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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

RAKESH BANSAL and HEMA T.  
BANSAL, individuals,

Plaintiffs,

v.

NATIONWIDE MUTUAL INSURANCE  
COMPANY, a corporation, and Does 1  
through 10,

Defendant.

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

**PLAINTIFFS' OPPOSITION TO  
NATIONWIDE MUTUAL  
INSURANCE COMPANY'S MOTION  
FOR SUMMARY JUDGMENT**

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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**I. INTRODUCTION**

This case arises out of Defendant Nationwide Mutual Insurance Company's mishandling of a straightforward insurance claim for water damage. After Plaintiff Rakesh Bansal's property sustained significant water damage caused by a failed refrigerator supply line, Nationwide, instead of helping him to restore his house to its pre-loss condition, did everything possible to limit its payments on the claim and to find reasons to deny coverage. Nationwide initially offered Mr. Bansal an insultingly low estimate of approximately \$11,000, which was nowhere near the amount needed to repair the property. Moreover, Nationwide never offered Mr. Bansal any temporary housing under the policy's coverage for additional living expenses even though he had no functioning kitchen and was not able to live in the house following the loss. After delaying the adjustment, Nationwide then forced Mr. Bansal to incur the costs of an appraisal, which determined that the cost of the repairs was actually \$165,000. But even after the appraisal, Nationwide continued its bullying tactics by unreasonably refusing to pay for covered moving costs and the costs of temporary housing while repairs were undertaken. Nationwide also took a nonsensical position that coverage for the additional living expenses incurred during the repair process were barred because they were incurred 24 months after the date of loss, even though it took Mr. Bansal nearly two years to prove to Nationwide that its initial estimate was approximately 15 times less than what it initially offered and the only reason for the delay was Nationwide's refusal to pay what it owed in the first place.

Nationwide's denial of Plaintiffs' claims for moving expenses, additional living expenses, and loss of use constitute a breach of contract arising out of a wrongful refusal to pay benefits owed under the policy. Nationwide's denial of these contract benefits, along with its failure to thoroughly investigate Plaintiffs' claims and to timely pay benefits owed, was unreasonable and subjects Nationwide to liability for breach of the implied covenant of good faith and fair dealing. Finally, Nationwide's continued insistence on taking unreasonable coverage positions and making unreasonable demands to its insureds for

documents that did not exist, and its refusal to work with its insureds to determine the scope of their covered losses constitutes evidence of malice and reckless indifference towards its insureds, which exposes Nationwide to a punitive damages award.

## **II. STATEMENT OF ISSUES TO BE DECIDED**

1. Has Nationwide wrongfully denied coverage under the Policy for (a) additional living expenses in the form of increased food costs; (b) additional living expenses in the form of temporary housing; (c) moving costs not included in the appraisal award; (d) fair rental value).

2. Was Nationwide's withholding of benefits owed under the Policy unreasonable?

3. Are Plaintiffs' entitled to punitive damages against Nationwide?

## **III. STATEMENT OF RELEVANT FACTS**

Plaintiff Rakesh Bansal purchased a policy of insurance from Nationwide, identified as policy number 7204HR232971 (the "Policy"). Declaration of Lindsay Lathrum ("Lathrum Decl.") ¶ 5, Ex. A. The Policy insured against the risk of physical loss of damage to Plaintiffs' home located at 428 Hershner Drive, Los Gatos, CA 95032-4003 (the "Property"). *Id.* The Policy also provided coverage for loss of use in the form of additional living expenses and fair rental value. Lathrum Decl. ¶ 5, Ex. A at NMIC000017.

While the Policy was in effect, on or about July 17, 2021, Mr. Bansal's home sustained major water damage when water escaped from a refrigerator water supply line spreading throughout the dwelling and rendering the house uninhabitable. Declaration of Peter Roldan ("Roldan Decl."), ¶ 3, Exh. A, 17:3-17; 27:4-20.

Robert Mulcahey, the Nationwide adjuster assigned to the claim, hired Alacrity Claims Solutions ("Alacrity") to inspect the Property. Lathrum Decl., ¶¶ 7-8. Mr. Mulcahey was based in Iowa, was not a licensed California contractor, and lacked the qualifications or licensing to properly evaluate the scope of damage to a dwelling or the costs to repair or replace water damaged real property. Roldan Decl., ¶ 4, Exh. B, 6:19-25; 12:12-13:20. Alacrity charged Nationwide a total of \$265.00 for inspecting the Property.

1 Roldan Decl., ¶ 5, Exh. C, 37:13-38:22. Daniel Mendez, the adjuster sent to inspect the  
2 loss, received no specific training from Alacrity on the subject of claims handling and  
3 Alacrity was unaware as to whether Mr. Mendez held any licenses that qualified him to  
4 investigate water damage claims in California. Roldan Decl., ¶ 5, Exh. C, 22:12-20; 20:5-  
5 21:3.

6 On or about July 28, 2021, Nationwide created a scope of repair and estimate for  
7 the cost of repairing of the Property in the amount of \$11,845.44 (replacement cost value  
8 or RCV) and \$11,068.14 (actual cash value or ACV). Roldan Decl., ¶ 4, Exh. B, 59:18-60:9,  
9 Exh. 4; Lathrum Decl., ¶ 9, Exh. C. This amount was highly inadequate and was not  
10 sufficient to repair the Property. Roldan Decl., ¶ 6, Exh. D, 105:13-17; Exh. 7 at 2. Neither  
11 Alacrity nor Nationwide suggested any remediation was needed, allowing water to soak  
12 the building materials. Nationwide also did not advise Mr. Bansal at that time that he was  
13 entitled to any type of additional living expenses coverage.

14 Understanding that there was no practical way to do even patch-up repairs for that  
15 amount, the insured was forced to hire a public adjuster, Jahn Miller, to help him with the  
16 adjustment of the claim. Roldan Decl., ¶ 3, Exh. A, 25:5-18. The insured's public adjuster  
17 presented an estimate from the insured's contractor indicating that the cost to replace the  
18 kitchens and their components would be at least \$140,905.69 RCV. Roldan Decl., ¶ 6, Exh.  
19 D, 65:18-66:11; Exh. 5. Nationwide eventually raised its estimate to \$69,261.61 ACV and  
20 \$75,420.16 RCV in January 2022, and paid an additional \$52,012.31 after deducting  
21 deductible, depreciation, and prior payment. Lathrum Decl., ¶ 45-47, Exh. CC.

22 However, Nationwide refused to adjust the estimate prepared by Accurate  
23 Estimates and refused the insured's request for further inspection of the Property and  
24 instead told Mr. Bansal that he would have to initiate appraisal if he disagreed with  
25 Nationwide's valuation of the loss, as Nationwide's position would not change. Lathrum  
26 Decl., ¶ 51, Exh. HH; Roldan Decl., ¶ 7, Exh. E, 167:21-168:21, Exh. 13. Mr. Bansal was  
27 thus forced to incur the cost of an appraisal.

1 The Policy provides that in the event of a dispute between the parties on the value  
2 of the loss, either party may make a written demand for appraisal of the loss. Lathrum  
3 Decl., ¶ 5, Ex. A. Realizing that Nationwide’s offer would not help to restore even a small  
4 part of the damage to the Property and faced with Nationwide’s refusal to work with him  
5 to reconcile the differences in estimates, the insured was forced to demand an appraisal on  
6 March 7, 2022. Roldan Decl., ¶ 4, Exh. B, 106:20-107:7, Exh. 15.

7 On February 23, 2023, the insurance appraisal award was issued following an  
8 appraisal hearing that was held on February 22, 2023. Lathrum Decl., ¶ 71, Exh. AAA.  
9 Judge Duryee (Ret.) from ADR Services served as an umpire for the appraisal panel, and  
10 Robert Bresee and John Ratto served as appraisers. *Id.*

11 The panel determined that the value of the loss for the building repairs was  
12 \$158,818.83 ACV and \$165,000 RCV, more than **ten times** what Nationwide initially  
13 claimed was sufficient to repair the damage covered under the Policy. *Id.* Plaintiffs spent  
14 approximately \$39,325.00 in appraisal costs. Roldan Decl., ¶ 4, Exh. B, 113:15-22;  
15 Declaration of Rakesh Bansal (“Bansal Decl.”), ¶ 2. Although Nationwide describes the  
16 award as “split-the-difference” award, Nationwide has no actual insight into the  
17 methodology used by the appraisal panel in calculating the award and produced no  
18 evidence to support its contention that the appraisal panel merely “split the difference”  
19 between two competing estimates for repair.

20 Based on the plain language of the appraisal award, the award only included repair  
21 costs and did not include pack-out and storage costs. Lathrum Decl., ¶ 71, Exh. AAA.  
22 However, to date, Nationwide has refused to pay for any pack-out or storage fees  
23 submitted by the insured after the appraisal. Roldan Decl., ¶ 4, Exh. B, ¶ 130:7-24. These  
24 fees total \$31,055.06. Roldan Decl., ¶ 4, Exh. B, ¶ 128:6-129:21. Faced with yet another  
25 roadblock created by Nationwide’s refusal to pay benefits owed under the Policy, Mr.  
26 Bansal had to scramble to utilize his own resources for the pack-out and storage, including  
27 asking family members to help with the moveout process, and he ended up having to  
28

1 dispose of some of his personal property in order to complete the process. Roldan Decl., ¶  
2 4, Exh. B, ¶ 154:4-13.

3 Nationwide has also refused to make any payments for additional living expenses in  
4 the form of increased food costs on the grounds that Plaintiffs did not provide  
5 documentation of their “base” food costs. Motion at 15 (Doc. 53). Mr. Bansal did not  
6 maintain complete records of his and his wife’s food costs prior to the loss (which were  
7 paid using several credit cards and cash). Roldan Decl., ¶ 4, Exh. B, 77:2-78:23. Mr. Miller  
8 proposed an alternate method of calculating the base food costs which was based on  
9 information provided by Plaintiffs regarding their “normal” food expenditure and  
10 determining the additional amount it would cost for them to eat out due to the lack of  
11 kitchen facilities. Lathrum Decl., ¶ 41, 57 Exh. Z, MM. Nationwide refused to agree to this  
12 reasonable solution, made no other efforts to find a way to calculate the costs, and instead  
13 just sent repeated emails requesting documents that Plaintiffs said they did not have.  
14 Lathrum Decl., ¶ 46, 50, 51, 88, Exh. CC, GG, HH, RRR.

15 Furthermore, although the appraisal panel determined that the duration of  
16 construction would last five months, Nationwide has not paid anything for loss of use  
17 during the construction period, despite the fact that Plaintiffs, through their public  
18 adjuster, submitted Airbnb receipts in the amount of \$21,504.00, plus additional receipts  
19 for parking and meals to support his claim for additional living expenses, while the  
20 construction was ongoing. Lathrum Decl., ¶ 85, Exh. OOO.

21 Unable to convince Nationwide to deal directly with a vendor to arrange payment  
22 for the pack-out and storage, the Bansals submitted receipts for the costs actually incurred  
23 for moving, but Nationwide ignored that too. Lathrum Decl., ¶ 85, Exh. OOO. Even  
24 though Nationwide initially took the position that the receipts were required in order to  
25 pay additional living expenses, this time it simply ignored the materials showing the  
26 amounts incurred as additional living expenses, continued to require receipts for  
27 groceries, and has continued to ignore the existence of the Airbnb receipts submitted by  
28 the insured. Lathrum Decl., ¶ 86, Exh. PPP. Feeling frustrated and understanding that

1 Nationwide was refusing to pay for even something that was much less than comparable  
 2 housing, Mr. and Mrs. Bansal were not able to stay in a comparable dwelling during the  
 3 construction, something that they were entitled to under the Policy and what Nationwide  
 4 still owes Mr. and Mrs. Bansal. Roldan Decl., ¶ 4, Exh. B, ¶ 40:8-11. Instead of paying the  
 5 additional living expenses as required under the Policy, Nationwide continued to request  
 6 information that was not necessary for the adjustment of the claim in violation of the Fair  
 7 Claims Settlement Practice Regulations.

#### 8 **IV. SUMMARY JUDGMENT STANDARD**

9 “Summary judgment is proper when the record shows that there is no genuine  
 10 dispute as to any material fact and the movant is entitled to a judgment as a matter of law .  
 11 . . . When the moving party bears the burden of proof on a claim or defense, it must  
 12 produce evidence which would entitle it to a directed verdict if the evidence went  
 13 uncontroverted at trial. . . . If the moving party satisfies its initial burden, the burden then  
 14 shifts to the party opposing summary judgment to establish a genuine issue of material  
 15 fact.” *Am. Nat’l Prop. and Cas. Co. v. Stubbs*, 512 F.Supp.3d 1132, 1134–35 (D.Nev. 2021).  
 16 “If the movant bears the burden of proof on an issue. . . he must establish beyond  
 17 peradventure *all* of the essential elements of the claim. . . to warrant judgment in his  
 18 favor.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in original).  
 19 The evidence supporting the moving party’s motion must constitute admissible evidence.  
 20 *See Jackson v. Federal Express*, 766 F.3d 189 (2nd Cir. 2014).

21 “In contrast, when the nonmoving party bears the burden of proof on a claim or  
 22 defense, the moving party must either produce evidence negating an essential element of  
 23 the nonmoving party’s . . . defense or show that the nonmoving party does not have enough  
 24 evidence of an essential element to carry its ultimate burden of [proof] at trial.” *Stubbs*,  
 25 512 F.Supp.3d at 1135.

#### 26 **V. ARGUMENT**

##### 27 **A. Breach of Contract**

##### 28 1. Moving Costs Are Recoverable

Nationwide contends that even though the appraisal award does not specifically mention Plaintiffs' moving costs, these costs are nonetheless inherently included in the award, which sets the amount of the loss. This argument finds no support in the language of the appraisal award, which provides as follows:

We, the undersigned, without bias or personal interest, have examined the available evidence, **including estimates, reports, photographs**, and other evidence. We have considered the positions of both parties and we conducted a site inspection. The Parties waived an evidentiary hearing. The Appraisal panel considered all the evidence submitted and thereafter deliberated. Having fully performed the duties assigned to us, we find the amount of loss to be as follows:

|           | <u>Replacement Cost</u> | <u>Depreciation</u> | <u>ACV</u>   |
|-----------|-------------------------|---------------------|--------------|
| Building: | \$165,000               | \$6181.171          | \$158,818.83 |

Lathrum Decl., ¶ 72, Ex. AAA (emphasis added). The only description of the loss relates to the cost of repairing the building. Also, Exhibit A to the appraisal award is an estimate prepared for the claim by Nationwide, which the panel reviewed during the appraisal and which was used to derive the amount of depreciation. Notably, the Nationwide estimate does not include pack-out or moving costs.

Nationwide's contention also directly contradicts the language of the Policy, which provides as follows:

#### **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.

Lathrum Decl. ¶ 5, Ex. A, at NMIC000032.

The Policy's appraisal provision further provides that

The appraisers and umpire are only authorized to determine the **"actual cash value", replacement cost, or cost to repair the property** that is the subject of the claim.

Lathrum Decl. ¶ 5, Ex. A, at NMIC000033 (emphasis added).

The Policy defines "actual cash value" as follows:

1. "Actual Cash Value" means the amount it would cost the

“insured” to **repair or replace covered property in its condition at the time of the loss**, such expense being computed as of the time of the loss and quantified as follows. The measure of this “actual cash value” recovery, in whole or partial settlement of the claim, for either a total or partial loss to the structure or its contents, **shall be the amount it would cost the “insured” to repair, rebuild, or replace the thing lost or damaged** less a fair and reasonable deduction for physical depreciation based upon its condition at the time of the loss or the policy limit, whichever is less. A deduction for physical depreciation shall apply only to components of a structure that are normally subject to repair and replacement during useful life of that structure.

Lathrum Decl. ¶ 5, Ex. A, at NMIC000050.

These provisions make it clear that the scope of the appraisal only covered the actual cost of repairing Plaintiffs’ damaged property and did not determine the amount of any other losses sustained by Plaintiffs, such as moving costs and loss of use. Such costs would not be subject to physical depreciation, and the fact that depreciation was applied to the entire award amount further supports a conclusion that these costs were not included in the award. Finally, Thomas Koester, a contractor who prepared a repair estimate for Plaintiffs and who has testified as an expert in past appraisals, has testified that he did not see anything in the appraisal award to suggest that pack-out costs were included. Roldan Decl., ¶ 6, Exh. D, 223:17-224:3.

The only evidence that Nationwide has produced to support its contention that the appraisal award included moving costs is an email from John Ratto, the appraiser selected by Nationwide to serve on the appraisal panel. Lathrum Decl. ¶ 80, Ex. JJJ. Mr. Ratto’s statement regarding the inclusion of moving costs does not constitute admissible evidence of the scope of the award. Section 703.5 of the California Evidence Code provides that an appraiser is not competent to testify in any subsequent civil proceeding, as to any statement, conduct, decision, or ruling, occurring at or in conjunction with an appraisal. *See also Khorsand v. Liberty Mut. Fire Ins. Co.*, 20 Cal. App. 5th 1028, 1036-1037 (2018) (trial court erred in considering appraiser’s declaration); Plaintiffs’ Objections to Nationwide’s Evidence, No. 1.

1 Nationwide's undisputed refusal to pay for Plaintiffs' moving costs at the very least  
2 creates an issue of triable fact as to whether the denial constituted a breach of contract.

3 2. Plaintiffs Can Recover Additional Living Expenses for Housing

4 Nationwide also contends that Plaintiffs' claim for additional living expenses is  
5 barred because they have breached a condition of the Policy by not providing  
6 documentation of housing costs until October 5, 2023, 21 days after filing the lawsuit and  
7 more than 26 months after the date of loss. Nationwide also contends that Plaintiffs'  
8 claim for temporary housing is barred because the appraisal panel determined that the  
9 projected time for repairs was five months, Nationwide paid the award amount on March  
10 13, 2023, and documentation was not provided until more than five months after the date  
11 of payment.

12 Nationwide does not contend that Plaintiffs did not actually incur additional  
13 housing costs or that they did not submit adequate documentation to prove that they  
14 incurred additional costs for housing. Rather, its argument is limited to the contention  
15 that Plaintiffs breached a condition of the Policy that purportedly allows Nationwide to  
16 deny payment after 24 months have passed from the date of loss, regardless of whether  
17 there are any delays in the handling and adjustment of the claim.

18 As the moving party, Nationwide has the burden of proving at trial the alleged  
19 breach of the Policy condition, and whether the breach resulted in substantial prejudice to  
20 the carrier. *Silicon Storage Tech., Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 2015 WL  
21 7293767, at \*4 (N.D. Cal. 2015); *Silicon Valley Bank v. New Hampshire Ins. Co.*, 203  
22 F.Supp.2d 1152, 1159 (C.D. Cal. 2002); *Brizuela v. CalFarm Ins. Co.*, 116 Cal. App. 4th 578,  
23 591 (2004); *Pitzer Coll. v. Indian Harbor Ins. Co.*, 8 Cal.5th 93 (2019). To justify  
24 summary judgment, Nationwide must "establish beyond peradventure" *both* essential  
25 elements. *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986) (emphasis in  
26 original). But Nationwide never addresses the prejudice element. *See Nissani v. Jewelers*  
27  
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1 *Mut. Ins. Group*, 2022 WL 3013225, at \*2 (C.D. Cal., 2022) (summary judgment denied if  
 2 carrier presents no evidence on the prejudice issue).<sup>1</sup>

3 “The overriding purpose of the actual prejudice requirement is to prevent the  
 4 complete forfeiture of coverage based upon an insured's harmless breach of a policy  
 5 condition.” *Silicon Valley Bank*, 203 F.Supp.2d at 1159. The prejudice requirement  
 6 “represents a fundamental public policy of California, to prevent a windfall to the insurer.”  
 7 *Pitzer Coll.*, 8 Cal.5th at 104-05. Nationwide’s failure to cite and discuss the prejudice  
 8 element, let alone prove that it suffered substantial prejudice as a result of any alleged  
 9 delays by Plaintiffs in providing documentation of their loss, is fatal to its motion.

10 Once the appraisal determined the amount of time required to repair the Property,  
 11 Nationwide had an obligation to pay additional living expenses incurred by the Plaintiffs  
 12 during the five-month period that the Property was being repaired. The fact that the  
 13 Plaintiffs were not able to start repairs until October 5, 2023 did not cause any  
 14 demonstrable prejudice to Nationwide and Nationwide cannot deny the claim on that  
 15 basis. Moreover, Nationwide’s contention that the five-month period for repairs starts  
 16 exactly the day after it paid the appraisal ward is absurd on its face, as it would be  
 17 unreasonable to expect Plaintiffs to immediately begin repairs on that day. Roldan Decl., ¶  
 18 8, Exh. F, 47:21-49:7.

19 Finally, Nationwide contends that Plaintiffs are not entitled to coverage for  
 20 temporary housing because the Policy provides that coverage for additional living  
 21 expenses is only available “for the shortest time required to repair or replace the damage  
 22 or, if you *permanently relocate*, the shortest time required for your household to settle  
 23 elsewhere.” Lathrum Decl. ¶ 5, Ex. A, at NMIC000050. However, Mr. Bansal and his wife  
 24 never permanently moved to the Oxnard property. Even though Mr. Bansal spent most of  
 25 his time there after the loss, he would regularly check in on the Property, which he

26 \_\_\_\_\_  
 27 <sup>1</sup> Should Nationwide attempt to cure the omission in its reply, the Court should reject that  
 28 effort. *See t’Bear v. Forman*, 359 F.Supp.3d 882, 909-10 (N.D.Cal., 2019) (court “need  
 not consider arguments raised for the first time in a reply brief”).

1 referred to as his “home.” Roldan Decl., ¶ 4, Exh. B, 28:5-15. He also testified that the  
 2 reason he rented the Airbnb was to oversee repairs to his home. Roldan Decl., ¶ 4, Exh. B,  
 3 10:23-11:13; 32:22-33:2. Thus, there is a factual question as to whether Plaintiffs had  
 4 actually permanently moved out of the Property during the relevant time period for the  
 5 claim.

### 6 3. Plaintiffs Can Recover Additional Living Expenses for Food

7 Nationwide argues that Plaintiffs cannot recover ALE coverage for their increased  
 8 food expenses because they never provided their “normal” food costs as a basis for  
 9 calculating the amount of the increase. It is true that Plaintiffs did not provide the  
 10 requested receipts because they did not see any need to retain these records of expenses  
 11 that were incurred prior to the loss and therefore, Mr. Bansal was only able to produce a  
 12 limited number of credit card statements showing some of his food costs. Roldan Decl., ¶  
 13 4, Exh. B, 77:2-78:16.

14 Nevertheless, rather than continuing to ask for receipts that did not exist,  
 15 Nationwide could have investigated the claim by asking Mr. Bansal for a recorded  
 16 statement detailing his base food costs or asking him specific questions about these costs.  
 17 Roldan Decl., ¶ 8, Exh. F, 57:12-59:5. Nationwide had a duty to fully investigate Plaintiffs’  
 18 claim for additional living expenses and the evidence shows that there is an issue of  
 19 material fact as to whether it did so.

20 Nationwide also contends that Plaintiffs are not entitled to coverage for increased  
 21 food costs because the claimed costs began on October 14, 2021, by which time Plaintiffs  
 22 had moved to their property located in Oxnard. However, as discussed above, there is a  
 23 factual question as to whether Plaintiffs had actually permanently moved out of the  
 24 Property during the relevant time period for the claim.

### 25 4. Plaintiffs Can Recover Fair Rental Value

26 The Policy provides coverage for fair rental value if a covered loss “makes that part  
 27 of the ‘residence premises’ rented to others or held by rental by you not fit to live in.”  
 28 Lathrum Decl. ¶ 5, Ex. A at NMIC000017.

1 Nationwide contends that Plaintiffs never made a claim for fair rental value, but  
 2 that is not the case. On November 25, 2024, Mr. Bansal sent an email to Joseph Austin  
 3 claiming coverage for loss of rents. Bansal Decl., ¶ 3, Exh. A. The email included a copy of  
 4 a lease entered into between Mr. Bansal and Poonam Manwani for the Property, dated  
 5 February 20, 2024. *Id.* Mr. Bansal has also testified that Plaintiffs intended to rent out  
 6 the Property after they got married in November 2021. Roldan Decl., ¶ 4, Exh. B, 29:5-  
 7 29:12. However, they were unable to do so because of the unrepaired damage to the  
 8 Property. Bansal Decl., ¶ 4. All of the foregoing constitute the necessary records and  
 9 evidence to support Plaintiffs' claim for lost rents.

10 Nationwide has not issued any written denial or other correspondence setting forth  
 11 its coverage position on Plaintiffs' claim for fair rental value, and it has not paid any policy  
 12 benefits for fair rental value.<sup>2</sup> Bansal Decl., ¶ 5. At the very least, there is a genuine issue  
 13 of material fact as to whether Nationwide's refusal to pay the claim constitutes a breach of  
 14 contract.

### 15 **B. Bad Faith**

16 "[T]here are at least two separate requirements to establish breach of the implied  
 17 covenant: (1) benefits due under the policy must have been withheld; and (2) the reason  
 18 for withholding the benefits must have been unreasonable or without proper cause." *Love*  
 19 *v. Fire Insurance Exchange*, 221 Cal. App. 3d 1136, 1151 (1990).

20 Nationwide contends that the genuine dispute doctrine serves as a complete  
 21 defense to Plaintiffs' bad faith claim. *See Paslay v. State Farm General Ins. Co.*, 248 Cal.  
 22 App. 4th 639, 652-653 (2016). As the California Supreme Court has held, to prevail on a  
 23 "genuine dispute" basis as a matter of law, Nationwide must point to evidence showing it  
 24 is "*indisputable* that the basis for [its] denial of benefits was reasonable—for example,  
 25 *where even under the plaintiff's version of the facts there is a genuine issue as to the*  
 26 \_\_\_\_\_

27 <sup>2</sup> Nationwide's failure to issue any written denial or other written response to the claim  
 28 constitutes a violation of 10 CCR § 2695.7, which requires insurers to clearly document the  
 amounts accepted or denied for a claim.

1 *insurer's liability under California law.* On the other hand, an insurer is not entitled to  
 2 judgment as a matter of law where, *viewing the facts in the light most favorable to the*  
 3 *plaintiff*, a jury could conclude that the insurer acted unreasonably.” *Wilson v. 21st*  
 4 *Century Ins. Co.*, 42 Cal.4th 713, 724 (2007) (emphases added).

5 Nationwide cannot come close to satisfying that burden. To justify a ruling as a  
 6 matter of law that its conduct was reasonable, taking Plaintiffs’ version of the facts,  
 7 Nationwide would have to convince the Court that its conduct in handling Plaintiffs’  
 8 “indisputably reasonable.” It was not:

- 9 • Nationwide failed to investigate whether Plaintiffs’ home was unfit to live in,  
 10 which would have entitled Plaintiffs to coverage for additional living  
 11 expenses and failed to disclose applicable coverages. Roldan Decl., ¶ 8, Exh.  
 12 F, 33:18-34:23.
- 13 • Nationwide failed to investigate the Plaintiffs’ standard of living prior to the  
 14 loss in order to determine the amount owed for additional living expenses.  
 15 Roldan Decl., ¶ 8, Exh. F, 57:12-59:5; 59:22-60:9.
- 16 • Nationwide assigned unqualified investigators to estimate the amount of the  
 17 property damage loss, which resulted in an insufficient and incomplete  
 18 estimate. Roldan Decl., ¶ 8, Exh. F, 86:17-90:17.
- 19 • Nationwide failed to advise Mr. Bansal that remediation of water damage  
 20 was required to prevent further damage to the Property. Roldan Decl., ¶ 8,  
 21 Exh. F, 87:9-23.
- 22 • Nationwide failed to reasonably adjust its estimate in response to the  
 23 estimate prepared by Thomas Koester of Accurate Estimates, in violation of  
 24 10 CCR §2695.9(d). Roldan Decl., ¶ 8, Exh. F, 98:21-100:3; 100:25-101:9;  
 25 105:15-107:11.
- 26 • Nationwide relied on its estimate and refused to accept supplemental  
 27 estimates. Roldan Decl., ¶ 8, Exh. F, 145:7-17.

- Nationwide attempted to settle Plaintiffs' claim by making an unreasonably low settlement offer. Roldan Decl., ¶ 8, Exh. F, 136:2-137:15.
- Nationwide did not issue a written denial letter for Plaintiffs' claim for moving costs and did not explain its refusal to pay Plaintiffs' claim for additional living expenses. Roldan Decl., ¶ 8, Exh. F, 137:6-141:9.
- Nationwide did not require its adjuster, Joseph Austin to comply with 10 CCR §2695.9 and perform a reasonable adjustment of Plaintiffs' claim, nor did it reprimand him for that failure, which suggests that he was following Nationwide's standard practices. Roldan Decl., ¶ 8, Exh. F, 145:23-147:11.

Nationwide's conduct was particularly egregious with regard to the events leading up to the appraisal:

On January 14, 2022, Mr. Miller wrote to Mr. Austin in response to Nationwide's estimate, which it considered to be a fair determination of the cost of repairs. Roldan Decl., ¶ 7, Exh. E, 156:17-158:11, Exh. 10. In that email, Mr. Miller outlines a plan for a detailed comparison of the Nationwide and Koester estimates, and a potential site inspection. *Id.* Mr. Miller further states that Nationwide "agreeing" with one of its "approved" contractors does not result in a settlement and that Nationwide needs to reach an agreement with its insured. *Id.*

On January 24, 2022, Mr. Miller wrote to Mr. Austin with a comparison of the estimates showing that the Nationwide estimate is missing \$85,836.78 in repair costs, that there is no agreement as to the scope of loss, that the Nationwide estimate is insufficient, and that a reinspection will be necessary at the site of loss in order to discuss the differences in scope. Roldan Decl., ¶ 7, Exh. E, 164:24-166:10, Exh. 12.

On February 7, 2022, Mr. Austin wrote to Mr. Miller saying that Nationwide agreed with its own contractor and if Miller disagreed, he should invoke appraisal. Roldan Decl., ¶ 7, Exh. E, 167:21-168:21, Exh. 13. Mr. Miller's insistence on standing on the estimate of its preferred vendor and refusing to consider adjustments to that estimate was unreasonable. Roldan Decl., ¶ 8, Exh. F, 98:21-100:3, 100:25-101:9, 105:15-107:11, 145:7-17.

1 On February 11, 2022, Mr. Miller wrote to Mr. Austin insisting that Nationwide is  
 2 required to adjust the difference between the estimates, that Nationwide has certain  
 3 options for addressing the estimate under 10 CCR 2695.9, and that Nationwide was not  
 4 complying with those guidelines. Roldan Decl., ¶ 7, Exh. E, 181:1-185:18, Exh. 14.

5 On March 7, 2022, Mr. Miller wrote to Mr. Austin to tell him that Nationwide's  
 6 refusal to try to reach an agreement regarding the competing estimates is forcing the  
 7 insured into a costly appraisal process. Roldan Decl., ¶ 7, Exh. E, 186:2-13, Exh. 15.

8 Mr. Miller's unreasonable refusal to comply with applicable standards and  
 9 regulations pertaining to claims handling directly led to Mr. Bansal having to resort to an  
 10 expensive insurance appraisal.

11 Furthermore, the genuine dispute doctrine

12 does not relieve an insurer of its obligation to thoroughly and  
 13 fairly investigate, process and evaluate the insured's claim. A  
 14 genuine dispute exists only where the insurer's position is  
 maintained in good faith and on reasonable grounds.

15 *Paslay*, 248 Cal. App. 4th at 653). Thus, "an insurer cannot reasonably and in good faith  
 16 deny payments to its insured without thoroughly investigating the foundation for its  
 17 denial." *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 819 (1979).

18 "Expert testimony [also] does not automatically insulate insurers from bad faith  
 19 claims based on biased investigations." *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 996  
 20 (9th Cir. 2001). In *Guebara*, the court thought of several circumstances where biased  
 21 investigation claims could go to a jury including when "the insurer failed to conduct a  
 22 thorough investigation." *Id.*

23 In this case, as discussed above, Nationwide's investigation of Plaintiffs' claim was  
 24 thoroughly lacking.

25 Based on the foregoing, a finder of fact could conclude that Nationwide did not  
 26 conduct a thorough investigation of the claim, as required by the Fair Claims Settlement  
 27 Practices Regulations. *See* 10 CCR §2695.7(d). An insurer's failure to comply with these

1 practices can support a finding that the insurer breached the implied covenant of good  
2 faith and fair dealing. *See Jordan v. Allstate*, 148 Cal.App.4th 1062, 1078 (2007).

3 Finally, Nationwide's reliance on the \$250,128.66 estimate prepared by Thomas  
4 Koester for the appraisal is misplaced and does not support a finding that a genuine  
5 dispute existed. *Keshish* and *Fraley*, two of the cases cited by Nationwide in support of its  
6 contention that Mr. Koester's appraisal demonstrates the existence of a genuine dispute,  
7 are distinguishable because those cases involved estimates submitted by a policyholder in  
8 support of a claim.<sup>3</sup> Mr. Koester's second estimate was prepared in connection with the  
9 appraisal, and only after Nationwide refused to pay the amount of Mr. Koester's initial  
10 estimate of \$140,905.69. Roldan Decl., ¶ 6, Exh. D, 122:18-123:9. Nationwide was never  
11 asked to adjust the claim based on Mr. Koester's second estimate, and so it is irrelevant to  
12 the analysis.

13 Plaintiffs have suffered significant damages as a result of Nationwide's  
14 unreasonable conduct, including having to incur and pay \$39,325 in costs in connection  
15 with the appraisal, and two years of lost rent due to delays in the claims process, and  
16 emotional distress damages. Roldan Decl., ¶ 4, Exh. B, 134:3-7, 138:2-16.

### 17 **C. Punitive Damages**

18 For a *jury* award of punitive damages, there must be clear and convincing evidence  
19 of fraud, malice, or oppression. Civ. Code §3294(a). In the summary judgment context,  
20 Courts have acknowledged the significance of the heightened standard of proof at trial: in  
21 ruling on the summary judgment motion, "the judge must view the evidence presented  
22 through the prism of the substantive [clear and convincing] evidentiary burden[.]"  
23 *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242 (1986).

24 To prove malice under California law, it is not necessary to show defendant had  
25 personal animosity toward plaintiff or acted out of "evil" motives; it is enough that the  
26 \_\_\_\_\_

27 <sup>3</sup> *Rappaport-Scott*, *Maynard*, and *Behnke* are all inapposite because they do not involve  
28 property damage claims that went to the appraisal process. *Rappaport-Scott* and  
*Maynard* involved uninsured motorist arbitrations, and *Behnke* involved a mandatory fee  
arbitration.

1 insurer intended the consequences that were substantially certain to result from his or her  
 2 conduct. *See Schroeder v. Auto Driveaway Co.*, 11 Cal.3d 908, 922 (1974). Under the  
 3 applicable CACI jury instruction, and in the context of an insurance claim, malice is  
 4 present where an insurer intentionally deprives its insureds of her rights under the policy.  
 5 *See* CACI No. 3946 (“‘Malice’ means defendant acted with intent to cause injury.”);  
 6 *Jordan*, 148 Cal.App.4th at 1080. “Punitive damages are likewise appropriate if the  
 7 defendant’s acts are reprehensible, fraudulent or in blatant violation of law or policy.”  
 8 *Food Pro Intern., Inc. v. Farmers Ins. Exch.*, 169 Cal.App.4th 976, 994 (2008). “[A]ll that  
 9 is required is that the fraud must equate to the conduct which gives rise to liability—in this  
 10 case bad faith.” *Notrica v. State Comp. Ins. Fund*, 70 Cal. App. 4th 911, 947-48 (1999);  
 11 CACI No. 3945. Punitive damages are also appropriate when an insurer has been  
 12 “recklessly indifferent to the rights of the insured[.]” *Id.* at 995.

13 In this case, Nationwide’s conduct, included repeated failures to thoroughly  
 14 investigate Plaintiffs’ claims for policy benefits, a refusal to pay benefits for additional  
 15 living expenses, citing a time limitation in the policy, even though the delays stemmed  
 16 from Nationwide’s delays in claims handling, and a steadfast refusal to work with  
 17 Plaintiffs to adjust their claim for increased food costs, all of which were tacitly endorsed  
 18 by Nationwide, who was aware of the conduct and did nothing to correct or reprimand the  
 19 personnel involved. All of this constitutes evidence of the requisite malice and reckless  
 20 indifference that would entitle Plaintiffs to punitive damages.

## 21 **VI. CONCLUSION**

22 Nationwide cannot meet its burden of establishing that that there is no genuine  
 23 dispute as to any material fact and that it is entitled to a judgment as a matter of law on  
 24 any of Plaintiffs’ claims or any of the issues in this litigation. Plaintiffs have produced  
 25 sufficient evidence to establish that they will be able to meet their burden of proof on all of  
 26 their claims at trial.

27

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1 Dated: June 26, 2025

2  
3 By:   
Peter Roldan

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