October 27, 2025 Truckee Civil Law & Motion Tentative Rulings

1. CL0002545 Discover Bank vs. Cody Netherby

Appearance required by Plaintiff to show cause, if any, as to why this action should not be dismissed and/or you sanctioned for failure to comply with local case management, delay reduction, or other court rules. See Code of Civil Procedure Sections 177.5, 575.2 and 1141.10 et seq.; Government Code Section 68608(b); California Rules of Court 2.30, 3.110, 3.740 and 3.810 et seq.; Local Rules 4.00-4.00.8, 4.00.10, 4.02, 4.02.1, 4.03. Specifically, Plaintiff has failed to timely serve the named defendant in this matter. Absent good cause being shown, the Court intends to dismiss this case in its entirety without prejudice.

2. CL0002884 Bank of America, N.A. vs. Larrisa Ann Cassella

No appearances required. On the Court's own motion and in light of the Declaration filed by counsel for Plaintiff, the Court continues the OSC re Dismissal to January 12, 2026 at 1:30 p.m. in Dept. A. Plaintiff shall file a proof of service, an application to serve by publication (if deemed appropriate), or a request for dismissal of defendant in advance of the continued order to show cause date.

3. CL0002960 Midland Credit Management Inc. vs. Arnold J Brandt

Appearance required by Plaintiff to show cause, if any, as to why this action should not be dismissed and/or you sanctioned for failure to comply with local case management, delay reduction, or other court rules. See Code of Civil Procedure Sections 177.5, 575.2 and 1141.10 et seq.; Government Code Section 68608(b); California Rules of Court 2.30, 3.110, 3.740 and 3.810 et seq.; Local Rules 4.00-4.00.8, 4.00.10, 4.02, 4.02.1, 4.03. Specifically, Plaintiff has failed to timely serve the named defendant in this matter. Absent good cause being shown, the Court intends to dismiss this case in its entirety without prejudice.

4. CL0002982 Portfolio Recovery Associates LLC vs. Casey Timms

Appearance required by Plaintiff to show cause, if any, as to why this action should not be dismissed and/or you sanctioned for failure to comply with local case management, delay reduction, or other court rules. See Code of Civil Procedure Sections 177.5, 575.2 and 1141.10 et seq.; Government Code Section 68608(b); California Rules of Court 2.30, 3.110, 3.740 and 3.810 et seq.; Local Rules 4.00-4.00.8, 4.00.10, 4.02, 4.02.1, 4.03. Specifically, Plaintiff has failed to timely serve the named defendant in this matter. Absent good cause being shown, the Court intends to dismiss this case in its entirety without prejudice.

5. CU0001352 William Vick vs. Rmax Operating, LLC et al

Tentative Ruling

Defendant Lincoln and Long Engineering's ("L & L") Motion for Good Faith Settlement is denied without prejudice.

Standards Governing Good Faith Settlement Determination

In an action alleging claims against multiple joint tortfeasors, a party may seek a good faith settlement determination under Code of Civil Procedure section 877.6(a) which, if granted, generally bars claims for contribution and indemnity by any other joint tortfeasor against the settling party. Code Civ. Proc. §§ 877.6(a)(1), (c). The motion for a good faith settlement determination "may include a request to dismiss a pleading or a portion of a pleading." Cal. Rules of Ct., Rule 3.1382. "The notice of motion or application for determination of good faith settlement must list each party and pleading or portion of pleading affected by the settlement and the date on which the affected pleading was filed." *Id.*

"Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligators in a contract debt shall be entitled to a hearing of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligators…" Code Civ. Proc. § 877.6(a)(1). Rulings on a motion for good faith settlement must be made "in view of the equitable goals of the statute, in conformity with the spirit of the law and in a manner that serves the interests of justice", and must serve the goals of "encouraging settlement among all interested parties" and "equitably allocating costs among multiple tortfeasors", as opposed to allowing a party to obtain "protection from its indemnification obligation at bargain-basement prices." *Long Beach Memorial Medical Center v. Sup. Ct.* (2009) 172 Cal. App. 4th 865, 873, 876.

A good faith determination is only denied if the settlement is "grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the settling defendant's liability to be." *Torres v. Union Pacific Railroad Company* (1984) 157 Cal.App.3d 499, 509. The following factors are considered in determining whether a settlement is within the ballpark of a reasonable settlement range: 1) a rough approximation of the plaintiffs' total recovery and the settling defendant's proportionate liability; 2) the amount paid in settlement; 3) recognition that the settling defendant should pay less in settlement than if it were found liable after trial; 4) the settlor's financial condition and insurance policy limits, if any; and 5) evidence of any collusion, fraud, or tortious conduct between the settlor and plaintiff aimed at making the nonsettling parties pay more than their fair share. *Tech-Bilt Inc. v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, 499. No one factor is outcome determinative. And not every factor will necessarily apply in every case. *Dole Food Co., Inc. v. Superior Court* (2015) 242 Cal.App.4th 894, 909.

That a settlement calls for the settling party to pay less than the party's theoretical proportionate share does not mean the settlement is made in bad faith; a good faith settlement does not require "'perfect or even nearly perfect apportionment of liability.' [Citation omitted.] All that is necessary is that there be a 'rough approximation' between a settling tortfeasor's offer of settlement and his proportionate liability. [Citation omitted.]" *North County Contractor's Assn., supra,* 27 Cal.App.4th at 1090-1091. In assessing the value of the settlement to the settling party and whether the settlement was reached in good faith, "a trial court must examine not only the settling tortfeasor's potential liability to the plaintiff, but also the settling tortfeasor's potential liability to all nonsettling tortfeasors. [Citations omitted.]" *PacifiCare of California v. Bright Medical Associates, Inc.* (2011) 198 Cal.App.4th 1451, 1465-1466; *TSI Seismic Tenant Space, Inc. v. Superior Court* (2007) 149 Cal.App.4th 159, 166.

The court is entitled to rely on its judicial experience in evaluating the good faith of the settlement amount. *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 968. The determination of whether the settlement is a good faith settlement is left to the discretion of the trial court *Id.* The requirement of good faith is to protect the interests of the non-settling defendants. *City of Grand Terrace v. Superior Court* (1987) 192 Cal.App.3d 1251, 1263.

<u>The Tech-Bilt Factors as Applied to the Present Case</u>

Here, while L & L has submitted declarations of its attorneys, it has not provided any evidentiary support that the proposed settlement is proportionate to L &L's share of the costs and damages, and there is no evidence to determine if the settlement amount is fair and reasonable, and provides no evidence whatsoever to satisfy any of the *Tech-Bilt* factors. The motion is based entirely on unsupported declarations, and no evidence such as deposition testimony, discovery responses, or expert testimony. The motion also fails to address the proportional share of liability of contractors involved in the construction who have recently been added to the action, or have not yet been made a party to the action. Until additional information is discovered and presented to this court, the motion is premature. Additionally, while the notice of motion and motion include a request to dismiss L & L, they fail to include a list of each party and pleading or portion of pleading affected by the settlement and the date on which the affected pleading was filed pursuant to California Rules of Court, Rule 3.1382.

Because L & L has failed to submit evidence in support of its motion, the court cannot determine if the settlement is based on a "rough approximation" considering plaintiff's total claimed damages and the defendants' potential shares of liability. Therefore, L & L's motion is denied without prejudice.

6. CU0001911 Celeste Dexter vs. West River Real Estate, Inc., a corporation

Defendant West River Real Estate, Inc.'s motion to strike is granted without leave to amend in part and with leave to amend in part. The following matters are stricken from the complaint with leave to amend: (1) The word "penalties" in the Second Cause of Action at Page 3, line 22 of the First Amended Complaint, (2) The word "penalties" in the Third Cause of Action at Page 4, line 3 of the First Amended Complaint. The following matters are stricken from the complaint without leave to amend: (3) The phrase "attorney's fees" in the Third Cause of Action at Page 4, line 4 of the First Amended Complaint, and (4) The phrase "attorney's fees" in the Seventh Cause of Action at Page 5, line 9 of the First Amended Complaint. The phrases "declaratory and" and "injunctive relief for the unlawful, unfair and fraudulent conduct" at Page 5, lines 6 and 7 of the First Amended Complaint are also stricken from the complaint without leave to amend.

<u>Analysis</u>

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof[.]" Code Civ. Proc., § 435 (b)(1). "[A] motion to strike is generally used to reach defects in a pleading which are not subject to demurrer." *Pierson v. Sharp Memorial Hospital, Inc.* (1989) 216 Cal.App.3d 340, 342.) A motion to strike may be directed to all or a portion of a complaint, cross-complaint, answer, or demurrer. Code Civ Proc., § 435(a). The grounds for a motion to strike must appear on the face of the pleading or from matters which the court may take judicial notice. *Id*. On a motion to strike, the court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. *Atwell Island Water Dist. v. Atwell Island Water Dist.* (2020) 45 Cal.App.5th 624, 628, *as modified* (Feb. 27, 2020). The court may "strike out any irrelevant, false, or improper matter inserted in any pleading" or "strike all or part of any pleading not filed in conformity with applicable law, court rules, or an order of the court." Code Civ. Proc., § 436(a), (b). When the defect which justifies striking a complaint is capable of cure, the court should allow leave to amend. *Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.

Seventh Cause of Action: Requests for Declaratory and Injunctive Relief

Plaintiff does not oppose striking the requests for declaratory and injunctive relief from the Seventh Cause of Action. Therefore, The phrases "declaratory and" and "injunctive relief for the unlawful, unfair and fraudulent conduct" at Page 5, lines 6 and 7 of the First Amended Complaint are stricken from the complaint with no leave to amend.

Second and Third Causes of Action: Claims for Penalties

Defendant seeks to strike the claims for "penalties" because the statute of limitations for a claim for penalties is one year. Code Civ. Proc. § 340(a). The court agrees. Plaintiff alleges her employment ended on or about October 3, 2023, and she filed her claim on February 11, 2025. Therefore, her claims for statutory penalties are barred by the one-year statute of limitations. Additionally, Labor Code § 226.7(c) only provides for payment of an additional hour of pay for each workday the meal or rest or recovery period is not provided by an employer, which is not a penalty. Lab. Code. § 226.7(c); *Naranjo v. Spectrum Sec. Servs., Inc.* (2019) 40 Cal.App.5th 444. Therefore, plaintiff's claim for "penalties" in the second and third causes of action must be stricken.

Plaintiff asserts her use of the term "penalties" includes waiting time penalties under Labor Code § 203, which are subject to a three-year statute of limitations. Therefore, leave to amend is granted so that plaintiff may attempt to cure the defect.

Third Cause of Action: Claim for Attorney's Fees

Defendant argues plaintiff's claim for attorney's fees must be stricken because attorney's fees are not available for a cause of action for "failure to provide meal and rest breaks". The court agrees. Claims for attorney's fees are not allowed for actions for missed meal and rest breaks. *Naranjo v. Spectrum Sec. Servs., Inc.* (2019) 40 Cal.App.5th 444, 474. Because attorney's fees are not available for a cause of action for failure to provide meal and rest breaks, or for waiting time violations, there is no possibility plaintiff will be able to cure the defect with amendment. Therefore, the phrase "attorney's fees" is stricken with no leave to amend.

Seventh Cause of Action: Claim for Attorney's Fees

Defendant argues attorney’s fees are not available for a cause of cation for “violations of the UCL (Bus. & Prof. Code, § 17200, et. Seq.)”. The court again agrees. Plaintiff asserts a plaintiff may recover attorney’s fees under Code of Civil Procedure § 1021.5 if the action results in the enforcement of an important right affecting the public interest.” However, such may only occur if a significant benefit “has been conferred on the general public or a large class of persons.” Code Civ. Proc. § 1021.5(a). Plaintiff’s FAC does not allege any of the elements necessary for a recovery of attorney’s fees under such statute. Because plaintiff has provided no indication she can cure the defect with amendment, the phrase “attorney’s fees” is stricken with no leave to amend.

7. CU0002016 Maria Bersabe Magana Sanchez vs. Thomas Alvey

No appearances required. On the Court’s own motion and in light of the Declaration filed by counsel for Plaintiff, the Court continues the OSC re Dismissal to December 8, 2025 at 1:30 p.m. in Dept. A. Plaintiff shall file a proof of service, an application to serve by publication (if deemed appropriate), or a request for dismissal of defendant in advance of the continued order to show cause date.

8. CU0002205 Agno, Randy Ryan et al v. Dykes, Michelle

No appearances required. The OSC re Dismissal is VACATED on the Court’s own motion as being moot.

9. CU0002216 Peter Zellner et al vs. Amanda Jean Neadeau

No appearances required. The OSC re Dismissal is VACATED on the Court’s own motion as being moot.

10. CU0001113 CHRISTOPHER M HUBER vs. CALIFORNIA FAIR PLAN ASSOCIATION

Defendant California Fair Plan Association’s motion for summary judgment is granted.

<u>Objections to Evidence</u>

The court rules on plaintiff’s evidentiary objections as follows:

Plaintiff’s Objections to the Flournoy Declaration are sustained as to 11 (“diligent” is impermissible opinion; and 18 (relevance). The remaining objections are overruled.

The court rules on defendant’s evidentiary objections as follows:

1. Objections to the Declaration of Neil Dorfman in its entirety: SUSTAINED (improper expert opinion pursuant to *California Shoppers, Inc. v. Royal Globe Ins. Co.* (1985) 175 Cal.App.3d 1, 66-67; hearsay, foundation, improper legal conclusion)
2. Specific objections to the Declaration of Neil Dorfman: 1 – 11 SUSTAINED (inadmissible opinion evidence, calls for legal conclusion).

3. Objections to Plaintiff's Additional Material Facts: 1-2, 4-13 SUSTAINED (speculation, calls for legal conclusion, foundation, inadmissible opinion, hearsay, foundation). The remaining objection is overruled.
4. Objections to Plaintiff's Declaration: 2, 4, 6-9, 11-16 SUSTAINED (hearsay, foundation, calls for legal conclusion, inadmissible opinion). The remaining objections are overruled.
5. Objections to Exhibit Evidence Submitted by Plaintiff: OVERRULED

<u>Requests for Judicial Notice</u>

Defendant's Requests for Judicial Notice filed on July 24, 2025 date are granted in their entirety. However, the court only takes judicial notice of the foregoing documents only as to "the existence, content and authenticity of public records and other specified documents"; it does not take judicial notice of the truth of the factual matters asserted in those documents. *Dominguez v. Bonta* (2022) 87 Cal. App. 5th 389, 400.

Plaintiff's Requests for Judicial Notice filed on September 25, 2025 date are granted. However, the court only takes judicial notice of the foregoing documents only as to "the existence, content and authenticity of public records and other specified documents"; it does not take judicial notice of the truth of the factual matters asserted in those documents. *Dominguez v. Bonta* (2022) 87 Cal. App. 5th 389, 400.

<u>Reply Separate Statement</u>

The court notes defendant filed a reply separate statement which is not allowed and will be disregarded. Cal. Rules of Court, Rule 3.1113; *Nazir v. United Airlines* (2009) 178 Cal.App.4th 243, 252.

<u>Background</u>

On December 4, 2023, Plaintiff ("Plaintiff" or "Huber") filed a Complaint in Case No. CU0001113 against Defendant California Fair Plan Association ("Defendant" or "CFPA"), with causes of action for: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; and (3) Declaratory Judgment. According to the complaint, plaintiff contends he was issued a homeowner's insurance premium from Defendant on May 19, 2022 for insurance on the property located at 10305 Harvest Way, Grass Valley, CA ("Subject Property"). On December 12, 2022, Plaintiff made a claim for damages due to the structure after a tree fell on it. Plaintiff alleges CFPA breached the contract and acted in bad faith by denying the claim in part, or otherwise delaying payments and satisfaction of the claim.

On June 13, 2024, Plaintiff filed a complaint in Case No. CU0001441 against Defendant with causes of action for: (1) Breach of Contract; (2) Breach of Implied Covenant of Good Faith and Fair Dealing; and (3) Declaratory Judgment. According to the complaint, plaintiff contends he was issued a homeowner's insurance premium from CFPA on May 19, 2023 for insurance on the Subject Property, and he made a claim under the policy for vandalism on June 20, 2023 after discovering vandalism caused by a prior tenant. Plaintiff alleges CFPA breached the insurance contract, acted in bad faith in denying the claim, and as a result Plaintiff has suffered loss of use of the insured premises, the payments denied under the policy, and other damages.

Case No. CU0001113 was consolidated with Case No. CU0001441 on April 14, 2025. On October 15, 2025, the case was reassigned to Department A of the Truckee Session of the Nevada County Superior Court due to the recusal of the Honorable Robert Tice-Raskin.

Now, Defendant CFPA moves for summary judgment or, in the alternative, summary adjudication of both cases.

Standard of Review

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing motions for summary judgment, courts must apply a three-step analysis: (1) identify the issues framed by the pleadings to be addressed; (2) determine whether the moving party showed facts justifying a judgment in movant's favor; and (3) determine whether the opposing party demonstrated the existence of a triable, material issue of fact. *Hinesley v. Oakshade Town Center* (2005) 135 Cal. App. 4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences made accordingly, no triable issues of fact exist, and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741.

A triable issue of material fact exists where "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, supra*, 25 Cal.4th at 850.

As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Courts "liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." *Dore v. Arnold Worldwide, Inc*. (2006) 39 Cal.4th 384, 389. A motion for summary judgment or summary adjudication must be denied where the moving party's evidence does not prove all material facts, even in the absence of any opposition or where the opposition is weak. *See Leyva v. Superior Court* (1985) 164 Cal.App.3d 462, 475; *Salasguevara v. Wyeth Labs., Inc*. (1990) 222 Cal.App.3d 379, 384, 387.

Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an essential element or defense, a court must grant a motion for summary judgment or summary adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

Analysis

1. First Cause of Action – Breach of Contract

Defendant contends that summary judgment is proper because there are no disputed facts that defendant breached any provision in the policies at issue. Plaintiff argues there is a triable fact because failure to perform a contract is a breach, and CFPA breached the insurance policy by failing to properly investigate two claims, created extraordinary delays in payments, and concealed the fact that a subsequent inspection found missed damages covered under the policy. Defendant replies that plaintiff cannot defeat a motion for summary judgment by producing evidence to support claims outside the issues framed by the pleadings, and therefore, plaintiff's claim that CFPA breached the policy by issuing a loss payment for less than the contractor's estimates fails because there is no policy language to support such. Defendant also argues plaintiff fails to provide any evidence CFPA delayed acknowledgment or investigation of the vandalism claim, which was timely and appropriately denied.

To state a claim for breach of contract, a plaintiff must allege sufficient facts to establish (1) a contract between the parties, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) damages to the plaintiff from the breach. *Wall Street Network, Ltd. v. New York Times Co.* (2008) 164 Cal.App.4th 1171, 1178. "As damages are an element of a breach of contract cause of action [citation], a plaintiff cannot obtain judgment on a breach of contract cause of action in an amount of damages to be determined later." *Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 241 (*Paramount Petroleum*).

Defendant presents the following undisputed material facts based on testimony and documentary evidence: (1) plaintiff secured an insurance policy from defendant on the Subject Property on May 18, 2022, which was effective from May 19, 2022 through May 19, 2023. Defendant's SSUMF # 2. Plaintiff renewed the policy for the Subject Property on March 17, 2023, which was effective from May 19, 2023 through May 19, 2024. Defendant's SSUMF # 3. (2) On December 12, 1011, Plaintiff tendered a claim for wind damage causing a tree to fall on the Subject Property. Defendant's SSUMF #6. On December 12, 2022, defendant mailed plaintiff a written acknowledgment of the wind damage claim. Defendant's Exhibit #5. Defendant issued a number of checks to plaintiff for the wind damage claim. Defendant's SSUMF ##17-19. Defendant also issued a check for fair rental value of the Subject Property. Defendant's SSUMF ## 22-23. On July 20, 2023, a property loss notice reported a claim for the Subject Property. Defendant's Exhibit #31. On July 21, 2023, defendant sent plaintiff an acknowledgment of the loss and assigned the same claim number, and on August 1, 2023, defendant's agent inspected the Subject Property. Defendant's SSUMF ## 32-33. On August 16, 2023, defendant mailed plaintiff a letter denying the claim. Defendant's SSUMF # 35. On January 31, 2024, defendant's agent issued a report recommending additional scope of repair and loss to plaintiff for the wind damage claim. Defendant's SSUMF # 42.

The element at issue here is whether a breach of the terms of the agreement occurred, or, alternatively, whether the alleged failure to sufficiently investigate plaintiff's claims constitutes a breach. The Dwelling Insurance Policy from CFPA, policy number CFP 2800809 includes the following clauses:

> 5. **Your Duties After Loss**. In case of a loss to covered property, you must see that the following are done:

a. give prompt notice to us;
b. protect the property from further damage;
c. make reasonable and necessary repairs to protect the property;
d. keep an accurate record of repair expenses;
e. if you make repairs to protect the property, set aside the damaged part(s) for our inspection and, if possible, photograph the damage; and f. prepare an inventory of damaged personal property to the best of your ability….

Def.'s Compendium of Evidence ("COE"), Ex. 2, p. 10 ¶ 5.

6. **Loss Settlement**. Subject to Condition 2 (Insurable Interest and Limit of Liability), we will pay the following amounts for covered property losses:
a. Coverages A and B Losses:….

ii. Partial Loss: in case of Partial Loss to the property, we will pay the actual cash value of the Partial Loss as measured by the amount it would cost you to Repair, rebuild, or Replace the thing lost or damaged less a fair and reasonable deduction for physical Depreciation based upon its condition at the time of the loss, or the policy limit, whichever is less. A deduction for physical Depreciation shall apply only to components of a structure that are normally subject to Repair and Replacement during the useful life of that structure…

(5) We will pay no more than the amount payable for the loss under Condition 6, above, unless: a) actual reconstruction or replacement is complete at the Described Location shown in the Declarations….

Def.'s COE, Ex. 2, pp. 11-13.

14. **Loss Payment**. We will adjust all losses with you or your properly authorized representative. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Your loss will be payable 30 days after we receive proof of loss and:
a. reach an agreement with you;
b. there is an entry of final judgment; or
d. there is a filing of an appraisal award with us.

Def.'s COE, Ex. 2, p. 15 ¶ 14.

27. **Loss Deductible Clause**. The amount of deductible shown in the Declarations of this policy shall be deducted from the amount of loss to all property covered hereunder in any one occurrence resulting from the perils insured against.

Def.'s COE, Ex. 2, p. 18 ¶ 27.

Pertinent Policy Endorsements/Exclusions.

10. **Vandalism or Malicious Mischief**, meaning willful and malicious damage to, or destruction of, the described property.
This peril does not include loss;
a. to glass or safety glazing material constituting a part of the building other than glass building blocks;

> b. by pilferage, theft, burglary or larceny, but will be liable for damage to the covered buildings caused by burglars;
> c. by modification or alteration to rental property made without the owner's permission; or
> d. to property on the Described Location if the dwelling has been vacant or unoccupied for more than 30 consecutive days immediately before the loss. A dwelling being constructed is considered "vacant" if it lacks the furniture and the furnishings minimally necessary for human habitation. A dwelling is considered "unoccupied" of there is no person residing lawfully in it.

Def.'s COE, Ex. 2, pp. 7-8 ¶ 10.

"When interpreting a policy provision, we give its words their ordinary and popular sense except where they are used by the parties in a technical or other special sense." *Haynes v. Farmers Ins. Exchange* (2004) 32 Cal.4th 1198, 1204. As to the wind damage claim, Plaintiff alleges that he "has demanded of defendants payment for repair of damages, for loss of use, and other damages, but CFPA has failed and refused, and continues to fail and refuse to pay plaintiff all required sums due under said policy, *as supported by the bids of licensed contractors*." Case No. CU0001113 Complaint, ¶ 22 (emphasis added). Plaintiff continues by alleging CFPA's "withholding of insurance payments was unreasonable and without proper cause in breach of the insuring agreements." *Id.*, ¶ 24. However, while the contract states the insured should submit a signed proof of loss which sets forth "specifications of any damaged building and detailed estimates for repair of the damage," it also specifies CFPA will "pay the actual cash value of the Partial Loss…." Def.'s COE, Ex. 2, p. 11.

Plaintiff does not dispute that defendant issued a number of checks to plaintiff for the wind damage claim after inspecting the property and issuing several reports. Defendant's SSUMF ## 17-19, 11, 14. Plaintiff also does not dispute defendant issued a check for fair rental value of the Subject Property. Defendant's SSUMF ## 22-23. Finally, plaintiff does not dispute the adjustor, Crawford & Company issued a fourth report recommending additional scope of repair and loss payments to plaintiff on January 31, 2024. Defendant's SSUMF # 42. Pursuant to Insurance Code § 2051.5(a)(2), if the policy requires the insured to repair "the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property…. Once the property is repaired…insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property." There is no provision in the insurance policy requiring defendant to issue a loss payment for the full value of plaintiff's repair estimate based on bids of licensed contractors.

As to the vandalism claim, plaintiff alleges, "CFPA was obligated by contract and statute to properly conclude the following: complete an adequate investigation, adjust the loss; determine cost of repair, issue checks to its insured, and avoid unnecessary delay in payments to be made under the policy. Complaint No. CU001441, ¶ 16. Plaintiff does not dispute that on August 1, 2023, the adjustor inspected the Subject Property alongside plaintiff to investigate the vandalism claim. Defendant's SSUMF # 33. Plaintiff also does not dispute that on August 16, 2023, less than thirty (30) days from receipt of the first notice of loss, defendant mailed plaintiff a letter denying the claim. Defendant's SSUMF #35. Therefore, while plaintiff disputes the denial of the claim, he does not dispute that an investigation was conducted and the result communicated to him within

30 days. Additionally, it is undisputed that the adjustor hired an inspector who investigated the vandalism claim, and issued a report concluding the damage throughout the home "appeared to be the result of the tenet's hard lifestyle" and not vandalism. Plaintiff's Additional MF #15; Harper Decl., Ex. I. While plaintiff appears to contest the outcome of the investigation, he fails to allege a policy term that was breached by defendant.

Therefore, CFPA has met its burden to show there are no disputed facts that defendant breached any provision in the policies at issue, and plaintiff has not met his burden to establish a triable fact. Accordingly, the court GRANTS defendant's motion for summary judgment as to the First Causes of Action in both cases.

2. <u>Second Cause of Action: Breach of the Implied Covenant of Good Faith and Fair Dealing</u>

Defendant contends summary judgment is proper because there is no requisite breach of contract, and that CFPA's claim adjudication in Case No. CU0001113 was properly handled, and CFPA's denial of the vandalism claim in Case No. CU0001441 was not unreasonable or without proper cause.

"'The [implied] covenant of good faith and fair dealing [is] implied by law in every contract.' [Citation.] The covenant is read into contracts and functions 'as a *supplement* to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract.' [Citation.] The covenant also requires each party to do everything the contract presupposes the party will do to accomplish the agreement's purposes. [Citation.] A breach of the implied covenant of good faith is a breach of the contract [citation], and 'breach of a specific provision of the contract is not…necessary' to a claim for breach of the implied covenant of good faith and fair dealing [citation]." *Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244 (emphasis in original). Plaintiff's allegations must show "that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet this criteria will depend on the contractual purposes and reasonably justified expectations of the parties." *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1395.

"To establish bad faith, a policy holder must demonstrate misconduct by the insurer more egregious than an incorrect denial of policy benefits." *Case v. State Farm Mutual Automobile Ins. Co., Inc.* (2018) 30 Cal.App.5th 397, 402. Under this standard, "an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's coverage claim is not liable in bad faith[,] even though it might be liable for breach of contract." *Id.* (quoting *Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co.* (2001) 90 Cal.App.4th 335, 347). If there exists a genuine issue as to whether the insurer has liability under the policy for the claim presented by the insurer, there cannot be an imposition of bad faith liability on the insurer for denying a claim. *Id.*

As discussed above, while plaintiff has established a dispute as to how the claims were decided, he has failed to present any evidence that defendant denied his claim in bad faith. Accordingly, the court GRANTS defendant's motion for summary judgment as to the Second Causes of Action in both cases.

3. Third Cause of Action: Declaratory Relief

Defendant contends summary judgment is proper because plaintiff has failed to demonstrate breaches of contract and breaches of the implied covenant of good faith and fair dealing. The court agrees. In light of the above rulings, the court GRANTS defendant's motion for summary judgment as to the Third Causes of Action.

The Court finds a triable issue of material fact as to whether Plaintiff knew or should have known of the breach prior to December 12, 2021. See SSUMF #XX.

Conclusion

For the foregoing reasons, the court decides the motion as follows: The court GRANTS Defendant CFPA's motion for summary judgment.