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16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 PAUL OAKENFOLD, an individual,
19
20 Plaintiff,

21 vs.

22 STATE FARM GENERAL INSURANCE
23 COMPANY, an Illinois corporation;
24 DANIEL LUCAS, an individual; EA
25 RENFROE & CO., INC., a Georgia
26 corporation; and DOES 1-50, inclusive,
27
28 Defendants.

Case No. 2:24-cv-07455-SVW-JPR
[Assigned to Hon. Stephen V. Wilson]

**PLAINTIFF’S OPPOSITION TO
DEFENDANTS, STATE FARM
GENERAL INSURANCE COMPANY
AND DANIEL LUCAS’S MOTION
FOR SUMMARY JUDGMENT OR,
IN THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

[Filed concurrently with 1. Statement of
Additional Material Facts; 2. Response
to Separate Statement; 3. Declaration of
Andrew M. Jacobson; 4. Declaration of
Todd Bruneau; 5. Declaration of Paul
Oakenfold; 6. Appendix of Exhibits. and
7. Evidentiary Objections to Evidence]

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1 **I. INTRODUCTION**

2 This is an insurance breach of contract and insurance bad faith action brought
3 by Plaintiff Paul Oakenfold (“Plaintiff”) against his insurer, STATE FARM
4 GENERAL INSURANCE COMPANY (hereinafter “State Farm”), EA RENFROE &
5 CO., INC. (“Renfroe”) and DANIEL LUCAS (“Lucas”) (collectively, “Defendants”).
6 Prior to bringing this action, State Farm denied coverage twice. The first claim arises
7 out of a February 21, 2023 wind and rain event (“Water Claim”) while the second
8 claim arises out of a March 23, 2023 tree falling event (“Tree Claim”). Defendants
9 Renfroe and Lucas were involved in the investigation and adjustment of the Tree
10 Claim.

11 Prior to filing this Opposition, Plaintiff and Defendants State Farm, Lucas and
12 Renfroe have stipulated to dismiss, with prejudice, all claims and causes of action
13 related to Plaintiff’s Tree Claim and Claims against Renfroe and Lucas. The Parties
14 have filed a Joint Stipulation with this Court. (See Doc. No. 31). Thus, this
15 Opposition will not discuss the issues raised as to the Tree Claim raised in
16 Defendants’ Motion, as they are now moot.

17 The remaining issues in which State Farm seeks summary judgment are
18 relating to the Water Claim. However, this Motion is premature and should not be
19 considered. On October 7, 2024, the Court held an Initial Status Conference where
20 the Court ordered Defendants to file summary judgment briefing on the statute of
21 limitations issue pertaining to the Tree Claim. As Plaintiff is no longer seeking
22 damages pertaining to the Tree Claim, the statute of limitations issue is moot.
23 Plaintiff should be entitled to conduct discovery, take depositions, and retain experts
24 to support his case and present sufficient evidence to oppose this Motion. To date, no
25 discovery has been conducted, nor have any depositions been taken. Plaintiff
26 respectfully requests that this Court disregard this Motion and allow State Farm to
27 refile it at a later time once discovery is well on its way and Plaintiff has the
28 opportunity to take important depositions, including depositions of State Farm’s Rule

1 30(b)(6) designee and the experts State Farm is relying on in attempting to dismiss
2 Plaintiff’s case.

3 To the extent this Court does consider the Motion for Summary Judgment,
4 Plaintiff will oppose Defendant State Farm’s Motion with the information available at
5 this time, but requests a continuance to permit Plaintiff to engage in discovery and
6 gather additional evidence to support its position and for the reasons set forth below,
7 Defendants’ Motion should be denied in its entirety.

8 **II. KEY FACTS DEFEATING THIS MOTION**

9 Plaintiff Paul Oakenfold (“Plaintiff”) is the owner of the property located at
10 6901 Oporto Drive, Los Angeles, California 90068 (“Property”) and has resided at
11 the property since 2005. (PAF 1). State Farm issued to Plaintiff an all-risk
12 Homeowners Policy to Paul Oakenfold for a single-family home located at 6901
13 Oporto Drive, Los Angeles, CA 90068-2638 (the “Property”), bearing policy number
14 71-GY-N104-9 (the “Policy”). (PAF 2). The Policy provides coverage for:

15 “accidental direct physical loss to the property described in Coverage A,
16 unless the loss is excluded or limited in SECTION I—LOSSES NOT
17 INSURED or otherwise excluded or limited in this policy.” (PAF 3).

18 The Policy “is one of the broadest forms available today, and provides
19 [Plaintiff] with outstanding value for [his] insurance dollars. (PAF 4).

20 On or about February 21, 2023, heavy winds and rains passed through
21 Plaintiff’s Property. The heavy winds caused tiles to fall from his roof which allowed
22 rainwater to penetrate into his home, causing substantial damage throughout the
23 Property. (PAF 5) Following the February 21, 2023 windstorm, Plaintiff noticed
24 large amounts of water throughout his home. Plaintiff promptly placed towels down
25 to dry out all noticeable wet areas within his home. He also contacted Glenn Herrera
26 at Skyline Builders to cover the roof openings caused by the February 21, 2023
27 windstorm (PAF 6). Despite Plaintiff’s efforts to mitigate and clean up the water
28 damages, he observed water damages throughout his home including damage to the

1 hardwood floors, staining in the ceilings, damage to the French doors in the living
2 room and main hallway, and discoloration and water damages in and around his
3 kitchen and cabinets, among other areas throughout his Property. (PAF 7).

4 Prior to the February 2023 windstorm, there was no evidence of any
5 discoloration, cracking or any other damages to the floors, walls, French doors or
6 kitchen areas. Plaintiff resided in the home since 2005 and would have realized these
7 damages if they were present before the windstorm. The damages, which were
8 anything but minor, arose on or after the February 21, 2023 windstorm. (PAF 8).
9 Plaintiff has always kept his Property well maintained. He always promptly hired
10 someone to inspect and repair any and all present damages. In 2017/2018, Plaintiff's
11 home sustained damages and he pursued a formal claim with his insurance carrier at
12 that time. However, Plaintiff eventually hired Mr. Herrera to repair those damages
13 and paid Mr. Herrera out of pocket to fix the foundations of the home (re-supporting),
14 repairing the cracks in the ceiling and walls, and replacing the floors. (PAF 9).
15 Following the repairs performed by Mr. Herrera in 2018, Plaintiff never observed any
16 other damages to his home until the February 21, 2023 windstorm event. (PAF 10).
17 Plaintiff retained Matt McGinnis and presented his water damage claim to State Farm
18 on June 7, 2023. Through Mr. McGinnis, Plaintiff urged State Farm to promptly
19 investigate and resolve his claim so he could repair his home and return it back to its
20 pre-loss condition. (PAF 11).

21 On June 20, 2023, Mr. McGinnis sent State Farm an email attaching a copy of
22 the estimate from Plaintiff's contractor, Glenn Herrera of Skyline Building Services
23 Inc. Mr. Herrera's estimate represents the scope of repairs the Property as a result of
24 the roof leaks resulting from the February 2023 windstorm event. Mr. McGinnis
25 asked State Farm to review Mr. Herrera's estimate which would put Plaintiff's
26 Property back to its pre-loss condition. (PAF 12). On July 5, 2023 State Farm adjuster
27 Karin Miller inspected the loss location. (PAF 13). On August 1, 2023, Mr. McGinnis
28 requested a status of the Water Claim. (PAF 14). After no response, Mr. McGinnis

1 followed up again on August 7, 2023 requesting the status of State Farm’s estimate
2 related to the scope of repairs for the damages to the home. (PAF 15). On August 16,
3 2023, Mr. McGinnis again followed up on State Farm’s estimate. (PAF 16).

4 On August 17, 2023, Leslie Douglas, on behalf of Plaintiff, emailed State Farm
5 asking if there was any update on State Farm’s estimate that was supposed to be sent
6 to Mr. McGinnis on August 14, 2023. In that same email, Ms. Douglas stated “Really
7 trying to get this progress started.” (PAF 17).

8 On August 21, 2023, Mr. McGinnis sent another follow up email to State Farm
9 stating that “The insured is getting real anxious and frustrated. Mr. Oakenfold would
10 like to restore his property. I believe you came out on the 5th of July and now it is
11 August 21st. Please send over the estimate for review. Thank you.” (PAF 18). On
12 August 22, 2023, Mr. McGinnis called State Farm and stated that he has been calling
13 and leaving voice messages without any response from State Farm and is still waiting
14 on State Farm’s estimate and the insured is thinking about hiring an attorney. (PAF
15 19). On August 23, 2023, Mr. McGinnis sent another email to State Farm asking
16 when the estimate would be sent over and further stated that it’s been “over 47 days
17 since your site visit.” (PAF 20). For months, Plaintiff repeatedly asked Mr. McGinnis
18 what was going on with his claim and why there wasn’t an update from State Farm.
19 Mr. McGinnis informed Plaintiff that State Farm was not answering or returning his
20 calls. (PAF 21) On August 30, 2023, Mr. McGinnis filed a Request for Assistance
21 with the Department of Insurance regarding State Farm’s delays in investigating and
22 resolving the claim in a prompt manner. Plaintiff was becoming extremely anxious
23 and upset with the lack of progress on his claim. (PAF 22). On September 6, 2023,
24 Matt McGinnis called State Farm and stated that there has been no information nor
25 payments on the claim and that the insured was getting upset with the lack of
26 movement on his claim. He further stated that he has been requesting to speak with
27 the TM (team manager) on the claim and that the property was inspected on July 5,
28 2023 and there was still no update, and Plaintiff filed a complaint against State Farm

1 with the Department of Insurance. (PAF 23). On September 7, 2023, State Farm
2 received the Department of Insurance Complaint that was filed by Plaintiff with
3 regard to the lack of update and payment on the claim. (PAF 24).

4 On September 26, 2023, McGinnis called State Farm asking to speak to the
5 adjuster on the claim. He advised that there had been no activity on the claim in 15
6 days and “needs forward movement.” (PAF 25) On September 26, 2023, State Farm
7 made a claim note indicating that it was trying to resolve plaintiff’s claim by
8 reconciling its estimate with the estimate provided by Plaintiff’s contractor. State
9 Farm further noted that it may need to hire a third party to provide an estimate of
10 repairs “if reconciliation with [Plaintiff’s] contractor does not work.” (PAF 26).

11 State Farm’s adjuster confirmed that “wind driven rain came through the doors
12 and damaged” elements of the Property. Thus, coverage was confirmed and on
13 October 2, 2023, State Farm issued a payment to Plaintiff in the amount of
14 \$71,594.55 for the dwelling damages, representing State Farm’s total assessment of
15 the damages sustained to Plaintiff’s home. (PAF 27). State Farm’s assessment of
16 covered damages and payment of \$71,594.55 accounted for the water damage to the
17 walls, doors, framing and windows. (PAF 28) Instead of hiring “a third party to
18 provide an estimate of repairs” to help reconcile the two estimates, State Farm
19 retained Engineering Systems, Inc. (“ESI”) to assess the cause of all unpaid damages.
20 (PAF 29).

21 On October 2, 2023, State Farm had determined that the damage to the roof
22 was “footfall” and “not wind related”. State Farm went on to state that it has retained
23 an engineer to investigate what caused the damage to the roof (along with the
24 framing, window and doors). (PAF 30).

25 On October 24, 2023, ESI inspected the Property to determine the cause of
26 damages to Plaintiff’s Property. (PAF 31) On December 5, 2023, ESI called State
27 Farm indicated that they “needed to speak with the claim rep” at State Farm. State
28 Farm said they didn’t want to discuss any part of the claim as they don’t want to

1 “influence” the engineer’s report. (PAF 32)

2 Frustrated by almost a year of State Farm- caused delays and low payment
3 from State Farm, Plaintiff retained Apex Public Adjusters (Apex) to assist with
4 moving his Water Claim forward. (PAF 33). Todd Bruneau is a General Adjuster at
5 Apex with extensive experience evaluating and adjusting wind and water damage
6 claims. Both Mr. Bruneau and the president and owner of Apex, William Rafter,
7 assisted Plaintiff with his Water Claim. (PAF 34) Mr. Bruneau inspected the property
8 on February 28, 2024. Plaintiff’s assistant Lain Roy was also present and showed Mr.
9 Bruneau around the property. Together, they walked the property including the
10 interior and exterior and the surrounding grounds. (PAF 35)

11 During the February 28, 2024 site inspection, Mr. Bruneau noticed multiple
12 roof leaks and water damage to the interior finishes of the home caused by the subject
13 Water Claim. He also observed missing roof tiles on the north elevation of the home
14 which was consistent with a wind event. The missing tiles were also consistent with
15 the interior damages, in line with the areas of damage on the interior. (PAF 36).

16 Mr. Bruneau noted that many other roof tiles on the north side were broken and
17 appeared to be the result of persons walking on the roof to implement plastic roof
18 covering. This was visible as the plastic had blown partially off. The broken tiles can
19 result if weather conditions are poor at the time of the work or inexperienced persons
20 walk on the tiles improperly and break them. Notwithstanding, the conditions were
21 consistent with a wind damaged roof allowing water intrusion into the home and
22 workers trying to mitigate the situation with roof tarping. The opposite south facing
23 portion of the roof was covered with plastic and could not be observed, but damage
24 on the interior below this area was consistent with missing tiles resulting from a wind
25 event and resulting damage. (PAF 37). Due to the interior damage, including damage
26 to the open and continuous wood flooring, Mr. Bruneau obtained contents pack out/in
27 storage estimate from West Coast Contents, which was submitted to State Farm on
28 March 4, 2024. (PAF 38).

1 Plaintiff also retained Fuhrmann Floors to inspect the damaged flooring at the
2 Property. Fuhrmann Floors determined the wood flooring could not be refinished and
3 required replacement and they provided an estimate. Plaintiff's flooring expert
4 determined that the wood flooring could not be just sanded and refinished but
5 requires replacement. (PAF 39)

6 On March 1, 2024, Mr. Bruneau sent an email to State Farm stating that he has
7 inspected the home and based on his inspection and the State Farm estimate, it's clear
8 the Plaintiff will need to relocate and the contents will need to be packed out. He also
9 informed State Farm that Trittech Restoration was preparing an estimate of repairs and
10 pack out bid. Mr. Bruneau informed State Farm that Plaintiff was returning home and
11 due to visible mold and the P5 report, he cannot reside inside his home and asked if
12 coverage would be afforded. (PAF 40).

13 On March 4, 2024, Mr. Bruneau sent State Farm the pack out estimate,
14 asbestos testing report, procedure 5 and related invoices; he also asked when State
15 Farm would like to re-inspect the property and discuss the loss. On March 6, 2024,
16 Mr. Bruneau followed up again on the estimates and payment. (PAF 41)

17 On February 28, 2024, Mr. Jones (adjuster for State Farm) discussed ESI's
18 investigations and findings. (PAF 42). On March 25, 2024, Mr. Bruneau asked State
19 Farm for a copy of the ESI Engineering report, but State Farm never responded or
20 produced the ESI report. (PAF 43).

21 On March 26, 2024, Mr. Bruneau met with Thomas Jones (State Farm adjuster)
22 to re-inspect the Property and discuss the damages. Also present was Warren Hogge
23 of Fuhrmann Floors. Mr. Hogge, Plaintiff's flooring expert, informed Mr. Jones that
24 the floors could not be repaired and sanded, stained and refinished. Mr. Bruneau, Mr.
25 Jones and Mr. Hogge all understood and agreed that the solid oak wood flooring
26 throughout the continuous floors throughout the home needed to be replaced. (PAF
27 44) Mr. Jones's claim note indicates that he agreed that the continuous solid oak
28 wood flooring throughout the home required repair/replacement which would take

1 approximately 2-3 weeks. His claim note also indicates that he explained and offered
2 the floor replacement to Plaintiff who said he had his own flooring company selected.
3 (PAF 45).

4 On April 9, 2024, Apex sent State Farm the revised estimate for \$912,101.23
5 and on April 30, 2024, requested a status of State Farm's review of the revised
6 estimate, and requested approval of pack out, P5 remediation and temporary housing.
7 (PAF 46). On April 18, 2024, Apex asked for an update on the revised estimate which
8 included the wood floor damage and asked again about approval for pack out, P5
9 remediation and temporary housing. (PAF 47).

10 On April 30, 2024, State Farm issued a letter stating that they received their
11 engineer's report on April 18, 2024 and it is pending management review. State Farm
12 also acknowledged receipt of the packout/packback estimate and said they will
13 discuss once they review the engineer report; stated that additional living expenses
14 were not approved at that time. (PAF 48).

15 On May 3, 2024, Apex emailed State farm asking for a status of the revised
16 estimate previously sent on 4/9/2024. In that email, Apex also asked State Farm why
17 there was no update on the review of the estimate which State Farm promised by the
18 end of the month (April 2024). Apex also asked if State Farm was approving the pack
19 out estimate, P5 remediation and temporary housing. (PAF 49). On May 6, 2024,
20 Apex emailed State farm asking for a status of the revised estimate previously sent on
21 4/9/2024. In that email, Apex also asked State Farm why there was no update on the
22 review of the estimate which State Farm promised by the end of the month (April
23 2024). Apex also asked if State Farm was approving the pack out estimate, P5
24 remediation and temporary housing. (PAF 50). On May 17, 2024, Plaintiff submitted
25 a repair estimate from Tri-tech which included repairs for the roof damage in the
26 amount of \$912,101.23. (PAF 51). On May 18, 2024, Daniel Lucas of EA Renfroe
27 and on behalf of State Farm acknowledged that Plaintiff made repairs to the walls,
28 ceiling and tile floor in the SE lower-level bedroom following the 2018 prior loss.

1 (PAF 52). On May 22, 2024, State Farm issued a letter stating that they were still
2 evaluating coverage and required more time. (PAF 53).

3 On May 31, 2024, Apex sent an email to State Farm following up on the voice
4 message to State Farm and asking for an update on payment for the water loss. In that
5 same email, Apex reminded State Farm that all necessary and requested documents
6 were submitted to State Farm and it had been over 2 weeks since they heard back from
7 State Farm on the claim. Apex requested a reply to the email with an update and/or
8 estimate of when to expect information to relay to Plaintiff. (PAF 54). Apex reviewed
9 the State Farm estimate and payment of \$71,594.55 and noted that the State Farm
10 estimate included payment for the damage to the (1) walls and ceiling plaster; (2)
11 painting and staining; (3) wood floors; and (4) replacement of the French Doors in the
12 left hallway. (PAF 55). State Farm paid to have the floors sanded. However,
13 Plaintiff's flooring expert opines that the floors could not be repaired and sanded,
14 stained and refinished because they had been sanded 2-3 times previously and were
15 too thin. (PAF 56) The damage to the wood floors requires full replacement according
16 to Plaintiff's flooring expert, Fuhrmann Floors, as the floors are not thick enough to
17 sand. (PAF 57)

18 State Farm's estimate only accounted for one coat of paint was for the walls
19 and ceiling, which is improper. (PAF 58). State Farm's estimate included the
20 replacement of the French doors in the left hallway (line items 51 & 52), but omitted
21 the replacement of the French doors in the foyer and right hallway. Replacement of
22 all of the French doors should have been included to achieve a uniform appearance.
23 (PAF 59)

24 State Farm's estimate allocated to replace the one water damaged kitchen
25 ceiling beam. However, the allocations for this are inadequate due to a matching issue
26 with the other beams and the estimate does not cover the cost of this work. The
27 estimate includes refinishing of the wood flooring and to remove and detach the
28 lower cabinets, but not the island cabinet; and includes removal and resetting of some

1 but not all appliances. The upper cabinets were omitted, but would need to be
2 refinished or replaced along with the lower cabinets depending on the scope
3 requirements during the work. (PAF 60).

4 On July 2, 2024, State farm issued a denial letter, citing to various exclusions
5 under the Policy. The denial was based on the ESI engineer report and a review of the
6 2018 engineering report. (PAF 61). As of August 2, 2024, State Farm claims that it
7 extended “partial coverage” for the Water Damage Claim but following “a thorough
8 investigation, it was determined damaged are related to old damages and at least in
9 part investigated by prior insurance carrier.” (PAF 62).

10 Plaintiff is disappointed in the manner in which State Farm has adjusted his
11 claim. Plaintiff has spent considerable time and attention in assisting State Farm with
12 its adjustment of the claim, to no avail and this has caused Plaintiff extreme
13 emotional distress. (PAF 63) To date, Plaintiff’s home is in disarray and the damages
14 have not been fully repaired. The roof still needs complete repair, the ceilings and
15 walls need to be repaired, the French Doors need repairing, and the flooring needs
16 repair. (PAF 64).

17 **III. LEGAL STANDARD FOR SUMMARY JUDGMENT**

18 The Court may grant a summary judgment only where there is “no genuine
19 dispute as to any material fact and...the movant is entitled to judgment as a matter of
20 law.” Fed. R. Civ. P. 56(a). Summary judgment is a drastic remedy and is therefore to
21 be granted cautiously. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

22 The Court must view the evidence presented on the motion in the light most
23 favorable to the opposing party. *Tolan v. Cotton*, 572 US 650, 651 (2014); *Fresno*
24 *Motors, LLC v. Mercedes Benz USA, LLC*, 771 F.3d 1119, 1125 (9th Cir. 2014). “The
25 evidence of the non-movant is to be believed, and all justifiable inferences are to be
26 drawn in his favor.” *Anderson*, 477 U.S. at 255. Moreover, all reasonable inferences
27 must be drawn in the opposing party’s favor both where the underlying facts are
28 undisputed and where they are in controversy. At the summary judgment stage, the

1 nonmovant’s version of any disputed issue of fact is presumed correct. *Eastman*
2 *Kodak Co. v. Image Technical Services, Inc.*, 504 U.S. 451, 456 (1992); *McSherry v.*
3 *City of Long Beach*, 584 F.3d 1129, 1135 (9th Cir. 2009).

4 **IV. SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE GENUINE**
5 **ISSUES EXIST AS TO STATE FARM’S LIABILITY FOR BREACH OF**
6 **CONTRACT FOR PLAINTIFF’S WATER CLAIM**

7 **A. The Policy Insures Against All Risks of Loss Unless Specifically Excluded &**
8 **Coverage is Interpreted Broadly in Favor of the Insured and Exclusions are**
9 **Interpreted Narrowly Against the Insurer**

10 “[I]n an action upon an all-risks policy ... the insured does not have to prove
11 that the peril proximately causing his loss was covered by the policy. This is because
12 the policy covers all risks save for those risks specifically excluded by the policy. The
13 insurer, though, since it is denying liability upon the policy, must prove the policy's
14 noncoverage of the insured's loss—that is, that the insured's loss was proximately
15 caused by a peril specifically excluded from the coverage of the policy.” *Vardanyan*
16 *v. AMCO Ins. Co.*, 243 Cal. App. 4th 779, 796–97 (2015) (quoting *Strubble v. United*
17 *Services Auto. Assn.*, 35 Cal.App.3d 498, 504, (1973)).

18 California law is clear: if semantically permissible, the contract will be given
19 such construction as will fairly achieve its manifest object of securing indemnity to
20 the insured for the losses to which the insurance relates. Any reasonable doubt as to
21 uncertain language will be resolved against the insurer. *Crane v. State Farm Fire &*
22 *Casualty Co.*, 5 Ca1.3d 112, 115 (1971); *see also, Fire Ins. Exchange v. Superior*
23 *Court*, 116 Cal.App.4th 446 (2004). Insurance coverage is “interpreted broadly so as
24 to afford the greatest possible protection to the insured, [whereas] ... exclusionary
25 clauses are interpreted narrowly against the insurer.” *White v. Western Title Insurance*
26 *Co.*, 40 Ca1.3d 870, 881 (1985). The exclusionary clause “must be conspicuous, plain
27 and clear.” *State Farm Mutual Automobile Insurance Co. v. Jacober*, 10 Ca1.3d 193,
28 201-202 (1973). This rule applies with particular force when the coverage portion of
the insurance policy would lead an insured to reasonably expect coverage for the

1 claim purportedly excluded. *MacKinnon v. Truck Insurance Exchange*, 31 Cal.4th
2 635, 648 (2003).

3 Here, the insurance Policy at issue affords “one of the broadest forms available
4 today” and is considered to be an “all risk” policy, which insures for all risks of direct
5 physical loss unless otherwise excluded. (Plaintiff’s Additional Material Facts (PAF)
6 2-4); *see, Garvey v. State Farm & Casualty Co.*, 48 Cal.3d 395, 407 (1987).

7 B. State Farm Initially Acknowledged that the Water Damage Claim Was a
8 Covered Loss Under the Policy and Only Disputed the Extent and Cost of
9 Repairs

10 Here, the severe windstorm allowed heavy rain water to penetrate into
11 Plaintiff’s home. (PAF 5). The February 2023 windstorm event caused extensive,
12 immediate damage to the structural elements, including the roof, floors, walls, doors,
13 framing and windows. (PAF 5-7). These damages arose after windstorm event, and
14 were not pre-existing in nature. (PAF 8-10). This was initially confirmed by State
15 Farm, who acknowledged that the damages to Plaintiff’s Property resulted from the
16 wind/rain storm event on February 21, 2023. More specifically, State Farm’s own
17 adjuster inspected the Property and confirmed that the damages were the result of the
18 windstorm event, which invoked coverage under the Policy, prompting State Farm to
19 issue a payment of \$71,594.55, representing State Farm’s total assessment of the
20 damages related to the Water Damage Claim. (PAF 27). **State Farm’s estimate and**
21 **payment accounted for the water damage to the walls, doors, framing and**
22 **windows.** (PAF 27-28). Thus, when payment was made to Plaintiff, coverage was not
23 in dispute. However, given the significant difference between State Farm’s estimate
24 of \$71,594.55 compared to the estimate from Plaintiff’s contractor in the amount of
25 \$760,340.21, State Farm “attempted to reconcile” the estimates to determine if further
26 payment was owed and due. (PAF 26). If reconciliation did not work, State Farm
27 informed Plaintiff that it will hire a third party to provide an estimate of repairs. (PAF
28 26). In other words, State Farm led Plaintiff to believe that the only issue in dispute

1 was the *value* and scope of the covered water damages between the two estimates.

2 Instead of reconciling the two estimates to determine the true value of the
3 scope of repairs for Plaintiff’s damaged home, State Farm quickly switched gears and
4 retained a “cause” expert. The only likely reason why State Farm would retain an
5 expert to determine the cause of damages it had already paid for is because State
6 Farm realized that Plaintiff’s estimate was more in line with the actual damages
7 sustained in the Water Damage Claim and that it had underpaid and undervalued the
8 damages to Plaintiff’s Los Angeles home. State Farm’s retention of Engineering
9 Systems, Inc. (“ESI”) was intentionally set up to create a coverage dispute. To no
10 surprise, State Farm’s retained engineer came up with the familiar causation defense
11 of “pre-existing damages” to defeat payment of what was initially a covered claim.

12 State Farm relies on the ESI and Harris & Sloan Reports in arguing that the
13 unpaid damages are excluded from coverage. (Motion p. 19:5-20:9). These opinions
14 and conclusions in these reports are inadmissible hearsay because they are offered for
15 the truth of the matter stated. Fed. R. Evid. 801. Accordingly, State Farm has not
16 presented any admissible evidence to establish the cause of the unpaid damage or that
17 it is excluded from coverage.

18 Furthermore, there is a genuine issue of fact as to the cause of the unpaid
19 damage which precludes summary judgment on Plaintiff’s breach of contract related
20 to the Water Damage Claim. Again, coverage was never in dispute until State Farm
21 was responsible for reconciling the two estimates to determine the true value and
22 whether additional payments were owed and due. Only then did State Farm question
23 whether the damages were even caused by the February 21, 2023 windstorm event, or
24 whether some exclusion in the Policy could provide State Farm a complete defense.
25 While State Farm did not want to speak with ESI regarding its investigation and
26 findings because it didn’t want to “influence” the engineer’s report (PAF 32), that is
27 precisely what State Farm did. State Farm discussed the engineer’s findings on
28 February 28, 2024, and did not issue its denial letter until July 2, 2024, approximately

1 five months later. (PAF 42, 61).

2 ESI inspected the property on October 24, 2023, eight months after the
3 windstorm event and over four months after Plaintiff reported the Water Damage
4 Claim to State Farm. (DAF 4, PAF 31). Six months after inspecting Plaintiff’s
5 property, ESI submitted its report to State Farm, setting forth their alleged opinions
6 and conclusions as to the cause and origin of the Water Damage Claim. (DAF 10,
7 PAF 48). ESI essentially concluded that all of the damage to the interior and exterior
8 of the home was pre-existing and resulted from age, deterioration, deficiencies in the
9 design and construction of the home, lack of routine maintenance and repairs, among
10 other things. (DAF 14).

11 All of ESI’s conclusions are based on faulty and erroneous assumptions and/or
12 are contradicted by substantial evidence in this case. In particular, while ESI
13 concludes that the water damage observed was the result of “age-related
14 deterioration” over a long period of time, conveniently omitted from ESI’s report is
15 that it inspected the home eight months after the storm. In other words, while ESI
16 assumes that the damages pre-dated the loss, ESI conducted its investigation 8
17 months after the water damage loss occurred and failed to consult with witnesses with
18 personal knowledge of the pre-loss condition of the interior elements of the home,
19 most significantly, Plaintiff himself. Had ESI communicated with Plaintiff himself,
20 ESI would have realized that the alleged “preexisting” damages and deterioration it
21 saw did not exist prior to the Water Damage Claim and instead, Plaintiff observed all
22 of these water damages after the February 2023 windstorm event. (PAF 5-10). All
23 other damages had been timely repaired. (PAF 9-10).

24 ESI does not identify case-specific evidence of gradual effects of wear and tear
25 and earth movement to the Property over time. ESI failed to account for the fact that
26 the windstorm event occurred eight months prior to the time the water intrusions
27 occurred and thus, cannot say when the damage occurred and did not perform any
28 evaluation of how long it would take for such alleged “pre-existing” conditions to

1 appear. Similarly, there is no evidence that ESI had or asked for pre-loss photographs
2 of the interior of the home. ESI did not speak with Plaintiff before concluding that the
3 damages were caused by lack of routine maintenance and repairs. ESI's conclusions
4 are also refuted by State Farm's claim file which acknowledges evidence of prior
5 repairs to the home. (PAF 52). ESI's conclusions are also refuted by State Farm's
6 claim adjusters who determined that the cause of the damages was the result of the
7 windstorm event (PAF 27) and the other adjuster, Mr. Thomas Jones, who agreed
8 with Plaintiff's flooring expert that the solid oak wood flooring throughout the home
9 needed to be replaced for a uniform appearance. (PAF 44-45).

10 ESI identified four possible causes of the damages but failed to explain how
11 any of them caused the damage or was the predominate cause of damages to the
12 home. ESI has no idea how much water entered the home on February 21, 2023 and if
13 those water intrusions caused the damages observed, yet, summarily concluded that
14 all of the damages were pre-existing and attributable to everything but the windstorm
15 event.

16 Other than reviewing the Harris & Sloan Report from 2018, which was outdated
17 and completely irrelevant to the subject claim, State Farm did no further investigation
18 before deciding to deny Plaintiff's claim. The denial came approximately 17 months
19 after the windstorm event occurred. Completely ignoring evidence of the home's
20 condition before and after the water loss event occurred, State Farm blindly accepted
21 ESI's position to deny coverage while ignoring all of the evidence available to it
22 which supported coverage, including information and documents in its own claim
23 file. For instance, there was no mention of any "preexisting damage" observed or
24 noted when State Farm's claim adjuster Karin Miller initially inspected the loss
25 location. (PAF 13, 27). Plaintiff submitted evidence that his home was in good
26 condition prior to the windstorm and did not observe water damages to the walls,
27 doors, framing and windows prior to the February 2023 storm. (PAF 5-10).
28 Moreover, State Farm's own claim note from August 2, 2024 is uncertain as to what

1 degree of damages were preexisting from the prior claim (PAF 62).

2 Undeterred, State Farm ignored this information then summarily denied the
3 claim without proper analysis, explanation or supporting evidence. State Farm’s
4 belated, biased and perfunctory investigation started when it hired ESI to manufacture
5 a coverage dispute and ended several months later when it received enough
6 information to render a denial of Plaintiff’s claim.

7 C. The Policy, as A Matter of Law, Applies to Cover the Water Damage Claim
8 Under California’s Doctrine of Efficient Proximate Cause

9 State Farm’s attempt to exclude damage caused by any of the four exclusions
10 cited in its denial letter runs afoul of California’s efficient proximate cause rules.

11 The efficient proximate cause of loss is defined as “the predominating” or
12 “most important cause of the loss.” *Garvey v. State Farm Fire & Casualty Insurance*
13 *Company* 48 Cal.3d 395, 402-403 (1989). When a loss is caused by a combination of
14 a covered and specifically excluded risks, the loss is covered if the covered risk was
15 the efficient proximate cause of the loss.” *State Farm Fire & Cas. Co. v. Von Der*
16 *Lieth*, 54 Cal. 3d 1123, 1131, (1991). “[T]he question of what caused the loss is
17 generally a question of fact.” *Id.* California courts have long held that unless
18 specifically excluded from a policy, a negligent act or omission occurring in the
19 course of construction or installation of improvements to property is a risk of physical
20 loss triggering policy coverage. *Garvey*, 48 Cal.3d at 408.

21 In *Chadwick v. Fire Insurance Exchange*, 17 Cal.App.4th 1112 (1993) the
22 appellate court examined the state of concurrent cause and noted the following:

23 California courts have consistently applied the efficient proximate cause
24 analysis where two or more distinct actions, events or forces combined
25 to create the damage. (*E.g.*, *Sabella v. Wisler* (1963) 59 Cal.2d 21, 26,
26 31-32 [27 Cal.Rptr. 689, 377 P.2d 889] [negligent construction of sewer
27 and inadequate compaction of fill (covered perils), both causing settling
28 (excluded peril)]; *Sauer v. General Ins. Co.* (1964) 225 Cal.App.2d 275,
278 [37 Cal.Rptr. 303] [leakage of water from plumbing system
(covered) and sinking of earth (excluded)]; *Gillis v. Sun Ins. Office, Ltd*
(1965) 238 Cal.App.2d 408, 419 [47 Cal.Rptr. 868, 25 A.L.R.3d 564]

1 [windstorm (covered) and water (excluded)]; *Premier Ins. Co. v. Welch*
2 (1983) 140 Cal.App.3d 720, 725 [189 Cal.Rptr. 657] [negligent
3 installation of sewer (covered) and saturation of earth in heavy rain
4 (excluded)]; *Garvey v. State Farm Fire & Casualty Co., supra*, 48
5 Cal.3d at pp. 412-413 [negligent construction (covered) and earth
6 movement (excluded)]; *Howell v. State Farm Fire & Casualty Co.,*
7 *supra*, 218 Cal.App.3d at pp. 1459-1460 [fire (covered) and earth
8 movement (excluded)]; *State Farm Fire & Casualty Co. v. Von Der*
9 *Lieth, supra*, 54 Cal.3d at pp. 1127-1128, 1133 [third party negligence in
10 failing to stabilize and dewater earth (covered) and earth movement and
11 rising groundwater (excluded)]; *Brian Chuchua's Jeep, Inc. v. Farmers*
12 *Ins. Group* (1992) 10 Cal.App.4th 1579, 1580-1581, 1583 [13
13 Cal.Rptr.2d 444] [earthquake (covered) and leaking gasoline storage
14 tank (excluded)].) (17 Cal.App.4th at 1117.)

11 Rather than address the “efficient proximate cause” of the loss which
12 determines coverage, State Farm points to four potential causes of loss to bar
13 coverage (*i.e.*, deficient design and construction, age related deterioration,
14 retrofit/replacement of improvements made after original construction, and/or lack of
15 maintenance and repairs). State Farm’s arguments overlook the efficient proximate
16 cause of the loss—the windstorm rain event—which is a covered peril in the Policy.
17 State Farm’s failure to even attempt to apply its exclusions to Plaintiff’s theory of
18 causation is fatal to its Motion. State Farm cannot argue that the efficient proximate
19 cause was something other than the February 21, 2023 rainstorm event.

20 State Farm’s interpretation of its exclusions improperly attempts to circumvent
21 the efficient proximate cause doctrine and *California Insurance Code Section 530*
22 (“[a]n insurer is liable for a loss of which a peril insured against was the proximate
23 cause, although a peril not contemplated by the contract may have been a remote
24 cause of the loss; but he is not liable for a loss of which the peril insured against was
25 only a remote cause.”). As a matter of public policy and under California law, State
26 Farm is prohibited from enforcing policy provisions that purport to exclude coverage
27 where the efficient proximate cause of the loss is covered simply because an excluded
28 cause also appears in the chain of causation. *Id.* In other words, this language is

1 identical to the efficient proximate cause test, and damage due to defective design or
2 construction, retrofitting and replacement and installation of additions and
3 improvements, is covered when the loss is otherwise included. At minimum, any
4 ambiguity of the provision invokes the rule that the exception to the exclusions is
5 interpreted broadly and favor coverage. *Jordan v. Allstate Insurance Co.* 116
6 Cal.App.4th 1206, 1215 (2004).

7 In sum, the Policy provides coverage for Plaintiff’s loss. State Farm’s reliance
8 on its exclusions is misplaced because Plaintiff’s home first suffered damage by a
9 “Covered Cause of Loss” even in the parlance of the exclusions. Even when a loss is
10 caused by a combination of covered and excluded perils, the entire loss is covered if
11 the efficient proximate cause is covered. Where, as here, an efficient proximate cause
12 (wind driven rain) is a covered cause of loss, the existence of excluded causes later in
13 the chain of causation cannot defeat coverage. *See Cal. Ins. Code Section 530*. Since
14 “the question of what caused the loss is generally a question of fact” (*State Farm Fire*
15 *& Cas. Co. v. Von Der Lieth*, 54 Cal. 3d 1123, 1131 (1991), summary judgment
16 should be denied.

17 **V. SUMMARY JUDGMENT FOR BREACH OF THE IMPLIED**
18 **COVENANT OF GOOD FAITH AND FAIR DEALING SHOULD BE**
19 **DENIED BECAUSE THERE ARE TRIABLE ISSUES OF MATERIAL**
20 **FACT REGARDING DEFENDANTS’ BAD FAITH HANDLING OF**
21 **PLAINTIFF’S CLAIM**

21 As a general rule, there can be no breach of the implied covenant of good faith
22 and fair dealing if no benefits are due under the policy. *Brehm v. 21st Century Ins.*
23 *Co.*, 83 Cal. Rptr. 3d 410, 417 (Ct. App. 2008). However, “the principle that no
24 breach of the covenant of good faith and fair dealing can occur if there is no coverage
25 or potential for coverage under the policy is quite different from the argument that no
26 breach of the implied covenant can occur if there is no breach of an express
27 contractual provision.” *Id.* at 418. Even an insurer that pays the full limits of its
28 policy may be liable for breach of the implied covenant if improper claims handling

1 causes detriment to the insured. *Fleming v. Safeco Ins. Co.*, 206 Cal. Rptr. 313, 315-
2 16 (Ct. App. 1984).

3 “[W]hen benefits are due an insured, ‘delayed payment based on inadequate or
4 tardy investigations, oppressive conduct by claims adjusters seeking to reduce the
5 amounts legitimately payable and numerous other tactics may breach the implied
6 covenant because’ they frustrate the insured’s right to receive the benefits of the
7 contract in ‘prompt consideration for losses.’” *Waller v. Truck Ins. Exch., Inc.*, 900
8 P.2d 619, 639 (1995) (quoting *Love v. Fire Ins. Exch.*, 271 Cal. Rptr. 246, 256 (Ct.
9 App. 1990)).

10 Moreover, “the genuine dispute rule does not relieve an insurer from its
11 obligation to thoroughly and fairly investigate, process and evaluate the insured’s
12 claim.” *Wilson v. 21st Century Ins. Co.*, 42 Cal. 4th 713, 752 (2007). To avoid bad faith
13 liability, an insurer’s dispute regarding its liability must be genuine. There are “several
14 circumstances where a biased investigation claim should go to jury: (1) the insurer was
15 guilty of misrepresenting the nature of the investigatory proceedings; (2) the insurer’s
16 employees lied during the depositions or to the insured; (3) the insurer dishonestly
17 selected its experts; (4) the insurer’s experts were unreasonable; and (5) the insurer
18 failed to conduct a thorough investigation.” *Guebara v. Allstate Ins. Co.* 237 F.3d 987,
19 996 (9th Cir. 2001). Additionally, an insurer’s reliance on its expert could not be
20 determined to be reasonable as a matter of law where the expert ignored relevant facts
21 undermining the expert’s opinions. *Brehm v. 21st Century Ins. Co.*, 166 Cal. App. 4th
22 1225, 1240-1241 (2008).

23 Whether a dispute was genuine must be evaluated based on the circumstances
24 existing at the time of the dispute. An insurer cannot use later-occurring events to
25 justify its position. “The reasonable or unreasonable action...must be measured as of
26 the time [the insurer] was confronted with the factual situation to which it was called
27 upon to respond.” *Austero v. National Casualty Co.*, 84 Cal.App.3d 1, 32 (1978)
28 (overruled on other grounds by *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal.3d 809

1 (1979)).

2 State Farm’s dilatory, biased and perfunctory investigation began when it realized
3 that Plaintiff’s damages were a lot higher than State Farm had originally estimated, and
4 went back to reverse its coverage determination, ultimately finding enough “evidence”
5 to support a denial. Again, State Farm was not denying coverage up until it was tasked
6 with reconciling its estimate from Plaintiff’s estimate. State Farm decided to ignore all
7 the evidence that supported a covered claim and instead of engaging in additional
8 discussions to identify the basis for the difference in value of damages, as it promised to
9 do, State Farm determined it would be easier to retain an expert to deny benefits all
10 together. Interestingly, State Farm refused to engage in discussions with its engineer, as
11 it didn’t want to “influence” his findings. (PAF 32). Yet, on February 28, 2024, the
12 State Farm adjuster at the time, Mr. Jones, had a conversation with the engineer to
13 discuss his investigation and findings. (PAF 42). A jury could conclude, based on these
14 facts, along with a denial letter that came five months after Mr. Jones discussion with
15 the engineer regarding his “findings”, that State Farm was directly involved and
16 influenced ESI’s findings to support a coverage denial. This is the definition of bad
17 faith.

18 This case is analogous to *Fadeeff v. State Farm General Insurance Co.*, 50 Cal.
19 App. 5th 94 (2020), where the initial adjuster confirmed that coverage and damages but
20 State Farm went back to deny the claim after rubber-stamping an expert report based on
21 a limited investigation. ESI inspected the home over eight months after the loss
22 occurred, and prepared its report over a year after the loss. For ESI to conclude, without
23 any reliable evidence or facts that the damage was “pre-existing” is belied by State
24 Farm’s initial assessment and payment of the claim. Even more, ESI falsely concludes
25 that Plaintiff did not make repairs and failed to maintain his premises. But that too is
26 contradicted by State Farm’s claim file which acknowledges evidence of repairs made
27 to the home. ESI also fails to explain why a large windstorm could not have caused the
28 damages to the home, but conclusively states that the damages pre-dated the loss. ESI

1 failed to address why the preexisting damages were not present or visible to Plaintiff
2 immediately prior to the February 2023 windstorm. ESI failed to consult with anyone
3 knowledgeable about the repairs, maintenance and condition of the home immediately
4 prior to the loss. This is just another example of the false narrative created to deny
5 coverage. Unbelievably, State Farm once blindly accepted ESI’s position and did not
6 look for any evidence supporting coverage of the claim.

7 Furthermore, State Farm’s reliance on a stale report from Harris & Sloan cannot
8 be deemed reasonable. That report was obtained for the sole purpose of denying the
9 claim, despite all the evidence that supported coverage. After State Farm received
10 these reports, State Farm did nothing to verify the accuracy of the conclusions it
11 baselessly relies on in denying Plaintiff’s once-covered claim.

12 State Farm hired ESI for the purpose of manufacturing a genuine dispute. Its
13 blind reliance on ESI’s speculative and inadequate investigation, which directly
14 contradicted the findings of its own adjuster, to deny further payment demonstrates
15 the unreasonableness of its claim handling. Rather than look for evidence supporting
16 coverage, State Farm focused solely on evidence supporting denial of coverage.

17 **VI. PLAINTIFF HAS SUFFICIENT EVIDENCE FOR HIS PUNITIVE**
18 **DAMAGES CLAIM**

19 An insured may recover punitive damages if the insurer not only denied or
20 delayed the payment of policy benefits unreasonably or without proper cause, but, in
21 doing so, was guilty of malice, oppression or fraud. *Jordan v. Allstate Ins. Co.*, 56
22 Cal. Rptr. 3d 312, 325 (Ct. App. 2007).

23 Evidence that an insurer “intentionally manipulated the facts to create a
24 favorable record” to justify its denial of benefits may support punitive damages claim.
25 *Mazik v. Geico Gen. Ins. Co.*, 247 Cal. Rptr. 3d 450, 464 (Ct. App. 2019).

26 Importantly, “a majority of courts find that genuine disputes of material fact
27 regarding an insurer's bad faith conduct similarly create a genuine dispute as to an
28 award of punitive damages.” *Marderosian v. Nationwide Mutual Insurance Company*,

1 No. CV 19-6152 PSG (KSx), 2020 WL 4787998, *10 (C.D. Cal June 1, 2020). As the
2 moving party without the burden of persuasion, State Farm’s initial burden on
3 summary judgment, “must either produce evidence negating an essential element of
4 the nonmoving party’s claim or defense or show that the nonmoving party does not
5 have enough evidence of an essential element to carry its ultimate burden of
6 persuasion at trial.” *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F. 3d
7 1099, 1102 (9th Cir. 2000). Accordingly, State Farm must show that Plaintiff cannot
8 prove State Farm acted with malice, oppression, or fraud.

9 As discussed above, despite the countless requests for an update from State
10 Farm, State Farm continuously ignored Plaintiff and failed to timely communicate
11 and provide updates on his claim, forcing Plaintiff to file a Department of Insurance
12 Complaint. (PAF 14-25; 33; 40-43; 47-50; 53-54; 63). State Farm also confirmed
13 coverage and then went back to reverse its coverage determination based on
14 misleading and false assumptions, which it knew were false and intended to create a
15 coverage dispute. (PAF 26-29; 43-45). State Farm delayed the claim over a year
16 before it finally issued a denial. State Farm refused to submit reports and evidence it
17 was relying on to support its coverage determination, despite multiple requests. (PAF
18 43). There is evidence that State Farm influenced its engineer’s investigation and
19 conclusions. (PAF 32, 42).

20 Over 1 year and 9 months since the date of loss, and Plaintiff’s home is still not
21 repaired. The acts and omissions of State Farm have caused Plaintiff to spend
22 considerable time, effort, money and energy and have resulted in extreme emotional
23 distress to Plaintiff. (PAF 63). Plaintiff has sufficient evidence of malice, oppression
24 and fraud to allow his claim for punitive damages to be decided by the trier of fact
25 and State Farm should not be entitled to summary judgment on this issue.

26 ///

27 ///

28 ///

1 **VII. CONCLUSION**

2 Plaintiff, Paul Oakenfold, has raised factual issues as to every basis on which
3 State Farm seeks summary judgment. Plaintiff respectfully requests this Court deny
4 the Motion in its entirety. Alternatively, Plaintiff requests a continuance in order to
5 conduct depositions and other discovery to obtain facts essential to justify this
6 Opposition.

7
8 Dated: November 4, 2024

ENGSTROM, LIPSCOMB & LACK

9
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