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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

GBTI, INC., GILL BROS. TRUCKING,
et al.,

Plaintiffs,

vs.

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA, et al,

Defendants.

CASE NO. CV F 09-1173 LJO DLB

**ORDER ON DEFENDANTS' F.R.Civ.P. 12
MOTIONS**
(Doc. 4.)

INTRODUCTION

Defendant insurance agent seeks to dismiss plaintiff insureds' breach of contract and bad faith claims as a matter of law. Defendants insurer and insurance agent further seek to strike allegations regarding issuance of a policy and punitive damages. Plaintiff insureds filed no opposition papers. This Court considered defendant insurer and insurance agent's F.R.Civ.P. 12(b)(6) motion to dismiss and F.R.Civ.P. 12(f) motion to strike on the record and VACATES the August 10, 2009 hearing, pursuant to Local Rule 78-230(c), (h). For the reasons discussed below, this Court DISMISSES plaintiffs' claims against defendant insurance agent and STRIKES allegations regarding issuance of a policy and punitive damages.

1 **BACKGROUND**¹

2 **The Parties**

3 Plaintiffs Harninder Gill, Harjinder Gill, Charan Gill, Pakhar Gill and Gurdial Gill were officers,
4 directors, shareholders and employees of plaintiffs GBTI, Inc. (“GBTI”) and Gill Bros. Trucking (“Gill
5 Bros.”). GBTI is an interstate motor carrier. GBTI and Gill Bros. owned, leased and operated trucking
6 equipment.²

7 Defendant Insurance Company of the State of Pennsylvania (“ICSP”) is an auto and trucking
8 insurer. The complaint identifies as an authorized agent defendant The American International Group
9 Inc. dba The Truck Insurance Group a division of American International Group Risk Management
10 (“Truck”).

11 **The Policies**

12 In December 2004, ICSP and Truck (collectively “defendants”) issued to GBTI a commercial
13 automobile liability policy (“GBTI auto policy”) and a commercial general liability policy (“GBTI CGL
14 policy”). Also in December 2004, defendants issued to Gill Bros. a commercial general liability policy
15 (“Gill Bros. CGL policy”).³

16 **The Underlying Action**

17 On August 14, 2005, a Gill Bros.’ tractor trailer, which was leased to and operated by GBTI, was
18 involved in a multi-vehicle collision in Missouri. The collision resulted in a consolidated personal-
19 injury action in Missouri federal court (“underlying action”). On February 28, 2007, a complaint was
20 filed to attempt to pierce the corporate veils of GBTI and Gill Bros.

21 In March 2007, plaintiffs tendered defense and indemnity of the underlying action to defendants,
22 who on April 17, 2007 denied the tender.

23
24

¹ The factual recitation is derived generally from plaintiffs’ operative original complaint (“complaint”), the
25 target of defendants’ challenges.

26 ² GBTI, Gill Bros. and the individual plaintiffs will be referred to collectively as “plaintiffs.”

27 ³ Defendants note that plaintiffs do not attach to the complaint a copy of the Gill Bros. CGL policy but
28 merely attach a certificate of liability insurance referencing commercial general liability policy no. SGL1807103 and the
certificate holder as “Gill Brothers Trucking.” The complaint alleges that the GBTI CGL policy bears the same policy no.
“SGL1807103” and that the Gill Bros. CGL policy no. is SGL1807105.

1 **Plaintiffs' Claims**

2 The complaint alleges that plaintiffs “were forced to retain private counsel to defend themselves”
3 and “have incurred substantial costs attendant to the legal fees incurred” to defend the underlying action.

4 The complaint alleges:

- 5 1. A (first) breach of contract claim that “Defendants breached their contractual obligations
6 to the Plaintiffs under the terms of all of the stated Policies” by “failing to defend”
7 plaintiffs in the underlying action; and
- 8 2. A (second) claim of tortious breach of the implied covenant of good faith and fair dealing
9 in that defendants:
- 10 a. Failed to provide a defense when the potential for coverage existed;
 - 11 b. Failed to provide a prompt and reasonable explanation to deny a defense;
 - 12 c. Failed to conduct an independent investigation and analysis of potential
13 coverage;
 - 14 d. Failed to grant plaintiffs the benefit of doubt regarding potential or possibility for
15 coverage;
 - 16 e. Placed defendants’ financial interests above plaintiffs’ financial interests;
 - 17 f. Engaged in conduct designed to defeat coverage;
 - 18 g. Applied the policies’ terms to defeat coverage without regard to the policies’
19 express terms;
 - 20 h. Compelled plaintiffs to initiate this action;
 - 21 i. Failed to investigate plaintiffs’ claim for defense fairly and objectively;
 - 22 j. Denied a defense to plaintiffs based on an erroneous interpretation of the
23 policies;
 - 24 k. Ignored allegations and evidence to trigger the duty to defend;
 - 25 l. Denied plaintiffs a defense without considering all information reasonably
26 available;
 - 27 m. Denied plaintiffs a defense based on speculation;
 - 28 n. Misrepresented and overlooked important allegations in the underlying action;

1 and

2 o. Failed to inquire and investigate all possible bases that might support a defense.

3 The complaint seeks to recover legal fees and expenses incurred to defend the underlying action
4 and emotional distress and punitive damages.

5 **TRUCK’S F.R.Civ.P. 12(b)(6) MOTION TO DISMISS**

6 Truck seeks to dismiss plaintiffs’ breach of contract and bad faith claims in that it was not a party
7 to the policies issued to GBTI and Gill Bros.

8 **F.R.Civ.P. 12(b)(6) Standards**

9 A F.R.Civ.P. 12(b)(6) motion to dismiss is a challenge to the sufficiency of the pleadings set
10 forth in the complaint. “When a federal court reviews the sufficiency of a complaint, before the reception
11 of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not
12 whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to
13 support the claims.” *Scheurer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683 (1974); *Gilligan v. Jamco*
14 *Development Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). A F.R.Civ.P. 12(b)(6) dismissal is proper where
15 there is either a “lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a
16 cognizable legal theory.” *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990); *Graehling*
17 *v. Village of Lombard, Ill.*, 58 F.3d 295, 297 (7th Cir. 1995).

18 In resolving a F.R.Civ.P. 12(b)(6) motion, the court must: (1) construe the complaint in the light
19 most favorable to the plaintiff; (2) accept all well-pleaded factual allegations as true; and (3) determine
20 whether plaintiff can prove any set of facts to support a claim that would merit relief. *Cahill v. Liberty*
21 *Mut. Ins. Co.*, 80 F.3d 336, 337-338 (9th Cir. 1996). Nonetheless, a court is “free to ignore legal
22 conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in
23 the form of factual allegations.” *Farm Credit Services v. American State Bank*, 339 F.3d 765, 767 (8th
24 Cir. 2003) (citation omitted). A court need not permit an attempt to amend a complaint if “it determines
25 that the pleading could not possibly be cured by allegation of other facts.” *Cook, Perkiss and Liehe, Inc.*
26 *v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

27 “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
28 allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires more

1 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
2 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964-65 (2007) (internal citations omitted).
3 A complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Twombly*,
4 550 U.S. at 570, 127 S.Ct. at 1974. Moreover, a court “will dismiss any claim that, even when construed
5 in the light most favorable to plaintiff, fails to plead sufficiently all required elements of a cause of
6 action.” *Student Loan Marketing Ass'n v. Hanes*, 181 F.R.D. 629, 634 (S.D. Cal. 1998).

7 For a F.R.Civ.P. 12(b)(6) motion, a court generally cannot consider material outside the
8 complaint. *Van Winkle v. Allstate Ins. Co.*, 290 F.Supp.2d 1158, 1162, n. 2 (C.D. Cal. 2003).
9 Nonetheless, a court may consider exhibits submitted with the complaint. *Van Winkle*, 290 F.Supp.2d
10 at 1162, n. 2. In addition, a “court may consider evidence on which the complaint ‘necessarily relies’
11 if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3)
12 no party questions the authenticity of the copy attached to the 12(b)(6) motion.” *Marder v. Lopez*, 450
13 F.3d 445, 448 (9th Cir. 2006). A court may treat such a document as “part of the complaint, and thus
14 may assume that its contents are true for purposes of a motion to dismiss under Rule 12(b)(6).” *United*
15 *States v. Ritchie*, 342 F.3d 903, 908 (9th Cir.2003). Such consideration prevents “plaintiffs from
16 surviving a Rule 12(b)(6) motion by deliberately omitting reference to documents upon which their
17 claims are based.” *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998). A “court may disregard
18 allegations in the complaint if contradicted by facts established by exhibits attached to the complaint.”
19 *Sumner Peck Ranch v. Bureau of Reclamation*, 823 F.Supp. 715, 720 (E.D. Cal. 1993) (citing *Durning*
20 *v. First Boston Corp.*, 815 F.2d 1265, 1267 (9th Cir.1987)). Moreover, “judicial notice may be taken
21 of a fact to show that a complaint does not state a cause of action.” *Sears, Roebuck & Co. v.*
22 *Metropolitan Engravers, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956); see *Estate of Blue v. County of Los*
23 *Angeles*, 120 F.3d 982, 984 (9th Cir. 1997). As such, this Court may consider the exhibits to plaintiffs’
24 complaint.

25 **Breach Of Contract**

26 Truck argues there is no contractual relationship between it and plaintiffs in that the contracting
27 parties are ICSP and GBTI. Truck notes “there is no reference to Truck as the insurer on either the Auto
28 or General Liability policies” and that as a non-party, it is not subject to a breach of contract claim.

1 California Insurance Code section 22 defines insurance as “a contract whereby one undertakes
2 to indemnify another against loss, damage, or liability arising from a contingent or unknown event.”
3 “An insurance policy is, fundamentally, a contract between the insurer and the insured.” *Stein v.*
4 *International Ins. Co.*, 217 Cal.App.3d 609, 613, 266 Cal.Rptr. 72 (1990). “[N]on-insurer defendants
5 [are] not parties to the agreements for insurance.” *Gruenberg v. Aetna Ins. Co.*, 9 Cal.3d 566, 576, 108
6 Cal.Rptr. 480 (1973).

7 The exhibits attached to the complaint indicate that Truck is neither an insurer nor a party to an
8 insurance agreement with plaintiffs. Plaintiffs offer nothing to reveal that Truck is a party to contract
9 subject to plaintiffs’ claims in this action. This Court construes absence of plaintiffs’ opposition as
10 plaintiffs’ concession that Truck is not subject to a breach of contract claim.

11 **Breach Of Implied Covenant Of Good Faith And Fair Dealing**

12 Truck argues that it is not subject to a claim for breach of implied covenant of good faith and fair
13 dealing in absence of a contractual relationship with plaintiffs.

14 “The prerequisite for any action for breach of the implied covenant of good faith and fair dealing
15 is the existence of a contractual relationship between the parties, since the covenant is an implied term
16 in the contract.” *Smith v. City and County of San Francisco*, 225 Cal.App.3d 38, 49, 275 Cal.Rptr. 17
17 (1990). “California courts repeatedly have stressed that the covenant of good faith and fair dealing arises
18 from a contractual relationship and is limited to the parties in that relationship.” *U.S. for Benefit and*
19 *Use of Ehmcke Sheet Metal Works v. Wausau Ins.*, 755 F.Supp. 906, 912 (E.D. Cal.1991). An insurer’s
20 duty of good faith and fair dealing “arises from a contractual relationship existing between the parties.”
21 *Gruenberg*, 9 Cal.3d at 577, 108 Cal.Rptr. 480.

22 The “implied covenant of good faith and fair dealing is limited to assuring compliance with the
23 express terms of the contract, and cannot be extended to create obligations not contemplated by the
24 contract.” *Pasadena Live, LLC v. City of Pasadena*, 114 Cal.App.4th 1089, 1093-1094, 8 Cal.Rptr.3d
25 233 (2004) (citation omitted.) “Without a contractual relationship, [plaintiffs] cannot state a cause of
26 action for breach of the implied covenant.” *Smith*, 225 Cal.App.3d at 49, 275 Cal.Rptr. 17. As a non-
27 party to the insurance contract, non-insurers “are not, as such, subject to an implied duty of good faith
28 and fair dealing.” *Gruenberg*, 9 Cal.3d at 576, 108 Cal.Rptr. 480.

1 As noted above, Truck is not a party to an insurance contract with plaintiffs. In the absence of
2 a contractual relationship, Truck is not subject to an implied covenant of good faith and fair dealing.
3 Truck is not subject to obligations contemplated by a contract to which it is not a party. The record
4 reveals that Truck is a non-insurer and thus not subject to plaintiffs' claims. Plaintiffs' lack of
5 opposition is a concession that their bad faith claim fails as to Truck.

6 **DEFENDANTS' F.R.Civ.P. 12(f) MOTION TO STRIKE**

7 Defendants seek to strike allegations that they issued the Gill Bros. CGL policy and punitive
8 damages allegations.

9 **F.R.Civ.P. 12(f) Standards**

10 F.R.Civ.P. 12(f) empowers a court to strike from a pleading "any redundant, immaterial,
11 impertinent, or scandalous matter." Motions to strike may be granted if "it is clear that the matter to be
12 stricken could have no possible bearing on the subject matter of the litigation." *LeDuc v. Kentucky*
13 *Central Life Ins. Co.*, 814 F.Supp. 820, 830 (N.D. Cal. 1992); *Colaprico v. Sun Microsystems, Inc.*, 758
14 F.Supp. 1335, 1339 (N.D. Cal. 1991). "[T]he function of a [F.R.Civ.P.] 12(f) motion to strike is to avoid
15 the expenditure of time and money that must arise from litigating spurious issues by dispensing with
16 those issues prior to trial." *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983);
17 *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, *Fogerty v.*
18 *Fantasy, Inc.*, 510 U.S. 517, 114 S.Ct. 1023 (1994). .

19 An "immaterial" matter has no essential or important relationship to the claim for relief or
20 defenses pleaded. *Fantasy, Inc.*, 984 F.2d at 1527; *Gilbert v. Eli Lilly & Co., Inc.*, 56 F.R.D. 116, 120,
21 n. 5 (D. P.R. 1972); *Fleischer v. A.A.P., Inc.*, 180 F.Supp. 717 (D. Pa. 1958). An "impertinent"
22 allegation is neither responsive nor relevant to the issues involved in the action and which could not be
23 put in issue or given in evidence between the parties. *Gilbert*, 56 F.R.D. at 120, n. 6; *Burke v. Mesta*
24 *Mach. Co.*, 5 F.R.D. 134 (D. Pa. 1946). An "impertinent" matter consists of statements that do not
25 pertain and are unnecessary to the issues in question. *Fantasy, Inc.*, 984 F.2d at 1527.

26 Matters may be stricken to reduce trial complication or if challenged allegations are so unrelated
27 to plaintiff's claims to be unworthy of consideration as a defense and their presence in the pleading will
28 prejudice the party seeking to strike matters. *Fantasy, Inc.*, 984 F.2d at 1527. "[A] motion to strike may

1 be used to strike any part of the prayer for relief when the damages sought are not recoverable as a matter
2 of law.” *Bureerong v. Uvawas*, 922 F.Supp. 1450, 1479, n. 34 (C.D. Cal. 1996). With these standards
3 in mind, this Court turns to defendants’ attack on the Gill Bros. CGL policy and punitive damages
4 claims.

5 Certificate Of Insurance

6 The complaint alleges that the certificate of insurance attached as Exhibit C supports that
7 defendants issued the Gill Bros. CGL policy no. SGL1807105. The Exhibit C certificate of insurance
8 references policy no. SGL1807103. The complaint fails to attach policy no. SGL1807105.

9 Defendants argue the Exhibit C certificate of insurance fails to support that the Gill Bros. CGL
10 policy no. SGL1807105 was issued. Defendants note that a certificate of insurance does not establish
11 policy issuance and point to California Insurance Code section 384(a), which provides:

12 A certificate of insurance or verification of insurance provided as evidence of insurance
13 in lieu of an actual copy of the insurance policy shall contain the following statements
or words to the effect of:

14 This certificate or verification of insurance is not an insurance policy and does not
15 amend, extend or alter the coverage afforded by the policies listed herein.
16 Notwithstanding any requirement, term, or condition of any contract or other document
17 with respect to which this certificate or verification of insurance may be issued or may
pertain, the insurance afforded by the policies described herein is subject to all the terms,
exclusions and conditions of the policies.

18 “A certificate of insurance is merely evidence that a policy has been issued. (Ins. Code, § 384.)
19 It is not a contract between the insurer and the certificate holder.” *Empire Fire & Marine Ins. Co. v.*
20 *Bell*, 55 Cal.App.4th 1410, 1423, n. 25, 64 Cal.Rptr.2d 749 (1997).

21 Defendants conclude that allegations that the Exhibit C certificate of insurance creates insurance
22 obligations should be stricken.

23 The complaint’s Exhibit C contradicts that Gill Bros. CGL policy no. SGL1807105 was issued.
24 Exhibit C does not give rise to a policy to support plaintiffs’ claims. Plaintiffs offer nothing to evidence
25 issuance of Gill Bros. CGL policy no. SGL1807105, and absence of plaintiffs’ opposition suggests that
26 plaintiffs lack claims arising from issuance of Gill Bros. CGL policy no. SGL1807105. As such,
27 allegations addressing Gill Bros. CGL policy no. SGL1807105 should be stricken.

1 **Punitive Damages**

2 Defendants argue that the complaint’s punitive damages allegations lack sufficient specificity
3 of defendants’ alleged misconduct to support punitive damages.

4 ***General Pleading Requirements***

5 California Civil Code section 3294 (“section 3294”) provides that in an action “for breach of an
6 obligation not arising from contract,” a plaintiff may seek punitive damages “where it is proven by clear
7 and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.” Cal. Civ.
8 Code, § 3294(a).

9 “Although the court will apply the substantive law embodied in section 3294, ‘determinations
10 regarding the adequacy of pleadings are governed by the Federal Rules of Civil Procedure.’” *Jackson*
11 *v. East Bay Hosp.*, 980 F.Supp. 1341, 1353 (N.D. Cal. 1997).

12 Punitive damages are “available to a party who can plead and prove the facts and circumstances
13 set forth in Civil Code section 3294.” *Hilliard v. A.H. Robbins Co.*, 148 Cal.App.3d 374, 392, 196
14 Cal.Rptr. 117 (1983). “To support punitive damages, the complaint . . . must allege ultimate facts of the
15 defendant's oppression, fraud, or malice.” *Cyrus v. Haveson*, 65 Cal.App.3d 306, 316-317, 135 Cal.Rptr.
16 246 (1976). Pleading the language in section 3294 “is not objectionable when sufficient facts are alleged
17 to support the allegation.” *Perkins v. Superior Court*, 117 Cal.App.3d 1, 6-7, 172 Cal.Rptr. 427 (1981).

18 In *G.D. Searle & Co. v. Superior Court*, 49 Cal.App.3d 22, 29, 122 Cal.Rptr. 218 (1975), the
19 California Court of Appeal explained punitive damages pleading:

20 When the plaintiff alleges an intentional wrong, a prayer for exemplary damage may be
21 supported by pleading that the wrong was committed willfully or with a design to injure.
22 . . . When nondeliberate injury is charged, allegations that the defendant's conduct was
23 wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary
damages; such allegations do not charge malice. . . . When a defendant must produce
evidence in defense of an exemplary damage claim; fairness demands that he receive
adequate notice of the kind of conduct charged against him. (Citations omitted.)

24 “Allegations that the acts . . . were ‘arbitrary, capricious, fraudulent, wrongful and unlawful,’ like other
25 adjectival descriptions of such proceedings, constitute mere conclusions of law . . .” *Faulkner v.*
26 *California Toll Bridge Authority*, 40 Cal.2d 317, 329, 253 P.2d 659 (1953); *see Letho v. Underground*
27 *Construction Co.*, 69 Cal.App.3d 933, 944, 138 Cal.Rptr. 419 (1997) (facts and circumstances of fraud
28 should be set out clearly, concisely, and with sufficient particularity to support punitive damages); *Smith*

1 v. *Superior Court*, 10 Cal.App.4th 1033, 1042, 13 Cal.Rptr.2d 133 (1992) (punitive damages claim is
2 insufficient in that it is “devoid of any factual assertions supporting a conclusion petitioners acted with
3 oppression, fraud or malice.”); *Brousseau v. Jarrett*, 73 Cal.App.3d 864, 872, 141 Cal.Rptr. 200 (1977)
4 (“conclusory characterization of defendant's conduct as intentional, willful and fraudulent is a patently
5 insufficient statement of ‘oppression, fraud, or malice, express or implied,’ within the meaning of section
6 3294”).

7 ***Substantive Allegations***

8 “Evidence that an insurer has violated its duty of good faith and fair dealing does not thereby
9 establish that it has acted with the requisite malice, oppression or fraud to justify an award of punitive
10 damages.” *Mock v. Michigan Millers Mutual Ins. Co.*, 4 Cal.App.4th 306, 328, 5 Cal.Rptr.2d 594
11 (1992). Required conduct to award punitive damages for the tortious breach of contract “is of a different
12 dimension” than that required to find bad faith. *Shade Foods, Inc. v. Innovative Products Sales &*
13 *Marketing, Inc.*, 78 Cal.App.4th 847, 890, 93 Cal.Rptr.2d 364 (2000) (quoting *Tomaselli v.*
14 *Transamerica Ins. Co.*, 25 Cal.App.4th 1269, 1286, 31 Cal.Rptr.2d 433 (2000)). An insurer's “inept and
15 negligent handling of a claim” does not support a punitive damages claim. *Patrick v. Maryland Casualty*
16 *Co.*, 217 Cal.App.3d 1566, 1576, 267 Cal.Rptr. 24 (1990); see *Tomaselli v. Transamerica Ins. Co.*, 25
17 Cal.App.4th 1269, 1288, 31 Cal.Rptr.2d 433 (1994) (poor claims handling does not warrant need “to
18 punish for the maintenance of evil policies which damage the public in general”).

19 “Under California law, punitive damages are not available for breaches of contract no matter how
20 gross or willful.” *Tibbs v. Great American Ins. Co.*, 755 F.2d 1370, 1375 (9th Cir. 1985). “Although a
21 bad faith refusal to defend may constitute a breach of the implied covenant . . . , bad faith does not
22 necessarily indicate the presence of malice, oppression or fraud.” *Tibbs*, 755 F.2d at 1375 (citations
23 omitted). “There must be substantial evidence of intent to vex, injure and annoy, a conscious disregard
24 of plaintiff's rights, before punitive damages may be awarded.” *Betts v. Allstate Insurance Co.*, 154
25 Cal.App.3d 688, 709, 201 Cal.Rptr. 528, 540 (1984).

26 Insurer actions which are “negligent (failing to follow up information provided by the insured),
27 overzealous (taking an unnecessary deposition under oath of the insured), legally erroneous (relying on
28 an endorsement which was not shown to have been delivered), and callous (failing to communicate)”

1 are not “evil, criminal, recklessly indifferent to the rights of the insured, or with a vexatious intention
2 to injure.” *Tomaselli*, 25 Cal.App.4th at 1288, 31 Cal.Rptr.2d 433.

3 Punitive damages are never awarded as a matter of right, are disfavored by the law, and should
4 be granted with the greatest of caution and only in the clearest of cases. *Henderson v. Security Pacific*
5 *National Bank*, 72 Cal.App.3d 764, 771, 140 Cal.Rptr. 388 (1977).

6 ***Malice, Oppression Or Fraud***

7 Defendants contend that the complaint lacks sufficient allegations of malice, oppression or fraud
8 to impose punitive damages.

9 Section 3294(c)(1)–(3) defines:

- 10 1. “Malice” as “conduct which is intended by the defendant to cause injury to the plaintiff
11 or despicable conduct which is carried on by the defendant with a willful and conscious
12 disregard of the rights and safety of others”;
- 13 2. “Oppression” as “despicable conduct that subjects a person to cruel and unjust hardship
14 in conscious disregard of that person’s rights”; and
- 15 3. “Fraud” as “an intentional misrepresentation, deceit, or concealment of a material fact
16 known to the defendant with the intention on the part of the defendant of thereby
17 depriving a person of property or legal rights or otherwise causing injury.”

18 ““Despicable conduct” is conduct which is so vile, base, contemptible, miserable, wretched or
19 loathsome that it would be looked down upon and despised by ordinary decent people.” *Mock*, 4
20 Cal.App.4th at 331, 5 Cal.Rptr.2d 594. “Such conduct has been described as “[having] the character of
21 outrage frequently associated with crime.” *Tomaselli*, 25 Cal.App.4th at 1287, 31 Cal.Rptr.2d 433
22 (quoting *Taylor v. Superior Court*, 24 Cal.3d 890, 894, 157 Cal.Rptr. 693, 598 P.2d 854 (1979)).

23 Defendants note that the complaint alleges that defendants failed to properly investigate
24 plaintiffs’ claim but fails to provide details “as to how the investigation was improperly conducted or
25 somehow inadequate.” An “insurer’s inept and negligent handling of a claim” does not support
26 imposition of punitive damages. *Patrick*, 217 Cal.App.3d at 1576, 267 Cal.Rptr. 24.

27 Defendants further fault the complaint’s lack of allegations that defendants acted with intent to
28 “vex, annoy or injure” and lack of “facts showing any purported deceit.” Defendants note the absence

1 of allegations that defendants intentionally concealed or misrepresented material facts. Defendants
2 characterize any alleged misrepresentations as to law which are not actionable “because statements of
3 the law are considered merely opinions and may not be relied upon absent special circumstances not
4 present here.” *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 940 (9th Cir. 2006).

5 Although the bad faith claim includes a list of alleged breaches and claims mishandling issues,
6 the bad faith claim lacks sufficient allegations to support punitive damages. The complaint includes
7 platitudes and a conclusory paragraph which essentially summarizes section 3294 elements. The
8 complaint lacks ultimate facts of defendants’ purported malice, oppression or fraud. The complaint fails
9 to put defendants on notice of alleged wrongdoing to impose punitive damages on them. Plaintiffs fail
10 to oppose striking punitive damages allegations. The complaint fails to allege sufficient acts of malice,
11 oppression or fraud to support punitive damages to warrant striking punitive damages allegations.

12 **CONCLUSION AND ORDER**

13 For the reasons discussed above, this Court:

- 14 1. DISMISS Truck from this action;
- 15 2. DIRECTS the clerk to enter judgment in favor of defendant The American International
16 Group Inc. dba The Truck Insurance Group a division of American International Group
17 Risk Management and against plaintiffs Harninder Gill, Harjinder Gill, Charan Gill,
18 Pakhar Gill, Gurdial Gill, GBTI, Inc. and Gill Bros. Trucking;
- 19 3. STRIKES from the complaint allegations addressing Gill Bros. CGL policy no.
20 SGL1807105 and including the complaint’s paragraphs 16-19, Exhibit C and all further
21 allegations in connection with Gill Bros. CGL policy no. SGL1807105;
- 22 4. STRIKES from the complaint punitive damages allegations, including paragraph 39 and
23 the punitive damages prayer at page 9, line 26; and
- 24 5. ORDERS ICSP, no later than August 10, 2009, to file an answer to the complaint’s
25 remaining allegations.

26 IT IS SO ORDERED.

27 **Dated: July 28, 2009**

27 /s/ Lawrence J. O'Neill
28 UNITED STATES DISTRICT JUDGE