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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

PSY BURGER, LLC, a California limited liability company,

Plaintiff,

vs.

STATE FARM GENERAL INSURANCE COMPANY, an Illinois Corporation authorized to do business in California; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. Case No.: 2:25-CV- SVW (MARx)

[Assigned for all purposes to: Hon. Stephen V. Wilson, Courtroom 10A]

MEMORANDUM OF POINTS AND AUHTORITIES IN SUPPORT OF PLAINTIFF'S OPPOSITION TO STATE FARM GENERAL INSURANCE COMPANY'S MOTION FOR SUMMARY ADJUDICATION

Date: March 16, 2026
Time: 1:30 p.m.
Crtrm.: 10A

[FILED AND SERVED CONCURRENTLY WITH COMPENDIUM OF EVIDENCE; DECLARATIONS OF CODY J. SHAVER, CHRIS CAMERON; UZI WIZMAN, AND JOSE BANDA; AND EVIDENTIARY OBJECTIONS TO THE DECLARATIONS OF DAVID A. TARTAGLIO,

ROBERT L. SHARP, PHIL BOHMAN, MAURICE WRIGHT, ROBERT BIRKHOFER, NELSON ZETINO AND KEVIN D. COX

TRIAL DATE: 05/12/2026

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

In this insurance bad faith case, Psy Burger, LLC ("Psy Burger") suffered extensive damage resulting from a windstorm and subsequent rainwater that intruded into the rented structure in several rooms. This intrusion caused damage to the interior of the structure, damage to appliances and business interruption losses which ultimately compelled Psy Burger to sell the location as the repairs, which were denied by State Farm General Insurance Company ("State Farm"), were not covered. State Farm, despite the policy affording coverage for wind damage and subsequent rain, collapse, and business interruption, turned its back on Psy Burger and focused only on facts that negated coverage while ignoring evidence that supported coverage, fabricated policy language, and failed to apply coverage afforded in the policy.

State Farm's motion now seeks to resolve a narrow but novel issue, namely whether State Farm had a duty to seek coverage, refrain from fabricating exclusionary language, and seek coverage for the claim. There are numerous reasons why State Farm's motion should fail. The law does not permit a court to adjudicate a claim without fully disposing of that claim. Here, the claim by Psy Burger cannot be disposed of if this Court grants State Farm the requested relief.

"*It is important to recognize the reason for the possibility of tort, and perhaps even punitive damages on top of regular tort damage, for an insurance company's unreasonable breach of an insurance contact. Insurance contracts are unique in that, if the insurance company breached them, the policyholder suffers a loss (often a catastrophic loss) that cannot, by definition, be compensated by obtaining another contract. Thus, without the possibility of tort damages hanging over its head when it makes a claims decision, an insurance company may choose not to deal in good faith when a policyholder makes a claim. The insurance company could arbitrarily deny a claim, thus gambling with a policyholder's benefits of the agreement. If the insurance company gambled wrong, it would be no worse off then it would have been if it had honored the claim in the fist place. In effect, if the law confined the exposure of the insurance company under such circumstances to only contract damages, it would be pardoned and still retain the fruits of its offense.*" (*Pulte Home Corp. v. American Safety Indemnity Co.* (2017) 14 Cal.App.5th 1086, 1125.)

In its motion, State Farm has cherry picked only favorable facts to present to this Court in an apparent attempt to limit this Court's understanding of the events that ultimately lead Psy Burger to close its business. Based upon the facts omitted by State Farm, it is respectfully requested that State Farm's motion be denied.

This opposition is based on the following grounds:

1. State Farm ignored coverage for collapse when the facts and State Farm's own expert conceded this covered event. State Farm did not investigate this issue.
2. State Farm applied an inapplicable exclusion in the policy to negate coverage for Psy Burger's business interruption claim and cited policy exclusionary language that simply did not and does not exist.
3. State Farm denied a covered claim for wind and subsequent water intrusion by fabricating the loss date and by imposing duties upon Psy Burger that simply did not exist.
4. State Farm conceded that wind damage occurred to the structure, which permitted the water to intrude into the structure, a condition of the policy. However, State Farm never investigated these facts despite advising Psy Burger that an investigation would occur to determine coverage of the loss.
5. State Farm fabricated exclusionary language as it pertained to Psy Burger's equipment for the purpose of issuing a denial for this portion of the claim.
6. Psy Burger failed to conduct a fair and thorough investigation of the claim by way of failing to interview known percipient witnesses that could offer information in support of coverage for the claim.

II. STATEMENT OF FACTS

Timeline of Events: This matter occurred on August 20, 2023, when Psy Burger's owner discovered water in numerous rooms of the business. The water was intruding from an opening in the roof. (Ex. **A** to Plaintiff's Compendium of Exhibits at ¶ 10). The claim was reported to State Farm on the same date, assigned a claim

number of 75-54W3-86J, (the "Claim") and assigned to Maurice Wright. (Ex. **A** to Plaintiff's Compendium of Exhibits at ¶11).

Upon notification of the Claim, State Farm acknowledged that the ceiling had collapsed as a result of water intrusion. (Ex. **B** to Plaintiff's Compendium of Exhibits at P. SFPSY_000118).

An inspection occurred and the Claim was denied on October 19, 2023.The denial letter provided that the predominant cause of the loss was wear, tear and deterioration and the predominate cause of the loss to the interior of the building and refrigerator was water that entered, and there was no opening created by a loss insured that allowed water to enter the building. The denial letter also provided the language for coverage for the equipment breakdown, inclusive that coverage exists for damage resulting from an accident; however, the definition of "accident" was not included in the letter. (Ex. **C** to Plaintiff's Compendium of Exhibits.)

In response to this denial, Psy Burger retained a roofing expert to inspect the property, Top Roofing. According to Top Roofing, the *"[p]arapet walls has torch down material which is no longer adhered to the wall and creased from lifting which is likely due to wind.*" (Ex. **D** to Plaintiff's Compendium of Exhibits at page 4). This report included photos of the wind damage (Ex. **D** to Plaintiff's Compendium of Exhibits at pages 5-7).

Upon receipt of the Top Roofing report, State Farm chose not to interview this roofing expert but made the determination to retain an engineer, SPC Engineering. SPC Engineering, by way of Kevin Cox, inspected the roof and issued a report with his findings on January 4, 2024. (Ex. **E** to Plaintiff's Compendium of Exhibits.)The report states in part at P. 5:

- "*The creases were most likely caused by past multiple and frequent elevated wind events acting on the inadequately adhered roofing over an extended period of time."*

- *"It is more likely that the leaking is due to poor roof drainage and excess standing water on the roof during heavy rainstorms.*"

Based upon this information, State Farm issued a second denial of the Claim on January 8, 2024, wherein State Farm affirmed that the wind damage was from prior issues and the intrusion of rainwater was from standing water. (Ex. **F** to Plaintiff's Compendium of Exhibits.) This letter failed to identify any collapse coverage or identifying what an "accident" is defined as under the equipment breakdown coverage.

Psy Burger retained public adjuster Waypoint Adjusting, who reached out to Kevin Cox of SPC Engineering and documented the call in a contemporaneous email. (Ex. **G** to Plaintiff's Compendium of Exhibits.) The discussion addressed report and photographs produced by SPC Engineering. Kevin Cox and Waypoint Adjusting identified that Kevin Cox identified that there was wind damage to the roof however, he could not 100% rule out that some of the wind damage was a result of Tropical Storm Hillary. (Ex. **G** to Plaintiff's Compendium of Exhibits at page 3). Based upon this information, it was determined the wind damage to the roof must have occurred in February of 2023, within the policy period.

This information was conveyed to State Farm who issued a third letter addressing coverage on June 10, 2024. (Ex. **H** to Plaintiff's Compendium of Exhibits.) State Farm, by way of Robert Birkhofer, notified Psy Burger that it was acknowledging the wind damage to the roof of the structure; however, the interior damage would not be considered as the interior damage occurred in August. The June 10, 2024 letter also stated that State Farm would continue investigating the Claim but reserving its rights to afford coverage based upon an allegation that Psy Burger failed to notify State Farm of the roof damage promptly and there was a failure to mitigate the wind damage from February of 2023. This is despite Psy Burger having no custody nor control of the roof and the damage to the roof not occurring until the water intrusion occurred in August of 2023.

The Policy: The policy at issue is identified as policy number 92-E7-J310-8 (the "Policy"). The Policy provides that the property business and business personal property, located at 15030 Ventura BLVD STE 16, Sherman Oaks, CA 91403-2444 are covered under the Policy. (Ex. **I** to Plaintiff's Compendium of Exhibits.)

The Policy provides the following language as it pertains to the structure:

Property Not Covered
Covered Property does not include:
. . . .
e. The interior of any building or structure, or the property inside any building or structure, caused by rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
(1.) The building or structure first sustains damage by a Covered Cause Of Loss to its roof, outside walls, or outside building glass through which the rain, snow, sleet, ice, sand or dust enters: . . . . (Ex. **I** to Plaintiff's Compendium of Exhibits pages SFPSY_000040-SFPSY_000041.)

The Policy provides that a Covered Cause Of Loss:
SECTION I – COVERED CAUSES OF LOSS
We insure for accidental direct physical loss to Covered Property unless the loss is:
1. Excluded in SECTION I- EXCLUSIONS; or
2. Limited in the Property Subject To Limitations provision.
. . . .
i. Other Types Of Loss
(1) Wear and Tear;
. . . .
But if an excluded cause of loss is listed in Paragraphs (1) through (7) above results in an accidental direct physical loss by any of the "specified causes of loss" or by building glass breakage, we will pay for the loss caused by that "specified cause of loss" or by building glass breakage (Ex. **I** to Plaintiff's Compendium of Exhibits page SFPSY_000044.)
The Policy provides a definition of "specified cause of loss"
SECTION I – DEFINITIONS
. . . .
17. *"Specified causes of loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; "sinkhole collapse"; "volcanic action"; falling objects; weight of snow, ice or sleet; water damage.*
a. *Falling objects does not include loss to:*
(1) *Personal property in the open; or*
(2) *The interior of a building or structure, or property*

inside a building or structure, unless the roof, an outside wall, or outside building glass of the building or. . . . (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000061.)

The Policy includes coverage for equipment. The Policy provides:

22. Equipment Breakdown
a. *You may extend the insurance provided by this coverage form to apply for direct physical loss to Covered Property caused by an "accident" to "covered equipment". The most we will pay for each covered loss under this Extension Of Coverage is the Limit Of Insurance that applies to the Covered Property, unless a specific limit is stated in the Additional Coverages below.*
The amount we pay under this Extension Of Coverage, or any Additional Coverage described below, will not increase the applicable Limit Of Insurance.
b. Equipment Breakdown Additional Coverage
(1) Expediting Expenses*. We will pay up to $100,000 for the reasonable extra cost to:*
(a) *Make temporary repairs to; and*
(b) *Expedite permanent repairs or permanent replacement of;*
Covered Property damaged by an "accident" to "covered equipment".
The amount we pay under this Expediting Expenses Additional Coverage will not increase the applicable Limit Of Insurance. (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000051.)

The Policy provides a definition for the term "accident" as identified as a cause of loss under Equipment Breakdown Additional Coverage:

SECTION I – DEFINITIONS

1. "Accident" means direct physical loss as follows:
a. Mechanical breakdown, including rupture or bursting caused by centrifugal force;
b. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires; . . . . (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000059.)

As it pertains to coverage for "collapse" The Policy provides:

4. Collapse

> *a. With respect to buildings:*
> *(1) Collapse means an abrupt falling sown or caving in of a building or any part of a building;*
> . . . .
> *b. We will pay for accidental direct physical loss to Covered Property, caused by collapse of a building or any part of a building that is insured under this coverage form or that contains Covered Property insured under this coverage form, if the collapse is caused by one or more of the following:*
> *c. (1) Any of the "specified causes of loss" or by breakage of building glass, all only as insured against in this coverage form;*
> *(2) Weight of people or personal property;*
> *(3) Weight of rain that collects on a roof; or*
> *(4) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in Paragraphs (1) through (3), we will pay for the loss even if use of defective material or methods in construction, remodeling or renovation, contributes to the collapse.* ((Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000046.)

III. LEGAL STANDARD

A. Summary Adjudication Standard In Federal Court.

Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for granting a motion for summary judgment is essentially the same as for granting a directed verdict. See *Anderson v. Liberty Lobby, Inc.*, (1986) 477 U.S. 242, 250. Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." Id.

The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. See *Celotex Corp. v. Catrett*, (1986) 477 U.S. 317, 323. If the moving party fails to carry its initial burden of production, "*the nonmoving party has no obligation to produce anything.*" *Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Cos., Inc.*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).

If the moving party has sustained its burden, the burden then shifts to the nonmovant to identify specific facts, drawn from materials in the file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. See *Celotex supra*, 477 U.S. at 324; *Anderson supra*, 477 U.S. at 256 ("*a party opposing a properly supported motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial.*"). A factual dispute is material only if it affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth. *SEC v. Seaboard Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

Summary judgment must be granted for the moving party if the nonmoving party "*fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.*" *Celotex supra*, 477 U.S. at 322; see *Anderson supra*, 477 U.S. at 252 (*parties bear the same substantive burden of proof as would apply at a trial on the merits*).

In determining whether a triable issue of material fact exists, the evidence must be considered in the light most favorable to the nonmoving party. See *Barlow v. Ground*, 943 F.2d 1132, 1134 (9th Cir. 1991), cert. denied, 505 U.S. 1206, 112 S.Ct. 2995 (1992). However, summary judgment cannot be avoided by relying solely on "*conclusory allegations [in] an affidavit.*" *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990); see also *Matsushita Elec. Indus. Co. v. Zenith Radio*

Corp., 475 U.S. 574, 586 (1986) (more than a "metaphysical doubt" is required to establish a genuine issue of material fact). "*The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to survive summary judgment; "there must be evidence on which the [fact finder] could reasonably find for the plaintiff.*" *Anderson* supra, 477 U.S. at 252.

IV. ARGUMENT

A. The Policy Provides Coverage For Water Intrusion Resulting From Wind Damage Absent Fabricated Exclusionary Language Applied By State Farm.

As cited under the Policy language, there is coverage for water intrusion that results from a wind created opening. State Farm's expert identified wind damage but then opined that there was prior wind damage and the damage to the roof was not caused by Storm Hilary.

Plaintiff's expert, Top Roofing, identified wind damage on the roof and opined that was the cause of the water intrusion. This opinion was never investigated by State Farm, and State Farm ignored this expert and chose to retain its own expert.

While State Farm has a right to retain experts, State Farm owed a duty to interview this witness for the purpose of investigating his findings and opinions. A breach of that duty is a breach of the duty of care. (Jose Banda Decl. at ¶41.) Courts have determined that a failure to interview witnesses that may be able to provide evidence in support of coverage is a breach of the duty of care amounting to bad faith conduct. (*Frommoethelydo v. Fire Ins. Exch.* 42 Cal.3d 208.)

State Farm also ignored evidence of wind damage identified by its own expert, SPC Engineering and chose rather to focus upon f wear and tear, despite SPC Engineering's opinion that it could not rule out storm damage. This is not extent of unreasonable behavior at issue as it pertains to wind damage. Upon being apprised of the wind damage, and that this wind damage occurred within the Policy period, State Farm doubled down and egregiously breached the duties owed on several merits as it pertained to this notification of wind damage. First, State Farm, upon

conceding that the wind damage may have permitted the water intrusion, fabricated Policy language citing that simply did not exist. According to State Farm, in its June 10, 2024 letter, the interior water intrusion was not covered since the water intrusion occurred on a separate date. There is no Policy language that cites to this.

The Policy simply states the rainwater must enter through a storm created opening (covered peril) for there to be coverage. Although State conceded this may have occurred, State Farm made an intentional and egregious error when State Farm chose to post-loss underwrite the Policy and fabricate language that the wind and rain must be from the same event.

This fabricated exclusionary language violates the State of California Efficient Proximate Cause doctrine, codified in California Insurance Code §530. An insurance company is liable for damages sustained which does not immediately ensue from the covered peril complained, as these damages are deemed consequential. (*Elton v. Anheuser-Busch Beverage Group, Inc.* (1996) 50 Cal. App. 4th 1301, 1305.; see also *Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747 at 756 *Howell v. State Farm Fire & Cas. Co.* (1990) 218 Cal.3d 1446, 1452.) State Farm is unable to cite to any language in the Policy that placed a limitation upon wind damage and ensuing losses, such as water intrusion; however, State Farm did the same in its June 10, 2024, denial letter. (Ex. **H** to Plaintiff's Compendium of Exhibits.)

State Farm is unable to apply Policy language negating damage from wind when combined with an exclusion such as wear and tear because this violates California's anti-concurrent causation rules.

Many property insurance policies contain exclusionary language that appears to limit coverage to a greater extent than would be the case under the efficient proximate cause analysis. For example, some policies deny coverage for loss "caused directly or indirectly" by excluded perils "regardless if any other cause or event contributing concurrently or in any sequence to the loss (*Id* at 747, 751.)

If applied literally, this language would allow an insurer to deny coverage for a loss caused in part by an excluded peril, even though the efficient proximate cause of the loss was a covered peril. Such provisions are unenforceable to the extent that they conflict with Insurance code 530 and the efficient proximate cause doctrine. Reasonable insureds consider themselves insured against losses proximately caused by perils covered under a first party insurance policy, regardless of contrary language employed in connection with excluded perils.

State Farm, in addition to the fabricated language to limit coverage on this Claim, notified Psy Burger on that same date, June 10, 2024, that there may have been a violation of Policy conditions pertaining to a duty to mitigate the wind damage and failure to give prompt notice.

An insured, however, is not required to provide notice of the loss until the loss manifests itself. "Manifestation" refers to when the damage first becomes apparent. (*Home Ins. Co. v. Landmark Ins. Co*. (1988) 205 Cal. App. 3d 1388, 1392.) "Apparent damage" can exist only when the damage becomes "appreciable," for example, when a reasonable insured would be on notice of a potential insured loss. Cracks may be so trivial that an insured may not be alerted to the gravity of the damage. (*Prudential-LMI Com. Insurance v. Superior Court* (1990), 51 Cal. 3d 674, 686.), discussing *Abari v. State Farm Fire & Casualty Co. (1988) 205 Cal. App. 3d 530, 535.)* Placing an improper burden upon an insured, i.e. requiring an insured to report damages they are not aware of, and of which are damages to a roof the insured is not in control of is a breach of the duties owed amounting to bad faith conduct. (Ex. 10. ¶ 40.). The same theory of damages applies to State Farm fabricating that Psy burger had a duty to mitigate the wind damage which manifested itself in August of 2023. There is no requirement that an insured mitigate damage that was unknown.

Even after State Farm conceded that there was wind damage which permitted the rainwater to enter, State Farm fabricated policy language and violated established case law applicable to the facts of this loss.

State Farm had a duty to evaluate this information and continue its investigation and although State Farm notified Psy Burger on June 10, 2024, that it would, State Farm did not conduct any further investigation.

In its motion, State Farm states that once it conceded that there was evidence that wind permitted the rainwater to enter (Ex. **H** to Plaintiff's Compendium of Exhibits) it did not hear from Psy Burger again. However, an insured does not hold a duty to investigate the Claim, that burden is on State Farm.

State Farm owed a duty to investigate the wind damage and water intrusion just as State Farm represented to Psy Burger that it would. (Ex. **H** to Plaintiff's Compendium of Exhibits.)

State Farm conveniently ignores this fabricated exclusionary language and made up duties in its motion. An insurance company is not permitted to sit back and do nothing and wait upon an insured to investigate their claim. The insurer holds a duty to initiate an investigation (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809.) and must not look the other way when confronted with facts revealing the possibility of coverage. (*Jordan v. Allstate Ins. Co.* (2007) 148 Cal.App.4th 1062, 2074, citing *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc*. (2000) 78 Cal.App.4th 847, 882.) (Ex. 10 ¶13 at p. 13.) Additionally, *"[a]n insurer is not permitted to rely selectively on facts that support its position and ignore facts that support the claim. Doing so may constitute bad faith.*" (*Mazik v. Geico General Ins. Co*. (2019) 35 Cal.App.5th 455, 462.)

B. Coverage For Equipment Is Covered Under The Policy Absent the Fabricated Exclusionary Language Applied By State Farm.

Addressing Equipment Breakdown coverage, State Farm denied this portion of the Claim on the basis of wear and tear of the roof, which is a non-existent and

fabricated policy language. The initial denial letter, (Ex. **C** to Plaintiff's Compendium of Exhibits)states, "*Based upon the results of our discussions, site inspection, and investigation, the predominant cause of loss for damage to your roof is wear, tear and deterioration. Your policy does not provide coverages for this type of loss.*" The denial letter then includes the language of the Policy for Equipment Breakdown coverage. (Ex. **C** to Plaintiff's Compendium of Exhibits) The cited exclusion does not exist in the Policy for Equipment Breakdown Coverage.

Equipment Breakdown coverage is applicable when loss results from an "accident," which includes:

> *SECTION I – DEFINITIONS*
>
> *2. "Accident" means direct physical loss as follows:*
> *a. Mechanical breakdown, including rupture or bursting caused by centrifugal force;*
> *b. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires; . . . .* (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000059.)

There is nothing in the Policy limiting the cause of the mechanical breakdown or electric arcing. However, State Farm fabricated additional exclusionary language in the Policy to include a limitation that does not exist, *wear and tear*, for this provision of coverage.

State Farm appears to have acted in a deliberate manner by misinterpreting policy provisions for the purpose of defeating coverage. This type of conduct has been found to be bad faith. (*Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 395-396.) Furthermore, when an insurer focuses on inapplicable exclusionary language while ignoring other relevant terms, this conduct has been found to be a breach of the duty owed amounting to bad faith. (*Pulte Home Corp. v. American Safety Indemnity Co. supra* at 1117, finding "*American Safety made an unreasonable reading of its policy language by focusing on the ongoing operations language, to the exclusion of other relevant policy terms in the AIEs it drafted.*")

The record is clear, State Farm fabricated exclusionary language in the Policy for the purpose of denying coverage. The exclusionary language contained in the October 19, 2023, denial letter does not exist in the Policy. Coverage should have been afforded, or at the very least, investigated and applied to the actual language contained in the Policy addressing coverage for equipment breakdown (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000046.) Ignoring relevant coverage provisions in the Policy to the detriment of an insured has been determined to be a breach of the duties owed amounting to bad faith conduct.

C. The Policy Affords Coverage for Collapse that State Farm Never Acknowledged Nor Investigated.

State Farm was made aware that a portion of the Property had collapsed. (Ex. **B** to Plaintiff's Compendium of Exhibits at page P. SFPSY_000118.) Upon retaining SPC Engineering, State Farm was advised that one of the issues, in addition to wind damage, was that the roof was sagging and permitting water to pool, and that it was SPC's opinion that this sagging and pooling permitted water to intrude into the structure. The water intrusion from this pooling resulted in a collapse. However, despite the Policy clearly providing coverage for collapse resulting from the weight of water on the roof, State Farm never addressed this coverage provision and simply ignored any coverage for collapse under the Policy. (Ex. **I** to Plaintiff's Compendium of Exhibits at page SFPSY_000046.)

Ignoring Policy language that supports coverage is a breach of the duties owed by State Farm in its investigation. Providing coverage for collapse under the Policy and never investigating this coverage provision is wrongful conduct. (Banda Decl. at ¶38.) This same legal reasoning that applies to State Farm failing to apply coverage for equipment breakdown, applies here. An insurer may be guilty of bad faith by unreasonably reading its policy language by focusing on one phrase in the policy to the exclusion of other relevant terms. (*Pulte Home Corporation, Supra*. See also, *Fletcher v. Western National Life Ins. Co. Supra*, ruling that deliberately

misrepresenting policy provisions for the purpose of defeating coverage improper conduct amounting to bad faith.)

D. State Farm Failed To Provide A Thorough And Fair Investigation Of The Claim.

The aforementioned facts reflect that State Farm failed to investigate the Claim thoroughly amounting to bad faith. In order to protect the insured's peace of mind an insurer cannot reasonably and in good faith deny payments to the insured without thoroughly investigating the foundation of the denial. (*Egan v. Mutual of Omaha Ins. Co. Supra* at p. 819.) All of the information in support of the Claim were at State Farm's fingertips, but State Farm either failed to initiate an investigation, attempted to find fault with Psy Burger's investigation, or simply falsified policy language and conditions, all of which amount to bad faith. (*Id* at 809.)

Failing to investigate information is conduct amounting to bad faith as an insurer's conduct has been found to be unreasonable when it fails to investigate or seek to discover evidence relevant to coverage issues. Additionally, an insurer's unwillingness to continue its investigation into a claim has been found to be wrongful conduct. (*Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc., Supra* at 880.)

It is difficult to conclude that State Farm fulfilled its obligation not to impair the right of the insured to receive benefits, and to give at least as much consideration to Psy Burger's interests as it did its own. (*Egan, Supra* at 691, 620.)

"*When investigating a claim, an insurance company has a duty to diligently search for evidence which supports its insured's claim. If it seeks to discover only the evidence that defeats the claim it holds its own interest above that of the insured*. (*Mariscal v. Old Republic Life Ins. Co*. (1996) 42 Cal.App.4th 1617, 1620.) *"[I]f the insurer denied benefits unreasonably (i.e. without any reasonable basis for such denial, it may be exposed to the full array of tort remedies, including punitive damages.* (Jo*rdan v. Allstate Ins. Co. supra* at 1073.)

State Farm relies on the genuine dispute doctrine to avoid liability.

"*The genuine dispute rule does not relieve an insurer from its obligation to thoroughly and fairly investigate, process and evaluate the insured's claim. A genuine dispute only exists where the insurer's position is maintained in good faith and on reasonable grounds. . ..*" (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 724.)

The undisputed facts are that State Farm decided to pursue a track that only benefitted its financial interests. For example, State Farm denied that there was wind damage to the roof despite its own expert confirming wind damage was present. (See Exhibit **E** of Plaintiff's Compendium of Exhibits at page SFPSY _000731.) As opposed to investigating this information, State Farm fabricated exclusionary language which stated that the wind and rain must have been from the same occurrence. Not only does that language not exist in the Policy, but it also violates California's efficient proximate cause rule.

Where there is a legitimate basis for the insured to dispute the position of the insurer causing a withholding of benefits or delay in payment, the court cannot apply the genuine dispute doctrine to eliminate the insured's cause of action for bad faith by summary judgment. (*Guebara v. Allstate Insurance Company* (2001) 237 F.3d 987.) The facts show that State Farm's coverage position with respect to collapse coverage and equipment breakdown coverage, both of which were either ignored or had inapplicable exclusions applied, creates a reasonable basis for the insured to dispute the insurer's position. This is in addition to the fabrication of duties that are not contained in the Policy or those which violate established California law.

More importantly, this is not about reliance upon an expert which State Farm argues creates a genuine dispute. At issue is the unreasonable Claims handling conduct subsequent to receipt of the expert reports and how State Farm fabricated

language to continue to deny the Claim despite experts confirming wind damage, a covered peril, to the roof.

The genuine dispute doctrine does not relieve an insurer from its obligation to thoroughly and fairly investigate, process and evaluate the claim. A genuine dispute only exists where the insurer's position is maintained in good faith and on reasonable grounds. An insurer is not entitled to summary judgment as a matter of law where, viewing the facts in light most favorable to plaintiff, a jury could conclude the insurer acted unreasonably. (*Zubillaga v. Allstate Indemnity Company* (2017) 12 Cal. App. 5th 1017, 1027-1028.) All of the acts complained of occurred subsequent to or unrelated to experts reports. State Farm fabricated policy language, ignored facts and evidence, fabricated duties and failed to interview witnesses that could offer information in support of the Claim. It is a fair assessment that based upon those allegations, a jury could conclude that State Farm acted unreasonably amounting to bad faith.

To overcome a defense of "genuine dispute" a plaintiff must show that either the insurer based the denial upon unfounded facts known to the insurer or the insurer ignored facts. (*Wilson v. 21st. Century Ins. Co., Supra* at 721.) For purposes of State Farm's motion, Plaintiff has more than met the burden of production and proof to defeat the motion.

E. Punitive Damages

State Farm argues that it has not been proven that it had the requisite motive to injure or have ill will towards Psy Burger; and thus, there can be no bad faith. That argument does not hold muster. " *'[T]he covenant of good faith can be breached for objectively unreasonable conduct, regardless of the actor's motive.' . . . [A]n insured plaintiff need only show, for example, that the insurer unreasonably refused to pay benefits. . . .;there is no requirement to establish subjective bad faith.*" (*Bosetti v. United State Life Ins. Co. In the City of New York* (2009) 175 Cal.App.4th 1208, 1236.)

A jury need not find that the insurer acted with malice in order to find that an insurer acted "oppressively". Malice requires a finding that the insurer acted with both a "conscious" disregard for the rights of others. The statutory definition of oppression instead only requires a "conscious" disregard of the rights of others. (*Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1226.) while motive to *injure* can be proved by express evidence (direct evidence) or by implication (indirect evidence), i.e. evidence of other facts from which the jury may *infer* a defendant's motive and willingness to injure. (*Neal v. Farmers Ins. Exchange* (1978) 21 Cal. 3d 910, 923.) Additionally, whether an insurer's actions are unreasonable is an issue of fact for a jury to decide, and therefore summary adjudication is improper. (*Chateau Chamberay Homeowner's Ass'n v. Assoc. Intern. Ins. Co*. (2001) 90 Cal.App.4th 335, 346.)

The allegations made are false, and all that is required is that State Farm intended the consequences that were substantially certain to result from its conduct. No 'evil motive' is required to be shown. (*Schroeder v. Auto Driveaway Co.* (1974)11 Cal. 3d 908, 922.)

Determinations related to assessment of punitive damages have traditionally been left to the discretion of the jury. (*Davis v. Hearst* (1911) 160 Cal. 143, 173.) The granting or withholding of the award of punitive damages is wholly within the control of the jury (*Ferraro v. Pacific Fin. Corp.* (1970) 8 Cal.App.3d 339.)

In *Wetherbee v. United Ins. Co. of America* (1968) 265 Cal.App.2d 921, 931, the court stated (in affirming a fraud judgment against an insurer by an insured who was disabled, "Thus the jury could properly have found that plaintiff's disability was at all times such as to entitle her to full benefits under the terms of the policies but that defendant despite its representations to the contrary, had never at any time intended to comply with those terms and, in fact consistently refused to do so.

A jury need not find that the insurer acted with malice in order to find that an insurer acted "oppressively". Malice requires a finding that the insurer acted with

both a "conscious" disregard for the rights of others. The statutory definition of oppression instead only requires a "conscious" disregard of the rights of others. (*Major v. Western Home Ins. Co. supra* at 1226.) while motive to *injure* can be proved by express evidence (direct evidence) or by implication (indirect evidence), i.e. evidence of other facts from which the jury may *infer* a defendant's motive and willingness to injure. (*Neal v. Farmers Ins. Exchange supra* at 923.) Additionally, whether an insurer's actions are unreasonable is an issue of fact for a jury to decide, and therefore summary adjudication is improper. (*Chateau Chamberay Homeowner's Ass'n v. Assoc. Intern. Ins. Co. supra* at 346.)

F. Management Ratification

A final issue State Farm has asserted in its partial MSJ is that Maurice Wright and Robert Birkhofer are not managing agents of State Farm.

When an officer, director or managing agent is aware that a claims adjuster reported only selected information and omitted important information, ratification can be established. (*Mazik v. Geico General Ins. Co. supra* at 467, 468-469, detailed review of the facts that could have been known by the claims manager had he reviewed the file; ". . .the jury had a sufficient basis to conclude that [claims manager] approved. . .".) Additionally, ratification can be established by circumstantial evidence, (*Id* at 455, 467-468.)

The claim file produced by State Farm is replete with management involvement. (See response to Defendant's SUF #s 55 and 57.) Christopher Jones, Brian Reed, Robert Midgett, Phil Bohman, and Eric Blake were all involved in in reviewing the claim, handling the claim, making decisions about the claim, and issuing opinions about the claim.

The above shows that no less than five claims managers with State Farm reviewed portions of this file and/or made coverage decisions. State Farm's argument that none of its claims personnel were in a position to make decisions about the claim is not only not factually supported but it is offensive. In effect, State

Farm is attempting to rewrite the provisions of Cal. Code Regs. Tit. 10, § 2248.5(c) which states the following: *(c) No person, firm or corporation* ***other than the insurer or its designated claim representative shall be authorized to settle or adjust claims****. Neither the creditor nor the general agent or agent of the insurer shall be designated claim representative for the insurer in settling or adjusting claims. A group policyholder, however, by arrangement with the insurer, may draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.* [Emphasis added.]

State Farm's denial that any of the aforementioned employees were authorized to ratify State Farm's actions then raises an additional triable issue of fact in light of the language of the foregoing regulation – were any of these named claims adjusters authorized to ratify State Farm's actions?

V. CONCLUSION

The Court should respectfully deny Defendants' partial motion for summary in its entirety because defendant has failed to carry its burden of production and viewing the evidence in a light most favorable to Plaintiff, there are triable issues of fact with respect to the handling of Plaintiff's Claim.

Date: February 20, 2026

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