UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SHANNEN DOHERTY,

Plaintiff,

v.

STATE FARM GENERAL INSURANCE COMPANY et al.,

Defendants.

Case No. 2:19-cv-01963-MCS-PLA

ORDER RE: RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW (ECF NO. 235) AND MOTION FOR NEW TRIAL (ECF NO. 236)

Defendant State Farm General Insurance Company renews its motion for judgment as a matter of law and moves for a new trial. (MJMOL, ECF No. 235-1; MNT, ECF No. 236-1.) The motions are fully briefed. (MJMOL Opp'n, ECF No. 239; MJMOL Reply, ECF No. 240; MNT Opp'n, ECF No. 238; MNT Reply, ECF No. 241.) The Court heard argument on the motions on November 29, 2021.

I. BACKGROUND

This is a dispute over homeowner's insurance coverage for a fire that damaged Plaintiff's residential property. (FPTCO, ECF No. 180.) After Plaintiff rested her case at trial, Defendant moved for judgment as a matter of law on Plaintiff's claim of breach of the covenant of good faith and fair dealing ("insurance bad faith") and request for punitive damages. (Rule 50(a) Mot., ECF No. 216.) The Court granted the motion as to

the punitive damages request but denied the motion as to the insurance bad faith claim. (Minutes, ECF No. 217.) Ultimately, a jury found Defendant liable to Plaintiff for breach of contract and insurance bad faith. The jury awarded Plaintiff $2,346,000 in contract damages (consisting of $1,200,000 to remediate the insured property; $660,000 to remediate Plaintiff's personal property, and $486,000 in additional living expenses), $3,000,000 in emotional distress, and $1,000,000 in attorney's fees. (Verdict, ECF No. 224.)

II. PREFILING CONFERENCE ISSUES

Plaintiff contends that Defendant did not raise several grounds presented in the motions during the prefiling conference of counsel. (MNT Opp'n 5–7; MJMOL Opp'n 8–9.) Defendant agrees that it failed to raise these grounds at the conference, but it argues that Plaintiff fails to show any prejudice she suffered from the inadequate conference and asks the Court to consider the motions on their merits. (MNT Reply MNT Reply 1–2; MJMOL Reply 1–2.)

"[C]ounsel contemplating the filing of any motion shall first contact opposing counsel to discuss thoroughly, preferably in person, the substance of the contemplated motion and any potential resolution" at least seven days before filing a motion. C.D. Cal. R. 7-3. "The purpose of Local Rule 7-3 is to help parties reach a resolution which eliminates the necessity for a hearing," which "further[s] judicial economy and the administration of justice." *James R. Glidewell Dental Ceramics, Inc. v. Phila. Indem. Ins. Co.*, No. 8:16-cv-01155-JLS-E, 2016 U.S. Dist. LEXIS 189416, at *1 (C.D. Cal. Sept. 12, 2016) (internal quotation marks omitted); *accord Caldera v. J.M. Smucker Co.*, No. CV 12-4936-GHK (VBKx), 2013 U.S. Dist. LEXIS 183977, at *2 (C.D. Cal. June 3, 2013) (noting that the rule "enables the parties to brief the remaining disputes in a thoughtful, concise, and useful manner" (internal quotation marks omitted)).

The Court admonishes Defendant for failing to raise all issues presented in the motions at the prefiling conference. Nonetheless, the Court exercises its discretion to decide the motions on their merits. Plaintiff fails to show any unfair prejudice she

suffered due to Defendant's failure to raise certain issues during the conference. *See, e.g.*, *Furie v. Infowars, LLC*, 401 F. Supp. 3d 952, 970 (C.D. Cal. 2019) (examining merits of motion, despite lack of strict compliance with Local Rule 7-3, because nonmovant did not suffer prejudice). Plaintiff notes that this Court frequently denies motions for failure to comply with the letter and spirit of Local Rule 7-3. (MNT Opp'n 7 n.3; MJMOL Opp'n 9 n.4.) As demonstrated by the decisions Plaintiff collects, the Court generally gives movants leave to resubmit their motions upon an adequate Local Rule 7-3 conference. To do so here, where the motions are fully briefed and the disputes clearly would not be resolved through the meet-and-confer process, would waste the parties' and the Court's time and resources.

The Court warns that it will require strict compliance with Local Rule 7-3 in all further proceedings in this case.

III. MOTION FOR NEW TRIAL

A. Legal Standard

"The court may, on motion, grant a new trial on all or some of the issues . . . for any reason for which a new trial has heretofore been granted in an action at law in federal court." Fed. R. Civ. P. 59(a)(1). Rule 59 does not specify the grounds upon which a new trial may be granted, but the Ninth Circuit recognizes that courts are bound by historically recognized grounds. For example, a new trial may be granted "if the verdict is contrary to the clear weight of the evidence, is based upon false or perjurious evidence, or to prevent a miscarriage of justice." *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 729 (9th Cir. 2007) (quoting *Passantino v. Johnson & Johnson Consumer Prods.*, 212 F.3d 493, 510 n.15 (9th Cir. 2000)). Courts "enjoy[] considerable discretion" in deciding a new trial motion. *Jorgensen v. Cassiday*, 320 F.3d 906, 918 (9th Cir. 2003) (internal quotation marks omitted).[1]

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[1] Plaintiff misstates the legal standard in part. (MNT Opp'n 5 (quoting *DSPT Int'l, Inc. v. Nahum*, 624 F.3d 1213, 1218 (9th Cir. 2010), for a legal standard that pertains to the standard governing motions for judgment as a matter of law).)

B. Discussion

1. Insurance Bad Faith Claim

Defendant asks for a new trial on the insurance bad faith claim because the clear weight of the evidence shows that it did not act unreasonably or without proper cause in delaying or denying policy benefits to Plaintiff and because the tort damages are excessive and unsupported by evidence presented at trial. (Mot. 3–8.) The Court agrees with Defendant on both grounds and orders a new trial on this claim.

a. *Clear Weight of the Evidence*

Even if the verdict is supported by substantial evidence, a trial judge has a duty to weigh the evidence and set aside the verdict if, "in [the court's] conscientious opinion, the verdict is contrary to the clear weight of the evidence." *Molski*, 481 F.3d 724, 729 (alteration in original) (quoting *Murphy v. City of Long Beach*, 914 F.2d 183, 187 (9th Cir. 1990)). A court must order a new trial if, "having given full respect to the jury's findings, the judge on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Tortu v. Las Vegas Metro. Police Dep't*, 556 F.3d 1075, 1087 (9th Cir. 2009) (internal quotation marks omitted). In considering a Rule 59 motion, the court "is not required to view the trial evidence in the light most favorable to the verdict"; instead, it may "weigh the evidence, make credibility determinations, and grant a new trial for any reason necessary to prevent a miscarriage of justice." *Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd.*, 762 F.3d 829, 841–42 (9th Cir. 2014). "However, a district court may not grant a new trial simply because it would have arrived at a different verdict." *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, 251 F.3d 814, 819 (9th Cir. 2001).

To prevail on an insurance bad faith claim, a plaintiff must show "that the insurer acted unreasonably or without proper cause" in denying or delaying policy benefits. *Trishan Air, Inc. v. Fed. Ins. Co.*, 635 F.3d 422, 434 (9th Cir. 2011) (emphasis removed) (quoting *McCoy v. Progressive W. Ins. Co.*, 171 Cal. App. 4th 785, 793 (2009)). The insurer's conduct must "demonstrate[] a failure or refusal to discharge contractual

responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement." *Chateau Chamberay Homeowners Ass'n v. Associated Int'l Ins. Co.*, 90 Cal. App. 4th 335, 346 (2001) (internal quotation marks omitted). The insured must also show that the insurer's bad faith conduct is both a cause in fact and a proximate cause of the claimed injury. *See* Cal. Civ. Code § 3333; *PPG Indus. v. Transamerica Ins.* Co., 20 Cal. 4th 310, 315 (1999) ("Because breach of the implied covenant is actionable as a tort, the measure of damages for tort actions applies, and the insurance company generally is liable for any damages which are the proximate result of that breach." (internal quotation marks omitted)).

The Court has examined each category of evidence of purported bad faith the parties raise and determines that the verdict for Plaintiff contravenes the clear weight of the evidence. Broadly, Plaintiff points to evidence showing Defendant denied or delayed benefits, but the weight of the evidence presented at trial demonstrates that Defendant's conduct was not unreasonable or without proper cause, or that Defendant's conduct was not the proximate cause of any damages.

Plaintiff asserts that Defendant's initial inspection of her property was inadequate, so any subsequent delay or denial of benefits was unreasonable. (MNT Opp'n 8–13.) *See Jordan v. Allstate Ins. Co.*, 148 Cal. App. 4th 1062, 1074 (2007) ("An insurer must fully inquire into the bases for the claim; indeed, it 'cannot reasonably and in good faith deny [benefits] to its insured without *thoroughly* investigating the foundation for its denial.'" (alteration in original) (quoting *Egan v. Mutual of Omaha Ins. Co.*, 24 Cal. 3d 809, 819 (1979))). Plaintiff places much emphasis on Defendant's team manager's summary that the "[i]nitial inspection indicated light smoke with limited damage to the risk." (MNT Opp'n 9–10 (citing Boswell Decl. Ex. K, at 62, ECF No. 238-14).) This one-sentence summary is minimally probative of the adequacy or

thoroughness of Defendant's initial inspection. Evidence that Plaintiff, industrial hygienists, and other witnesses reached a different conclusion on the extent of the fire damage does not give rise to an inference that Defendant's initial inspection was not full and thorough or was consciously and deliberately designed to return results showing limited damage. *See 501 E. 51st St. v. Kookmin Best Ins. Co.*, 47 Cal. App. 5th 924, 938 (2020) (approving trial court's reasoning that bad faith could not be inferred from change in coverage position given that "[i]nitial opinions are often superseded by further investigation" (internal quotation marks omitted)). Indeed, the team manager's note indicates Defendant's willingness to revisit its coverage position predicated upon the initial inspection in good faith—based on Plaintiff's public adjuster's representation that "there's more damage," the team manager approved the assignment of a hygienist. (Boswell Decl. Ex. K, at 62.) Having examined the exhibit in context, the Court declines to find this note indicative of a bad faith initial inspection.

Plaintiff also contends that Defendant's reversal of its coverage position concerning Plaintiff's pool, refrigerator, and entrance gate evinces a failure to conduct a full and thorough initial investigation. (MNT Opp'n 11–12.) Again, Defendant's reversal of its coverage position in Plaintiff's favor does not by itself imply that its initial position was unreasonably held or warrant an inference that the investigation upon which it based its initial position was not full and thorough. *See 501 E. 51st St.*, 47 Cal. App. 5th at 938.

Plaintiff argues that Defendant also inadequately inspected her clothing and wood flooring and failed to immediately retain an industrial hygienist. (MNT Opp'n 12.) The law does not require perfect inspections or claims handling. *See Othman v. Globe Indem. Co.*, 759 F.2d 1458, 1464–65 (9th Cir. 1985) ("Although in hindsight we may perhaps think of avenues not fully explored, we cannot say that Globe failed to investigate the claim thoroughly or investigated in a manner that indicated its goal was to secure facts to deny coverage." (citation omitted)). The Court gleans no inference from the evidence presented at trial that Defendant's initial inspections of Plaintiff's

clothing and flooring were not reasonably thorough and fair. Plaintiff complains that Defendant retained a consultant to assess whether the clothing could be remediated who declined to address whether remediation would address Plaintiff's health concerns. That the inspection did not meet Plaintiff's standards does not evince a conscious and deliberate effort to frustrate her benefits under her policy. (*See* Boswell Decl. Ex. E (Day 3 Tr.) 97–98, ECF No. 238-8.) At best, the scope of the consultant's investigation evidences a dispute over whether the clothing should be remediated or replaced—that is, a genuine dispute over the scope of coverage that does not give rise to tort liability. *See Trishan Air*, 635 F.3d at 434 (summarizing genuine dispute rule). Further, the evidence fails to show Defendant's delay in retaining an industrial hygienist was unreasonable. Defendant's team manager authorized the assignment of a hygienist three weeks after the fire. (Boswell Decl. Ex. K, at 62.)

Plaintiff contends Defendant on numerous occasions delayed paying benefits and processing her claim. (MNT Opp'n 13–14.) Beyond the mere fact of delay, Plaintiff did not adduce evidence at trial demonstrating how these delays were unreasonable or without proper cause. Weighing the evidence, the Court draws no inference that the delays were unreasonable or without proper cause, especially given the lengthy, involved interactions and disputes between the parties regarding the myriad components of Plaintiff's complicated claim. (*See generally* Boswell Decl. Ex. K (claim file).)

The Court also notes the dearth of evidence that any delays proximately caused Plaintiff damages. For example, Plaintiff testified at trial that Defendant delayed reinspection of her wood flooring, but she did not offer evidence tending to show the delayed reinspection caused any damages. (*See* Boswell Decl. Ex. C (Day 2 A.M. Tr.) 34–35, ECF No. 238-6.) Plaintiff's public adjuster testified that delays negatively impacted the effectiveness of cleaning Plaintiff's clothing, but Plaintiff did not produce evidence tending to show how this proximately caused her to suffer emotional distress or incur attorney's fees. (Boswell Decl. Ex. E (Day 3 Tr.) 25.) The evidence probative of whether delays were the proximate cause of noneconomic damages is particularly

thin. Plaintiff testified regarding distress she felt after her landlord threatened to evict her after Defendant failed to timely pay her rent. (Boswell Decl. Ex. C (Day 2 A.M. Tr.) 45–46). The Court finds Plaintiff's claim of damages as to this issue not credible. The person Plaintiff contends threatened her with eviction, Donna Lee, testified that she did threaten to evict Plaintiff or to issue a three-day notice of eviction. (Boswell Decl. Ex. E (Day 3 Tr.) 108–09.) The Court credits Ms. Lee's testimony and finds that Defendant's conduct did not proximately cause Plaintiff to fear eviction. Plaintiff provided little other testimony probative of how delay of other benefits caused her emotional distress.

Plaintiff contends Defendant's failure to respond to Plaintiff's initial claim for 10 days, production of a blank sample policy providing incorrect information regarding the additional living expense benefits under Plaintiff's policy, and publication of Plaintiff's confidential documents in the court record all evince Defendant's bad faith. (MNT Opp'n 14–15.) Weighing the evidence, the Court strongly disagrees. A 10-day delay in responding to Plaintiff's initial claim is reasonable given the scope of the fire, which impacted not only Plaintiff, but also her community at large. (*See* Boswell Decl. Ex. B (Day 1 P.M. Tr.) 115, ECF No. 238-5 ("I mean, granted lots of people were filing claims; right? So I, um, I'm, you know, no one special in that sense . . . .").) The Court declines to infer from the evidence concerning the other incidents that Defendant's conduct was conscious and deliberate; instead, the production of a sample policy and the filing of confidential documents appear to be the products of "honest mistake[s], bad judgment or negligence" not warranting tort liability. *Chateau Chamberay*, 90 Cal. App. 4th at 346.

In short, the evidence leaves the Court with a definite and firm conviction that the jury made a mistake in rendering a verdict for Plaintiff on the insurance bad faith claim.

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b. *Excessive Damages*

"[A] jury's award of damages is entitled to great deference, and should be upheld unless the amount is clearly not supported by the evidence or only based on speculation or guesswork." *In re First Alliance Mortg. Co.*, 471 F.3d 977, 1001 (9th Cir. 2006) (internal quotation marks omitted); *accord Chalmers v. City of Los Angeles*, 762 F.2d 753, 760 (9th Cir. 1985) (requiring jury's award to be upheld unless "grossly excessive or monstrous or shocking to the conscience" (internal quotation marks omitted)). Awards must be upheld "whenever possible, and all presumptions are in favor of the judgment." *DSPT Int'l, Inc. v. Nahum*, 624 F.3d 1213, 1224 (9th Cir. 2010) (internal quotation marks omitted).

If the court determines that damages are excessive, the court "may grant defendant's motion for a new trial or deny the motion conditional upon the prevailing party accepting a remittitur. The prevailing party is given the option of either submitting to a new trial or of accepting a reduced amount of damage which the court considers justified." *Fenner v. Dependable Trucking Co.*, 716 F.2d 598, 603 (9th Cir. 1983). "A remittitur must reflect the maximum amount sustainable by proof." *Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1094 (9th Cir. 2014) (internal quotation marks omitted).

Here, the jury awarded $1,000,000 in attorney's fees. (Verdict.) At trial, Plaintiff's counsel, Devin McRae, testified that Plaintiff incurred attorney's fees in the total amount of $970,763.69. Mr. McRae indicated that $872,636.84 was "attributable to efforts to procure the benefits under the policy that are due." (Boswell Decl. Ex. E (Day 3 Tr.) 4–5.) The evidence simply does not support an award of fees $127,363.16 more than what Mr. McRae attributed to efforts to procure policy benefits and $29,236.31 more than the total fees Plaintiff incurred absent apportionment. To explain the jury's fee award, Plaintiff theorizes that the jury sought to award $127,363.16 toward fees incurred in September 2021 and during trial. (MNT Opp'n 17–19; *see* Boswell Decl. Ex. E (Day 3 Tr.) 5 (testifying that September 2021 fees had not been tabulated at the time of trial).) Even assuming Plaintiff's hypothesis proves true, the

additional fee award for September 2021 and trial proceedings would be speculative. Although Plaintiff presented evidence of her trial team's hourly rates, (*see* Boswell Decl. Ex. D (Day 2 P.M. Tr.) 77, ECF No. 238-7), she produced no evidence of the number of hours each attorney expended in September 2021 and at trial. Any jury estimate of the hours the trial team incurred is the product of speculation based on facts outside the evidentiary record. The fee award is clearly not supported by the evidence.

Moreover, the emotional distress award of $3,000,000 is grossly excessive considering the evidence presented at trial. Plaintiff points to few instances of emotional distress evidence adduced at trial, (MNT Opp'n 21–22): Plaintiff testified that she experienced fear due to the smell of smoke in her house, (Boswell Decl. Ex. C (Day 2 A.M. Tr.) 28); panic and fear after Defendant incorrectly indicated she would receive only two weeks of coverage for additional living expenses, (Boswell Decl. Ex. B (Day 1 P.M. Tr.) 117–19); distress when her landlord purportedly threatened to file a three-day eviction notice after Defendant failed to make a timely rent payment, (Boswell Decl. Ex. C (Day 2 A.M. Tr.) 45–46); hives, itchiness, and irritation when she stayed overnight at her house, (*id.* at 53–54); and embarrassment, humiliation, ridicule, and shame after Defendant publicly filed into the court record documents containing Plaintiff's confidential information, (*id.* at 56). Plaintiff's oncologist testified that Plaintiff had anxiety resulting from being displaced from her home and from her cancer diagnosis, and that Plaintiff treated her anxiety with "behavioral methods like meditation." (Boswell Decl. Ex. F (Day 4 A.M. Tr.) 64–65, ECF No. 238-9.) Even assuming Defendant's conduct proximately caused Plaintiff's emotional distress,[2] the evidence does not support damages of the magnitude the jury awarded. Plaintiff did not

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[2] In addition to the proximate cause issues identified *supra*, the Court also questions whether Plaintiff adduced evidence that Defendant's handling of her insurance claim was a proximate cause of fear she experienced from smelling smoke in her house or physical signs of distress she experienced staying overnight at her home. The Court also questions whether Plaintiff presented evidence that the hives, itchiness, and irritation she experienced staying overnight at her house are signs of emotional distress.

present "evidence of significant, concrete harm," such as a diagnosis or treatment by a physician specializing in mental health, evidence of significant manifestations of Plaintiff's emotional distress, or testimony illustrating how Plaintiff's distress interfered with her everyday life. *Briley v. City of West Covina*, 66 Cal. App. 5th 119, 142 (2021). Indeed, testimony that Plaintiff hosted dinner parties with her oncologist in her fire-damaged house undermines her claim of significant, lasting distress resulting from the condition of her property. The evidence of ordinary distress Plaintiff suffered does not warrant the extraordinary remedy of $3,000,000—over $85,000 per month for the 35 months between the fire and trial. Considering the evidence of emotional distress presented at trial, the award shocks the conscience.

The damages the jury awarded are excessive. The Court exercises its discretion not to offer a remittitur and instead orders a new trial. *See Fenner*, 716 F.2d at 603.

As an aside, the Court is also troubled by the effect Plaintiff's closing argument may have had on the jury in its consideration of tort damages. In closing argument, Plaintiff's counsel asked the jury to award "a multiplier of the compensatory damages"—to wit, three times the award of attorney's fees. (Rojas Decl. Ex. 1 (Day 4 P.M. Tr.) 50, ECF No. 236-3.) Counsel also invited the jury to award fees for which no evidence was adduced by noting that "even if you give her the 872 [thousand dollars in fees], she's gonna be undercompensated there" because counsel had not tabulated the fees incurred during trial. (*Id.*) Possibly persuaded by Plaintiff's arguments, the jury awarded $1,000,000 in fees and $3,000,000 in emotional distress damages. (Verdict.)

To rehabilitate the multiplier argument Plaintiff presented at closing, Plaintiff asserts that California law supports noneconomic awards that bear a reasonable relationship to economic damages. (MNT Opp'n 20 (citing *Major v. W. Home Ins. Co.*, 169 Cal. App. 4th 1197, 1216 (2009)).) But the authority upon which Plaintiff relies does not authorize a jury to award noneconomic damages as a multiplier of economic damages, irrespective of evidence of noneconomic damages presented at trial. *See Major*, 169 Cal. App. 4th at 1216 (articulating standard for review of challenge to

excessive noneconomic damages and approving two-to-one ratio between noneconomic damages and total economic damages award).

The Court declines to find that a new trial is warranted because of attorney misconduct but warns that similar arguments should not be presented to the jury upon retrial.

c. *Summary*

Each of Defendant's arguments, that the verdict is contrary to the clear weight of the evidence and that the jury awarded excessive damages, presents an independent and sufficient ground for granting a new trial. The Court grants the motion for a new trial on this claim.

2. Breach of Contract Claim

Defendant argues that a new trial on the breach of contract claim is warranted because the jury awarded excessive contract damages. It contends that Plaintiff presented no evidence at trial supporting any "additional living expenses incurred" under Coverage C, and that the jury's award under Coverage A&B reflect damages that were not reasonably foreseeable to the parties when they entered the insurance contract. (Mot. 8–11.)

Defendant's arguments are not appropriate for a new trial motion. The Coverage C argument would require the Court to interpret the insurance contract consistent with Defendant's reading that Plaintiff can recover only those expenses she actually incurred. Defendant's Coverage A&B argument would require the Court to determine as a matter of law that Plaintiff's damages are consequential damages or were not reasonably foreseeable. These are new legal theories raising questions of law that should have been presented in a motion for summary judgment or motion for judgment as a matter of law before the jury rendered a verdict. A "legal matter cannot be appropriately considered on a motion for a new trial . . . ." *Tortu*, 556 F.3d at 1085; *accord Parton v. White*, 203 F.3d 552, 556 (8th Cir. 2000) ("Rule 59 motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments that could have been offered or

raised prior to entry of judgment."); *Grumman Aircraft Eng'g Corp. v. Renegotiation Bd.*, 482 F.2d 710, 721 (D.C. Cir. 1973) ("Ordinarily Rule 59 motions for either a new trial or a rehearing are not granted by the District Court where they are used by a losing party to request the trial judge to reopen proceedings in order to consider a new defensive theory which could have been raised during the original proceedings."), *rev'd on other grounds*, 421 U.S. 168 (1975). This motion is not a proper vehicle for Defendant's arguments.[3]

A new trial is warranted on the insurance bad faith claim only.

IV. RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW

A. Legal Standard

Federal Rule of Civil Procedure 50(b) authorizes a party to renew a motion for judgment as a matter of law submitted under Rule 50(a). In ruling on the renewed motion, a court may: "(1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law." Fed. R. Civ. P. 50(b).

"The standard for judgment as a matter of law . . . 'mirrors' the summary judgment standard." *Reed v. Lieurance*, 863 F.3d 1196, 1204 (9th Cir. 2017) (quoting *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000)). A court may grant the motion only if "there is no legally sufficient basis for a reasonable jury to find for that party on that issue." *Jorgensen v. Cassiday*, 320 F.3d 906, 917 (9th Cir. 2003) (citation and internal quotation marks omitted); *accord Ostad v. Or. Health Scis. Univ.*, 327 F.3d 876, 881 (9th Cir. 2003) ("Judgment as a matter of law is proper when the evidence permits only one reasonable conclusion and the conclusion is contrary to that

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[3] The Court declines to decide whether Defendant's arguments properly could be presented in a Rule 59(e) motion to amend the judgment. *See Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111–12 (9th Cir. 2011) (articulating grounds for granting a motion to amend the judgment, but warning against abuse by parties who raise arguments in a Rule 59(e) motion that "could reasonably have been raised earlier in the litigation" (internal quotation marks omitted)).

reached by the jury.").

The court may not weigh the evidence or assess the credibility of witnesses; instead, the Court must "draw all reasonable inferences in favor of the nonmoving party" and "disregard all evidence favorable to the moving party that the jury is not required to believe." *Reeves*, 530 U.S. at 150–51. Any part of the verdict supported by "substantial evidence" must be upheld. *SEC v. Todd*, 642 F.3d 1207, 1215 (9th Cir. 2011). "Substantial evidence is evidence adequate to support the jury's conclusion, even if it is also possible to draw a contrary conclusion from the same evidence." *Id.* (quoting *Wallace v. City of San Diego*, 479 F.3d 616, 624 (9th Cir. 2007)).

B. Discussion

Defendant presents two arguments in its motion: (1) the insurance bad faith claim is not supported by substantial evidence that Defendant unreasonably denied or delayed policy benefits, and (2) there is no substantial evidence that State Farm owed Plaintiff any additional living expenses. (MJMOL 3–10.)

The Court rejects the first argument. Although the Court finds that the verdict on the insurance bad faith claim is contrary to the clear weight of the evidence, the Court weighed evidence purporting to show the unreasonableness of Defendant's conduct in reaching its conclusion. Drawing all reasonable inferences in favor of Plaintiff, the Court determines that the insurance bad faith claim is supported by substantial evidence. For example, although the Court firmly believes the clear weight of the evidence shows Defendant's delays in payment of benefits were reasonable, there is substantial evidence from which a reasonable juror could find the delays were unreasonable. (*See* MJMOL Opp'n 20–22 (collecting evidence).)

The second argument was not presented in Defendant's Rule 50(a) motion. (*See generally* Rule 50(a) Mot.) The Court rejects the argument on this basis. *See EEOC v. Go Daddy Software, Inc.*, 581 F.3d 951, 961 (9th Cir. 2009) ("[A] party cannot properly raise arguments in its post-trial motion for judgment as a matter of law under Rule 50(b) that it did not raise in its pre-verdict Rule 50(a) motion." (internal quotation marks

omitted)).

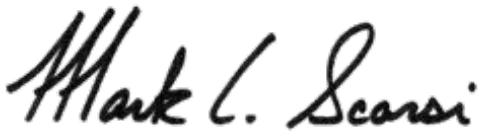
The renewed motion for judgment as a matter of law is denied.

IV. CONCLUSION

The motion for new trial is granted in part and denied in part, and the renewed motion for judgment as a matter of law is denied. Within 14 days, the parties shall meet and confer and file a joint stipulation proposing dates for retrial of the insurance bad faith claim.

IT IS SO ORDERED.

Dated: January 11, 2022



MARK C. SCARSI
UNITED STATES DISTRICT JUDGE