

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY WALKER, et al.,  
Plaintiffs,  
v.  
AMERICAN NATIONAL INSURANCE  
COMPANY, et al.,  
Defendants.

Case No.16-cv-06255-HSG

**ORDER GRANTING DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT**

Re: Dkt. No. 54

Pending before the Court is a motion for summary judgment by Defendant American National Insurance Company. Dkt. No. 57. For the reasons set forth below, the Court **GRANTS** the motion.

**I. BACKGROUND**

**A. Facts<sup>1</sup>**

This case centers on five insurance policies purchased by Plaintiffs Anthony and Pamela Walker (“Mr. Walker” and “Mrs. Walker,” respectively). See Dkt. No. 1-1, Ex. A (“Complaint”) ¶¶ 11-16.

**1. Insurance Policies Issued to Mrs. Walker**

On October 16, 1986, Defendant issued Policy M010900740 (“Policy 740”) to Mrs. Walker, who was the owner and the insured. Dkt. No. 54-2 (Declaration of Wayne Smith, or “Smith Decl.”) ¶ 3; see also id., Ex. 1 (Policy 740). On November 4, 2010, Defendant received a cash loan request on Policy 740. Id. ¶ 4; see also id., Ex. 2. A cash loan “is taking out the cash value of the policy,” which the policyholder must “eventually . . . pay back.” Dkt. No. 54-1

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<sup>1</sup> All facts listed in this section are either undisputed or reflect this Court’s drawing all reasonable inferences in Plaintiffs’ favor.

1 (Declaration of Sean P. Nalty, or “Nalty Decl.”), Ex. 18 (Deposition of Rajeshvar Singh, or “Singh  
2 Depo.”), at 34:22-35:2. Defendant accordingly issued a check to Mrs. Walker in the amount of  
3 \$1,600, which was subsequently cashed. Smith Decl. ¶ 4; see also id., Ex. 3. Although Plaintiffs  
4 “failed to make the monthly payment on this loan,” which led to the lapse of Policy 740,  
5 Defendant “forgave the loan” and reinstated the policy, which remains in force. Id. ¶ 4.

6 On October 18, 2001, Defendant issued Policy M014157288 (“Policy 288”) to Mrs.  
7 Walker, who was the owner and the insured. Id. ¶ 5; see also id., Ex. 4. (Policy 288). On  
8 November 4, 2010, Defendant received a cash loan request on Policy 288, and accordingly issued  
9 a check to Mrs. Walker in the amount of \$1,700, which was subsequently cashed. Id.; see also id.,  
10 Ex. 5, 6. Although Plaintiffs “have not refunded to [Defendant] the proceeds from the loan,”  
11 Defendant forgave the loan. Id. ¶ 5. The policy remains in force. Id.

## 12 2. Insurance Policies Issued to Mr. Walker

13 On April 23, 2008, Defendant issued Policy M16038970 (“Policy 970”) to Mr. Walker. Id.  
14 ¶ 6; id., Ex. 7 (Policy 970). Mr. Walker was the owner and his granddaughter, J.W., was the  
15 insured. Id. ¶ 6. On January 14, 2011, Defendant received a cash surrender request on Policy 970.  
16 Id.; see also id., Ex. 8. A policyholder who surrenders her policy “closes the policy,” and receives  
17 its accumulated cash value. See Singh Depo. at 34:22-35:7. After the submission of the cash  
18 surrender request, “[n]o premium was paid” on this policy, and Mr. Walker “received no cash on  
19 surrender as no cash was owed under the terms of” Policy 970. Smith Decl. ¶ 6.

20 On December 2, 2010, Defendant issued Policy M16216437 (“Policy 437”) to Mr. Walker.  
21 Id. ¶ 7; see also id., Ex. 9 (Policy 437). Mr. Walker was the owner and his granddaughter, V.W.,  
22 was the insured. Id. ¶ 7. Policy 437 replaced Policy 970, leaving “no material gap in coverage.”  
23 Id. Mr. Walker, moreover, “paid no additional premium for the replacement coverage.” Id. This  
24 policy remains in force. Id.

25 On May 26, 2009, Defendant issued Policy M16114023 (“Policy 023”) to Mr. Walker. Id.  
26 ¶ 8; see also id., Ex. 10 (Policy 023). Mr. Walker was the owner and his granddaughter, J.W., was  
27 the insured. Id. ¶ 8. On January 14, 2011, Defendant received a cash surrender request. Id.; see  
28 also id., Ex. 11. After the submission of the cash surrender request, “[n]o premium was paid” on

1 this policy, and Mr. Walker “received no cash on surrender as no cash was owed under the terms  
2 of” Policy 023. Id.

3 **3. Mr. Walker’s Contention that Defendant “Stole” Plaintiffs’ Policies**

4 Mr. Walker contends that Defendant “stole” six policies from him by falsely asserting that  
5 he “never paid for them.” Nalty Decl., Ex. 12 (Deposition of Anthony Walker, or “Anthony  
6 Walker Depo.”), at 42:4-43:3. Among these six policies, Mr. Walker claims, are four of the  
7 policies at issue in this case. See id. at 45:1-9 (Mr. Walker’s claim that Defendant “stole” Policies  
8 288 and 740); id. at 46:16-21 (Policy 970); id. at 72:8-13 (Policy 023). There do not appear to be  
9 any allegations by Mr. Walker that Defendant “stole” the fifth policy involved in this case, Policy  
10 437.

11 Mr. Walker stated that “[t]he only thing [he] did was, [he] wanted to surrender four  
12 policies for [his] children,” none of which are at issue in this case. Id. at 43:12-14; see also Dkt.  
13 No. 56-2 (Declaration of Anthony Walker, or “Walker Decl.”) ¶ 3 (“In or around 2008, my wife  
14 (Plaintiff Pamela Walker) and I decided to surrender the whole life insurance policies of our adult  
15 children[.]”). After doing so, however, he “began receiving letters from [Defendant] of loans that  
16 were due under the policies of my adult children,” despite the fact that he “never requested loans.”  
17 Walker Decl. ¶ 4. During a visit to Defendant’s office to notify the company of its error, Mr.  
18 Walker noticed that an agent “had signed [his] initials on a surrender form without [his] consent.”  
19 Id. ¶ 5. Rajveshar Singh, a manager for Defendant, assisted Mr. Walker in correcting the error and  
20 asked him to “sign surrender forms that were blank,” telling Mr. Walker “that he would fill in the  
21 forms later.” Id. Mr. Walker did so, and subsequently “realized that [Defendant] cashed out as  
22 loans the 2 policies of [his] wife, the policies of [his] grandchildren [V.W.] and [J.W.],” as well as  
23 another loan not as issue in this case. Id. ¶ 7. Mr. Walker had “never requested that [his] wife’s  
24 policies be surrendered or touched in any way,” nor did he ever request that his granddaughters’  
25 loans “be surrendered.” Id. ¶¶ 6-7. Mr. Walker contacted Defendant in December 2010 “to  
26 inform them of the situation and requested that the mistake be fixed,” id. ¶ 8, and “continued to  
27 contact [Defendant] and Mr. Singh for over 5 years and was always told the problem was being  
28 investigated,” id. ¶ 9. Mr. Walker testified that he was unsure how the policies of his wife and

1 granddaughters became “involved,” and suggested that Defendant’s errors were due to “some  
2 fraud.” See Anthony Walker Depo. at 43:15-17.

3 Mr. Walker stated that he first learned “[a]ll this”—that is, he first believed Defendant had  
4 “stolen” his policies—10 years prior to his February 9, 2018 deposition, in February 2008. See *id.*  
5 at 48:8-15; see also *id.* at 48:14-15 (“When the company first made a mistake ten years ago, it all  
6 went haywire.”). More specifically, Mr. Walker testified that he learned that Policy 740, Policy  
7 288, Policy 970, and Policy 023 were stolen 10 years prior to his deposition. See *id.* at 47:13-20  
8 (Policy 970); *id.* at 49:4-11 (Policy 970 and “[t]he two policies that [his] wife has”); *id.* at 72:8-15  
9 (Policy 023).

10 As for Mrs. Walker, she testified that she learned “over eight years ago” from Singh that  
11 the two policies she owned, Policy 740 and Policy 288, were no longer in force. Nalty Decl., Ex.  
12 17 (Deposition of Pamela Walker, or “Pamela Walker Depo.”), at 20:14-21:5; see also *id.* at 22:1-  
13 9; *id.* at 30:19-22 (“Q: And from that point forward, it’s been your understanding that you don’t  
14 have any type of life insurance with [Defendant]? A: Yes.”). She testified that she felt that  
15 Defendant “has put me and my family through a lot of hardship,” the hardship being “not having  
16 any life insurance policies.” *Id.* at 34:11-17. Mrs. Walker was also diagnosed with breast cancer  
17 in 2010, and Mr. Walker stated that the thought of not having life insurance for her has caused  
18 both me and [Mrs. Walker] considerable stress.” See Walker Decl. ¶ 13.

19 **B. Procedural Posture**

20 On August 17, 2016, Plaintiffs filed suit in state court. See Dkt. No. 1-1, Ex. A.  
21 Defendant filed a notice of removal in this Court on October 28, 2016. Dkt. No. 1. On August 22,  
22 2017, the Court denied a motion to remand by Plaintiffs and dismissed with prejudice the claims  
23 against Singh, who Plaintiffs named in the Complaint. See Dkt. No. 47.

24 On March 21, 2018, Defendant filed a motion for summary judgment or, in the alternative,  
25 partial summary judgment and summary adjudication of issues. Dkt. No. 54 (“Mot.”). Plaintiffs  
26 filed their opposition on April 7, 2018, Dkt. No. 56 (“Opp.”), and Defendant replied on April 13,  
27  
28

1 2018, Dkt. No. 57 (“Reply”).<sup>2</sup>

2 **II. LEGAL STANDARD**

3 Summary judgment is proper when a “movant shows that there is no genuine dispute as to  
4 any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).  
5 A fact is “material” if it “might affect the outcome of the suit under the governing law.” *Anderson*  
6 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is “genuine” if there is evidence  
7 in the record sufficient for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.*  
8 But in deciding if a dispute is genuine, the court must view the inferences reasonably drawn from  
9 the materials in the record in the light most favorable to the nonmoving party, *Matsushita Elec.*  
10 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986), and “may not weigh the evidence  
11 or make credibility determinations,” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997),  
12 overruled on other grounds by *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). If a court  
13 finds that there is no genuine dispute of material fact as to only a single claim or defense or as to  
14 part of a claim or defense, it may enter partial summary judgment. Fed. R. Civ. P. 56(a).

15 With respect to summary judgment procedure, the moving party always bears both the  
16 ultimate burden of persuasion and the initial burden of producing those portions of the pleadings,  
17 discovery, and affidavits that show the absence of a genuine issue of material fact. *Celotex Corp.*  
18 *v. Catrett*, 477 U.S. 317, 323 (1986). Where the moving party will not bear the burden of proof on  
19 an issue at trial, it “must either produce evidence negating an essential element of the nonmoving  
20 party’s claim or defense or show that the nonmoving party does not have enough evidence of an  
21 essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins.*  
22 *Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). Where the moving party will bear the  
23 burden of proof on an issue at trial, it must also show that no reasonable trier of fact could not find  
24 in its favor. *Celotex*, 477 U.S. at 325. In either case, the movant “may not require the nonmoving  
25 party to produce evidence supporting its claim or defense simply by saying that the nonmoving

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27 <sup>2</sup> The Court notes that Plaintiffs’ opposition was filed three days late, apparently due to a  
28 calendaring error by counsel for Plaintiffs. See Dkt. No. 56-1 (Declaration of John A. Holman) ¶  
2. Given the lack of prejudice to Defendant, the Court declines to strike the opposition. See Reply  
at 1.

1 party has no such evidence.” Nissan Fire, 210 F.3d at 1105. “If a moving party fails to carry its  
2 initial burden of production, the nonmoving party has no obligation to produce anything, even if  
3 the nonmoving party would have the ultimate burden of persuasion at trial.” Id. at 1102-03.

4 “If, however, a moving party carries its burden of production, the nonmoving party must  
5 produce evidence to support its claim or defense.” Id. at 1103. In doing so, the nonmoving party  
6 “must do more than simply show that there is some metaphysical doubt as to the material facts.”  
7 Matsushita Elec., 475 U.S. at 586. A nonmoving party must also “identify with reasonable  
8 particularity the evidence that precludes summary judgment,” because the duty of the courts is not  
9 to “scour the record in search of a genuine issue of triable fact.” Keenan v. Allan, 91 F.3d 1275,  
10 1279 (9th Cir. 1996). If a nonmoving party fails to produce evidence that supports its claim or  
11 defense, courts must enter summary judgment in favor of the movant. Celotex, 477 U.S. at 323.

### 12 **III. DISCUSSION**

13 Defendant seeks summary judgment as to each of Plaintiffs’ seven causes of actions. The  
14 Court considers each one in turn.

#### 15 **A. Plaintiffs’ Claim for Breach of Implied-in-Fact Contract Is Precluded As a** 16 **Matter of Law.**

17 Plaintiffs’ first cause of action is for breach of written contract. See Compl. ¶ 43  
18 (“Plaintiff paid the premiums and or was ready willing able to pay the premiums. Defendant  
19 failed to provide the insurance benefits for which plaintiff paid American National Insurance  
20 Company.”). Plaintiffs’ second cause of action is for breach of implied-in-fact contract based on  
21 the same conduct. See id. ¶¶ 51-52 (“Plaintiff . . . paid premiums in consideration of receiving  
22 insurance policies from American National Insurance Company alleged herein. Defendants, in  
23 consideration of premiums paid to American National Insurance Company, promised and agreed  
24 to provide plaintiff with the insurance policies referred to herein.”). “[I]t is well settled that an  
25 action based on an implied-in-fact or quasi-contract cannot lie where there exists between the  
26 parties a valid express contract covering the same subject matter.” Daniel v. Wayans, 8 Cal. App.  
27 5th 367, 398 (2017) (citations omitted) (original brackets).<sup>3</sup> Plaintiffs’ opposition disputes

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28 <sup>3</sup> Defendant argues that “[t]here is no evidence that there was an implied in fact contract” between

1 Defendant’s contention that summary judgment should be granted as to this claim, but their  
2 argument is conclusory and lacks any relevant legal authority.

3 Accordingly, the Court grants summary judgment as to Plaintiffs’ claim for breach of  
4 implied-in-fact contract.

5 **B. Plaintiffs Proffer No Evidence in Support of Their Claim That Defendant**  
6 **Breached the Covenant of Good Faith and Fair Dealing.**

7 Plaintiffs’ third cause of action is for breach of the covenant of good faith and fair dealing  
8 (also referred to as “bad faith”). See Compl. ¶¶ 55-60. “Bad faith occurs where the insurer  
9 withholds insurance benefits unreasonably and without proper cause.” *Tetravue Inc. v. St. Paul*  
10 *Fire & Marine Ins. Co.*, No. 14-CV-2021 W (BLM), 2018 WL 1172852, at \*5 (S.D. Cal. Mar. 6,  
11 2018) (citing *Rappaport-Scott v. Interinsurance Exch. of the Auto. Club*, 146 Cal. App. 4th 831,  
12 837 (2007)). But where “there is no potential for coverage, and, hence, no duty to defend under  
13 the terms of the policy, there can be no action for breach of the implied covenant of good faith and  
14 fair dealing because the covenant is based on the contractual relationship between the insured and  
15 the insurer.” *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 36 (1995) (original emphasis). It is  
16 only “when benefits are due an insured” that “delayed payment based on inadequate or tardy  
17 investigations, oppressive conduct by claims adjusters seeking to reduce the amounts legitimately  
18 payable and numerous other tactics may breach the implied covenant because they frustrate the  
19 insured’s right to receive the benefits of the contract in prompt compensation for losses.” See *id.*  
20 (citations and internal quotation marks omitted).

21 Defendant has provided undisputed evidence that Policy 970 and Policy 023 were  
22 surrendered, and are thus no longer in force. See *Singh Depo.* at 34:22-35:7; *Smith Decl.*, Exs. 8,  
23 11. There is thus no potential for coverage under these policies as a matter of law, precluding any  
24 bad faith claim. See *Waller*, 1 Cal. 4th at 36. Defendant has also produced evidence that Policy  
25 740, Policy 288, and Policy 437 are still in force, with no benefits due. See *Smith Decl.* ¶¶ 4, 5, 7.  
26 In opposition, Plaintiffs do not dispute that evidence, but instead respond with contentions that

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27 Defendant and Plaintiffs, see *Mot.* at 17, but even that argument overlooks the threshold issue: an  
28 implied-in-fact contract cannot exist where there is an express contract covering the same subject  
matter, see *Daniel*, 8 Cal. App. 5th at 398.

1 their bad faith claim is based on the assertion that Defendant “falsified surrender forms,  
2 surrendered whole life insurance policies without [Plaintiffs’] consent or knowledge, failed to  
3 investigate claims in accordance with their own procedures, used deceptive practices and  
4 deliberate misrepresentations to avoid paying claims, and failed to maintain adequate investigative  
5 procedures.” See Opp. at 10. But they provide neither citations to the record in support of these  
6 claims nor any supporting evidence.

7 Accordingly, the Court grants summary judgment as to Plaintiffs’ bad faith claim, given  
8 their failure to meet their evidentiary burden.

9 **C. Plaintiffs’ Boilerplate Negligence Allegations Are Insufficient to Warrant a**  
10 **Departure from the General Rule Precluding Negligence Claims Against**  
11 **Insurers.**

12 Plaintiffs’ fourth cause of action for negligence is based on the allegation that “Defendant  
13 . . . was negligent in doing the acts alleged” in the Complaint, despite its “ow[ing] plaintiff a duty  
14 of ordinary care.” See Compl. ¶¶ 62-63. In opposition, Plaintiffs state their claim for negligence  
15 is based on, again, Defendant’s “falsifying surrender forms, surrendering whole life insurance  
16 policies without [Plaintiffs’] consent or knowledge, failing to investigate claims in accordance  
17 with their own procedures, using deceptive practices and deliberate misrepresentations to avoid  
18 paying claims, and failing to maintain adequate investigative procedures,” all of which “exceeds  
19 the scope of the contract between the parties.” See Opp. at 11. Plaintiffs cite no legal authority in  
20 the single paragraph they devote to arguing this cause of action.

21 In California, “negligence is not among the theories of recovery generally available against  
22 insurers.” *Tento Int’l, Inc. v. State Farm Fire & Cas. Co.*, 222 F.3d 660, 664 (9th Cir. 2000)  
23 (citing *Sanchez v. Lindsey Morden Claims Servs., Inc.*, 72 Cal. App. 4th 249, 254 (1999)) (internal  
24 quotation marks omitted). “When an insured seeks to recover in tort for an insurer’s mishandling  
25 of a claim, it must allege more than mere negligence.” *Opperwall v. State Farm Fire & Cas. Co.*,  
26 No. 17-cv-07083-YGR, 2018 WL 1243085, at \*4 (N.D. Cal. Mar. 8, 2018) (citing *Adelman v.*  
27 *Associated Int’l Ins. Co.*, 90 Cal. App. 4th 352, 369 (2001)) (internal quotation marks omitted)  
28 (original emphasis). Plaintiffs’ negligence allegations here are boilerplate. Moreover, they fail to  
“provide[] any support for why [they] should be allowed to pursue a negligence claim in this case



1 despite the general rule that negligence actions are not permitted against insurers.” See *id.*

2 Accordingly, the Court grants summary judgment as to Plaintiffs’ negligence claim.

3 **D. Plaintiffs’ Claim Under Section 790.03(h) of the California Insurance Code**  
4 **Fails Because There Is No Private Right of Action Under That Section.**

5 Plaintiffs’ fifth cause of action, which they purport to bring under Cal. Ins. Code §  
6 790.03(h), is barred at the outset. Under California law, “[t]here is no private civil cause of action  
7 against an insurer that commits one of the various acts listed in” section 790.03(h). See *Reid v.*  
8 *Mercury Ins. Co.*, 220 Cal. App. 4th 262, 276 (2013) (quoting *Moradi-Shalal v. Fireman’s Fund*  
9 *Ins. Cos.*, 46 Cal. 3d 287, 313 (1988)) (internal quotation marks omitted). Moreover, Plaintiffs do  
10 not address this claim in their opposition.

11 Accordingly, the Court grants summary judgment as to Plaintiffs’ claim under section  
12 790.03(h) of the California Insurance Code.

13 **E. Plaintiffs Provide No Evidence of the Alleged Conduct Underlying Their**  
14 **Unfair Competition Claim.**

15 Plaintiffs also allege a violation of California’s Unfair Competition Law, Cal. Bus. & Prof.  
16 Code §§ 17200, et seq. (“UCL”), premised on the allegation that “Defendant sold plaintiff  
17 insurance policies and then den[ied] the existence of the insurance policies and or misrepresented  
18 material terms, facts and circumstances relating to the insurance policies.” See Compl. ¶ 72.  
19 Plaintiffs also cite Defendant’s alleged refusal to reinstate their policies, confirm the existence of  
20 policies, provide copies of policies, remove unauthorized loans, and provide information regarding  
21 the status of the policies. *Id.* ¶ 73. They seek injunctive relief. See *id.* ¶ 75.

22 Defendant contends that Plaintiffs are not entitled to injunctive relief since “the subject of  
23 the Complaint is past conduct.” See Mot. at 23. It is true that a claim under the UCL arguably  
24 “lacks merit” where the conduct complained of has ended. See *Feitelberg v. Credit Suisse First*  
25 *Boston, LLC*, 134 Cal. App. 4th 997, 1022 (2005) (“As the California Supreme Court said long  
26 ago, ‘when as here, the assertedly wrongful practice has ended long before the action is filed, its  
27 requested termination is a rather empty prayer.’”) (quoting *Blue Chip Stamps v. Superior Court*,  
28 18 Cal. 3d 381, 386 (1976)). Defendant argues that because “the injury that Walker complains of

1 is that the policies were stolen 10 years ago,” and because “Ms. Walker testified that she lost her  
2 policies eight years ago . . . there is absolutely no evidence to support the existence of a real or  
3 immediate threat of repeated injury in the future.” Mot. at 23-24.

4 In opposition, Plaintiffs purport to cite legal authority (but do not provide an actual  
5 citation) to support their assertion that “UCL claims may be based on claims handling practices, as  
6 long as they do not rest exclusively on [Unfair Insurance Practices Act] violations.” See Opp. at  
7 11. Plaintiffs go on to argue that “[t]he conduct of [Defendant] as set forth above establishes this  
8 private right of action,” see *id.*, in an apparent reference their contention that Defendant “falsified  
9 surrender forms, surrendered whole life insurance policies without [Plaintiffs’] consent or  
10 knowledge, failed to investigate claims in accordance with their own procedures, used deceptive  
11 practices and deliberate misrepresentations to avoid paying claims or reinstating claims, and failed  
12 to maintain adequate investigative procedures,” *id.* at 10.

13 Again, Plaintiffs provide neither citations to the record nor any evidence of the conduct  
14 underlying their UCL claim. Accordingly, the Court grants summary judgment as to this claim,  
15 given Plaintiffs’ failure to meet their evidentiary burden.

16 **F. Plaintiffs’ Remaining Causes of Action Are Time-Barred.**

17 Defendant contends that Plaintiffs’ remaining causes of action for breach of contract and  
18 declaratory relief are time-barred. The Court agrees.

19 **1. In California, the statute of limitations for a cause of action begins to**  
20 **run when the claim “is complete with all of its elements.”**

21 “The application of the statute of limitations on undisputed facts is a purely legal  
22 question[.]” *Aryeh v. Canon Bus. Solutions, Inc.*, 55 Cal. 4th 1185, 1191 (2013) (citing *Jolly v. Eli*  
23 *Lilly & Co.*, 44 Cal. 3d 1103, 1112 (1988)). The limitations period begins when a claim  
24 “accrues,” or “when it is complete with all of its elements—those elements being wrongdoing,  
25 harm, and causation.” *Id.* (citation, internal quotation marks, and brackets omitted).

26 For a breach of contract claim, the elements “are (1) the existence of the contract, (2)  
27 plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting  
28 damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011) (citation

1 omitted). Such a cause of action generally accrues “at the time of breach.” Buschman v.  
2 Anesthesia Bus. Consultants LLC, 42 F. Supp. 3d 1244, 1250 (N.D. Cal. 2014) (citation and  
3 internal quotation marks omitted). But because a claim accrues “when it is complete with all of its  
4 elements,” see Aryeh, 55 Cal. 4th at 1191 (emphasis added), it is more accurate to state that “a  
5 breach of contract claim does not lie and hence does not accrue until the plaintiff must show an  
6 actionable and appreciable harm beyond mere nominal damages,” Buschman, 42 F. Supp. 3d at  
7 1251 (citing Aguilera v. Pirelli Armstrong Tire Corp., 223 F.3d 1010, 1015 (9th Cir. 2000))  
8 (internal quotation marks omitted).

9 An action for breach of contract is governed by a four-year statute of limitations. See Cal.  
10 Civ. Proc. Code § 337(1). The limitations period for declaratory relief “concern[ing] obligations  
11 or liabilities ‘founded upon an instrument in writing’” is four years. See Ginsburg v. Gamson, 205  
12 Cal. App. 4th 873, 883 (2012) (citing Cal. Civ. Proc. Code § 337(1)).

13 **2. Plaintiffs’ breach of contract and declaratory relief claims accrued in**  
14 **2010 at the latest, rendering their claims in this suit untimely.**

15 Mr. Walker’s claims for relief, which are based on the policies he owns (Policy 970, Policy  
16 437, and Policy 023), accrued once he could show damages. See Buschman, 42 F. Supp. 3d at  
17 1251. Plaintiffs allege that due to Defendant’s breach of contract, they suffered “loss of insurance  
18 benefits, peace of mind, emotional distress, serious emotional distress, worry, anxiety,  
19 inconvenience, [and] money paid for insurance premiums for which they did not receive insurance  
20 coverage and or insurance benefits[.]” Compl. ¶ 48.

21 Viewed in the light most favorable to Plaintiffs, the evidence proffered by Defendant  
22 establishes that 10 years before his deposition, in February 2008, Mr. Walker began believing that  
23 Defendant had stolen his policies, because that was when “it all went haywire.” See Anthony  
24 Walker Depo. at 48:14-15. In 2008, when he attempted to surrender the policies of his adult  
25 children (which are not at issue in this case), Mr. Walker “realized that [Defendant] cashed out as  
26 loans the 2 policies of [his] wife” and “the policies of [his] grandchildren [V.W.] and [J.W.],”  
27 Walker Decl. ¶ 7, despite the fact that had “never requested that [his] wife’s policies be  
28 surrendered or touched in any way,” and never requested that his granddaughters’ loans “be

1 surrendered,” id. ¶¶ 6-7. In December 2010, Mr. Walker contacted Defendant “to inform them of  
2 the situation and requested that the mistake be fixed.” Id. ¶ 8.

3 The undisputed record therefore establishes that Mr. Walker became aware of his damages  
4 for breach of contract by, at the latest, December 2010. At that point, it is clear that he essentially  
5 realized that he was not receiving what he was paying for. He was therefore required to bring his  
6 claim no later than December 2014. See Cal. Civ. Proc. Code § 337(1). Plaintiffs, however, filed  
7 this action in state court on August 17, 2016. See Dkt. No. 1-1. His claim is accordingly time-  
8 barred. His claim for declaratory relief as to his “right, title and interest in the insurance policies”  
9 at issue in this case, see Compl. ¶ 81, is time-barred for the same reason, see Ginsburg, 205 Cal.  
10 App. 4th at 883.

11 Mrs. Walker’s claims for relief are based on the policies she owns: Policy 740 and Policy  
12 288. Again, viewed in the light most favorable to Plaintiffs, the evidence proffered by Defendant  
13 establishes that she became aware that her policies were no longer in force in February 2010, more  
14 than eight years before her deposition. See Pamela Walker Depo. at 20:14-21:5; see also id. at  
15 22:1-9; id. at 30:19-22; Walker Decl. ¶ 13. Because she testified that not having life insurance  
16 policies was “a hardship,” see id. at 34:11-17, the evidence establishes that damages accrued at the  
17 latest in February 2010, based on the lack of life insurance policies.

18 Plaintiffs proffer no evidence in rebuttal. The undisputed record, therefore, establishes that  
19 Mrs. Walker became aware of her damages for breach of contract by, at the latest, February 2010.  
20 As a result, she was required to bring her claim no later than February 2014. See Cal. Civ. Proc.  
21 Code § 337(1). Plaintiffs filed this action in state court on August 16, 2016. See Dkt. No. 1-1.  
22 Her claims for breach of contract and declaratory relief based on that contract are therefore time-  
23 barred.

24 **3. Plaintiffs provide no evidence showing that their discovery of the claim**  
25 **was delayed or that they are entitled to an equitable exception.**

26 Plaintiffs assert several arguments against Defendant’s statute of limitations defense.  
27 None are persuasive. Their primary argument invokes the discovery rule, see Opp. at 6, which is  
28 the “most important” exception to the rules governing accrual of claims, see Norgart v. Upjohn

1 Co., 21 Cal. 4th 383, 397 (1999). The discovery rule “postpones accrual of a cause of action until  
2 the plaintiff discovers, or has reason to discover, the cause of action.” Id. A “plaintiff discovers  
3 the cause of action when he at least suspects a factual basis, as opposed to a legal theory, for its  
4 elements, even if he lacks knowledge thereof—when, simply put, he at least suspects . . . that  
5 someone has done something wrong to him[.]” Id. (citing Jolly, 44 Cal. 3d at 1110) (internal  
6 quotation marks omitted) (original ellipses). A plaintiff “has reason to discover the cause of action  
7 when he has reason at least to suspect a factual basis for its elements,” and a plaintiff has a reason  
8 to suspect “when he has notice or information of circumstances to put a reasonable person on  
9 inquiry.” Id. at 398 (citations and internal quotation marks omitted). “[H]e need not know the  
10 specific facts necessary to establish the cause of action,” and indeed, “he cannot wait for them to  
11 find him and sit on his rights; he must go find them himself if he can and file suit if he does.” Id.  
12 (citation and internal quotation marks omitted).<sup>4</sup>

13 For the reasons discussed above, the Court is satisfied that Plaintiffs had inquiry notice of  
14 their breach of contract claims (and declaratory relief claims) in 2010, which required them to file  
15 suit within four years. Plaintiffs contend that they “did not have the requisite knowledge of the  
16 injury suffered nor the essential facts to support their claims until consulting with an attorney.”  
17 See Opp. at 6. But it is black-letter law that a plaintiff “need not know the specific facts  
18 necessary” for his or her cause of action, Norgart, 21 Cal. 4th at 398, and need only “have reason  
19 to at least suspect that a type of wrongdoing has injured them,” see Fox, 35 Cal. 4th at 807  
20 (emphasis added). Plaintiffs, by their own admission, suspected such wrongdoing in 2010.  
21 Moreover, Plaintiffs’ suggestion that their cause of action did not accrue until 2016, when they  
22 consulted an attorney, contravenes the law on this point. See Gutierrez v. Mofid, 39 Cal. 3d 892,  
23 898 (1985) (in bank) (“It is irrelevant that the plaintiff is ignorant of his legal remedy or the legal  
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25 <sup>4</sup> The Supreme Court clarified Norgart in Fox v. Ethicon Endo-Surgery, Inc., 35 Cal. 4th 797  
26 (2005). There, it held that “[u]nder the discovery rule, suspicion of one or more of the elements of  
27 a cause of action, coupled with knowledge of any remaining elements, will generally trigger the  
28 statute of limitations period.” Fox, 35 Cal. 4th at 807 (citation omitted) (emphasis added).  
“Rather than examining whether the plaintiffs suspect facts supporting each specific legal element  
of a particular cause of action, we look to whether the plaintiffs have reason to at least suspect that  
a type of wrongdoing has injured them.” Id.

1 theories underlying his cause of action. Thus, if one has suffered appreciable harm and knows or  
2 suspects that professional blundering is its cause, the fact that an attorney has not yet advised him  
3 does not postpone commencement of the limitations period.”).

4 Plaintiffs also incorrectly suggest that equitable tolling and equitable estoppel apply in  
5 these circumstances. See Opp. at 6. “Where . . . a plaintiff contends that the statute of limitations  
6 is not a bar based on equitable tolling, the plaintiff bears the burden of proving the applicability of  
7 such.” *Fanucci v. Allstate Ins. Co.*, 638 F. Supp. 2d 1125, 1137 (N.D. Cal. 2009) (citing *Judelson*  
8 *v. Am. Metal Bearing Co.*, 89 Cal. App. 2d 256, 266 (1948)). The same is true of a plaintiff  
9 asserting equitable estoppel. See *Utterkar v. Ebix, Inc.*, No. 14-CV-02250-LHK, 2015 WL  
10 1254768, at \*4 (N.D. Cal. Mar. 18, 2015) (stating that “under California law, a plaintiff carries  
11 the burden of pleading and proving the . . . elements of equitable estoppel”) (citing *Honig v. S.F.*  
12 *Planning Dep’t*, 127 Cal. App. 4th 520, 529 (2005)). Here, Plaintiffs have done nothing that  
13 approaches meeting those burdens. Their brief cites the standards for equitable tolling and  
14 equitable estoppel, but proffers no evidence showing their entitlement to such relief. This is  
15 insufficient on summary judgment, particularly where it requires the Court to “scour the record” in  
16 order to piece together facts that could support a litigant’s vague, undeveloped argument. See  
17 *Keenan*, 91 F.3d at 1279.

18 Last, Plaintiffs refer the Court to allegations in the Complaint setting out Defendants’  
19 alleged violations, see Opp. at 6-7 (citing Compl. ¶ 45), which are plainly insufficient at the  
20 summary judgment stage. They also set forth a paragraph’s worth of facts asserting, inter alia,  
21 that they (1) notified Defendant regarding their concerns with the policies at issue in 2010; (2) that  
22 in 2013, “Plaintiffs still had concerns related to the policies and [Defendant] was continuing its  
23 investigation of the concerns,” and (3) received a letter dated February 4, 2016 from Defendant  
24 “refusing to reinstate the policy of Pamela Walker and returning a check made out to  
25 [Defendant].” See Opp. at 7 (citing record). But as discussed above, Plaintiffs’ contention that  
26 they notified Defendant of their concerns regarding the policies in 2010 amounts to an admission  
27 that their claims accrued in 2010, requiring that they file suit within four years. They failed to do  
28 so.

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Accordingly, the Court grants summary judgment as to Plaintiffs' breach of contract claims and their cause of action for declaratory relief. Moreover, because the Court grants summary judgment as to the entirety of Plaintiffs' Complaint, it need not reach the issue of punitive damages.

**IV. CONCLUSION**

For the foregoing reasons, the Court **GRANTS** Defendant's motion for summary judgment. The Clerk is directed to enter judgment in favor of Defendant and close the case.

**IT IS SO ORDERED.**

Dated: 4/27/2018

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge