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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Case No. 3:21-cv-00419-ART-CLB

Plaintiff,

ORDER

v.

DUSTIN DRUMMOND,

Defendant.

DUSTIN DRUMMOND,

Counter Claimant,

v.

NATIONWIDE MUTUAL INSURANCE
COMPANY,

Counter Defendant.

Nationwide Mutual Insurance Company brings this action against Defendant and Counter Claimant, Dustin Drummond, seeking declaratory judgment that Mr. Drummond's Umbrella Insurance Policy Agreement with Nationwide does not cover an off-road vehicle accident in which Mr. Drummond was involved. Mr. Drummond brings counter claims alleging breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of the Nevada Unfair Practices Act (NRS 686A.310, *et seq.*).

Before the court are Nationwide's motion for summary judgment (ECF No. 34), which requests judgment on all claims in favor of Nationwide, and Mr. Drummond's motion to exclude the testimony of expert witness Gary Selvin, Esq. (ECF No. 32). For the reasons identified below, the Court grants Nationwide's motion in full and denies Mr. Drummond's motion as moot.

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1 **I. FACTS**

2 Sometime around March 2021, the Drummonds purchased a new home,
3 which they soon learned would not be covered under their current homeowners
4 insurance policy. (ECF No. 47-1 at 7:13-8:1.) They reached out to Haley Glinz, an
5 insurance agent for Movement Insurance, and decided to get a new homeowners
6 policy and to bundle that policy with several others under a single Nationwide
7 Umbrella Policy (“UP”). (ECF No. 34-5 at 118:8-119:2.)

8 On May 4, 2021, before the UP was finalized, the Drummonds emailed Ms.
9 Glinz to request help insuring their new vehicle, a Can-Am Maverick X-3 (“Can-
10 Am”). A Can-Am Maverick X-3 is similar to an ATV but intended for multiple
11 passengers.¹ (ECF No. 47-4.) Ms. Glinz provided the Drummonds with a quote
12 for a Safeco Policy covering the Can-Am, which they reviewed and approved. (ECF
13 No. 34-5 at 117:12-118:4; ECF No. 47-7.) Mr. Drummond claims to have believed
14 that his Safeco Policy was somehow connected to the UP and that his Can-Am
15 would be covered under the UP. (ECF No. 47-1 at 12:1-6.) But nothing in the
16 record indicates that Ms. Glinz told Mr. Drummond his Can-Am would be covered
17 under the UP or that Mr. Drummond explicitly asked for coverage of his Can-Am
18 under the UP. (ECF No. 47-1 at 9:18-23; *see* ECF No. 47-3 at 11:14-22.)

19 A few days after the Drummonds sent the above-referenced email, on May
20 17, 2021, the UP was finalized. (*See* ECF No. 47-6.) The UP did not list the Safeco
21 policy as one of its “listed underlying policies,” meaning it was not among the
22 policies for which the UP generally provides coverage. (*See id.* at 6.) Mr.
23 Drummond reviewed the UP, including the section in which “listed underlying
24 policies” are identified. (ECF No. 34-5 at 21:8-12, 22:20-24.)

25
26 ¹ *See* Off-Road Livin’, *ATV vs. SXS/UTV: Differences, Benefits and Everything in Between*,
27 CAN-AM BUYING GUIDE (Jan. 2021), <https://www.brp-world.com/kw/en/Our-vehicles/can-am-off-road/blog/atv-vs-sxs-utv.html>
28 [<https://web.archive.org/web/20240411193016/https://www.brp-world.com/kw/en/Our-vehicles/can-am-off-road/blog/atv-vs-sxs-utv.html>].

1 Ms. Glinz has been the Drummonds' insurance agent since 2015. (ECF No.
2 34-5 at 10:16-21.) Though she has never had a written contract with the
3 Drummonds, she has helped them obtain many insurance policies over the years,
4 including several non-Nationwide policies, (*id.* at 11:7-13; ECF No. 47-1 at 5:6-
5 13, 13:11-13; ECF No. 47-3 at 18:22-24); provided them guidance on which
6 policies to purchase, (*see* ECF No. 47-3 at 10:17-11:13); and provided them with
7 insurance-related services such paying premiums on their behalf, (ECF No. 34-5
8 at 18:2-11). Movement, Ms. Glinz's employer, has appointments with
9 approximately 33 insurance companies and access to approximately 70 carriers
10 across the country. (ECF No. 34-5 at 134:6-25.) Neither Movement nor Ms. Glinz
11 is required to place all of their clients with Nationwide, (*Id.* at 133:21-24).
12 Nationwide can reject any policy submitted by Movement, (*Id.* at 132:11-19); and
13 Movement cannot modify or waive the terms of any Nationwide policy, (*Id.* at
14 133:1-6). Ms. Glinz has a written contract with Nationwide, is referred to as an
15 "agent" in Nationwide's contracts, has a specific "agent number," and is granted
16 the ability to take certain steps on Nationwide's behalf, such as to "bind subject
17 to binding authority." (ECF No. 47 at 19.) She also receives a commission for
18 policies she places with Nationwide. (*Id.*)

19 Mr. Drummond was in an accident in his Can-Am on August 1, 2021 while
20 off-roading with friends. (ECF No. 7 at ¶ 14; *see* ECF No. 47-1 at 16:4-16.) His
21 friends suffered injuries, (ECF Nos. 7 at ¶ 15; 47-1 at 16:17-25), and insurance
22 claims were opened under Mr. Drummond's Safeco and Nationwide Insurance
23 policies. (ECF No. 34-1 at ¶ 5.)

24 Mr. Drummond reported the accident to Safeco on August 1, 2021. (ECF
25 No. 35 at 6.) He did not report the accident to Nationwide. (ECF No. 34-5 at
26 153:17-23.) Nationwide received notice of the Safeco claim on August 10, 2021.
27 (ECF No. 34-1 at ¶ 5.) On August 11, Claim Specialist Nancy Klein opened a claim
28 under Mr. Drummond's Personal Auto Policy. (*Id.* at ¶ 6.) On August 12, 2021,

1 she contacted Mr. Drummond to notify him that his claim would need to be re-
2 opened under his Umbrella Policy instead. (*Id.* at ¶ 8.) The claim was reopened
3 under the Umbrella Policy on August 13. (*Id.* at ¶ 10.) On August 30, 2021, Ms.
4 Klein sent a status letter to Mr. Drummond advising him that Nationwide was
5 still investigating his claim. (*Id.* at ¶¶ 26-27.) On September 13, 2021, Nationwide
6 in-house counsel, outside counsel, and upper management met to discuss the
7 claim. (*Id.* at ¶ 36.) On September 17, 2021, Nationwide issued a reservation of
8 rights letter to Mr. Drummond informing him that he was not covered by the UP.
9 (*Id.* at ¶ 39.) Nationwide filed their Complaint for Declaratory Relief the same day.
10 (ECF No. 1.)

11 Nationwide brings this action seeking declaratory judgment that coverage
12 of Mr. Drummond’s accident is excluded under Exception 7.d of the UP. That
13 exception bars coverage for any:

14 “occurrence’ arising out of the ownership, maintenance, or use of . .
15 . [a] **land motor vehicle**, trailer or semi-trailer unless insurance is
16 provided by a “listed underlying policy” which is shown in the
Declarations [section of the UP].”

17 (ECF No. 47-6 at 18 (emphasis added).)

18 Mr. Drummond brings counterclaims for (1) breach of contract, alleging
19 that Nationwide materially breached the terms of the UP by failing to pay for
20 damages related to the accident; (2) violation of the Nevada Unfair Practices Act
21 (NRS 686A.310 §§ (b), (e)), alleging Nationwide unfairly contested his claim and
22 unfairly delayed resolution of the claim; and (3) breach of the implied covenant
23 of good faith and fair dealing, alleging effectively the same conduct as his Unfair
24 Practices claim. (ECF No. 7 at 8-11.) Nationwide now requests summary
25 judgment on all claims in its favor.

26 **II. ANALYSIS**

27 **A. LEGAL STANDARD**

28 Summary judgment is appropriate when there is no genuine dispute as to

1 any material fact and the moving party is entitled to judgment as a matter of law.
2 This means that if the evidence, viewed in the light most favorable to the non-
3 moving party, shows that there is no genuine issue of material fact, the court can
4 grant summary judgment in favor of the moving party. In determining summary
5 judgment, a court applies a burden-shifting analysis. “When the party moving for
6 summary judgment would bear the burden of proof at trial, it must come forward
7 with evidence which would entitle it to a directed verdict if the evidence went
8 uncontroverted at trial. In such a case, the moving party has the initial burden
9 of establishing the absence of a genuine issue of fact on each issue material to
10 its case.” *C.A.R. Transp. Brokerage Co. v. Darden Rests., Inc.*, 213 F.3d 474, 480
11 (9th Cir. 2000).

12 In contrast, when the nonmoving party bears the burden of proving the
13 claim or defense, the moving party can meet its burden in two ways: (1) by
14 presenting evidence to negate an essential element of the nonmoving party's case;
15 or (2) by demonstrating that the nonmoving party failed to make a showing
16 sufficient to establish an element essential to that party's case on which that
17 party will bear the burden of proof at trial. *See Celotex Corp. v. Catrett*, 477 U.S.
18 317, 323–24 (1986). If the moving party fails to meet its initial burden, summary
19 judgment must be denied and the court need not consider the nonmoving party's
20 evidence. *See Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 159–60 (1970).

21 If the moving party satisfies its initial burden, the burden then shifts to the
22 opposing party to establish that a genuine issue of material fact exists. *See*
23 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The
24 nonmoving party cannot avoid summary judgment by relying solely on
25 conclusory allegations that are unsupported by factual data. *See Taylor v. List*,
26 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, the opposition must go beyond the
27 assertions and allegations of the pleadings and set forth specific facts by
28 producing competent evidence that shows a genuine issue for trial. *See Celotex*,

1 477 U.S. at 324.

2 At summary judgment, a court’s function is not to weigh the evidence and
3 determine the truth, but to determine whether there is a genuine issue for trial.
4 *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The evidence of
5 the nonmovant is “to be believed, and all justifiable inferences are to be drawn
6 in his favor.” *Id.* at 255. But if the evidence of the nonmoving party is merely
7 colorable or is not significantly probative, summary judgment may be granted.
8 *See id.* at 249–50.

9 **B. DECLARATORY JUDGMENT AND BREACH OF CONTRACT**

10 To resolve Nationwide’s declaratory judgment claim and Mr. Drummond’s
11 breach of contract claim, the Court must answer two questions: (1) does the
12 language of Exclusion 7.d obviously and unambiguously bar coverage of Mr.
13 Drummond’s accident under the UP; (2) if Exclusion 7.d bars coverage, should
14 Nationwide be equitably estopped from arguing against coverage because of
15 certain misrepresentations made by its alleged agent, Haley Glinz.

16 **1. Coverage on the Face of the UP**

17 Nationwide argues that, since Exclusion 7.d applies to accidents involving
18 land motor vehicles, and the Can-Am is a land motor vehicle, 7.d obviously and
19 unambiguously excludes Mr. Drummond’s accident from coverage under the UP.
20 Mr. Drummond responds that there is an ambiguity as to the term “land motor
21 vehicle,” and Nevada law requires the Court to read any such ambiguity in his
22 favor.

23 Federal Courts interpreting contracts apply the law of the state in which
24 the contract was formed. *See, e.g., Travelers Property Cas. Co. of America v.*
25 *ConocoPhillips Co.*, 546 F.3d 1142, 1145 (9th Cir. 2008) (applying California law
26 to the interpretation a California insurance contract). In Nevada, to preclude
27 coverage under an insurance policy’s exclusion provision, an insurer must:

28 (1) draft the exclusion in “obvious and unambiguous language,” (2)

1 demonstrate that the interpretation excluding coverage is the only
2 reasonable interpretation of the exclusionary provision, and (3)
3 establish that the exclusion plainly applies to the particular case
4 before the court.

5 *Century Sur. Co. v. Casino W., Inc.*, 329 P.3d 614, 616 (Nev. 2014) (citing *Powell*
6 *v. Liberty Mut. Fire Ins. Co.*, 252 P.3d 668, 674 (Nev. 2011)). An exclusion
7 provision is ambiguous if it “creates multiple reasonable expectations of coverage
8 as drafted.” *Century Sur. Co.*, 329 P.3d at 616 (citing *Powell*, 252 P.3d at 672)
9 (internal quotation marks omitted). Even a seemingly clear provision “can be
10 rendered ambiguous when applying the [provision] to the facts leads to multiple
11 reasonable interpretations.” *Century Sur. Co.*, 329 P.3d at 616. Any ambiguity
12 must be interpreted in favor of the insured and against the insurer when, as here,
13 the insurer drafted the policy. *Powell*, 252 P.3d at 672.

14 If an exclusion provision is unambiguous, a court may find that it does not
15 apply to a particular set of facts as a matter of law. See *United National Ins. Co.*
16 *v. Frontier Ins. Co., Inc.*, 99 P.3d 1153 (Nev. 2004); *Schroeder v. State Farm Fire*
17 *and Cas. Co.*, 770 F. Supp. 558 (D. Nev. 1991). Contract provisions are given
18 their plain meaning and read “according to common speech and usage and the
19 understanding of the average man. . . .” *Catania v. State Farm Life Ins. Co., Inc.*,
20 598 P.2d 631, 632-33 (Nev. 1979); see also *Webb v. National Union Fire Ins. Co.*
21 *of Pittsburgh, Pa.*, 207 F.3d 579, 581 (9th Cir. 2000) (“A policy’s words and terms
22 are construed according to their plain, ordinary and accepted sense in the
23 common speech of man unless it appears from the policy that a different meaning
24 is intended.”).

25 Exclusion 7.d states that:

26 excess liability and additional coverages do not apply to . . . [a]n
27 “occurrence” arising out of the . . . use of . . . [a] land motor vehicle,
28 trailer or semi-trailer unless insurance is provided by a “listed
underlying policy” which is shown in the Declarations [Section of the
UP].

(ECF No. 47-6 at 18.) The Parties disagree over whether the term “land motor
vehicle” applies to Mr. Drummond’s Can-Am Maverick X-3. Mr. Drummond does

1 not contest that the accident was an “occurrence,” that his Safeco policy was not
2 a “listed underlying policy,” or that the UP’s excess liability insurance is the only
3 potential source of coverage for his accident under the UP.

4 Because the UP does not define “land motor vehicle,” the Court must
5 interpret that term “according to common speech and usage and the
6 understanding of the average man.” *Catania*, 598 P.2d at 632-33. In normal
7 parlance, “land” refers to the ground, as opposed to the air or the sea. *See Land*,
8 OXFORD ENGLISH DICTIONARY (3rd ed. 2024) (“The solid portion of the earth’s
9 surface, as opposed to sea, water”). This aligns with the structure of Exception 7,
10 which divides its coverage exceptions into water (7.a), air (7.b), and land (7.d).²
11 The term “motor vehicle” most naturally means a mode of transport compelled by
12 a motor. *See Vehicle*, OXFORD ENGLISH DICTIONARY (3rd ed. 2024) (“A conveyance,
13 a form of transport”); *Motor* OXFORD ENGLISH DICTIONARY (3rd ed. 2024) (“A
14 machine that supplies motive power for a vehicle or other device with moving
15 parts . . .”); *Motor Vehicle*, MERRIAM-WEBSTER DICTIONARY (11th ed. 2024) (“an
16 automotive vehicle not operated on rails”).

17 In its plain meaning, then, “land motor vehicle” means: (1) any vehicle; (2)
18 which operates on land; (3) using a motor. This is the only reasonable
19 interpretation of the term, in the context of Exclusion 7.d. *Century Sur. Co.*, 329
20 P.3d at 616. As one district court explained, “[t]he term ‘land motor vehicle’ is
21 only ambiguous once attorneys get involved, not before.” *DiPaolo*, 2011 WL
22 13305304, at *3 (D. Nev. 2011) (granting summary judgment in favor of an
23 insurance company because the term “land motor vehicle” unambiguously did
24 not apply to an airplane forced to make an emergency landing on a freeway).

25 None of the alternative definitions of land motor vehicle posited by Mr.

26 ² Exception 7 also includes an exception for “motorcycle[s], motor scooter[s], motorized
27 bicycle[s], [and] moped[s].” (ECF No. 47-6 at 18 (7.c).) This exception appears to have
28 been added for the sake of thoroughness, and it does not render the meaning of “land”
in Exception 7.d any less clear.

1 Drummond capture the common, ordinary meaning of the term as it appears in
2 the UP. Mr. Drummond argues that the term “motor vehicle” includes only those
3 vehicles designed for use on public roads and highways. (ECF No. 47 at 16-18).
4 But ATVs, snowmobiles, and off-road motorcycles are commonly referred to as
5 motor vehicles, despite generally being operated off-road. *See DiPaolo*, 2011 WL
6 13305304, at *3 (stating that the term “land motor vehicle” applies to “cars,
7 trucks, and likely even bulldozers and snowmobiles.”).

8 Mr. Drummond argues that the UP’s use of the term “recreational motor
9 vehicle” implies that the term “land motor vehicle” does not include vehicles that
10 are used recreationally. But “land motor vehicle” and “recreational motor vehicle”
11 are different terms, used in different portions of the UP. (*Compare* ECF No. 47-6
12 at 18 (Exclusion 10) (excluding from coverage a person’s use of an “‘auto’,
13 ‘recreational motor vehicle’ or watercraft” when she lacks a reasonable belief that
14 she is entitled to its use) (emphasis added) *with id.* (Exclusion 7.d).)

15 Mr. Drummond argues that the Court should adopt the definition of “motor
16 vehicle” contained in NRS 485.050 (“[a] self-propelled vehicle which is designed
17 for use upon a highway”) or NRS 482.135 (“every device in . . . which any person
18 . . . is or may be transported . . . upon a public highway”). But when “a provision
19 in an insurance contract is unambiguous, a court will interpret and enforce it
20 according to the plain and ordinary meaning of its terms.” *Fed. Ins. Co. V. Coast*
21 *Converters*, 339 P.3d 1281, 1285 (Nev. 2014). It will not “rewrite contract
22 provisions that are otherwise unambiguous. . . .” *Id.*; *see also Sierra Pacific Power*
23 *Co. v. Hartford Steam Boiler Inspection and Ins. Co.*, Case No. 03:04-CV-0034-
24 LRH (RAM), 2007 WL 2407037, at *3 (D. Nev. 2007) (“Nevada law generally
25 requires a plain reading of the terms of the contract and only looks outside of the
26 contract when ambiguities exist”).

27 Finally, Mr. Drummond argues that inclusion of the term “land motor
28 vehicle” in a list that also contains the terms “trailers” and “semi-trailers”

1 suggests that land motor vehicles, like trailers, must be intended exclusively for
2 use on public roads and highways. But there is a logical leap between “trailers”
3 and “vehicles intended exclusively for use on public roads,” and the Court need
4 not countenance this strained reading of 7.d. *See Evans v. Safeco Life Ins. Co.*,
5 916 F.2d 1437, 1441 (9th Cir. 1990) (“If a reasonable interpretation favors the
6 insurer and any other interpretation would be strained, no compulsion exists to
7 torture or twist the language of the policy.”).

8 Because the term “land motor vehicle” obviously and unambiguously
9 includes Mr. Drummond’s Can-Am, Exclusion 7.d plainly applies to Mr.
10 Drummond’s accident. *Century Sur. Co.*, 329 P.3d at 616. The Can-Am is a “land
11 motor vehicle,” in part, because it has four wheels and an internal mode of
12 propulsion, it does not operate on rails, and it is used to transport people over
13 land. (ECF No. 34-5 at 183-85.) The accident was an occurrence because it was
14 “an accident . . . [resulting in] bodily injury . . . caused by an insured.” (ECF No.
15 47-6 at 12 (internal quotation marks omitted).) And, Mr. Drummond’s Safeco
16 policy, which insures the Can-Am, is not a “listed underlying policy” under the
17 UP. (*See id.* at 6.)

18 **2. Coverage through Estoppel**

19 The Court next determines whether Mr. Drummond can estop Nationwide
20 from arguing that that the UP does not cover his Can-Am. Mr. Drummond argues
21 that estoppel should apply because Haley Glinz was an agent of Nationwide, and
22 she made material misrepresentations that caused Mr. Drummond to believe his
23 Can-Am would be covered under the UP. Nationwide responds that Ms. Glinz was
24 actually Mr. Drummond’s agent and that she made no misrepresentations related
25 to the Can-Am's coverage under the UP.

26 The doctrine of promissory estoppel empowers courts to estop parties from
27 arguing against the existence of a contract when four conditions are met: “(1) the
28 party to be estopped must be apprised of the true facts; (2) he must intend that

1 his conduct shall be acted upon, or must so act that the party asserting estoppel
2 has the right to believe it was so intended; (3) the party asserting the estoppel
3 must be ignorant of the true state of facts; (4) he must have relied to his detriment
4 on the conduct of the party to be estopped.” *Branch Banking and Trust Company*
5 *v. D.M.S.I., LLC*, 871 F.3d 751, 763 (9th Cir. 2017) (applying Nevada law). The
6 actions of a company’s agent can be attributed to that company for liability
7 purposes or for equitable interventions like estoppel. *See, e.g.*, Restatement
8 (Third) Of Agency § 2.04 (2006).

9 Mr. Drummond’s estoppel argument falls short for two reasons. First, there
10 are no facts in the record indicating that Ms. Glinz made a promise on which she
11 intended Mr. Drummond to rely or that Mr. Drummond actually did rely on any
12 such promise. Second, at the time Ms. Glinz secured Mr. Drummond’s Safeco
13 and Nationwide policies, she was acting as an agent of Mr. Drummond, not
14 Nationwide, so her actions cannot be imputed to Nationwide for estoppel
15 purposes.

16 **a. Promise and Reliance**

17 Mr. Drummond claims that Ms. Glinz told him his Can-Am would be
18 covered under the UP and that he relied to his detriment on that
19 misrepresentation. (ECF No. 47 at 21.) But Mr. Drummond’s position is not
20 supported by the factual record.

21 “The promise giving rise to . . . promissory estoppel must be clear and
22 definite, unambiguous as to essential terms, and the promise must be made in a
23 contractual sense.” *Torres v. Nev. Direct Ins. Co.*, 353 P.3d 1203, 1209 (Nev. 2015)
24 (citing 31 C.J.S. *Estoppel and Waiver* § 116 (2008)). In other words, the promise
25 must be real, and it must be “sufficient to induce reliance” on the promised act.
26 *Id.* at 1210.

27 Here, the uncontested facts demonstrate that Ms. Glinz never told Mr.
28 Drummond his Can-Am would be covered under the UP, and she never acted in

1 a way that suggested it would be covered. In the email thread in which Mr.
2 Drummond requested a policy covering his Can-Am, Ms. Glinz clearly
3 distinguished between the Nationwide UP and the other policies that might cover
4 the Can-Am. (ECF No. 47-4 at 3-4.) She did not suggest the Can-Am would be
5 covered under the UP, and certainly not in terms that were “clear,” “definite,” or
6 “unambiguous.” *Torres*, 353 P.3d at 1209. In fact, Mr. Drummond stated in his
7 depositions that he did not recall any conversation in which Ms. Glinz suggested
8 the Can-Am would be covered by a Nationwide policy. (ECF No. 47-1 at 9:18-23;
9 *see also* ECF No. 47-3 at 11:14-22 (indicating Ms. Glinz does not recall presenting
10 Mr. Drummond with any quotes for Nationwide policies on his Can-Am.)

11 Even if Ms. Glinz’s actions did constitute a promise, Mr. Drummond cannot
12 claim detrimental reliance on that promise. “There can be no promissory estoppel
13 where complainant’s act is caused by his or her own mistake in judgment.”
14 *Torres*, 353 P.3d at 1210 (citing 31 C.J.S. *Estoppel and Waiver* § 116 (2008)). Mr.
15 Drummond testified that he merely assumed his Can-Am would be covered under
16 the UP. (ECF No. 47-1 at 12:4-6.) In Nevada, parties to insurance contracts are
17 presumed to have read those contracts, *Farmers Ins. Exch. V. Young*, 832 P.2d
18 376, 379 n.2 (Nev. 1992), and Mr. Drummond did in fact read the UP, (ECF No.
19 34-5 at 21:8-12, 22:20-24). The UP does not list Mr. Drummond’s Safeco policy
20 as a “listed underlying policy.” (ECF No. 47-6.) Any belief that the Can-Am would
21 be covered was the result of Mr. Drummond’s own mistake and not of any act or
22 omission by Ms. Glinz. *Torres*, 353 P.3d at 1210.

23 Mr. Drummond argues that he made no mistake in judgment because he
24 reasonably assumed the UP would cover his Can-Am. He specifically points to a
25 warning in the UP, which states: “changes or additions made to your Auto and
26 Homeowner policies may not be reflected on this Declarations [section].” (ECF No.
27 47-6 at 5.) Mr. Drummond claims this warning led him to reasonably believe that
28 his Safeco policy was not listed because it was new and that it would soon be

1 listed alongside his other policies.

2 Mr. Drummond's argument fails for two reasons. First, he raises the UP's
3 warning for the first time on summary judgment, and he points to nothing in the
4 record suggesting the warning affected his expectations of coverage before the
5 accident. Legal arguments and memoranda "are not evidence, and they cannot
6 by themselves create a factual dispute sufficient to defeat a summary judgment
7 motion where no dispute otherwise exists." *British Airways Bd. v. Boeing*, 585
8 F.2d 946, 952 (9th Cir. 1978).

9 Second, Mr. Drummond had the opportunity to confirm his belief for
10 several months. At any time between May 17 (the date of effective coverage) and
11 August 1 (the date of the accident), Mr. Drummond could have checked if the UP
12 had been updated to include his Safeco policy. If he had, he would have seen that
13 his Safeco policy was never included as a listed underlying policy under the UP.
14 Mr. Drummond cannot now claim he was unaware that the UP did not cover his
15 Can-Am.

16 **b. Ms. Glinz's Agency**

17 Even if Ms. Glinz did make a misrepresentation, and even if Mr. Drummond
18 reasonably relied on that misrepresentation, the misrepresentation cannot be
19 imputed to Nationwide, because Ms. Glinz was not an agent of Nationwide at the
20 time Mr. Drummond purchased his UP and Safeco policies.

21 In Nevada, "an agency relationship is formed when one who hires another
22 retains a contractual right to control the other's manner of performance." *Grand*
23 *Hotel Gift Shop v. Granite State Ins. Co.*, 839 P.2d 599, 602 (Nev. 1992). "The
24 existence of an agency relationship is generally a question of fact for the jury if
25 the facts showing the existence of agency are disputed, or if conflicting inferences
26 can be drawn from the facts." *Schlotfeldt v. Charter Hosp. of Las Vegas*, 910 P.2d
27 271, 274 (Nev. 1996). But when the undisputed facts lead only to the inference
28 that no agency relationship exists, Nevada courts have made no-agency

1 determinations as a matter of law. *Grand Hotel Gift Shop*, 839 P.2d at 603.

2 Nevada law presumes that independent insurance agents like Ms. Glinz are
3 agents of the insured and not the insurer, even when they are acting in a “dual
4 agency” capacity. *Id.* This is true even though Nevada statutes create certain
5 mandatory relationships between insurer and insurance agent. *See Id.* at 602. In
6 the past, Nevada courts have looked to a few factors to help determine whether
7 an independent insurance agent is an agent of an insurance company:

8 “(1) the insured's reliance on the agent's judgment and discretion in
9 procuring insurance coverage, (2) the general rule that an
10 independent insurance agent is considered the agent of the insured,
11 not the insurer, (3) in dealing with an insured, whether the agent
12 selected which insurance company to use, (4) whether the agent
13 reviewed the insured's financial records and made recommendations
14 regarding coverage, (5) whether the agent knew that the insured was
15 relying on him to explain the insurance policies he procured, and (6)
16 the general rule that even if the agent acts in a “dual agency”
17 capacity, he is still the agent for the insured, not the insurer.”

18 *Id.* at 603.

19 Courts have also considered the extent of the agent’s relationship with the
20 insured, the number of other insurance companies the agent works with, the
21 percent of the agent’s policies sold through the insurer, whether the insurer
22 placed restrictions on the sorts of people or entities to whom the agent could sell
23 insurance, and whether the insurer placed a quota on the number of policies the
24 agent referred to it. *See Id.*

25 It is undisputed that Ms. Glinz has been the Drummonds’ insurance agent
26 since 2015, and she has helped them get several non-Nationwide policies over
27 the years. (ECF No. 34-5 at 10:16-21, 11:7-13; ECF No. 47-1 at 5:6-13, 13:11-
28 13; ECF No. 47-3 at 18:22-24.) It is also undisputed that Ms. Glinz kept the
Drummond’s credit card information on file and would pay premiums on their
behalf, (ECF No. 34-5 at 18:2-11); she regularly made suggestions to the
Drummonds about which insurance policy to obtain, (*See* ECF No. 47-3 at 10:17-
11:13); and she and the Drummonds independently elected to enter the UP,

1 without input from Nationwide, (ECF No. 47-1 at 7:7-23).

2 Moreover, Movement, Ms. Glinz's employer, has appointments with
3 approximately 33 insurance companies and access to approximately 70 carriers
4 across the country. (ECF No. 34-5 at 134:6-25.) Neither Movement nor Ms. Glinz
5 is required to place all of their clients with Nationwide. (*Id.* at 133:21-24.)
6 Nationwide also has the opportunity to reject any policy submitted by Movement,
7 (*Id.* at 132:11-19), and Movement cannot modify or waive the terms of any
8 Nationwide policy. (*Id.* at 133:1-6.) These undisputed facts lead to only one
9 reasonable inference: Ms. Glinz was an agent of the Drummonds, not Nationwide,
10 when Mr. Drummond purchased his Umbrella Policy.

11 It is true that Nationwide refers to Ms. Glinz as an "agent" in certain policy
12 paperwork, assigns her an "agent number," and grants her powers like the ability
13 to "bind subject to binding authority." (ECF No. 47 at 19.) But this is standard
14 practice for an insurance broker, and it does not overcome the presumption in
15 Nevada law that an insurance broker is an agent of the insured, not the insurer.
16 *See Grand Hotel Gift Shop*, 839 P.2d at 602 (finding no agency relationship
17 between insurer and insurance agent despite the fact that the agent
18 countersigned the policy in question and was appointed as the insurer's "agent"
19 in Nevada); (ECF No. 47-3 at 13:16-18.)

20 Mr. Drummond argues that NRS 683A.321 establishes a statutory agency
21 relationship between Nationwide and Ms. Glinz. That statute distinguishes
22 between insurance agents and insurance brokers and establishes certain powers
23 and licensing requirements for each group. NRS 683A.321. But the court in
24 *Grand Hotel Gift Shop*, dismissed a similar argument, and it is not clear how the
25 statute in this case meaningfully differs from those in *Grand Hotel*. *See* 839 P.2d
26 at 602. As the Nevada Supreme Court explained:

27 Statutes requiring the registering or licensing of insurance agents
28 have no effect on their powers to bind their principals, and do not
change the general laws of agency. Neither the license granted to an

1 insurance agent nor the statute under which it is issued define the
2 authority of an insurance agent.

3 *Id.* (citing 16 John Alan Appleman & Jean Appleman, *Insurance Law and Practice*
4 with Forms § 8671, at 182-83 (1981 & Supp. 1991)).

5 Because Mr. Drummond's equitable estoppel argument fails on the
6 grounds identified above, the Court does not reach Nationwide's argument that
7 Mr. Drummond should be barred from raising this issue for the first time in his
8 response to Nationwide's motion for summary judgment. (See ECF No. 51 at 10-
9 11.)

10 Because Exclusion 7.d of the UP clearly and unambiguously applies to Mr.
11 Drummond's accident, and because estoppel is not warranted, the Court grants
12 summary judgment in favor of Nationwide on its declaratory judgment claim and
13 against Mr. Drummond on his breach of contract claim.

14 **C. DRUMMOND'S REMAINING COUNTERCLAIMS AND MOTION TO 15 EXCLUDE**

16 Mr. Drummond brings two remaining counterclaims: breach of the implied
17 covenant of good faith and fair dealing and violation of the Nevada Unfair
18 Practices Act. (ECF No. 7 at 8-11.) His Unfair Practices Act claim alleges that
19 Nationwide violated NRS 686A.310(b) and (e), which prohibit insurance agencies
20 from unfairly contesting valid insurance claims and unfairly delaying resolution
21 of claims. (*Id.* at 8-9.) His breach of the implied covenant claim alleges that
22 Nationwide unfairly denied him coverage. (*Id.* at ¶ 39.) Because Nationwide did
23 not unreasonably delay resolution of Mr. Drummond's claim, and because its
24 refusal to provide coverage was reasonable, both claims fail.

25 "To establish a claim for breach of the implied covenant of good faith and
26 fair dealing, a plaintiff must prove: (1) the existence of a contract between the
27 parties; (2) that the defendant breached its duty of good faith and fair dealing by
28 acting in a manner unfaithful to the purpose of the contract; and (3) the plaintiff's
justified expectations under the contract were denied." *Perry v. Jordan*, 900 P.2d

1 335, 338 (Nev. 1995). NRS 686A.310(b) prohibits insurers from “[f]ailing to
2 acknowledge and act reasonably and promptly upon communications with
3 respect to claims arising under insurance policies,” and NRS 686A.310(e)
4 prohibits them from “[f]ailing to effectuate prompt, fair and equitable settlements
5 of claims in which liability of the insurer has become reasonably clear.” While the
6 issue of an insurer’s bad faith is generally a matter of fact for the jury, *Allstate*
7 *Ins. Co. v. Miller*, 212 P.3d 318, 327 (Nev. 2009), it can be decided as a matter of
8 law when, viewing the facts in the light most favorable to the plaintiff, a jury could
9 not conclude that the insurer acted unreasonably, *cf. Neal v. Farmers Ins. Exch.*,
10 582 P.2d 980, 985 (1978).

11 None of the alleged facts suggest that Nationwide unreasonably delayed or
12 denied Mr. Drummond’s claim. It is undisputed that the entire claim investigation
13 took just over one month (August 10, 2021 to September 17, 2021). (ECF No. 34-
14 1 at ¶¶ 5, 39.) Nationwide has provided a detailed, unchallenged description of
15 the steps that were taken within that period, which the Court has summarized
16 in the facts section, above. (See ECF No. 34-1.) According to that description,
17 Nationwide worked diligently to resolve the claim and communicated with Mr.
18 Drummond where necessary about the state of his claim. (See *id.*) When
19 Nationwide’s claims agent noticed that Mr. Drummond’s accident might not be
20 covered by the UP, she immediately referred the issue for further review. (*Id.* at ¶
21 14.) Mr. Drummond has not pointed to any request for communication to which
22 Nationwide did not respond. He complains of a three-day period in which his
23 claim was erroneously opened under his Personal Auto Policy before being closed
24 and reopened under the UP, but this three-day filing error cannot constitute an
25 unreasonable delay or denial of Mr. Drummond’s claim.

26 Further, the Court’s analysis of Nationwide’s declaratory judgment claim
27 demonstrates that that Nationwide’s denial of Mr. Drummond’s claim was not
28 only reasonable but legally justified.

1 Read in the light most favorable to Mr. Drummond, the alleged facts cannot
2 support a finding of bad faith. Thus, the Court grants summary judgment in favor
3 of Nationwide on Mr. Drummond's claims for breach of the implied covenant of
4 good faith and fair dealing and for violation of the Nevada Unfair Practices Act.

5 The Court does not reach Nationwide's argument that Mr. Drummond is
6 not entitled to punitive damages because he has no surviving claim from which
7 damages could flow.

8 Because all claims in this case have been resolved, Mr. Drummond's
9 motion to exclude the testimony of Gary Selvin (ECF No. 32) is denied as moot.

10 **III. CONCLUSION**

11 It is therefore ordered that Plaintiff/Counter Defendant Nationwide Mutual
12 Insurance Company's motion for summary judgment (ECF No. 34) is granted.

13 It is further ordered that Defendant/Counter Claimant Dustin
14 Drummond's motion to exclude the testimony of Gary Selvin (ECF No. 32) is
15 denied as moot.

16 The Clerk of Court is directed to enter judgment in keeping with this order
17 and close this case.

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19 Dated this 7th day of May 2024.

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21 

22
23 ANNE R. TRAUM
24 UNITED STATES DISTRICT JUDGE
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