

1 week of May, 2020. (Doc. 102, p. 2.) Mrs. Le reported the fire to her insurer, State Farm. *Id.*
2 Mrs. Le then hired a public insurance adjuster, Associated Adjustment Bureau (“Associated”).
3 *Id.* Associated estimated the fire damage at \$182,608.42 on a replacement cost value basis. *Id.*

4 State Farm was unwilling to pay the loss amount submitted by Associated, so the Les
5 asserted their right to an appraisal pursuant to the terms of the insurance policy. (Doc. 102, pp.
6 2-3.) On or about September 21, 2021, the appraisal panel issued an award that assessed the
7 replacement cost value damages at \$193,509.49 and the actual cash value damages at
8 \$177,398.90. (Doc. 102, p. 3.) On or about December 24, 2021, the appraisal panel issued a
9 “Corrected Appraisal Award” clarifying the scope of the panel’s award. *Id.* State Farm
10 objected to the size of the panel’s award but paid the Les a supplemental sum of \$27,767.99.
11 (Doc. 102, p. 4.)

12 On December 27, 2021, The Les filed suit in Pima County Superior Court against State
13 Farm claiming breach of contract and breach of the duty of good faith. (Doc. 102, p. 4.) The
14 breach of contract claim includes a claim that State Farm breached the insurance contract by
15 failing to pay the full value of the appraisal award. (Doc. 102, p. 4.) On January 26, 2022, State
16 Farm removed the action to this court. (Doc. 1.) On February 23, 2022, the Les filed a motion
17 to confirm the appraisal award pursuant to A.R.S. § 12-1511. (Doc. 11.) On April 1, 2022, State
18 Farm filed a combined response and motion to vacate the appraisal award pursuant to A.R.S.
19 § 12-1512. (Doc. 25.)

20 On December 27, 2022, this court confirmed the Corrected Appraisal Award issued on
21 December 24, 2021. (Doc. 56.) In a subsequent filing, State Farm asserted that “the balance
22 owed [from the appraisal award] is \$84,096.85, not \$86,401.85 as Plaintiff claims.” (Doc. 102,
23 p. 5; Doc. 63, pp. 1-2.)

24 The plaintiffs filed the pending motion for partial summary judgment on September 8,
25 2023. (Doc. 101.) They argue that the defendant, State Farm, is in breach of the residential
26 insurance contract, which specifies that payment of an appraisal award must be made 60 days
27 from the date “there is a filing of an appraisal award with us.” (Doc. 101, p. 5.)

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Summary Judgment

Summary judgment is available only “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). There is a genuine dispute “if the evidence is such that a reasonable jury could return a verdict for the non[-]moving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986).

The initial burden rests on the moving party to point out the absence of any genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). “Where the moving party will have the burden of proof on an issue at trial, the movant must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). “Where the non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party’s case.” *In re Oracle Corp. Securities Litigation*, 627 F.3d 376, 387 (9th Cir. 2010).

Once initially satisfied, the burden shifts to the non-movant to demonstrate through the production of probative evidence that an issue of fact remains to be tried. *Celotex Corp.*, 477 U.S. at 324, 106 S.Ct. at 2553. “If a reasonable jury viewing the summary judgment record could find by a preponderance of the evidence that [the non-movant is] entitled to a verdict in [its] favor, then summary judgment [is] inappropriate; conversely, if a reasonable jury could not find [for the non-movant], then summary judgment [is] correct.” *Cornwell v. Electra Cent. Credit Union*, 439 F.3d 1018, 1027-28 (9th Cir. 2006).

“In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). “Rather, it draws all inferences in the light most favorable to the non[-]moving party.” *Id.*

1 “Summary judgment is particularly appropriate to resolve questions of insurance
2 coverage, since the interpretation of a written contract is a matter of law to be determined by
3 the court.” *757BD LLC v. Nat’l Union Fire Ins. Co. of Pittsburgh, PA*, 330 F. Supp. 3d 1143,
4 1148 (D. Ariz. 2018), *aff’d*, 804 F. App’x 592 (9th Cir. 2020).

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6 Insurance Policy Interpretation

7 “[T]he tenets of insurance policy contractual interpretation are well-established.” *Nat’l*
8 *Fire Ins. Co. of Hartford v. James River Ins.*, 162 F. Supp. 3d 898, 903–04 (D. Ariz. 2016),
9 *clarified on denial of reconsideration*, 2016 WL 2606984 (D. Ariz. 2016). “An insurance
10 policy must be read as a whole, so as to give a reasonable and harmonious effect to all of its
11 provisions.” *Id.* “The Court must construe the written terms of the policy to effectuate the
12 parties’ intent, and to protect the reasonable expectations of the insured” *Id.* “[T]he
13 [p]olicy’s language must be viewed from the standpoint of the average layman who is untrained
14 in the law or the field of insurance.” *Id.* “Where the language of the policy is clear, the Court
15 shall afford it its plain and ordinary meaning and apply it as written.” *Id.* “[C]ourts construe
16 a clause subject to different interpretations by examining the language of the clause, public
17 policy considerations, and the purpose of the transaction as a whole.” *Id.*

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19 Analysis: Breach of Contract

20 The Les assert that State Farm has breached that part of the insurance policy that requires
21 payment 60 days from the filing of an appraisal award. The policy reads in pertinent part as
22 follows:

23 **Loss Payment.** We will adjust all losses with you. We will pay you unless some
24 other person is named in the policy or is legally entitled to receive payment. Loss
will be payable 60 days after we receive your proof of loss and:

- 25 a. reach agreement with you;
26 b. there is an entry of a final judgment; or
c. *there is a filing of an appraisal award with us.*

27 (Doc. 102, p. 5, emphasis added.)

1 The appraisal award was confirmed by this court on December 27, 2022. (Doc. 102, p.
2 4.) State Farm acknowledged that the balance still outstanding on the award is \$84,096.85.
3 (Doc. 102, p. 5.) Sixty days have since past, and State Farm has not paid the balance owed as
4 required by the insurance contract. *Id.*; see also *Bennett v. Homesite Ins. Co.*, 636 F. Supp. 3d
5 1267, 1272 (W.D. Wash. 2022) (“The Court agrees with the Bennetts that the plain meaning
6 of the operative provision [“loss will be payable”] requires payment to be made within 30 days
7 of the underlying prerequisites being met.”).

8 There “is no genuine dispute as to any material fact” and “the movant is entitled to
9 judgment as a matter of law.” Fed. R. Civ. P. 56(a); see, e.g., *Bennett v. Homesite Ins. Co.*, 636
10 F. Supp. 3d 1267, 1272 (W.D. Wash. 2022) (“[T]he Court agrees with the Bennetts that
11 Homesite breached the policy by not making payment within 30 days of the appraisal award.”).

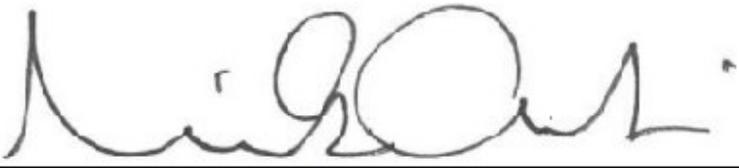
12 RECOMMENDATION

13 The Magistrate Judge recommends that the District Court, after its independent review
14 of the record, enter an order

15 GRANTING the plaintiffs’ motion for partial summary judgment on the plaintiffs’
16 breach of contract claim. (Doc. 101.)

17 Pursuant to 28 U.S.C. §636 (b), any party may serve and file written objections within
18 14 days of being served with a copy of this report and recommendation. If objections are not
19 timely filed, the party’s right to de novo review may be waived. The Local Rules permit the
20 filing of a response to an objection. They do not permit the filing of a reply to a response
21 without the permission of the District Court.

22 DATED this 13th day of November, 2023.

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27 Honorable Michael A. Ambri
28 United States Magistrate Judge