) ("Rule 56 authorizes a summary adjudication that will often fall short of a final determination, even of a single claim . . .") (internal quotation marks omitted).

Material facts are those necessary to the proof or defense of a claim, and are determined by referring to substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor."

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Anderson, 477 U.S. at 255.<sup>1</sup>

The moving party has the initial burden of establishing the absence of a material fact for trial. Anderson, 477 U.S. at 256. “If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact . . . , the court may . . . consider the fact undisputed.” Fed. R. Civ. P. 56(e)(2). Furthermore, “Rule 56[(a)] mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” Celotex Corp., 477 U.S. at 322. Therefore, if the nonmovant does not make a sufficient showing to establish the elements of its claims, the Court must grant the motion.

### III. DISCUSSION

#### *A. Request for Judicial Notice*

As a preliminary matter, Schmidt requests that the Court take judicial notice of several documents. Request for Judicial Notice (“RJN”), Dkt. No. 34-1. Under Federal Rule of Evidence 201, the Court may take judicial notice of matters of public record if the facts are not “subject to reasonable dispute.” Lee v. City of Los Angeles, 250 F.3d 668, 688-89 (9th Cir. 2001); see Fed. R. Evid. 201(b). Specifically, Schmidt requests that the Court take judicial notice of the “Safer At Home for Control of Covid-19” orders issued by the City of Los Angeles on March 19, 2020, April 20, 2020, and May 13, 2020. RJN at 2. However, the true and correct copies of those documents are not attached to the RJN, thus the Court cannot take judicial notice of them at this time.

#### *B. Breach of Contract Claim*

Schmidt’s complaint alleges breach of contract by American Modern for failure to provide benefits owed under the Policy related to the fire claim, Compl. ¶¶ 5-16, and

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<sup>1</sup> “In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the ‘Statement of Genuine Disputes’ and (b) controverted by declaration or other written evidence filed in opposition to the motion.” L.R. 56-3.

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failure to provide benefits owed under the Policy related to the theft claim. Id. ¶¶ 17-21. “A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff’s performance or excuse for nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of the breach.” CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226, 1239 (2008). American Modern argues that it does not have an obligation to pay additional benefits because Schmidt has not met her burden of establishing that she fully performed under the Policy. Mot. at 22-23.

Under California law, “[p]rovisions of an insurance policy that require an insured to cooperate and meet various conditions are enforceable, and the violation of such provisions by an insured may be grounds for denying a claim.” Gilbert v. Infinity Ins. Co., 186 F. Supp. 3d 1075, 1085 (E.D. Cal. 2016). “[I]n the absence of a reasonable excuse, when an insured fails to comply with the insurance policy provisions requiring an examination under oath and the production of documents, the breach generally results in a forfeiture of coverage, thereby relieving the insurer of its liability to pay, and provides the insurer an absolute defense to an action on the policy.” Brizuela v. Calfarm Ins. Co., 116 Cal. App. 4th 578, 589 (2004). “In the context of cooperation that does not involve submission to an under oath examination, California courts have required a showing that the insurer was prejudiced in its investigation by the insured’s failure to cooperate.” Martinez v. Infinity Ins. Co., 714 F. Supp. 2d 1057, 1061-62 (C.D. Cal. 2010) (emphasis omitted).

The Policy contains a provision requiring Schmidt to both produce documents and sit for an EUO at American Modern’s request as part of the claims process. See Policy at 19-20. Under California law, failure to comply with this type of provision may provide the insurer an absolute defense to an action based on the Policy. See Brizuela, 116 Cal. App. 4th at 590. American Modern argues that Schmidt failed to comply with the Policy’s requirement to sit for an EUO and to produce documents upon request. See Mot. at 2; Policy at 24.

A total of five EUOs were scheduled in this case for the following dates: March 26, 2020, SUF ¶ 64; April 23, 2020, SUF ¶ 65; May 27, 2020, SUF ¶ 66; June 23, 2020, SUF ¶ 68; and July 21, 2020, SUF ¶ 69. It is undisputed that the March, April, and May EUOs were rescheduled due to pandemic-related Stay at Home Orders. See SUF ¶¶ 65-68. The parties mutually agreed to reschedule the first three EUOs for good cause. Standing

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alone, the cancellations of the March, April, and May EUOs do not support a finding that Schmidt failed to comply with the Policy.

American Modern canceled the June EUO because Schmidt failed to produce documents by the deadline prior to the scheduled examination date. SUF ¶ 69. Courts may consider cancellation of an EUO by an insurer because of the insured's failure to timely produce relevant documents to be the fault of the insured. See Abdelhamid v. Fire Ins. Exch., 182 Cal. App. 4th 990, 1007 (2010) (holding that the insurer "had no reason to set a second EUO without [the insured]'s cooperation in fully submitting all material documentation necessary for its investigation"). Schmidt then unilaterally canceled the July EUO because she retained new counsel. SUF ¶ 75. After multiple attempts by Schmidt's counsel to solicit a response, American Modern produced claim-related documents but did not attempt to reschedule the EUO. SUF ¶¶ 77-80. While Schmidt did express a willingness to reschedule the EUO for a mutually convenient time, she never proposed a new date. Schmidt argues that the events leading up to the cancellation of the EUOs are distinguishable from other cases where courts found the insured to be in breach. See Opp'n at 5-12. However, that is not the only breach of the Policy that American Modern alleges.

Prior to each scheduled EUO, an earlier document production deadline passed without any production by Schmidt before either party requested to reschedule. The initial deadline for document production was set for March 23, 2020; American Modern sent a letter rescheduling the EUO on March 24, 2020. SUF ¶¶ 64-65. The next deadline for document production was on April 20, 2020; Schmidt requested a continuance of the EUO on April 21, 2020. SUF ¶¶ 65-66. The following deadline for document production was on May 18, 2020; Schmidt requested another continuance of the EUO on May 26, 2020. SUF ¶¶ 66-68. The document production deadline was then rescheduled for June 15, 2020; American Modern rescheduled the EUO on June 23, 2020. SUF ¶¶ 68-69. American Modern specifically rescheduled the June EUO because of Schmidt's repeated failure to produce the required documents. SUF ¶ 69. After American Modern set a new document production deadline of July 14, 2020, Schmidt unilaterally informed American Modern that she would not produce any documents until it submitted additional claim related documentation to her new counsel. SUF ¶ 75.

The Policy requires an insured to both sit for an EUO and produce relevant documentation as part of the claims process. See Policy at 19-20. While rescheduling the

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EUOs due to public health measures was not a breach, Schmidt made no argument at the time that the Stay at Home Orders interfered with her ability to produce required documentation, nor does she present any such argument now. Schmidt missed four separate deadlines to produce the documents, and unilaterally canceled a fifth deadline without consulting with American Modern. Failure to produce documents may be a breach as a matter of law if it is prejudicial to the insurer. See Martinez, 714 F. Supp. 2d at 1062. Thus, the Court turns next to the question of whether Schmidt's failure to produce documents was prejudicial.

On June 1, 2019, Schmidt submitted a list of "additional items for reimbursement" related to the fire claim, alleging that personal property with a total replacement cost of \$40,150 needed to be replaced for health reasons. SUF ¶¶ 39-40. At the time, American Modern requested documentation of proof of purchase to calculate the depreciated value of the items consistent with the Policy. SUF ¶ 39. The document requests prior to the EUOs sought that same information. See Dkt. No. 32-54 at 4. The undisputed facts suggest that there are legitimate questions regarding the veracity of Schmidt's claim for those personal property expenses. See SUF ¶¶ 38-40. Without access to the documents that it repeatedly requested, American Modern would be prejudiced by its inability to substantiate Schmidt's claim and calculate the value of the lost property. See Martinez, 714 F. Supp. 2d at 1063.

Similar issues exist with Schmidt's theft claim. Schmidt submitted three different inventory lists of lost property, totaling more than \$46,000. SUF ¶¶ 48, 51, 61. As with the fire claim, American Modern requested a detailed inventory of lost personal property along with purchase price for the purpose of calculating depreciated value. See Dkt. No. 32-54 at 4. Schmidt also requested reimbursement for living expenses resulting from the theft claim, which included lodging, meals, and \$2,000 for cash gratuities allegedly distributed at the Malibu Beach Inn. See SUF ¶ 45. American Modern requested documents to support those claims as well. See Dkt. No. 32-54 at 5. Finally, in the police report Schmidt alleged that she suspected that Venegas stole her property. SUF ¶ 52. American Modern contacted Venegas who contradicted Schmidt's version of events and provided contradictory evidence. SUF ¶¶ 62-63. American Modern requested records of communications with Venegas and law enforcement to corroborate Schmidt's claim. See Dkt. No. 32-54 at 4. The undisputed facts raise a number of substantial questions as to the veracity of Schmidt's theft claim. Given the inconsistent versions of events and lack of documentation to support some of Schmidt's claims, it would be prejudicial to

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require American Modern to proceed without the requested documents.

There is no genuine issue of material fact that Schmidt failed to produce the documents requested by American Modern to evaluate her claim. There is also no genuine issue of material fact as to whether Schmidt's failure breached the contract and prejudiced American Modern's investigation of her claims.

Accordingly, the Court **GRANTS** American Modern's motion for summary judgment on the breach of contract claims.

*C. Breach of Implied Duty of Good Faith and Fair Dealing*

Schmidt's third claim for relief is for breach of the implied covenant of good faith and fair dealing. Compl. ¶¶ 22-29. Schmidt's claim for breach of the duty of good faith and fair dealing rests on American Modern allegedly unreasonably withholding benefits owed under the Policy. *Id.* "Under California law, an insurer cannot breach the duty of good faith and fair dealing unless benefits are due under the policy." *Gilbert*, 186 F. Supp. 3d at 1087. "In first party insurance cases, the implied covenant of good faith and fair dealing is breached only if the denial or delay in provision of benefits is unreasonable." *Martinez*, 714 F. Supp. 2d at 1063 (citing *Wilson v. 21st Century Ins. Co.*, 42 Cal.4th 713, 723 (2007)).

As discussed above, the Court held as a matter of law that benefits are not due under the policy because Schmidt is in breach. It was not unreasonable for American Modern to deny benefits based on Schmidt's failure to produce documents and sit for an EUO as required by the Policy. Schmidt has not presented any evidence to suggest that American Modern acted in bad faith.

Accordingly, the Court **GRANTS** the motion for summary judgment on the claim for breach of the implied covenant of good faith and fair dealing.

**IV. CONCLUSION**

For the foregoing reasons, the Court **GRANTS** the motion for summary judgment in full. The Court finds that oral argument would not be helpful in this matter. Fed R. Civ. P. 78; L.R. 7-15.



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**IT IS SO ORDERED.**

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