

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

<b>Case No.</b>	2:19-cv-10104-RGK-AFM	<b>Date</b>	December 13, 2021
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<b>Title</b>	Nazila Neman et al. v. State Farm General Insurance Company
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**Present:** The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

Not Present

Not Present

**Proceedings:** (IN CHAMBERS) Order Re: Defendants’ Motion for Judgment as a Matter of Law, Motion for New Trial, and Motion to Alter or Amend the Judgment [DEs 130, 131, and 132]

**I. INTRODUCTION**

On July 3, 2019, Plaintiffs Nazila and Bijan Neman (collectively, “Plaintiffs”) filed a complaint in Los Angeles County Superior Court against Defendant State Farm General Insurance Company (“Defendant”), alleging California statutory claims and claims for breach of contract and breach of the implied covenant of good faith and fair dealing. Defendant removed the case to this Court on November 26, 2019.

The case went to trial on August 24, 2021. After a four-day trial, the jury found that Defendant breached both the insurance contract and the implied covenant of good faith and fair dealing, and awarded \$446,950.46 for each respective breach. The jury also found that Defendant acted with malice, oppression, and/or fraud, and therefore awarded \$5,000,000 in punitive damages. At no point during the trial did Defendant move for judgment as a matter of law (“JMOL”) pursuant to Federal Rule of Civil Procedure (“Rule”) 50(a). After the Court entered judgment, Defendant filed the motions presently before the Court: (1) Motion for JMOL; (2) Motion to Alter or Amend the Judgment; and (3) Motion for New Trial. (ECF Nos. 130, 131, and 132).

For the following reasons, the Court: (1) **DENIES** the Motion for JMOL; (2) **GRANTS *in part*** and **DENIES *in part*** the Motion to Alter or Amend the Judgment; and (3) **DENIES** the Motion for New Trial.

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Title *Nazila Neman et al. v. State Farm General Insurance Company***II. JUDICIAL STANDARDS****A. Motion for Judgment as a Matter of Law**

After one party has been fully heard during a jury trial, the court may grant JMOL against that party when “a reasonable jury would not have a legally sufficient evidentiary basis for the party on that issue.” Fed. R. Civ. P. 50(a). The movant may also file a renewed motion for judgment as a matter of law after the entry of judgment. Fed. R. Civ. P. 50(b). A motion brought under Rule 50(b) “may be considered only if a Rule 50(a) motion for judgment as a matter of law has been previously made.” *Tortu v. Las Vegas Metropolitan Police Dept.*, 556 F.3d 1075, 1081 (9th Cir. 2009). This requirement is “strictly construed”; a district court *must not* consider a Rule 50(b) motion if the moving party failed to advance a Rule 50(a) motion. *Id.*

**B. Motion to Alter or Amend the Judgment**

Under Rule 59(e), a court may alter or amend judgment in the following circumstances: (1) the court is presented with newly discovered evidence; (2) the court committed clear error or made a decision that was manifestly unjust; or (3) there is an intervening change in controlling law. *Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001).

**C. Motion for New Trial**

Under Rule 59, a court may grant a new trial to a party after a jury trial “for any reason for which a new trial has . . . been granted in an action at law in federal court.” Fed. R. Civ. P. 59(a)(1)(A). Rule 59 does not specify the grounds on which a court may grant a new trial. Thus, the court is “bound by those grounds that have historically been recognized.” *Zhang v. Am. Gem Seafoods, Inc.*, 339 F.3d 1020, 1035 (9th Cir. 2003). Those grounds include, but are not limited to, claims that the verdict is against the clear weight of the evidence or based on false evidence, that the damages are excessive, or that the trial was not fair to the moving party. *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940); *see also Tortu*, 556 F.3d at 1087.

**III. DISCUSSION****A. Judgment as a Matter of Law**

Defendant argues that it is entitled to JMOL because the evidence does not support the jury’s verdict on either the breach of the covenant of good faith issue or the amount of punitive damages awarded. Unfortunately for Defendant, its attorneys failed to bring a Rule 50(a) motion before the case went to the jury, either orally or on the papers. Such a motion is a procedural prerequisite to a court’s

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consideration of a post-trial Rule 50(b) motion. The Court “must not consider” a post-trial motion for JMOL if the movant failed to bring an initial Rule 50(a) motion, and therefore does not do so here. *Tortu*, 556 F.3d at 1081.<sup>1</sup>

**B. Motion to Alter/Amend the Judgment**

In its Motion to Alter or Amend the Judgment, Defendant argues that the Court should strike from the judgment: (1) the punitive damages; (2) prejudgment interest; and (3) attorney’s fee awards. The Court addresses each in turn.

*1. Punitive Damages Award*

Defendant argues that the court made a manifest error of law when it allowed the jury to award punitive damages despite having seen no evidence of Defendant’s financial condition, and therefore the Court must strike the award. Plaintiffs acknowledge that the jury did not have such evidence before it, but requests that the Court take judicial notice of Defendant’s financial condition to affirm the award. California law mandates that the Court find in Defendant’s favor here.

To receive punitive damages, a plaintiff must present “meaningful evidence of the defendant’s financial condition” to the jury. *Townsend Farms, Inc. v. United Juice Corp.*, 793 Fed. App’x 493, 495–96 (9th Cir. 2019) (quoting *Adams v. Murakami*, 54 Cal. 3d 105, 109 (1991)). This showing is not optional; it is a necessary element of a plaintiff’s punitive damages case. *Adams*, 54 Cal. 3d at 110. The requirement is strict because “absent financial evidence, a jury will be encouraged (indeed, required) to speculate as to a defendant’s net worth in seeking to return a verdict that will appropriately punish the defendant,” and “[s]ound public policy should preclude awards based on mere speculation.” *Id.* at 114. If the plaintiff had a “full and fair” opportunity to present her case for punitive damages and was unable to provide sufficient evidence of the defendant’s financial condition, any award of punitive damages must be stricken, and “no retrial of the issue is required.” *Baxter v. Peterson*, 150 Cal. App. 4th 673, 692.

At trial, the jury saw no evidence at all of Defendant’s financial condition. In the punitive damages portion of the trial, Plaintiffs attempted to introduce a document that was purportedly Defendant’s financial statement, but the Court excluded the document as hearsay. (8/27/21 Trial Transcript, at 8, ECF No. 121.) The Court then asked whether Plaintiffs were prepared to introduce

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<sup>1</sup> Defendant seems to have implicitly accepted this outcome, as it did not file a reply brief in support of its Motion for JMOL after Plaintiffs identified Defendant’s procedural error.

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witnesses on the punitive damages issue, and Plaintiffs' attorneys stated that they were not.<sup>2</sup> (*Id.*) As such, despite a "full and fair opportunity" to present evidence of Defendant's financial condition to the jury, Plaintiffs failed to do so. Their failure mandates that the Court **STRIKE** the award of punitive damages *in toto*.

2. *Prejudgment Interest and Attorneys' Fees*

Defendant's arguments that Plaintiffs are not entitled to either prejudgment interest or attorneys' fees are addressed fully in the Court's November 19, 2021 Order on Plaintiffs' Motions for Attorneys' Fees and Prejudgment Interest. (*See* ECF No. 161.) That Order: (1) confirmed the award of prejudgment interest to Plaintiffs; but (2) denied their request for attorneys' fees over and above those already awarded by the jury.

Defendant, however, raises the issue that both the Judgment and the Court's Order do not make clear which item of damages provided the basis for calculating prejudgment interest. The Court now clarifies its previous Order. The award of prejudgment interest—\$208,725.86—is based only on the breach of contract damages of \$446,950.46. The award is 10% of the breach of contract damages *per annum*, from January 19, 2017, to entry of judgment on September 21, 2021. The award was not based on the breach of the implied duty of good faith and fair dealing damages, nor was it based on the punitive damages.

For clarity on the issue of attorneys' fees, the Court also **STRIKES** the award of attorneys' fees in the judgment, in accordance with its previous finding that attorneys' fees were included as part of the jury's damages award. (*See* ECF No. 161.)

As to all other arguments, Defendant's Motion regarding prejudgment interest and attorneys' fees is **DENIED as moot**.

**C. Motion for New Trial**

In its Motion for New Trial, Defendant repeats its sufficiency of the evidence arguments from its Motion for JMOL. Defendant also argues that the Court erred when it refused to instruct the jury on the

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<sup>2</sup> The Court reminded Plaintiffs several times during the course of the trial that the "case [was] dragging waiting for witnesses." (8/25/21 Trial Transcript, at 52:10, ECF No. 117.) The Court admonished Plaintiffs to ensure that their witnesses were available on time, and that the Court would not wait for witnesses to arrive.

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affirmative defense of “policy exclusion.” Finally, it argues that the jury’s award of punitive damages was excessive. Having resolved the issue of punitive damages, the Court **DENIES as moot** the portions of the Motion for New Trial related to them, and considers only: (1) whether the verdict finding breach of the covenant of good faith and fair dealing was supported by sufficient evidence; and (2) whether the failure to instruct the jury on the affirmative defense of “policy exclusion” was error requiring a new trial.

1. *Verdict Against the Clear Weight of the Evidence*

Defendant argues that the jury incorrectly found in Plaintiffs’ favor on the issue of the breach of the covenant of good faith and fair dealing because the evidence demonstrated a mere genuine dispute as to coverage, rather than an unreasonable denial of or delay in payment. Specifically, it states that its denial of payment was reasonable because between March 1, 2017 and the date of trial, it received no information “that provided a basis for further payments,” either from Plaintiffs’ investigators or its own. (Def.’s Mot. for New Trial, at 3.) Defendant also argues that any delay in payment was also reasonable, mostly because Plaintiffs delayed in providing relevant information to Defendant. (*Id.* at 4.)

Plaintiffs countered with evidence that: (1) State Farm’s representative initially informed Plaintiffs that their damage was covered; (2) State Farm reneged on that promise once it saw the cost of pool repairs; and (3) State Farm created a coverage dispute out of whole cloth by relying on an incomplete investigation by Exponent Engineering, to which it provided a limited universe of documentation. While a court does not view the evidence in the light most favorable to the prevailing party on a motion for new trial, it still must find that the verdict is “contrary to the clear weight of the evidence.” *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007). Having reviewed the evidence, the Court is not “left with the definite and firm conviction that a mistake has been committed by the jury.” *Landes Const. Co., Inc. v. Royal Bank of Canada*, 833 F.2d 1365, 1371–72 (9th Cir. 1987). While Defendant’s evidence attempts to explain its denial of coverage and delay in issuing payment, it was reasonable for the jury to credit Plaintiffs’ evidence over Defendant’s.

Accordingly, the Court **DENIES** Defendant’s Motion for New Trial as pertains to the sufficiency of the evidence of Defendant’s breach of the covenant of good faith and fair dealing.

2. *Jury Instructions*

Defendant also argues that the Court erred, and that such error was prejudicially harmful, when it refused to instruct the jury on the affirmative defense of “policy exclusion.” Plaintiffs counter that the defense was included within the ambit of Jury Instruction No. 12, Element 3, which required the jury to find that “there was a *covered loss* under the insurance contract requiring Defendant’s performance” before finding that Defendant had breached the contract. (Jury Instructions, at 13, ECF No. 108.)

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Plaintiffs are correct. At the outset, it was not error to deny Defendant’s request to include an instruction on “policy exclusion.” A court is “not required to . . . incorporate every proposition of law suggested by counsel” so long as the “instructions as given allow[] the jury to determine intelligently the issues presented.” *Los Angeles Memorial Coliseum Comm’n v. Nat. Football League*, 726 F.2d 1381, 1398 (9th Cir. 1984). The central issue in this case—the one around which nearly all the evidence and arguments revolved—was whether the damage to the pool was covered by, *or excluded by*, the insurance contract. The jury could not have found State Farm liable unless the damage was covered by the contract—in other words, that it was not subject to a policy exclusion. The Court’s Instruction No. 12 reflected this requirement and allowed the jury to “determine intelligently the issues presented.” *Los Angeles Memorial Coliseum Comm’n*, 726 F.2d at 1398.

Even if the failure to separately emphasize the defense of “policy exclusion” was error, that error was harmless. An error in instructing the jury is not a cause for new trial if it is “more probably than not harmless.” *Coursen v. A.H. Robins Co., Inc.*, 764 F.2d 1329, 1337 (9th Cir. 1985). Because the jury necessarily needed to consider whether the insurance contract covered or excluded the damage to the pool before finding that State Farm breached the contract, any conceivable error was harmless to Defendant. An instruction on “policy exclusion” would merely have been duplicative, causing the jury to twice consider whether the pool damage was a “covered loss.”

Accordingly, the Court **DENIES** Defendant’s Motion for New Trial as pertains to the jury instructions.

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IV. **CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendant's Motion for JMOL, **GRANTS *in part*** and **DENIES *in part*** Defendant's Motion to Alter or Amend the Judgment; and **DENIES** Defendant's Motion for New Trial. In accordance with the above, the Court **ORDERS** as follows:

- The Court **STRIKES** the award of punitive damages from the judgment.
- The Court **STRIKES** the award of attorneys' fees from the judgment, because the jury awarded attorneys' fees as part of its damages award
- The Court clarifies the award of prejudgment interest, noting that the award is based on the breach of contract damages only.

**IT IS SO ORDERED.**

Initials of Preparer

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