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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PRAETORIAN INSURANCE CO.,

Plaintiff,

v.

A R BUSINESS GROUP, INC., d/b/a  
US TIRE & WHEEL; MARSHAUN  
TATE; S.T., by and through his  
guardian ad litem, KENNETH TATE;  
ELISEO QUINTERO, SR.; AIDA  
QUINTERO; FORD MOTOR  
COMPANY; BRIDGESTONE  
AMERICAS, INC.,

Defendants.

No. 2:13-cv-02639-MCE-EFB

**MEMORANDUM AND ORDER**

This case concerns two civil actions filed in the Sacramento County Superior Court (the "Underlying Actions"). Those suits seek to hold AR Business Group, Inc. d/b/a US Tire & Wheel ("USTW") liable for deaths and injuries that resulted from a motor vehicle accident. USTW was insured at the time by the plaintiff in this suit, Praetorian Insurance Co. Praetorian brought this suit in federal court pursuant to its diversity jurisdiction, seeking declaratory relief that any liability attributed to USTW in the Underlying Actions is not covered by USTW's insurance policy and that Praetorian, therefore, has no duty to defend USTW in those actions. Furthermore, Praetorian seeks

1 reimbursement from USTW for all fees and costs it has already incurred in defending  
2 USTW in the Underlying Actions. Before the Court now are cross Motions for Summary  
3 Judgment. ECF Nos. 46, 48. For the reasons below, Plaintiff's motion is GRANTED,  
4 while Defendants' motion is DENIED.<sup>1</sup>

## 5 6 **BACKGROUND**<sup>2</sup> 7

8 This suit concerns the duties and obligations of Praetorian in relation to two civil  
9 actions currently pending against USTW in the Sacramento County Superior Court.  
10 Those actions arise out of a very serious rollover accident which occurred on Interstate 5  
11 in Merced County on June 20, 2011. Defendant Marshaun Tate was driving a Ford  
12 Explorer with three passengers when the left rear wheel tire's tread separated, causing  
13 the Explorer to roll over. Tate's wife, Iczert Tate, and Eliseo Quintero, Jr.—both  
14 passengers—suffered fatal injuries from the accident. Tate and his son—the third  
15 passenger—suffered non-fatal injuries.

16 Only days before the accident, USTW had sold and installed four used tires on  
17 Tate's Explorer. Tate and his son, through a guardian ad litem, filed one of the  
18 Underlying Actions in Sacramento County Superior Court, while Eliseo Quintero Sr. and  
19 Aida Quintero filed the other. In those Underlying Actions, the Tates and the Quinteros  
20 allege that the tires USTW sold and installed on the Explorer contained manufacturing  
21 defects. Furthermore, they allege that the tires were the wrong type for the Explorer,  
22 were too old, and were negligently placed on the vehicle. Because of these errors and  
23 defects, the Tates and Quinteros seek to hold USTW liable for the injuries and deaths  
24 that resulted from the June 20, 2011 accident.

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26 <sup>1</sup> Because oral argument would not have been of material assistance, the Court ordered this  
27 matter submitted on the briefs in accordance with Local Rule 230(g).

28 <sup>2</sup> Unless otherwise noted, the facts in this section are drawn directly, and in some cases verbatim,  
from the Plaintiff's and Defendants' cross motions for summary judgment.

1 During the period when USTW installed the tires on Tate's Explorer, it had an  
2 insurance policy from Praetorian that covered liability stemming from accidents caused  
3 by USTW's auto repair work. The relevant language reads:

4 **SECTION II - LIABILITY COVERAGE**

5 **A. Coverage**

6 **1. "Garage Operations" -- Other Than Covered**  
7 **"Autos"**

8 a. We will pay all sums an "insured" legally  
9 must pay as damages because of  
10 "bodily injury" or "property damage" to  
11 which this insurance applies caused by  
12 an "accident" and resulting from "garage  
13 operations" other than the ownership,  
14 maintenance or use of covered "autos".  
15 We have the right and duty to defend  
16 any "insured" against a "suit" asking for  
17 these damages. However, we have no  
18 duty to defend any "insured" against a  
19 "suit" seeking damages for "bodily  
20 injury" or "property damage" to which  
21 this insurance does not apply.

22 **2. "Garage Operations" -- Covered "Autos"**

23 We will pay all sums an "insured" legally must  
24 pay as damages because of "bodily injury" or  
25 "property damage" to which this insurance  
26 applies, caused by an "accident" and resulting  
27 from "garage operations" involving the  
28 ownership, maintenance or use of covered  
"autos".

\* \* \*

We have the right and duty to defend any  
"insured" against a "suit" asking for such  
damages or a "covered pollution cost or  
expense". However, we have no duty to defend  
any "insured" against a "suit" seeking damages  
for "bodily injury" or "property damage" or a  
"covered pollution cost or expense" to which  
this insurance does not apply.

26 The policy also contained several exclusions, one of which is the subject of this  
27 litigation:

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**USED TIRES AND RECAPPED TIRES EXCLUSION  
ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE LIABILITY COVERAGE FORM  
COMMERCIAL GENERAL LIABILITY FORM**

Named Insured: Chat Auto Sales & US Tire & Wheel  
Policy Number: P0007014946  
Endorsement Effective: 04/21/2011  
Countersigned By (authorized Representative): Susan Matlock

BUSINESS AUTO COVERAGE FORM, SECTION II-LIABILITY COVERAGE, Part B. EXCLUSIONS, GARAGE COVERAGE FORM, SECTION II-LIABILITY COVERAGE, Part B. EXCLUSIONS and COMMERCIAL GENERAL LIABILITY FORM, SECTION I-COVERAGES, Part 2. EXCLUSIONS are amended to include the following:

**USED TIRES AND RECAPPED TIRES EXCLUSION:**

“Bodily injury” or “property damage”, arising out of a defect in, or failure of, one or more tires which were not new when sold or installed by the “insured” or had been recapped, retreaded or regrooved by the “insured”, its agent, employee(s) or independent contractor(s).

**ORIGINAL SIGNATURE ON FILE**

Named Insured’s Signature	Date
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This endorsement shall apply to any continuation, reinstatement, renewal or replacement of the above mentioned policy by the Named Insured. (If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**ALL OTHER TERMS AND CONDITIONS REMAIN  
UNCHANGED**

DMI CA 85 4-06.

Praetorian alleges that this Exclusion precludes it from covering any liability USTW incurred as a result of the June 20, 2011 accident and from any duty to defend USTW in the Underlying Actions. Accordingly, Praetorian brought this suit seeking declaratory relief. Because USTW has since become bankrupt, Praetorian named the

1 plaintiffs in the Underlying Actions co-defendants in this action as the real parties in  
2 interest.

### 3 STANDARD

4  
5 The Federal Rules of Civil Procedure provide for summary judgment when “the  
6 movant shows that there is no genuine dispute as to any material fact and the movant is  
7 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also Celotex Corp. v.  
8 Catrett, 477 U.S. 317, 322 (1986). One of the principal purposes of Rule 56 is to  
9 dispose of factually unsupported claims or defenses. Celotex, 477 U.S. at 325.

10 In a summary judgment motion, the moving party always bears the initial  
11 responsibility of informing the court of the basis for the motion and identifying the  
12 portions in the record “which it believes demonstrate the absence of a genuine issue of  
13 material fact.” Celotex, 477 U.S. at 323. If the moving party meets its initial  
14 responsibility, the burden then shifts to the opposing party to establish that a genuine  
15 issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith  
16 Radio Corp., 475 U.S. 574, 586–87 (1986); First Nat’l Bank v. Cities Serv. Co., 391 U.S.  
17 253, 288–89 (1968).

18 In attempting to establish the existence or non-existence of a genuine factual  
19 dispute, the party must support its assertion by “citing to particular parts of materials in  
20 the record, including depositions, documents, electronically stored information,  
21 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do  
22 not establish the absence or presence of a genuine dispute, or that an adverse party  
23 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The  
24 opposing party must demonstrate that the fact in contention is material, i.e., a fact that  
25 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,  
26 Inc., 477 U.S. 242, 248, 251–52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and  
27 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also  
28 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is

1 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,  
2 477 U.S. at 248. In other words, the judge needs to answer the preliminary question  
3 before the evidence is left to the jury of “not whether there is literally no evidence, but  
4 whether there is any upon which a jury could properly proceed to find a verdict for the  
5 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251  
6 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)). As the Supreme Court  
7 explained, “[w]hen the moving party has carried its burden under Rule [56(a)], its  
8 opponent must do more than simply show that there is some metaphysical doubt as to  
9 the material facts.” Matsushita, 475 U.S. at 586. Therefore, “[w]here the record taken as  
10 a whole could not lead a rational trier of fact to find for the nonmoving party, there is no  
11 ‘genuine issue for trial.’” Id. 87.

12 In resolving a summary judgment motion, the evidence of the opposing party is to  
13 be believed, and all reasonable inferences that may be drawn from the facts placed  
14 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at  
15 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s  
16 obligation to produce a factual predicate from which the inference may be drawn.  
17 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), aff’d,  
18 810 F.2d 898 (9th Cir. 1987).

## 20 ANALYSIS

21  
22 The disposition of this case turns on (1) the enforceability of the Used Tire  
23 Exclusion, and (2) the applicability of that Exclusion to the Underlying Actions.

### 24 A. Enforceability of the Used Tire Exclusion

25 Under California law, insurance policy exclusions require both “[c]onspicuous  
26 placement of exclusionary language” and that “[t]he language itself . . . be plain and  
27 clear.” Haynes v. Farmers Ins. Exch., 32 Cal. 4th 1198, 1211 (2004) (quoting  
28 Jauregui v. Mid-Century Ins. Co., 1 Cal. App. 4th 1544, 1550 (1991)). The insurer holds

1 the burden of fulfilling these requirements of conspicuousness and clarity. Steven v. Fid.  
2 & Cas. Co. of N.Y., 58 Cal. 2d 862, 877 (1962). If that burden is not met, the exclusion  
3 is unenforceable. Haynes, 32 Cal. 4th at 1204. Furthermore, “it is well established that  
4 ‘mere receipt of [an endorsement] . . . does not serve to charge the insured with  
5 constructive knowledge of [an] exclusion’ it contains.” Id. at 1210 (alterations in original)  
6 (quoting Underwriters Ins. Co. v. Purdie, 145 Cal. App. 3d 57, 65 (1983)).

7 USTW originally obtained insurance from Plaintiff in 2010. Joint Statement of  
8 Undisputed Material Facts (“JUMF”), ECF No. 47, ¶ 11. The 2010 policy included a  
9 Used Tire Exclusion, id., but the parties dispute whether the Exclusion was ever signed  
10 by USTW. Furthermore, USTW testifies that had it known about the Exclusion, it would  
11 not have purchased the insurance. Defs.’ Separate Statement of Undisputed Material  
12 Facts, ECF No. 48-2, ¶ 28. This is because about 50% of USTW’s tire business  
13 consisted of used tire sales. JUMF, ¶ 1.

14 In 2011, USTW renewed its insurance policy with Plaintiff, and it contained the  
15 same Used Tire Exclusion as the 2010 policy. Id. ¶¶ 16–17. Although USTW did not  
16 sign the Exclusion itself, it did sign the renewal quote provided by Plaintiff, which stated  
17 that the “Used Tire Exclusion will carry forward.” Id. ¶¶ 14–16. Furthermore, the Used  
18 Tire Exclusion was named in a list of forms within the policy itself. Id. ¶ 17. The Used  
19 Tire Exclusion itself was provided on a separate page. See id. ¶ 19. This 2011 policy  
20 was in effect at the time USTW installed the tires on Tate’s Ford Explorer. See id.  
21 ¶¶ 16, 42.

22 Defendants argue that the Used Tire Exclusion is unenforceable because USTW  
23 did not have actual notice of the Exclusion. See Defs.’ Mem. of P & A in Supp. of Mot.  
24 for Partial Summ. J. (“Defs.’ MSJ”), ECF No. 48-1, at 10–12. Plaintiff, however, argues  
25 that California law only requires that exclusions be conspicuous and in clear language.  
26 Pl.’s Opp’n to Defs.’ MSJ, ECF No. 55, at 6. Thus, they contend, any factual dispute  
27 over whether USTW had actual knowledge of the Exclusion or ever signed the Exclusion

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1 is not material and accordingly does not prevent summary judgment in its favor. See id.  
2 at 8–9.

3 Plaintiff has the better of the argument. While cases contain language stating that  
4 an exclusion “is insufficient to bind a party to unusual or unfair language unless it is  
5 brought to the attention of the party and explained,” Fields v. Blue Shield of Cal.,  
6 163 Cal. App. 3d 570, 578 (1985), California law does not require actual notice. Instead,  
7 exclusions are analyzed as to whether they are sufficiently conspicuous (i.e., brought to  
8 the attention of the party) and sufficiently clear (i.e., explained). See, e.g., Haynes,  
9 32 Cal. 4th at 1206–12 (performing such an analysis).

10 Here, the Exclusion was both conspicuous and clear. It was contained on its own  
11 page and bore the title “USED TIRES AND RECAPPED TIRES EXCLUSION  
12 ENDORSEMENT” in all caps, bolded. It also was named in all caps in a boxed, set-  
13 apart list of forms. These characteristics render exclusions conspicuous under California  
14 law. See Thompson v. Mercury Cas. Co., 84 Cal. App. 4th 90, 97 (2000) (finding  
15 limitation on liability not sufficiently conspicuous because “the language . . . is not  
16 bolded, italicized, enlarged, underlined, in different font, CAPITALIZED, boxed, set apart,  
17 or in any other way distinguished from the rest of the fine print.”). Thus, the Used Tire  
18 Exclusion was sufficiently conspicuous to be enforceable.

19 The Exclusion was also sufficiently clear, stating in plain language that “[b]odily  
20 injury’ or ‘property damage,’ arising out of a defect in, or failure of, one or more tires  
21 which were not new when sold or installed by the ‘insured’ or had been recapped,  
22 retreaded or regrooved by the ‘insured,’ its agent, employee(s) or independent  
23 contractor(s)” was excluded from coverage. JUMF, ¶ 19. It clearly lays out that the  
24 policy provides no coverage for any used tire sold by USTW, spelling out explicitly what  
25 kinds of tires it encompasses, i.e., “not new” or otherwise “recapped, retreaded or  
26 regrooved.” Its title also calls out the exclusion’s subject as a “Used Tires and Recapped  
27 Tires Exclusion.”

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1           Though the parties dispute whether USTW ever signed the Exclusion when it was  
2 originally included in the 2010 policy, it is undisputed that USTW both received and  
3 signed the 2011 policy. The 2011 policy is the subject of this litigation, and its  
4 conspicuous inclusion of the Used Tire Exclusion in clear language renders the  
5 Exclusion enforceable.

6           Defendants make an additional argument that the Exclusion is void because it  
7 was not sent to California Department of Insurance for approval before using the  
8 Exclusion form in its policies. Defs.' Opp'n to Pl.'s Mot. for Summ. J ("Pl.'s MSJ"), ECF  
9 No. 54, at 18–20. However, they provide no authority for the proposition that there is a  
10 requirement that insurers submit all forms for approval with the California Department of  
11 Insurance or that failure to do so renders such forms void. Instead, they cite provisions  
12 of the California Insurance Code that place such requirements on advisory  
13 organizations, see id. at 19, which are not applicable here.

14           Accordingly, the Used Tire Exclusion is enforceable, regardless of whether it was  
15 ever separately signed or whether USTW had actual knowledge of it. The undisputed  
16 material facts show that it was sufficiently conspicuous and clear under California law,  
17 and that USTW received a copy of it when the policy was renewed for 2011. Thus, the  
18 Court must next determine whether the Used Tire Exclusion applies to the Underlying  
19 Actions, and whether the relevant material facts are undisputed such that summary  
20 judgment is appropriate.

21           **B.     Applicability of the Used Tire Exclusion to the Underlying Actions**

22           Under California law, insurers have a duty to defend any “suit which potentially  
23 seeks damages within the coverage of the policy.” Gray v. Zurich Ins. Co., 65 Cal. 2d  
24 263, 275 (1996). The duty applies even if there is only “a bare ‘potential’ or ‘possibility’  
25 of coverage.” Montrose Chem. Corp. v. Superior Court, 6 Cal. 4th 287, 295 (1993). In  
26 analyzing whether an insurance policy creates a duty to defend, courts interpret the  
27 terms of the policy by applying the same doctrines used in interpreting ordinary  
28 contracts. Palmer v. Truck Ins. Exch., 21 Cal. 4th 1109, 1115 (1999) (“While insurance

1 contracts have special features, they are still contracts to which the ordinary rules of  
2 contractual interpretation apply.”). Thus, “[w]hen interpreting a policy provision, [courts]  
3 give its words their ordinary and popular sense except where they are used by the  
4 parties in a technical or other special sense.” Haynes, 32 Cal. 4th at 1204 (quoting AIU  
5 Ins. Co. v. Superior Court, 51 Cal. 3d 807, 822 (1990)).

6 Here, Defendants contend that a potential for coverage exists because the  
7 Underlying Actions contain theories of liability that are not related to the tire’s status as  
8 “used,” but stemming from human error. They allege that the accident was also caused  
9 by USTW’s negligence in (1) placing the tires on Tate’s Ford Explorer, (2) installing tires  
10 that were too old, (3) installing the wrong size tires, and (4) installing the wrong type of  
11 tires. Defs.’ MSJ, at 14. Thus, they conclude, damages did not arise solely “out of a  
12 defect in, or failure of,” the used tires. See id. at 18. Because of these alleged multiple  
13 causes of the accident, Defendants argue that the concurrent causation doctrine applies,  
14 id., which requires insurance coverage when liability is “caused jointly by an insured risk  
15 and by an excluded risk,” State Farm Mut. Auto. Ins. Co. v. Partridge, 10 Cal. 3d. 94, 102  
16 (1973) (in bank).

17 As a necessary predicate for this argument, Defendants contend that the Used  
18 Tire Exclusion only applies to risks inherent in a tire’s status as used. Defs.’ MSJ, at 17  
19 (“[Defendants] believe that the Used Tire Exclusion should not apply even to the alleged  
20 manufacturing defects in the tires.”). Thus, they argue, the concurrent causation  
21 doctrine applies—the accident was caused independently by the tire’s negligent  
22 installation and by the tire’s status as used. Id. at 17–18. But this interpretation is belied  
23 by the plain language of the Exclusion itself, and, as noted earlier, an insurance  
24 contract’s plain language controls. The Exclusion precludes liability not only for  
25 “defect[s] in” used tires, but also more broadly for “failure[s] of” used tires.

26 Framing the Exclusion in this way, it becomes clear that the joint causation  
27 doctrine is inapplicable. Any possible negligence on the part of USTW is intrinsically  
28 linked to the tire’s failure, and therefore falls within the Exclusion. In Partridge, the

1 California Supreme Court clarified that the concurrent causation doctrine requires the  
2 insured cause to be not causally related to the uninsured cause. See 10 Cal. 3d at 104  
3 n.10 (finding the concurrent causation doctrine applicable to an injury when careless  
4 driving caused a modified firearm to discharge because “the firing of the trigger did not  
5 ‘cause’ the careless driving, nor vice versa.”). Here, any of the alleged negligence could  
6 only have caused the accident to occur by first causing the tire to fail. And, because the  
7 Used Tire Exclusion is not limited to injuries caused by a tire’s status as used, the fact  
8 that the accident’s immediate cause was the tire’s failure brings Defendants’ injuries  
9 within the Used Tire Exclusions exemption for liability “arising out of a . . . failure of” a  
10 used tire.

11 Therefore, there is no possibility that Defendants’ injuries are covered by USTW’s  
12 insurance policy, and Praetorian has no duty to defend USTW in the Underlying Actions.

### 14 CONCLUSION

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16 For the foregoing reasons, Plaintiff’s Motion for Summary Judgment, ECF No. 46  
17 is GRANTED, and Defendants’ Motion for Summary Judgment, ECF No. 48, is DENIED.  
18 The matter having now been concluded in its entirety, the Clerk of Court is directed to  
19 close the file.

20 IT IS SO ORDERED.

21 Dated: January 13, 2017

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23   
24 MORRISON C. ENGLAND, JR.  
25 UNITED STATES DISTRICT JUDGE  
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28