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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

**FRISCO HONNEVK, and BOUALAI  
VONGPHACHANH,**

**Plaintiffs,**

**v.**

**FARMERS NEW WORLD LIVE  
INSURANCE COMPANY,**

**Defendant.**

**No. 1:11-cv-1531 AWI DLB**

**MEMORANDUM OPINION AND ORDER  
ON DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT**

**Doc. # 22**

This is an action in diversity for breach of insurance contract by plaintiffs Frisco Honnevk and Boualai Vongphachanh (“Plaintiffs”), who are beneficiaries of a life insurance contract written by defendant Farmers New World Insurance Company (“Defendant”) insuring the life of Somporn Phasavo (“Phasavao”). Plaintiff’s complaint alleges claims for breach of contract and bad faith arising from the failure of Defendants to pay insurance proceeds upon Plaintiffs’ submission of claims following the alleged death of Phasavo. Currently before the court is Defendant’s motion for summary judgment or, in the alternative, summary adjudication. Diversity Jurisdiction exists pursuant to 28 U.S.C. § 1332. Venue is proper in this court.

1 **PROCEDURAL HISTORY**

2 This action was removed from Fresno County Superior Court on September 9, 2011, on  
3 the basis of diversity jurisdiction. Defendant’s notice of motion for summary judgment was filed  
4 on February 11, 2013, and Defendant’s memorandum of points and authority was filed on  
5 February 25, 2013. Plaintiffs’ opposition was filed on February 19, 2013, and Defendant’s reply  
6 was filed on February 25, 2013. The matter was taken under submission as of March 11, 2013.

7 **UNDISPUTED MATERIAL FACTS**

8 The following is a summary of undisputed material facts proffered by Defendants. These  
9 facts are not disputed except as noted.

10 Defendant issued a “policy of Nonparticipating Modified Premium Term Live Insurance  
11 (hereinafter, “Policy”), insuring the life of Decedent on or about June 9, 2008. The policy  
12 provided a death benefit of \$150,000. The beneficiaries of the Policy were Decedent’s cousin,  
13 Honnevk, and Decedent’s spouse, Vongphachanh. The Policy provides that “upon receipt of due  
14 proof of the insured’s death,” the proceeds of the Policy would be paid to the beneficiaries. On or  
15 about October 7, 2008, Honnevk signed a “Claimant’s Statement for Insurance Proceeds.”  
16 (“Honnevk’s Statement”). Honnevk’s Statement stated that Decedent had died on August 28,  
17 2008, as a result of a car accident. Honnevk later completed a document called a “Foreign Death  
18 Questionnaire (“FDQ”) on or about January 2, 2009. Honnevk’s FDQ stated Decedent Died on  
19 September 10, 2008, and named “Mr. Bounsuy, Lao Army” as a person that was present at the  
20 “final services.”

21 Co-Plaintiff Vongpachanh completed a FDQ on or about January 26, 2009, in which she  
22 stated Decedent died on September 10, 2008, and that his remains were identified by Paul  
23 Sayavong. Vongpachanh completed a “Claimant’s Statement for Insurance Proceeds” on  
24 February 11, 2009, in which she reported that the date of death was August 28, 2008, as a result  
25 of a car accident.

26 On or about October 20, 2008, Defendant acknowledged receipt of a death certificate and  
27 a letter from the U.S. Embassy in Laos. Both the Death Certificate and the letter from the  
28 embassy were faxed to Defendant by Plaintiffs’ agent. The death certificate was written in

1 Laotian and signed by a Mr. Bounseriy Kitniphon, (“Cmdr. Kitniphon”) Commanding Officer of  
2 the Phoukhoun Army Unit that had found Decedent’s remains. The Death Certificate was  
3 accompanied by an English translation. The letter from the U.S. Embassy that was faxed along  
4 with the Death Certificate did not mention the Death Certificate but advised that an original  
5 Travel Document and unexpired Alien Resident Card were being returned to the USCIS Office in  
6 Bangkok, Thailand. The author of the letter – U.S. Consul Michael D. Sweeny – stated that “it  
7 appears that [Phasavo] died in Laos in September 2008,” without any documentation or other  
8 information supporting that speculation.

9 Defendant retained the services of a Claims Investigator to investigate the details of  
10 Plaintiffs’ claims under the Policy. Upon completion of the investigation, the Investigator sent  
11 Defendant a report which contained, among other things, an interview with Cmdr. Kitniphon  
12 regarding his actual knowledge of facts contained in the statements made in the Death Certificate.  
13 Cmdr. Kitniphon told the investigator he did not know exactly what happened to Phavaso, did not  
14 know who found the remains or where the remains were cremated. Cmdr. Kitniphon stated he  
15 wrote the Death Certificate at the behest of Paul Sayavong, the person who is listed as having  
16 identified the remains. It also happens that Paul Sayavong is a relative of Cmdr. Kitniphon’s  
17 wife.

18 Plaintiffs’ claims for benefits from the Policy were denied by Defendant on April 20,  
19 2010. Both Plaintiffs acknowledge timely receipt of Defendants’ notice of denial and  
20 acknowledge that they understood the nature of the notification.

21 Plaintiffs did not submit a separate statement of disputed material facts as such. Rather,  
22 Plaintiff’s noted the parties were unable to agree on a single set of undisputed material facts and,  
23 as a consequence, Plaintiff’s submitted a version of Defendants’ list of undisputed material facts  
24 to which Plaintiffs have added or amended certain paragraphs or statements. The major facts  
25 alleged by Plaintiffs opposition to Defendant’s motion for summary judgment are set forth as  
26 follows:

27 Plaintiff through subpoena of the New York Life Insurance Company; who  
28 also has a life insurance policy in effect on Phasavo, [received documents relating

1 to Phasavo’s death]. [The] Documents received are statements of the head of the  
2 village and four soldiers with photographs attached, statements claimed to have  
3 found a dead body on September 2008. Found on [the] deceased[’s] possession, a  
4 US Passport, California Drivers License and other personal effect[s] of the  
deceased, Somporn Phasavo. The soldiers, after a few days, claimed to have  
cremated the body for lack of cold storage.

5 Plaintiffs submit as fact that these witnesses can and will identify the dead  
6 body they discovered in September of 2008 as Somporn Phasavo. Arrangements  
7 are being made to bring the Village Chief and Two Soldiers to the United States to  
testify at trial.

8 Doc. # 21-5 at ¶¶ 42-43 (hereinafter, “Paragraph 42” or “Paragraph 43”).

### 9 LEGAL STANDARD

10 Summary judgment is appropriate when it is demonstrated that there exists no genuine  
11 issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.  
12 Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Poller v. Columbia  
13 Broadcast System, 368 U.S. 464, 467 (1962); Jung v. FMC Corp., 755 F.2d 708, 710 (9th Cir.  
14 1985); Loehr v. Ventura County Community College Dist., 743 F.2d 1310, 1313 (9th Cir. 1984).

15 Under summary judgment practice, the moving party always bears  
16 the initial responsibility of informing the district court of the basis for its  
17 motion, and identifying those portions of “the pleadings, depositions,  
18 answers to interrogatories, and admissions on file, together with the  
affidavits, if any,” which it believes demonstrate the absence of a genuine  
issue of material fact.

19 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Although the party moving for  
20 summary judgment always has the initial responsibility of informing the court of the basis for its  
21 motion, the nature of the responsibility varies “depending on whether the legal issues are ones on  
22 which the movant or the non-movant would bear the burden of proof at trial.” Cecala v.  
23 Newman, 532 F.Supp.2d 1118, 1132-1133 (D. Ariz. 2007). A party that does not have the  
24 ultimate burden of persuasion at trial – usually but not always the defendant – “has both the initial  
25 burden of production and the ultimate burden of persuasion on the motion for summary  
26 judgment.” Nissan Fire & Marine Ins. Co., Ltd. v. Fritz Companies, Inc., 210 F.3d 1099, 1102  
27 (9th Cir. 2000). “In order to carry its burden of production, the moving party must either produce  
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1 evidence negating an essential element of the nonmoving party's claim or defense or show that  
2 the nonmoving party does not have enough evidence of an essential element to carry its ultimate  
3 burden of persuasion at trial." Id.

4 If the moving party meets its initial responsibility, the burden then shifts to the opposing  
5 party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec.  
6 Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); First Nat'l Bank of Arizona v. Cities  
7 Serv. Co., 391 U.S. 253, 288-89 (1968); Ruffin v. County of Los Angeles, 607 F.2d 1276, 1280  
8 (9th Cir. 1979). In attempting to establish the existence of this factual dispute, the opposing party  
9 may not rely upon the mere allegations or denials of its pleadings, but is required to tender  
10 evidence of specific facts in the form of affidavits, and/or admissible discovery material, in  
11 support of its contention that the dispute exists. Rule 56(e); Matsushita, 475 U.S. at 586 n.11;  
12 First Nat'l Bank, 391 U.S. at 289; Strong v. France, 474 F.2d 747, 749 (9th Cir. 1973). The  
13 opposing party must demonstrate that the fact in contention is material, i.e., a fact that might  
14 affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S.  
15 242, 248 (1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th  
16 Cir. 1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could  
17 return a verdict for the nonmoving party, Anderson, 477 U.S. 248-49; Wool v. Tandem  
18 Computers, Inc., 818 F.2d 1433, 1436 (9th Cir. 1987).

19 In the endeavor to establish the existence of a factual dispute, the opposing party need not  
20 establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual  
21 dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at  
22 trial." First Nat'l Bank, 391 U.S. at 290; T.W. Elec. Serv., 809 F.2d at 631. Thus, the "purpose of  
23 summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there  
24 is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory  
25 committee's note on 1963 amendments); International Union of Bricklayers v. Martin Jaska, Inc.,  
26 752 F.2d 1401, 1405 (9th Cir. 1985).

27 In resolving the summary judgment motion, the court examines the pleadings,  
28 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any.

1 Rule 56(c); Poller, 368 U.S. at 468; SEC v. Seaboard Corp., 677 F.2d 1301, 1305-06 (9th Cir.  
2 1982). The evidence of the opposing party is to be believed, Anderson, 477 U.S. at 255, and all  
3 reasonable inferences that may be drawn from the facts placed before the court must be drawn in  
4 favor of the opposing party, Matsushita, 475 U.S. at 587 (citing United States v. Diebold, Inc.,  
5 369 U.S. 654, 655 (1962)(per curiam); Abramson v. University of Hawaii, 594 F.2d 202, 208 (9th  
6 Cir. 1979). Nevertheless, inferences are not drawn out of the air, and it is the opposing party's  
7 obligation to produce a factual predicate from which the inference may be drawn. Richards v.  
8 Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd, 810 F.2d 898, 902 (9th  
9 Cir. 1987).

## 10 ANALYSIS

### 11 I. Breach of Contract Claim

12 Defendant's basic contention regarding Plaintiff's breach of contract claim is that  
13 Plaintiffs are unable as a matter of law to provide *admissible* evidence to show due proof of  
14 Phasavo's death. Plaintiff's place emphasis on the word "admissible" because, as they observe,  
15 there are substantial problems with the authentication and hearsay nature of evidence that was  
16 submitted by Plaintiffs. There is no question that the contract insuring the life of Phasavo placed  
17 the burden on Plaintiffs to show by a preponderance of the evidence the fact of Phasavo's death.  
18 See New York Life Ins. Co. v. Gamer, 303 U.S. 161, 171 (1938) (proof by preponderance of  
19 evidence due where life insurance contract places burden of proof on beneficiaries of policy).  
20 Plaintiff's complaint alleges two claims for relief; the first for breach of contract based on the  
21 failure of Defendant to pay proceeds from the Policy and the second for bad faith. Both claims  
22 are predicated on contention that Plaintiffs submitted "due proof" of Phasavo's death in  
23 accordance with the terms of the Policy. The threshold issue that arises immediately from  
24 Defendant's motion for summary judgment is what evidence constitutes "due proof of death"?

25 What constitutes sufficient substantive evidence to establish the fact of death of an insured  
26 is a matter of state law. See Tu v. Mut. Life Ins. Co. of New York, 136 F.3d 77, 79-80 (1 Cir.  
27 1998 (interpreting Massachusetts state law to determine the meaning of the term "due proof of  
28 death"). Significantly, neither party has provided the court with any California case authority that

1 would apply to resolve the question of what constitutes a sufficient proof of death under the facts  
2 presented in this case. The court has been similarly unable to find any relevant California case  
3 authority.

4 Defendants request that this court adopt the analytical framework set forth in Tu. In that  
5 case the First Circuit Court of Appeals held:

6 Due proof is “the proof furnished to the insurer [that] shows on the whole  
7 “that the claim is of a class within the protection of the policy, so that *if the*  
8 *proofs should be accepted as true the insurer reasonably might pay the*  
9 *claim.”* *Washington v. Metropolitan Life Ins. Co.*, 372 Mass. 714, 363  
10 N.E.2d 683, 685 (1977 (emphasis added) (quoting in part *O’Neil v.*  
11 *Metropolitan Life Ins. Co.*, 300 Mass. 477, 15 N.E.2d 8,9,811 (1938). In  
short, due proof satisfies a “preliminary requirement” of notice *Krantz [v.*  
*John Hancock Mut. Life Ins. Co.]*, 141 N.E.2d. [703, 723 (1957)], but if the  
insurer denies death, the claimant must prove it by admissible evidence.  
*Larsen v. Metropolitan Life Ins. Co.*, 289 Mass. 573, 194 N.E. 664, 665  
(1935).

12 136 F.3d at 79-80.

13 In the context of the instant action, the First Circuit’s decision in Tu stands for two  
14 important, albeit perfectly ordinary propositions. First, as noted, the decision in Tu illustrates the  
15 ordinary rule that in a diversity insurance case state law determines what must be proven to  
16 prevail in a claim and federal law determines what evidence is admissible to make that proof. See  
17 Tu, 136 F.3d at 81 (relying on Federal Rules of Evidence to determine the admissibility of  
18 documents); Estate of Mohamed v. Monumental Life Ins. Co., 138 F.Supp.2d 709, 718 (E.D. Va.  
19 2001) (noting decision in Tu rested on state statute and case law). Second, at the level of a  
20 motion for summary judgment, the claimant of a life insurance policy has the burden to produce  
21 evidence in accordance with Rule 56 upon which a trier of fact could find that the insured is dead.  
22 This is nothing more than application of the legal standard articulated above to the context of a  
23 life insurance dispute.

24 There are two propositions important to this case that are *not* supported by the decision in  
25 Tu. First, the decision in Tu does not support the proposition that a showing of any particular  
26 type of evidence, such as a death certificate, is necessary to establish a claim in a life insurance  
27 case in California. As noted in Estate of Mohamed, the court’s decision in Tu focused on the  
28 admissibility of a foreign death certificate – one having problems of authentication similar to the

1 purported death certificate in this case – but that was only because the claimant in the Tu case  
2 offered no evidence of death other than a foreign death certificate that could not be authenticated.  
3 See Estate of Mohamed, 138 F.Supp.2d 718 (“Unlike *Min Tu*, the inadmissibility of the Somali  
4 death certificate as a means of proof of the facts stated therein does not end the Court’s enquiry  
5 into the sufficiency of the proof submitted”).

6 Second, and more important in the context of this case, the decision in Tu cannot be  
7 interpreted to modify in any way the standards for summary judgment set forth in Rule 56 of the  
8 Federal Rules of Civil Procedure. Under Rule 56(c)(2), a “party may object that the material  
9 cited to support or dispute a fact *cannot* be presented in a form that *would* be admissible as  
10 evidence.” Id. (italics added). This court has always interpreted Rule 56(c)(2) to require that an  
11 objection to a proffer of evidence on the ground of inadmissibility must be based on the  
12 impossibility of producing the evidence in a form that would be admissible *at trial*. This court  
13 has never interpreted Rule 56 to require that the evidence alleged be admissible in the form  
14 presented at summary judgment. As a result, objections to evidence based on hearsay or lack of  
15 authentication are routinely waived in the absence of a showing that there is no way the evidence  
16 could be presented at trial that would overcome those objections. The decision in Tu does not  
17 counsel otherwise.

18 The court accepts for purposes of this analysis that the Death Certificate executed in  
19 Cambodia is not admissible as proof of Phasavao’s death and cannot be made admissible under  
20 the facts of this case. What remains is whether Plaintiff have nonetheless succeeded in  
21 establishing a genuine issue of material fact as to Phasavo’s death on the strength of the facts  
22 alleged in Paragraphs 42 and 43 of Plaintiffs’ opposition that were quoted above and whether  
23 Plaintiffs can present that evidence in a form that would be admissible at trial. The court will  
24 address these sub-issues in turn.

25 ***A. Identifying Articles Found on the Decedent’s Body Presumptively Establish Its***  
26 ***Identity***

27 As previously noted, neither the court nor either party has found any California authority  
28 that embellishes on the requirement that a claimant to the proceeds of a life insurance policy



1 prove the death of the insured by a preponderance of the evidence. Fortunately, the facts of this  
2 case do not require that the court go too far out on a limb to decide what is sufficient in this case.  
3 In the absence of any authority to the contrary, the court finds that where a dead body is  
4 discovered and documents are recovered from the body that in normal circumstances would be  
5 sufficient to establish that individual's identity for official purposes and where no facts are  
6 present to suggest that the identifying documents are false or belong to another, the identifying  
7 documents establish identity to a degree sufficient to withstand a motion for summary judgment.  
8 Plaintiff alleges in Paragraph 42 that the soldiers found a California Driver's license and a  
9 Passport "and other personal effects of the deceased" on the body and that the documents  
10 indicated the body was Phasavao's. The court finds that if those facts could be established by  
11 witness testimony, those facts would be sufficient to establish the identity of the body to a degree  
12 sufficient to place the issue before a trier of fact.

13 ***B. Evidence supporting Identity of Decedent is Improper under Rule 56(c)***

14 The information contained in Paragraph 42 is supported by brief excerpts of transcripts of  
15 translated conversations between an investigator hired by Plaintiffs and the soldiers and the  
16 village chief as noted. The evidentiary material supporting the allegations in Paragraph 42 is set  
17 forth in Exhibits "R" through "V" of Defendants Appendix of Exhibits, Document Numbers 22-7  
18 and 22-8. The documents in question constitute Plaintiffs' responses to special interrogatories  
19 seeking any late-acquired information concerning the alleged death of Phasavao. The relevant  
20 documents consist of translations of interviews between an investigator and four military  
21 personnel and a village chief who indicated during their interviews that they had seen a dead body  
22 by the side of the road, that the body had been dead an estimated four days and was decomposing,  
23 that the body had apparently died as a result of a traumatic accident and that documents of  
24 identification had been removed indicating the body was that of Phasavao.

25 Defendants object to the proffer of evidence contained in Paragraphs 42 and 43 on the  
26 grounds of hearsay, lack of authentication and failure to obtain the statements under oath. See  
27 Doc. # 26 at 11:5-12:9 (arguing the non-admissibility of the documents). Rule 56(c)(4) requires  
28 that evidence of a fact may be in the form of an "affidavit or declaration used to support or

1 oppose a motion [ . . . ] [which is] made on personal knowledge, set[ing] out facts that would be  
2 admissible in evidence, and show[ing] that the affiant or declarant is competent to testify on the  
3 matters stated.” The court finds the documents constituting support for the facts alleged in  
4 Paragraph 42 fulfill all the requirements of Rule 56 except that the information set forth in the  
5 translated transcripts is not in the form of a declaration or declarations. As a result, the court  
6 finds that the evidence supporting the allegations set forth in Paragraph 42 is not, strictly  
7 speaking, in conformity with the requirements of Rule 56(c).

8 ***C. Rule 56(e) Permits Opportunity to Correct Deficiency***

9 Pursuant to Rule 56(e), “[i]f a party fails to properly support an assertion of fact or fails to  
10 properly address another party’s assertion of fact as required by Rule 56(c), the court may: (1)  
11 give an opportunity to properly support or address the fact.” In Paragraph 43, Plaintiffs state their  
12 intention to transport at least two of the soldiers and the village chief to the United States for the  
13 purpose of testimony at trial. Although Defendants do not address the prospect of testimony by  
14 these witnesses, the court has no present reason to believe their testimony would be inadmissible  
15 and would effectively cure any problems of hearsay or authentication. Defendants have objected  
16 that Plaintiffs’ statement that they will produce two of the soldiers and the village chief at trial is  
17 mere speculation. The court finds the statement of intent to produce the witness as set forth in  
18 Paragraph 43 is not speculative to any greater extent than the intent to produce witnesses in any  
19 trial. The identities of the proposed witnesses are known and they have been located by the  
20 investigator. Defendants have not alleged any reason why Plaintiff’s will necessarily fail in the  
21 effort to establish the identity of the body that is alleged to have been that of Phasavo.

22 The court finds that where, as here, the mere correction in the form of a proffer of  
23 evidence is likely to be sufficient to establish an issue of material fact in opposition to a motion  
24 for summary judgment, and where there is no apparent reason why that correction cannot be  
25 accomplished in a timely manner, permitting a party to correct the deficiency in the proffered  
26 evidence is appropriate under Rule 56(e)(1). Further, permitting Plaintiff to resubmit the  
27 materials formerly submitted in the form of translated transcripts in the form of declarations or  
28 affidavits as required by Rule 56(c) addresses the legitimate concern of Defendants and the court

1 that the evidence to be proffered supports the substance of the facts alleged.

2 The decision on Defendant's motion for summary judgment as to Plaintiffs' claim for breach  
3 of contract will be continued a reasonable amount of time to permit Plaintiffs to resubmit  
4 evidence of Phasavao's death in a form consistent with the requirements of Rule 56(c).  
5 Defendant may submit any objection to Plaintiff's proffer of evidence no later than fourteen days  
6 from the date of submission of the evidence to the court. The court will thereafter take the matter  
7 under submission and make its final ruling on the matter.

## 8 **II. Bad Faith Claim**

9 Plaintiff's second claim for relief alleges breach of the implied covenant of good faith  
10 based on Defendant's alleged failure to adequately investigate details of Phasavao's death.  
11 Defendant's primary ground for summary judgment as to Plaintiff's bad faith claim is that the  
12 claim is time-barred. Plaintiffs contend in their opposition that Defendants failed to notify  
13 Plaintiffs of the running of the statutory limitations period pertaining to bad faith contract claims  
14 and contends that Defendants should be equitably estopped from asserting a statute of limitations  
15 defense. Plaintiffs cite 10 California Code of Regulations, sections 2695.4(a) and 2695.7(f) for  
16 the proposition that Defendants were required to notify Plaintiffs of any time limits that might  
17 apply "to the claim presented by the claimant," or to notify Plaintiffs prior to the running of any  
18 time period "upon which the insurer may rely to deny a claim." Doc. # 25 at 5.

19 The court finds Plaintiff's contentions regarding Defendant's duty to notify are misplaced.  
20 The cited portions of the California Code of Regulations apply on their face to benefits available  
21 under the terms of an insurance contract. Plaintiff's claim for bad faith lies outside the insurance  
22 policy and is based on state common law theories of tort, not on the terms of the contract itself.  
23 Plaintiffs' argument fails to establish that Defendants had any duty to notify Plaintiffs of the  
24 statutory limitations period for the filing of a claim for bad faith.

25 In order for the doctrine of equitable estoppel to apply, certain conditions must be present:  
26 "[T]he party to be estopped must be apprised of the facts; the other party must be ignorant of the  
27 true state of the facts; the party to be estopped must have intended that its conduct be acted upon,  
28 or so act that the other party had a right to believe that it was so intended; and the other party

1 must rely on the conduct to its prejudice.” ( Cal. Cigarette Concessions v. City of L.A., 53 Cal.2d  
2 865, 869 (1960); see also Driscoll v. City of Los Angeles, 67 Cal.2d 297, 305 (1967)). Here,  
3 there was no action or representation by Defendants upon which Plaintiffs relied to their  
4 detriment. Although Plaintiff’s have little familiarity with the English language or with the  
5 workings of the legal system, Plaintiffs have admitted that they received the notices of denial of  
6 claim timely and that they understood what the denial letters meant. Plaintiffs cite nothing that  
7 might have impeded efforts to obtain timely assistance in filing a claim for bad faith. There is no  
8 apparent basis for the application of equitable estoppel to prevent Defendants from asserting a  
9 limitations defense under the facts of this case.

10 The court finds Plaintiffs’ second claim for relief for common law breach of the implied  
11 covenant of good faith and fair dealing is time-barred.

12 **CONCLUSION AND ORDER**

13 THEREFORE, for the reasons discussed above, it is hereby ORDERED that Defendant’s  
14 motion for summary judgment as to Plaintiffs’ second claim for relief for breach of the implied  
15 covenant of good faith and fair dealing is GRANTED. Plaintiffs’ second claim for relief is  
16 DISMISSED with prejudice.

17 Defendant’s motion for summary judgment as to Plaintiffs’ first claim for relief for breach  
18 of contract is hereby CONTINUED to allow Plaintiff to re-submit evidence to support the  
19 allegations set forth in Paragraph 42 in accordance with Rule 56(c) of the Federal Rules of Civil  
20 Procedure and as discussed above. Such evidence shall be filed and served not later than twenty-  
21 one (21) days from the date of service of this order. Defendants may file and serve any objection  
22 to Plaintiffs’ proffer of evidence no less than fourteen (14) days from the date Plaintiffs file and  
23 serve their proffer of evidence pursuant to this order.

24  
25 IT IS SO ORDERED.

26 Dated: July 15, 2013

27   
28 SENIOR DISTRICT JUDGE