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NATIONWIDE MUTUAL INSURANCE COMPANY

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

RAKESH BANSAL and HEMA T BANSAL, individuals,

Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE COMPANY, a corporation. and Does 1 -10, inclusive,

Defendants.

Case No. 3:23-cv-05527-LB

NATIONWIDE MUTUAL INSURANCE COMPANY'S

(1) NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, PARTIAL SUMMARY JUDGMENT

(2) MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date:	July 17, 2025
Time:	9:30 a.m.
Location:	450 Golden Gate Ave., San Francisco, CA 94102 Courtroom B, 15th Floor
Judge:	Hon. Laurel Beeler

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NOTICE OF MOTION AND MOTION

TO PLAINTIFFS AND THE CLERK OF THE COURT:

PLEASE TAKE NOTICE that on July 17, 2025, at 9:30 a.m. or as soon thereafter as counsel may be heard, in Courtroom B of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, 15th Floor, San Francisco, California, 94102, defendant Nationwide Mutual Insurance Company will move for summary judgment on Plaintiffs' claims against it, as well as their claim for punitive damages.

Nationwide request that the Court enter summary judgment in its favor on all claims in Plaintiffs' complaint and its claim for punitive damages. Alternatively, Nationwide requests partial summary judgement as follows: (1) Plaintiff cannot recover beyond the amount of the loss that was resolved through appraisal and paid by Nationwide; (2) Plaintiffs cannot recover temporary housing costs under Additional Living Expense Coverage based on failure to satisfy contractual prerequisites; (3) Plaintiffs cannot recover their food costs under Additional Living Expense Coverage based on failure to satisfy contractual prerequisites; (4) Plaintiffs cannot recover alleged moving costs based on payment of the appraisal award and contractual limits; (5) Plaintiffs cannot recover for Fair Rental Value under applicable policy language; (6) Nationwide acted reasonably *as a matter of law* and there was a "genuine dispute" regarding the scope of repairs; and (7) Plaintiffs' cannot recover punitive damages.

This motion is brought under Federal Rule of Civil Procedure 56 and is based on this Notice, the following Memorandum of Points and Authorities, the concurrently-filed declarations of Lindsay Lathrum and Matthew Chipman and all documents attached to those declarations, all pleadings, records, and documents on file herein, and such additional evidence and argument as may be properly introduced in support of this motion.

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I. INTRODUCTION

Plaintiff Rakesh Bansal owned a home, where he lived with his wife, plaintiff Hema Bansal, and which he insured with Nationwide (the "Insured Property"). After the Insured Property sustained water damage, plaintiffs filed a claim, and Nationwide timely inspected the Insured Property. Nationwide drafted an initial loss estimate and later a revised repair estimate. During this time, plaintiffs moved into a separate home owned by Hema Bansal (the "Oxnard Property") without telling Nationwide, and they never permanently moved back to the Insured Property. Plaintiffs were unsatisfied with the amounts offered by Nationwide and invoked the contractual appraisal provision to resolve the amount of the loss. The appraisal process resulted in an award that was almost exactly midway between each parties' last respective estimates. Nationwide paid the award promptly.

While living at the Oxnard Property, plaintiffs requested Nationwide to pay for their food costs under their Additional Living Expense ("ALE") coverage. Despite repeated requests from the Nationwide adjuster, plaintiffs never substantiated their pre-loss food costs to enable payment of any incremental "increased" costs. More significantly, plaintiffs failed to disclose that they were living at the Oxnard Property and that their demand for allegedly additional food costs arose not because of the water loss at the Insured Property, but rather because two of the kitchen appliances at the Oxnard Property broke. Plaintiffs also demanded that Nationwide pay for housing costs under their ALE coverage to compensate Mr. Bansal for the interval when he rented an apartment near the Insured Property to allegedly oversee repairs. But plaintiffs' demand came more than 24 months past the loss date—after expiration of the available contractual repair time under the policy limits, and beyond the allotted time resolved by the appraisal award.

The undisputed facts reflect that Nationwide is entitled to judgment as a matter of law because: (a) the amount of the loss was resolved through appraisal and has been paid; (b) no additional ALE expenses (for temporary housing or food) were owed based on failure to satisfy contractual prerequisites; (c) demands to pay plaintiffs for Fair Rental Coverage and moving costs (packout/packback) have no valid basis under the policy language or the appraisal award; (d) Nationwide reasonably evaluated and paid the claim as a matter of law; and (e) there is no basis for punitive damages as a matter of law.

II. STATEMENT OF ISSUES TO BE DECIDED

(1) Are plaintiffs entitled to coverage for: (a) Additional Living Expenses (temporary housing), (b) Adjusting Living Expenses (food costs), (c) for packout/packback costs in excess of the appraisal award; (d) appraisal costs; and (e) Fair Rental Value Coverage?

(2) Was Nationwide's conduct unreasonable as a matter of law and/or there was a "genuine dispute" regarding the scope of coverage?

(3) Are Plaintiffs entitled to recover punitive damage from Nationwide?

III. FACTS

A. The Nationwide Insurance Policy

Nationwide's policy, which insured real property located at 428 Hershner Drive in Los Gatos (the "Insured Property") at the time of the loss, states:

> **D. Coverage D — Loss Of Use**
>
> …
>
> **1. Additional Living Expense**
>
> If a loss covered under Section I makes that part of the "residence premises" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.
>
> Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere. Payment will not exceed the actual loss sustained or 24 months from the date of loss, whichever occurs first.
>
> **2. Fair Rental Value**
>
> If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.
>
> Payment will be for the shortest time required to repair or replace such premises. Payment will not exceed the actual loss sustained or 24 months from the date of loss, whichever occurs first.
>
> …
>
> **C. Duties After Loss**
>
> In case of a loss to covered property, we have no duty to provide coverage under this policy if you or an "insured" seeking coverage fails to comply with the following duties:
>
> …
>
> 5. Cooperate with us in the investigation of a claim;

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> …
>
> 8. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
>
> …
>
> g. Receipts for additional living expenses incurred and records that support the fair rental value loss;
>
> …
>
> **F. Appraisal**
>
> If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. … The appraisers will separately set the amount of loss…. A decision agreed to by any two will set the amount of loss.

Declaration of Lindsay Lathrum ("Lathrum Decl.") ¶5, Ex. A, at NMIC000017, 30-32).

B. The Loss Occurs and Nationwide Begins Its Investigation.

On July 19, 2021, Rakesh Bansal reported a water loss at the Insured Property that occurred on July 17, 2021 (the "Loss"). Lathrum Decl. ¶6, Ex. B at NMIC_003687-88; Dkt. 1, Ex. A, ¶7. The assigned adjuster, Robert Mulcahey, hired third-party vendor to inspect the Insured Property. *Id.* at ¶¶7-8; Declaration of Matthew Chipman ("Chipman Decl."), ¶5, Ex. D 69:3-10. Nationwide then drafted an initial estimate to repair the property. *Id.* at ¶ 9, Ex. C. On July 28, 2021, Mr. Mulcahey sent Mr. Bansal a copy of Nationwide's initial estimate and a letter explaining that estimate. *Id.* at ¶ 10, Ex. D. Mr. Mulcahey had *two separate conversations* with Mr. Bansal that day explaining how to request supplemental payments for necessary repair work beyond the amount already paid. *Id.* at ¶11; ¶6, Ex. B at NMIC_003307. Nationwide promptly paid Mr. Bansal approximately $8,500 per its initial estimate, less the Policy deductible and recoverable depreciation. *Id.* at ¶12, Ex. E.

C. Plaintiffs Hire a Public Adjuster and Secretly Move Into Their Second Home.

On or about August 19, 2021, public adjuster Jahn Miller emailed Mr. Mulcahey advising that he had been retained on behalf of Mr. Bansal. Chipman Decl., ¶2, Ex. A, 51:13-22, Ex. 3. Mr. Miller provided Nationwide a Public Insurance Adjuster Contract executed by Mr. Bansal on August 18, 2021, where Mr. Bansal agreed to pay and assign Mr. Miller 10% of any payment issued by Nationwide. *Id.* at ¶13, Ex. F. Around this time, Plaintiffs moved into Ms. Bansal's second home in Oxnard, California (the "Oxnard Property) without disclosing this to Nationwide. Chipman Decl. ¶2, Ex. A, 27:19-28:4; ¶3 Ex. B, 19:5-11; ¶5, Ex. D 137:14-138:14.

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On August 20, 2021, Mr. Mulcahey and Mr. Miller exchanged emails regarding lead and asbestos testing, mitigation, and drying work at the Insured Property.[1] Lathrum Decl., ¶14, Ex. G. In that exchange, Mr. Miller stated: "In the meantime, I will keep you in the loop as to any pertinent information concerning this claim as it comes up, including, but not limited to, ALE coverage that the insured will, *at some point*, need to be used by your Insured." *Id.* (emphasis added). Mr. Mulcahey responded stating that Nationwide had a third-party company that "can handle getting [Mr. Bansal] set up in a hotel or whatever is need and can set up a direct bill. If [Mr. Bansal] makes [his] own arrangements it would have to be handled on a reimbursement basis." *Id.* Mr. Miller responded, confirming his understanding of Mr. Mulcahey's email. *Id.*

On September 9, 2021, Mr. Miller and his selected contractor, Tom Koester of Accurate Estimates, Inc. ("AEI"), inspected the Insured Property. Chipman Decl. ¶4, Ex. C, 50:18-20. Mr. Koester took measurements of the Insured Property but did not perform any destructive testing. *Id.* at 57:11-17. On September 16, 2021, Mr. Miller emailed Mr. Mulcahey that there was additional alleged damage and suggesting that Nationwide should reinspect the Insured Property. Lathrum Decl., ¶16, Ex. I. That same day, Mr. Mulcahey emailed Alacrity requesting a reinspection of the Insured Property. *Id.* at ¶17, Ex. J. The reinspection was scheduled for October 26th because Mr. Bansal wanted to be present. *Id.* at ¶18; ¶6, Ex. B at NMIC_003286.

Mr. Koester drafted a "preliminary" estimate that he sent to Mr. Miller on September 20, 2021, for approximately $140,000. Chipman Decl. ¶¶4-5, Ex. C-D, 59:23-60:6; 65:19-25, Exs.4-5. Mr. Koester believed that replacement of the wood flooring at the Insured Property was necessary because of the age and thinness of the flooring. *Id.* at Ex. C, Ex. 4. However, he did not actually measure the thickness of the floor at the Insured Property, and he had no idea how many times the floor had been refinished. *Id.* at 61:18-22;63:2-21; 64:18-65:9. On October 21, 2021, Nationwide received Mr. Koester's initial estimate, as well as other reports and invoices.[2]. Lathrum Decl. ¶ 19, Ex. K.

[1] Nationwide paid Mr. Bansal directly for these costs on September 11, 2021. Lathrum Decl. ¶15, Ex. H.

[2] Nationwide paid Mr. Bansal for these costs on November 14, 2021(Lathrum Decl., *Id.* at ¶27, Ex. P) and October 28, 2021 (Lathrum Decl. ¶ 32, Ex. S).

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D. The Claim is Reassigned and the Investigation Continues.

On October 25, 2021, the Claim was reassigned to large loss adjuster Joe Austin. *Id.* at ¶20, ¶6, Ex. B at NMIC_003279; Chipman Decl. ¶5, Ex. D 82:18-21. Mr. Austin called Mr. Miller to introduce himself, explain the process for evaluating supplemental payment requests, and confirmed that he could attend the inspection on October 26th. *Id.* at ¶21; ¶6, Ex. B at NMIC_003276. Mr. Austin then reinspected the Insured Property, along with a licensed, independent general contractor, Justus Manderbach of American Technologies, Inc. ("ATI"), as well as Mr. Bansal, Mr. Miller and Mr. Koester. *Id.* at ¶24; ¶6, Ex. B at NMIC_003274-75; Chipman Decl. ¶5, Ex. D 86:4-23. During this reinspection, Mr. Austin advised that Nationwide would hire Renovar, a third-party vendor, to determine if the cabinets in the kitchen were repairable. *Id.* Mr. Austin also discussed additional living expenses while the Insured Property was being repaired. *Id.* Mr. Austin also sent identical letters to Mr. Miller and Mr. Bansal quoting the ALE and Fair Rental Value coverages in the Policy. *Id.* at ¶25, Ex. N. Mr. Austin's letters specifically stated: "Be sure to document your expenses and keep any receipts for extra costs needed to maintain your normal standard of living while you cannot live in your home so we know how much we may need to reimburse you." *Id.*

Mr. Austin then retained Renovar to inspect the kitchen cabinets to determine if they were repairable. Chipman Decl. ¶5, Ex. D, 96:3-7; 99:1-7. On October 28, 2021, Mr. Austin emailed Mr. Miller and Mr. Bansal stating that that he had retained Renovar. *Id.* at ¶26, Ex. O. Mr. Austin followed up with Renovar on November 2nd, November 5th, November 9th, November 10th, and November 11th regarding its inspection. Lathrum Decl. ¶6, Ex. B at NMIC_003271-72; ¶¶28-29, Ex. Q. On November 19, 2021, Mr. Austin sent a status letter to Mr. Bansal and Mr. Miller, stating that Nationwide's investigation was pending a report from Renovar. *Id.* at ¶30, Ex. R; Chipman Decl. ¶5, Ex. D 112:1-14. Mr. Austin spoke with Mr. Miller that same day, noting that Renovar would inspect the Insured Property on November 30th. *Id.* at¶6, Ex. B at NMIC_003270; ¶31; Chipman Decl. ¶5, Ex. D 118:2-16. During this conversation, Mr. Miller said that he would send documentation of food costs allegedly incurred by Mr. Bansal. *Id.* However, Mr. Miller *did not* reveal that the plaintiffs were living in Ms. Bansal's house, and that the alleged additional food costs arose because two of Ms. Bansal's kitchen appliances were allegedly broken. *Id.* Mr. Austin reminded Mr. Miller that food reimbursement is based on incurred costs less "food normal." *Id.* On December 8, 2021, Mr. Miller emailed Mr. Austin, regarding alleged food costs Plaintiffs incurred between October 14, 2021

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and November 16, 2021, stating: "To date, the Insured has incurred a total of $1,273.46 of food related purchases. After deducting 20% from the incurred amount, in order to arrive at an additional cost expense, we are claiming the amount of $1,018.68 for the ALE -Food expense component of this claim." *Id.* at ¶33, Ex. T; Chipman Decl. ¶2, Ex. A, 88:8-22, Ex. 9. Mr. Austin responded stating, "[i]n order to properly reimburse you for the increase in food costs, we need your *food normal costs* for you and your family per day and/or per week. Your ALE Coverage provides reimbursement of *reasonable increase* in food costs." *Id.* at ¶34, Ex. U (emphasis added). Mr. Austin also noted that he had not received Renovar's report, and that Nationwide would finalize and send its revised repair estimate once he had Renovar's report. *Id.* Mr. Austin emailed Renovar regarding the status of its report that same day. *Id.* at ¶35, Ex. V.

Mr. Austin did not get Renovar' report until December 17, 2021, because it was mistakenly sent to the wrong email address. *Id.* at ¶ 6, Ex. B at NMIC_003267; ¶38, Ex. X; Chipman Decl. ¶ 5, Ex. D 115:18-116:10. Renovar's report found that the cabinets were not repairable. *Id.* at ¶36, Ex. W. On December 22, 2021, Mr. Austin emailed Mr. Bansal and Mr. Miller, attaching Renovar's report, noting that it was previously sent to the wrong email address, and stating that he would contact them again with a revised estimate based on Renovar's report. *Id.* at ¶39, Ex. Y. Mr. Austin spoke with Mr. Manderbach of ATI that same day, and they agreed to discuss a revised repair estimate in January 2022. *Id.* at ¶6, Ex. B at NMIC_003265; ¶ 40. On December 24, 2021, Mr. Miller emailed Mr. Austin regarding, among other things, coverage for Plaintiffs food costs:

> They indicated that they might spend $100 per week for two adults…After further discussion, we determined the best way to figure the additional cost of the food component would be a percentage of the cost to eat at a restaurant and the bifurcation of the food vs prep and service. What we came up with was the additional cost to eat out would be 80% of the cost incurred. Therefore, based on the aforementioned and as per our email of 12/8/21, the Insured is claiming the additional expense of $1,018.68.

Id. at ¶41, Ex. Z. On January 11, 2022, Mr. Austin emailed Mr. Miller and Mr. Bansal, advising that he would forward his completed repair estimate as soon as it was approved. *Id.* at ¶42, Ex. AA. That day, Mr. Miller also emailed Mr. Austin, regarding alleged food costs Plaintiffs incurred between November 17, 2021 to December 31, 2021, for $3,930.52. *Id.* at ¶43, Ex. BB; Chipman Decl. ¶2, Ex. A, 98:5-22, Ex. 13. After deducting what Mr. Miller called "a normal expense" of 20%, he requested payment of

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$3,414.42 for this period, and a total amount of $4,163.10 for all food expenses to date. *Id.*

On January 13, 2022, Mr. Manderbach of ATI confirmed to Mr. Austin that: (a) ATI agreed with Nationwide's revised estimate and period of restoration; and (b) ATI was available to begin repairs immediately. *Id.* at ¶6, Ex. B at NMIC_003258; ¶44. Mr. Austin called Mr. Miller that day to discuss Nationwide's revised estimate and ATI's willingness to assist with the repair. *Id.* at ¶6, Ex. B at NMIC_003258; ¶45. Mr. Austin also emailed Mr. Miller and Mr. Bansal attaching Nationwide's revised estimate and letter regarding ALE coverage. *Id.* at ¶46, Ex. CC. Mr. Austin's email stated that Nationwide would issue payment for approximately $52,000 based on its revised estimates, less prior payments and the Policy deductible. *Id.* The email also stated, "We have confirmed with American Technologies, Inc. (ATI) that they can complete the repairs to your home to pre-loss condition based on our approved Xactimate Dwelling Repair Estimate, and they have agreed to our scope/cost," and provided Mr. Manderbach's contact information. *Id.* On January 14, 2022, Nationwide paid Mr. Bansal based on its revised estimate. *Id.* at ¶47, Ex. DD.

On January 14, 2022, Mr. Miller emailed Mr. Austin, challenging ATI's confirmation that it could complete repairs for the amount of Mr. Austin's revised estimate. *Id.* at ¶48, Ex. EE. Mr. Miller said that plaintiffs would have their preferred vendor (AEI) draft a competing estimate. *Id.* On January 21, 2022, Mr. Austin acknowledged receipt of Mr. Miller's email and stated that Nationwide would evaluate any supporting documents he submits. *Id.* at ¶49, Ex. FF. Mr. Austin further reiterated that Plaintiffs could effectuate all requisite repairs for the amount of Nationwide's repair estimate by hiring ATI—but plaintiffs *were not required* to hire ATI. *Id.* If plaintiffs were to instead retain a different repair contractor, then Mr. Austin requested Mr. Miller to provide the contractor's contact information and repair bid. *Id.* On January 24, 2022, Mr. Miller emailed Mr. Austin about AEI's "delta" repair estimate of approximately $85,000, and requesting payment of $4,163.10 for food expenses based on the credit card summaries submitted less a 20% reduction for "normal food expense." *Id.* at ¶50, Ex. GG.

On February 2, 2022, Mr. Austin responded to Mr. Miller's letter by explaining that Nationwide had issued an undisputed payment based on its revised estimate (confirmed by ATI) and that any remaining disagreement regarding the amount of loss could be resolved through the contractual appraisal provision quoted in the email. *Id.* at ¶51, Ex. HH. Mr. Austin also again requested documentation to support

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Plaintiffs' pre-Loss food estimate of $400/month. *Id.* Mr. Austin noted that *pre-Loss* credit card spend summaries would be accepted, and even if plaintiffs did not have copies of all food receipts, then they should send whatever was available. *Id.* Mr. Austin's email also requested that, *on a prospective going-forward basis*, Mr. Bansal should retain and send copies of actual food receipts. *Id.* On February 10, 2022 and March 4, 2022, Mr. Austin again sent Mr. Miller and Mr. Bansal identical letters requesting documentation to support Mr. Bansal's food expenses. *Id.* at ¶¶52-53, Exs. II-JJ. On March 4, 2022, Mr. Austin spoke with Mr. Manderbach (ATI) about potentially reinspecting the Insured Property. *Id.* at ¶6, Ex. B at NMIC_003250; ¶54. But Mr. Manderbach advised that reinspection was unnecessary because ATI had already inspected the Insured Property, and ATI was prepared to undertake repairs based on Nationwide's revised estimate. *Id.*

E. The Loss Is Appraised and Resulted In A Split-The-Difference Award.

On March 7, 2022, Mr. Miller demanded appraisal in writing. Chipman Decl. ¶5, Ex. D, 186:2-13, Ex. 15; Dkt. 1, Ex. A, ¶13. On March 28, 2022, Lisa Bolle of Resnick & Louis, Nationwide's retained appraisal counsel, sent a letter to Mr. Miller advising of her firm's retention and identifying Nationwide's appraiser. Lathrum Decl. ¶55, Ex. KK. On March 30, 2022, Mr. Austin sent Mr. Miller and Mr. Bansal a status letter advising that final resolution of their claim was pending the appraisal. *Id.* at ¶56, Ex. LL. On April 11, 2022, Mr. Miller sent Ms. Bolle two letters regarding the scope of appraisal, the latter of which stated:

> After discussing the matter, further, with your policyholder, we have decided that it would be better to just allow the Appraisal Panel to decide the extent of the damage and loss, without reference to any previous estimates written for the repair of the damage to the dwelling… Therefore, since we are pursuing a resolution to the dispute, utilizing the Appraisal process, we feel that the Panel would be in a better position to determine the whole loss and damage and value for the loss to the dwelling.

Id. at ¶¶57-58, Ex. MM-NN. Between April 2022 and February 2023 Mr. Austin sent monthly letters to Mr. Miller and Bansal, indicating that final resolution of Plaintiffs' claim was pending the appraisal. *Id.* at ¶¶ 59-70, Exs. OO-ZZ.

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Unbeknownst to Nationwide, Mr. Koester reinspected the Insured Property and drafted another estimate in February 2023 for approximately $250,000—an increase of approximately $100,000 from his first estimate. Chipman Decl. ¶4, Ex. C, 122:16-123:9. Although Mr. Koester sent this estimate to Mr. Miller and Plaintiffs' appraiser, it was never provided to Nationwide. Lathrum Decl. ¶95. On February 22, 2023, the appraisal hearing was conducting resulting in an award for $165,000 Replacement Cost Value, $158,818.83 Actual Cash Value and $6,181.17 in Recoverable Depreciation (the "Award"). Lathrum Decl. ¶ 72, Ex. AAA; Dkt. 1, Ex. A, ¶¶15-16. The Award approximately split the difference between Nationwide's January 2022 estimate and Mr. Koester's February 2023 estimate. On March 13, 2023, Mr. Austin emailed Mr. Miller and Mr. Bansal, attaching both the Award and a cover letter stating that Nationwide would issue payment based on the Award, less prior payments, recoverable depreciation and the Policy deductible. *Id.* at ¶ 72, Ex. BBB. On March 13, 2023, Nationwide paid Mr. Bansal $89,579.84. *Id.* at ¶ 73, Ex. CCC; Dkt. 1, Ex. A, ¶17. Between April 2023 and August 2023, Mr. Austin sent Mr. Miller and Mr. Bansal monthly letters requesting an update regarding repairs to the Insured Property, all of which went unanswered. *Id.* at ¶¶ 74-78, Exs. DDD-HHH.

F. Plaintiffs Request Temporary Housing so Mr. Bansal Could Be Near the Repairs.

On August 15, 2023, Mr. Miller emailed Mr. Austin attaching a letter requesting approximately $31,000 in packout/moving costs and stating, "[l]astly, the insured will be renting, on a temporary basis, quarters to reside in while repairs are ongoing." *Id.* at ¶79, Ex. III. However, neither Mr. Miller nor Mr. Bansal requested payment for temporary housing costs at this time. That same day, Mr. Austin emailed his manager, Lindsay Lathrum, Mr. Ratto and Mr. Bolle inquiring whether packout/moving costs were included the Award, to which Mr. Ratto responded that, based on his review of his file, the Award incorporated those costs. *Id.* at ¶80, Ex. JJJ. On August 28, 2023, Mr. Austin emailed Mr. Miller, stating that the Award was inclusive of any alleged packout/moving costs, and therefore Nationwide had already paid them. *Id.* at ¶81, Ex. KKK. Mr. Austin's email again asked for documentation to support the claimed food costs. *Id.* On September 5 and 23, 2023, Mr. Austin sent identical status letters to Mr. Miller and Mr. Bansal requesting documentation to support the claimed food costs, both of which went unanswered. *Id.* at ¶¶ 82-83, Exs. LLL-MMM.

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G. Plaintiffs File This Lawsuit and Nationwide Continues to Adjust the Claim.

On September 14, 2023, Plaintiffs filed this lawsuit in San Francisco Superior Court. Dkt. 1. On October 5, 2023, Mr. Miller emailed Mr. Austin a letter requesting payment based on an invoice from AirBNB for August 21, 2023 to October 21, 2023 for $10,659, a credit card summary for one of Mr. Bansal's credit cards for August 17-20, 2023 for incurred food expenses of $374.42, and an invoice for packout/storage from Pro Smart Movers for $3,462.68. *Id.* at ¶84, Ex. NNN. On November 29, 2023, Mr. Miller emailed Mr. Austin requesting reimbursement of the previously submitted costs, except for the AirBNB, which had increased to $21,504 for August 21, 2023 to December 31, 2023. *Id.* at ¶ 85, Ex. OOO.

On December 6, 2023, plaintiffs were represented by counsel, and thus Mr. Austin emailed Mr. Miller requesting authorization to speak with Mr. Bansal directly. *Id.* at ¶ 86, Ex. PPP. The email requested documents to support Mr. Bansal's food claim, quoting the ALE provision of the Policy, as well as attaching his October 26, 2021 letter. *Id.* Mr. Austin's email also requested an update regarding the status of repairs at the Insured Property. *Id.* On January 17, 2024, Plaintiffs' counsel, Mr. Halavanau, emailed Mr. Austin, agreeing to let him directly communicate with Mr. Bansal. *Id.* at ¶ 87, Ex. QQQ.

On January 23, 2024, Mr. Austin emailed Mr. Miller and Mr. Bansal, quoting the ALE coverage in the Policy (again), requested documents to support Mr. Bansal's food claim (again), and a status update regarding repairs to the Insured Property (again). *Id.* at ¶88, Ex. RRR. Mr. Austin sent a nearly-identical follow up emails to Mr. Miller and Mr. Bansal on February 18 and March 11, 2024. *Id.* at ¶¶ 89-90, Exs. SSS-TTT. On March 19, 2024, Mr. Miller emailed Mr. Austin a letter dated two years earlier (March 12, 2022). *Id.* at ¶91, Ex. UUU. The letter purported to attach an invoice for $1,074.63 for costs to move back into the Insured Property, as well as requested reimbursement of an additional $873.62 for housing costs between December 21-26, 2023, and noted that repairs were completed on February 2, 2024. *Id.* On July 19, 2024, Nationwide paid Mr. Bansal the depreciation in the Award. *Id.* at ¶ 92.

IV. LEGAL STANDARD

Summary judgment is proper where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. Pro. 56 (a); (c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). There is no genuine dispute where, taking the record as a whole, a rational trier of fact cannot find for the nonmoving party. *See Matsushita Elec. Indus. Co. v.*

Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Although the movant bears the burden on summary judgment, this burden "may be discharged by 'showing' – that is, pointing out to the district court – that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp.*, 477 U.S. at 325. The burden then shifts to the opposing party to show a genuine dispute of material fact and demonstrate that sufficient evidence exists for a reasonable jury to return a verdict in its favor. *Matsushita*, 475 U.S. at 586-87. "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). In opposing summary judgment, "[a]rguments based on conjecture or speculation are insufficient[.]" *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1173 (9th Cir. 2016).

V. ARGUMENT

A. Plaintiffs Cannot Prove Breach of Contract.

Plaintiffs cannot show that Nationwide withheld any benefits they seek as damages. *Dalrymple v. United Serv. Auto. Ass'n*, 40 Cal. App. 4th 497, 512, fn. 4 (1995) ("[A]bsent an actual withholding of *benefits due*, there is no breach of contract.") (emphasis added).

1. The Appraisal Award Resolved The Amount Of The Loss—Including Any Alleged Moving Costs—And Thus Plaintiffs Cannot Recover Additional Amounts For Moving Costs.

There can be no breach of contact where, as here, an insurer pays an appraisal award. *Klubnikin v. California Fair Plan Assn.*, 84 Cal. App. 3d 393, 399 (1978) (affirming the trial court's holding that a confirmed appraisal award barred plaintiffs' subsequent action for breach of contract that sought damages in excess of the appraisal award); *Bernstein v. Travelers Ins. Co.*, 2006 WL 2567875, at *3 (N.D. Cal. 2006) (affirming order granting summary judgment on a breach of contract claim because value of loss "was actually litigated and necessarily decided during the appraisal, the appraisal award was final and on the merits, and therefore Plaintiffs [were] barred from relitigating this issue by the doctrine of collateral estoppel"); *Yadidsion v. AmGUARD Ins. Co.*, No. 2:22-CV-01038-AB-PVC, 2022 WL 2288307, at *3 (C.D. Cal. Apr. 11, 2022) (dismissing breach of contract claim based on "well supported position" that insurer cannot be liable for breach of contract after it pays appraisal award); *Fuchs v. State Farm Gen. Ins. Co.*, No. CV 16-01844-BRO-GJS, 2017 WL

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3579431, at *4 (C.D. Cal. July 3, 2017), aff'd, 765 F. App'x 223 (9th Cir. 2019) (granting summary judgment for insurer on breach of contract claim because it appraisal award conclusively set the value of the loss and the insurer paid the award).

Under both California law and the Policy, the appraisal panel conclusively determined the value of the Loss. Cal. Ins. Code § 2071 ("The appraisers shall then appraise the loss[.]"); Lathrum Decl. ¶5, Ex. A at NMIC_000032 ("The appraisers will separately set the amount of loss."). This includes all necessary expenses to complete the repairs *e.g.*, removing and replacing Plaintiffs' belongings to complete the repairs. Indeed, Mr. Bansal conceded that the amount of his dwelling loss was resolved in the appraisal process and was binding on the amount of coverage he was entitled to. Chipman Decl. ¶2, Ex. A, 118:2-15. Sandra Moriarty, Plaintiffs' insurance expert, agrees that the amount of loss was resolved in the appraisal. Chipman Decl. ¶7, Ex. F 34:17-19.[3] Because Nationwide undisputedly paid the Award Plaintiffs cannot recover additional amounts beyond the Award by characterizing them as moving costs, or "pack-in / pack-out."

To the extent Plaintiffs assert that these discrete costs are not inherently included in the Award because they are not explicitly mentioned, they are wrong. Such argument constitutes an impermissible collateral attack on the Award. Cal. Civ. Proc. Code § 1288 (petition to correct or vacate award must be served within 100 days of service of the award); *Klubnikin*, 84 Cal. App. 3d at 398 (appraisal award that was not challenged in 100 days "is not subject to collateral attack except for grounds that would be available to attack any other civil judgment.") This Court's decision in *Bernstein v. Travelers Ins. Co.*, No. C05-1528 SBA, 2006 WL 2567875, (N.D. Cal. Sept. 5, 2006) is instructive. In *Bernstein*, a dispute arose following the appraisal of a water loss incurred at a commercial property. Prior to the appraisal, Travelers sent a letter to the appraisers regarding the scope of the appraisal, stating in part, "The appraisal should calculate the loss to [the insured's] building caused by water intrusion during the policy period." *Id.* at *1. The insured never objected to Travelers' letter. *Id.* The appraisal panel then issued an award accompanied with a letter explaining

[3] At the time of filing, only a rough copy of Ms. Moriarty's June 10, 2025 transcript was available. Nationwide can submit copies of the referenced pages when the certified copy is available.

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the scope of the award. Travelers paid the award, less the deductible and prior payments. *Id.* The insured then sued Travelers for breach of contract and bad faith arguing, *inter alia*, that the appraisers did not consider damages to its "main shop area." This Court disagreed, noting that an insured's *only remedy* if dissatisfied with an appraisal award is to petition a court to vacate or correct the award. *Id.* at *3. Because neither party petitioned within the statutory deadline, the award was final as a matter of law. *Id.* Considering Travelers' letter to the appraisers, the appraisal briefs, the explanation of the award, and one appraiser's testimony, this Court determined that there was no genuine dispute of material fact that damage to the main shop was actually litigated and necessarily decided. *Id.* Therefore, Travelers was entitled to summary judgment on the breach of contract claim.

The facts here are strikingly similar. Prior to the appraisal, Mr. Miller sent Nationwide's appraisal counsel a letter stating, "…we have decided that it would be better to just allow the Appraisal Panel to decide the extent of the damage and loss… we feel that the Panel would be in a better position to determine the whole loss and damage and value for the loss to the dwelling." Lathrum Decl. ¶ 57, Ex. MM. When asked, Nationwide's appraiser stated it was his belief the Award included packout/packback costs. *Id.* at ¶ 80, Ex. JJJ. Plaintiffs also admit in their Complaint that an insurance appraisal "set the value of disputed losses under the Policy." Dkt. 1. ¶ 14. Moreover, the Award *specifically articulated all the components that it did not cover*: enforcement of building codes, ordinances or law. *Id.* at ¶71, Ex. AAA. The Award *does not* exclude moving costs. *Id.* Accordingly, there is no dispute that the Award set the total value of Loss, including necessary costs to complete the repairs such as moving costs. To hold otherwise would contradict California's statutory framework regarding appraisal awards.

2. Plaintiffs Cannot Recover ALE Coverage For Temporary Housing.

Temporary housing may be covered under ALE, subject to a time limit of, "the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere." *Id.* at ¶5, Ex. A at NMIC_000017. Beyond this subjective limit, there is an absolute limit that the coverage "will not exceed the actual loss sustained or 24 months from the date of loss, whichever occurs first." *Id.* Plaintiffs' insurance expert agrees that there is no contractual obligation to pay housing costs submitted after the 24-month period. Chipman Decl. ¶7,

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Ex. F 33:20-22; 32:16-19. As a condition for coverage, claimants must submit receipts of incurred additional expenses. *Id.* at ¶5, Ex. A at NMIC_000031. The Policy prohibits suits against Nationwide unless Plaintiffs complied with this condition. *Id.* at ¶5, Ex. A at NMIC_000033. An insurer's duty to pay is not triggered until it obtains "sufficient evidence to establish the validity of [a] claim." *Abdelhamid v. Fire Ins. Exchange*, 182 Cal. App. 4th 990, 1000-1001 (2010) (insurer was entitled to summary judgment where insured violated "the condition of her insurance contract requiring her to provide a proof of loss with supporting documentation."); *Ram v. Infinity Select Ins.*, 807 F. Supp. 2d 843, 859-60 (N.D. Cal. 2011) (insurer entitled to summary judgment on plaintiff's contract claim where he failed to produce requested records). Plaintiffs' insurance expert agrees that Nationwide is not obligated to pay for housing costs if substantiating documentation is not provided. Chipman Decl. ¶7, Ex. F 35:21-36:2.

Here, Mr. Miller did not submit any documentation regarding Mr. Bansal's incurred temporary housing costs until October 5, 2023, which is 21 days after Plaintiffs filed this lawsuit, and more than 26 months after the date of loss. *Id.* at ¶ 84, Ex. NNN. Because Plaintiffs did not timely provide any evidence of incurred temporary housing costs prior to suit, Nationwide cannot be liable for not paying them. *Abdelhamid*, 182 Cal. App. 4th at 1000-1001; *Ram*, 807 F. Supp. 2d at 859-860. Coverage is also time barred for exceeding "24 months from the date of loss[.]" *Id.* at ¶5, Ex. A at NMIC_000017. Coverage is also time barred because the period of restoration set forth in the Award (issued on February 22, 2023) was 5 months, which Nationwide paid on March 13, 2023. *Id.* at ¶73. Measured from either the date of the Award or the date of Nationwide's payment, Plaintiffs' demand exceeded 5 months, and it is time barred.

Plaintiffs' claim for temporary housing is also barred because they *permanently relocated* to another property shortly after the Loss. The Policy provides coverage for the "shortest time period required for your household to settle elsewhere" if Plaintiffs permanently relocated. *Id.* at ¶5, Ex. A at NMIC_000017. Here, Plaintiffs admitted that they moved to the Oxnard Property a few weeks after the Loss in 2023. Chipman Decl. ¶2, Ex. A 27:25-28:4; ¶3, B, 19:5-11; 20:15-24. Plaintiffs also admitted that they have continuously lived at the Oxnard Property through today, except for Mr. Bansal's occasional visits to the Insured Property, his stay at the temporary housing, and his brief stay

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at the Insured Property in 2024 to verify completion of the repairs. *Id.* at ¶2, Ex. A 10:23-11:20; Ex. B, 20:25-21:3. Plaintiffs' entitlement to coverage for temporary housing expired when they permanently relocated to the Oxnard Property in 2023. To the extent Plaintiffs assert that Nationwide's alleged "delay" in adjusting their claim effects some sort of tolling, they are wrong. The Policy contains no such language, and neither Plaintiffs nor this Court can re-write the Policy to say otherwise. *Hackethal v. Nat'l Cas. Co.*, 189 Cal. App. 3d 1102, 1109 (1987) (court may not rewrite insurance policy).

Finally, Mr. Bansal admitted that he moved into the temporary housing because he wanted to be closer to the Insured Property while it was being repaired. *Id.* at ¶2, Ex. A, 32:9-16. But the Policy does compensate Plaintiffs for Mr. Bansal's geographic preference while the Insured Property was being repaired. Rather, it provides coverage for *necessary* expenses so that an insured can maintain their normal standard of living. As such, there is no coverage for temporary housing.

3. Plaintiffs Cannot Recover ALE Coverage for Food.

Plaintiffs cannot recover ALE coverage for their incurred food costs because there is no dispute that they never provided the "food normal" costs necessary to determine the *increase* that would allegedly be owed to maintain their *normal standard of living*. Indeed, Plaintiffs never submitted any evidence of pre-Loss food expenses. Chipman Decl. ¶2, Ex. A, 155:22-156:2; 158:24-159:8. The Policy explicitly states it pays only for Plaintiffs' "increased" costs, not just whatever they spend. Lathrum Decl. ¶5, Ex. A at NMIC_000017. Plaintiffs' insurance expert does not dispute this is what the Policy covers, and that Nationwide needs to know what the *increase* in Plaintiffs' normal food spending was before it can issue payment. Chipman Decl. ¶7, Ex. F 36:9-17. Mr. Bansal admitted that he never provided Nationwide with any documentation of pre-Loss food expenses and thus Nationwide had no evidence of what he was spending on food before the Loss. Chipman Decl. ¶2, Ex. A, 84:8-16. Mr. Bansal further admitted that his credit card statements prior to the Loss were available, that they would have shown his food expenses prior to the Loss, but he does not remember why he did not submit them. *Id.* at 76:18-77:6; 84:8-16. Plaintiffs' insurance expert does not dispute that Plaintiffs never provided Nationwide their "usual costs" for food. Chipman Decl. ¶7, Ex. F 37:17-22; 134:9-18. Under California law, Nationwide cannot be liable for

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failure to pay for an increase in Plaintiffs' food costs if they do not provide evidence of the *existence of any increase*. *Abdelhamid*, 182 Cal. App. 4th at 1000 (affirming summary judgment in favor of insurer on ALE claim because insured failed to submit receipts and records supporting ALE claim).

During the claim adjustment, Mr. Miller told Mr. Austin that Plaintiffs spent an estimated $100 per week on food, but Mr. Bansal admitted that such speculation "…wasn't supported by evidence. I did not have evidence to support that $100 a week." *Id.* at 94:2-8. Mr. Miller also proposed that Nationwide should simply reduce Plaintiffs' total food expenditures by 20% (as an approximation of "food normal") and pay 80% of their total incurred costs. Other than "common sense," neither Mr. Bansal nor Mr. Miller provided any substantiation for this estimate. *Id.* at 89:23-90:13; 94:14-95:7. Further, Mr. Bansal undertook no analysis whatsoever in making the 80/20 proposal—he merely relied on a suggestion from Mr. Miller. *Id.*[4] Such unsupported speculation cannot create any genuine dispute as to any material fact that would preclude judgment in favor of Nationwide.

Finally, Plaintiffs claimed food costs began on October 14, 2021–approximately 89 days after the Loss. Chipman Decl. ¶2, Ex. A, 88:8-22, Ex. 9.[5] By this time, they had already moved to the Oxnard Property, which had a working and functional kitchen when they initially moved in. Chipman Decl. ¶3, Ex. B, 39:5-20; 40:1-3. Later, the stove and refrigerator at the Oxnard Property allegedly broke. *Id.* at 35:17-21. Thus, the evidence indicates that Plaintiffs did not incur allegedly increased food costs because the Insured Property was uninhabitable, but rather because the Oxnard Property's kitchen appliances allegedly broke after they moved in. Chipman Decl. ¶2. Ex. A, 101:15-102:2. On these facts, there is no ALE coverage for Plaintiffs' increased food costs. Also, for the reasons set forth above, Plaintiffs' food costs submitted on October 5, 2023 are also time barred.

[4] Plaintiffs' insurance expert agrees that Nationwide was not required to rely on Mr. Miller's representations, that it would be "reasonable to require more documentation" and that there is nothing unreasonable about Nationwide's request that Plaintiffs retain their post-Loss receipts. Chipman Decl. ¶7, Ex. F 46:11-47:11; 50:4-6.

[5] On August 20, 2021, Mr. Miller wrote to Mr. Austin stating, "I will keep you in the loop as to any pertinent information concerning this claim as it comes up, including, but not limited to, ALE coverage that the insured will, *at some point*, need to be used by your Insured." Lathrum Decl., ¶ 14, Ex. G. Meaning, as of August 20, 2021, Plaintiffs did not believe the Property was uninhabitable or that they had incurred any ALE food costs.

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4. Plaintiffs Cannot Recover Their Incurred Appraisal Costs.

Plaintiffs are seeking costs they incurred in appraisal—here, Mr. Miller's fees, their appraiser's costs and costs for the umpire. However, such costs are not recoverable under the Policy per statute and its explicit terms. Cal. Ins. Code § 2071; Lathrum Decl. ¶5, Ex. A at NMIC_000032.

5. Plaintiffs Cannot Recover Fair Rental Value Coverage.

Nationwide first learned in litigation discovery that Plaintiffs are making a claim for Fair Rental Value. That coverage applies where "*part*" of the Insured Property is either "rented to others or held for rental by you" but not fit to live in due to a covered loss. Lathrum Decl. ¶5, Ex. A at NMIC_000017. For example, this might include a situation where a family rents out a room of their house. A condition for this coverage is that Plaintiffs submit "records that support the fair rental value loss." *Id.* at ¶5, Ex. A at NMIC_000031.

It is undisputed that when the Loss occurred Mr. Bansal was living at the Insured Property with his wife, and did not have a tenant. Chipman Decl. ¶2, Ex. A, 16:21-24; ¶3, Ex. B 34:1-11. And Mrs. Bansal admitted that the first time the Insured Property was offered for rent was "[w]hen it was fixed," meaning 2024. *Id.* at ¶3, Ex. B, 21:15-17.[6] Plaintiffs insurance expert agrees that there was no evidence they "planned to rent [the Insured Property] or taken steps to rent it" or "that [Plaintiffs] had done anything towards holding [the Insured Property] for rent." Chipman Decl ¶7, Ex. F 141:11-142:1. Because the Insured Property was neither rented nor held out for rent when the Loss occurred Plaintiffs cannot recover Fair Rental Value coverage. Moreover, there is no evidence that Plaintiffs made a claim for Fair Rental Value coverage or submitted supporting documentation prior to this lawsuit. Lathrum Decl. ¶94; Chipman Decl. ¶5, Ex. D 137:14-138:16. California law, the Policy and common sense dictates that Plaintiffs cannot secure such coverage where they never made a claim before filing suit. *Abdelhamid*, 182 Cal. App. 4th at 1000-1001 (2010); *Ram*, 807 F. Supp. 2d at 859-60.

[6] Nationwide understands that Plaintiffs are allegedly renting the *entire* Property to a tenant. If true, this would not support coverage because the Policy only provides Fair Rental Value coverage if "part" of the Property is rented or held out for rent—not the entire Property.

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Plaintiffs may argue that they "intended" or "planned" to rent out the Insured Property before the Loss. However, Plaintiffs' speculative possibility that the Insured Property *could have* been rented is insufficient to trigger coverage. In *Slojewski v. Allstate Ins. Co.*, 2013 WL 497950 (N.D. Cal. Feb. 8, 2013), this Court granted partial summary judgment in Allstate's favor on this exact same issue. There, Allstate moved for partial summary judgment on its insured's fair rental value claim arguing that the policy required the insured to submit "records supporting any claim for loss of rental income," which the insured failed to provide. *Id.* at *1. The court agreed, holding that the insured was required to produce documentation supporting his claim for lost rental income but failed to do so. *Id.* The insured contended that he was not required to show that he had tenants at the time of the loss, merely that his property was held out for rental. *Id.* This Court held that, regardless of whether the insured was correct, he still must present evidence that showing the property was "indeed held out for rental." *Id.*[7] The evidence shows that the Insured Property was neither rented nor held out for rent when the Loss happened. There is therefore no Fair Rental Value coverage.

B. There Can Be No Bad Faith.

1. Absent Breach of Contract, There Can Be No Bad Faith.

Under California law, there can be no breach of the implied covenant of good faith and fair dealing without a breach of the contract. *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 36, *as modified on denial of reh'g* (Oct. 26, 1995) (the covenant of good faith and fair dealing is "based upon" the contract and has no existence independent of such contract); *Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1151-53 (1990) (same).

2. There Was a Genuine Dispute Regarding the Scope of Damage.

To establish "bad faith" under California law, plaintiffs must show that (1) Nationwide withheld benefits due under its policy, and (2) its reasons for withholding such benefits were "unreasonable or

[7] *See also Ehsan v. Ericson Agency, Inc.*, 2003 WL 21716345, at *14 (Conn. Super. Ct. July 3, 2003) (court agreed that the vandalism prevented the property from being available to rent but noted that there was no evidence that the insured's sometimes-vacation-sometimes-rental property would have been rented during those months); *Alden v. USAA Cas. Ins. Co.*, 2009 WL 928901, at *4 (E.D. La. Apr. 3, 2009) (court found there was no documentation that the property was "held for rent" at the time of the alleged damage and plaintiff's testimony that he was still searching for a tenant when a hurricane hit was insufficient).

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without proper cause." *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 992 (9th Cir. 2001); *Love*, 221 Cal. App.3d at 1151 ("[T]he primary test is whether the insurer withheld payment of an insured's claim unreasonably and in bad faith. Where benefits are withheld for proper or reasonable cause, there is no breach of the implied covenant").

Unreasonable conduct, *i.e.*, conduct lacking in a good faith or reasonable foundation, is the lynchpin of bad faith claim. *Aceves v. Allstate Ins. Co.*, 68 F.3d 1160, 1166 (9th Cir. 1995); *Opsal v. United Servs. Auto. Ass'n*, 2 Cal. App. 4th 1197, 1205 (1991) (" '[T]he ultimate test of [bad faith] liability in the first party cases is whether the refusal to pay policy benefits was unreasonable' "). "Unreasonable" conduct is not synonymous with mistaken, sloppy or even negligent claims handling; rather, "bad faith" liability requires conscious misconduct. *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 222 Cal. App. 3d 1371, 1395 (1990); *Chateau Chamberay Homeowners Ass'n v. Assoc. Int'l Ins. Co.*, 90 Cal. App. 4th 335, 350 (2001) ("it is not enough to say . . . that [the insurer] could have done a better job in adjusting [a] claim"); *Congleton v. Nat'l Union Fire Ins. Co.*, 189 Cal. App. 3d 51, 59 (1987) (bad faith liability does not rest on an insurer's "'mistaken judgment'").

When investigating a claim for first-party policy benefits, insurers need not accept as true every statement their insureds make. Rather, an insurer is entitled to withhold payment "until it [can] find out on its own, to a measure of certainty" that it actually owes under the policy's terms the benefits the insured claims. *Blake v. Aetna Life Ins. Co.*, 99 Cal. App. 3d 901, 921 (1979); *see Nager v. Allstate Ins. Co.*, 83 Cal. App. 4th 284, 289 (2000) ("There can be no 'unreasonable delay' until the insurer receives adequate information to process the claim and reach an agreement with the insured"); *Waters v. United Services Auto. Assn.*, 41 Cal.App.4th 1063, 1081 (1996) ("Clearly, both logic and good policy dictate that no such rule [requiring insurers to accept policyholders' claims without independent verification] ever be applied in first party cases"). "There is nothing *per se* wrong with an insurance company relying on its own retained experts or employees," and even a "substantial disparity" in expert opinions "does not, by itself, suggest the insurer acted in bad faith." *Anderson v. USAA Cas. Ins. Co.*, No. C 06-07948 WHA, 2008 WL 619004, at *9 (N.D. Cal. Mar. 4, 2008); *see also Cardiner v. Provident Life & Acc. Ins. Co.*, 158 F. Supp. 2d 1088, 1101 (C.D. Cal. 2001) ("The mere fact that these doctors have been hired by insurers rather than insureds does not support bias. Indeed, if this were the case, then most experts in any case would be deemed bias.").

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Under California law, a "genuine dispute" regarding the extent or scope of coverage precludes bad faith liability. *Guebara*, 237 F.3d at 994; *see also Chateau Chamberay*, 90 Cal. App. 4th at 347-48 (an erroneous coverage denial does not give rise to bad faith liability if the insurer reasonably relies on the opinions of outside professionals in making its decision); *501 East 51st Street, Long-Beach-10 LLC v. Kookmin Best Ins. Co., Ltd.*, 47 Cal. App. 5th 924, 937-38 (2020) (granting insurer summary judgment on bad faith claim where insured based denial on expert report); *Paslay v. State Farm Gen. Ins. Co.*, 248 Cal. App. 4th 639, 652-53 (2016) (insurer not liable for bad faith as a matter of law when it relied on its expert's reports to determine the cost of repairs to the insured's home); *Fraley v. Allstate Ins. Co.*, 81 Cal. App. 4th 1282, 1293 (2000) (no bad faith claim would lie where the insurer relied on expert opinions regarding the scope and cost of repairs, because "even a substantial disparity in estimates for the scope and cost of repairs does not, by itself, suggest the insurer acted in bad faith").

To defeat summary judgment, there must be factually supported suggestions of bias in the record—unsupported arguments that an expert was biased or produced a fraudulent report are insufficient to survive summary judgment. *Anderson*, 2008 WL 619004, at *8 (N.D. Cal. Mar. 4, 2008)*; Guebara*, 237 F.3d at 996 (holding that, generally, insurers may rely on expert opinions to overcome bad-faith claims even when there is contrary expert testimony); *501 E. 51st St., Long-Beach-10 LLC*, 47 Cal. App. 5th at 938 (affirming summary adjudication of bad faith claim in insurer's favor: "[t]here is no dispute that defendants based their claim denial on the final expert report, and there is no evidence that report was contrived or false.").

Here, Nationwide's conduct was reasonable and there was a genuine dispute regarding the cost to repair the Insured Property. Regarding Plaintiffs' structural damage claim, Nationwide retained an independent vendor to inspect the Insured Property shortly after the Loss, drafted an initial repair estimate and paid Mr. Bansal based on that estimate. Mr. Mulcahey also explained to Mr. Bansal that he could request supplements to the initial estimate if repair costs exceeded the amount paid. Rather than commence repair work and submit supplemental payment requests as needed, Mr. Bansal retained Mr. Miller, who in turn retained Mr. Koester to draft a competing estimate. After Mr. Koester's estimate was sent to Nationwide, the claim was reassigned to a Large Loss Adjuster (Mr. Austin), who inspected the Insured Property with a licensed, independent general contractor, and who also retained a cabinet contractor to determine whether the kitchen cabinets were repairable. After the cabinets were determined to be

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unrepairable, Mr. Austin drafted a revised estimate that the licensed, independent contractor verified, and paid Mr. Bansal based on that estimate. Finally, after the Award was issued, Nationwide promptly paid it. On these undisputed facts, there can be no bad faith as a matter of law.

Plaintiffs may (wrongly) assert that the monetary disparity between Nationwide's revised estimate and the Award suggests that Nationwide somehow "low balled" them, and "forced" them into appraisal. But neither the facts nor the law supports this position. First, the disparity between an insured's claimed loss and the amount the insured ultimate recovery at arbitration or appraisal establishes that a "genuine dispute" exists regarding the amount of coverage. *Rappaport-Scott*, 146 Cal. App. 4th at 839. This is true *even where an insured recovers more at appraisal* than the insurer or the insurer's experts estimated. *Holland v. Westport Ins. Corp.*, No. C 04 1238 CW, 2007 WL 1456045, at *4 (2007) ("[E]ven if an arbitrator later awards a greater amount than the insurer offered, the amount of that award in comparison to the amount demanded by the insured can establish a lack of bad faith as a matter of law").

Here, the undisputed evidence shows that Mr. Koester drafted and sent a *second* estimate for approximately $250,000 to Mr. Miller and Mr. Bresee but never told Nationwide about it. Lathrum Decl. ¶ 95; Chipman Decl., ¶4, Ex. C, 122:17-123:9;129:14-130:5. The Award is $85,000 *less* than Mr. Koester's second estimate and $90,000 more than Nationwide's revised estimate. Plaintiffs therefore cannot credibly suggest that Nationwide undervalued the Loss without acknowledging that they overvalued the Loss, which precludes recovery for bad faith. *See Keshish v. Allstate Ins. Co.*, 959 F. Supp. 2d 1226 (2013).

In *Keshish*, 959 F. Supp. 2d 1226 (2013), Allstate estimated the cost to repair its insureds' home was $7,582.09 and issued a payment, less the policy deductible. *Id.* at 1230. After the insureds' attorney disputed that estimate, Allstate retained ServiceMaster who drafted a repair estimate *even lower* than Allstate's. *Id.* The insured later sent Allstate a repair estimate for $81,326.45. *Id.* Allstate rejected the insureds' estimate as too high, advised it would not issue additional payments, and closed its file. *Id.* The claim went to appraisal resulting in an award of $42,950 ($34,367 *more* than Allstate's estimate but $38,826 *less* that the insureds' estimate), which Allstate promptly paid. *Id.* Allstate moved for summary judgment on the bad faith claim arguing, *inter alia*, a genuine dispute existed regarding the value of the loss. The court agreed with Allstate, stating:

> Here, Allstate and plaintiffs each retained an independent expert to evaluate the damage to plaintiffs' home; each expert arrived at a different estimate. Allstate

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> promptly paid plaintiffs $7,582.09, the undisputed amount of plaintiffs' claim. Allstate also honored plaintiffs' request that it engage in the appraisal process, and paid the appraisal award to plaintiffs soon after it was rendered.

Id. at 1236. The Court further stated: "The fact that plaintiffs' expert estimated the loss at approximately ten times the amount Allstate's adjuster and expert did is insufficient, by itself, to raise triable issues concerning bad faith." *Id.* (*referencing Guebara*, 237 F.3d at 993 ("Where the parties rely on expert opinions, even a substantial disparity in estimates for the scope and cost of repairs does not, by itself, suggest the insurer acted in bad faith.")

Similarly, in *Fraley v. Allstate*, 81 Cal. App. 4th 1282 (2000), Allstate hired two contractors who drafted estimates to repair an insureds' property for $110,000 and $115,000, respectively, while the insureds' contractor estimated the cost to be $227,000. *Id.* The insureds later submitted an estimate drafted by another contractor for $291,106.57 and Allstate retained another contractor who drafted a repair estimate for $182,549. *Id.* at 1293. Allstate conceded that the minimum cost to repair was $199,647.94 and it paid the insureds based on that estimate. *Id.* at 1287. The claim proceeded to appraisal and the insured submitted an estimate by *another* contractor (their third) for $490,107. *Id.* However, the appraisal set the actual cash value at $200,000 and replacement cost at $364,000, which was $164,000 *more* than Allstate's last estimate, but $130,000 *less* than its insured's estimate. *Id.* The California Court of Appeal affirmed dismissal of the insureds' bad faith claim, holding:

> The record reveals that Allstate handled the Fraleys' claim reasonably, by retaining experts and investigating, paying the undisputed actual cash value of the loss and proceeding to appraisal on the disputed portion of the claim, replacement cost. Moreover, Allstate promptly paid the replacement cost appraisal award after the Fraleys purchased another home.

Id. Regarding the "genuine dispute" the *Fraley* court noted, "the Fraleys concede that the 'dispute over the 'scope' of what needed to be repaired was in large part the reason why [they] were forced to demand appraisal on the Replacement Cost of their home.'" *Id.; see also, Rappaport-Scott*, 146 Cal. App. 4th at 839 (disparity between the insured's asserted damages ($346,000) and her actual recovery determined at arbitration ($63,000) established "*as a matter of law*, that a genuine dispute existed as to the amount payable on the claim." (emphasis in original)); *Maynard v. State Farm Mutual Automobile Insurance Co.*, 499 F.Supp.2d 1154, 1158-1160 (2007) (granting summary judgment on bad faith claim, holding that under California law "[a] genuine dispute exists when an arbitrator awards substantially lower damages

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than plaintiff claims" where insured's claimed $500,000 in damages, insurer offered $5,000, and arbitration award was $86,000); *Behnke v. State Farm Ins. Co.*, 196 Cal. App. 4th 1443, 1470 (2011) (holding that an arbitrator's award of only $16,000 less than the plaintiff's demand established the existence of a genuine dispute as to the amount of coverage "as a matter of law," thus barring the insured's bad faith claim).

Here, Nationwide used a licensed, independent general contractor to inspect the Insured Property. Chipman Decl. ¶5, Ex. D, 94:15-24. That independent contractor also reviewed Nationwide's revised estimate and agreed that he could perform the work for the estimated amount. Lathrum Decl. ¶6, Ex. B at NMIC_003258, ¶44; Chipman Decl. ¶5, Ex. D 110:3-13. Nationwide promptly paid Plaintiffs based on its revised estimate. Lathrum Decl. ¶73, Ex. CCC. Although the Award is approximately $90,000 more than Nationwide's revised estimate, this cannot establish bad faith *per se*. Plaintiffs' insurance expert agrees that that the fact that an estimate is lower than an appraisal award does not itself demonstrate the estimate is inadequate. Chipman Decl. ¶7, Ex. F 89:7-10. Moreover, this overlooks that Plaintiffs *overestimated* this damage by approximately the same amount. Accordingly, there was a "genuine dispute" regarding the value of Loss which precludes bad faith liability as a matter of law. Regarding Plaintiffs' claim for food costs, they failed to provide documentation to demonstrate their alleged *increase* in food costs despite acknowledging that such information exists and could be accessed. Chipman Decl. ¶2, Ex. A, 76:18-77:6; 84:8-16; 155:22-156:2; 158:24-159:8. Regarding Plaintiffs' temporary housing claim, it is time barred and Plaintiffs did not submit their incurred costs until after they filed this lawsuit. Lathrum Decl. ¶84, Ex. NNN. In sum, the undisputed facts prove that Nationwide did not unreasonably withhold any benefits to Plaintiffs.

C. Plaintiffs Are Not Entitled to Punitive Damages.

1. Without Bad Faith, Plaintiffs Cannot Recover Punitive Damages.

Absent bad, faith there can be no award of punitive damages. *Lunsford v. Am. Guarantee & Liab. Ins. Co.*, 18 F.3d 653, 656 (9th Cir. 1994) (affirming summary judgment for insurer on punitive damages based, in part, on lack of bad faith); *Franceschi v. American Motorists Ins. Co.*, 852 F.2d 1217, 1220 (9th Cir. 1988) (without bad faith, punitive damages are not recoverable). Even if Plaintiffs could somehow prove bad faith[8], they are not entitled to punitive damages because there is

[8] Proof of bad faith on an insurer's part does not, without more, entitle an insured to punitive damages. *Silberg v. Cal. Life Ins. Co.*, 11 Cal. 3d 452, 462-63 (1974) (to support an award of punitive damages,

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no evidence of oppression, fraud or malice nor is there evidence that any officer, director or managing agent of Nationwide's was involved in Plaintiffs' claim.

2. There is No Evidence of Oppression, Fraud or Malice.

Punitive damages may only be recovered upon proof by "clear and convincing evidence" that a defendant acted with "oppression, fraud or malice." Civ. Code § 3294. The "clear and convincing" standard contemplates a showing "so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind." *Conservatorship of Wendland*, 26 Cal. 4th 519, 552 (2001) (internal quotes omitted). The "clear and convincing" standard applies at all stages of litigation, including summary judgment. *Bernstein v. Kemper Indep. Ins. Co.*, 670 F. Supp. 3d 1018, 1034 (E.D. Cal. 2023) (applying "clear and convincing" standard in granting defendant-insurer's motion for summary judgment); *Basich v. Allstate Ins. Co.*, 87 Cal. App. 4th 1112, 1118-19 (2001) ("clear and convincing" standard applies on summary judgment).

For punitive damages, a defendant's actions must be beyond "overzealous" or "callous" – they must be "evil, criminal, recklessly indifferent to the rights of the insured, or with a vexatious intention to injure." *Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1288 (1994). Punitive damages *cannot* be awarded for "'a mistake of law or fact, honest error of judgment, over-zealousness, mere negligence or other such noniniquitous human failing.'" *Id.* at 1288, n. 14; see *also Shade Foods v. Innovative Products Sales & Mtk'g*, 78 Cal. App. 4th 847, 892 (2000) ("the type of '[u]nreasonable and negligent [conduct that] falls within the common experience of human affairs' is insufficient to support a punitive damages award"). As set forth above, Nationwide's conduct was reasonable. *Slottow v. American Casualty Company of Reading, Penn.*, 10 F.3d 1355, 1362 (9th Cir. 1993) ("[n]othing in California law suggests a refusal to provide coverage as requested by an insured, when the refusal is supported by a reasonable, good faith argument, can form the basis for punitive damages"); *see also Anderson v. State Farm Mut. Auto. Ins. Co.*, 2008 WL 2441086, at *9 (E.D. Cal. June 13, 2008) (granting summary judgment in insurer's favor on punitive damages claim after concluding plaintiff's bad faith claim failed due to a genuine dispute). There is no evidence —let

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the plaintiff must show more than bad faith by the insurer; she must show "oppression, fraud, or malice")

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alone "clear and convincing" evidence sufficient to establish that Nationwide acted with oppression, fraud, or malice.

3. There Is No Evidence of Corporate Ratification.

To recover punitive damages, Plaintiffs must also establish that a corporate officer, director, or managing agent (1) had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others, (2) authorized or ratified the conduct giving rise to punitive damages, or (3) was personally guilty of such conduct. Cal. Civ. Code § 3294(b); *Terpin v. AT And T Mobility LLC*, 118 F.4th 1102, 1112 (9th Cir. 2024) (plaintiff cannot recover punitive damages based on failure to allege facts regarding corporate involvement or ratification of oppression, fraud or malice). Corporate involvement must be proven by clear and convincing evidence. *See Barton v. Alexander Hamilton Life Ins. Co. of Am.*, 110 Cal. App. 4th 1640, 1644 (2003) (trial court did not err in applying "clear and convincing" standard to evaluate evidence of corporate ratification); *Holtzclaw v. Certainteed Corp.*, 795 F. Supp. 2d 996, 1021-23 (E.D. Cal. 2011) (summary judgment proper where plaintiff "failed to submit" clear and convincing evidence "that the conduct at issue was performed or ratified by an 'officer, director or managing agent'"). Here, no "officer, director, or managing agent" of Nationwide's was involved in the adjustment of the Claim. Lathrum Decl., ¶ 93; Chipman Decl. ¶6, Ex. E. Not one of Nationwide's employees that adjusted the Claim is, or ever was, a director, officer or managing agent of Nationwide, and none of them had the authority to guide corporate conduct or determine corporate policy. *Id.* Plaintiffs cannot point to any evidence—much less clear and convincing evidence—of corporate involvement with any alleged conduct.

VI. CONCLUSION

Nationwide respectfully request this Court grant summary judgment in its favor.

Dated: June 12, 2025

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