

1 **MUSICK, PEELER & GARRETT LLP**

2 333 South Hope Street, Suite 2900  
3 Los Angeles, California 90071-3048  
Telephone (213) 629-7600  
Facsimile (213) 624-1376

4 Steven J. Elie (State Bar No. 130566)  
*s.elie@musickpeeler.com*  
5 David A. Tartaglio (State Bar No. 117232)  
*d.tartaglio@musickpeeler.com*  
6 Jacqueline A. Robinson (State Bar No. 305628)  
*j.robinson@musickpeeler.com*  
7

8 Attorneys for Defendant STATE FARM GENERAL INSURANCE COMPANY

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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12

13 PSY BURGER, LLC, a California  
14 limited liability company,

15 Plaintiff,

16 vs.

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

22 Defendants.

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CASE No. 2:25-cv-10901 SVW (MARx)  
*[Assigned for all purposes to:  
Hon. Stephen V. Wilson, Ctrm. 10A]*

**STATE FARM GENERAL  
INSURANCE COMPANY'S  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

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

[FILED AND SERVED CONCURRENTLY  
WITH NOTICE OF MOTION AND MOTION  
FOR PARTIAL SUMMARY JUDGMENT;  
STATEMENT OF UNDISPUTED FACTS AND  
CONCLUSIONS OF LAW; COMPENDIUM OF  
EVIDENCE; DECLARATIONS OF DAVID A.  
TARTAGLIO, ROBERT L. SHARP, PHIL  
BOHMAN, MAURICE WRIGHT, ROBERT  
BIRKHOFFER, NELSON ZETINO AND KEVIN  
D. COX; AND [PROPOSED] ORDER]

TRIAL DATE: 05/12/2026

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF ARGUMENT**

3 Plaintiff PSY Burger, LLC (“Plaintiff”) seeks benefits from Defendant State  
4 Farm General Insurance Company (“State Farm”) for damages Plaintiff claims its  
5 business suffered as a result of heavy winds. Plaintiff first notified State Farm of the  
6 loss on August 21, 2023. State Farm thereafter promptly and thoroughly investigated  
7 the claim for coverage. State Farm retained two roofing experts, and determined,  
8 based on the totality of the circumstances, that the storm damage and all damage  
9 flowing from the same were not covered under the terms and conditions of the  
10 businessowners policy issued to Plaintiff. State Farm denied coverage for Plaintiff’s  
11 claim on October 19, 2023, and reaffirmed that denial twice after it considered  
12 additional information that Plaintiff provided.

13 State Farm seeks partial summary judgment in its favor as to Plaintiff’s second  
14 claim for Breach of the Implied Covenant of Good Faith and Fair Dealing (“Bad  
15 Faith”) because State Farm acted reasonably and with proper cause in denying  
16 Plaintiff’s claim for damage to its property and business personal property, as well as  
17 Plaintiff’s claim for loss of use and business interruption damages. State Farm  
18 maintains that the denial of coverage was correct, but at a minimum, a “genuine  
19 dispute” exists about whether State Farm owes coverage to Plaintiff. Where, as here,  
20 a “genuine dispute” exists about whether a claim is legitimate, the insurer cannot be  
21 liable for breach of the implied covenant for denying the claim. This is true even if a  
22 trier of fact later disagrees with the insurer’s decision. *Chateau Chamberay*  
23 *Homeowners Ass’n v. Associated Int’l Ins. Co.*, 90 Cal.App.4th 335, 347-351 (2001).  
24 Plaintiff’s claim for bad faith therefore fails.

25 Additionally, even if Plaintiff could meet its burden of showing that State Farm  
26 acted unreasonably or without proper cause in handling its claim, which it cannot,  
27 Plaintiff cannot meet its burden of producing “clear and convincing evidence” that  
28 State Farm, or any of its directors, officers, or managing agents, acted with

1 oppression, fraud, or malice in handling Plaintiff’s insurance claim. CAL. CIV. CODE  
2 § 3294(a). Therefore, Plaintiff’s claim for punitive damages also fails and partial  
3 summary judgment in State Farm’s favor as to the same is warranted. State Farm  
4 agrees to leave the breach of contract claim for trial.

5 **II. BACKGROUND FACTS**

6 **A. The State Farm Policy Issued To Plaintiff**

7 State Farm issued Businessowners Policy No. 92-E7-J310-8 to Plaintiff for the  
8 coverage period of January 10, 2023 to January 10, 2024 (the “Policy”). (Statement  
9 of Undisputed Facts [SUF] 1.) The Policy provided the following relevant coverages  
10 and limits of insurance all subject to Plaintiff’s \$1,000 deductible: (1) Coverage A –  
11 Buildings: No Coverage; (2) Coverage B – Business Personal Property: \$84,700; (3)  
12 Spoilage On Premises: \$15,000; and (4) Loss Of Income And Extra Expense: Actual  
13 Loss Sustained – 12 Months. (SUF 2.)

14 For this claim, the coverage does not apply to rain-related property damage  
15 caused by wear and tear or deterioration and defects in the property. The pertinent  
16 policy provisions applicable to this case state (SUF 3):

17 **SECTION I – PROPERTY**

18 **COVERAGE A – BUILDINGS**

19 Buildings, meaning the buildings and structures at the described premises  
20 ....

21 \* \* \*

22 **COVERAGE B – BUSINESS PERSONAL PROPERTY**

23 Business Personal Property located in or on the buildings at the described  
24 premises ... including:

- 25 1. Property, used in your business, that you own, lease from others or
- 26 rent from others, or that is loaned to you; ...
- 27 5. Property, as described in **Coverage A – Buildings**, if you are a
- 28 tenant and no Limit Of Insurance is shown in the Declarations for

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**Coverage A – Buildings.** The property must:

- a. Pertain to the described premises occupied but not owned by you; and
- b. Be your insurance responsibility according to the terms of your lease or rental agreement.

\* \* \*

**PROPERTY SUBJECT TO LIMITATIONS**

1. We will not pay for loss to: ...

e. The interior of any building or structure, or the property inside any building or structure, caused by rain ... 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 ... enters; ....

\* \* \*

**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.

\* \* \*

**SECTION I – EXCLUSIONS**

\* \* \*

2. We do not insure under any coverage for any loss caused by one or more of the following: ...

1. **Other Types Of Loss**

(1) Wear and tear;

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(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself; ...

But if an excluded cause of loss that is listed in Paragraphs (1) through (7) above results in an accidental direct physical loss by any of the “specified causes of loss” ... we will pay for the loss caused by that “specified cause of loss” ...

3. We do not insure under any coverage for any loss caused by one or more of the items below:

a. **Weather Conditions**

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. and 2. above to produce the loss ...

c. **Work**

Faulty, inadequate or defective: ...

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property (including land, structures or improvement of any kind) on or off the described premises.

But if accidental direct physical loss results from items 3.a., 3.b., or 3.c., we will pay for that resulting loss unless the resulting loss is itself excluded in SECTION I of this coverage form.

4. We do not insure under any coverage for any loss consisting of the items in Paragraphs 1., 2. or 3. This exclusion does not apply to the items in Paragraphs 2. or 3. if the loss is caused by a **SECTION I — COVERED CAUSE OF LOSS.**

\* \* \*

**SECTION I – EXTENSIONS OF COVERAGE**

Subject to the terms and conditions applicable to **SECTION I** of this coverage form, the following Extensions Of Coverage apply separately to each premises described in the Declarations. But the amount of insurance provided on any one described premises will not be more than the Limit Of Insurance specified in each Extension Of Coverage if a limit is included in the extension ...

**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 ....

The Policy also contains the following relevant provisions concerning the loss of income coverage provided therein (SUF 4):

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**CMP-4705.2 LOSS OF INCOME AND EXTRA EXPENSE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The coverage provided by this endorsement is subject to the provisions of **SECTION I – PROPERTY**, except as provided below.

**COVERAGES**

**1. Loss Of Income**

- a. We will pay for the actual “Loss Of Income” you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by accidental direct physical loss to property at the described premises. The loss must be caused by a Covered Cause Of Loss ...
- b. We will only pay for “Loss Of Income” you sustain during the “period of restoration” that occurs after the date of accidental direct physical loss and within the number of consecutive months for Loss Of Income And Extra Expense shown in the Declarations. We will only pay for “ordinary payroll expenses” for 90 days following the date of accidental direct physical loss ....

(Emphasis added.) The Policy likewise contains the following relevant provisions concerning the spoilage coverage provided therein (SUF 5):

**CMP-4471 SPOILAGE COVERAGE**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

The following provisions apply to the coverage provided by this endorsement:

Under **SECTION I – EXTENSIONS OF COVERAGE**, the following is added:

**SPOILAGE**

1           1.     You may extend the insurance that applies to Business Personal  
2           Property to accidental direct physical loss to “perishable goods”,  
3           caused by: ...

4                   c.     Power Outage, meaning a change in temperature, humidity  
5                   or pressure resulting from complete or partial interruption  
6                   of electrical power, either on or off the described premises,  
7                   due to conditions beyond your control ....

8           5.     The most we will pay under this Spoilage Coverage endorsement  
9           is the Limit Of Insurance shown in the Declarations under:

10                   a.     Spoilage – On Premises for any loss covered under  
11                   Paragraph 1. of this endorsement, where the loss to  
12                   “perishable goods” occurs at the described premises ...

13                   The amount we pay under this Extension Of Coverage will not  
14                   increase the applicable Limit Of Insurance ....

15           As discussed below, this Policy language justified State Farm’s denial of  
16           coverage for Plaintiff’s claim. State Farm’s investigation determined that the roof  
17           leak at the Property and resultant damage were caused by wear, tear and deterioration  
18           and improper installation, maintenance and repair of the same, all excluded events  
19           under the Policy.

20           **B.     State Farm’s Thorough Investigation And Timely Claim Handling**

21           Between August 20-21, 2023, Tropical Storm Hillary (“Storm”) caused heavy  
22           rains to hit parts of Southern California. (SUF 6.) Plaintiff’s Uzi Waizman  
23           (“Waizman”) reported damage to the commercial property where Plaintiff operated  
24           its business, at 15030 Ventura Boulevard, Suite 16, Sherman Oaks, CA 91403  
25           (“Property”), resulting from the Storm to State Farm on August 21, 2023. (SUF 7.)  
26           Specifically, Waizman informed State Farm that rainwater had entered through an  
27           opening on the roof and flooded the Property, causing damage to the Property’s  
28           interior and Plaintiff’s business personal property. (SUF 8.)

          After Plaintiff’s claim was assigned to State Farm’s Maurice Wright  
          (“Wright”), Wright contacted Waizman on August 25, 2023 to discuss the loss and to

1 schedule an inspection of the Property. (SUF 9-10.) During their conversation,  
2 Waizman informed Wright he had observed ceiling damage during the Storm, and  
3 that the electricity, refrigerator and freezer and internet stopped working once water  
4 entered the building, causing Plaintiff’s food product to spoil and business to close.  
5 (SUF 11-12.)

6 After Wright conducted an in-person inspection of the Property and  
7 interviewed Waizman regarding the loss on August 29, 2023, he sent a letter to  
8 Plaintiff on September 6, 2023 requesting more information regarding Plaintiff’s  
9 claims for lost food inventory and damaged equipment. (SUF 13-14.) State Farm’s  
10 LaShanae Wallace (“Wallace”) also sent a letter to Plaintiff on September 7, 2023  
11 requesting Plaintiff’s most recent federal business income tax return and information  
12 regarding Plaintiff’s business operations, including the estimated period of restoration  
13 (“POR”) and actual income earned during the POR. (SUF 15.)

14 At the same time Waizman informed Wallace on September 11, 2023 that the  
15 estimated POR was three months, he provided State Farm with an itemized list of  
16 food products which had spoiled because of the loss of power associated with the  
17 Storm, totaling \$8,647.28. (SUF 16-17.) When Wright and Waizman next spoke on  
18 September 21, 2023, Waizman advised that he wished to begin repairs. (SUF 18.)  
19 Because State Farm’s coverage determination was still pending, Wright retained Seek  
20 Now to inspect the roof at the Property, and informed Waizman of the same on  
21 September 27, 2023. (SUF 19-20.)

22 Seek Now’s Nelson Zetino (“Zetino”) thereafter inspected the roof at the  
23 Property with Waizman present on October 3, 2023. (SUF 21.) As a result of that  
24 inspection, Zetino found no evidence of any wind damage or storm-created opening  
25 on the roof. (SUF 22.)

26 Based on the facts conveyed by Plaintiff through Waizman to Wright, the  
27 observations and opinions of Zetino, Wright’s observations at his August 29, 2023  
28 inspection, Wright’s review of the claim file and wind and weather reports from the

1 date of loss, and after consultation with State Farm management, Wright concluded  
2 there was no coverage for Plaintiff’s loss. (SUF 23.) Wright then explained to  
3 Waizman on October 18, 2023 that State Farm was unable to extend coverage for  
4 Plaintiff’s loss because there was no evidence of any wind-damage or storm-created  
5 opening to the roof at the Property. (SUF 24.) Wright, on behalf of State Farm, then  
6 sent a letter to Plaintiff via Waizman on October 19, 2023 explaining the grounds for  
7 State Farm’s denial of coverage for Plaintiff’s claim:

8 “... Based upon the results of our discussions, site inspection, and  
9 investigation, the predominant cause of loss to your roof is wear, tear and  
10 deterioration. The predominate cause of loss to the interior of the  
11 building and your refrigerator is water, which entered through your roof.  
12 As we discussed, there was no opening created by a loss insured that  
13 allowed water to enter the building. Therefore, the damage caused by  
14 water which [entered] through your roof is not covered ....”

15 (SUF 25.)

16 After consulting with State Farm Team Manager Robert Midgett, Wright  
17 informed Waizman on October 24, 2023 that, although State Farm was not extending  
18 coverage for damage sustained by the Property and Plaintiff’s business personal  
19 property as a result of the Storm, or Plaintiff’s associated lost business income,  
20 coverage would be extended under the Policy’s Spoilage Endorsement for food that  
21 spoiled due to the loss of power associated with the Storm. (SUF 26.)<sup>1</sup> State Farm  
22 then issued a payment of \$7,647.28 (\$8,647.28 less the Policy’s \$1,000 deductible) to  
23 Plaintiff for spoiled food products on November 2, 2023. (SUF 27.)

24 On November 28, 2023, State Farm received a roofing inspection report  
25 prepared by Plaintiff’s roofer, Top Roofing, Inc. (“Top Roofing”), wherein Top  
26 Roofing opined, *inter alia*, that previous strong winds had likely caused sections of  
27 the roof at the Property to separate from the roof’s structure. (SUF 28-29.)

28 <sup>1</sup> This was reiterated by Midgett during an October 31, 2023 telephone conversation  
with Waizman. (Declaration of Phil Bohman, ¶¶ 4 & 14; Exhibit 2, Bates stamped  
nos. SFPSY\_000111-SFPSY\_000112.)

1 Plaintiff's claim was then reassigned to State Farm's Robert Birkhofer  
2 ("Birkhofer") on November 30, 2023, after which Birkhofer reviewed Top Roofing's  
3 report and, after consultation with State Farm Team Manager Phil Bohman  
4 ("Bohman"), concluded that State Farm needed to confirm if the roof damage at the  
5 Property was caused by wind rather than by wear, tear or deterioration. (SUF 30-31.)  
6 Birkhofer then retained SPC Geotechnical, Inc. ("SPC") on November 30, 2023 to  
7 evaluate Top Roofing's findings and to (1) answer whether the roof at the Property  
8 sustained weather-related damage, (2) confirm Top Roofing's opinion that wind  
9 caused sections of the parapet walls to peel back, thus allowing water to enter the  
10 interior of the structure, and (3) confirm that the damage to the roof and parapet wall  
11 was caused by wind, rather than some other factor. (SUF 32.) Birkhofer advised  
12 Plaintiff of SPC's retention on December 6, 2023. (SUF 33.)

13 On December 19, 2023, SPC's engineer Kevin Cox ("Cox") inspected the roof  
14 at the Property with Waizman present. (SUF 34.) Later that day, after SPC's  
15 inspection, Waizman informed Birkhofer he had tarped the roof to keep the interior  
16 dry and to mitigate further damage to the Property's interior and business personal  
17 property. (SUF 35.) Waizman then informed Birkhofer the following day that the  
18 Property's interior had remained dry and unharmed during a rainstorm that took place  
19 the night before while the roof was tarped. (SUF 36.)

20 After Birkhofer advised Plaintiff on January 2, 2024 that State Farm was  
21 awaiting receipt of SPC's report before it could move forward with Plaintiff's claim,  
22 State Farm received SPC's report on January 4, 2024. (SUF 37-38.) Based on its site  
23 observations, review of weather data, wind analysis, engineering evaluation, and  
24 professional experience and judgment, SPC concluded that the roof damage at the  
25 Property was most likely due to improper original installation and occurred prior to  
26 the Storm. (SUF 39.) SPC also concluded that issues with roof leaks at the Property  
27 were most likely due to poor roof drainage and ponding of standing water on the flat  
28 portion of the roof. (SUF 40.)

1 Based on the observations and opinions of SPC, Birkhofer’s review of the claim  
2 file, and after consultation with Bohman, Birkhofer confirmed there was no coverage  
3 for Plaintiff’s loss. (SUF 41.) Accordingly, Birkhofer, on behalf of State Farm, sent  
4 a letter to Plaintiff via Waizman on January 8, 2024 reaffirming State Farm’s denial  
5 of coverage for Plaintiff’s claim:

6 “... The engineer is of the opinion that wind on the date of loss was likely  
7 not capable of damaging the roof, and that sections of the vertical roofing  
8 were likely already loose prior to the date of loss. The engineer is of the  
9 opinion that poor roof drainage and standing water were contributing  
factors to the roof leak.

10 As previously communicated in the coverage letter that was sent to you  
11 on October 19, 2023, the damage caused by the water which entered  
12 through your roof is not covered by your policy because [a] covered  
13 cause of loss did not create an opening on the building exterior. Damage  
14 related to wear, tear, and deterioration [is] not covered under your policy  
15 ....”

16 (SUF 42.)

17 On February 6, 2024, State Farm was notified that Plaintiff had retained Chris  
18 Mooney (“Chris”) with Waypoint Adjusting LLC (“Waypoint”) to serve as Plaintiff’s  
19 public adjuster with respect to the handling of the claim. (SUF 43.) After Chris  
20 contacted Birkhofer on March 18, 2024 regarding the status of Plaintiff’s claim,  
21 Birkhofer sent a copy of the Policy and claim documents to Chris on March 20, 2024.  
22 (SUF 44.) Chris then informed Birkhofer on March 28, 2024 that Cox had allegedly  
23 indicated to Chris it was possible wind from the Storm had caused damage to the roof  
24 at the Property. (SUF 45.) After Birkhofer responded that State Farm would consider  
25 any new evidence presented, Chris advised Birkhofer that Cox had allegedly  
26 acknowledged wind from the Storm could not be 100% ruled out as having caused or  
27 contributed to the roof’s damage. (SUF 46.) Upon reviewing this information,  
28 Birkhofer spoke with Cox on April 17, 2024, wherein Cox informed Birkhofer he did  
not feel it was necessary to amend or supplement SPC’s report based on Cox’s  
conversation with Chris. (SUF 47.)

1 Based on his review of Chris’ March 28<sup>th</sup> email, his April 17<sup>th</sup> conversation  
2 with Cox and his review of the claim file, and after consultation with Bohman,  
3 Birkhofer concluded State Farm would not be changing its decision to deny coverage  
4 for Plaintiff’s loss as no new information had been received. (SUF 48.) Birkhofer  
5 informed Chris of the same on April 17, 2024, but simultaneously advised that State  
6 Farm would consider any new information in the future. (SUF 49.)

7 Birkhofer then received a letter from Chris on June 3, 2024, wherein Chris  
8 proposed the date of the wind damage to the roof be updated to reflect February 2023,  
9 the date of the highest winds recorded, and demanded that coverage of ensuing water  
10 damage be extended. (SUF 50.) Based on his review of Chris’ June 3<sup>rd</sup> email and  
11 letter, as well as the claim file, and after consultation with Bohman, Birkhofer  
12 concluded that State Farm’s decision to deny coverage for Plaintiff’s loss would stand,  
13 as Chris was proposing the wind damage to the roof did not occur on the date of loss  
14 for which Plaintiff’s claim was filed. (SUF 51-52.) State Farm also reserved the right  
15 to deny coverage for Plaintiff’s loss to the extent Plaintiff did not meet the Policy’s  
16 conditions requiring prompt reporting of damage to State Farm or mitigation of  
17 damages if the roof damage occurred in February 2023. *Ibid.* Birkhofer then sent a  
18 letter to Plaintiff via Chris on June 10, 2024 reflecting the same. (SUF 52.) State  
19 Farm received no further communication regarding Plaintiff’s claim until it received  
20 a letter of representation from Plaintiff’s attorney on August 7, 2024. (SUF 53.)

21 Plaintiff then filed the instant lawsuit against State Farm in the Los Angeles  
22 County Superior Court for Breach of Contract and Breach of the Implied Covenant of  
23 Good Faith and Fair Dealing seeking punitive damages (among other relief) on July  
24 24, 2025. (SUF 54.) On November 13, 2025, State Farm removed the lawsuit to this  
25 Court based on diversity jurisdiction.

26 **C. The Pleadings**

27 In its Complaint, Plaintiff alleges the loss was caused by “heavy damage to the  
28 Property when rain water entered through an opening in the roof, and flooded the

1 Property.” (ECF Docket No. 1-2 (Complaint), ¶ 10.) Plaintiff also alleges that “on  
2 or about August 29, 2023 [*sic*], Wright conducted an in-person inspection of the loss  
3 and conducted an interview with Waizman [*sic*].” *Id.* at ¶ 12. Plaintiff further alleges  
4 that “on or about October 19, 2023, Wright issued a letter denying coverage for the  
5 loss” stating, *inter alia*, that “the predominant cause of loss to your roof is wear, tear  
6 and deterioration [while the] predominate cause of loss to the interior of the building  
7 and your refrigerator is water, which entered through your roof ....” *Id.* at ¶ 13.

8 Plaintiff then alleges that after it retained Top Roofing to prepare a report based  
9 on its inspection findings, “[t]he report was then transmitted to [State Farm].” *Id.* at  
10 ¶ 14. Plaintiff alleges that State Farm then retained “SPC Engineering [to perform]  
11 an on-site inspection [on December 19, 2023],” after which SPC “sent its report of  
12 their findings” to State Farm on January 4, 2024. *Id.* at ¶¶ 16-17. Plaintiff alleges  
13 that it then “received a denial of coverage letter from [State Farm on January 8, 2024]  
14 with supporting documentation, including the SPC Engineering report, indicating the  
15 damage is due to wear, tear and deterioration [with] the winds on the date of loss being  
16 the unlikely cause of the damage [and adding] pre-existing issues with the roof’s  
17 drainage and standing water [as] contributing factors ....” *Id.* at ¶ 18.

18 Plaintiff thereafter alleges that its retained public adjuster, Chris with  
19 Waypoint, spoke with SPC’s Cox on March 19, 2024, wherein Cox allegedly  
20 “confirmed the possibility that wind during tropical Storm Hillary might have  
21 contributed to the damage.” *Id.* at ¶¶ 19, 23 & 25. Plaintiff alleges that Chris  
22 “reviewed this information with Birkhofer,” but State Farm “[informed Chris on April  
23 17, 2024] that [State Farm would] stand by its denial of coverage.” *Id.* at ¶¶ 26-27 &  
24 30. Finally, Plaintiff alleges that Chris “[received] a letter from [State Farm on June  
25 10, 2024, which included a] further denial of coverage ....” *Id.* at ¶ 32.

26 Plaintiff alleges the water loss was covered under the terms of the Policy, and  
27 thus State Farm’s denial of the claim constitutes a breach of contract. *Id.* at ¶ 39.  
28 Plaintiff also alleges that State Farm breached its implied covenant of good faith and

1 fair dealing by, among other things, failing to properly, fairly, timely and fully  
2 investigate the claim, failing to evaluate the claim objectively, using restrictive and  
3 unreasonable interpretations of the Policy as an excuse for denying payment of  
4 benefits, and deliberately denying benefits State Farm knew were owed under the  
5 Policy. *Id.*, ¶¶ 44.a.-44.k. Plaintiff seeks special and general damages, attorneys’  
6 fees, punitive or exemplary damages, and costs and expenses of suit. *Id.* at p. 9.

7 **III. LEGAL STANDARDS ON PARTIAL SUMMARY JUDGMENT**

8 **A. The Parties’ Respective Burdens Of Proof**

9 *Federal Rule of Civil Procedure* 56(a) provides that “[t]he court shall grant  
10 summary judgment if the movant shows that there is no genuine dispute as to any  
11 material fact and the movant is entitled to judgment as a matter of law.” Under  
12 *Federal Rules of Civil Procedure* 56(b) and (c), summary judgment is proper “if the  
13 pleadings, depositions, answers to interrogatories, and admissions on file, together  
14 with the affidavits, if any, show that there is no genuine issue as to any material fact  
15 and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp.*  
16 *v. Catrett*, 477 U.S. 317, 322 (1986). Material facts are those that may affect the  
17 outcome of the case. *Anderson v. Lib. Lobby, Inc.*, 477 U.S. 242, 248 (1986). A  
18 genuine issue is one in which the evidence is such that a reasonable fact-finder could  
19 return a verdict for the non-moving party. *Ibid.*

20 Where the moving party does not have the burden of proof at trial on a  
21 dispositive issue, the moving party may meet its burden for summary judgment by  
22 showing an “absence of evidence” to support the non-moving party’s case. *Celotex*,  
23 477 U.S. 317 at 325.

24 The non-moving party, on the other hand, is required by Rule 56(e) to go  
25 beyond the pleadings and designate specific facts showing that there is a genuine issue  
26 for trial. *Id.* at 324. It cannot rely on conclusory allegations unsupported by factual  
27 data to create a triable issue of fact so as to preclude summary judgment. *Hansen v.*  
28 *United States*, 7 F.3d 137, 138 (9th Cir. 1993) (citing *Marks v. Dept. of Justice*, 578

1 F.2d 261, 263 (9th Cir. 1978)). A non-moving party who has the burden of proof at  
2 trial must present enough evidence that a “fair-minded jury could return a verdict for  
3 the [opposing party] on the evidence presented.” *Anderson*, 477 U.S. 242 at 255.

4 **B. Insurance Policy Interpretation Under California Law**

5 In a diversity action, the court must apply state law in interpreting an insurance  
6 policy. *SDR Capital Mgmt., Inc. v Am. Int’l Specialty Lines Ins. Co.*, 320 F.Supp.2d  
7 1043, 1046 (S.D. Cal. 2004). The interpretation of an insurance policy “is a legal  
8 rather than a factual determination.” *Congleton v. Nat’l. Union Fire Ins. Co.*, 189  
9 Cal.App.3d 51, 59 (1987); *see also Waller v. Truck Ins. Exch., Inc.*, 11 Cal.4th 1, 18  
10 (1995). Although insurance policies have special features, “they are still contracts to  
11 which the ordinary rules of contractual interpretation apply .... If contractual language  
12 is clear and explicit, it governs.” *Bank of the West v. Super. Ct.*, 2 Cal.4th 1254, 1264  
13 (1992) (Citations omitted). In interpreting insurance contracts, a court must not  
14 manufacture strained constructions of policy language to impose upon an insurer a  
15 liability it has not agreed to assume. *Gunderson v. Fire Ins. Exch., Inc.*, 37  
16 Cal.App.4th 1006, 1118 (1995). Here, although State Farm, at the Court’s direction,  
17 is not moving as to the Breach of Contract claim for relief, the applicable insurance  
18 policy interpretation principles come into play in Plaintiff’s burden of proof at trial.

19 **IV. STATE FARM IS ENTITLED TO PARTIAL SUMMARY JUDGMENT**  
20 **ON PLAINTIFF’S CLAIM FOR BREACH OF THE IMPLIED**  
21 **COVENANT OF GOOD FAITH AND FAIR DEALING**

22 To prevail on its cause of action for bad faith, Plaintiff must show that State  
23 Farm “has (1) withheld benefits due under the policy, and (2) that such withholding  
24 was ‘unreasonable’ or ‘without proper cause.’” *Major v. Western Home Ins. Co.*, 169  
25 Cal.App.4th 1197, 1209 (2009) (citing *Gruenberg v. Aetna Ins. Co.*, 9 Cal.3d 566,  
26 573-574 (1973)). However, Plaintiff cannot prove either element.<sup>2</sup>

27 \_\_\_\_\_  
28 <sup>2</sup> While State Farm is not moving as to the breach of contract claim for relief, it

1           **A. State Farm Did Not Breach The Policy**

2           The Implied Covenant of Good Faith and Fair Dealing is based upon the  
3 contractual relationship between the insured and the insurer. As such, there can be no  
4 breach of the implied covenant in the absence of a breach of contract. *Waller*, 11  
5 Cal.4th at 35; *Love v. Fire Ins. Exch.*, 221 Cal.App.3d 1136, 1153 (1990). “*Even if*  
6 *there was evidence the claim was improperly handled, there could be no cause of*  
7 *action for breach of the covenant of good faith or of any statutory duty since [the*  
8 *insurer] correctly denied the claim.”* *Brodkin v. State Farm*, 217 Cal.App.3d 210, 218  
9 (2000), emphasis added; *see also Benavides v. State Farm Gen. Ins. Co.*, 136  
10 Cal.App.4th 1241, 1250 (2006) (“If the insurer’s investigation – adequate or not –  
11 results in a correct conclusion of no coverage, no tort liability arises for breach of the  
12 implied covenant”).

13           To prevail on its claim for Bad Faith, Plaintiff will be required to prove a breach  
14 of the contract in the first instance. Under the undisputed facts set forth above,  
15 however, State Farm contends Plaintiff cannot meet that threshold. Specifically, State  
16 Farm’s denial of coverage for Plaintiff’s claim was proper. As discussed more  
17 thoroughly in the Declarations of Nelson Zetino and Kevin Cox submitted with this  
18 Motion, the Property *first sustained* damage to the roof due to the faulty, inadequate  
19 and defective installation, repair and maintenance of the roofing material and/or  
20 because of wear, tear and deterioration, excluded events under the Policy.  
21 (Declaration of Nelson Zetino, ¶¶ 7-9; Declaration of Kevin Cox, ¶¶ 8-13; *see also*  
22 *SUF 3.*) Subsequent wind events (weather conditions) thereafter may have allowed  
23 rainwater to enter the Property’s interior during the Storm. *Ibid.* Accordingly, as the  
24 efficient proximate cause of the roof damage (i.e., improper installation and  
25 maintenance and/or wear, tear and deterioration) was an excluded loss under the  
26 \_\_\_\_\_  
27 maintains that Plaintiff will not be able to meet its burden at trial as to this first element  
28 of its Bad Faith claim.

1 Policy, the resulting loss is not covered (i.e., the Property did not first sustain damage  
2 caused by a covered loss, such that loss to the interior of the building, and Plaintiff’s  
3 business personal property inside, caused by rain) and State Farm did not act in bad  
4 faith in denying coverage for Plaintiff’s claim. *See* CAL. INS. CODE § 530; see also  
5 *Freedman v. State Farm Ins. Co.*, 173 Cal.App.4th 957 (2009); *Garvey v. State Farm*  
6 *Fire & Cas. Co.*, 48 Cal.3d 395 (1989); *Julian v. Hartford Underwriters Ins. Co.*, 35  
7 Cal.4th 747 (2005). Plaintiff has produced no evidence of a covered accidental direct  
8 physical loss, as it would be required to do under the Policy. (SUF 3.)

9 In sum, State Farm’s denial was reasonable, appropriate and is supported by  
10 the facts and Plaintiff’s claim for bad faith should fail for that independent reason.

11 **B. State Farm Acted Reasonably And With Proper Cause**

12 Plaintiff’s bad faith claim also fails because State Farm’s handling of Plaintiff’s  
13 claim was reasonable and proper. The mere fact that an insurer denies benefits that  
14 might be owed does not automatically mean that it acted in bad faith. *Chateau*  
15 *Chamberay*, 90 Cal.App.4th at 346-347. “As long as the insurer’s coverage decision  
16 was reasonable, it will have no liability for breach of the covenant of good faith and  
17 fair dealing.” *Morris v. Paul Revere Life Ins. Co.*, 109 Cal.App.4th 966, 977 (2003).  
18 Therefore, to establish bad faith, a plaintiff must show that the insurer withheld  
19 benefits unreasonably or “without proper cause.” *Chateau Chamberay*, 90  
20 Cal.App.4th at 347.

21 Mistakes in claim handling do not constitute bad faith. *Id.* at 346. Nor does  
22 “sloppy or negligent claims handling ... rise to the level of bad faith.” *Id.* at 351.  
23 Rather, “[b]ad faith implies dishonesty, fraud and concealment.” *Merritt v. Reserve*  
24 *Ins. Co.*, 34 Cal.App.3d 858, 876 (1973), emphasis added. The insurer’s conduct must  
25 demonstrate “a failure or refusal to discharge contractual responsibilities, prompted  
26 not by an honest mistake, bad judgment or negligence but rather by a conscious and  
27 deliberate act[.]” *Careau & Co. v. Sec. Pac. Bus. Credit, Inc.*, 22 Cal.App.3d 1371,  
28 1395 (1990).

1           Moreover, an insurer’s conduct is not judged using hindsight. “[T]he  
2 reasonableness of the insurer’s decisions and actions must be evaluated as of the time  
3 that they were made; the evaluation cannot fairly be made in light of subsequent  
4 events that may provide evidence of the insurer’s errors.” *Chateau Chamberay*, 90  
5 Cal.App.4th at 347.

6           State Farm had proper grounds to deny Plaintiff’s claim, in light of the case law  
7 and undisputed facts discussed above. State Farm fully and fairly investigated  
8 Plaintiff’s claim. State Farm promptly investigated the property damage and then  
9 retained two specialists/experts to assist in the evaluation of the loss. As discussed in  
10 the Declarations of Maurice Wright, Robert Birkhofer and Phil Bohman, State Farm  
11 relied upon the investigations and observations of Wright and Birkhofer, Midgett and  
12 Bohman’s independent review thereof, and their collective experience with thousands  
13 of similar water losses. All of the evidence supported a coverage denial as there was  
14 no covered, accidental direct physical loss and all of the undisputed evidence pointed  
15 to the roof leak at the Property and resultant damage having been caused by wear, tear  
16 and deterioration and improper installation, maintenance and repair of the same, all  
17 excluded under the Policy.

18           At best, Plaintiff’s evidence and arguments, factually and through its consultant  
19 Top Roofing and public adjuster Chris, merely amount to a disagreement with the  
20 conclusions of State Farm in denying coverage and Plaintiff’s contention that State  
21 Farm “ignored facts” or “targeted” its investigation to deny coverage. While State  
22 Farm denies that occurred, the undisputed facts show that State Farm **did** consider the  
23 information provided by both Plaintiff, its public adjuster and its consultants (*See*,  
24 *e.g.*, Declaration of Maurice Wright, ¶¶ 7, 10 & 14; Declaration of Robert Birkhofer,  
25 ¶¶ 7-8, 10-11, 14-15 & 18-21; Declaration of Phil Bohman, ¶¶ 10, 12-13, 15-22), they  
26 just came to a different conclusion based on an objective review of some of the same  
27 evidence. In addition, the facts establish that contrary to Plaintiff’s allegations in the  
28 Complaint, at multiple times throughout its investigation, State Farm provided the

1 facts to Plaintiff that supported the denial and even conducted two post-denial  
2 evaluations upon Plaintiff’s and Chris’ disputes of the denial. However, Plaintiff did  
3 not and has not provided any new information that would alter the facts on which  
4 State Farm relied for its position. Therefore, Plaintiff has not met its burden of  
5 establishing that State Farm made any conscious or deliberate act (other than the  
6 denial itself) (*Careau & Co.*, 22 Cal.App.3d at 1395) or acted with “dishonesty, fraud  
7 and concealment” (*Merritt*, 34 Cal.App.3d at 876) to support its claim for bad faith.  
8 Instead, Plaintiff merely disagrees with State Farm’s coverage determination made  
9 after thoughtful and careful analysis. Disagreement is insufficient to establish the  
10 requisite dishonesty, fraud or concealment needed to succeed in a bad faith action.

11 **C. At Minimum, There Is A Genuine Issue As To Coverage**

12 It is equally well-established that “bad faith liability cannot be imposed where  
13 there ‘exist[s] a genuine issue as to [the insurer’s] liability under California law.’  
14 [Citation.]” *Opsal v. United Services Auto. Assn.*, 2 Cal.App.4th 1197, 1205-1206  
15 (1991) (citing *Safeco Ins. Co. of Am. v. Guyton*, 692 F.2d 551, 557 (9<sup>th</sup> Cir. 1982),  
16 disapproved on other grounds in *Garvey v. State Farm Fire & Cas. Co.*, 48 Cal.3d  
17 395, 410-411 (1989)). The genuine issue doctrine applies to both legal and factual  
18 disputes. *See Guebara v. Allstate Ins. Co.*, 237 F.3d 987 (9<sup>th</sup> Cir. 2001).

19 Summary judgments have been repeatedly granted and affirmed where the  
20 carrier establishes that it did not act “unreasonably or without proper cause” such as  
21 where the carrier establishes there is a “genuine dispute” as to the insurer’s liability  
22 under California law. *Mosley v. Pac. Specialty Ins. Co.*, 49 Cal.App.5th 417, 436  
23 (2020), review denied (Aug. 12, 2020) (summary judgment for carrier on breach of  
24 the implied covenant affirmed) (quoting *Jordan v. Allstate Ins. Co.*, 148 Cal.App.4th  
25 1062, 1072 (2007)); *Fraley v. Allstate Ins. Co.*, 81 Cal.App.4th 1282, 1285, 1292  
26 (2000) (summary judgment for carrier on breach of the implied covenant affirmed).

27 The application of the genuine dispute doctrine “becomes a question of law  
28 where the evidence is undisputed and only one reasonable inference can be drawn

1 from the evidence.” *Chateau Chamberay*, 90 Cal.App.4th at 346. Courts do “not  
2 decide which party is ‘right’ as to the disputed matter, but only that a reasonable and  
3 legitimate dispute actually existed.” *Id.* at 348, fn. 7 (summary adjudication for carrier  
4 on breach of the implied covenant affirmed). Thus, it does not matter that the insured  
5 disputes the carrier’s conclusion. *Century Surety Co. v. Polisso*, 139 Cal.App.4th 922,  
6 949 (2006) (“an insurer does not act in bad faith when it mistakenly withholds policy  
7 benefits, if the mistake is reasonable or is based on a legitimate dispute as to the  
8 insurer’s liability”).

9 For all of the reasons stated above, State Farm’s conduct was reasonable as a  
10 matter of law. At a minimum, a reasonable and legitimate dispute as to coverage  
11 exists. Therefore, this Court should find that State Farm did not breach the implied  
12 covenant of good faith and fair dealing and grant partial summary judgment in its  
13 favor on this issue.

14 **V. STATE FARM IS ENTITLED TO PARTIAL SUMMARY JUDGMENT**  
15 **ON PLAINTIFF’S PUNITIVE DAMAGES CLAIM**

16 In this case, Plaintiff seeks punitive damages against State Farm. However, as  
17 the only cause of action that could support an award of punitive damages is Plaintiff’s  
18 cause of action for bad faith (which fails for the reasons discussed above), Plaintiff’s  
19 request for punitive damages lacks any support under the facts and the stringent  
20 requirements of California law. At a minimum, the Court should grant summary  
21 adjudication to State Farm on Plaintiff’s punitive damages claim as Plaintiff cannot  
22 meet its burden of proving that State Farm was guilty of “oppression, fraud or malice.”  
23 *See* CAL. CIV. CODE § 3294.

24 California *Civil Code* § 3294(a) authorizes an award of punitive damages in a  
25 tort action where it is found “that the defendant has been guilty of oppression, fraud  
26 or malice.” No fraud claim is alleged against State Farm in this case. *Miller v. Nat’l.*  
27 *Am. Life Ins. Co.*, 54 Cal.App.3d 331, 336-37 (1976) (cause of action for fraud must  
28 be alleged).

1 Section 3294(c)(1) defines “malice” as, *inter alia*, “despicable conduct which  
2 is carried on by the defendant with a willful and conscious disregard of the rights or  
3 safety of others,” while section 3294(c)(2) defines “oppression” as “despicable  
4 conduct that subjects a person to cruel and unjust hardship in conscious disregard of  
5 that person’s rights.” “[T]he adjective ‘despicable’ ... refers to circumstances that are  
6 ‘base,’ ‘vile,’ or ‘contemptible.’” *College Hosp., Inc. v. Super. Ct.*, 8 Cal.App.4th  
7 704, 725 (1994), citation omitted.

8 As one California court stated:

9 “Punitive damages are appropriate if the defendant’s acts are  
10 reprehensible, fraudulent or in blatant violation of law or policy. The  
11 mere carelessness or ignorance of the defendant does not justify the  
12 imposition of punitive damages.... Punitive damages are proper only  
13 when the tortious conduct rises to levels of extreme indifference to the  
14 plaintiff’s rights, a level which decent citizens should not have to  
15 tolerate.” *Food Pro Int’l, Inc. v. Farmers Ins. Exch.*, 169 Cal.App.4th  
16 976, 994 (2008).

17 *Civil Code* § 3294(a) also sets the highest bar in terms of the standard of proof  
18 Plaintiff must meet. Even at the summary judgment stage, the Court must test  
19 Plaintiff’s punitive damages claim under the heightened “clear and convincing  
20 evidence” standard required by section 3294(a). “Where the plaintiff’s ultimate  
21 burden of proof will be by ‘clear and convincing’ evidence, *the higher standard of*  
22 *proof must be taken into account in ruling on a summary judgment motion.*” *Basich*  
23 *v. Allstate Ins. Co.*, 87 Cal.App.4th 1112, 1118 (2001) (Italics added). Accordingly,  
24 Plaintiff must prove “by clear and convincing evidence” that State Farm is guilty of  
25 oppression or malice. As explained in *In re Angelia P.*, 28 Cal.3d 908, 919 (1981):

26 “‘Clear and convincing’ evidence requires a finding of high probability.  
27 This standard is not new. We described such a test 80 years ago, as  
28 requiring that the evidence be ‘so clear as to leave no substantial doubt’;  
‘sufficiently strong to command the unhesitating assent of every  
reasonable mind.’ It retains validity today.” (Internal citations omitted.)

28 ///

1 Where a plaintiff cannot prove by “clear and convincing” evidence that an  
2 insurer acted with oppression, fraud, or malice, an insurer is entitled to partial  
3 summary judgment on the punitive damages claim. *See Franceschi v. Am. Motorists*  
4 *Ins. Co.*, 852 F.2d 1217, 1220 (9th Cir. 1998) (Applying California law).

5 No such showing has been or could be made here. State Farm acted reasonably  
6 and with proper cause in investigating the claim and disclaiming coverage. (SUF 59.)  
7 Plaintiff has not produced any evidence of bad faith, let alone any oppression, fraud,  
8 or malice, and certainly cannot meet the high burden of proof by clear and convincing  
9 evidence. Under these circumstances, State Farm is entitled to partial summary  
10 judgment on Plaintiff’s punitive damages claim. *Ibid.*

11 Additionally, a plaintiff seeking punitive damages against a corporation must  
12 show that the act constituting malice, oppression, or fraud was committed or ratified  
13 by an “officer, director, or managing agent.” *See CAL. CIV. CODE § 3294(b); see also*  
14 *Cruz v. HomeBase*, 83 Cal.App.4th 160, 163 (2000). Plaintiff has no such evidence.  
15 (SUF 56-58, 60.)

16 As demonstrated above, as a matter of law, State Farm acted reasonably and  
17 with proper cause in investigating and ultimately denying Plaintiff’s claim. Plaintiff  
18 has not produced any evidence of bad faith, let alone any oppression, fraud, or malice  
19 committed by anyone at State Farm, whether an officer, director, managing agent, or  
20 otherwise. (SUF 55-59.) Plaintiff certainly cannot meet the high burden of proof by  
21 clear and convincing evidence. For this coverage dispute, involving conflicting expert  
22 opinions, the punitive damage claim is perfunctory and misplaced Under these  
23 circumstances, State Farm is entitled to partial summary judgment on Plaintiff’s  
24 punitive damage claim. *Franceschi*, 852 F.2d at 1220.

25 ///

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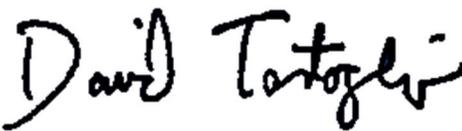
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1 **VI. CONCLUSION**

2 State Farm respectfully requests that partial summary judgment be granted in  
3 its favor on the grounds that it is not liable for breach of the implied covenant of good  
4 faith and fair dealing and it is not liable for punitive damages.

5  
6 DATED: February 13, 2026

MUSICK, PEELER & GARRETT LLP

7  
8 By: 

9  
10 Steven J. Elie  
11 David A. Tartaglio  
12 Jacqueline A. Robinson  
13 Attorneys for Defendant STATE FARM  
14 GENERAL INSURANCE COMPANY  
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