

1 I. FACTUAL ALLEGATIONS

2 The following factual allegations in Plaintiffs'
3 Complaint are pertinent to the dismissal motion. "On or about
4 June 21, 2009, [Defendant] entered into a[] written insurance
5 contract, . . . with [Plaintiffs], the terms of which contract
6 provide inter alia, that [Defendant] would indemnify [Plaintiffs]
7 from any damage that they may sustain by reason of fire to or
8 theft of [their] . . . 2006 Ford Mustang [("the Vehicle")]."
9 (Compl. ¶ 4.) "On or about December 3, 2009, . . . [Plaintiffs]
10 notified [Defendant] that . . . the [Vehicle] had been stolen . .
11 . ." (Id. ¶ 9.)

12 "Subsequent to receiving notice of the Claim,
13 [Defendant] . . . commenced an investigation" (Id. ¶ 10.)
14 "[Defendant] determined during its investigation that after [the
15 Vehicle] had been removed from [Plaintiffs'] residence . . . it
16 was totally destroyed by fire" (Id. ¶ 14.) "On May 28,
17 2010, [Defendant] completed its investigation and . . . refused
18 to indemnify [Plaintiffs] for any loss . . . , [on the ground
19 that] it had obtained evidence that supplied it with probable
20 cause to believe that [Plaintiffs] had notified [Defendant] of
21 the Claim fraudulently and . . . had deliberately procured the
22 removal of the [Vehicle] from their residence and . . . caused or
23 procured the cause of the fire that subsequently destroyed the
24 [Vehicle]." (Id. ¶ 15.)

25 "By making allegations, without probable cause . . . ,
26 that [Plaintiffs] had deliberately procured the removal of the
27 [Vehicle] . . . and . . . had deliberately procured, or caused
28 to be procured, the fire that subsequently destroyed the

1 [Vehicle], [Defendant] . . . breached the covenant of good faith
2 and dealing" (Id. ¶ 18.) "As a direct and proximate
3 result of [this breach] . . . , [Plaintiffs] suffered damages,
4 contemplated by the Policy, in that they were unable to replace
5 the [Vehicle], they were accused of and prosecuted for criminal
6 activity, they were subjected to arrest and detention, they lost
7 past and future income and lost the bargained for peace and
8 security of knowledge that their financial losses covered by the
9 Policy would be indemnified by [Defendant], all . . . in the sum
10 of . . . \$9,950,000.00[] or according to proof." (Id. ¶ 19.)

11 **II. DISCUSSION**

12 Defendant argues Plaintiffs' tort-based implied
13 covenant claim should be dismissed because it is barred by the
14 two-year statute of limitations prescribed in section 339(1) of
15 the California Code of Civil Procedure.

16 This limitations period applies to tort-based implied
17 covenant claims. Archdale v. Am. Int'l Specialty Lines Ins. Co.,
18 154 Cal. App. 4th 449, 467, n. 19 (2007) (citing Cal. Civ. Proc.
19 Code § 339(1)); see also Powell v. Liberty Life Assur. Co. of
20 Boston, C 06 4328 MMC, 2006 WL 2734315, at * 1 (N.D. Cal. Sept.
21 25, 2006) ("[T]o the extent plaintiff elects to proceed under a
22 tort theory, [her claim] is subject to a two-year statute of
23 limitations." (citation omitted)). "[T]he statute of limitations
24 for [implied covenant tort] claims . . . begins to run[] when the
25 insurer unequivocally denies the insured's claim for benefits
26 allegedly due under the policy." Alberts v. Liberty Life
27 Assurance Co. of Boston, C 14-01587 RS, 2014 WL 2465121, at *2
28 (N.D. Cal. June 2, 2014); accord Smyth v. USAA Prop. & Cas. Ins.

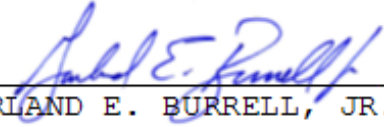
1 Co., 5 Cal. App. 4th 1470, 1477 (1992) (finding that a tort-based
2 implied covenant claim accrued when the insurer "denied the
3 existence of [certain] insurance policies."); Powell, 2006 WL
4 2734315, at *1 (finding tort-based implied covenant claim
5 "accrued no later than . . . when defendant denied plaintiff's
6 appeal from its decision to terminate payment of benefits.").

7 Plaintiffs allege that Defendant denied their claim on
8 May 28, 2010. (Compl. ¶ 15.) Plaintiffs filed their Complaint on
9 May 15, 2014, which is more than two years after the claim
10 accrued. Since Plaintiffs have not shown that their tort-based
11 implied covenant claim was filed before the statute of
12 limitations period expired, this portion of Defendant's motion is
13 granted. Defendant also argues this claim should be dismissed
14 with prejudice. However, this portion of the motion is only
15 supported by an unpersuasive, conclusory argument and therefore
16 is denied.

17 **III. CONCLUSION**

18 For the stated reasons, Defendant's motion is granted
19 in part and denied in part. Plaintiffs are granted fourteen (14)
20 days from the date on which this order is filed to file an
21 amended complaint addressing deficiencies in the dismissed claim.

22 Dated: August 26, 2014

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26 GARIAND E. BURRELL, JR.
27 Senior United States District Judge
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