2025 WL 3526923 (Cal.App. 6 Dist.) (Appellate Brief)
Court of Appeal, Sixth District, California

American Abalone Farms, LLC., Plaintiff and Appellant,
v.
Star Insurance Company et al., Defendant and Respondent.

No. H052643
December 01, 2025

Santa Cruz County Superior Court Case No. 22CV02083
Honorable Schmal

Appellant's Reply Brief

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***7** Introduction

This case is about an abalone farm, an insurance policy, and one of the most destructive fires in California history – the CZU Fire. The insurer's own claim file admits the causation chain:

wildfire → civil authority/road closure → abalone mortality

and that is enough to establish coverage. Despite Respondent (Star) Insurer's claim that the abalone (as "stock") are only covered under Coverage F (Farm Products), the policy's primary grants in E, F, and G, along with compensation under DFO/EPO each independently reach this loss:

Coverage E (E.1.c: "Contents of Farm Buildings"):

Special, all-risk coverage, direct physical loss resulting from wildfire (EPC). Insurer admits the abalone are maintained in farm buildings along with the chain of causation from fire through road closure to abalone deaths. E.1.c is subject only to the restriction that "contents" be described in the declarations, and abalone are described in E's declarations.

Coverage E (E.1.j: "Business Personal Property") - restored:

Respondent admits coverage under E.1.j by removal of "Stock" and Farm Products from BPP – acknowledged as policy language as to E.1.j in isolation but has no effect on the prior sub-sections. But that coverage admitted & removed is then restored by the Special Property Broadening Endorsement (see SPBE extensions for coverages E/F/G and related definitions). SPBE ***8** acknowledges/defines "Stock" and Farm Products within BPP. Beyond all that, coverage was intended as confirmed by E's declarations which include abalone – it is insurer's duty to find that coverage and they agreed to do just that (Adjuster's email on behalf of Star, re further review for coverage 1 AA 206). But, when it comes time to pay – insurer argues no coverage at all.

Coverage F ("Stock"):

Pays destruction of ("stock") caused by or resulting from a Covered Cause of Loss (fire). That's exactly what the record shows, and abalone (as "stock") are declared in F's schedule.

Coverage G ("Supplies & Business Personal Property"):

The most important supply on the farm is the supply of abalone. Covered under G at least because BPP, which includes stock and farm products (as confirmed under extensions for each of Coverages E, F, and G), is declared in G's schedule.

DFO/EPO (Civil Authority):

This Disruption of Farming Operations (DFO) section relates to C.1's "Loss and Expense" during the 2-week period following Emergency Prohibition Against Occupancy (EPO). Respondent admits the Abalone died in that 2-week period – that's the C.1 loss and it triggered insurer's partial payment for shutdown related income loss. However, the impact of that loss extends forward, income that would have occurred without that loss of abalone supply – i.e., A.1's net loss – which is not period restricted. Moreover, abalone are declared property in DFO's schedule.

***9 The main insuring clause**

promises to pay for "direct loss ... caused by or resulting from any covered cause of loss." (1 AA 084) Respondent asks the court to transform that clause into direct causation (and omit "or resulting from"). That transformation is unsupported by the record or any case law. Star's own admissions indicate damage and loss caused by the CZU Fire and every bit of a "direct cause" as written in the policy.[1] The words speak for themselves *and* the abalone farmer's expectations. Direct loss ≠ direct cause, nor does it strike or resulting from, words which are unaccounted for in Respondent's opposition.

Respondent's position dispensed by declaration

as abalone are declared in the declarations and schedules – those declarations mean the abalone are intended coverage. If abalone, whether as stock, BPP, supplies, or farm products are in the declarations, an explanation is owed, and required for summary judgment, why no coverage was obtained for each corresponding coverage part. And, that does not change no matter how many cases Respondent cites.

Requested disposition: Hold coverage under E, F, and G, remanding to calculate A.1 net-loss and bad faith.

*10 PRELIMINARY REPLY TO RESPONDENT'S INTRODUCTION AND MISSTATEMENTS

Appellant addresses Respondent's threshold misstatements up front:

1) **Respondent asserts coverage requires fire to be the immediate, physical cause touching the abalone**. Not so. The insuring clause covers loss "caused by or resulting from" a Covered Cause of Loss. A reading that imputes "direct" to mean

"immediate-only cause" would erase "or resulting from"—a surplusage reading California law rejects. The efficient proximate cause is obviously the wildfire.

2) **Respondent claim's Petitioner's "Stock" (abalone) is only Basic under Coverage F – Farm Products**. Wrong - the policy does not say that. The policy they sold covers abalone, abalone as "stock," and abalone as stock, supplies and/or farm products as BPP – that is in the corresponding declarations and schedules for E (Special), F (Basic), and G (Special). The declarations define what is covered, and if any doubt remains, that coverage is again enumerated in the Special Property Broadening Endorsement extensions for E, F, and G. The question for insurer is: If "Stock" is only covered under Coverage F, why do the declarations for coverage E say "ABALONE"?, why do the extensions for Coverage E/F/G include "Stock" and "Farm Products" as Business Personal Property? The answer is because ***11** stock is insured under each of E/F/G along with net loss under the DFO endorsement, which is exactly what the farmer asked:

"... I *particularly asked him to add the insurance for coverage of the abalone*." (1 AA 257:17-18)

3) **Respondent asserts that Petitioner says PG&E generates electricity on the farm**. Not True. Petitioner never said that. While the farm has electrical generators, they are not part of PG&E's equipment at the farm. There is no evidence of any failure of PG&E electrical generation anywhere, and the fact remains: PG&E electricity used at the farm is a product of PG&E equipment on the farm.

4) **Variety of PG&E Equipment At The Farm**. Respondent's footnote (RB 33 n.5) claims Appellant relies on its "*own inadmissible declaration*" for Additional UMF No. 7 ("*A variety of PG&E electrical equipment is located on the premises*"). But in the trial court, Star expressly responded to UMF 7 as "*Undisputed but irrelevant*," noting only legal significance and never offering contrary evidence. (3 AA 611–612.) Now that it has apparently become relevant, Star cannot, on appeal, re-label as 'inadmissible' a fact it previously admitted as undisputed. Moreover, any alleged translation/authentication defect in the original declaration was cured in the manner the trial court ***12** prescribed; the re-authenticated declaration is in the appellate record.

5) **Respondent's "Oxygen only" story** — Respondent tells the Court the abalone "died due to lack of oxygen," full stop. Mr. Xie testified that even before the road closure—while generators kept pumps running—smoke and fumes from the CZU Fire were already being pumped into the tanks, making it "*hard for them*" and visibly harming the abalone. (1 AA 265:2-4) That is direct damage from fire and is not speculative; it is testimony.

Smoke and ash did not vanish when the generators later stopped; they remained in the tanks as suspended/settled debris and as *contaminants* absorbed into the water column until the farmer was finally allowed back in to clean. Pumping smoke-laden air into water is an additive process: every hour of aeration draws more smoke and ash into the water, increasing the smothering and contaminant load, and leaving "*smudge*" and residue that further harms and suffocates abalone. That is consistent with what Mr. Xie described ("*hard for them*," "*lots of ashes*," "*the grounds were full of ashes*," and extensive cleaning), (1 AA 262, 5 AA 1159:20-21; 5 AA 1153:14, 16, 19, 24; 1 AA 038:15) (1AA 252, 264 and 272; RB 51.) with the re-filed authenticated and translated declaration describing ash-smudge clogging the pumps, (6 AA 1549) and then confirmed by the "*orange bucket*" photograph which shows smoke-infused abalone with soot/ash ***13** caked breathing holes.[2] (4 AA 876) That photograph, if not ultimately excluded, strongly supports that at least some abalone smothered directly from smoke/ash fallout – visual confirmation that it truly was "*hard for them*." But even without the photo, the record still shows damage, even if the precise number of abalone that died directly from smoke and ash alone remains uncertain (e.g., "abalone die after 8 hours with the bad air," 1 AA 271). Either way, the evidence allows a trier of fact to reasonably find that smoke and ash directly harmed the supply of stock and contributed to the abalones' demise.

Respondent cites no evidence distinguishing (i) oxygen deprivation from pumps not operating and (ii) oxygen deprivation from choking on smoke and ash pumped into or already in the water column, nor (iii) any evidence that smoke and ash already harming the abalone somehow ceased to matter once the generators failed. None. The evidence shows that ash, which ***14** came with the smoke, was everywhere; and "everywhere" necessarily includes tanks, pumps, and abalone.

6) **Respondent says: "Unfortunately, as Mr. Xie testified, both the road closures and the power outages happened at once, ..."** Not True, the record shows Xie testified that the power was shut-down first and only later the roads were closed. After that testimony, opposing counsel acknowledged they understood.[3] This highlights the continuous onslaught of mis-information, mischaracterization, and red tape that is Star's first line of defense. When Star told Xie they would investigate and let him know about further coverages,[4] he actually believed them – not anymore.

7) **Respondent's "No other competent evidence" story** — Not true. The same excerpted deposition they filed shows multiple fire-linked mechanisms of harm—smoke/ash contamination and road-closure fuel denial compounding pump/aeration problems–creating triable causation issues (fire → smoke/ash directly harming abalone; fire → road closures → inability to refuel generators → abalone deaths). Moreover, that deposition testimony is confirmed and admitted on the record here in the Introduction of Respondent's Brief. That testimony, ***15** and those admissions alone are sufficient to defeat summary judgment.

8) **Respondent suggests DFO recovery is limited to the road closure**. (RB 52.) Not so. The two-week period (C.1) during road closure is the trigger window. The measure of recovery is A.1's net-loss (before taxes) framework. Abalone deaths occurring in the window produce revenue loss across the ensuing year – a classic A.1 calculation.

9) **Respondent treats Off-Premises Services as a categorical bar**. It is not. The clause contains its own exception: if loss by a Covered Cause of Loss results, the policy pays for that resulting loss. We never get to the exception because no evidence shows *failure* away from the premises, but, even so, with *fire* or any other Covered Cause of Loss — the exception governs.

10) **Respondent repeats that "no one ever told Star,"** but their own file calls it a "new wildfire claim," their EOB ties loss to wildfire and civil authority, and they issued a DFO Civil Authority payment. CZU was national news – not necessary – party admissions defeat this narrative.

11) **Respondent claims "exclusions do not create coverage,"** Respondent is correct as far as it goes. The carve-backs and exceptions are not creating coverage but expressly preserving coverage when fire, a covered cause of loss, is the driving peril (the efficient proximate cause). Those carve-back sentences were part of the bargained-for coverage and are part of the contract, and they must be given due effect if needed – which, ***16** under the admitted facts and coverages, they are not, but, accepting everything else Respondent says as true (it isn't) coverage is preserved.

12) **Respondent describes what they paid as a "partial declination"** as if a majority of policy coverage was paid. But 85k (acknowledged, thank you nonetheless) is less than 5 percent of coverage due under the policy.

13) **"Insured's Understanding" (and Expectations)** Respondent's own record beautifully underscores this point. Abalone farmer's testimony could not more passionately describe insured's understanding (and expectations):

"... I *told him to buy the insurance for coverage of my abalone*. " (1 AA 251:11-12)

"... I *particularly asked him to add the insurance for coverage of the abalone*." (1 AA 257:17-18)

"*... it's not that I don't understand your questions, just that I don't understand how come you're asking all these questions that are not related to my insurance for the compensation of my abalones, or all the abalones dead. I don't have them anymore*." (1 AA 254:12-16)

A. Respondent's Introduction Admits the Causation Chain; Liability Follows

Even within Respondent's own Introduction, the operative facts are conceded: (i) access prohibitions during the CZU Fire response; (ii) resulting loss of generator power to abalone pumps; (iii) mass abalone deaths. Overlaying Respondent's adjuster's ***17** correspondence and Explanation of Benefits (EOB), the chain is complete:

wildfire → civil authority/road closure → abalone mortality

Those are admissions against interest.[5] Judgment on coverage can rest on Respondent's words alone; damages/period can be remanded under A.1 for calculation.

B. No Law Cited for Their Core Propositions—Because Their Own Record Makes It Unnecessary

Respondent cites no authority establishing that "direct" in the insuring clause means "immediate cause," nor any case construing the policy's "or resulting from" language as surplusage. Nor do they cite a case that converts C.1's two-week civil-authority trigger into a hard cap on A.1's net-loss calculation for inventory/supplies/stock destroyed during that window but slated for later monetization. That vacuum is telling and cannot hide behind even another 50 citations. Respondent's file admits everything necessary for liability; case law is redundant where their own record resolves the quintessential issues.

CORRECTIONS TO RESPONDENT'S FACTUAL HISTORY (PAGE 1)

Respondent states, "*Appellant fails to cite significant portions of the Policy language it is arguing about*," yet four sentences later pastes a cut-up version of the very policy provision Appellant ***18** quoted verbatim and relied upon throughout — among the most significant sentences in the form and which Respondent attempts to transform. Appellant continues to quote the controlling language verbatim in this Reply, because the outcome turns on those sentences as written—not on Respondent's gloss.

STANDARD OF REVIEW

Appellate review of summary judgment and policy interpretation is de novo. Evidentiary rulings are reviewed for abuse of discretion, but the summary judgment ruling itself is de novo. De novo review requires consideration of the entire record, and coverage provisions are construed broadly for the insured while exclusions are narrowly construed. (See *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843; *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal.4th 1, 18; *Minkler, supra*, 49 Cal.4th at p. 321.; *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822–823; *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 648–649.)

I. RESPONDENT MISSTATES THE INSURING CLAUSE—"DIRECT" MODIFIES LOSS, NOT CAUSE; "CAUSED BY OR RESULTING FROM" HAS MEANING AND EMBRACES EPC

The insuring clause covers "direct physical loss of or damage to" Covered Property "caused by or resulting from" any Covered Cause of Loss. (Policy, Agricultural Business Property Coverage Form, § A, 1 AA 84) "Direct" modifies loss, not cause. Reading "direct" as "immediate-only cause" renders the phrase "or ***19** resulting from" meaningless surplusage—an interpretation California law forbids. (See *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 821–822 [interpretation that renders language surplusage disfavored]; *Sabella v. Wisler* (1963) 59 Cal.2d 21, 31–33; *Garvey v. State Farm Fire & Cas. Co.* (1989) 48 Cal.3d 395, 403-404.) Respondent's own recasting of this clause omits 'or resulting from' entirely, it attempts to transform "direct" into a causation straitjacket the policy does not contain. (RB 24–26.) California recognizes resulting-from causation and the efficient proximate cause (EPC) doctrine; fire need not incinerate abalone to be the covered peril that set the chain in motion.

II. CIVIL AUTHORITY: (A) DFO ENDORSEMENT (C.1) GRANTS COVERAGE; (B) GOVERNMENTAL-ACTION CARVE-BACK PRESERVES IT

A. C.1's "Up to Two Weeks" Trigger Does Not Exhaust A.1's Net-Loss Remedy

C.1 Defines a loss triggered Emergency Prohibition Against Occupancy (EPO) due to neighboring property damage by a Covered Cause of Loss. (DFO Endorsement, §§ A.1, C.1, 1 AA 122-123) The C.1 loss occurs during a 2 week window while occupancy is prohibited. The measure of recovery is A.1's calculation – reduction in net profit or increase in net loss. Critically, abalone deaths that occurred during the C.1 2-week window represent lost revenue over the later harvest cycle/holiday season. While acknowledging compensation for ***20** income lost during the two-week prohibition, that does not exhaust A.1's "net loss" remedy for abalone deaths that occurred in that two-week period but whose income would have been realized outside that two-week period.

B. Governmental Action Carve-Back Independently Preserves Coverage

The policy pays for acts of destruction ordered at the time of a fire to prevent its spread. (Special Causes of Loss – Exclusions, § C.3; 1 AA 107.) That carve-back operates independently of DFO and preserves coverage under other parts of the policy (including Coverages E, F, and G) so fire-suppression and evacuation consequences are not swept into an exclusion.

III. OFF-PREMISES SERVICES DOES NOT DEFEAT COVERAGE; IT'S NOT EVEN APPLICABLE, AND ITS OWN RESULTING-LOSS CLAUSE RESTORES IT

A. Threshold Misfit: Off-Premises Exclusion Not Applicable

– Respondent says the Off-Premises Services exclusion (Off-Premises Services Exclusion, § C.6, 1 AA 107–108; RB 31–33.) fits these facts because there was a "failure of power" that occurred "away from the insured location." That is wrong even before we reach generators, road closures, or ensuing-loss.

First, the record does not establish a qualifying "failure." The exclusion is written for breakdowns in a public utility system — ***21** storm-damaged grids, downed lines, substation failures—not for an intentional, controlled shutoff executed as part of a wildfire response. Respondent's own cases (*Mapletown, Lakes' Byron Store, Red Bird Egg Farms*) all involve that classic scenario: an unexpected breakdown at a remote facility.[6] Here, by contrast, the de-energization was a deliberate fire-safety measure during the CZU Fire, not a "failure" in the ordinary sense. At minimum, that distinction renders the term "failure" ambiguous and must be resolved in the insured's favor.

Second, Respondent has not carried its burden to prove the failure occurred "*away from the 'insured location*."' The judicially-noticed PG&E complaint and the record show PG&E equipment—lines, transformers, and related facilities—serving and located at the Farm itself. Respondent simply assumes, without a pinpoint in the record, that any interruption necessarily happened "*away from*" the Farm somewhere out on PG&E's broader grid. That is not evidence; it is argument. On summary judgment, the insurer bears the burden to prove facts bringing the loss within the exclusion. On this record, the geographic component is at best uncertain—and that uncertainty alone defeats their threshold application of the exclusion.

***22** **Respondent's own brief confirms the problem.**

On page 35, Respondent describes "[t]he cutting off of services by PG&E, however it is accomplished, [which] kept power from being supplied to the 'insured location."' (RB 35) That phrasing does two things. First, it admits Respondent cannot identify where in PG&E's system the shutdown occurred; it simply asserts that services were "cut off," "however it is accomplished." That falls well short of Respondent's burden to prove a "*failure*" ("*the failure*") occurred "*away from*" the insured location, as

the exclusion requires. Second, Respondent's own words concede not only that is was not a "failure," but it was an accomplished task - an intentional, controlled shutoff in wildfire conditions is something PG&E accomplishes; it is something PG&E prepares for and implements as part of a government coordinated wildfire response;[7] it is not a breakdown or malfunction of utility equipment, but a requirement of statute. Star's plethora of authorities—each involving bona fide off-premises breakdowns—simply do not apply, and, in fact, are contrary to a deliberate safety de-energization in an emergency services coordinated wildfire response.

In essence, Star rephrases the Policy's "*failure of ... services, however caused*" as "*cutting off of services ... however it is accomplished*," those two are a world apart – an entire re-write of "failure" into a deliberate act of safety. That only confirms that ***23** what happened here is not the kind of unplanned utility "failure" this exclusion contemplates.

Respondent mischaracterizes Appellant's argument.

AOB does not "*agree that a shutdown across the electrical grid ... would be a failure*." (RB 37.) Appellant argued that an intentional wildfire-safety shutoff is not a "failure" at all, and in any event, Respondent never carried its burden to show where such a "failure" occurred. (AOB 27.) Appellant does not contend that any covered peril that appears at the start of a causal chain automatically produces coverage; the question, under Insurance Code section 530 and the efficient-proximate-cause cases, is which peril is the dominant, originating cause of the loss. Compared to the enormity and dominant impact of the CZU Fire, the shutdown was no more than an intermediate, ordinary, and expected event—one the Farm had generators precisely to anticipate.

The phrase Respondent paraphrases—"'a 'failure' (shutdown) across a network that includes the farm'"—appears only in a conditional, arguendo sentence ("*if it did*" qualify as a failure) and refers to a network that includes the insured location, not some remote "electrical grid" failure "away from" the premises. Appellant therefore has not conceded that the event here was a "failure," much less that it was a failure occurring away from the insured location.

***24** In any event, Respondent's *own* description confirms that what occurred was a deliberate de-energization that PG&E accomplished, not an unintended "failure" in the ordinary sense of that word. On page 35, Star recasts the Policy's "*failure of ... services, however caused*" as "the cutting off of services by PG&E, however it is accomplished." (RB 35) That is not how electrical systems "*fail*"; it is how they are intentionally shut down. Fictional portrayals may show a single switch blacking out an entire city at once, but in the real world a utility de-energizes in segments, including large individual users (like a farm), using isolation switches and mains (the same devices used to isolate on-site generators) are at the farm — whether switched remotely or manually.

As alleged in the American Abalone v. PG&E complaint—which Respondent itself placed before this Court—the shutoff occurred at the farm, not at some distant point "*away from*" the insured location. (RB Appx, PG&E Compl. Pg 4, ¶6 "*at the farm*.") This is not to say other portions of the network were or were not energized or de-energized. The fact of the matter is that the surrounding area had electricity quickly restored, but the farm was more than 20 days later (RB Appx, PG&E Compl. Pg 4, ¶7 "*the electricity to the Farm was not restored ... until much later*.") is consistent with electrical disconnection "at the farm." But under Respondent's own "*however accomplished*" formulation, the critical threshold questions of how and where are ignored — where the cutoff occurred and what it was are not met (it is not just – "*however accomplished*" – the threshold elements must ***25** be satisfied according to the text of the exclusion). Here, Respondents' own record shows a deliberate shutoff *at the insured location* ("at the farm"), not a "*failure of ... services ... away from*" it, and certainly not the sort of bona fide, off-premises breakdown addressed in Respondent's off-premises-services cases.

Because Respondent cannot conclusively show both (1) a qualifying "failure" and (2) that it occurred "*away from the insured location*," the exclusion does not fit these facts—even before efficient proximate cause, the resulting-loss clause, or the Governmental Action carve-back are considered.

B. *Julian* and § 530 Bar Using ACC Boilerplate to Erase Fire as the Efficient Proximate Cause

As discussed above, the CZU Fire harmed the abalone in more than one way. First, smoke and ash were pumped through the tanks, making it "*hard for them*," visibly stressing and harming the stock ("*abalone die after 8 hours with the bad air*," 1 AA 271); on this record, and even if the 'orange bucket' photograph is ultimately excluded, a trier of fact could reasonably infer that smoke and ash alone may have contributed to some abalone deaths if not mitigated. That contamination did not stop when the power later failed; the smoke and ash already drawn into the tanks remained in the water and on surfaces until the farmer was allowed to re-enter and clean. Second, the same fire then prompted the coordinated wildfire response—PG&E's de- ***26** energization, civil-authority road closures, and loss of access— that ultimately led to generator shutdown, oxygen loss, and the mass abalone deaths. Those are simply two mechanisms by which a single covered peril, *Fire*, reached the Farm. Recognizing that smoke and ash alone may have been fatal for some abalone does not change the efficient proximate cause analysis; it underscores that however the pathway is described, the dominant initiating peril remains *Fire*, not a shut-down re-labeled as a "*power failure*."

Peril That Set The Loss In Motion.

Even if Respondent could satisfy the threshold elements for the power failure exclusion (it cannot), the analysis does not end there. The law asks what peril really set the loss in motion—*not* whether the insurer can identify an excluded peril somewhere in the chain.

Appellant does not argue that an insurer is automatically liable whenever a covered peril appears somewhere at the beginning of a causal chain. The rule, as *Sabella, Garvey*, and *Julian* confirm, is that where a covered peril is the efficient proximate cause of the loss, coverage exists even if excluded or non-listed causes appear as intermediate or concurrent links. (*Sabella* (1963) 59 Cal.2d 21, 31–33; *Garvey* (1989) 48 Cal.3d 395, 403–404; *Julian* (2005) 35 Cal.4th 747, 754–755.) That is the only proposition for which Appellant cites section 530 and *Julian*.

Under Cal. Ins. Code § 530 and California's efficient proximate cause cases—including *Garvey* and *Julian v. Hartford Underwriters Ins. Co.* (2005) 35 Cal.4th 747—policy language ***27** including broad "regardless of any other cause or event" and "contribute in any way with" lead-in phrases, cannot be enforced to deny coverage where a covered peril is the efficient proximate cause of the loss.

Here, that covered peril is *Fire*. The coordinated wildfire response—including PG&E's de-energization and the civil-authority road closures—are simply the relay steps by which that *Fire* reached the Farm. The evidence shows two fire-driven chains:

Chain 1: CZU Fire →	PG&E Shut-Off.	→ Generators On-OK	→ "Hard For Them"
Chain 2: CZU Fire →	road closed no maintain	→ generators no re-fuel	→ oxygen loss → abalone deaths

Chain 1 illustrates the first responsive measure to the fire, namely the PG&E shut-off that triggers activation of the Farm's generators. Standing alone, **Chain 1** does not necessarily kill the abalone; indeed, aside from the "*smokey air*" now being pumped into and accumulating in the tanks making it "*hard for them*," and likely killed some ("*abalone die after 8 hours with the bad air*," 1 AA 271) – despite that direct damage, the generators were also able to preserve stock by supplying oxygen.

Chain 1 is admitted throughout Respondent's Brief & Depo: ***28**

Chain Link	Respondents' Brief & Depo

CZU Fire	Intro.P9: "During the CZU Lightening Complex fire in August of 2020 ..."
PG&E Shut-Off	Intro.P9: "road closures and power outages ..." P.30: "PG&E's decision to shut the power down;" "shutting off power." P.33 "PG&E withheld power to the abalone farm"
Generators On-OK	P.29: "Appellant was able to utilize generators"
"*Hard For Them*"	"Before they closed the road, we had generator. Well, because the smoke, the fume affected the abalone, it was hard for them." 1 AA 265 "not only the power outage, is a lot of reasons: the air, the smoke, the ashes," 1 AA 270 "The abalone die after 8 hours with the bad air," 1 AA 271

Chain 2 is what produces the majority loss: the CZU Fire leads to road closures which prevent refueling and maintenance of the generators/tanks, which in turn leads to oxygen loss and the abalone's demise.

Chain 2 is admitted throughout Respondent's Brief:

Chain Link	**Respondents' Brief**
CZU Fire	Intro.P9: "During the CZU Lightening Complex fire in August of 2020 ..."
Road closure	Intro.P9: "road closures and power outages ..." P.29: "But then, Highway 1, the access road into the farm, was closed,"
generators not re-fueled, tanks not maintained	Intro.P9: "prevented the insured from tending to the abalone tanks and keeping the mechanized pumps in operation," P.29: "farm employees could not get to the farm to keep the generators running."
Oxygen loss	P.30: "a governmental decision ... that left the abalone without oxygen."
Abalone deaths	Intro.P9: "most of the abalone died." P30: ", the abalone quickly died."

***29** The responsive measures—the coordinated wildfire response (PG&E power shut-off, mandatory evacuation/road closures)—are links in the causation chains that carry the *fire's* effects to the Farm whether it be power shut-off or road closure. They are not new, competing efficient causes, but results of the efficient proximate cause— the means by which a wildfire and its response cause loss in the real world.

In efficient-proximate-cause terms, any alleged "*off-premises power failure*" is therefore, at most, a link in the sequence *Fire* set in motion, not the dominant or originating cause of the loss. Most important, section 530 makes clear that where the efficient proximate cause is covered—here, *Fire*—coverage exists even if excluded or non-listed perils appear as intermediate or concurrent causes.

In this case, the alleged "*off-premises power failure*" is not even the peril that directly harms the abalone — not even present within Chain 2 because it does not cause or link to the direct set ***30** of events that kill most of the abalone. At best, the "failure" is tangential in that it merely sets up conditions (generator operation) under which the fire-driven road closure proceeds to kill the abalone. Even if one were to concatenate Chain 1 and Chain 2 (effectively grafting "*power failure*" inline), it would still be only an intermediate step entirely between *Fire* and road closure (and a significant time span *before* closure) — and not even the cause, let alone efficient proximate cause.

Julian confirms that insurers may not rely on broad ACC preambles ("regardless of any other cause or event ... in any sequence") to write the efficient-proximate-cause rule out of existence. Respondent's position does exactly what *Julian* forbids: it plucks a single relay step out of the coordinated wildfire response, re-labels it "power failure," promotes that step to controlling status, and then uses ACC language to pretend the CZU *Fire* is legally irrelevant. Under section 530 and *Julian*, the Court must instead recognize *Fire* as the efficient proximate cause and hold that broad ACC wording in the exclusion cannot erase coverage.

C. The Policy's Ensuing-Loss Sentence Restores Coverage; Respondent's "Majority View" Cases Are Bona Fide Off-Premises Breakdowns

Respondent says the "resulting loss" sentence "*does not change the outcome under these facts*" and leans on a string of "majority ***31** view" decisions. (RB 40.) That misreads both the policy and the cases it cites.

The exclusion's carve-back recites:

"But, if loss or damage by a Covered Cause of Loss results, we will pay for that resulting loss or damage."

The focus is on what the loss is by, not on whether a covered peril happens to arrive "after" a utility interruption in some mechanical sequence. If the loss is "*by a Covered Cause of Loss*," the insurer must pay for that resulting loss—even if an excluded hazard appears somewhere earlier in the chain. Here, "Fire" is expressly a Covered Cause of Loss under Basic Causes of Loss, and Coverage F defines "loss" as destruction caused by or resulting from a Covered Cause of Loss. The abalone destroyed during the CZU Fire response is therefore a "resulting loss" by a Covered Cause of Loss.

Respondent's own "majority view" authorities confirm that this is how ensuing-loss clauses operate. They distinguish between (1) the initial condition the insurer treats as excluded and (2) a separate peril that results in the loss and is itself covered, with the ensuing peril's damage paid. *Acme Galvanizing Co. v. Fireman's Fund Ins. Co.* illustrates the point by hypothetical: even if a defective weld were treated as excluded, a later fire caused by that weld would be a distinct, covered peril, and the fire damage would be paid. (*Acme Galvanizing Co. v. Fireman's Fund Ins. Co.* (1990) 221 Cal.App.3d 170, 180.) The same conceptual distinction appears across Respondent's cases: courts ***32** identify the peril that actually produces the loss (e.g., fire, collapse) rather than letting an upstream mechanical condition swallow coverage.

Here, that framing cuts against Star, not in its favor. The peril that destroys the abalone is Fire and its direct consequences—civil-authority road closures, PG&E's coordinated de-energization during the CZU Lightning Complex Fire, and the Farm's generator operations during that wildfire response—not a free-standing "power failure" risk divorced from Fire. Star's attempt to re-characterize the chain as a "power failure loss" simply re-labels a fire-response peril that the policy itself lists as a Covered Cause of Loss. Even if "power failure" were somehow viewed as an excluded condition in the chain, the resulting loss is still "loss or damage by a Covered Cause of Loss," which the ensuing-loss sentence restores to coverage.

This case fits that logic, but with the roles reversed from how Respondent tries to cast them. Even if the Court credits some "utility interruption" in the chain, the separate, covered peril that dominates the loss is the CZU Fire and its direct consequences: civil-authority road closures, PG&E's coordinated de-energization, and the Farm's on-site generator operations during the wildfire response culminating in abalone destruction. Those are not mere side-effects of a random grid malfunction; they are fire-response conditions by a named Covered Cause of Loss.

At bottom, Respondent's reading would make the carve-back a nullity. Any time utility service is implicated, Star simply labels ***33** the entire chain a "power failure," declares fire and fire-response legally irrelevant, and erases both the resulting-loss sentence and the efficient-proximate-cause rule. That interpretation violates basic principles of policy construction, which require giving effect to all words and construing coverage-restoring language at least as generously as exclusions are construed narrowly. The insured's construction—that where a Covered Cause of Loss (Fire) is the peril by which the abalone were destroyed, the resulting-loss provision restores coverage even if "power failure" appears somewhere in the causal chain—is not only reasonable, it is the only reading that gives both the exclusion and its carve-back operative effect.

Under California law, that is enough. At minimum, the ensuing-loss sentence is reasonably susceptible to Appellant's interpretation and must therefore be construed in the insured's favor, defeating Star's attempt to wield C.6 as a categorical bar.

Every case Respondent cites for its "majority view" involves a bona fide off-premises breakdown – a system *not* operating properly and *not* driven by a covered peril—for example, a tree falling on a remote line, a substation explosion, or a regional blackout that physically interrupted power miles from the insured. *Torres v. American Economy Ins. Co.* (N.M. 1999) 989 P.2d 626, *Lakes'Byron Store, Red Bird Egg Farms*, and similar authorities all concerned damage or breakdown at a public utility facility away from the insured's premises, with no fire or fire-response peril interposed. Those rulings simply confirm that when there actually is an off-premises failure point, the exclusion ***34** might actually apply. Here, we do not have a failure, there is no proven off-premises failure point, *and* a covered peril (fire) drives the entire chain.

None of those decisions involved (1) a deliberate fire-safety de-energization, (2) government-coordinated road closures, and (3) a policy that, in the same clause, restores coverage for "*resulting loss*" by a Covered Cause of Loss. On these facts and under this wording, the ensuing-loss sentence operates exactly as written: it brings back/preserves coverage for the wildfire-driven loss, even if a utility interruption is somewhere in the causation chain.

In Sum, Star must clear six separate hurdles to make the off-premises services limitation do the work it claims, and it misses every one of them:

(1) **Initial Burden (Power "failure" vs. accomplishment)**. Star never carries its initial burden to show that the operative peril is a "power failure" over the fire-response conditions the policy itself lists as a Covered Cause of Loss, and it never shows that PG&E's deliberate, coordinated de-energization during the CZU Lightning Complex Fire qualifies as a "failure" in the sense C.6 uses that term. Star's own evidence describes what PG&E did as an accomplishment—an intentional shutoff coordinated with Cal Fire and local governments under statute—not an accidental breakdown of utility service.

(2) **No "away" Point of Failure** Second, even on Star's own labeling, it must show that any alleged "failure" was ***35** "occurring away from the described premises," but the loss here coincides with on-premises generator operations at the insured location, and a turn-off "*at the farm*," not a distant grid malfunction.

(3) **Fire-Driven Chain of Events**. Third, Star must persuade the Court to treat the entire chain of events culminating in the abalone deaths—including the road closure and the road closure's effect on the Farm's generators—as "loss or damage caused by or resulting from power failure occurring away from the described premises," rather than loss caused by Fire and the fire-response conditions the policy itself lists as a Covered Cause of Loss. But Star has already admitted that the road closure was

a fire-driven event, and even if the Court were to ignore that fact, the abalone were already being harmed—"it was hard for them"—while power was still being supplied to the Farm by generators, even before the roads were closed.

(4) **Resulting-Loss Clause**. Fourth, if the Court were somehow to accept both that label and that expansion, Star must still avoid the policy's resulting-loss sentence, which restores coverage where "loss or damage by a Covered Cause of Loss results."

(5) **Governmental Action Carve Back**. Fifth, it must also avoid the separate Governmental Action carve-back, which returns coverage when civil-authority measures arise (see below: PG&E does not operate in a vacuum and is ***36** statutorily required to coordinate with Cal Fire and local governments) from a Covered Cause of Loss such as Fire.

(6) **Efficient Proximate Cause (EPC)**. Sixth and finally, Star must persuade this Court to disregard the efficient-proximate-cause rule by treating a downstream "*power failure*" label characterization as displacing the wildfire peril that actually drives the loss (and the label).

Star does not clear any of these hurdles. At a minimum, Appellant's reading—fire as the Covered Cause of Loss, with the ensuing-loss sentence restoring coverage (or any other of the hurdles)—is more than reasonable, and any competing *construction* must be resolved against insurer in favor of coverage.

D. Governmental Action: PG&E Does Not Operate in a Vacuum; Wildfire Response Is a Government-Coordinated Action Preserved by the Carve-Back

Star argued below that Exclusion C.3 (Governmental Action) bars coverage, contending that closing roads or turning off power is not an "act of destruction" by governmental authority. (Special Causes of Loss – Exclusions, § C.3, 1 AA 107) (RA 009 [Star's Reply in Support of MSJ, § C].) At the same time, Respondent acknowledges that the fire-driven road closure (chain 2) is a governmental action that destroyed the abalone. To the extent Star continues to invoke that exclusion on appeal, Appellant ***37** agrees that the CZU response was governmental action—that is precisely why the carve-back applies.

Respondent attempts to characterize '*PG&E's decision to shut the power down*' and '*road closures due to a governmental decision to issue mandatory evacuations and shut down Highway 1*' as '*two separate perils, each with their own sources (PG&E on one hand and the CHP on the other)*.' (RB 30.) But that is not how California law Public Safety and other shutoffs, it is not a private business decision. Under Cal. Pub. Util. Code § 451 and Cal. Pub. Util. Code § 399.2(a), and CPUC's PSPS decisions, utilities de-energize only as part of a regulated wildfire-safety program that must be coordinated with public safety agencies and local governments. In that framework, PG&E's de-energization and the associated road closures are components of the same coordinated governmental wildfire response, not independent, unrelated perils. Star's own description—that a '*governmental decision*' to close Highway 1 was a peril that left the abalone without oxygen—underscores that governmental action is a central link in the causal chain and falls within the carve-back.

In other words, PG&E does not operate in a vacuum, and its Public Safety Power Shutoff (PSPS) during the CZU Fire was not a private business choice but mandated by governmental authority in statutes [8] as part of a coordinated wildfire response with state and local authorities, alongside Cal Fire suppression ***38** efforts and Civil Authority road closures that prohibited access to the Farm. [9] Those same road closures and access prohibitions are what prevented the farmer from cleaning out smoke and ash contamination in the tanks, from refueling and maintaining generators, and from otherwise mitigating the ongoing fire damage to the abalone—damage which, as discussed above, a trier of fact could reasonably find as the cause or contributing to the loss.

PG&E's Public Safety Power Shutoff was part of the coordinated emergency-management regime the Legislature and CPUC created to address wildfire risk. CPUC's PSPS decisions repeatedly emphasize that utilities must coordinate with state and local public-safety partners, identify and protect critical facilities, and mitigate the public-safety harms of de-energization events, including by planning for backup resources and evacuation support for vulnerable customers. [10] Those decisions rest on Public

Utilities Code sections 451 and 399.2(a), which ***39** both authorize and constrain PSPS: utilities may de-energize only pursuant to their statutory duty, and CPUC reviews those decisions and the utility's efforts to identify and mitigate safety risks created by the shutoff itself. [11] In that framework, PG&E's de-energization and the associated road closures are not independent, private "business decisions," but regulated components of a unitary, government-directed wildfire response—governmental action that falls within the Policy's carve-back, not outside it.

No Authority. Respondent nevertheless insists on calling PG&E's deliberate, regulated PSPS an "off-premises power failure," even while admitting it was an "accomplishment." That label is not just inconsistent with the record; it is unsupported by a single authority. PG&E is one of the most heavily regulated entities in the country, and the CPUC maintains an entire adjudicatory system governing its rates, services, and emergency-response obligations—including the PSPS regulations cited here. Yet Respondent does not identify a single CPUC decision characterizing a PSPS de-energization as a "failure of power." By contrast, Appellant cites multiple CPUC decisions and Public ***40** Utilities Code provisions that treat PSPS events as regulated public-safety measures, not "failures" in the sense C.6 uses that term.

The policy recognizes that kind of coordinated governmental response (including access restriction) and contains an explicit carve-back:

- The Governmental Action exclusion does not apply to "***acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread***."

On this record, the de-energization and road closures were exactly that—acts taken in real time to prevent the spread of the CZU *Fire* and protect the region—and they are the very measures that prevented mitigation of the fire-driven smoke/ash contamination and kept the Farm's pumps, tanks, and generators from being serviced. Appellant calls them "Governmental Action" because that is what they are, and the policy's text then does the rest: the carve-back independently preserves coverage for those fire-prevention and fire-suppression measures and their consequences, including the inability to clean contaminated tanks or maintain life-support systems for the abalone.

Respondent cannot invoke the Governmental Action exclusion while ignoring the carve-back that restores coverage in the precise scenario the Farm faced: wildfire, governmental emergency measures, and resulting inability to mitigate continuing fire damage. Taken together, the EPC rule, the ensuing-loss sentence in Off-Premises Services, and the ***41** Governmental Action carve-back all point in the same direction: wildfire and its coordinated response remain covered causes of loss under this policy. At the very least, they create triable issues that preclude summary judgment.

IV. COVERAGES E (SPECIAL), F (BASIC), and G (SPECIAL) SUPPORT RECOVERY; DFO (SPECIAL) IS ADDITIONAL, NOT EXCLUSIVE

Coverage E is all-risk; loss is covered unless excluded. And the Governmental Action carve-back preserves coverage under E where fire-prevention measures would otherwise be invoked as an exclusionary hook. (Coverage E – Agricultural Business Property Coverage Form, § A.1, 1 AA 84.) Coverage F expressly defines "loss" for fish/animals as the death or destruction caused by, resulting from, or made necessary by a Covered Cause of Loss (including fire). (Coverage F – Farm Products, § A.1, definition of "loss," 1 AA 94.) DFO is a separate income/expense coverage and Respondent's partial two-week payment is an admission of both loss and coverage predicates; DFO does not displace Coverages E, F, or G. (Declarations for Coverages E, F, G scheduling abalone and BPP, 1 AA 117–121.)

Because Coverages E and G (and the DFO Special form attached to them) are "Special" (all-risk) coverages, the insuring clauses are construed broadly and any exclusions or limitations narrowly interpreted. (e.g., see *AIU Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 822–823; *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 648–649.)

***42 Respondent's treatment of the Property Special Broadening Endorsement (SPBE) is inverted.**

The SPBE does not "limit first party coverage to 25 enumerated situations" (RB 18); it is expressly titled a "Property Special Broadening Endorsement," includes the 25 enumerations, initiates Blanket Coverages, and modifies Coverages E, F, and G. (Property Special Broadening Endorsement, 1 AA 127, 139.) Its numbered provisions (apart from the enumerations) are extra grants, sublimits, and carve-backs, including a specific buy-back of coverage for "off premises services" under Coverage F, and they presuppose that "Covered Property" and "stock" are already within grants related to Business Personal Property.

Section C. Coverage Extensions To Coverage E, F, And G states "Payment of any reduced value of '**stock**' is included within the applicable Limit of Insurance for Your **Business Personal Property**." (4 AA 1019.) But this is precisely what Respondent argues is entirely excluded from Coverage E vis-à-vis a carve-out that lives in a sub-part of a sub-section of Coverage E (E.1.j). (RB 15.)

The coverage extensions further clarify BPP coverage by defining:

"'**Perishable goods**' means **business personal property, including Farm Products**, maintained under controlled conditions for its preservation, and are susceptible to loss or damage if the controlled conditions change." (4 AA 1024.) The ***43** abalone are grown and maintained under controlled conditions, and their loss was because the controlled conditions changed.

"'Stock' means merchandise held in storage or for sale, raw materials and in-process or finished goods and products, including supplies used in their packaging or shipping." (4 AA 1024.) The farm's abalone are held in storage, in tanks under controlled conditions for sale. When sold they are trucked to market or shipped in airtight packaging.

Read together with the Declarations—which specifically schedule "abalone," "stock," and BPP separately from other property (e.g., declarations for coverage E "Sells Abalone In Airtight" is listed separate from "Bldg" and "Shed"; in declarations for Coverage F, "stock" is on its own schedule; and, in declaration for coverage G, BPP is listed separately from "Tools & Equip")—the SPBE confirms that the supply of abalone, as stock/farm products are to be equally treated as BPP. In essence, as to the farm: **abalone = stock = farm products = BPP**

under Coverages E, F, and G; it does not silently remove that coverage, quite the contrary – coverage is reinforced and overrides any contrary interpretation of the earlier provisions.

Further, the off-SPBE item 23 extends Coverage F to loss proximately caused by "off premises services" and expressly states that parts of the Covered Causes of Loss–SPECIAL and Section ***44** C.6. Exclusions "do not apply" to that coverage. (Endorsement Additional Coverage, referring to paragraph 23 under Covered Causes of Loss–SPECIAL and paragraph 6 of Section C – Exclusions; 1 AA 221.) That structure is inconsistent with Respondent's effort to let the Off-Premises Services exclusion swallow fire-driven farm-product losses wholesale.

Coverage G confirms broader BPP protection and underscores Star's failed duty to investigate all applicable coverages.

Coverage G and its declarations were part of the Policy exhibit below and are cited in Star's own papers. (1 AA 120–121; RB 48–49.) The Coverage G Declarations do list "MISCELLANEOUS MOBILE AGRICULTURAL MACHINERY AND IMPLEMENTS INCLUDING TOOLS, EQUIPMENT AND SUPPLIES (any one item not to exceed $2,500)," but on the following page the Coverage G schedule separately insures BUSINESS PERSONAL PROPERTY on a Special cause-of-loss basis with a $310,000 limit. (1 AA 120–121.) In ordinary property practice, business personal property includes "stock," and SPBE expressly modifies Coverages E, F, and G so that the insured's stock and Farm Products are treated within that BPP

framework. Against that structure, Star's suggestion that Coverage G somehow excludes the Farm's supply of abalone as a category is not a fair reading. At a minimum, Coverage G is an additional grant of Special BPP coverage Star never negated on summary judgment.

***45** Star's threshold complaint—that Appellant did not expressly argue Coverage G below—also ignores both the record and Star's own obligations. Whether Coverage G applies is a pure question of policy interpretation on undisputed text, which this Court reviews de novo and may consider even if not pressed in precisely this form below. (See, e.g., *Yeap v. Leake* (1997) 60 Cal.App.4th 591, 599; *C9 Ventures v. SVC–W., L.P.* (2012) 202 Cal.App.4th 1483, 1492.)

Respondent's reliance on *Pulver v. Avco Financial Services* (1986) 182 Cal.App.3d 622 is misplaced. *Pulver* simply held that an appellant may not expand the record on appeal by relying on documents that were never presented to the trial court; the Court of Appeal would not consider new evidentiary material that had not been "before the trial court" when it ruled. (Id. at pp. 631–632.) Here, Appellant's Coverage G argument rests entirely on the same Policy exhibit and declarations Star itself lodged and cited below. (1 AA 120–121; see also 1 AA 84–85.) Appellant is not asking this Court to consider new evidence, only to apply de novo review to undisputed policy language that is already part of the summary-judgment record. And, under *Yeap* and *C9 Ventures*, where the facts are undisputed and the issue is one of contract interpretation, the Court may consider a legal coverage theory that flows from the existing record even if the insured's trial briefing did not use the same label Respondent now attacks.

***46** More fundamentally, it was Star's duty—not the abalone farmer's—to identify potentially applicable coverages. An insurer must "fully inquire into possible bases that might support the insured's claim" and "cannot reasonably and in good faith deny payments to its insured without thoroughly investigating the foundation for its denial." (*Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 819; *Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1624–1625.) Star told Appellant it would review the Policy and determine what coverage applied and later claimed it had "looked hard" and could only find limited coverage. Yet the very Policy Star adjusted and submitted in support of summary judgment includes a separate Coverage G schedule for BUSINESS PERSONAL PROPERTY on a Special basis. Star's failure even to address Coverage G as a potential basis for recovery—while now faulting Appellant for invoking it— underscores both that Star did not carry its summary-judgment burden and that its claim handling fell short of its good-faith duty to search for coverage, not merely for exclusions.

Respondent argues "Coverage F is the only part covering abalone.

Respondent says "The plain language of the policy, with its separate coverage parts and limits of liability, demonstrates that Coverage F is the only part to apply to farm products ... abalone." But, once again, the policy does not say that. Appellant looks to the policy, in Coverage E (E.1.c), it says: "contents of ... farm buildings ... if described in the declarations." These buildings only contain 3 things: tanks, pumps, and ***47** abalone. When we review the declarations for E, it says: Bldg; Shed; and abalone ("Sells Abalone in Airtight."). That is the plain language of the policy and it *plainly intends* to cover abalone.

Then, the SPBE brings back supplies, farm products, and stock (abalone) into Business Personal Property – entirely extinguishing Respondent's previous argument that farm products were removed from E via the E.1.j carve-out. But that carve-out, cocooned in its own sub-section, never affected the coverage under E.1.c ("contents of ... farm buildings"), and, with the SPBE clarification of BPP, that carve-out has no effect even in its own sub-section. Accordingly, coverage is now claimed under E.1.j as well. But more importantly, the clarified definition of BPP and BPP's separately listed inclusion in the declarations for Coverage G - shows that the supply of abalone (stock) was intended to be covered under G, and, inter alia, coverage E/F and DFO as well.

"... I *told him to buy the insurance for coverage of my abalone*. " (1 AA 251:11-12)

"... I *particularly asked him to add the insurance for coverage of the abalone*." (1 AA 257:17-18)

And finally, Respondent again relies on the Off-Premises Services Exclusion which, as an intentional shut-off has been shown to be normal, expected, and a statutorily mandated operation in a coordinated wildfire response – not a failure. Respondent still points to no off-premises failure point, and, in any event, such an exclusion cannot negate coverage over EPC, and, even if it did, ***48** both a resulting loss clause and Governmental Action exception each separately restore coverage.

V. RECORD MISCHARACTERIZATION AND PARTY ADMISSIONS CONTROL

A. Respondent Gaslighting Its Own Record Fails Under The Evidence Code

Respondent's "no one ever told Star" narrative is untenable because it contradicts Respondent's own contemporaneous writings — party admissions. *Mason v. Lake Dolores Group* (2004) 117 Cal.App.4th 822, 830–831 (party admissions as substantive evidence). Evidence Code §§ 1220–1222. Those admissions defeat any attempt to re-characterize the claim as mere "power loss" (which itself would fail under EPC). Insured did not pay thousands of dollars for insurance to be continually misled about coverage and facts:

B. Admissions & Notice Timeline (Targeted)

- Initial intake (Meadowbrook) – Claim intake form identifies "Fire" (CZU) and frames the loss in wildfire context. (Claim Intake, "Fire," 1 AA 200.)
- Aug. 26, 2020 - Internal subject line: "PR9820004442 American Abalone LLC-new wildfire claim." (Bost → Sedgwick). [Despite being unable to communicate, was able to understand new wildfire claim]. (5 AA 1216.)
- EOB / Partial Declination – Respondent ties loss to wildfire and civil authority: "The act of Civil Authority that prohibited access to the insured location; and, the Wildfire damage to the off premises electrical utility equipment and the loss of electrical utility service... The lack of incoming electricity caused the pumps... and much of the abalone died." (1 AA 209.)
- Broker email – contemporaneous communication relaying wildfire context (if the Court reaches it in the record). (2 AA 367.)
- Jan.-Feb. 2022 – Pre-suit counsel email identifies the insured and references claim number PR9820004442, tethering the correspondence to the same wildfire claim file handled by Star/Sedgwick. (1 AA 237.)
- Sept. 28, 2022 – Counsel email (contemporaneous filing): "We have a disagreement as to the coverage in this matter. I have attached a copy of the complaint and other papers that have been filed." Star acknowledged and forwarded to coverage counsel. (1 AA 244.)

C. Bad Faith Themes Should *Not* Be Rewarded

Beyond Star's "no one ever told us this was a fire claim" narrative, several other aspects of its handling and litigation posture independently support reversal of the bad-faith summary adjudication (Modus Operandi. Star has a history [12] - ***50** See *Star Ins. Co. v. Sunwest Metals, Inc.* (C.D.Cal. May 18, 2015, No. 8:13-cv-01930) 2015 WL 3741305.):

- **All-risk sold, no-risk adjusted**. Star drafted and sold this agricultural package as a Special-form, all-risk policy for business personal property, stock, and farm products, but adjusted the claim as if the Policy were a narrow, named-peril form that could never respond if PG&E or governmental action appeared anywhere in the causal chain. *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 (Insurer breaches the covenant when it unreasonably withholds policy benefits; bad faith where denial is based on an overly narrow construction that deprives insured of contracted-for protection.); *Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.* (2000) 78 Cal.App.4th 847, 881–882 (Affirming bad-faith verdict where insurer took strained coverage positions and "parsing" readings of the policy that were inconsistent with reasonable expectations of coverage).
- **Declarations and SPBE ignored**. The Declarations and SPBE explicitly schedule abalone and treat the Farm's stock and Farm Products as part of the BPP framework under Coverages E, F, and G, yet Star's coverage position acts as if

E.1.j's farm-product carve-out erased those grants entirely. ignoring the Declarations/SPBE is the epitome of a one-sided investigation condemned by *Egan/Mariscal/Wilson* triad. [13]

- **Exclusions maximized, grants minimized**. Star gave maximum possible breadth to the Off-Premises Services and Governmental Action exclusions—treating them as universal "no coverage" levers—while simultaneously minimizing or ignoring the resulting-loss clause, the Governmental Action carve-back, and SPBE's extensions of coverage. As in *MacKinnon* and *Jordan*, courts have rejected the exact interpretive move Star makes here. [14]
- **PSPS and PG&E used as a pretext to avoid a fire claim**. Star recasts a wildfire claim as a "power failure" claim by focusing on PG&E's shutoff rather than the Fire and fire-response conditions that actually drove both the shut-off and the loss. It does so even though PG&E's de-energization was a deliberate, regulated Public Safety Power Shutoff ("PSPS") coordinated with Cal Fire and local governments—not an accidental "failure" of utility service. CPUC's PSPS decisions repeatedly emphasize that PSPS events are pre-planned public-safety measures requiring coordination with state and local public-safety partners, identification and protection of critical facilities, and mitigation of harms to vulnerable customers, not random breakdowns of power lines. They are regulated governmentally mandated public-safety measures, not "power failures." [15]
- **Duty to investigate all coverages breached**. Star told Appellant it would review the Policy and determine what coverage applied, and later claimed it had "looked hard" and could only find limited coverage. Yet the same Policy includes a separate Coverage G schedule insuring BUSINESS PERSONAL PROPERTY on a Special basis and a SPBE blanket Business Income/Extra Expense coverage—obvious candidates for evaluation that Star never meaningfully addressed. *Egan, supra*, 24 Cal.3d at 819–821; *Mariscal, supra*, 42 Cal.App.4th at 1624-1625; and *Jordan, supra*, 148 Cal.App.4th at 1072–1073.
- **Policy expertise used to deny, not to find coverage**. Star submitted a declaration below attesting that its representative was "*very familiar*" with this Policy form. That familiarity was not used to identify all potential coverage grants for a catastrophic CZU Fire loss; it was used to construct a denial that treats broad, paid-for coverages as if they did not exist. Using deep product knowledge to defeat rather than honor an insured's claim for a plainly real loss is the opposite of a good-faith search for coverage. *Egan, supra*, 24 Cal.3d at 819–821 (Insurer's superior position and expertise triggers a duty to give as much consideration to the insured's interests as to its own; using that expertise primarily to deny benefits is the essence of bad faith). *Love, supra*, 221 Cal.App.3d at 1151 (Implied covenant is breached when insurer uses its position to unreasonably deny benefits to which insured is entitled under the policy).
- **Post-hoc Coverage G attack**. Coverage G and its declarations were in the record and cited by Star, yet Star never treated Coverage G's BPP grant as a possible basis for recovery while adjusting the claim or moving for summary judgment. Only on appeal does Star argue Appellant should be barred from relying on G at all—flipping its duty to investigate into a complaint that the farmer did not do Star's coverage work for it. Exactly the type of post-hoc rationalization that *Shade* and *Wilson* view skeptically in the bad-faith context. [16]
- **Inconsistent treatment of same loss/Partial payment**. Star paid some benefits under DFO for net income loss tied to the CZU Fire and access prohibitions, while simultaneously denying property and stock coverage for the same event, without any principled explanation of why the same loss is covered income under one form but not covered property under the rest of the package, and the DFO payment itself was partial. *Wilson, supra*, 42 Cal.4th at 720–721 (Partially paying a claim based on a flawed investigation can support bad-faith liability; the fact benefits are eventually or partially paid does not cure earlier unreasonable withholding); *Love, supra*, 221 Cal.App.3d at 1151 (Bad faith exists where the insurer unreasonably withholds policy benefits; partial payment does not insulate the carrier if it arbitrarily denies the rest).

D. Now, Star blames Appellant for claiming coverage the Farm paid for

Respondent even tries to fault Appellant for pointing out that the "special" Covered Causes of Loss operate like an all-risk form, "giving Appellant a wider range of covered perils." (RB 50.) That criticism has it backwards. Star itself drafted and sold this agricultural package as a Special-form, all-risk policy for the Farm's abalone - business personal property, supplies, stock, and farm products; Mr. Xie testified he specifically asked his broker to "buy the insurance for coverage of my abalone." (1 AA 251:11–12, 257:17-18.) Star's claim representative later submitted a declaration stating she was "very familiar" with this Policy form, and then used that familiarity not to identify all of the coverages the Farm paid for, but to construct a denial that treats broad Special-form grants, SPBE expansions, and scheduled abalone as if they were marginal or nonexistent.

***55** Star and its claims administrator did not simply deny coverage and walk away; they expressly promised to complete their investigation and "review of the policy" and then advise the insured "why no other coverage is provided by the policy or if there are any additional coverages available." [17] Having made that promise, Star cannot now blame the insured for failing to identify Coverage G and other available coverage parts when Star's own investigation and policy expertise were supposed to be working for its policyholder, not against it.

The problem is not that Appellant is trying to expand coverage beyond what was sold, but that Star's claim handling effectively collapses the all-risk coverage structure into a near/no-risk policy. Having taken premium for an all-risk version of coverage, Star's post-loss effort to recast the Policy as if it were a bare-bones, loss-by-loss form is itself evidence of unreasonable, outcome-driven interpretation rather than a good-faith attempt to honor the coverage the Farm paid for.

*56 VI. EVIDENTIARY POSTURE DOES NOT SALVAGE SUMMARY JUDGMENT UNDER DE NOVO REVIEW

Even crediting Respondent's evidentiary posture, de novo review controls the coverage questions and the textual operation of DFO/Civil Authority, the Governmental Action carve-back, and Off-Premises Services (resulting-loss). On this record, coverage is established as a matter of law, or at minimum triable issues bar summary judgment.

RELIEF REQUESTED

Appellant respectfully requests that this Court:

1. Reverse the judgment entered in favor of Star Insurance Company on its motion for summary judgment.
2. Hold, as a matter of law, that the Policy affords coverage for Appellant's abalone-loss claim under Coverages E, F, and G and the DFO Civil Authority coverage (C.1) on the record presented—i.e., that the CZU Fire and the resulting governmental emergency measures (including access prohibitions) fall within the Policy's coverage grants and are not barred by the Governmental Action exclusion (as limited by its carve-back) or the Off-Premises Services exclusion (as limited by its ensuing-loss sentence)—and remand to the trial court for determination of the amount and period of loss under A.1's net-loss framework.
3. In the alternative, if the Court declines to make dispositive coverage holdings, hold that there are triable issues of material fact concerning: (a) the application of the Off-Premises Services exclusion (including "failure" and "away from the insured location"); (b) the effect of the resulting-loss clause; and (c) the Governmental Action carve-back, and remand for trial on those issues.
4. Reverse the summary adjudication of Appellant's bad-faith claim and remand for further proceedings on liability and damages, including punitive damages as appropriate.
5. Remand for further proceedings consistent with this Court's opinion, including consideration of the policy, claim-file materials, EOB, DFO payment records, deposition excerpts, and other record materials cited in the AOB and this Reply.
6. Award costs on appeal to Appellant and grant such other and further relief as the Court deems just and proper.

Dated: November 24, 2025

Respectfully submitted,

/s/ j. carpenter

John W. Carpenter SBN 202008

Attorney for Plaintiff and Appellant

American Abalone Farms, LLC.

Footnotes

1 Star claim administrator's declaration: a letter that explained coverages "**available for the losses caused by the CZU fire**" 1 AA 056:26-27; Star's counsel "**Are you the person most knowledgeable regarding damage [to the farm] due to the fire in August 2020**?" (1 AA 252:14-16), and "**you were allowed to return to the property after the fire -- after you got -- after the fire caused your property to be closed off**?"". Star's Adjuster (Sedgwick): "The loss **indirectly results from the CZU Lightning Complex Fires**." 1 AA These are not minor subliminal slips, one is a declaration, the others are seasoned insurance counsel and adjusters. Their language mirrors the main insuring clause which Star says provides no coverage at all. It is obvious the farm was damaged by the fire, Star representatives spent a full day at the farm investigating and photographing the damage and do not provide a single picture substantiating any of their coverage denials. Star has done this before, and Star, its representatives, and agents all know very well what this is about, and it's not about paying claims.

2 (Status of "orange-bucket" photo). The same "orange-bucket" photograph of smoke-infused ash-encrusted abalone appears in the summary-judgment record multiple times:

- First, in Plaintiff's January 26, 2024 opposition papers as Exhibit N to Exhibits J-U, where Star's objection was sustained as to that exhibit only. [Order on Round-One Evidentiary Objections (Defs' Evidentiary Objections, 3 AA 577–584.)
- Second, in Plaintiff's February 22, 2024 supplemental opposition as Exhibit AU, which the court's later evidentiary orders did not expressly exclude. (2 AA 529-573.)
- Third, in Plaintiff's April 16, 2024 filing submitting Exhibit 26 and Exhibits A-AJ, where the photo again appears and no sustained objection identifies it for exclusion. (4 AA 777-888; 5 AA 1076-1266.)
- Fourth, in the Third Declaration of Ocean Xie filed May 22, 2024, which expressly describes the same photograph of dead abalone near the orange bucket as accurately depicting the ash-encrusted abalone and the condition of the farm after the fire. (6 AA 1549–1551.)

Star's one sustained objection was thus limited to a single early exhibit label; the later versions were never expressly excluded and are part of the record on appeal.

3 "A. When there were power outage, the roads were not closed yet. They closed the road later.

Q. Okay. I think I understand." (1 AA 265.)

4 "Once they have completed their investigation and review of the policy, they will advise you ... if there are any additional coverages available." (1 AA 206.)

5 Please include the admissions under declaration ("losses **caused by the CZU fire**" 1 AA 056:26-27), and at deposition "**Are you the person most knowledgeable regarding damage [to the farm] due to the fire in August 2020**?" (1 AA 252:14-16.)

6 See *Mapletown Foods, Inc. v. Motorists Mut. Ins. Co.* (Ohio Ct.App. 1995) 104 Ohio App.3d 345, 662 N.E.2d 48 (power outage caused by downed wire away from insured's stores; off-premises power exclusion applied); *Lakes' Byron Store, Inc. v. Auto-Owners Ins. Co.* (S.D. 1999) 589 N.W.2d 608 (snow/ice storm knocked out poles and lines; resort without power for nine days; off-premises power exclusion applied); *Red Bird Egg Farms, Inc. v. Pennsylvania Mfrs. Indem.*

Co. (4th Cir. 2001) 15 Fed.Appx. 149 (egg farm's ventilation fans lost power when off-premises electricity failed; hens died; off-premises power exclusion applied).

7 Coordination with CAL FIRE and local fire/emergency departments is mandatory for PG&E as part of the regulatory guidelines established by the California Public Utilities Commission (CPUC).

8 California Public Utilities Code sections \(451\) and \(399.2(a)\), provide electric utilities authority to shut off power for public safety - overseen by the California Public Utilities Commission (CPUC).

9 Coordination with CAL FIRE and local fire/emergency departments is mandatory for PG&E as part of the regulatory guidelines established by the CPUC.

10 See, e.g., CPUC Decision (D.) 19-05-042 (May 30, 2019) (Phase 1 PSPS decision) [requiring electric IOUs to coordinate with local governments and first/emergency responders to identify critical facilities, to annually update critical-facility lists before fire season, and to engage in advance planning so those facilities can remain resilient during de-energization events]; CPUC D. 20-05-051 (May 28, 2020) [Phase 2 PSPS guidelines requiring collaboration with public-safety partners, local governments, and representatives of access-and-functional-needs communities to identify assistance and evacuation needs during PSPS events]; CPUC D.21-06-034 (June 3, 2021) [Phase 3 PSPS decision directing utilities to continually improve PSPS and mitigate PSPS impacts, particularly on vulnerable communities]; CPUC D.21-06-014 (June 24, 2021) [finding, inter alia, that PG&E failed in 2019 PSPS events to adequately identify and evaluate safety risks created by its shutoffs, and emphasizing the need to weigh wildfire-mitigation benefits against public-safety harms from de-energization].

11 See Pub. Util. Code, § 451 [requiring every public utility to furnish and maintain "adequate, efficient, just, and reasonable service" and facilities "as are necessary to promote the safety, health, comfort, and convenience" of patrons and the public]; id., § 399.2, subd. (a) [reaffirming each electrical corporation's duty to operate its distribution grid in a "safe, reliable, efficient, and cost-effective manner"]; see also CPUC D.12-04-024 (Apr. 19, 2012) [holding SDG&E has authority under §§ 451 and 399.2(a) to de-energize in emergency situations when necessary to protect public safety]; Resolution ESRB-8 (July 12, 2018) [extending de-energization guidance to all electric IOUs]; D.21-06-034, supra [confirming CPUC's review of the reasonableness of PSPS decisions under §§ 451 and 399.2(a)]; *Gantner v. PG&E Corp.* (2023) 14 Cal.5th 340, 350-352 [describing CPUC's PSPS decisions and findings that PG&E failed to adequately identify and weigh public-safety risks arising from its shutoffs].

12 This is not the first time Star has been criticized for its claims-handling after a fire. In *Star Ins. Co. v. Sunwest Metals, Inc.* (C.D.Cal. May 18, 2015, No. 8:13-cv-01930) 2015 WL 3741305, the district court found that Star waived its right to rescind a fire policy where it ignored multiple "red flags" about misrepresentations in the insured's application, and held Star liable for breach of contract. The Ninth Circuit affirmed, emphasizing that an insurer may not "blindly ignore evidence of misrepresentation, collect premiums, and then opportunistically rescind once a claim is filed," and that Star had "turned a blind eye for nearly two years" to information that "distinctly implied" misrepresentations. *Star Ins. Co. v. Sunwest Metals, Inc.* (9th Cir. 2017) 2017 WL 2198969, at 1-2 (mem. dispo.) (internal quotation marks and citation omitted).

13 *Egan v. Mutual of Omaha Ins. Co.* (1979) 24 Cal.3d 809, 819-821 (Insurer "must fully inquire into possible bases that might support the insured's claim" and cannot deny benefits without a thorough, fair investigation.); *Mariscal v. Old Republic Life Ins. Co.* (1996) 42 Cal.App.4th 1617, 1624–1625 (Insurer has a duty to diligently search for evidence that supports coverage and acts unreasonably if it "seeks to discover only the evidence that defeats the claim."); *Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 720-721 (A jury may find bad faith where an insurer ignores evidence supporting coverage and focuses only on evidence supporting denial; "genuine dispute" doesn't excuse a one-sided investigation).

14 *MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 648–649 (Exclusions must be interpreted narrowly and in favor of coverage; insurer cannot rely on hyper-literal readings that defeat reasonable coverage expectations.) *Jordan*

v. Allstate Ins. Co. (2007) 148 Cal.App.4th 1062, 1072-1073 (Reversing summary judgment where insurer focused on exclusions and ignored "additional coverage" provisions that also reasonably supported coverage; bad faith cannot rest on such a one-eyed reading.)

15 CPUC D. 12-04-024 (Apr. 19, 2012); CPUC D. 19-05-042 (May 30, 2019); CPUC D. 20-05-051 (May 28, 2020); CPUC D. 21-06-014 (June 24, 2021); CPUC D. 21-06-034 (June 3, 2021).)

16 *Shade Foods, supra*, 78 Cal.App.4th at 881-882 (Insurer's evolving, post-hoc coverage positions in litigation supported a finding of bad faith, even where it eventually paid some components of the loss.) *Wilson, supra*, 42 Cal.4th at 720-721 (Insurer cannot hide behind "genuine dispute" when its position is not grounded in a fair investigation and consistent, reasonable coverage analysis.)

17 See Sedgwick letter sent on Star's behalf, included in Star's own Compendium of Evidence in support of its motion for summary judgment, stating that "while they are continuing their investigation, there may be reasons why other coverage for this loss is excluded or restricted. Once they have completed their investigation and review of the policy, they will advise you why no other coverage is provided by the policy or if there are any additional coverages available." (1 AA 206.) Having itself placed this claim-handling correspondence in the summary-judgment record, Star cannot now ignore its promise to review the Policy and advise the insured "if there are any additional coverages available" when Appellant points out coverage parts Star never mentioned or evaluated. Star has a history of the same: Compare *Star Ins. Co. v. Sunwest Metals, Inc., supra*, 2017 WL 2198969, at 1-2 (insurer cannot ignore facts that "distinctly impl[y]" a different coverage picture and then use its own failure to investigate as a sword against its insured).

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