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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY,

Plaintiff,

v.

GERARDO ALANN FELIX GARAY;
MARY GARCIA ROJAS; CYNTHIA ANN
ROJAS; CHRISTINA MONTECINO;
GABRIEL ROJAS; ANITA ROJAS,
individually and as Guardian ad Litem for
BRANNON JONAH CLAYTON; and
DOES 1 to 50, inclusive,

Defendants.

Case No. 1:14-CV-00138-AWI-JLT

ORDER ENTERING STIPULATED
JUDGMENT IN FAVOR OF
NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY

MARY GARCIA ROJAS; CYNTHIA ANN
ROJAS; CHRISTINA MONTECINO;
GABRIEL ROJAS; and ANITA ROJAS,

Counterclaimants,

v.

NATIONWIDE AGRIBUSINESS
INSURANCE COMPANY; PEERLESS
INSURANCE COMPANY; GOLDEN
EAGLE INSURANCE CORPORATION

Counterdefendants.

1 Plaintiff/Counterdefendant Nationwide Agribusiness Insurance Company
2 (“Nationwide”), Defendant Gerardo Alann Felix Garay, and
3 Defendants/Counterclaimants Mary Garcia Rojas, Cynthia Ann Rojas, Christina
4 Montecino, Gabriel Rojas, and Anita Rojas, individually and as Guardian ad Litem
5 for Defendant Brannon Jonah Clayton, have stipulated to entry of judgment in favor
6 of Nationwide.

7 In light of the Court’s order dated February 22, 2016, denying Defendants’
8 motion for partial summary judgment against Nationwide, Doc. 76, the parties to the
9 stipulation have agreed that the Court should enter judgment pursuant to the terms
10 outlined below, subject to the right to appeal.

11 **I. Procedural History of the Pleadings.**

12 1. On January 31, 2014, Plaintiff Nationwide Agribusiness Insurance
13 Company (“Nationwide”) filed a complaint against Mary Garcia Rojas, Cynthia
14 Ann Rojas, Christina Montecino, Gabriel Rojas, and Anita Rojas, individually and
15 as Guardian ad Litem for Brannon Jonah Clayton (all of whom are referred to herein
16 collectively as the “Rojas Defendants”), and Gerardo Alann Felix Garay. Doc. 1.

17 2. Nationwide’s Complaint sought declaratory relief against the Rojas
18 Defendants and Garay with respect to its rights under two different insurance
19 policies: **(A)** the “Commercial Auto” insurance policy that Nationwide issued to
20 HFS Enterprises Inc. (“HFS”), policy no. CA 119496A, for the policy period of
21 May 25, 2011 to May 25, 2012; and **(B)** the “Commercial Umbrella Policy,” policy
22 no. CU 119496A, that Nationwide issued to HFS for the policy period of May 25,
23 2011 to May 25, 2012. Both of these insurance policies are hereinafter referred to
24 as the “Nationwide Policies.”

25 3. In short, Nationwide’s Complaint sought judicial declarations that
26 Nationwide: **(A)** did not have a duty under the Nationwide Policies to defend
27 Defendant Gerardo Alann Felix Garay in the civil action that the Rojas Defendants
28 had filed against HFS and Garay in the California Superior Court for the County of

1 Kern titled Rojas, et al. v. HFS Enterprises, Inc., Case no. S-1500-CV-275244,
2 alleging motor vehicle and general negligence causes of action against both HFS
3 and Garay (the “Rojas Action”) ; and (B) did not have any obligation under the
4 Nationwide Policies to indemnify or settle the Rojas Action on Gerardo Garay’s
5 behalf.

6 4. On February 14, 2014, Nationwide filed a First Amended Complaint
7 (“FAC”) Doc. 5. The FAC seeks declaratory relief as to the same issues alleged in
8 the Complaint.

9 5. On April 3, 2014, the Rojas Defendants answered Nationwide’s FAC.
10 Doc. 15.

11 6. Also on April 3, 2014, the Rojas Defendants (except for Brannon Jonah
12 Clayton), as assignees of the rights of Defendant Gerardo Garay and as judgment
13 creditors, filed a Counterclaim against Nationwide for breach of contract and breach
14 of the implied covenant of good faith and fair dealing with respect to the Nationwide
15 Policies. Doc. 16. In short, the Rojas Defendants’ Counterclaim alleged that
16 Nationwide breached the Nationwide Policies and the covenant of good faith and
17 fair dealing by failing to settle the Rojas Action within policy limits on Defendant
18 Garay’s behalf, by failing to defend Garay in the Rojas Action, and by failing to
19 indemnify Garay for the judgment against him in the Rojas Action.

20 7. On April 25, 2014, Nationwide answered the Rojas Defendants’
21 Counterclaim. Doc. 21.

22 8. On May 8, 2014, Defendant Gerardo Garay answered Nationwide’s
23 FAC. Doc. 22.

24 9. On July 11, 2014, the Rojas Defendants filed a First Amended Answer
25 to Nationwide’s FAC and a First Amended Counterclaim against Nationwide.
26 Docs. 30, 31.

27 10. On August 1, 2014, Nationwide answered the Rojas Defendants’ First
28 Amended Counterclaim.

1 11. On March 3, 2015, the Rojas Defendants (except for Brannon Jonah
2 Clayton), as assignees of the rights of Defendant Gerardo Garay and as judgment
3 creditors against Nationwide and Peerless Insurance Company, filed a Second
4 Amended Counterclaim that alleged a new direct cause of action against Peerless
5 Insurance Company as judgment creditors. Doc. 49.

6 12. On March 24, 2015, Nationwide answered the Rojas Defendants’
7 Second Amended Counterclaim. Doc. 51.

8 13. On April 6, 2015, Peerless Insurance Company answered the Rojas
9 Defendants’ Second Amended Counterclaim. Doc. 53.

10 14. On September 10, 2015, the Rojas Defendants (except for Brannon
11 Jonah Clayton) as assignees of the rights of Defendant Gerardo Garay and as
12 judgment creditors against Nationwide, Peerless Insurance Company, and Golden
13 Eagle Insurance Corporation, filed a Third Amended Counterclaim that alleged an
14 additional direct cause of action against Golden Eagle Insurance Corporation as
15 judgment creditors. Doc. 62.

16 15. On September 25, 2015, Golden Eagle Insurance Corporation answered
17 the Rojas Defendants’ Third Amended Counterclaim. Doc. 65.

18 16. On September 28, 2016, Nationwide answered the Rojas Defendants’
19 Third Amended Counterclaim. Doc. 66.

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21 **II. The Rojas Defendants/Counterclaimants’ Motion for Partial Summary**
22 **Judgment Against Nationwide.**

23 17. On September 24, 2015, the Rojas Defendants/Counterclaimants filed a
24 motion for partial summary judgment against Nationwide. Doc. 64. In short, the
25 motion sought a determination pursuant to the terms of the Nationwide Policies that
26 a 2001 Dodge truck, identified as having California license number 7C93594, was a
27 covered auto owned or borrowed by HFS on October 23, 2011.

1 18. On October 26, 2015, Nationwide filed its Opposition to the Rojas
2 Defendants/Counterclaimants’ motion for partial summary judgment. Doc. 67.

3 19. On November 2, 2015, the Rojas Defendants/Counterclaimants filed
4 their Reply to Nationwide’s Opposition to their motion for partial summary
5 judgment. Doc. 68.

6 20. On January 26, 2016, upon the Court’s invitation to do so, Peerless
7 Insurance Company and Golden Eagle Insurance Corporation filed a brief in
8 response to the Rojas Defendants/Counterclaimants’ motion for partial summary
9 judgment. Doc. 73.

10 21. On February 2, 2016, the Rojas Defendants/Counterclaimants filed a
11 response to the briefing that Peerless Insurance Company and Golden Eagle
12 Insurance Corporation filed on January 26, 2016. Doc. 74.

13 22. On February 2, 2016, Nationwide filed a response to the briefing that
14 Peerless Insurance Company and Golden Eagle Insurance Corporation filed on
15 January 26, 2016. Doc. 75.

16 23. On February 22, 2016, the Court issued an order denying the Rojas
17 Defendants/Counterclaimants’ motion for partial summary judgment. Doc. 76. The
18 Court’s order held that the evidence that the parties submitted both in support of and
19 in opposition to the motion indicates that HFS was not an owner or borrower of the
20 truck on October 23, 2011.

21 24. The Court’s order, based on the evidence submitted by the parties, held
22 that after HFS’s sale of the truck to JSA Company (“JSA”) on March 26, 2010, HFS
23 was no longer an owner of the truck. Doc. 76, p. 13. The Court held that “HFS was
24 not, by reason of the Vehicle Code, owner of the Truck such that it was liable for
25 operation of the vehicle by any other person. *See Veh. Code § 5602.*” Doc. 76, p. 13.

26 25. The Court also rejected Defendants’ contention that HFS was an owner
27 of the truck after the sale to JSA. The Court held that “JSA’s transfer of possession
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1 to HFS for purposes of selling the Truck on behalf of JSA does not impact the
2 ownership of the Truck.” *Id.*

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4 **III. Stipulation for Entry of Judgment in Nationwide’s Favor.**

5 26. The parties have stipulated that the Court’s findings in the February 22,
6 2016 order that HFS’s ownership was terminated upon the bona fide sale of the
7 truck to JSA and HFS’s compliance with Vehicle Code § 5602, and that HFS’s
8 subsequent possession and efforts to sell the truck did not impact the ownership of
9 the truck, are determinative that there was no coverage under the Nationwide
10 policies.

11 27. In light of the Court’s denial of the Rojas
12 Defendants/Counterclaimants’ motion for partial summary judgment, Nationwide,
13 the Rojas Defendants/Counterclaimants, and Defendant Gerardo Garay, have met
14 and conferred and agreed that if Nationwide were to file a motion for summary
15 judgment pursuant to FRCP Rule 56, the same evidence which was before the Court
16 on the Defendants/Counterclaimants motion for partial summary judgment would be
17 introduced in support of the motion and in opposition to such a motion. The Court’s
18 February 22, 2016 order finding that HFS was not the owner of the truck after
19 March 26, 2010 would negate coverage and entitle Nationwide to summary
20 judgment.

21 28. The Rojas Defendants/Counterclaimants, Defendant Gerardo Garay,
22 and Nationwide have all agreed that judgment should be entered as follows:

- 23 a. In favor of Nationwide and against all of the Rojas Defendants
24 and Gerardo Garay with respect to each of Nationwide’s claims
25 for declaratory relief set forth in Nationwide’s FAC; and
26 b. In favor of Nationwide, only, and against all Counterclaimants
27 with respect to each of the claims as alleged against Nationwide
28 in the Third Amended Counterclaim.

1 c. Counterclaimants continue to assert their claims against
2 Counterdefendants Peerless Insurance Company and Golden
3 Eagle Insurance Corporation.

4 29. Nationwide, Gerardo Garay, and the Rojas Defendants have all
5 stipulated that final judgment may now be entered in favor of Nationwide based on
6 the evidence submitted to the Court by the parties in support of and in opposition to
7 the Rojas Defendants/Counterclaimants' motion for partial summary judgment,
8 subject to the right to appeal which is expressly reserved.

9 30. Nationwide, Gerardo Garay, and the Rojas Defendants have further
10 stipulated that each party shall be responsible only for their own respective costs
11 incurred in this lawsuit.

12 31. Nationwide and the Rojas Defendants have stipulated that subject to the
13 right of appeal, the Rojas Defendants shall take nothing from Nationwide with
14 respect to their Third Amended Counterclaim against Nationwide.

15 32. Each party to this agreement has expressly reserved its right to appeal
16 and/or cross-appeal this judgment and/or the Court's ruling of February 22, 2016.

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ORDER

Based on the forgoing, IT IS HEREBY ORDERED that:

1. Judgment is entered in favor of Plaintiff/Counterdefendant Nationwide Agribusiness Insurance Company and against all of the Rojas Defendants and Defendant Gerardo Garay with respect to each of Nationwide’s claims for declaratory relief set forth in Nationwide’s First Amended Complaint; and
2. Judgement is entered in favor of Nationwide only and against all Counterclaimants with respect to each of the claims as alleged against Nationwide in the Third Amended Counterclaim.

The Rojas Defendants/Counterclaimants shall take nothing from Nationwide with respect to their Third Amended Counterclaim. Each party shall be responsible only for their own respective costs incurred in this lawsuit.

IT IS SO ORDERED.

Dated: March 9, 2016



SENIOR DISTRICT JUDGE