

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 STATE FARM FIRE & CASUALTY)
4 COMPANY,)
5 Plaintiff,)
6 vs.)
7 HARRIS LAW FIRM, LLP,)
8 Defendant.)
9 _____)

Case No.: 2:22-cv-01015-GMN-DJA

**ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT**

10 Pending before the Court is the Motion for Summary Judgment, (ECF No. 20), filed by
11 Plaintiff State Farm Fire & Casualty Company. Defendant Harris Law Firm, LLP filed a
12 Response, (ECF No. 23), to which Defendant filed a Reply, (ECF No. 24).

13 For the reasons discussed below, the Court **GRANTS** Plaintiff’s Motion for Summary
14 Judgment.

15 **I. BACKGROUND**

16 This is a declaratory judgment action in which Plaintiff seeks clarification of its duties to
17 defend and indemnify Defendant pursuant to an insurance policy it issued for potential
18 liabilities stemming from a suit brought against Defendant in state court by 702PC, LLC. (*See*
19 *generally* First. Am. Compl.). The specific facts underlying the state court and instant dispute
20 are outlined below.

21 In June 2017, attorney Richard Harris executed a lease agreement for a North Las Vegas
22 aircraft hangar in anticipation of forming a limited-liability company for purchasing an
23 airplane. (Richard Harris Dep. 10:2–23, Ex. F to Mot. Summ. J., ECF No. 20-6). The hangar
24 was to house Richard Harris’ aircraft, which was for the use of Defendant and its principals,
25 Richard Harris, Joshua Harris, and Ben Cloward. (*Id.* 9:9–22); (702PC Corporate Data Sheet at

1 2–3, Ex. E to Mot. Summ. J., ECF No. 20-5). Richard Harris, Joshua Harris, and Ben Cloward
2 later formed 702PC LLC and purchased the Pilatus Aircraft (“Aircraft”) underlying this
3 lawsuit. (Richard Harris Dep. 18:18–19:4, Ex. F to Mot. Summ. J.); (Aircraft Registration
4 Application, Ex. 9 to Resp., ECF No. 23-9).

5 Defendant and 702PC LLC entered into an agreement by which 702PC LLC agreed to
6 provide air transportation services for Defendant’s employees. (Air Transportation Services
7 Agreement, Ex. 11 to Resp., ECF No. 23-11). Defendant made monthly lease payments for the
8 hangar from June 2017 to April 2018. (Richard Harris Dep. 23:18–24:7, Ex. F to Mot. Summ.
9 J.); (Harris Law Firm Payment Ledger, Ex. G to Mot. Summ. J., ECF No. 20-7). After this
10 date, 702PC LLC made monthly lease payments for the hangar. (702PC LLC Rent Payment
11 Ledger, Ex. I to Mot. Summ. J., ECF No. 20-9).

12 Although 702PC LLC paid for the hangar, Defendant, 702PC LLC, and Richard Harris
13 each used the space; specifically, Defendant stored files and Richard Harris kept his own
14 personal vehicles in the hangar. (Richard Harris Dep. 26:12–21, 22:14–25, 33:12–17, Ex. F to
15 Mot. Summ. J.). Richard Harris explained that 702PC LLC’s use of the hangar was limited to
16 Aircraft related activities, while Defendant’s use was limited to file storage. (*Id.* 43:4–7, 52:7–
17 14, 53:1–6). No physical barriers within the hangar restricted a party’s access to certain areas
18 of the hangar or property stored therein, and each party had the ability to access the hangar as
19 needed for the items they stored in the space. (*Id.* 17:23–18:11, 43:4–7, 45:11–18, 52:15–22).
20 According to Richard Harris, although there was no written rule regarding Defendant and its
21 employees’ interactions with the Aircraft, there was an understanding that Defendant and its
22 employees would have nothing to do with the plane. (*Id.* 39:2–7, 40:2–8, 41:5–8)

23 In November 2018, Defendant’s employees Chase Rasmussen and Jesus Mendoza were
24 directed to remove Defendant’s stored files and Richard Harris’s personal vehicles from the
25 hangar. (*Id.* 42:1–23, 44:1–45:10, 50:24–51:5). They were not authorized to remove or

1 otherwise touch the Aircraft. (*Id.* 44:1–45:10). Despite lacking authorization, Rasmussen and
2 Mendoza used a powered wheel-dolly to move the Aircraft. (*Id.* 55:3–11). Rasmussen and
3 Mendoza ultimately left the Aircraft under the hangar door and briefly exited the hangar. (*Id.*
4 48:21–49:17). After they left, “through an as-yet unknown set of circumstances,” the hangar
5 door closed on the Aircraft, seriously damaging the plane. (Resp. 2:6–9, ECF No. 23). 702PC
6 LLC, through its primary insurer, had the Aircraft repaired. (Aircraft Invoice Summary, Ex. 3
7 to Resp., ECF No. 23-3). 702PC LLC sent Plaintiff, as Defendant’s insurer, two demands
8 seeking reimbursement for damages incurred. (Demand, Ex. 4 to Resp., ECF No. 23-4); (Suppl.
9 Demand, Ex. 5 to Resp., ECF No. 23-5). Plaintiff rejected these demands, asserting the terms
10 of the policy exclude coverage for the events leading to the Aircraft’s damages. (Resp. 2:14–
11 16).

12 702PC LLC then filed suit against Defendant in state court, leading Plaintiff to file the
13 instant declaratory judgment action in this Court to determine whether it is liable to Defendant
14 under the policy. (*See generally* FAC). Plaintiff subsequently filed the instant Motion for
15 Summary Judgment, (ECF No. 20).

16 **II. LEGAL STANDARD**

17 The Federal Rules of Civil Procedure provide for summary adjudication when the
18 pleadings, depositions, answers to interrogatories, and admissions on file, together with the
19 affidavits, if any, show that “there is no genuine dispute as to any material fact and the movant
20 is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Material facts are those that
21 may affect the outcome of the case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
22 (1986). A dispute as to a material fact is genuine if there is a sufficient evidentiary basis on
23 which a reasonable fact-finder could rely to find for the nonmoving party. *See id.* “The amount
24 of evidence necessary to raise a genuine issue of material fact is enough ‘to require a jury or
25 judge to resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*,

1 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat'l Bank v. Cities Serv. Co.*, 391 U.S. 253,
2 288–89 (1968)). “Summary judgment is inappropriate if reasonable jurors, drawing all
3 inferences in favor of the nonmoving party, could return a verdict in the nonmoving party’s
4 favor.” *Diaz v. Eagle Produce Ltd. P’ship*, 521 F.3d 1201, 1207 (9th Cir. 2008). A principal
5 purpose of summary judgment is “to isolate and dispose of factually unsupported claims.”
6 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986).

7 In determining summary judgment, a court applies a burden-shifting analysis. “When
8 the party moving for summary judgment would bear the burden of proof at trial, it must come
9 forward with evidence which would entitle it to a directed verdict if the evidence went
10 uncontroverted at trial. In such a case, the moving party has the initial burden of establishing
11 the absence of a genuine issue of fact on each issue material to its case.” *C.A.R. Transp.*
12 *Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480 (9th Cir. 2000) (internal quotation
13 marks and citations omitted). In contrast, when the nonmoving party bears the burden of
14 proving the claim or defense, the moving party can meet its burden in two ways: (1) by
15 presenting evidence to negate an essential element of the nonmoving party’s case; or (2) by
16 demonstrating that the nonmoving party failed to make a showing sufficient to establish an
17 element essential to that party’s case on which that party will bear the burden of proof at trial.
18 *See Celotex Corp.*, 477 U.S. at 323–24. If the moving party fails to meet its initial burden,
19 summary judgment must be denied and the court need not consider the nonmoving party’s
20 evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

21 If the moving party satisfies its initial burden, the burden then shifts to the opposing
22 party to establish that a genuine issue of material fact exists. *See Matsushita Elec. Indus. Co. v.*
23 *Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). To establish the existence of a factual dispute,
24 the opposing party need not establish a material issue of fact conclusively in its favor. It is
25 sufficient that “the claimed factual dispute be shown to require a jury or judge to resolve the

1 parties' differing versions of the truth at trial." *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors*
2 *Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987). However, the nonmoving party "may not rely on
3 denials in the pleadings but must produce specific evidence, through affidavits or admissible
4 discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,
5 1409 (9th Cir. 1991), and "must do more than simply show that there is some metaphysical
6 doubt as to the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002)
7 (quotation marks and citation omitted). "The mere existence of a scintilla of evidence in
8 support of the plaintiff's position will be insufficient." *Anderson*, 477 U.S. at 252. In other
9 words, the nonmoving party cannot avoid summary judgment by relying solely on conclusory
10 allegations that are unsupported by factual data. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th
11 Cir. 1989). Instead, the opposition must go beyond the assertions and allegations of the
12 pleadings and set forth specific facts by producing competent evidence that shows a genuine
13 issue for trial. *See Celotex Corp.*, 477 U.S. at 324.

14 At summary judgment, a court's function is not to weigh the evidence and determine the
15 truth but to determine whether there is a genuine issue for trial. *See Anderson*, 477 U.S. at 249.
16 The evidence of the nonmovant is "to be believed, and all justifiable inferences are to be drawn
17 in his favor." *Id.* at 255. But if the evidence of the nonmoving party is "merely colorable or is
18 not significantly probative, summary judgment may be granted." *See id.* at 249–50 (internal
19 citations omitted).

20 **II DISCUSSION**

21 Plaintiff's Motion for Summary Judgment boils down to the applicability of two
22 provisions in the policy that exclude liability coverage. (*See generally* Mot. Summ. J.). Of
23 these two, the Court finds that coverage is excluded under the policy's care, custody, and

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1 control provision.¹

2 Exclusion 12 under the policy provides that Plaintiff is not obligated to cover “property
3 damage” to “personal property in the care, custody, or control of any insured[.]” (Policy at 29,
4 Ex. B to Mot. Summ. J., ECF No. 20-2). In the context of insurance, “custody” means to have
5 things “in charge—safekeeping. It implies temporary physical control merely, and does not
6 connote domination, or supremacy or authority, as does possession in its full significance.”
7 *Bowles v. Consolidated American Ins. Co.*, 11 Va. Cir. 146, 147 (1988) (quoting *Aetna Ins. Co.*
8 *v. Kaplan*, 141 S.E.2d 725 (Va. 1965)). The term “care” includes the concepts of “charge,
9 supervision, management, responsibility for or attention to safety and well-being, and
10 temporary keeping for the benefit of the owner.” *Neff Towing Service, Inc. v. United States Fire*
11 *Ins. Co.*, 652 N.W.2d 604, 610 (Neb. 2002). And the term “control” may include “the exercise
12 of regulation, influence, domination, or command with respect to property.” *Id.* at 610.

13 “The great majority of the cases,” including a recent decision by this court, “support the
14 view that property in the care, custody, or control of the insured refers to possessory handling
15 of the property as distinguished from proprietary control.” 9 Lee R. Russ & Thomas F. Segalla,
16 *Couch on Insurance* § 126:22 (3d ed. 2007) (collecting cases); *see Global Sterilization and*
17 *Fumigation, Inc. v. Admiral Ins. Co.*, No. 3:20-cv-00444, 2022 WL 2069249, at *3 (D. Nev.
18 May 4, 2022) (finding that care, custody, or control examines whether a party “exercised a
19 possessory right over the property that constitutes exclusive, care, custody, or control”). This
20 exclusion “is aimed at eliminating coverage where the insured is closely related to some type of
21 work-related situation and is exercising some sort of control over the property subsequently
22 damaged and to remove the inducement for the insured to submit exaggerated or false claims
23 and avoid the guarantee of workmanship.” 46 C.J.S. *Insurance* § 1379 (Aug. 2023 Update).

24
25 ¹ Plaintiff also contends it owes no liability coverage under the aircraft, auto, or watercraft exclusion. (Mot. Summ. J. 21:5–23). Because the Court finds coverage is excluded under the care, custody, or control exclusion, it declines to examine the applicability of the remaining provision.

1 According to Plaintiff, while Defendant did not legally own the Aircraft, its employees
2 exercised exclusive possessory control over the Aircraft when the incident occurred, such that
3 the Aircraft was in its care, custody, or control. (Mot. Summ. J. 10:1–20:23). In response,
4 Defendant contends that its employees could not exercise care, custody, or control over the
5 Aircraft because they were not authorized to possess or move the plane for any purpose. (Resp.
6 14:8–17:17). Defendant further contends that the exclusion is inapplicable because any control
7 exercised by its employees was not exclusive, as Rasmussen and Mendoza were not present
8 when the incident occurred and had thereby relinquished any possessory control they had over
9 the Aircraft. (*Id.* 12:26–14:6). The Court first examines whether Rasmussen and Mendoza
10 exercised possessory control over the Aircraft despite lacking consent or authorization to move
11 the plane.

12 **A. Possessory Control**

13 Defendant argues that its employees could not have exercised possessory control over
14 the Aircraft because they did not move the plane with the express or implied consent of its
15 owners and were not entrusted with care of the plane by 702PC LLC. (Resp. 14:7–17:7).
16 Defendant’s argument is well-taken; “Until 1955, it was universally held that an insured could
17 not be found to have exercised control over damaged property unless the insured operated with
18 the consent of the owner or otherwise under legal authority.” Insurance Coverage of
19 Construction Disputes § 20:15 (2d ed. 2023) (citing *Great Am. Indem. Co., of N.Y. of Saltzman*,
20 213 F.2d 743, 747 (8th Cir. 1954) (finding that a “mere trespasser inspecting the aircraft” could
21 not have “care, custody, or control of it”). After 1955, however, several courts have found that
22 physical control can occur without the consent of the owner. *See* Insurance Coverage of
23 Construction Disputes § 20:15 (2d ed. 2023) (collecting cases). As the Supreme Court of
24 Oregon articulated, “[w]here the insured knowingly assumes control over another person’s
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1 property, either with or without permission, there are reasons for excluding coverage.”

2 *Ferguson v. Birmingham Fire Ins. Co.*, 460 P.2d 342, 346 (Or. 1969) (en banc).

3 Here, it is undisputed that Defendants’ employees had access to the Aircraft and
4 exercised that right of access by knowingly and intentionally assuming physical control over
5 the plane. (Resp. 2:2–5, 10:15–19, 13:13–14); (Reply 4:7–17). “Physical control is the
6 hallmark of ‘care, custody, and control, or another’s property.’” 9 Couch on Ins. § 126:22 (Sept.
7 2023 Update). After Defendant’s employees took control of the Aircraft, the care, custody, and
8 control of the plane was completely, though temporarily, in the hands of Defendant. *See Essex*
9 *Ins. Co v. Soy Sock Co.*, 503 F. Supp. 2d 1068, 1075 (C.D. Ill. Aug. 24, 2007) (explaining that
10 factors to consider in determining possessory control is whether the defendants were granted or
11 exercised the right of access to the equipment). Despite Defendant’s arguments to the contrary,
12 the Court cannot ignore that it, through its employees, intentionally placed the Aircraft within
13 its own dominion. *See Transamerica Ins. Co. v. Preston*, 632 P.2d 900, 904 (Wash. Ct. App.
14 1981) (holding that care, custody, or control exclusion barred coverage because insured was
15 operating the train when collision occurred). To find otherwise would elevate the formal or
16 technical relationship between the parties over what transpired. Put differently, even assuming
17 Defendant and its employees were not supposed to interact with the Aircraft pursuant to an
18 unwritten policy, the fact remains Rasmussen and Mendoza *did* move the Aircraft. It is difficult
19 to reconcile Defendant’s contention that its employees lacked possessory control over the
20 Aircraft when they intentionally and knowingly took control of the plane and moved it.
21 Accordingly, the Court finds that Defendant, through its employees, exercised possessory
22 control over the Aircraft.

23 **B. Exclusive Control**

24 Defendant’s remaining argument is that the care, custody, and control exclusion is
25 inapplicable because the Aircraft was not under the exclusive and complete control of its

1 employees when the hangar door closed on the plane. (Resp. 12:1–14:6).

2 For the care, custody, and control exclusion to apply, an insured’s control over the
3 property at issue must be exclusive. *See Prateorian Ins. Co v. Western Milling, LLC*, No. 1:15-
4 cv-00557, 2017 WL 4284717, at *4 (E.D. Ca. Sept. 27, 2017). “While the control exercised by
5 the insured must be exclusive, it need not be continuous, and intimate handling of that property
6 is not a prerequisite to establishing possessory control.” 46 C.J.S. Insurance § 1379 (Aug. 2023
7 ed.). Exclusivity of possession may exist even if the possession is of short duration, *Stewart*
8 *Warner Corp. v. Burns Int’l Sec. Servs., Inc.*, 527 F.2d 1025, 1029 (7th Cir. 1975), and the fact
9 that the owner of the property also had access to the property does not preclude a finding of
10 possessory control, *Essex Ins. Co.*, 503 F. Supp. at 1075.

11 The Court finds that Defendant, through its employees, had exclusive control of the
12 Aircraft when the incident occurred for three reasons. First, the fact that 702PC LLC and
13 Defendant shared simultaneous access to the hangar and the Aircraft within the hangar does not
14 preclude a finding that Defendant had exclusive control when the incident occurred. *Id.*
15 Second, it is undisputed that the operative negligent act, *i.e.*, the moving of the Aircraft into the
16 hangar door, was completed while under the exclusive control of Defendant’s employees.
17 (Resp. 10:12–14); (Reply 7:10–19). Although 702PC LLC and Defendant shared the right to
18 access the hangar and the Aircraft as functional co-tenants, Defendant’s employees were the
19 only party exercising physical control over the Aircraft when the plane was put into a position
20 of peril. Third, the Court disagrees with Defendant’s contention that a finding of exclusivity is
21 precluded by the fact that the Aircraft was damaged “while no one was exercising control over
22 it[.]” (Resp. 10:20–21). It bears repeating that no other person or entity exercised any form of
23 physical interaction or control over the Aircraft during the incident. And the parties proffer no
24 evidence or explanation for why the hangar door descended. Although other tenants of the
25 hangar had an unfettered right of access to the hangar, Defendant and its employees were the

1 exclusive users of that right when the incident occurred. Therefore, the record before the Court
2 demonstrates that Defendant's care was exclusive when the accident occurred.

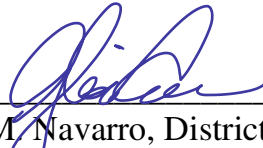
3 Accordingly, the Court finds that Plaintiff owes no liability coverage obligation to
4 Defendant because of the applicability of the care, custody, and control exclusion. Therefore,
5 Plaintiff's Motion for Summary Judgment is GRANTED.

6 **III. CONCLUSION**

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment, (ECF No.
8 20), is **GRANTED**.

9 **The Clerk of Court is instructed to close the case and enter judgment in favor of**
10 **Plaintiff against Defendant.**

11 **DATED** this 29 day of February, 2024.

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15 Gloria M. Navarro, District Judge
16 UNITED STATES DISTRICT COURT
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