UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 2:26-cv-02394-MWC-KES Date: June 11, 2026

Title: Jennifer Josephs *et al.* v. Security National Insurance Company

Present: The Honorable Michelle Williams Court, United States District Judge

T. Jackson	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: (IN CHAMBERS) ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO DISMISS WITH LEAVE TO AMEND (DKT. [12])

Before the Court is Defendant Security National Insurance Company's ("Defendant") motion to dismiss Plaintiffs Jennifer and Shane Josephs' (collectively, "Plaintiffs") complaint. *See* Dkt. # 12 ("*MTD*"). Plaintiffs opposed, *see* Dkt. # 14 ("*Opp'n*"), and Defendant replied, *see* Dkt. # 16 ("*Reply*"). The Court initially set Defendant's motion to dismiss for hearing on May 22, 2026. *See* Dkt. # 13. After reviewing the parties' briefing on the motion, the Court continued the hearing to June 5, 2026, and ordered supplemental briefing related to Defendant's statute of limitations argument on Plaintiffs' second cause of action. *See* Dkt. # 20. Plaintiffs complied with their supplemental briefing obligations and timely submitted a sur-reply. *See* Dkt. # 21 ("*Sur-Reply*"). The Court held a hearing on the matter on June 5, 2026. *See* Dkt. # 23. After considering the papers, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant's motion to dismiss **WITH LEAVE TO AMEND**.

I. Background

A. Plaintiffs' Allegations

This case centers on an insurance coverage dispute. *See generally* Dkt. # 1-1 ("*Compl.*"). Plaintiffs' complaint alleges as follows:

Plaintiffs own a property at 1786 Bryn Mawr Avenue in Santa Monica, California (the "Property"). *Id.* ¶ 7. On July 11, 2017, Jennifer Josephs entered into a "Prime Contract" with Zalman N, Inc. to perform general contracting services at the Property (the

"Project"). *Id.* ¶ 8. Under the Prime Contract, Zalman N, Inc. agreed to indemnify Plaintiffs against liabilities arising out of the Project and to carry workers' compensation insurance and general liability insurance covering the Project. *Id.* On November 8, 2018, Zalman N, Inc. officer Zalman Nemtzov entered into a subcontract with MRB Construction, Inc. ("MRB") for MRB to provide labor and materials to complete the framing of the Project. *Id.* ¶ 9. On December 27, 2018, Zalman N, Inc. entered into a subcontract with Jennifer Josephs for wood framing (the "Framing Contract"), which incorporated all terms and conditions of the Prime Contract. *Id.* ¶ 10. Defendant issued a liability insurance policy to Zalman Nemtzov with an effective period of January 3, 2019, to January 3, 2020. *Id.* ¶ 11.

On February 21, 2019, Isac Hernandez Hernandez was working on the Project performing exterior construction work. *See id.* ¶ 12. Mr. Hernandez fell eight to ten feet, resulting in serious injuries. *Id.* He had been performing exterior work around the ground level of the structure, and fell into an area of the Project that workers had dug to level the structure. *See id.* Mr. Hernandez sued Plaintiffs and others. *See id.* ¶ 13. Plaintiffs filed a cross-complaint against Zalman N, Inc., Mr. Nemtzov, and other defendants in Mr. Hernandez's lawsuit. *See id.* ¶ 14. Mr. Nemtzov tendered Plaintiffs' cross-complaint to Defendant. *See id.* On September 14, 2021, Defendant refused to defend the suit and denied coverage for Mr. Nemtzov and Zalman N, Inc. *See id.* On October 8, 2021, after MRB denied that Mr. Hernandez was its employee, Plaintiffs paid $4,000,000 through their own insurers to resolve Mr. Hernandez's claims against Plaintiffs. *Id.* ¶ 15.

Defendant refused several of Plaintiffs' settlement offers. *Id.* ¶ 16. First, Plaintiffs offered to settle within policy limits on November 9, 2022, though Defendant "did not meaningfully respond until March 3, 2023, when it rejected the demand." *Id.* Plaintiffs have settled their cross-complaint against Mr. Nemtzov and Zalman N, Inc.'s insurance broker, David Morris. *Id.* ¶ 17. In exchange for payment of $700,000, Plaintiffs released their claims against Mr. Morris. *Id.*

In late 2023, Plaintiffs agreed with Mr. Nemtzov and Zalman N, Inc. to a stipulated $3,300,000 judgment in favor of Plaintiffs against Mr. Nemtzov and Zalman N, Inc. *Id.* ¶ 18. That stipulation included an agreement for Plaintiffs not to execute the judgment against Mr. Nemtzov or Zalman N, Inc. *Id.* In exchange, Mr. Nemtzov and Zalman N, Inc. assigned Plaintiffs their rights against Defendant pursuant to policy No. NA156839900 and "all rights and remedies for breach of the covenant of good faith and fair dealing, bad faith, breach of duty to settle, or any other common law, contractual or statutory duty

[Defendant] may have had or has . . . ." *Id.* Zalman N, Inc. and Mr. Nemtzov "did not assign their rights as against [Defendant] for breach of the duty to defend." *Id.*

On November 28, 2023, the court in Mr. Hernandez's suit entered judgment of $3,300,000 in favor of Plaintiffs and against Mr. Nemtzov and Zalman N, Inc., jointly and severally, on Plaintiffs' causes of action for express indemnity and equitable indemnity. *Id.* ¶ 19. On March 14, 2025, Plaintiffs again offered to settle with Defendant within Defendant's policy limits. *Id.* ¶ 20. Plaintiffs notified Defendant of the $3,300,000 judgment against Mr. Nemtzov and Zalman N, Inc. and communicated that they would accept payment of Defendant's $1,000,000 policy limit in exchange for a release of claims. *Id.* Defendant rejected Plaintiffs' offer. *Id.*

Defendant's policy has a "Limitation of Coverage to Business Description Endorsement," which "amends the basic insuring provision" and allows for coverage of "[e]xterior work up to 3 stories in height." *Id.* ¶ 21. The Limitation of Coverage to Business Description Endorsement does not specify what types of "exterior work" are included. *Id.* ¶ 22. While that endorsement does specify that exterior work related to "[e]xterior framing work as a [subcontractor]" and "Exterior Insulation and Finish Systems (EIFS) work" is not included, the endorsement "can reasonably be interpreted to include virtually any type" of exterior work so long as that work does not exceed three stories in height. *Id.* ¶ 23. Mr. Hernandez was performing exterior work under three stories in height, and neither Mr. Nemtzov nor Zalman N, Inc. was a subcontractor. *Id.* ¶ 24. "The injury did not involve or relate to EIFS work." *Id.* Still, Defendant did not accept a reasonable settlement offer within its policy limit. *See id.* ¶ 26.

Plaintiffs' complaint includes two causes of action. The first is for a breach of Defendant's duty to indemnify based on its refusal to indemnify Mr. Nemtzov and Zalman N, Inc. (and, by assignment, Plaintiffs) and its refusal to accept a settlement offer within Defendant's policy limits. *See id.* ¶¶ 27–32. The second cause of action is for a breach of the duty of good faith and fair dealing following Defendant's failure "to timely investigate and properly evaluate Mr. Nemtzov and Zalman N, Inc.'s tender of [Plaintiffs'] cross-complaint," as well as Plaintiffs' multiple settlement offers. *See id.* ¶¶ 33–39.

B. Additional Facts for Consideration

Defendant argues—and Plaintiffs do not dispute—that the complaint's reference to the underlying contracts and insurance policy incorporates those documents by reference.

See MTD at 4; *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (identifying that a document "may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim . . . for example, when a plaintiff's claim about insurance coverage is based on the contents of a coverage plan"); *see also ArubaWater Corp. v. Wells Fargo Bank, N.A.*, 703 F. Supp. 3d 995, 1000 (D. Ariz. 2023) (detailing that "a court may consider documents incorporated by reference in the complaint without converting the motion to dismiss into a motion for summary judgment (citing *Van Buskirk v. CNN*, 284 F.3d 977, 980 (9th Cir. 2002))).

Defendant first highlights that the Prime Contract describes that the "[o]wner hereby engages Contractor to supervise the deconstruction of the existing home and to construct a new home of approximately 4,900 square feet, collectively referred to as 'the Work.'" *See MTD* at 4 (citing Dkt. # 12-1 ("*Compendium*") at 3). Next, Defendant points to its insurance policy, which states that "[t]his insurance does not apply to 'bodily injury' . . . included in the 'products-completed operations hazard' and arising out of 'your work' shown in the Schedule." *See MTD* at 4; *Compendium* at 69; *see also id.* (describing the work as "[n]ew construction of a dwelling and work within, or on, the premises of a dwelling . . ."). And the policy includes a "Designated Ongoing Operations Exclusion," which repeats the description of the work as "[n]ew construction of a dwelling and work within, or on, the premises of a dwelling" and provides that "[t]his insurance does not apply to 'bodily injury' . . . arising out of the ongoing operations described in the Schedule of this endorsement . . . ." *See id.* at 72.

II. Legal Standard

Federal Rule of Civil Procedure ("Rule") 8 requires a complaint to clearly establish the claims and parties such that a defendant would have "no difficulty in responding to the claims with an answer and/or with a Rule 12(b)(6) motion to dismiss." *Hearns v. San Bernardino Police Dep't*, 530 F.3d 1124, 1131–32 (9th Cir. 2008). Pleadings that are "verbose, confusing and conclusory" are subject to dismissal. *Nevijel v. N. Coast Life Ins. Co.*, 651 F.2d 671, 674 (9th Cir. 1981). A plaintiff fails to comply with Rule 8 if "all defendants are lumped together in a single, broad allegation." *Gauvin v. Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988).

To survive a motion to dismiss under Rule 12(b)(6), a complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In assessing the adequacy of the complaint, the court must accept all pleaded facts as true and construe them in the light most favorable to the plaintiff. *See Turner v. City & Cnty. of S.F.*, 788 F.3d 1206, 1210 (9th Cir. 2015); *Cousins v. Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009). The court then determines whether the complaint "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. However, a cause of action's elements that are "supported by mere conclusory statements[] do not suffice." *Id.* Accordingly, "for a complaint to survive a motion to dismiss, the non-conclusory factual content, and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (internal quotation marks omitted).

III. Discussion[1]

A. Breach of Duty to Indemnify

To plead a duty to indemnify, the insured must show that the claim falls within the scope of the insurance policy. *See Palmer v. Truck Ins. Exch., Inc.*, 21 Cal. 4th 1109, 1120 (1999) (citing *Collin v. Am. Empire Ins. Co.*, 21 Cal. App. 4th 787, 803 (1994)); *see also Toro-Aire, Inc. v. Fed. Ins. Co.*, No. CV 08-5784 SVW (JTLx), 2009 WL 10671437, at *5 (C.D. Cal. Oct. 1, 2009) (noting that the "fundamental question" regarding a duty to indemnify is whether the factual record and claims at the time of the relevant settlement demonstrate coverage (citing *Atmel Corp. v. St. Paul Fire & Marine Ins. Co.*, 430 F. Supp. 3d 989, 995 (N.D. Cal. 2006))). If there is a duty to indemnify, "[t]he obligation to indemnify arises when the insured's underlying liability is established." *Pro. Sec. Consultants, Inc. v. U.S. Fire Ins. Co.*, No. CV 10-04588 SJO (SSx), 2010 WL 4123786, at *3 (C.D. Cal. Sept. 22, 2010) (citing *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal. 4th 645, 659 n.9 (1995)).

Defendant argues that the policy unambiguously excludes coverage for Mr. Hernandez's bodily injury claim. It highlights the provision of the Prime Contract referring

[1] Plaintiffs argue that the Court should strike Defendant's motion for failure to comply with Local Rule 6-1, which requires a party to file a notice of motion at least twenty-eight days before the date set for hearing. *See* C.D. Cal. L.R. 6-1. Though Defendant noticed its April 13, 2026, motion for hearing on May 8, 2026, the Court *sua sponte* continued the hearing to May 22, 2026. Accordingly, there is no prejudice to Plaintiffs, and the Court will not strike Defendant's motion.

to the Project as "deconstruction of the existing home and to construct a new home" and notes that Defendant's policy excludes coverage for bodily injury arising from "[n]ew construction of a dwelling and work within . . . ." *See MTD* at 8. Because Mr. Hernandez's injuries occurred during "[n]ew construction," Defendant avers, it is not obligated to indemnify Plaintiffs. *See id.* at 9.

But Defendant's principal motion fails to address the "Limitation of Coverage to Business Description Endorsement." *See generally id.* Plaintiffs contend that this provision—which amends the basic insuring provision—allows for "[e]xterior work up to 3 stories in height." *See Opp'n* at 4. They point out that Defendant made "no attempt to explain how the 'new construction' exclusion can be reconciled with the Business Description Endorsement," or how "the Policy that was issued for the Project does not cover the Project." *See id.* (emphasis omitted). And Plaintiffs assert that Defendant "overlooks the Framing Contract alleged in the complaint and the work that [Mr.] Nemtzov and [Mr.] Hernandez were actually performing when the injury happened." *See id.*

The Court must construe the contract as a whole, including all relevant addendums and modifications. *See Centigram Argentina, S.A. v. Centigram Inc.*, 60 F. Supp. 2d 1003, 1011 (N.D. Cal. 1999) ("Provisions in a contract, however, are not to be considered in a vacuum, but instead the entirety of the contract must be interpreted together." (citation omitted)); Cal. Civ. Code § 1641 ("The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other."); *see also Reply* at 5 (same); *Opp'n* at 5 (same). In reply, Defendant questions "how an exclusion could be construed to broaden coverage that is otherwise unavailable," and notes that the endorsement "indicates that [a]ll other terms and conditions remain unchanged." *See Reply* at 4 (internal quotation marks and citation omitted)). Defendant interprets the provisions to state that its policy "might apply to exterior work up to three stories for construction that is not 'new.'" *See id.* (emphasis omitted).

But Defendant's counterargument proves Plaintiffs' point. Taking all provisions in tandem, it is not clear how these provisions fit together or where the coverage for "exterior work" ends. "A policy's language is ambiguous when it is susceptible of two or more reasonable interpretations." *Gutowitz v. Transamerica Life Ins. Co.*, 126 F. Supp. 3d 1128, 1136 (C.D. Cal. 2015) (citing *La Jolla Beach & Tennis Club, Inc. v. Indus. Indem. Co.*, 9 Cal. 4th 27, 37 (1994)). Ambiguities may center on the extent of coverage, *see Cont'l Cas. Co. v. Phoenix Constr.*, 46 Cal. 2d 426, 437–38 (1956), and they may arise from contradictory or inconsistent language in different portions of the policy, *see Delgado v.*

Heritage Life Ins. Co., 157 Cal. App. 3d 262, 271 (1984); *St. Paul Mercury Ins. Co. v. Frontier Pac. Ins. Co.*, 111 Cal. App. 4th 1234, 1244 (2003) ("An ambiguity results when there is contradictory or necessarily inconsistent language in different portions of the instrument . . . ." (internal quotation marks and citations omitted)). The Court could only guess at an interpretation that reconciles these provisions, which it must not do. *See Castro v. Fireman's Fund Am. Life Ins. Co.*, 206 Cal. App. 3d 1114, 1119 (1988) (identifying that "it is not the function of the court to determine which of several reasonable constructions of an ambiguous provision is the correct one . . . .").

Mr. Hernandez was performing exterior work on the Project near the ground level when he fell, and it is not clear what exterior work Defendant's policy would cover. "[U]nder settled principles[,] so long as coverage is available under any reasonable interpretation of an ambiguous clause, the insurer cannot escape liability." *State Farm Mut. Auto. Ins. Co. v. Jacober*, 10 Cal. 3d 197, 202–03 (1973). And insurance coverage provisions are "construed broadly in favor of affording protection, but clauses setting forth specific exclusions from coverage are interpreted narrowly against the insurer." *Minkler v. Safeco Ins. Co. of Am.*, 49 Cal. 4th 315, 322 (2010); *see E.M.M.I. Inc. v. Zurich Am. Ins. Co.*, 32 Cal. 4th 465, 471 (2004) ("Any ambiguous terms are resolved in the insureds' favor, consistent with the insureds' reasonable expectations." (internal quotation marks and citation omitted)).

Plaintiffs have plausibly alleged that Mr. Nemtzov reasonably expected coverage for the Project. "If policy language is ambiguous, an interpretation in favor of coverage is reasonable only if it is consistent with the objectively reasonable expectations of the insured." *Emps. Reinsurance Co. v. Super. Ct.*, 161 Cal. App. 4th 906, 920 (2008) (internal quotation marks and citations omitted). Defendant argues that even its policy was ambiguous, Plaintiffs could not have reasonably expected coverage based on the language of the policy excluding bodily injury coverage arising during new construction, "for which the insured received a premium credit . . . ." *See Reply* at 6.[2] To be sure, the documents include references to a "special condition" or "optional coverage" stating: "No New Residential Construction Work Prior to the Certificate of Occupancy is Allowed. Premium Credit is Applied." *See Compendium* at 91, 94. But the presence of the "premium credit"

[2] Defendant referenced the "premium credit" for the first time on reply, which stands as an independent reason to discount Defendant's argument. *See Lawman v. City and Cnty. of S.F.*, 159 F. Supp. 3d 1130, 1142 (N.D. Cal. 2016) ("The court will not consider arguments raised for the first time on reply.").

does little to explain conflicting language. This reference suggests only that the contractual language was the product of negotiation, about which there was little doubt. The "premium credit" provision does not clarify the countervailing "exterior work" provision, making it plausible that Mr. Nemtzov reasonably expected coverage for an injury resulting from exterior work, even if there were some limitations on coverage generally.

For these reasons, Plaintiffs have plausibly alleged that Defendant breached its duty to indemnify, and the Court **DENIES** Defendant's motion to dismiss Count I.

B. Breach of Duty of Good Faith and Fair Dealing

Defendant next argues that the Cout must dismiss Plaintiffs' cause of action for a breach of the duty of good faith and fair dealing. First, Defendant refers to its argument regarding the duty to indemnify, stating that "there is no coverage" available under Defendant's policy, which is "fatal" to Plaintiffs' second cause of action. *See MTD* at 9. Because the Court has already found coverage plausible based on ambiguity in the relevant documents, Defendant's first argument is unavailing.

Defendant also argues that the statute of limitations bars Plaintiffs' second cause of action. Defendant's principal motion asserted that because Defendant denied Mr. Nemtzov's insurance claim on September 14, 2021, "the latest [Plaintiffs] could have timely asserted the implied covenant claim against [Defendant] was September 14, 2023, or two years from the admitted date of the coverage denial . . . ." *See MTD* at 10. But Defendant included an alternative argument, that "if the implied covenant claim's accrual is keyed on the judgment, the latest that claim could have been brought was in late 2025." *See id.* After Plaintiffs contended that the statute of limitations in the third-party context "is tolled until there is a final, excess judgment against the insured," *see Opp'n* at 13 (citation omitted), Defendant argued the same in its reply, *see Reply* at 6–7. Still, the parties disagree as to when that judgment became final. Defendant maintains that because the judgment between Mr. Nemtzov and Plaintiffs was a stipulated judgment, it became final upon entry, commencing the statute of limitations period. *See id.* at 7. But Plaintiffs assert that because Defendant was not a party to the stipulated judgment, the judgment did not become final upon entry. *See Sur-Reply* at 3.

The statute of limitations for a bad faith claim is two years, *see* Cal. Civ. Code § 339(1), and the correct date on which that statute of limitations begins to run is from the date of final judgment against the insured, *see Larraburu Bros., Inc. v. Royal Indem. Co.*, 604 F.2d 1208, 1215 (9th Cir. 1979); *Archdale v. Am. Int'l Spec. Lines Ins. Co.*, 154 Cal. App. 4th 449, 478 (2007). "A judgment is not final as long as it remains subject to direct attack by appeal, by motion for a new trial, or motion to vacate the judgment." *Bialo v. W. Mut. Ins. Co.*, 95 Cal. App. 4th 68, 83 (2002) (cleaned up); *see also id.* (noting that "finality on appeal is not the only meaning of the phrase 'final judgment,'" and that "finality depends somewhat upon the purpose for which and the standpoint from which it is being considered . . . ."). The general rule is that a party may not appeal a "consent judgment." *See Norgart v. Upjohn, Co.*, 21 Cal. 4th 383, 400 (1999). There are exceptions to this rule, including when "consent was merely given to facilitate an appeal following adverse determination of a critical issue . . . ." *See id.*

Plaintiffs argue that the Court should view the stipulated judgment between Plaintiffs and Mr. Nemtzov the same as it would view a default judgment. But Plaintiffs provide no authority on which the Court can rely to collapse the distinction between a stipulated judgment and a default judgment. Plaintiffs refer to California Civil Procedure Code § 473(b), which allows a court to relieve a party from a judgment "against the party" based on the "party's mistake, inadvertence, surprise, or excusable neglect" within six months "after the judgment . . . was taken." *See* Cal. Civ. Proc. Code § 473(b). This argument fails for two reasons. First, the stipulated judgment was not one against Defendant. Instead, the court in Mr. Hernandez's suit entered judgment on Plaintiffs' cross-claim against Mr. Nemtzov. The sole effect of the stipulated judgment as to Defendant was that now Plaintiffs—not Mr. Nemtzov—would seek to recover against Defendant. But the judgment did not harm Defendant's rights or prejudice Defendant in any way. *See Sur-Reply* at 3 ("[Defendant] was not a party to this stipulated judgment. The stipulation to enter judgment was between [Mr.] Nemtzov and [Plaintiffs.] [Defendant]—the insurer with the duty to defend, the duty to settle, and the duty to pay—did not stipulate to anything.").

Second, though Plaintiffs cite the potential for fraud and collusion as the basis for Defendant to intervene and set aside the stipulated judgment, "a motion to set aside a judgment pursuant to section 473 is not a proper forum to determine whether the judgment is, in fact, the product of fraud or collusion." *See Sunseri v. Camperos Del Valle Stables, Inc.*, 185 Cal. App. 3d 559, 562 (1986). In *Sunseri*, as in this case, "[Defendant] *has* a forum in which to litigate these issues—in [Plaintiff's] lawsuit against the insurance company." *See id.* (emphasis in original); *see also id.* ("At that time [Defendant] will be afforded a full opportunity to demonstrate that the defendants were not covered, by insurance for the underlying claim and/or that the stipulated judgment was reached through fraud and collusion."). By contrast, § 473 creates a remedy for cases of mistake, inadvertence, or excusable neglect, which no party contends exist in this case. *See* Cal. Civ. Proc. Code § 473(b); *see also Westinghouse Elec. Corp. v. Super. Ct.*, 143 Cal. App. 3d 95, 109 (1983) ("Relief from mistake, inadvertence or excusable neglect in a variety of situations is available under section 473."). With no apt authority to the contrary, the brightline rule that "[a] stipulated judgment . . . becomes final when entered" controls.[3] *See Cadle Co. II v. Sundance Fin., Inc.*, 154 Cal. App. 4th 622, 524 (2007); *see also id.* at 623–24 ("We conclude that the limitations period begins to run when the trial court enters the stipulated judgment, unless the parties agreed to the judgment for the purpose of facilitating an appeal."). Applying that rule here, the court in Mr. Hernandez's case entered the stipulated judgment against Mr. Nemtzov on November 28, 2023, beginning the two-year statute of limitations period. Because Plaintiffs did not sue for breach of good faith until January 2026, the statute of limitations bars their claim.

Still, Plaintiffs' sur-reply attempts to change their position as to when the bad faith claim would begin to run, arguing that the relevant date is when Defendant denied Plaintiffs' post-judgment settlement offer. *See Sur-Reply* at 1–2. They ask the Court to understand their bad faith claim through the lens of Plaintiffs as judgment creditors, rather than as assignees. *See id.* at 2. Under that view, Plaintiffs' "bad faith claim . . . began to accrue on July 28, 2025, when [Defendant] rejected the post-judgment settlement offer." *See id.* But Plaintiffs cannot overcome issues that follow from extending their logic. If the Court adopts Plaintiffs' understanding, there is nothing preventing a judgment creditor like Plaintiffs from continually re-assigning their rights through stipulated judgments. The next party in interest could then make the same settlement demand to Defendant, which Defendant would presumably deny. Thus, the clock would start over for the new judgment creditor to sue Defendant for breach of good faith. Since "the purpose of the limitation period [is] to foster both certainty and finality in the law," *see Barnes v. Workers' Comp. Appeals Bd.*, 23 Cal. 4th 679, 686 (2000), the Court cannot adopt such a flexible interpretation. It is more appropriate to understand Plaintiffs as assignees, standing in Mr.

[3] Plaintiffs' sur-reply states without authority that "[t]he general rule that a stipulated judgment affecting only the two stipulating parties is final upon entry does not contemplate, and does not apply to, a situation where an insurer can intervene to oppose the judgment as improper or belatedly assume the defense and appeal the judgment against its insured." *See Sur-Reply* at 3. The Court gave Plaintiffs an opportunity at the hearing to provide some authority for their proposition, but Plaintiffs could not do so.

Nemtzov's shoes with respect to Defendant's coverage. *See, e.g.*, *Compl.* ¶ 34 (noting when describing cause of action for breach of good faith and fair dealing that "Defendants owe a duty to act honestly and in good faith with its insureds, including assignees, and to reasonably conduct a timely and fair investigation and evaluation of claims").

Thus, even if the Court disregarded the stipulated judgment entry date, the relevant alternative date would be September 14, 2021, when Defendant refused to defend Mr. Nemtzov.[4] *See Badell v. Celtic Life Ins. Co.*, 158 F. Supp. 2d 1186, 1192 (N.D. Cal. 2001) ("Thus, plaintiff's bad faith cause of action accrued when [the insurer] unreasonably denied her benefits."). To be sure, this conclusion leaves Plaintiffs unable to bring a breach of good faith claim, since—if the relevant date is the September 2021 denial of coverage as to Mr. Nemtzov—the statute of limitations would have expired before Mr. Nemtzov assigned his rights to Plaintiffs. But, guided by principles of equity, the Court must choose between two options which carry unfairness. *See McDonald v. Antelope Valley Cmty. Coll. Dist.*, 45 Cal. 4th 88, 99 (2008) (identifying the judicially-created "equitable tolling of statutes of limitations"); *Kleinecke v. Montecito Water Dist.*, 147 Cal. App. 3d 240, 247 (1983) ("Statutes of limitations are not so rigid that under certain circumstances principles of equity and justice will not allow them to be extended or tolled."). Under Plaintiffs' option, Defendant—through no fault of its own—cannot rely on the finality characteristic of a statute of limitations, since Plaintiffs could re-assign their rights to another judgment creditor and reset the clock on the new party's claim for breach of good faith by reiterating a settlement offer within policy limits. Under an alternative view, the statute of limitations would provide finality, and plaintiffs who step into the shoes of insureds may do so mistakenly if they fail to recognize that a statute of limitations could have already expired. Plaintiffs' view punishes a party based on actions out of its control; the alternative view at least creates prejudice against the party who could have avoided it.

Accordingly, the statute of limitations bars Plaintiffs' bad faith claim, and the Court **GRANTS** Defendant's motion to dismiss Count II.

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[4] The parties' shifting positions indicates that courts have adopted different approaches in analogous situations—some courts rely on the entry of judgment, others rely on the insurer's bad faith denial of coverage. Though the Court here finds the November 2023 entry of judgment date against Mr. Nemtzov to be the more relevant date given that Plaintiffs lacked any rights against Defendant in September 2021, the two-year statute of limitations precludes Plaintiffs' bad faith claim under either scenario.

IV. Leave to Amend

Whether to grant leave to amend rests in the sound discretion of the trial court. *See Bonin v. Calderon*, 59 F.3d 815, 845 (9th Cir. 1995). Courts consider whether leave to amend would cause undue delay or prejudice to the opposing party, and whether granting leave to amend would be futile. *See Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir. 1996). Generally, dismissal without leave to amend is improper "unless it is clear that the complaint could not be saved by any amendment." *Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003). In the Ninth Circuit, courts should grant leave to amend with "extreme liberality." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (internal quotation marks and citation omitted). Here, since this is the first time the Court has analyzed Plaintiffs' claims, Plaintiffs should have at least one opportunity amend. For that reason, and considering the Ninth Circuit's guidance, the Court **GRANTS** leave to amend.

V. Conclusion

For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART** Defendant's motion to dismiss **WITH LEAVE TO AMEND**. If Plaintiffs wish to file an amended complaint, they must do so by end of day on July 2, 2026.

IT IS SO ORDERED.

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Initials of Preparer TJ