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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 James Pintar and Tricia Pintar,

5 Plaintiffs

6 v.

7 CSAA General Insurance Company, et al.,

8 Defendants

Case No. 2:21-cv-00652-CDS-EJY

Order Granting in Part and Denying in Part
Defendant's Motion for Partial Summary-
Judgment

[ECF No. 32]

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10 This is a bad-faith insurance action brought by plaintiffs James and Tricia Pintar
11 (collectively, the Pintars). Plaintiffs bring three claims for relief: (1) breach of the covenant of
12 good faith and fair dealing, (2) breach of contract, and (3) a violation of Nevada's Unfair Claims
13 Practice Act (UCPA). Defendant CSAA General Insurance Company¹ brings this motion for
14 partial summary judgment on the UCPA and good faith and fair dealing claims, and for relief
15 from plaintiffs' prayer for punitive damages.² The Pintars oppose the motion and seek voluntary
16 dismissal of their UCPA claim.³ The matter is now fully briefed.

17 For the reasons set forth herein, I grant in part and deny in part CSAA's motion for
18 partial summary judgment. I also instruct the parties to participate in a mandatory settlement
19 conference before Magistrate Judge Elayna J. Youchah. Should the case not settle, a **joint**
20 **pretrial order will be due 14 days after the settlement conference.**

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23 ¹ The complaint identifies the defendant as AAA Nevada Fire & Casualty Insurance Company. See ECF
24 No. 1 at 1. In their motion for partial summary judgment, defendant states that it is identified incorrectly
25 in the caption. ECF No. 32 at 1, n. 1. Defendant advises that it is properly named "CSAA General
Insurance Company." *Id.* The Clerk of Court is kindly directed to correct the caption to reflect the
defendant as CSAA General Insurance Company.

26 ² CSAA is not seeking summary judgment on the Pintars' breach of contract claim. ECF No. 32 at 3.

³ Pls.' Opp'n to Mot. Part. Summ. J., ECF No. 35 at 9.

1 **I. Background information and relevant facts⁴**

2 On August 11, 2018, a windstorm caused significant damage when two trees fell over and
3 struck the Pintars' home in Las Vegas, Nevada (windstorm). ECF No. 1 at 2, ¶9. There is no
4 dispute that at the time of the windstorm, the Pintars had a homeowner's insurance policy in
5 effect through CSAA.⁵ The policy provided coverage for "[the Pintars'] dwelling, other
6 structures, personal property, loss of use, personal liability coverage and medical payments, all
7 as stated in the policy for varying designated policy amounts." ECF No. 1 at 2, ¶8; ECF No. 32 at
8 4, ¶2 (undisputed fact).

9 The Pintars contacted CSAA on August 12, 2018, and initiated a claim⁶ for the repairs
10 caused to their home by the trees. ECF No. 1 at 2-3, ¶10; ECF No. 32 at 4, ¶4 (undisputed fact).
11 There is no dispute that CSAA accepted coverage for the damage caused to the Pintars' home. *Id.*
12 According to CSAA, the Pintars were informed they would have to remove the fallen trees to
13 allow an investigator to perform an inspection of their home. ECF No. 32 at 4, ¶6 (citing Claim
14 Notes from CSAA, Def.'s Ex. A, ECF No. 32-1 at 7). The Pintars' policy may not include coverage
15 for tree removal. *See* Claim Notes from CSAA, Def.'s Ex. A, ECF No. 32-1 at 7. CSAA also offered
16 the Pintars temporary housing if their home was deemed uninhabitable because of the damage.
17 *Id.* at 8.

18 On August 21, 2018, the Pintars advised CSAA that the fallen trees were removed from
19 the property. *Id.* at 10. Six days later, CSAA's investigator completed an inspection that included
20 documentation of the losses and taking photographs of the damage to the Pintars' home. *Id.* at 12.

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24 ⁴ The court cites to the complaint to provide background information. Citations to the complaint are not
findings of fact unless the fact is noted as undisputed, or otherwise supported by admissible evidence.

25 ⁵ Policy No. H05-003969748. Neither party provided a copy of the policy to the court for my
consideration, but the pleadings agree that there was a CSAA Nevada policy covering the Pintars'
26 residence in effect at the time their home was damaged by the trees. *See* Compl., ECF No. 1 at 2, ¶7; Def.'s
Mot. Part. Summ. J., ECF No. 32 at 3-4, ¶1 (undisputed fact).

⁶ Claim No. 1002-82-8541.

1 Upon conclusion of the inspection, CSAA recommended that an engineer conduct an
2 additional inspection of the property. *Id.* On August 28, 2018, the following day, the Pintars
3 advised CSAA that they would hire a structural engineer to inspect their home. *Id.* at 13–14.

4 Subsequently, on September 7, 2018, CSAA asked the Pintars to provide a copy of the
5 engineer’s report in order to assess the property damage on their home. *Id.* at 13. Three days later,
6 CSAA contacted the structural engineer to obtain a copy of his report and learned that the
7 engineer was licensed in Colorado, not Nevada. *Id.* at 14–15. The engineer informed CSAA that
8 his report required verification by a Nevada-licensed engineer; and thereafter, the certified
9 report would be returned the same day. *Id.* CSAA still had not received the engineer’s report by
10 October 2, 2018. *Id.* at 17–18. On October 12, 2018, the Pintars hired a Nevada licensed engineer
11 who sent a report to CSAA. *Id.* at 19–21. On October 17, 2018, CSAA determined that the report
12 was “unusable” and decided to hire its own engineer. *Id.* at 22. A copy of that report has not been
13 provided to the court.

14 On November 7, 2018, the Nevada licensed engineer hired by CSAA conducted his
15 inspection. *Id.* at 24. That report was forwarded to the Pintars on January 3, 2019. *Id.* at 25–26;
16 *see generally* Ex. B (Engineering report). The CSAA-hired engineer called the Pintars and
17 apologized for the delay, advising that the report’s tardiness was his fault and not the fault of
18 CSAA. *Id.* at 26. Approximately one week later, CSAA sent its cost estimate for repair of the
19 damages to the Pintars’ home. *Id.* at 27. The CSAA-hired engineer concluded that the residence
20 was structurally sound and stable; however, due to the fallen trees, structural damage had
21 occurred that included “deformation, displacement, and/or cracking of structural framing
22 member near the point of impact[,]” and other “non-structural” damage. *Id.* at 84. To restore the
23 Pintars’ home to its pre-damaged condition, the CSAA-hired engineer recommended that
24 “impact load elements” be repaired, and the “roof framing of the main residence and garage be
25 exposed at the locations of impact to verify the extent of the structural damage.” *Id.* at 85.

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1 On that same day (January 3, 2019), the Pintars responded to the estimate, disputing
2 portions of the engineer's report. *Id.* at 28. On January 30, 2019, CSAA affirmed the estimate (*id.*
3 at 36–37), which the Pintars continued to dispute. *Id.* at 39. Because of the disagreement, the
4 Pintars advised that they would obtain their own contractors. *Id.* at 40–41. Part of the
5 disagreement involved the roof; the CSAA-hired engineer determined that it could be repaired,
6 not replaced, whereas the engineer hired by the Pintars determined it should be replaced. *Id.* at
7 41–43, 45–48.

8 On February 5, 2019, the Pintars sent a contractor estimate for the repairs to CSAA. *Id.* at
9 45–46. That estimate totaled \$82,332.19 and included costs for replacing windows, installing a
10 new roof, and labor. *Id.* at 43–46. On February 11, 2019, CSAA offered to have its investigator
11 work with the Pintars' contractor to conduct a joint inspection. *Id.* at 47. That reinspection
12 occurred on March 1, 2019, resulting in an allowance for additional repairs. *Id.* at 48–49. In
13 March 2019, CSAA provided a supplemental estimate based on the reinspection. *Id.* at 50–53. In
14 October 2019, the Pintars' contractor agreed to perform the repairs within CSAA's adjusted
15 estimate. *Id.* at 53.

16 While the date is unknown to the court, at a time thereafter, the Pintars hired Clean
17 Construction to perform the repairs. *Id.* at 88. In November 2019, the Pintars' home suffered
18 additional flooding and water damage while the repairs were on-going because the construction
19 company, who was not covered by insurance at the time, failed to secure a tarp on the roof. *Id.* As
20 a result, the Pintars filed a second insurance claim⁷ with CSAA. The current status of the repairs
21 to the Pintars' home is unknown to the court.

22 II. Legal standard

23 “The purpose of summary judgment is to avoid unnecessary trials when there is no
24 dispute as to the facts before the court.” *Nw. Motorcycle Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471
25 (9th Cir. 1994). Summary judgment is appropriate when the pleadings, the discovery, and
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⁷ Claim number 1003-56-9234.

1 disclosure materials on file, and any affidavits “show that there is no genuine issue as to any
2 material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp.*
3 *v. Catrett*, 477 U.S. 317, 319 (1986).

4 The moving party—the party seeking summary judgment—bears the initial burden of
5 informing the court of the basis for its motion and identifying those portions of the record that
6 demonstrate the absence of a genuine issue of material fact. *Id.* at 323. If the moving party fails to
7 meet its initial burden, summary judgment must be denied, and the court need not consider the
8 nonmoving party’s evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 160 (1970). However, if
9 the moving party satisfies Federal Rule of Civil Procedure 56’s requirements, then the burden
10 shifts to the party resisting the motion to “set forth specific facts showing that there is a genuine
11 issue for trial.” *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986). At summary judgment, “a court’s
12 function is not to weigh the evidence and determine the truth but to determine whether there is
13 a genuine issue for trial.” *Assur. Co. of Am. v. Ironshore Specialty Ins. Co.*, 2015 WL 4579983, at *3 (D.
14 Nev. July 29, 2015) (citing *Anderson*, 477 U.S. at 249). In evaluating a summary judgment motion,
15 a court views all facts and draws all inferences in the light most favorable to the nonmoving
16 party. *Kaiser Cement Corp. v. Fischbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

17 An issue is “genuine” if there exists a sufficient evidentiary basis upon which a
18 reasonable factfinder could find for the nonmoving party, and a dispute is “material” if it could
19 affect the outcome of the suit under the governing law. *Anderson.*, 477 U.S. at 248. However,
20 where reasonable minds could differ on the material facts at issue, summary judgment is not
21 appropriate. *Id.* at 250–51. “The amount of evidence necessary to raise a genuine issue of material
22 fact is enough ‘to require a jury or judge to resolve the parties’ differing versions of the truth at
23 trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities*
24 *Serv. Co.*, 391 U.S. 253, 288–89 (1968)). A principal purpose of summary judgment is “to isolate
25 and dispose of factually unsupported claims.” *Celotex*, 477 U.S. at 323–24.

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1 **III. Discussion**

2 *A. Pleadings filed by both parties violated the Local Rules.*

3 As a threshold matter, the court notes that the pleadings filed by both parties violate
4 Local Rule IA 10-1(b), which requires electronically filed documents to be text searchable. LR IA
5 10-1(b). Further, CSAA’s motion violates Local Rule IC 2-2(3), which requires exhibits and
6 attachments “be attached as separate files[,]” not as part of the base document. LR IC 2-2(3)(A).
7 Indeed, CSAA included a single attachment as a separate file, which included all of its
8 exhibits instead of filing each exhibit separately. *See* ECF No. 32-1. Given the age of this case and
9 the need for judicial efficiency, the court does not strike the filings under local rule IA 10-1(d).
10 However, the parties are cautioned that future violations of the rules may result in the court
11 striking inappropriately filed documents or exhibits. The court advises the parties that
12 adherence to the rules assists the court in resolving motions more expeditiously.

13 *B. CSAA’s motion for partial summary judgment is granted in part and denied in part.*

14 Turning to the motion, CSAA seeks summary judgment on the Pintars’ claims for
15 violations of Nevada’s Unfair Claim Practices Act, breach of the covenant of good faith and fair
16 dealing, and relief for the Pintars’ prayer for punitive damages. *See generally* ECF No. 32.

- 17 1. Summary judgment is denied as moot on the Unfair Claim Practices Act claim,
18 and it is dismissed without prejudice.

19 The Pintars do not object to dismissing their UCPA claim but argue that it should be
20 dismissed based on lack of subject matter jurisdiction. ECF No. 35 at 8–9. They further argue
21 that despite accepting liability for the damage to the Pintars’ residence in both 2018 and 2019,
22 CSAA’s refusal to “tender the full policy benefit to reimburse [them] for *all* of their directly
23 related home rebuilding/remodeling costs that arose from those claims” was unreasonable and
24 done in bad faith. *Id.* at 11.

1 It is unclear why the Pintars brought a UCPA claim because the Nevada Revised Statute
2 gives exclusive jurisdiction⁸ to the commissioner of the Nevada Department of Insurance
3 (NDOI) for any claims arising under 686A.310. *See Allstate Ins. Co. v. Thorpe*, 170 P.3d 989, 994 (Nev.
4 2007). Thus, as conceded by the Pintars (ECF No. 35 at 9), they would first need to exhaust all
5 administrative remedies with the NDOI. *See Nevada Power Co. v. Eighth Jud. Dist. Ct. of Nevada ex rel.*
6 *Cnty. Of Clark*, 102 P.3d 578, 586 (Nev. 2004); *Yoon v. Travelers Indem. Co.*, 2021 WL 1968279, at *3
7 (D. Nev. May 17, 2021). There is no evidence before the court that the Pintars exhausted their
8 administrative remedies before bringing their UCPA claim, nor any evidence showing that this
9 claim falls outside the exclusive jurisdiction of the Insurance Commissioner.⁹ Accordingly, it is
10 dismissed without prejudice¹⁰ and CSAA’s motion for summary judgment on this claim is denied
11 as moot.

12 2. Summary judgment is granted on the breach of the covenant of good faith and fair
13 dealing claim, and the Pintars’ prayer for punitive damages.

14 CSAA is entitled to summary judgment on the breach of the covenant of good faith and
15 fair dealing claim for relief. In Nevada, every contract imposes the duty of good faith and fair
16 dealing, and the relationship of an insured to an insurer is “one of special confidence” akin to,
17 but not ascending to, a fiduciary relationship. *Wohlens v. Bartgis*, 969 P.2d 949, 956 (1998)
18 (internal quotation marks omitted). Thus, “[t]o establish a prima facie case of bad-faith refusal
19 to pay an insurance claim, the plaintiff must establish that the insurer had no reasonable basis
20 for disputing coverage, and that the insurer knew or recklessly disregarded the fact that there
21 was no reasonable basis for disputing coverage.” *Powers v. United Servs. Auto. Ass’n*, 962 P.2d 596,
22 604 (1998); *see also Falline v. GNLV Corp.*, 107 Nev. 1004, 823 P.2d 888 (1991). An insurer fails to act

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24 ⁸ “A court may raise the question of subject matter jurisdiction...at any time during the pendency of an
25 action.” *Snell v. Cleveland, Inc.*, 316 F.3d 822, 826 (9th Cir. 2002). “If the court determines at any time that it
26 lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

⁹ *See Nevada Power Co.*, 102 P.3d at 586–87 (explaining what the court should consider in determining if a
plaintiff’s claim falls outside the agency’s exclusive jurisdiction).

¹⁰ CSAA asks that I dismiss this claim with prejudice but cites no points and authorities in support of its
request. Without more, I decline to dismiss this claim with prejudice.

1 in good faith when it refuses, without proper cause, to compensate the insured for a loss covered
2 by the policy. *Pemberton v. Farmers Ins. Exch.*, 858 P.2d 380, 382 (Nev. 1993). Such conduct gives rise
3 to a breach of the covenant of good faith and fair dealing and constitutes “bad faith.” *Id.* Stated
4 otherwise, when an insurance company’s interpretation of the contract is reasonable, there can
5 be no basis for concluding that the insurance company acted in bad faith. *Am. Excess Ins. Co. v.*
6 *MGM Grand Hotels, Inc.*, P.2d 1352, 1354–55 (1986).

7 At summary judgment, the party opposing the motion must present affirmative evidence
8 from which a jury could return a verdict in that party’s favor. *Anderson*, 477 U.S. at 257. The
9 Pintars do not cite any admissible evidence to support their opposition to the motion for partial
10 summary judgment on this claim. Instead, they merely argue that their reliance on their expert’s
11 testimony and report proves the CSAA’s bad faith conduct and lack of fair dealing. ECF No. 35
12 at 7–8. However, there is no evidence before the court to support the arguments based on that
13 testimony and report. The court was not provided a copy of the insurance policy detailing
14 coverage, a copy of CSAA’s policies showing lack of compliance therewith, or specific
15 information regarding how much CSAA offered to pay versus the estimate, what, if anything, the
16 Pintars actually received in payment(s) from CSAA,¹¹ or anything else supporting the Pintars’
17 argument. “Conclusory allegations ... without factual support, are insufficient to defeat summary
18 judgment.” *National Steel Corp. v. Golden Eagle Ins. Co.*, 121 F.3d 496, 502 (9th Cir. 1997). The only
19 admissible evidence addressing the Pintars’ argument is the deposition of the Pintars’ expert
20 witness, J. Eric Peterson. Jr. J.D., M.B.A., a casualty insurance broker. *See* Peterson Dep., Def.’s Ex.
21 G, ECF No. 32-1 at 99–103. He testified that it was not unreasonable for CSAA to: (1) allow the
22 Pintars to hire their own structural engineer (*id.* at 100), and (2) to find the report produced by

23 ¹¹ CSAA provided some information regarding costs, fees, and estimates in their exhibit. *See* Claim Notes
24 from CSAA, Def.’s Ex. A, ECF No. 32-1 at 29 (fee for engineer); *id.* at 33 (reference to paying a bill in the
25 amount of \$960); *id.* at 60 (discussing some repair estimates); *id.* at 41 (discussing repair bids); *id.* at 43
26 (tree removal cost and additional repair estimates). The only information before the court regarding
outstanding bills is set forth in the Pintars’ Exhibit 5, the deposition of J. Eric Peterson. Jr. J.D., M.B.A.
ECF No. 35-5 at 12 (Peterson testifying he believed CSAA should have covered approximately \$142,000
more in repairs).

1 that engineer inadequate which caused further delay (*id.* at 102). While not directly related to
2 bad faith but nonetheless relevant, he also testified that CSAA did not violate (the now
3 dismissed) NRS 686A.310 (the UPCA). *Id.* at 103. Stated otherwise, Peterson’s testimony
4 supports CSAA’s motion that their actions were not unreasonable. Further, Peterson testified
5 that CSAA complied with some of the Pintars’ request, such as their request to replace kitchen
6 cabinets with real wood, and that CSAA complied with its obligation to put the Pintars up in
7 the hotel during the repairs (even though they elected to stay on the property). *Id.* This is
8 additional evidence that CSAA did not breach the covenant of good faith and fair dealing. ECF
9 No. 35-5 at 15. Without more, I cannot find that the Pintars have met their burden of showing
10 specific facts demonstrating that there is a genuine issue for trial, so I grant CSAA’s motion for
11 summary judgment on the Pintars’ claim for breach of the covenant of good faith and fair
12 dealing.

13 CSAA is also entitled to summary judgment on the Pintars’ prayer for punitive damages.
14 In Nevada, a district court “has discretion to determine whether the defendant’s conduct merits
15 punitive damages as a matter of law.” *Bongiovi v. Sullivan*, 138 P.3d 433, 451 (Nev. 2006). An insurer
16 can be held to pay punitive damages for a bad faith claim if it is shown by clear and convincing
17 evidence that the insurer has been guilty of oppression, fraud, or malice. *Hackler v. State Farm Mut.*
18 *Auto. Ins. Co.*, 210 F.Supp.3d 1250, 1258 (D. Nev. 2016) (citing NRS § 42.005). Clear and
19 convincing evidence is defined as “evidence establishing every factual element to be highly
20 probable.” *In re Discipline of Drakulich*, 908 P.2d 709, 715 (Nev. 1995) (internal quotation marks and
21 citation omitted). The Pintars have failed to show clear and convincing evidence of oppression,
22 fraud, or malice. Rather, the evidence shows a genuine dispute over what should be covered, and
23 the costs related to coverage. As a result, I grant CSAA’s motion for summary judgment on the
24 Pintars’ prayer for punitive damages.

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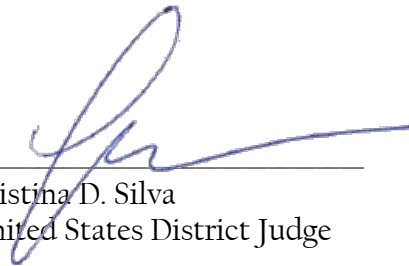
1 IV. Conclusion

2 IT IS THEREFORE ORDERED that CSAA's motion for partial summary judgment [ECF
3 No. 32] is GRANTED in part and DENIED as moot in part.

4 IT IS FURTHER ORDERED that the parties participate in a mandatory settlement
5 conference before the magistrate judge assigned to this case. Should the case fail to settle, a joint
6 pretrial order will be due 14 days after the settlement conference.

7 The Clerk of Court is kindly directed to correct the caption to reflect the defendant as
8 CSAA General Insurance Company.

9 DATED: October 16, 2023

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13 Cristina D. Silva
14 United States District Judge
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