## APPENDIX TABLE OF CONTENTS

### OPINIONS AND ORDERS



### REHEARING ORDER

## APPENDIX TABLE OF CONTENTS (Cont.)

### OTHER DOCUMENTS

**MEMORANDUM* OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (FEBRUARY 18, 2022)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEHAN ZEB MIR, M.D.,

*Plaintiff-Appellant,*

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; ET AL.,

*Defendants-Appellees.*

No. 20-56403

D.C. No. 2:19-cv-03960-SVW-SK

Appeal from the United States District Court for the Central District of California Stephen V. Wilson, District Judge, Presiding

Submitted February 15, 2022**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

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Jehan Zeb Mir, M.D., appeals pro se from the district court's summary judgment in his action alleging federal and state law claims stemming from denial of Mir's insurance claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hernandez v. Spacelabs Med. Inc.*, 343 F.3d 1107, 1112 (9th Cir. 2003). We affirm.

The district court properly granted summary judgment on Mir's claims for breach of contract and breach of the implied covenant of good faith and fair dealing because Mir's claims were barred by the applicable statute of limitations, and Mir failed to establish any basis for tolling. *See* Cal. Ins. Code § 11580.2(i)(2) ("Any arbitration instituted pursuant to this section shall be concluded . . . [w]ithin five years from the institution of the arbitration proceeding."); *id.* § 11580.2(k) (providing for tolling if the insurer fails to provide written notice of the applicable statute of limitations "at least 30 days before the expiration"); *see also id.* § 11580.2(i)(3) (excusing a party's noncompliance with the statute of limitations on the basis of estoppel, waiver, impossibility, impracticality, and futility).

The district court did not abuse its discretion by denying Mir's motion for reconsideration because Mir failed to establish any basis for such relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration).

The district court did not abuse its discretion by granting defendant's application to quash the deposition subpoena of Rosenwasser because Mir failed to demonstrate actual and substantial prejudice. *See Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1084, 1093 (9th Cir. 2003) (setting forth standard of review and explaining that a district court's "decision to deny discovery will not be disturbed except upon the clearest showing that the denial of discovery results in actual and substantial prejudice to the complaining litigant" (citation and internal quotation marks omitted)).

We reject as without merit Mir's contention that the district court lacked subject matter jurisdiction or that the September 24, 2012 letter was fabricated.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Mir's motion for judicial notice is denied as unnecessary.

AFFIRMED.

**ORDER OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA DENYING MOTION FOR RECONSIDERATION (NOVEMBER 25, 2020)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

JEHAN ZEB MIR

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

Case No. 2:19-cv-03960-SVW-SK

Before: The Honorable Stephen V. WILSON, U.S. District Judge.

On October 20, 2020, the Court granted summary judgment in favor of Defendant State Farm in this automobile insurance recovery case because Plaintiff Jehan Zeb Mir failed to comply with the statute of limitations for arbitrating uninsured motorist claims under Cal. Ins. Code § 11580.2(i) and there was no genuine dispute that any tolling provision applied. Dkt. 132. Before the Court is Plaintiff's motion for reconsideration of the Court's summary judgment. Dkt. 133.

Under Rule 59(e), "a motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, of if there is an intervening change in the controlling law." *Kana Enters., Inc. v. Estate of Bishop*, 229 F .3d 877, 890 (9th Cir. 2000) (citation omitted). "A Rule 59(e) motion may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation." *Id.* (citation omitted).

Local Rule 7-18 provides as follows:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L.R. 7-18.

"Courts in this district have interpreted Local Rule 7-18 to be coextensive with Rules 59(e) and 60(b)." *Doe v. Law Offices of Andrew Weiss*, 2020 WL

5983929, at *1 (C.D. Cal. 2020) (quoting *Tawjilis v. Allergan, Inc.*, 2015 WL 9982762, at *1 (C.D. Cal. 2015).

Plaintiff's motion fails to raise a proper ground for reconsideration. Plaintiff's motion primarily recycles the same arguments that the Court rejected regarding the statute of limitations under Cal. Ins. Code § 11580.2(i) and associated tolling provisions. Any variation on these arguments in the motion for reconsideration could with reasonable diligence have been presented to the Court in Plaintiff's initial motion for summary judgment.

Plaintiff also argues that the Court failed to consider evidence that State Farm failed to notify him in 2012 of the statute of limitations as required by Cal. Ins. Code § 11580.2(k). Plaintiff chose instead in his opposition to argue that State Farm's September 24, 2012 notice did not satisfy Cal. Ins. Code § 11580.2(k). Dkt. 122-1 ¶¶ 12-13 (describing letter as "[i]rrelevant"), 49 (raising legal argument that 2012 notice did not suffice). While Plaintiff points to his 2016 correspondence with State Farm as evidence that notice was not provided in 2012, this correspondence only accuses State Farm of failing to provide more recent notice. *See* Dkt. 94-3, Exs. 12, 14, 16, 19, 20. It does not create a reasonable inference that the September 24, 2012 notice was never provided.

For the foregoing reasons, the Court DENIES Plaintiffs motion for reconsideration.

IT IS SO ORDERED.

**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [94] (OCTOBER 20, 2020)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

JEHAN ZEB MIR

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

Case No. 2:19-cv-03960-SVW-SK

Before: The Honorable Stephen V. WILSON, U.S. District Judge.

## I. Introduction

Defendant State Farm moved for summary judgment on January 6, 2020 in this automobile insurance recovery case. Dkt. 94. Defendant argues that Plaintiff Jehan Zeb Mir failed to comply with the statute of limitations for arbitrating uninsured motorist claims under Cal. Ins. Code § 11580.2(i). The Court agrees and therefore GRANTS State Farm's motion for summary judgment.

## II. Factual and Procedural Background

Plaintiff states that he was rear-ended in a hit-and-run automobile accident in the City of Torrance,

California, on October 15, 2009. Declaration of Jehan Mir, Dkt. 123 ¶¶ 1-2. Plaintiff claims to have suffered whiplash and lost five months in earnings as a vascular surgeon. *Id.* ¶ 4.

Plaintiff was insured by State Farm with coverage of $100,000 for damages caused by uninsured motorists. *Id.* ¶ 5. Plaintiff states that his uninsured motorist claim was denied without explanation after two years of correspondence with State Farm. *Id.* ¶ 6.

On September 1, 2011, Plaintiff sent a letter to State Farm requesting to arbitrate his claim under Cal. Ins. Code § 11580.2(f). Declaration of Lisa G. Rosenwasser, Dkt. 94-3, Ex. 1. Plaintiff's deposition was taken on May 16, 2012. *Id.* ¶ 4; Mir Decl. ¶ 8. State Farm sent three letters to Plaintiff between June 26, 2012 and August 17, 2012, each seeking to reestablish contact with Plaintiff to discuss his claim. Rosenwasser Decl. ¶ 5-7; Exs. 2-4.

On September 24, 2012, State Farm sent a final letter to Plaintiff, informing him that State Farm had inferred from his failure to respond to prior letters that he was no longer pursuing his claim. The letter also cited the five-year statute of limitations for concluding arbitration proceedings under Cal. Ins. Code § 11580.2(i)(2), and explained that "[t]his claim must be arbitrated no later than 5 years therefrom, or September 1, 2016, with a reasonable time for scheduling and related matters pre hearing." Rosenwasser Decl., Ex. 5 (bold text in original).

Plaintiff does not dispute that State Farm mailed the September 24 letter giving Plaintiff notice of the 5-year statute of limitations. Plaintiff's Statement of Genuine Disputes ¶¶ 13, 49; *see generally* Mir Decl.;

Opposition to Motion for Summary Judgment, Dkt. 122, at 17-18. Rather, Plaintiff argues the September 24 letter is "[i]rrelevant to issue of not providing arbitration hearing between January 6 to August 5, 2016." Plaintiff's Statement of Genuine Disputes, Dkt. 122-1 ¶¶ 13, 49; see also Opposition, at 17-18.

Plaintiff took no action for nearly four years. On January 6, 2016, Plaintiff called State Farm and requested that the claims representative initially assigned to his case be produced for deposition. Mir Decl. ¶ 10-12. Plaintiff also claims to have sent a letter to this same effect but was unable to produce a copy because his "paper file is missing." *Id.* ¶ 13. State Farm's counsel recalls a January phone call and states that Plaintiff "abruptly ended the call." Rosenwasser Decl. ¶ 10.

Plaintiff sent a letter to State Farm on July 13, 2016, again requesting to take the deposition of the claims representative and proceed with arbitration thereafter. Rosenwasser Decl., Ex. 6. On August 5, 2016, State Farm replied to Plaintiff explaining that there was no reasonable purpose for deposing the claims representative, proposing a panel of arbitrators, and urging "immediate and timely attention." *Id.*, Ex. 7. State Farm's counsel states that she spoke with Plaintiff by phone on August 15, 2016, and that Plaintiff requested arbitration on August 31, 2016. *Id.* ¶ 13. State Farm was able to schedule arbitration for August 31, 2016, the last day before the statute of limitations expired. *Id.*, Ex. 10.

On August 21, 2016, Plaintiff sent another letter to State Farm, claiming that he had been unaware of the statutory deadline until their mid-August 2016 phone calls and seeking a stipulation of six months to

extend the time to complete arbitration. *Id.*, Ex. 9. Plaintiff also explained that he was too busy with unrelated pro se matters, including depositions in Sacramento on August 29 and 30, to attend the arbitration on August 31. *Id.*; Mir Decl. ¶¶ 19-20. State Farm declined to stipulate to extend the deadline. Rosenwasser Decl. Ex. 11.

Plaintiff vacated the August 31 arbitration date. *Id.*, Ex. 13. Plaintiff attempted to set up a new hearing date for September 27, claiming that the statute of limitations was tolled under Cal. Ins. Code § 11580.2(k). *Id.*, Exs. 19-20. State Farm concluded that the statute of limitations had run and declined to participate in any subsequent arbitration proceedings. *Id.*, Ex. 21.

Plaintiff filed this lawsuit on August 30, 2018 in the Central District of Illinois. Dkt. 1. The case was transferred to this Court on May 3, 2019. Dkt. 29. Plaintiff filed his Second Amended Complaint on June 11, 2019, asserting breach of contract, bad faith, fraud, intentional interference, and various civil rights claims against State Farm and three individuals. Dkt. 49. This Court dismissed Plaintiff's civil rights claims and his claims against the individual defendants. Dkt. 65, 78, 92.[1]

State Farm moved for summary judgment on January 6, 2020 raising only the statute of limitations issue. Dkt. 94. After the Court allowed Plaintiff several extensions, Plaintiff filed his opposition on

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[1] The Court denied State Farm's motion to declare Plaintiff a vexatious litigant because the standard is higher in the Ninth Circuit than under California law. Dkt. 96.

July 10, 2020. Dkt. 122. State Farm replied on July 24, 2020. Dkt. 126.

## III. Discussion

### a. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248. However, no genuine issue of fact exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

### b. Application

The California Insurance Code has special provisions governing uninsured motorist claims. *See generally* Cal. Ins. Code § 11580.2. As relevant to this case, the statute provides that "[a]ny arbitration

instituted pursuant to this section shall be concluded . . . [w]ithin five years from the institution of the arbitration proceeding." Cal. Ins. Code § 11580.2(i). Plaintiff instituted arbitration on September 1, 2011 by sending a letter to State Farm. Rosenwasser Decl., Ex. 1. Assuming no exception or tolling applies, the statute of limitations would have run five years after that date – on September 1, 2016 – and would bar Plaintiff's present claims. *See Blankenship v. Allstate Ins. Co.*, 186 Cal. App. 4th 87, 94 (2010) ("The [uninsured motorist] statute imposes an absolute obligation on the insured to comply with its mandates or else the insured forfeits his claim."); *Juarez v. 21st Century Ins. Co.*, 105 Cal. App. 4th 371, 377 (2003) ("[T]he Legislature intended to impose strict prerequisites and time limits for claims involving uninsured motorists.").

Plaintiff has two arguments that his claims are not barred by the statute of limitations.

First, Plaintiff argues that the statute of limitations was tolled for 30 days on August 19, 2016 and that State Farm breached its contract by declining to participate in arbitration after September 1. Opposition, at 16-17. The basis for Plaintiff's tolling argument is Cal. Ins. Code § 11580.2(k), which provides that "any insurer whose insured has made a claim under his or her uninsured motorist coverage . . . shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death." Cal. Ins. Code § 11580.2(k). Failure to notify an insured "shall operate to toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually

given." *Id.* This provision "imposes a duty on insurers to give their insured notice of the statutory time limit found in subdivision (i)." *Juarez*, 105 Cal. App. 4th at 375. Although not perfectly clear in his brief, Plaintiff appears to interpret this provision to require insurers to give notice within thirty days of the expiration of the statute of limitations. Opposition, at 16-17; Plaintiff's Statement of Genuine Disputes ¶ 49.

Plaintiff's theory is inconsistent with the statutory language. The statute provides that the insurer "shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation . . . ." Cal. Ins. Code § 11580 .2(k) (emphasis added). The statute of limitations is only tolled on "[f]ailure of the insurer to provide the written notice." *Id.* Plaintiff does not dispute that State Farm sent a letter to him dated September 24, 2012 informing him that the statute of limitations would expire on September 1, 2011. Rosenwasser Decl. ¶ 8; Ex. 5; Plaintiff's Statement of Genuine Disputes ¶¶ 13, 49. State Farm thus did not fail to provide written notice of the statute of limitations at least 30 days before its expiration, so the condition for tolling under § 11580.2(k) has not been met.

Any contrary interpretation would run afoul of California law requiring courts to "look first to the words of the statute, 'because the statutory language is generally the most reliable indicator of legislative intent.'" *Klein v. United States of America*, 50 Cal. 4th 68, 77 (2010) (citations omitted). California courts interpreting the uninsured motorist statute have declined invitations to override unambiguous statutory language to allow the statute to operate more generously to claimants. *See Blankenship*, 186 Cal. App. 4th at

100 (quoting *Juarez*, 105 Cal. App. 4th at 377) (holding that the "broad purpose" of the uninsured motorist statute to protect injured drivers "does not require us to interpret the statute as [Plaintiff] suggests because the language of the statute is clear and unambiguous"). Therefore, § 11580.2(k) did not toll the statute of limitations applicable to Plaintiff's claim beyond September 1, 2016.

Plaintiff's case citations do not support his interpretation. *Branham v. State Farm Mut. Auto. Ins. Co.* is inapplicable because the condition for tolling under subdivision (k) was met – namely, the insurer "did not notify [insureds] that the time limitation of subdivision (i) was running out, and never gave any subsequent notice." 48 Cal. App. 3d 27, 31 (1975). *State Farm Mut. Auto. Ins. Co v. Lykouresis* is similarly inapplicable because the condition for tolling under subdivision (k) was likewise met for a different reason – "the letters sent to [insured] by [insurer] did not constitute adequate notice of the statute of limitations." 72 Cal. App. 3d 57, 62 (1977). Here, State Farm notified Plaintiff of the statute of limitations more than 30 days before it expired and did so in unambiguous terms: "This claim must be arbitrated no later than 5 years therefrom [referencing the September 1, 2011 demand], or September 1, 2016, with a reasonable time for scheduling and relating matters pre hearing." Rosenwasser Decl., Ex. 5. Because Plaintiff was given adequate notice more than 30 days before expiration, the statute of limitations is not tolled under Cal. Ins. Code § 11580.2(k).

Plaintiff's second argument that his claim is not barred by the statute of limitations is that his noncompliance should be excused. The uninsured

motorist statute excuses noncompliance with statutes of limitations where "[t]he doctrines of estoppel, waiver, impossibility, impracticability, and futility apply." Cal. Ins. Code § 11580.2(i)(3).

Plaintiff's brief points to no facts supporting the application of equitable estoppel. Plaintiff only says that estoppel is a factual question and summary judgment must be denied on that basis. Opposition, at 18-19. "[A] valid claim of equitable estoppel consists of the following elements: (a) a representation or concealment of material facts (b) made with knowledge actual or virtual, of the facts (c) to a party ignorant, actually and permissibly, of the truth (d) with the intention, actual or virtual, that the ignorant party act on it, and (e) that party was induced to act on it." *Behnke v. State Farm Gen. Ins. Co.*, 196 Cal. App. 4th 1443, 1465 (2011). Plaintiff was informed of the statute of limitations through the September 24, 2012 letter and points to no contrary representations or reliance during the nearly four years in which he declined to pursue his claim. Therefore, Plaintiff has failed to demonstrate that a genuine dispute exists as to any of these elements and summary judgment on this issue is appropriate.

As to waiver, Plaintiff argues that State Farm waived the statute of limitation through "failure to provide notice of reasons for denial of claim, failure to produce Damon Groves for deposition, failure to give 30-day notice under Section 11580.2(k), failure to provide timely arbitration hearing pursuant to January 6, July 13, and August 5, 2016; failure to toll by 30-days the statute of limitations . . . ." Opposition, at 20. "Under California law, waiver is a 'voluntary relinquishment of a known right.'" *Lucchesi v. Bar-O Boys Ranch*, 353 F.3d 691, 696 (9th Cir. 2003) (quoting

*Isaacson v. City of Oakland*, 263 Cal. App. 2d 414 (1968)). "Waiver of a statute of limitations 'cannot be established without a clear showing of an intent to relinquish that right, and doubtful cases will be resolved against waiver.'" *Id.*

Plaintiff has pointed to no facts from which a reasonable jury could infer that State Farm intentionally relinquished its right under the statute of limitations. State Farm expressly invoked that right in its September 24, 2012 letter. Rosenwasser Decl., Ex. 5. State Farm promptly scheduled arbitration within the statute of limitations when Plaintiff informed State Farm that he was not abandoning his claim. *Id.*, Ex. 7. State Farm reiterated its intent to assert its rights under the statute of limitations over the phone in mid-August and in a letter dated August 23, 2016. *Id.*, Ex. 11; Mir Decl. ¶ 18. It was Plaintiff rather than State Farm who canceled the arbitration hearing after it was set for August 31. Rosenwasser Decl., Ex. 13; Mir Decl. ¶ 26. Summary judgment is therefore also proper as to Plaintiff's waiver argument because no reasonable jury could conclude on the undisputed facts that State Farm waived its right to assert the statute of limitations.

Finally, Plaintiff asserts that it was impossible, impractical or futile to comply with the August 31, 2016 statute of limitations "due to conflict with other pending legal matters in another US District Court," State Farm's failure to produce the claims specialist for deposition, and State Farm's decision to set a hearing date quickly. Opposition, at 21. As an initial matter, Plaintiff does not contend that he was busy on August 31 – only that he had depositions scheduled on August 29 and August 30. Mir Decl. ¶ 20. Plaintiff has

also not shown that he was entitled to depose the claims specialist, that he articulated a reasonable purpose for the deposition after State Farm objected, or that the arbitration hearing could not have proceeded until after the deposition. *See generally* Mir Decl. More fundamentally, Plaintiff failed to respond to four letters sent by State Farm in 2012 inviting his continued participation in the arbitration and did not re-initiate contact for nearly four years. Rosenwasser Decl. ¶¶ 9-10. Excuse for impossibility, impracticability, or futility is inappropriate where a party has not pursued an action with reasonable diligence. *See Jordan v. Superstar Sandcars*, 182 Cal. App. 4th 1416, 1422 (2010); *see also Santangelo v. Allstate Ins. Co.*, 65 Cal. App. 4th 804, 816 (1998) (no impracticality or impossibility excuse when failure to comply with statute of limitations resulted from party's own litigating decisions); *Allstate Ins. Co. v. Gonzalez*, 38 Cal. App. 4th 783, 790 (1995) (noting applicability to uninsured motorist arbitration of "general rule requiring reasonable diligence in the prosecution of actions, at every stage of the proceedings"). Therefore, summary judgment is appropriate on this issue because as a matter of law the undisputed facts do not support a conclusion that compliance with the statute of limitations was impossible, impractical, or futile.

Plaintiff's second argument thus fails because the undisputed facts do not support the application of any of the bases for excusing the statute of limitations in Cal. Ins. Code § 11580.2(i)(3).

## IV. Conclusion

For the foregoing reasons, the Court GRANTS Defendant's motion for summary judgment [94].

IT IS SO ORDERED.

**ORDER RESOLVING APPROPRIATE SCOPE OF DISCOVERY NECESSARY TO RESOLVE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT [94] [102] (FEBRUARY 11, 2020)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

JEHAN ZEB MIR

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

Case No. 2:19-cv-03960-SVW-SK

Before: The Honorable Stephen V. WILSON, U.S. District Judge.

On Jan. 27, 2020 this Court held a hearing in this matter regarding the necessary extent of additional discovery Plaintiff requires in order to respond to Defendant's motion for summary judgment. Dkt. 94. This Court previously issued a Civil Trial Preparation Order on Nov. 11, 2019, setting trial for Feb. 18th, 2020. Dkt. 76. Upon review of Plaintiff's motion to continue the summary judgment hearing, the Court set a new trial date for May 19th, 2020. Dkt. 99. The Court's conclusions following the hearing on relevant discovery are such:

Plaintiff has not adequately articulated why he needs to depose defendant's attorney Rosenwasser in order to respond to Defendant's motion for summary judgment, which is based on statute of limitations-focused arguments given the language of Cal. Ins. Code § 11580.2(i)(2)(A). Plaintiff was unable to articulate how a deposition of Rosenwasser would be necessary to resolve the question of why the statute of limitations on arbitration actions should be tolled. To the extent that Plaintiff alleges that he is entitled to tolling based on his direct interactions or conversations with Rosenwasser, he may submit declarations to that effect in support of his Opposition brief. Accordingly, the Court GRANTS State Farm's ex parte application to quash the deposition subpoena of Rosenwasser. Dkt. 102.

Plaintiff also stated at the hearing that certain relevant materials such as letters issued by State Farm to Plaintiff were not included in exhibits supporting State Farm's summary judgment motion. To the extent that such materials are in Plaintiff's possession, he may submit them as exhibits in support of his Opposition brief.

The Court instructs State Farm to turn over copies of all correspondence between Plaintiff and State Farm related to his uninsured motorist claim, as well as copies of the contents of Plaintiff's claim file with State Farm.

State Farm is ordered to file a notice with this Court once these documents have been produced to Plaintiff. Plaintiff then has 21 days to file an Opposition brief, and State Farm should file a Reply brief 14 days after that. The Court will set an appropriate hearing date in this matter after reviewing these materials. The current trial date is VACATED, and the Court will set a new trial date after it rules on the summary judgment motion.

**ORDER ON MOTION HEARING FOR EX PARTE APPLICATION (JANUARY 27, 2020)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

JEHAN ZEB MIR

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY ET AL.

Case No. 2:19-cv-03960-SVW-SK

Proceedings: [102] EX PARTE APPLICATION to Quash Deposition Subpoena of Attorney Lisa G. Rosenwasser and to Compel Plaintiff to Obey Court Order filed by Defendant State Farm Mutual Automobile Insurance Company

Before: The Honorable Stephen V. WILSON, U.S. District Judge.

Hearing held. The application is submitted. Order to issue.

**ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENYING PETITION FOR REHEARING (MAY 31, 2022)**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEHAN ZEB MIR, M.D.,

*Plaintiff-Appellant,*

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; ET AL.,

*Defendants-Appellees.*

No. 20-56403

D.C. No. 2:19-cv-03960-SVW-SK
Central District of California, Los Angeles

Before: FERNANDEZ, TASHIMA, and FRIEDLAND, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Mir's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 35) are denied.

No further filings will be entertained in this closed case.

**TRANSCRIPT OF HEARING**
**(JANUARY 27, 2020)**

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEHAN ZEB MIR, M.D.,

*Plaintiff,*

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; JOHN DOES, 1-20; DAMON GROVES, an individual; CHRIS KENNEDY, an individual; MICHAEL STRUBLE, an individual,

*Defendants.*

No. 19-3960SVW

Before: The Honorable Stephen V. WILSON, U.S. District Judge.

COURT CLERK: Item 10. CV 19-3960. Jehan Zib Mir versus State Farm Mutual Automobile Insurance Company, et al.

Counsel, please state your appearances for the record.

MR. MIR: Good afternoon, Your Honor. Dr. Mir, plaintiff, pro se.

MR. BATEZEL: Good afternoon, Your Honor. My name is Matt Batezel, and I represent defendant State Farm.

THE COURT: The defendant has not responded as of yet to the motion for summary judgment, and defendant [sic] seeks a continuance on the ground that he suffered injuries from a car accident and could not work effectively to respond to the motion.

The plaintiff has offered the—has offered some evidence that the defendant may not be—being candid with the Court based upon the defendant's work in a related case.

Is that your position?

MR. BATEZEL: Yes, Your Honor. I represent the defendant State Farm. Our concern was that the plaintiff may have not been candid.

Initially, our concern was that we just wanted the plaintiff to the comply with the Court's order to provide the discovery brief that Your Honor had previously ordered.

THE COURT: The plaintiff has not done that. But the Court is concerned regarding your allegation that in the timeframe that the plaintiff claims some incapacitation which would not allow him to respond to the instant summary judgment motion, he has been actively engaged in filing pleadings in another case in the northern district to California. Is that true?

MR. BATEZEL: In the Illinois court.

THE COURT: Illinois court.

MR. BATEZEL: Another case against State Farm that's been quite active.

THE COURT: In that regard, when were these pleadings filed?

MR. BATEZEL: The pleadings, there were two filed on January 7th and another one filed on January 12th, as well as in this case there were two items filed on January 10 and January 13th so that—

THE COURT: And when was this alleged automobile accident?

MR. BATEZEL: Well, Dr. Mir has not disclosed that in any of the documents I've seen. I don't know when the accident was. I believe it was sometime in December, but it's not clear.

THE COURT: Can the plaintiff inform the Court when this accident occurred?

MR. MIR: Yes, Your Honor.

THE COURT: Take the lectern if you would, sir.

MR. MIR: Yes, Your Honor. There are two issues here. One is, of course, the medical problems that I have.

THE COURT: Doctor, I asked you a specific question.

MR. MIR: August 5th, 2019, Your Honor.

THE COURT: And where did this accident take place?

MR. MIR: It happened on 110 North Freeway, just near Vermont Avenue, north of Vermont Avenue.

THE COURT: Were you hospitalized?

MR. MIR: No, I was seen in the emergency room, and I had x-rays taken.

THE COURT: But you apparently have been participating in other litigation in the timeframe since this automobile accident. Why did you in good faith tell the Court that you couldn't respond to the summary judgment motion here as a result of this automobile accident which apparently happened seven months ago?

MR. MIR: Your Honor, first of all, responding to those filings in Illinois, I had requested two continuances, two extensions of time in Illinois court, it did not-

THE COURT: When did you make those filings?

MR. MIR: I think it was—one was made in January-first week of January—4th, and then before that, I had responded to this Court's motion by December 23rd—December 20th, and the second one was very short one, it was not a big one, and the one I filed on January 24th was after a period of six weeks or something, it was even longer than that, that I did a little bit at a time, and I was able to barely make it to the last minute.

THE COURT: Now, the—is the pleadings that you filed in the Northern District of Illinois, were those the only pleadings that you filed since the automobile accident?

MR. MIR: Those are the only pleadings that I know of, Your Honor, and—

THE COURT: Well, that was my question. And your answer is: Those are the only pleadings.

MR. MIR: In Illinois, yes, Your Honor.

THE COURT: Okay. Do you have any other information, Mr.—

How do you say your name?

MR. BATEZEL: Batezel, Your Honor.

THE COURT: All right.

MR. BATEZEL: No, I don't have any other information other than the docket in that case.

THE COURT: All right. While you're there, let me ask you some questions about this case.

My recollection is that the plaintiff was struck by an uninsured motorist. He made a claim against State Farm. State Farm rejected the claim. He then opted as, as the policy allowed, to arbitrate, and he filed a letter beginning the arbitration about five years ago. And the arbitration never got underway, and there is a statute in California which requires that when an arbitration has begun, it must terminate within five years. That— as that five-year period was closing in, did the defendant, State Farm, inform the plaintiff that that five-year window is closing in?

MR. BATEZEL: Yes, Your Honor. The—

THE COURT: The answer is yes.

MR. BATEZEL: Yes.

THE COURT: And at that point, that there was a hearing set for arbitration?

MR. BATEZEL: Correct.

THE COURT: Who noticed that hearing, you or the plaintiff?

MR. BATEZEL: State Farm was represented by a different counsel at that time. State Farm noticed that hearing based on availability that the plaintiff had provided.

THE COURT: And how much notice was there for the hearing? In other words, when was it noticed, and when was the hearing?

MR. BATEZEL: It was approximately one month, Your Honor. It was scheduled for the last day of August of 2016. It was early in the month of August.

THE COURT: And apparently the plaintiff canceled the hearing.

MR. BATEZEL: That's correct, Your Honor.

THE COURT: Did he cancel it or continue it?

MR. BATEZEL: Canceled it.

THE COURT: And when did he cancel it in relation to the hearing date?

MR. BATEZEL: It was a few days before the hearing date. I don't have the—

Actually, I do have.

I believe it was on August 24th, Your Honor. So, seven days before the hearing.

THE COURT: And so the fact that the hearing was cancelled meant that there was no resolution to the arbitration.

MR. BATEZEL: Correct, Your Honor.

THE COURT: In the five-year period last.

MR. BATEZEL: That's correct, Your Honor.

THE COURT: Was there any—

At that point was your firm representing State Farm?

MR. BATEZEL: No, Your Honor. State Farm had basically house counsel that handles their—

THE COURT: And have you seen their files? MR. BATEZEL: Yes, Your Honor.

THE COURT: And is there any indication that between the date that the arbitration hearing was set, which as you said was about a month away, and the cancellation, there was any written or other communication between the plaintiff and the lawyer for State Farm?

MR. BATEZEL: Yes, there was communication during that time period.

THE COURT: And how was that communication reflected in the file?

MR. BATEZEL: It's reflected in letters, and it related to different issues, but primarily the plaintiff's request to take the deposition of State Farm's claim handler.

THE COURT: And so the plaintiff was—

Is that correspondence part of the record?

MR. BATEZEL: It's part of the exhibits of our motion for summary judgment, yes, Your Honor.

THE COURT: And what was State Farm's position with regard to that?

MR. BATEZEL: State Farm's position was that the deposition of the claim handler was not relevant to the issue of the uninsured motorist's claim;

and, furthermore, that the deposition was not timely noticed or requested.

THE COURT: And—but if you opt for arbitration, don't you forego certain discovery rights?

MR. BATEZEL: There are discovery rights that are impacted by arbitration. The parties retained their right to compel that discovery—

THE COURT: I see.

MR. BATEZEL: —as petitioned by the superior court.

THE COURT: And other than the request for a deposition, what other correspondence was there that you saw?

MR. BATEZEL: The other correspondence was relating to the fact that after the arbitration was sent—set—I'm sorry—that Dr. Mir was claiming that he was not going to be able to do it by that time due to some other matters that he was litigating, he didn't think he could be prepared in time.

He demanded extensions on the arbitration time, to which State Farm's counsel denied it. So that most of the conversations were of that nature and then some bickering, for lack of a better term, regarding that the statute requirement for the arbitration.

THE COURT: And the arbitration date was how close to the five-year termination period under the statute?

MR. BATEZEL: One day. It was the last possible day to arbitrate it.

THE COURT: And how was that date set? Was it set mutually or just by State Farm?

MR. BATEZEL: It was set mutually. This was after—

THE COURT: How was that reflected?

MR. BATEZEL: It's reflected in—in the declaration of Lisa Rosenwasser who was State Farm's counsel at the time.

THE COURT: I see.

MR. BATEZEL: And it was also, Your Honor, I should mention that the arbitrating company which was called Creative Dispute Resolution, confirmed the date with all parties multiple times before the hearing date so that it wasn't a surprise to Dr. Mir, or it shouldn't have been a surprise to Dr. Mir.

THE COURT: All right, thank you.

Let me ask Dr. Mir some questions about that.

Why shouldn't you be foreclosed from pursuing this lawsuit because of the California five-year statute?

MR. MIR: Your Honor, first of all, I must correct that they did not give me a 30-day notice of the arbitration in time. They called me—I—I—

This is going back 2016. In January 2016 I wrote them a letter asking to set the matter for arbitration and also produce the claim handler for deposition. I never heard anything from them. Then next thing was on July 13th, 2016, I asked them again to provide the arbitration and also produce the claim handler for deposition. No response.

THE COURT: Well, let me better understand one point. In terms of setting up the arbitration, could

either party set up the arbitration? I'm asking State Farm first.

MR. BATEZEL: The dates should be agreed between the parties, but either party can compel arbitration through petition with superior court.

THE COURT: But turning—

I'll get back to Dr. Mir in a minute. But he raised this point, that in January—What year would that have been?

MR. BATEZEL: January 2016.

THE COURT: 2016. He wrote a letter to State Farm asking for some discovery. Forgetting for the moment whether that was relevant or not, did he, in that letter, also ask to set an arbitration date?

MR. BATEZEL: We don't have any such letter, Your Honor.

THE COURT: I see. Are you saying you wrote a letter?

MR. MIR: Your Honor, we have a—

THE COURT: Are you saying, Doctor, that you wrote a letter in January?

MR. MIR: Yes, Your Honor.

THE COURT: Where is a copy of the letter?

MR. MIR: I have it, not here with me, Your Honor, but we have a copy of the letter, and we repeatedly mentioned that letter in the complaint as well as in the papers that you—

THE COURT: Did you—did you discuss in that letter the desire to set a hearing for arbitration?

MR. MIR: Yes, Your Honor, and also, not only that, they admit that in January of 2016 we had a telephone conversation with Lisa Rosenwasser, the attorney, State Farm's attorney. During that conversation I reiterated that I should be given—

THE COURT: I can't hear what you're saying.

MR. MIR: In January of 2016, I had a telephone conversation with an attorney to whom they admit during which I asked them to set the matter for arbitration.

Now, I cannot take them to arbitration. I cannot set up a—with a dispute resolution and ask them to comment on this date, because I tried that, and I could not succeed. They said the arbitration must—the hearing must be set by the State Farm. That's the dispute resolution that they told me.

THE COURT: Slower. You're—

MR. MIR: I'm sorry.

THE COURT: You're—

Did you just say that only State Farm could set up the arbitration?

MR. MIR: Absolutely, Your Honor.

THE COURT: Why do you—

What do you base that on?

MR. MIR: I base it on this, Your Honor, because after the five-year period expired, I asked them that these—the five-year period is tolled by 30 days under the statutes, one month, five eight zero point two K, that if there is no 30-day notice of

expiration of statute of limitations, then the five-year statutes are automatically tolled for 30 days.

THE COURT: What is the significance of the 30 days?

MR. MIR: The 30 days is—is to allow the other party to prepare for it—for the hearing—

THE COURT: What happened in that 30 days?

MR. MIR: Which—

THE COURT: Don't talk over me.

MR. MIR: I apologize, Your Honor.

THE COURT: So, when the statute expired, you're saying that the statute requires some affirmative notice from State Farm to you that the statute has expired, and if they don't give you that notice, then in the 30 days after the statute expired, you can restart the arbitration?

MR. MIR: No, this is not what it is, Your Honor. The statute says this, that one one five eight five eight five zero point two K provides that the State Farm, the insurer, is required to give a 30-day notice of expiration of statute of limitation. So, in this case, they were required to give me notice on August 1st, July 31, 2016: Look, the statute is going to expire in 30 days, so—

THE COURT: What's the significance other than the fact that they didn't give you that notice?

MR. MIR: Because I did not have enough time to prepare, Your Honor. I had to tell—

They get these witnesses together. They kind of disappear suddenly. This is a five-year-old case. I

had to get a doctor in, I had other witnesses, and it is preparation of—

THE COURT: But you knew that this arbitration had to be complete within five years, and by your own statement, you started to prepare for it in January of 2016. You wrote a letter to them asking for discovery.

MR. MIR: Your Honor, I did not know the exact date of expiration of statute of limitations.

THE COURT: Why didn't you? You should know that.

MR. MIR: I had, Your Honor, I had,—this was five years ago, and, you know, all I could do was expect to be provided with the arbitration. So, it was totally irrelevant when they're going to expire.

THE COURT: But just—wait a minute. By January 2016, this is four years or more since you indicated you wanted to arbitrate the issue. So, what were you doing during these four years?

MR. MIR: Nothing much was done, Your Honor.

THE COURT: Why?

MR. MIR: Your Honor, because there was still time in five years' period to complete the arbitration.

THE COURT: But why would you, as the plaintiff, who wanted the remedy, who wanted State Farm to pay you, just sit on your hands for four years plus?

MR. MIR: Your Honor, other matters were going on.

THE COURT: What other matters?

MR. MIR: There are other legal matters.

THE COURT: How many?

MR. MIR: There were about five, six other matters going on, Your Honor.

THE COURT: What kind of other matters?

MR. MIR: Regarding medical board medicine, Your Honor.

THE COURT: And were you representing yourself?

MR. MIR: I was representing myself.

THE COURT: And were those matters before courts or agencies?

MR. MIR: Before courts, Your Honor.

THE COURT: Federal courts?

MR. MIR: U.S. District Court, federal court.

THE COURT: In the Northern District of Illinois?

MR. MIR: No, that came just later.

THE COURT: Where were these other matters?

MR. MIR: I can—I can state that, Your Honor. First of all, there were two cases-three cases in the Central District of California. I can—I can—it was against hospitals and community hospital.

Then there was a—a—a case against me versus Deck (phonetically spelled), was in this Court, Central District of California, and I had a case in

U.S. District Court, Southern District of California, on medical board, which lasted five years, and it was continuously going on one after the other.

Then there was the administrative hearing in a matter going on in the Commonwealth of Pennsylvania, and there was voluminous file, like, this size.

Then there was litigation pending in U.S. District Court in Harrisburg on that matter, in another matter pending in the state court in Harrisburg.

Then there was also pending matter in—in—on the same matter in the appeal to the higher court, to the Supreme Court.

Then after that, there was a matter going on in New York Medical Board which started in 2006 up till 2016 and '17. There was an appeals—there was a matter litigated in the Southern District of New York.

And there are other-other appeals and writs going on. So, I was continuously busy, Your Honor, during that period.

THE COURT: So, in other words, you were so busy pursuing all these other cases that you didn't have enough time to pursue the arbitration.

MR. MIR: Yeah, because not included in that—

I still have time of—eight months when I called them in January of 2016, there was still eight months time available, Your Honor, to do arbitration.

THE COURT: But the—

Let me get back to you, Mr. Batezel.

You said something earlier that the issue regarding the claim didn't involve the particulars of the

accident because it was a uninsured motorist claim, correct?

MR. BATEZEL: What I had stated before, Your Honor, was that the deposition of State Farm's claim handler wouldn't be relevant to determine the value of Dr. Mir's claim from that automobile accident. Instead, the only evidence relevant would be any liability issue—

THE COURT: What position did State Farm take initially? Did it deny the claim or deny the amount that he sought?

MR. BATEZEL: It denied the amount, Your Honor. Primarily—

THE COURT: And I recognize that the claim was covered.

MR. BATEZEL: Correct. Payments were made under the medical payment coverage part of the claim and property damage coverage, and offers were made under the uninsured motorist coverage to which Dr. Mir did not accept. He only demanded the policy limits, the primary issue on his damage claim related to his claim of loss of income.

THE COURT: Now, what were the policy limits?

MR. BATEZEL: $100,000.

THE COURT: And what was the offer?

MR. BATEZEL: $3,000, Your Honor. Because the only—separating the loss of income part of the claim, the only other medical thing that he had sought from State Farm was the cost of a massage chair which was $3,000. The remainder of his claim

was a loss of income claim, which there was no documentation to support.

THE COURT: And did you so inform him?

MR. BATEZEL: Yes, I believe so, Your Honor. I was not handling that claim but—

THE COURT: But does the file show that when the claim was denied, that State Farm gave that reason?

MR. BATEZEL: The claim was never denied, but there was an offer made by writing.

THE COURT: And did State Farm indicate that it was making the offer that it did make because there was no support for loss of income?

MR. BATEZEL: There were certainly telephone calls with Dr. Mir regarding that issue, primarily before it got to arbitration. It was after State Farm said that they wouldn't pay for the loss of income that he demanded the arbitration.

THE COURT: So, then, in the arbitration, the issue would be whether he could sustain the loss of income claim.

MR. BATEZEL: In essence, correct, Your Honor.

THE COURT: And—but the loss of income claim, that is, the evidence regarding that, would appear to be singularly within his control.

MR. BATEZEL: Absolutely, Your Honor.

THE COURT: In other words, there is no evidence that State Farm would have to confirm or deny his loss of income.

MR. BATEZEL: That's correct, Your Honor. And that's why State Farm didn't pay the loss of income because he didn't support that—

THE COURT: So, getting back to you, Dr. Mir. Get back to the microphone.

Why did you need discovery from State Farm, if your—if the claim was—the offer was less than what you wanted, and the reason was because you couldn't or didn't support your loss of income claim? Isn't the loss of income something that you could provide, not State Farm?

MR. MIR: Thank you, Your Honor, for giving me the opportunity. He just keeps on making incorrect statements.

THE COURT: I don't know that they're incorrect.

MR. MIR: I'm saying, Your Honor, responding to that question, Your Honor. The proof of loss of earning was produced during my deposition. I had a letter of appointment, work as local tenant, as a cardiovascular surgeon in a VA hospital in Virginia. And I lost that—that local tenant position because of the accident. And I produced that letter during my deposition, and they had it all along that I had lost over hundred thousand dollars in income. That—

THE COURT: So, you're saying that that would have been the issue the arbitrator would decide. In other words, your letter and your position of the loss of income which was not accepted by State Farm would be something that you would have pursued in the arbitration.

MR. MIR: Yes, Your Honor. Not only on this account I had actual letter of appointment, and they did not object to it, the attorney—

THE COURT: I'm not deciding the merits of it now.

MR. MIR: Yeah, yeah, that's the issue I would have taken to arbitration, that, look, I had this job, I could not take it because I was walking around with a collar on my neck and nobody is going to let me inside their hospital with this obvious disability, and you know, so it doesn't—

THE COURT: All right, let me get down to the specific issue, and that is, you haven't complied with my court order requiring you to tell me what discovery you need and why, but you're here now. And what discovery do you want?

MR. MIR: Discovery, Your Honor, about—everything. I asked them during my subpoena that they should produce the—all my correspondence between me and the claim handler before the matter was—before the arbitration was requested.

THE COURT: Don't you have that correspondence?

MR. MIR: I want from them, Your Honor, because—so—because—if they produce them—that it's admissible.

THE COURT: But there is no ruling on any admissibility at this point. I haven't—

Are you denying the accuracy of the correspondence that State Farm has submitted?

MR. MIR: Submitted in their papers?

THE COURT: Yes.

MR. MIR: They do not respond to the issues, the motion, summary judgment motions, any document, do not respond to issues. They don't have the January 2016 letter in it.

THE COURT: The letter that you wrote to State Farm?

MR. MIR: Yes, Your Honor. They don't have August 5th letter, 2016 letter in their papers, in which again requesting for arbitration. They wrote the letter on August 5th, according to them, in that letter they still did not tell me—

THE COURT: Have you produced those letters? I have not seen the letters that you're referring to. Where are those letters?

MR. MIR: Your Honor, there was no opportunity. There has not been any discovery yet, Your Honor.

THE COURT: Answer my question.

MR. MIR: I have not produced, Your Honor.

THE COURT: Why haven't you produced those letters?

MR. MIR: Your Honor, we alleged in the complaint that these—

THE COURT: But I am asking you now to produce those letters. I want to see those letters.

MR. MIR: Fine, Your Honor. I will look for them. I did not expect this issue was going to come up.

THE COURT: Why wouldn't you expect this issue to come up? I mean, this is at the heart of your argument, and the Court is having a hard time crediting your argument in light of your answers.

You're telling me about two letters that are not in the files of State Farm that you claim you wrote, and you can't produce those letters as of today.

MR. MIR: I'll look for them, Your Honor. They're five-year-old letters. I'll look for them. I have them somewhere. I have boxes and boxes, and I can submit them.

THE COURT: Why do you want the—

What deposition testimony do you want?

MR. MIR: Well, the deposition is admissions, for example, that the proof of loss of earning was produced during deposition, including the letter which I produced, and every time—

THE COURT: And who is the person that you wanted deposed?

MR. MIR: Their attorney who was—the person I was dealing with.

THE COURT: Is that this Wasser [sic] person?

MR. MIR: Yes, I dealt with her for four or five years.

THE COURT: What is her first name?

MR. MIR: Lisa.

THE COURT: And where is this Lisa Wasser [sic] now?

MR. MIR: She's in Glendale, their offices. That's where the office is.

THE COURT: Is she with State Farm?

MR. BATEZEL: She's State Farm's counsel, Your Honor.

THE COURT: Was she house counsel then?

MR. BATEZEL: Yes, Your Honor.

THE COURT: And have you spoken to her?

MR. BATEZEL: My associate has.

THE COURT: And what is her recollection of this?

MR. BATEZEL: Her recollection is consistent with what her declaration is, that she had advised Dr. Mir of the five-year statute of limitations in September of 2012, that after that point she did not hear from him again until January 2016 when she had a phone call with him.

THE COURT: I missed the earlier part. She advised him when? What date was that?

MR. BATEZEL: He demanded arbitration on September 1st, 2011. During the rest of 2011 and 2012, they litigated the arbitration, for example, Dr. Mir's deposition was taken.

After his deposition was taken, she tried to contact him on four occasions to conclude the claim in some fashion either by scheduling arbitration or resolving it.

THE COURT: Is that reflected in document, in letters.

MR. MIR: Yes, Your Honor. She wrote letters that are attached to our summary judgment.

THE COURT: All right.

MR. BATEZEL: He did not respond to those efforts. And so on September 24th, 2012, she wrote Dr. Mir and said you have five years to arbitrate this. It expires on September 1st, 2016.

THE COURT: When did she write that letter again?

MR. BATEZEL: September 24th, 2012.

THE COURT: And what did she say in that letter?

MR. BATEZEL: She said that under the code, you have five years to arbitrate, and that five years is calculated from the date you demanded arbitration, and therefore, that date expires on September 1st, 2016.

THE COURT: And what does the correspondence reflect thereafter?

MR. BATEZEL: After that—that—that same letter also says, in essence, that because she hadn't heard from him, she was going to put his file in inactive status until he contacted her.

She did not hear from him again until January 1st of 2016, so three and a half years almost. At that time they had a telephone call where she has declared that she asked his intentions for the arbitration, and he ended the call. She does not have a letter from him from that point.

THE COURT: With regard to the 2016 episode, is that reflected in her file, the phone call?

MR. BATEZEL: There is no document of it, it's just her declaration on that.

THE COURT: And so—

Go ahead.

MR. RATEZEL: And then she did not hear from him again until July of 2016, which at that time he requested arbitration and the deposition of State Farm's claim handler. Nothing further happened again for a few weeks at which time the arbitration was set.

THE COURT: The claims handler would be the person who determined whether or not the proof of loss of income was supported.

MR. BATEZEL: Well, from a claim handling point of view, yes, it would be relevant for that; but for purposes of arbitration, his testimony would not be—

THE COURT: No, but I'm just focused on that.

MR. BATEZEL: Yes.

THE COURT: In other words, so, it would appear to me that his request to take the deposition of the claims handler wasn't totally inappropriate.

MR. BATEZEL: Well, to the contrary, Your Honor, it actually is inappropriate in an uninsured motorist arbitration, because in an uninsured motorist arbitration, we're litigating liability and damages from the accident. It would be just like adding auto accident case, and therefore the only thing relevant would be the issues of liability and the damages he could establish.

THE COURT: You're saying the claims handler had no input regarding whether the proof Dr. Mir offered regarding loss of income was relevant?

MR. BATEZEL: Correct, because we're not arbitrating it from a claim handling point of view, we're arbitrating it from a liability and damages point of view.

THE COURT: Let me just understand the earlier point, that the claims handler had no involvement whatsoever with the determination of whether

the evidence that Dr. Mir offered regarding his loss of income was supported.

MR. BATEZEL: Well, that claim handler would have evaluated that evidence to see if it was supported—

THE COURT: That's what I just asked.

MR. BATEZEL: But, Your Honor, the issue in the arbitration is that evidence as presented to the arbitrator. So, State Farm would not have called the claims handler as a witness. It would only be that evidence that Dr. Mir could present to establish his claim. It has nothing to do with what the claim handler knows.

THE COURT: So, you're saying the arbitrator would not have considered State Farm's position and would decide the matter from the beginning?

MR. BATEZEL: Correct, because the arbitration—in an arbitration the insurance companies stands in the shoes of the a tortfeasor.

THE COURT: I see. So—okay. So, that was July of 2016. What happened after that?

MR. BATEZEL: After that, Your Honor, there was not any further contact from Dr. Mir for about two to three weeks, at which point the contact occurred again, and that's when the arbitration was set for August 31st, 2016. And there were numerous letters in the time period of August about the arbitration, the request for the deposition, things like that.

THE COURT: So, if Dr. Mir wanted to take the deposition in this lawsuit of Ms. Wasser [sic], what would be your position?

MR. BATEZEL: I don't believe it's necessary, Your Honor, because of the fact that we're dealing with primarily-

THE COURT: "Necessary" is not a good word.

MR. BATEZEL: Necessary to—to oppose the summary judgment. If we get past the summary judgment, I would believe that he would have some entitlement to it.

THE COURT: I know, but he is hoping that there is something he can uncover in her deposition that would allow him to defeat the summary judgment motion.

MR. BATEZEL: I understand—

THE COURT: That's the point of his effort. I'm trying to find out what it may be.

MR. BATEZEL: I understand, Your Honor, I don't know what it could be, because we're dealing with the strict statute of limitations issue.

THE COURT: Let me ask Dr. Mir.

If I allowed you to take a deposition of Lisa Wasser [sic], what would she say that would help you defeat this summary judgment motion?

MR. MIR: Yes, Your Honor. First of all, she has to admit that I provided the proof of loss of earning, the contract I had in Virginia and which—which I provided in deposition that she would have to admit, but she had earlier denied that there was not such evidence. And secondly, she would have to admit that when I talked to her in January—they won't say anything what was the conversation in January—

THE COURT: Tell me what—what date are you referring to?

MR. MIR: Your Honor, January 16, 2016—

THE COURT: Yes.

MR. MIR: —when I sent them a later, and they say in their papers that a telephone conversation was held, they don't say what the contents of that telephone conversation was, that she now has to tell me what that conversation was about.

THE COURT: Well, what was the conversation about?

MR. MIR: The conversation was that they should produce—umm—the claim handler for deposition, and she should set up the matter for arbitration as soon as possible.

So that was the—that was the conversation on my side. And she said: Why do you want to take deposition of—of the claim handler? And so I explained to her that he denied the claim. The claim—

This matter should not go to the arbitration in the first place. He should have paid the claim like any other claim I sent to insurance company for medical services rendered, and he denied the claim. That's-

THE COURT: Okay, what else?

MR. MIR: Then, Your Honor, I was hoping and waiting to hear from her in response to my request for an arbitration to depose—or to pay the claim.

THE COURT: But you didn't hear from her for a long time.

MR. MIR: I didn't hear until I—until I ordered that on July 13, 2016, repeating that: Look, give me—produce Mr.—for—for deposition and set him for arbitration hearing.

Your Honor, I had no idea when the five years was going to expire at that point, at all.

THE COURT: Why not?

MR. MIR: Your Honor, I thought that was still good, because nobody had pointed me—

First of all—

THE COURT: Well, whose obligation is it? It's not theirs; it's yours.

MR. MIR: That's fine, but all that—within this five-year period, I'm making all these requests, Your Honor. I'm making all these requests.

THE COURT: Okay, what else would you ask Ms. Wasser [sic] beyond what you just said?

MR. MIR: I would ask her why she did not give me arbitration hearing. She has to admit that the first time she called me was by the—about the arbitration was, about August 19 or so, when I was driving—

THE COURT: What year?

MR. MIR: 2016, Your Honor. When I was driving in New York, I got a phone on my cell phone, and he said, you know, arbitration has completed. This is 11 days before the arbitration is going to expire, time is going to expire. I have to—we have to set this matter for arbitration.

I don't know if I can get an arbitrator at this time, in such a short period of time. And so I was in New York, I had to come back, and then I had two depositions in the federal court case which were, the Court had ordered those demonstrations beyond the discovery cut-off date.

THE COURT: Wait just one moment of. Let me ask a question I've asked before. In terms of mechanically setting up an arbitration, does it have to be mutual, or can either party schedule an arbitration?

MR. BATEZEL: Well, the selection of the date, Your Honor, would be mutual, and the date that was selected here was a date requested by Dr. Mir.

THE COURT: And is that in writing?

MR. BATEZEL: No. It was a telephone call.

THE COURT: Well, he's saying that Ms. Wasser [sic] phoned him—if I understood him correctly—11 days before the five-year expiration and said that there was a date set for arbitration.

MR. BATEZEL: The declaration of Ms. Rosenwasser states that on August 15 she spoke with Dr. Mir and discussed arbitration dates. He requested arbitration for August 31st. It was set—it was set the next day with Creative Dispute Resolution who confirmed it with both parties.

THE COURT: So, the date was set up.

MR. BATEZEL: Yes, yes, Your Honor.

THE COURT: All right. I will—

I've heard sufficient amount from the parties. I'll take the matter under submission and issue an order.

Thank you.

MR. MIR: Your Honor, can I respond, Your Honor, respectfully, to something he said?

THE COURT: Briefly.

MR. MIR: In relation with Rosenwasser, when I spoke on the telephone did not say the date was set for August. She called me, she set the date, as is stated before this Court, on August 24th, that the date was set for August 31st. August 29th and 30th I was taking depositions in Sacramento in a federal case, and I could not appear on the 31st, and I explained at that time that I cannot produce witnesses on such a short notice.

THE COURT: But did you sign this document with this arbitration organization?

MR. MIR: No, no, Your Honor. I did not sign any—I don't recall anything right now.

THE COURT: Is there a signature on some sort of document with this organization agreeing to an arbitration date?

MR. BATEZEL: I don't believe so, Your Honor. I'm not positive. I just know that they sent out a confirming letter to both parties.

THE COURT: All right, I will have to think about what was said, and I will issue an order.

MR. MIR: I did not—

THE COURT: Thank you, sir.

MR. BATEZEL: Thank you, Your Honor.

(Proceedings concluded.)

## LETTERS FROM JEHAN ZEB MIR TO ATTORNEY LISA ROSENWASSER (EXHIBITS FROM SUMMARY JUDGMENT MOTION)

### LETTER, AUGUST 24, 2016

Jehan Zeb Mir, MD
Cardiovascular & Thoracic Surgery
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Lisa G. Rosenwasser, Esq.
Telephone (818) 543-4324
Mark R. Weiner & Associates
Attorneys at Law
655 North Central Avenue, 12th Floor
Glendale, CA 91203

Re: Claim No. 75-4849-310
Date of Loss 10/15/2009

Dear Ms. Rosenwasser;

I am in receipt of your letter dated August 23, 2016 which contains several incorrect statements.

You never informed me or discussed with me anything on August 5, 2016 regarding the arbitration cut-off date or need to select an arbitrator in this matter as you have incorrectly stated in your August 23, 2016 letter.

I requested to proceed with the Arbitration in January 2016 in this matter and never received any communication from you. Then I again informed you

on July 13, 2016 that I would be ready for arbitration as soon as deposition of Damon Groves is completed.

You in order to avoid producing Damon Grove for deposition, you decided to employ the tactic of not communicating and informing me about the arbitration cut-off date and delaying in order to trip off the arbitration cut-off date till August 17, 2016 when I spoke to you on telephone from New York and you first informed me about the arbitration cut-off date and not once informing me about the provision for stipulation under *California Code of Civil Procedure § 583.330(a)* to extend time for arbitration.

By delaying you gave me 5-days to contact my witnesses and prepare for the case in the week of August 22-27, in addition to other pending legal matters.

I produced evidence during my deposition that l lost locum tenens position for 4 months which would have provided me an income of $120,000. That that position was never filled. State Farm owes me that amount and you must pay it.

You have no case. In order to avoid paying, you are employing such harassing tactics. I once again urge you to stipulate to extend arbitration date by full 8-months period as I was entitled to when I requested arbitration in January 2016 and produce Damon Grove for Deposition and to allow completion of other discovery.

There is no way I can possibly prepare or produce witnesses on such a short notice or even appear for arbitration on August 31, 2016. l would not return from Sacramento till late on August 30, 2016 and l

must prepare for two depositions right now which I am conducting on August 29, and 30, 2016 at Sacramento, CA.

I informed Creative Dispute Resolution today that we have a dispute and there is no way, I can possibly appear unprepared for deposition on August 31, 2016.

I must inform you that if you would not stipulate to extend the arbitration date for a period of 8 months in order to make up for time for a period of 8 months lost in preparing for this case since January 2016 due to your delaying and harassing tactics for not producing Damon Grove for deposition and to allow completion of other discovery and not informing me anytime about the arbitration cut-off date in the past 8 months, I will file lawsuit against you, your law firm and the State Farm Insurance Company for your gross bad faith misconduct and will request compensatory and punitive damages.

I will also report you to California State Bar for your highly unethical conduct.

1 once again urge you to pay immediate attention to this matter and extend the date for arbitration for a period of 8 months and produce Damon Grove with my Claim file at a mutually convenient date for Deposition and to allow completion of other discovery in order to avoid multiplicity of proceedings and other lawsuits.

Sincerely,

/s/ Jehan Zeb Mir, MD

## LETTER, AUGUST 26, 2016

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Re: Claim No. 75-4849-310
Date of Loss 10/15/2009

Dear Ms. Rosenwasser;

This is to supplement my letter dated August 24, 2016.

PLEASE note that at no time you provided me a written notice of expiration of the applicable statute of limitations pursuant to California Insurance Code § 11580.2 (k) which provides

(k) "Notwithstanding subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and the claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall operate to

> toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney."

At no time during your telephone call which I received in New York City while diving you qualified your statement about expiration of statutes of limitation that parties can extend the time to complete arbitration by written stipulation pursuant to California Insurance Code § 11580.2(i)(4). Instead, you stated that it would be even difficult to complete arbitration within the statutory time frame because arbiter usually require a 30 day Notice of Arbitration and you also told me that there was not enough time to depose Damon Groves, the Claim Representative because 10-day notice for deposition was required.

I had requested arbitration in January 2016 and your secretary told me that you believed I had abandoned the arbitration where full eight months were still available. I don't know where that came from.

Subsequently, on July 13, 2016 and August 5, 2016, I wrote you to complete arbitration as long as Damon Grove was deposed. You conveniently, decided not to timely respond to my July 13, 2016 request in order to trip the 5-year statutes of limitation which were only known to you. Even in your August 5, 2016 letter, you nowhere informed me the date by which the arbitration should be completed and declined to produce Damon Groves for deposition and incorrectly informed me that there was not enough time to conduct deposition.

As stated in my letter dated August 24, 2016, you gave me 5 days to contact and prepare my witnesses and collect other evidence. The witnesses are not simply available on such a short notice, thus seriously prejudicing my case. You are collaterally estopped by your own conduct and doctrines of waiver, impossibility, impracticality, and futility pursuant to California Insurance Code § 11580.2 (i)(3).

Based on the foregoing, I request you to extend the time period to complete arbitration by 8 months period which was available to me in January 2016 when I first requested arbitration and you never responded.

Sincerely,

/s/ Jehan Zeb Mir, MD

## LETTER, SEPTEMBER 2, 2016

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Re: Claim No. 75-4849-310
Date of Loss 10/15/2009

Dear Ms. Rosenwasser;

You have been served with Deposition Subpoena for Damon G. Groves.

I tried to schedule Arbitration date for September 27, 2016 with Creative Dispute Resolution, 3155 Old Conejo Road-Box 7, Thousand Oaks, California 91320 before previously agreed Hon. David W Long.

I was informed by Sandy Lance, Judicial Assistant at that Office, Creative Dispute Resolution is a neutral party and that the Arbitration has to be set by attorney for the Respondent State Farm Mutual Insurance Company and that she informed you today of my request to set up Arbitration hearing. She also said she consulted Judge Long and he also agreed with her position.

Please note the Statutes of Limitations were tolled by 30 days pursuant to California insurance Code § 11580.2 (k) since you did not provide me with 30 day Notice of the Statutes of Limitation.

I earnestly suggest that you set up Arbitration Hearing for September 27, 2016 commencing at 11:00 a.m. at your earliest convenience.

Thank you for your courtesy and cooperation in advance.

Sincerely,

/s/ Jehan Zeb Mir, MD

## LETTER, SEPTEMBER 6, 2016

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Re: Claim No. 75-4849-310
Date of Loss 10/15/2009

Dear Ms. Rosenwasser;

I am in receipt of your letter unreasonably stating that statutes have expired when in fact Statutes of Limitations were tolled by 30 days pursuant to California Insurance Code § 11580.2(k), since at no time you provided me a 30-day Notice of expiration of Statutes of Limitations.

You have declined to provide Arbitration since January 2016. You also never responded to my July 13, 2016 request to conduct deposition of Damon Groves and provide a hearing. Furthermore, even in your letter dated August 5, 2016, you still kept a secret when the statutes of limitations were going to expire and expressed no intent to hold arbitration hearing.

Your convenient, self- serving, belated, attempt to set up Arbitration on or after August 18, 2016 in order

to prevent deposition of Damon Groves was untimely for your failure to give 30 day notice of expiration of statutes of limitations as stated above.

I once again urge you that you produce Damon G Groves for Deposition on September 15, 2016 and set up Arbitration Hearing for September 27, 2016 commencing at 11:00 a.m. without any delay.

Thank you for your courtesy and cooperation in advance.

Sincerely,

/s/ Jehan Zeb Mir, MD

## LETTER, SEPTEMBER 8, 2016

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Re: Claim No. 75-4849-310
Date of Loss 10/15/2009

Dear Ms. Rosenwasser;

I am in receipt of your letter dated September 6, 2016.

I do not know what Notice of Expiration of Statutes of Limitations years ago, you are referring to. I could not find anywhere in my file such notification. Nonetheless, at least 30 day Notice of expiration of statutes of limitations pursuant to California Insurance Code § 11580.2(k) to pro-se is in addition to any Notice you might have given years ago. You do not honestly believe that this 30-day Notice is to complete all discoveries and prepare for arbitration hearing including noticing witnesses to testify.

This 30-day Notice is given to protect any uninformed and unsuspecting pro-se from falling in trap of expiration of statutes of limitations and for

that reason this Section is not applicable if one is represented by an attonley who is required to know about expiration of statutes of limitations.

Your problem is far more than that. You did not provide arbitration when requested by me eight (8) months ago in January 2016 or even cared to respond to such request for arbitration.

You again did not timely respond to July 13, 2016 Request to Produce Damon G. Groves for Deposition and conveniently failed to set or give proper, timely Notice of arbitration hearing. Once again in your August 5, 2016 letter, you made no attempt to produce Groves for deposition or timely schedule arbitration or notify arbitration cut-off date.

You first informed me on or about August 18, 2016 when I was out of town about the Arbitration hearing cut-off date of September 1, 2016. That is not a timely Notice of arbitration by any means.

By your delaying, harassing tactics you first prevented discovery by not producing Damon Groves for deposition and did not timely inform and schedule arbitration which you knew that you and only could schedule as I was informed by Sandy Lance at Creative Dispute Resolution.

You have acted in bad faith to prevent proper preparation of the case and to notify and prepare my witnesses to testify at the hearing. This is shown by the fact that you would not stipulate to extend time to complete arbitration beyond September 1, 2016. You would not stipulate to extend time because you have no case to begin with and that is the reason for your inaction in the past 8-months.

I take your September 6, 2016 letter declining to produce Damon Groves for Arbitration and not to conduct arbitration within 30-day tolled period or by stipulation to extend statutes of limitations or tolled period as your final response. I would therefore take deposition of Damon Groves off the Calendar and will initiate lawsuit for bad faith breach of contract, breach of covenant of good faith and fair dealing, emotional distress and other related causes of actions as I stated previously.

Sincerely,

/s/ Jehan Zeb Mir, MD

SUPREME COURT
PRESS