No. __________

In the Supreme Court of the United States

WHISPERING OAKS
RESIDENTIAL CARE FACILITY, LLC, ET AL.,

Petitioners,

v.

TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOR THE SIXTH APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In a liability-insurance-coverage dispute brought in the California state court, all events giving rise to the dispute occurred in Missouri and California served solely as the forum. The insurer moved for summary judgment invoking California law exclusively. The trial court granted summary judgment in favor of the insurer. The California Court of Appeal affirmed, citing certain Missouri authorities but applying California law.

The question presented is:

Whether a forum state's application of its own substantive law to a dispute wholly remote from the forum violates the Due Process Clause of the Fourteenth Amendment and/or the Full Faith and Credit Clause of the United States Constitution.

PARTIES TO THE PROCEEDINGS

Petitioner, and plaintiff-appellants below are Whispering Oaks Residential Care Facility LLC, Whispering Oaks RCF Management Co Inc., and Naren Chaganti.

Respondents, and defendant-appellees below are Travelers Property Casualty Company of America, and Joseph Tancredy.

CORPORATE DISCLOSURE STATEMENT

No parent or publicly held company own's 10% or more of Whispering Oaks Residential Care Facility LLC and Whispering Oaks RCF Management Co Inc.'s stock.

Travelers Property Casualty Company of America's parent, The Travelers Companies, Inc. is publicly held and trades under the ticker symbol TRV.

RELATED PROCEEDINGS

Superior Court of California (Santa Clara Cty.):

> *Whispering Oaks Residential Care Facility LLC et al.* v. *Travelers Property Casualty Company of America et al.*, No. 18CV336673 (May 16, 2024) (summary judgment granted for Travelers and Tancredy)

United States District Court (ND Cal.):

> *Naren Chaganti et al.* v. *Travelers Property Casualty Company of America et al.*, No. 5:19–cv–07493–LHK (May 14, 2020) (action remanded to Santa Clara County Superior Court)

Court of Appeal of California (6th App. Dist.):

Whispering Oaks Residential Care Facility LLC et al. v. *Robert Killingsworth*, No. H050479 (Aug. 15, 2023) (motion-to-quash order affirmed)

Whispering Oaks Residential Care Facility LLC et al. v. *Travelers Property Casualty Company of America et al.*, No. H052423 (Dec. 12, 2025) (judgment affirmed; petition for rehearing denied)

Supreme Court of California:

Whispering Oaks Residential Care Facility LLC et al. v. *Travelers Property Casualty Company of America et al.*, No. S294844 (Mar. 25, 2026) (petition for review denied)

Supreme Court of the United States:

Whispering Oaks Residential Care Facility LLC et al. v. *Travelers Property Casualty Company of America et al.*, No. 25A1402 (June 17, 2026) (time to petition for writ of certiorari extended to August 22, 2026)

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The Sixth Appellate District's unpublished opinion reproduced in the Appendix at App. 1–37. The Superior Court of California, Santa Clara's order is reproduced in the Appendix at App. 38–73.

JURISDICTION

The Sixth Appellate District's opinion was entered on December 12, 2025. The Supreme Court of California denied discretionary review on March 26, 2026. Justice Kagan extended the time to petition for writ of certiorari until August 22, 2026. This Court has jurisdiction under 28 U. S. C. §1257(a)

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the Fourteenth Amendment provides, in relevant part: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U. S. Const., Amdt. XIV, §1.

The Full Faith and Credit Clause provides, in pertinent part: "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U. S. Const., Art. IV, §1.

STATEMENT

In choice-of-law cases, if a forum state lacks any meaningful connection to the underlying events, its substantive law is irrelevant, and applying its law to a remote dispute violates the Constitution. See *Home Ins. Co.* v. *Dick*, 281 U. S. 397, 407–408 (1930); *John Hancock Mut. Life Ins. Co.* v. *Yates*, 299 U. S. 178

(1936); *Phillips Petroleum Co.* v. *Shutts*, 472 U. S. 797, 821–822 (1985).

On the other hand, "[w]here more than one State has sufficiently substantial contact with the activity in question, the forum State, by analysis of the interests possessed by the States involved, could constitutionally apply to the decision of the case the law of *one or another state* having such an interest in the multistate activity." *Richards* v. *United States*, 369 U. S. 1, 15 (1962) (emphasis added).

Here, California has no connection to the dispute beyond being the forum. The dispute arose in Missouri, the location of the insured risk. The third-party "suits" Petitioners faced were brought under Missouri law in Missouri courts. Thus, Missouri law, not California law, should govern the resolution of this matter.

When the insurer moved for summary judgment on the basis of California law alone, the trial court—followed by the court below—proceeded to decide the motion notwithstanding the absence of a California nexus. After stating that there is no difference between the two states' laws, the courts engaged in an eclectic and disjointed reliance on authorities from *both* jurisdictions, selectively quoting from cases to justify applying California law. Their ultimate decision thereby rests on the forum state's law, yielding an outcome that is arbitrary, unfair, confusing, and constitutionally deficient.

Neither the trial court nor the appellate court acknowledged that the dispute bore no relation to California. This omission, coupled with the courts' evident willingness to grant a legally deficient summary-judgment motion through independent, self-directed research, while disregarding Petitioners' arguments and raising issues Respondents should have raised, undermines the impartial role of the court as arbiter and violates the party-presentation principle. See *Clark* v. *Sweeney*, 607 U. S. 7, 9–10 (2025) (per curiam).

This Court's review is therefore essential. Given the lower courts' clear failure to follow this Court's well-established precedent regarding the application of the law of the jurisdiction having at least some connection to the dispute, the Court may wish to consider summary reversal or vacatur for reconsideration under *Home Ins. Co.*, *Yates*, and *Shutts*.

I. Factual Background

Petitioners owned and operated a residential care facility, a state-licensed entity, in St. Louis County, Missouri. Pursuant to a written lease, in 2008, Petitioners leased a portion of their land to Cricket Communications Inc. (Cricket), a wireless communications carrier. App. 2. The lease required Cricket to provide the lessors $1,000,000 in commercial general liability (CGL) insurance coverage. Travelers Property Casualty Company of America (Travelers) issued a CGL policy to Cricket. App. 3. The policy contained an endorsement with a "Blanket Additional Insured" provision covering "Owners, Managers and Lessors" of premises leased to the "named insured" (Cricket). App. 7. The policy does not designate governing law.

Sometime before January 10, 2010, someone—and Petitioners allege that it was a Cricket technician sent out to repair its wireless equipment—unplugged a heater that kept a water pipe from freezing. App. 47.

On January 10, 2010, water pressure to Petitioners' residential care facility fell sharply, and on January 11, 2010, the St. Louis County Department of Public Works issued a "Notice to Vacate" (Notice) alleging lack of running water and sewage overflowing water closets. App. 17, 66. The Notice ordered evacuation, stating that the condition was a public-health hazard. The residents were relocated to other facilities by that evening.

On January 14, 2010, the Missouri Department of Natural Resources (DNR) filed suit against Petitioners in the Circuit Court for St. Louis County, Missouri, alleging that the loss of water pressure violated the Missouri Safe Drinking Water Act (SDWA). App. 10–11. The DNR sought an injunction against reopening the facility until remedial measures were taken and civil penalties for the violation. *Ibid.* Petitioners also faced a number of investigations, including a federal subpoena concerning allegations relating to the incident.

Until 2018, Petitioners were not given a copy of the policy. App. 3. Nor were Petitioners informed of the existence of the policy or its terms. A Travelers agent investigated the incident on behalf of Cricket and wrote to Petitioners in 2011 that "Whispering Oaks was not an insured" in the matter. App. 22.

II. Proceedings Below

In 2018, Petitioners sued Travelers and its adjuster Joseph Tancredy in California state court, alleging, among other things, that they were covered by the policy, that they were unaware of the policy until 2018, that in 2011 a Travelers' employee had falsely written to them that they were not insured, and that

Travelers failed to defend and indemnify. Petitioners alleged that Missouri substantive law governed the dispute because they faced Missouri governmental actions under Missouri environmental laws in Missouri courts.

Travelers sought summary judgment under California law. App. 52. Despite Petitioners' objection that California has no relationship to the dispute, the trial court stated that there was no difference between the laws of the two States and granted summary judgment to Respondents. In doing so, the trial court conducted independent research and cited Missouri authorities to bolster the motion for summary judgment. It did not address Petitioners' principal objection that California has no relationship to the dispute.

On appeal, the court below did not determine governing law as a threshold issue. Without analyzing whether California had any contacts with the dispute, it held that there was no difference between the laws of the two States and affirmed the trial court by applying California law while reciting provisions of Missouri law.

The California Supreme Court denied review. App. 75.

III. Relevant Missouri and California laws are quite different

A liability insurance policy imposes a duty to defend on the insurer whenever the insured faces a "suit" seeking "damages." See *McCormack Baron Mgmt. Servs., Inc.* v. *Am. Guar. Liab. Ins. Co.*, 989 S. W. 2d 168, 170–171 (Mo. 1999), which states that "the duty to defend is determined by comparing the language of the insurance policy with the allegations in the complaint. If the complaint merely alleges facts that give rise to a claim potentially within the policy's coverage, the insurer has a duty to defend."

Missouri and California diverge significantly in how they interpret key policy terms such as "suit" and "damages," because the two States follow different approaches. Missouri adheres to the "functional equivalent" approach in construing the policy terms, whereas California adopts a "literal" approach. See *Certain Underwriters at Lloyd's of London* v. *Superior Court*, 24 Cal. 4th 945, 959 (2001) (*Lloyd's*) (explaining that California took a "literal approach" and declined to adopt a "functional" or a "hybrid" approach). *Lloyd's* acknowledged contrary authority from Missouri. *Id.*, at 964 (citing, among others, *Brown Group* v. *George F. Brown & Sons*, 963 S. W. 2d 285 (Mo. Ct. App. 1997)).

1. "Suit"

The policy defines the term "suit" to include a "civil proceeding" and "any other alternative dispute resolution proceeding." App. 42–43.

Missouri does not require a court-filed lawsuit for liability-insurance coverage. See *D.R. Sherry Constr. Ltd.* v. *Am. Fam. Mut. Ins. Co.*, 316 S. W. 3d 899, 906 (Mo. 2010) (out-of-court settlement in response to a threat to sue triggers the insurer's duty to indemnify); *Brown Group*, 963 S. W. 2d, at 287–288 (costs of voluntary compliance with environmental rules are subject to indemnity).

By contrast, California holds that a "suit" is a court proceeding initiated by filing a complaint. *Foster-Gardner, Inc. v. Nat. Union Fire Ins. Co.*, 18 Cal. 4th 857, 887 (1998). See also App. 18, n. 13 (noting that under California law, a "suit" requires "actual . . . proceedings").

2. "Damages"

Under Missouri law, the term "damages" includes any expense incurred as a result of a "suit," including out-of-court settlement payments (see *D.R. Sherry*, 316 S. W. 3d, at 906); costs of v oluntary compliance (see *Brown Group*, 963 S. W. 2d, at 287–288); remedial and mitigative costs in environmental cases (see *Superior Equipment Co.* v. *Maryland Casualty Co.*, 986 S. W. 2d 477, 483 (Mo. Ct. App. 1998)); and costs of compliance with equitable remedies in environmental cases (see *Farmland Indus., Inc.* v. *Republic Ins. Co.*, 941 S. W. 2d 505, 512 (Mo. 1997)).

Under California law, the term "damages" is limited to "money ordered by a court," *Lloyd's*, 24 Cal. 4th, at 951, and does not include costs imposed by administrative agencies, *id.*, at 959–960, or "prophylactic" costs incurred by an insured, *AIU Ins. Co.* v. *Superior Court*, 51 Cal. 3d 807, 843 (1990).

If, as the court below stated, the laws of the two states are the same, there would be no reason to cite any California authority given California's lack of connection to the dispute. Nevertheless, it applied California law while citing Missouri authorities.

The lower courts implicitly recognized that the dispute concerns events that occurred in Missouri. Under due process principles, applying California law to a Missouri dispute is unconstitutional because a State's substantive law may be chosen only where that State has a "significant contact or significant aggregation of contacts creating state interests, such that the choice of law is neither arbitrary nor fundamentally unfair." *Allstate Ins. Co.* v. *Hague*, 449 U. S. 302, 312–313 (1981).

REASONS FOR GRANTING THE PETITION

The decision below contravenes this Court's well-settled holdings that the Due Process and Full Faith and Credit Clauses restrain a forum state from applying its own law to a dispute having no substantial connection to the forum.

This Court's review is warranted to correct the lower court's clear departure from *stare decisis* and from this Court's long-established guidelines prohibiting the application of forum law to a distant dispute. The Court should consider summary reversal or vacatur for reconsideration in light of *Allstate* and this Court's other precedents.

I. Missouri law requires the insurer to defend at least two "suits"

Petitioners frame their argument around two "suits" they allege invoked the insurer's duty to defend. Under the procedure in California, if either of these "suits" triggers the insurer's duty to defend, summary judgment must be denied.

A. The DNR Suit

The DNR suit, brought under the Missouri Safe Drinking Water Act (SDWA), alleged that Whispering Oaks failed to comply with state laws and regulations requiring a certified operator for its public water system, failed to maintain an emergency operations plan, failed to maintain adequate water pressure, and failed to monitor residual disinfectant concentrations. App. 10–11, 45–46. The DNR sought an injunction to close the facility until the public water system fully complied with the SDWA and sought civil penalties to be paid to the St. Louis County Public School Fund for past violations. App. 15.

1. Injunction

Under Missouri law, the costs incurred to bring the public water system up to required water-pressure specifications and to monitor disinfectant concentrations are recoverable as "damages."

The court below acknowledged this, citing *Brown Group*, 963 S. W. 2d, at 286–288, for the proposition that "remediation costs undertaken under threat that the state would remediate and sue for its costs were damages imposed by law." App. 19–20, n. 14. Yet, after citing *Brown Group* and *D.R. Sherry*, instead of applying those principles, the court below concluded that the Notice is not a "suit" seeking "damages" by applying California law. It discarded binding Missouri precedent as "inapposite." *Ibid.*

The notion that certain compliance costs are not "damages" comes from California law, which excludes from "damages" any "prophylactic" costs. App. 66; *AIU*, 51 Cal. 3d, at 841.

Accordingly, under Missouri law the insurer had a duty to defend.

2. Civil Penalties

The DNR's complaint sought civil penalties payable to the Public School Fund, as noted at App. 15, which, under Missouri law, are treated as "damages" under a liability insurance policy. See *State Farm Fire & Cas. Co.* v. *Nat'l Research Ctr. for Coll. & Univ. Admissions*, 445 F. 3d 1100, 1104–1105 (CA8 2006) (applying Missouri law).

The policy does not define the terms "penalty" or "civil penalty." It expressly excludes fines or penalties in three situations: (1) willful violation of a penal statute relating to the sale of pharmaceuticals; (2) the Telephone Consumer Protection Act (TCPA); and (3) the Internal Revenue Code (IRC). App. 16–17. No Missouri court has held that SDWA civil penalties are punitive and not remedial. Missouri likewise does not bar coverage for punitive damages. See *Colson* v. *Lloyd's of London*, 435 S. W. 2d 42, 47 (Mo. Ct. App. 1968); *Ohio Cas. Ins. Co.* v. *Welfare Fin. Co.*, 75 F. 2d 58, 59–60 (CA8 1934) (applying Missouri law).

Under Missouri law, these indicia would have resulted in coverage based on the doctrine of reasonable expectations of the insured. See *Estrin Const. Co.* v. *Aetna Cas. & Surety Co.*, 612 S. W. 2d 413, 418–420 (Mo. Ct. App. 1981).

B. The St. Louis County Notice to Vacate

The Notice stated that Petitioners' business had to be evacuated immediately due to "No running water service to plumbing fixtures" and "Sewage waste overflowing water closets." App. 17, 66. This is "property damage" caused by an "accident."

Missouri does not define the term "suit" as limited to a court-initiated lawsuit (see *D.R. Sherry*, 316 S. W. 3d, at 906; *Brown Group*, 963 S. W. 2d, at 287–288). Therefore, costs to remediate the sewage overflow are "damages" under Missouri law. The court below disagreed that the Notice was a "suit" under the policy and thus concluded that its remedial costs are not "damages." This is an application of California law, which requires an "actual . . . proceeding." App. 19, n. 13.

Applying the law of a State with which there is no contact is arbitrary and unfair. *Shutts*, 472 U. S., at 821–822.

II. The Decision Below Directly Conflicts With This Court's Precedent

The California Court of Appeal's application of forum state's law to a remote dispute cannot be squared with this Court's long-standing precedents.

In *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930), a policy issued in Mexico by a Mexican insurer to a Mexican citizen covered a Mexican risk and restricted coverage to losses occurring in certain Mexican waters where the loss actually occurred. The policy permitted suit within one year from the date of loss, as allowed by Mexican law. Texas law, however, invalidated the shortening of the limitations period to less than two years. More than a year after the insured property was destroyed, Dick, as assignee of the policy proceeds, brought suit in Texas. This Court held that applying Texas law to void the contract's limitation-of-action clause violated due process because Texas, which had no contact with the transaction beyond the assignee's domicile, was "without power" to affect the terms of the contract, and Texas's attempt to impose a greater obligation than that agreed upon "violates the guaranty against deprivation of property without due process of law." *Id.*, at 408–409.

In *Yates*, 299 U. S. 178 (1936), a Massachusetts insurer issued a life insurance policy to a New York resident, delivered in New York, who later died in

New York. The insured's spouse, who had relocated to Georgia—a State with no connection to the claim—sued the insurer there. The central issue was whether the insured had materially misrepresented his health at the time of application for the policy. Under New York law, such a misrepresentation could void the policy; by contrast, Georgia law did not impose the same consequence. This Court held that the Georgia court's application of forum law and its failure to apply the relevant New York statute violated the Full Faith and Credit Clause of the U. S. Constitution, reflecting the federal interest in ensuring that the State with the most significant relationship to the dispute be respected.

Years later, this Court reiterated the principle in *Lauritzen* v. *Larsen*, 345 U. S. 571, 590–591 (1953): "We have held it a denial of due process of law when a state of the Union attempts to draw into control of its law otherwise foreign controversies, on slight connections, because it is a forum state."

The court below ignored this Court's directive forbidding the application of a state's law with no relationship to the dispute. Accordingly, review and, if appropriate, vacatur or reversal are warranted to preserve the Court's authority and to remind lower courts that departures from established precedent are not permitted.

Applying California law to this case violates the U. S. Constitution under the precedents set by *Allstate*, *Home Ins. Co.*, and *Yates*. The decision of the California Court of Appeal indicates that some state courts entirely ignore their duty to recognize constitutional limitations on choice of law. If not corrected, the decision below could encourage other courts to ignore constitutional protections for litigants and circumvent this Court's precedents.

III. Reversal or Vacatur Is Warranted

This Court has summarily reversed state courts that ignored or refused to apply controlling precedents. The "Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett* v. *Rose*, 496 U. S. 356, 371 (1990).

CONCLUSION

This Court should grant certiorari. The Court may wish to consider summary reversal or vacatur for reconsideration in light of *Allstate*, *Home Ins. Co.*, and *Yates*.

Respectfully submitted.

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AUGUST 2026

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APPENDIX

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Appendix A
[Filed: Dec. 12, 2025]

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

WHISPERING OAKS RESIDENTIAL CARE FACILITY LLC et al., Plaintiffs and Appellants, v. TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA et al., Defendants and Respondents.	H052423 (Santa Clara County Super. Ct. No. 18CV336673)

In this insurance coverage dispute, plaintiffs Whispering Oaks Residential Care Facility LLC (Whispering Residential), Whispering Oaks RCF Management Co. Inc. (Whispering Management), and Naren Chaganti sued a third party's insurer, Travelers Property Casualty Company of America (Travelers).

Plaintiffs alleged that Travelers owed them a duty to defend and indemnify in various proceedings and investigations stemming from a frozen pipe on plaintiffs' premises.[1] At summary judgment, the trial court ruled that Travelers owed plaintiffs coverage only where, as relevant here, a " 'suit' " alleged " 'damages' " because of " 'property damage,' " as those terms were used in the insurance policy. Reasoning that none of the proceedings identified by plaintiffs qualified, the court ruled that Travelers did not owe plaintiffs a duty to defend or indemnify.

Plaintiffs also pleaded a tort claim for interfering with a contract between plaintiffs and a third party, which the trial court ruled at summary judgment was barred by the statute of limitations.

Plaintiffs appeal from the judgment for Travelers and individual defendant Joseph Tancredy, challenging the summary judgment ruling, the denial of a motion to compel, and the award of costs to defendants as the prevailing parties. We will affirm the judgment.

I. BACKGROUND

A. *The Operative Third Amended Complaint*

Plaintiffs alleged as follows.

In 2008, Cricket Communications Inc. (Cricket) leased space on a water tank owned by Whispering Oaks Health Care Center Inc. "for the transmission and reception of radio communication signals" and

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[1] By this lawsuit, plaintiffs are not seeking coverage for any losses they suffered as an immediate result of the frozen pipe. Rather, their coverage claims address only Travelers's duty to defend and indemnify.

related "facilities" and "equipment" that Cricket would "install and maintain." The lease required Cricket to secure commercial general liability insurance in an aggregate amount of $1 million, which could be satisfied by an endorsement on Cricket's master policy. Whispering Oaks Health Care Center Inc. assigned the lease to Whispering Residential and Whispering Management. Chaganti is the "sole owner, member, officer and shareholder" of Whispering Residential and Whispering Management.

Cricket was insured under a commercial general liability insurance policy from Travelers. The policy included a Technology Xtend endorsement that covered plaintiffs as Cricket's landlord.

In January 2010, a water pipe froze. The incident caused substantial loss to plaintiffs' property and business and led to numerous civil proceedings and criminal investigations. Plaintiffs made a claim to Cricket, which referred the matter to Travelers. According to the operative complaint, defendants knew or should have known that Travelers had a duty to defend plaintiffs under the policy in "numerous actions" caused by "the frozen pipe incident." But, plaintiffs claimed, Travelers, including through Tancredy, "made false statements and/or concealed material facts" about the existence and terms of the policy and denied the required defense. Plaintiffs alleged they had no opportunity to review the policy until March 2018.

Plaintiffs pleaded seven relevant causes of action: (1) declaratory relief addressing (a) whether defendants owed plaintiffs a duty to defend and indemnify "numerous suits and investigations" and (b) whether plaintiffs are beneficiaries of the policy Cricket obtained from Travelers; (2) breach of the insurance contract; (3) breach of the duty of good faith and fair dealing in the insurance contract; (4) bad faith refusal to honor the insurance contract; (5) misrepresentation and concealment of the insurance policy and its provisions; (6) vexatious failure to pay under the policy; and (7) conspiracy with Cricket to (a) terminate Cricket's lease with plaintiffs and (b) prevent plaintiffs from enjoying the insurance benefits to which they were entitled under the lease.[2] The first six causes of action were based on Travelers's alleged duty to defend and indemnify plaintiffs in unspecified proceedings.

B. *The Summary Judgment Ruling*

Defendants moved for summary judgment or in the alternative summary adjudication, addressing plaintiffs' claims in two groups. Defendants asserted that the first six causes of action failed because they depended on their alleged duty to defend or indemnify plaintiffs under the policy, but they owed plaintiffs no such duty. Defendants argued that the seventh cause of action (1) was not adequately pleaded as a conspiracy claim; (2) failed on the merits as a tortious interference claim; and (3) was barred by the statute of limitations as a tortious interference claim.

While defendants' summary judgment motion was pending, plaintiffs unsuccessfully moved to compel Travelers to provide further responses to certain documents requests. Focusing on plaintiffs' coverage

[2] Plaintiffs' eighth and ninth causes of action were not pleaded against defendants. The trial court sustained Travelers's demurrer to the 10th through 12th causes of action, none of which were pleaded against Tancredy. Plaintiffs do not challenge the demurrer ruling or the denial of leave to amend.

claims, the trial court denied as irrelevant discovery targeted at whether Travelers induced Cricket to terminate its lease with Whispering Residential and Whispering Management.

The trial court granted summary judgment for defendants. It ruled that the first six causes of action failed because Travelers had no duty to defend or indemnify plaintiffs and that the seventh cause of action was a time-barred tortious interference claim. The court rejected defendants' alternate ground for resolving the seventh cause of action, ruling that defendants had not carried their initial burden of showing that the claim was substantively deficient.

C. *Entry of Judgment and Appeal*

The trial court entered judgment awarding defendants their costs of suit from plaintiffs. It amended the judgment specifying that defendants' costs were $2,534.65. Plaintiffs timely appealed.

II. DISCUSSION

A. *Summary Judgment*

When a defendant has prevailed on summary judgment, " ' "we review the record de novo to determine whether [they have] conclusively negated a necessary element of the plaintiff's case or demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial." ' " (*Saelzler v. Advanced Group 400* (2001) 25 Cal. 4th 763, 767.) The moving defendant "bears the burden of persuasion that there is no triable issue of material fact and that [it] is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) Upon a defendant's prima facie showing of the nonexistence of a triable issue of material fact, the plaintiff "is then subjected to a burden of production . . . to make a prima facie showing of the existence of a triable issue of material fact." (*Ibid*.) "We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal. 4th 1028, 1037.)

Plaintiffs contend that the trial court erred in granting summary judgment in that (1) plaintiffs were entitled to coverage under the Travelers insurance policy; (2) plaintiffs were entitled to a declaration that they were insured under the policy; (3) plaintiffs' claim for interference with the Cricket lease was not barred by the statute of limitations; and (4) defendants' moving papers were deficient in various ways. But defendants carried their initial burden of production and ultimate burden of persuasion to demonstrate their entitlement to summary judgment.

1. *Coverage Claims*

Challenging the first six causes of action, defendants submitted the insurance policy, interrogatory responses identifying the proceedings for which plaintiffs claimed Travelers owed a duty to defend and indemnify, and documents indicating the scope of the identified proceedings. The trial court ruled that Travelers had no duty as to any of the alleged proceedings, so the first six causes of action failed.

Plaintiffs dispute the trial court's application of the policy and additionally contend that some or all of the coverage claims are beyond the reach of defendants' motion because: (1) Travelers is estopped from denying coverage; (2) defendants' separate statement was defective (Cal. Rules of Court, rule 3.1350(d)(1)); and (3) defendants failed to address all of the issues on which plaintiffs sought declaratory relief in their first cause of action, overlooking plaintiffs' assertion of a dispute concerning their status as insureds under the policy.

As we will explain, defendants established that the alleged proceedings in which plaintiffs claim Travelers owed them a duty were: (1) a government petition for injunction and civil penalties to enforce the Missouri Safe Drinking Water Law filed against plaintiffs; (2) a licensing-related administrative complaint Whispering Residential and Whispering Management filed against the Missouri Department of Health and Senior Services; (3) two lawsuits plaintiffs filed against Cricket;[3] (4) a St. Louis County notice to vacate served on Whispering Residential; (5) federal document subpoenas served on Whispering Residential and Whispering Management; and (6) a Missouri Medical Board complaint against Chaganti's brother. Applying undisputed policy text to the alleged proceedings plaintiffs identified, we conclude that Travelers had no duty to defend or indemnify. We reject plaintiffs' remaining attempts to preserve their coverage claims.

a. *The Insurance Policy*

The Travelers commercial general liability insurance policy identified Cricket as a named insured. The policy's Technology Xtend endorsement provided that "[a]ny person or organization that is a premises

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[3] One of the suits was filed by Chaganti as assignee of rights from Whispering Residential and Whispering Management.

owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you."[4] For summary judgment purposes, there is no dispute that under this provision plaintiffs are insureds under the policy because liability arose out of that part of the premises plaintiffs leased to Cricket.

Under the policy, Travelers "will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury'[[5]] or 'property damage'[[6]] to which this insurance applies. [Travelers] will have the right and duty to defend the insured against any 'suit'[[7]] seeking those damages" but "no duty to defend the insured against any 'suit' seeking damages for 'bodily injury' or 'property damage' to

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[4] When the policy refers to "you," the reference includes Cricket.

[5] Bodily injury is defined in the commercial liability coverage form as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time," but an endorsement amends that definition to include physical harm and mental harm resulting from physical harm.

[6] Property damage includes "[p]hysical injury to tangible property [and] all resulting loss of use of that property" as well as "[l]oss of use of tangible property that is not physically injured." But there is an exclusion for property damage to "[p]roperty you own, rent, or occupy."

[7] Under the commercial liability coverage form, a suit is "a civil proceeding in which damages because of 'bodily injury', 'property damage' or 'personal and advertising injury' to which this insurance applies are alleged." The definition includes "[a]n arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent" and "[a]ny other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent."

which this insurance does not apply." The insurance described in the commercial general liability coverage form applies to " 'bodily injury' and 'property damage' only if" caused by an " 'occurrence' "[8] during the policy period. A Web Xtend Liability endorsement expands the definition of "suit" to include "a civil proceeding in which damages because of" covered injury or damage "are alleged."

b. *Legal Principles Governing Policy Interpretation*

" '[I]nterpretation of an insurance policy is a question of law.' " (See *Palmer v. Truck Ins. Exchange* (1999) 21 Cal. 4th 1109, 1115 (*Palmer*); accord *Seeck v. Geico General Ins. Co.* (Mo. 2007) 212 S. W. 3d 129, 132.) Although plaintiffs contend that the policy must be interpreted under Missouri law, we need not choose between Missouri and California law, because our analysis is the same. We apply " 'the ordinary rules of contractual interpretation' " to infer " 'the mutual intention of the parties' " in contracting for a policy of insurance. (*Palmer*, at p. 1115.) We interpret the policy's "written provisions" in context, giving the "terms their ' "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage." ' " (*Ibid.*; *Seeck*, at p. 132 ["Absent an ambiguity, an insurance policy must be enforced according to its terms"].) "A policy provision is ambiguous only if it is susceptible to two or more reasonable constructions despite the plain

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[8] An occurrence is "an accident, including continuous or repeated exposure to substantially the same general harmful conditions."

meaning of its terms within the context of the policy as a whole." (*Palmer*, at p. 1115, italics omitted; accord, *Seeck*, at p. 132.) If a provision is ambiguous, a "court may then 'invoke the principle that ambiguities are generally construed against the party who caused the uncertainty to exist (i. e., the insurer) in order to protect the insured's reasonable expectation of coverage.' " (*Palmer*, at p. 1115; see also *Seeck*, at p. 132 ["appl[ying] 'the meaning which would be attached by an ordinary person of average understanding if purchasing insurance,' [citation], and resolve[] ambiguities in favor of the insured"].)

c. *Travelers's Duty*

Plaintiffs do not dispute that the policy only obligated Travelers to defend or indemnify suits seeking damages for covered injury or property damage. Plaintiffs do dispute defendants' contention that plaintiffs can identify no qualifying suit giving rise to the duty to defend or indemnify. As we will explain, defendants carried their burden as to the first six causes of action by showing that plaintiffs cannot identify a covered suit.[9]

i. *The Missouri Safe Drinking Water Law Enforcement Action*

On January 14, 2010, the State of Missouri through its Attorney General, the Missouri Department of Natural Resources, and the Missouri Safe Drinking Water Commission petitioned for injunctive relief and civil penalties against plaintiffs alleging violations of

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[9] Defendants' showing was sufficient to carry their initial burden on the coverage issue, and plaintiffs did not raise any material factual disputes on that issue in their opposition.

the Missouri Safe Drinking Water Law. The government alleged that plaintiffs operated a water distribution system but (1) lacked a certified operator; (2) lacked an emergency operations plan; (3) failed to monitor quality; and (4) failed to maintain adequate water pressure on "January 8, 2010, and other dates not yet known." The government sought injunctive relief prohibiting plaintiffs "from any further violations of the Missouri Safe Drinking Water Law and its implementing regulations" and "from operating the facility and from dispensing drinking water until the Department has determined that the facility is operating in compliance with the Safe Drinking Water Law." The government requested civil penalties of $50 per day for the first violation and $100 per day for each successive violation and "all costs of these proceedings." In an April 2011 amended petition against only Chaganti and Whispering Residential, the government added a claim that pipes burst in December 2010.[10]

After a jury trial, the court entered judgment against Whispering Residential reflecting, among other relief, civil penalties of $135,650—originating with a $50 civil penalty for failing to maintain minimum water pressure on January 8, 2010. The

[10] After defendants filed their respondent's brief, plaintiffs moved for our consideration—by augmentation, judicial notice, or an evidentiary hearing—of extrarecord documents about this enforcement action. The only document plaintiffs proffered, however, is the government's motion for preliminary injunction in the enforcement action. We decline to expand the summary judgment record beyond what the parties presented to the trial court. (See *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434, 444, fn. 3.) The motion is denied.

judgment included equitable relief requiring Whispering Residential to (1) develop, implement, and submit an approvable emergency operations plan; (2) obtain services of a certified operator and place their water system under the supervision of a certified chief operator; and (3) not operate any other public water system in Missouri.[11]

Defendants argue, as they did in the trial court, that the enforcement action is not covered because (1) the government sought civil penalties rather than damages and, even if the penalties were tantamount to damages, (2) the government alleged no predicate covered injury, not even the property damage plaintiffs argued was the root of the enforcement action. The trial court ruled that the enforcement action was not a " 'suit' " involving " 'damages' " stemming from covered " 'property damage.' "

On appeal, plaintiffs contend that their costs in complying with the equitable relief are " 'damages' " because this was an "environmental enforcement action[]" and the civil penalties sought were damages because they were remedial. But we agree with the trial court's conclusion that the injunctive relief and civil penalties at issue in the Missouri Safe Drinking Water Law enforcement action are not "damages," so the enforcement action was not covered.

Missouri and California courts have interpreted insurance policies' undefined "damages" terms in the context of the Comprehensive Environmental

[11] In its original form, the judgment barred Whispering Residential from operating any public water system in Missouri; the judgment was amended to permit Whispering Residential to operate the one water system at issue.

Response, Compensation, and Liability Act of 1980 (CERCLA; 42 U. S. C. §9601 et seq.). (See *Farmland Industries, Inc. v. Republic Ins. Co.* (Mo. 1997) 941 S. W. 2d 505, 508 (*Farmland*); *AIU Ins. Co. v. Superior Court* (1990) 51 Cal. 3d 807, 825–842 (*AIU*).) Under CERCLA, the costs of removing or remediating an environmental harm "are commonly known as 'environmental response costs.' The government may require a responsible party to pay environmental response costs through one or more means." (*Farmland*, at pp. 506–507.) The government may do the environmental remediation itself and sue for reimbursement, it can sue to compel abatement, or it can secure a consent decree requiring a response action. (*Id.* at p. 507.)

The *Farmland* court ruled that "[t]he ordinary meaning of damages . . . includes environmental response costs required by the government." (*Farmland*, *supra*, 941 S. W. 2d at p. 508.) This is so even where equitable relief is the government's vehicle to compel removal and remediation because "the equitable relief at issue is a cost that Farmland is legally obligated to pay as compensation or satisfaction for a wrong or injury." (*Id.* at p. 509.) Put differently, "[t]he word 'damages' is used to make clear that insurers are obligated to cover both direct and consequential losses because of property damage for which an insured can be held liable." (*Id.* at p. 510.) But "fines or penalties are not included within the ordinary meaning of 'damages.' The ordinary meaning of a 'fine' or 'penalty' is not compensation or reparation for an injury; rather, it is a sum imposed as punishment." (*Id.* at pp. 510–511.)

Similarly, the *AIU* court reasoned that "[t]he ordinary, nontechnical meaning of 'damages' . . . encompasses reimbursement of response costs." (*AIU*, *supra*, 51 Cal. 3d at p. 828.) The out-of-pocket costs of investigating the release of hazardous waste into water and removing the waste were a loss. (*Id*. at pp. 828–829.) Reimbursement of the response costs was " 'compensation' " for the loss. (*Id*. at p. 829.) The court also held that, in the CERCLA context, "injunctive relief and reimbursement of response costs serve substantially the same purpose" so the "policy language is ambiguous as applied to remedial and mitigative costs incurred pursuant to injunction under CERCLA and similar statutes, and therefore must be construed in favor of coverage." (*Id*. at p. 841.) But the court cautioned that the costs to comply with an injunction based on conduct that did not cause the plaintiff any cognizable property or personal damage "might not be covered." (*Id*. at p. 839.)

Applying the ordinary meaning of "damages" recognized by either Missouri or California, "damages" does not extend to the equitable relief and civil penalties at issue here: The remedies sought by the government were not compensatory.

The equitable relief here required Whispering Residential to operate its well in compliance with Missouri law in the future by hiring necessary personnel and preparing an emergency plan. The government never sought injunctive relief beyond compelling future compliance with Missouri law. Unlike the CERCLA cases on which plaintiffs rely, the injunctive relief at issue here does not involve anything analogous to the removal or remediation of contamination caused by hazardous waste. (Cf. *Farmland*, *supra*, 941 S. W. 2d at p. 509; *AIU*, *supra*, 51 Cal. 3d at pp. 829, 841.) The equitable relief sought here involved no payment as compensation or satisfaction for a wrong or injury.

The civil penalties the government sought and obtained were a statutorily fixed per-violation sum payable to the government. (See Mo. Rev. Stat. § 640.130.) The petition called for the penalties to be paid to the State of Missouri (St. Louis County School Fund), although Whispering Residential was ultimately ordered to pay the State of Missouri (St. Louis County). Neither the St. Louis County School Fund nor St. Louis County were party to the litigation, and neither were alleged to have suffered damage. The undisputed material facts defendants developed reflect that the civil penalties sought and awarded under Missouri law were not compensation for an injury, but a sum imposed as punishment for statutory violations as to staffing, planning, and maintenance of water pressure. (See generally *Farmland*, *supra*, 941 S. W. 2d at p. 511 [observing that civil penalties would not be damages if they were "a sum imposed as punishment" rather than "compensation or reparation for an injury"].)

Plaintiffs' attempt to analogize the civil penalties provision here to the statutory damages made available by the Telephone Consumer Protection Act of 1991 (TCPA; 47 U. S. C. § 227 et seq.) is unpersuasive.

The TCPA restricts " 'unsolicited, automated telephone calls to the home and . . . certain uses of facsimile ([f]ax) machines and automatic dialers.' [Citation.] The act allows a private right of action for recipients of unsolicited communications that violate the act. [Citation.] The recipients can bring 'an action to recover for actual monetary loss from such a violation, or to receive $500 in damages for each such violation, whichever is greater.' " (*Columbia Casualty Co. v. HIAR Holding, L.L.C.* (Mo. 2013) 411 S. W. 3d 258, 261.) In holding that a class action seeking statutory damages under the TCPA was not a penalty or a fine exempt from the defendant violator's insurance coverage for property damage and advertising injury, the Missouri Supreme Court reasoned that TCPA statutory damages were intended at least in part to remedy " 'uncertain and hard-to-quantify actual damages,' including 'loss of use of equipment and phone lines for outgoing and incoming faxes, the expense of paper and ink, and the resultant inconvenience and annoyance . . . [of] unsolicited fax advertisements . . . interfer[ence] with company switchboard operations and burdens [on] the computer networks of those recipients who route incoming faxes into their electronic mail systems.' " (*HIAR*, at pp. 267–268.)

Here, in contrast, no one in the enforcement action claimed an injury caused by plaintiffs' statutory violations. Plaintiffs' violations of the Missouri Safe Drinking Water Law subjected them instead to nonremedial fines or penalties.

Plaintiffs argue that even if the government's lawsuit sought fines or penalties, the suit is covered because the Travelers policy contains an exclusion for certain sorts of penalties, suggesting that penalties not expressly excluded are covered damages. Specifically, plaintiffs point to exclusions for (1) " '[b]odily injury' or 'property damage' arising out of the willful violation of a penal statute"; (2) " 'bodily injury', 'property damage', 'personal injury', 'advertising injury' or 'website injury' arising out of unsolicited communications by or on behalf of any insured" including actual or alleged violations of the TCPA or other statutes "that bar, prohibit or penalize such communications"; and (3) "taxes, fines, interest, penalties or other cost imposed under, or resulting from, any provision of the Internal Revenue Code of 1986, as amended, or any similar state or local law." Plaintiffs contend that these exclusions signify that the omission of any corresponding exclusion for penalties under the Missouri Safe Drinking Water Law would create a reasonable understanding that the latter are covered. We disagree. Nothing about these exclusions suggests that the civil penalties at issue here were damages in the first instance.

ii. *Notice to Vacate*

On January 11, 2010, St. Louis County served Whispering Residential with a notice to vacate the building within 48 hours, because there was "[n]o running water service to plumbing fixtures" and "[s]ewage waste overflowing water closets." The county also specified that "the residents of this building must be relocated to state[-]approved facilities that are capable of providing for their special care needs." According to a declaration Chaganti filed in other litigation, which defendants included in support of their summary judgment motion, state officials evacuated the nursing home and placed the residents at other locations.[12]

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[12] Chaganti's declaration referred to both a notice to vacate and a condemnation notice. The interrogatory responses on which defendants rely to identify the alleged proceedings for which plaintiffs claim coverage referred only to condemnation.

In the trial court, defendants argued that the notice to vacate was not a " 'suit' seeking 'damages' " for covered injury because it "was not an adjudicative proceeding . . . wherein liability may be determined and covered damages awarded." Plaintiffs responded in the trial court and maintain on appeal that the notice was an injunction arising from an occurrence, which is covered for the same reasons that the Missouri Safe Drinking Water Law enforcement action is covered. And plaintiffs assert that because the "term 'suit' is defined as 'a civil proceeding' including 'arbitration' and 'any other alternative dispute resolution' proceeding," it extends to a quasi-judicial administrative proceeding and any coercive government actions. But for the proposition that coercive government action satisfied the policy definition of a "suit," plaintiffs merely cited cases from a handful of states from outside of Missouri or California where the term was undefined. (See *Aetna Casualty & Surety Co. v. Commonwealth* (Ky. 2005) 179 S. W. 3d 830, 836–838 [holding that costs of participating in Environmental Protection Agency administrative process were within reasonable expectations based on the undefined term " 'suit' "]; *R.T. Vanderbilt Co., Inc. v. Continental Casualty Co.* (2005) 273 Conn. 448, 454, 465; *Johnson Controls, Inc. v. Employers Ins. Of Wausau* (Wis. 2003) 665 N. W. 2d 257, 281–285; *Compass Ins. Co. v. City of Littleton* (Colo. 1999) 984 P. 2d 606, 622.)[13]

But on appeal plaintiffs characterize the alleged suit at issue as the notice to vacate, making no mention of the condemnation.

[13] Under California law, our Supreme Court has held that the undefined term "suit" unambiguously refers to " 'a civil action commenced by filing a complaint.' " (*Ameron Internat. Corp. v. Insurance Co. of State of Pennsylvania* (2010) 50 Cal. 4th 1370,

The definition of "suit" in the policy does not encompass the notice to vacate. Under the commercial liability coverage form and the Web Xtend endorsement, a suit is "a civil proceeding" alleging covered damages, an "arbitration proceeding in which such damages are claimed and to which [the insured] must submit or do[es] submit with our consent," or "[a]ny other alternative dispute resolution proceedings in which such damages are claimed and to which [the insured] submit[s] with our consent." Defendants have satisfied their initial burden of demonstrating that the notice to vacate was not a suit because it was simply a demand that plaintiffs vacate the premises, not a civil, arbitral, or alternate dispute resolution proceeding. Plaintiffs suggest that the notice to vacate, absent compliance, could have been followed by some form of civil, arbitral, or alternate dispute resolution proceeding, but plaintiffs produced no evidence that such proceedings were involved.[14] So defendants established

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1379, quoting *Foster-Gardner, Inc. v. National Union Fire Ins. Co.* (1998) 18 Cal. 4th 857, 878.) The court has since broadened the definition of suit, to include certain federal administrative adjudicative proceedings before an administrative law judge. (See *Ameron*, at pp. 1374–1375; see also *id*. at p. 1388 (conc. opn. of Kennard, J.).) But even as relaxed, under California law, the undefined term " 'suit' " requires "actual . . . proceedings." (*Foster-Gardner*, at p. 878.)

[14] The absence of any proceedings distinguishes *Houser Holdings CA, LLC v. Tokio Marine Specialty Ins. Co.* (N.D.Cal. 2024) 738 F. Supp. 3d 1226, 1228, where the District Court ruled that a county-initiated hearing to recover "damages that Houser allegedly owed to the [c]ounty for doing repair work" was a " 'suit' " as defined in the policy so the insurance company owed Houser a duty to defend. Nor have plaintiffs developed their analogy to Civil Code section 910, subdivision (a), which provides for a written notice of claim that has "the same force and effect as a notice

for the purposes of summary judgment that the notice to vacate did not give rise to coverage.

iii. *Federal Subpoenas*

The federal document subpoenas served on Whispering Residential and Whispering Management related to an investigation into "criminal health care fraud." So the subpoenas were unrelated to the frozen water pipe or any other "occurrence" under the policy or any suit seeking damages from plaintiffs because of covered injury or damage. Plaintiffs instead suggest that the fraud investigation was *motivated* by the water pipe incident. But the federal government's undeclared motivations for investigating alleged health care fraud do not change the basis for their claim. Travelers did not owe a duty to defend or indemnify plaintiffs in connection with alleged fraud.

iv. *The Proceedings Against Third Parties*

The remaining proceedings are suits filed by plaintiffs and a Missouri Medical Board disciplinary complaint against Chaganti's brother. None are related

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of commencement of a legal proceeding." The Missouri cases plaintiffs invoke are similarly inapposite. (See *D.R. Sherry Constr., Ltd. v. American Family Mut. Ins. Co.* (Mo. 2010) 316 S. W. 3d 899, 904, 906 [holding that insured was entitled to coverage of damages it was legally obligated to pay under pre-suit settlement agreement resolving customer's claim of property damage]; *Brown Group, Inc. v. George F. Brown & Sons, Inc.* (Mo.Ct.App. 1997) 963 S. W. 2d 285, 286–288 [holding that remediation costs undertaken under threat that the state would remediate and sue for its costs were damages imposed by law].)

to any suit seeking damages from plaintiffs because of covered injury or damage.

As to their affirmative litigation, plaintiffs argue that offensive tactics may in some contexts be defensive. But plaintiffs do not persuasively explain how their affirmative litigation qualifies for coverage. Plaintiffs concede that their licensing suit against the Missouri Department of Health and Senior Services (DHSS) predated the water pipe incident. Plaintiffs assert that their suit against Cricket—a named insured under the Travelers policy—was a reasonable attempt to mitigate losses brought in reliance on Travelers's false statement that plaintiffs were not an insured under Cricket's policy. Plaintiffs cannot persuasively liken the suits to defensive attempts to defeat or offset liability, when plaintiffs merely sought to prosecute their own claims for what they believed to be their uninsured losses. To the extent plaintiffs maintain that their pursuit of these claims is intertwined with their defense against others' suits, this theory founders on what we have explained is plaintiffs' failure to identify any suit against them that would trigger coverage.

As to the disciplinary action against Chaganti's brother, plaintiffs contend that the disciplinary proceedings were motivated by negative publicity about Chaganti's brother caused by the frozen water pipe incident. But whatever unalleged motivations led the state medical board to initiate the proceedings, their basis was the termination in 2006 of the brother's staff privileges at two different medical facilities for his alleged failures to report his affiliations with other hospitals.

d. *Estoppel*

In December 2011, Robert Killingsworth, a Travelers insurance adjuster processing plaintiffs' claim against Cricket, told Chaganti that "Cricket's CGL policy is not for the 'benefit' of Whispering Oaks as it relates to *liability claimed against Cricket*. Whispering Oaks is not an insured under our policy in this matter." (Italics added.) Plaintiffs contend that, lacking a copy of the policy, they reasonably understood this statement as an assertion that Cricket's policy provided *no* coverage for plaintiffs as Cricket's lessor, and in reliance sued Cricket for failing to provide insurance for its lessor's benefit. Plaintiffs argue Killingsworth's e-mail constituted a coverage denial, and Travelers is now estopped from denying coverage on any ground other than plaintiffs' failure to qualify as an insured.

Generally, "estoppel requires '(1) an admission, statement, or act inconsistent with the claim afterwards asserted . . . , (2) action by the other party on the faith of such admission, statement, or act, and (3) injury to such other party, resulting from allowing the first party to contradict or repudiate the admission, statement, or act.' " (*Brown v. State Farm Mut. Auto. Ins. Co.* (Mo. 1989) 776 S. W. 2d 384, 386 (*Brown*); see also *Feduniak v. California Coastal Com.* (2007) 148 Cal. App. 4th 1346, 1359.) Although it ordinarily presents a question of fact, "where the facts are undisputed and only one reasonable conclusion can be drawn from them, whether estoppel applies is a question of law." (*Feduniak*, at p. 1360.)

Under Missouri law, estoppel may preclude an insurer that first announces a specific defense and later seeks to rely on an inconsistent theory from asserting the inconsistent theory where "the announcement of the specific defense . . . lulls the insured into relying to his detriment and subsequent injury on the insurer's stated position." (*Brown*, *supra*, 776 S. W. 2d at p. 389; see *id*. at p. 388.) But "absent a statement which excludes other defenses and upon which the insured reasonably relies in preparing to preserve its claim, estoppel is not applicable." (*Id*. at p. 389; see also *Waller v. Truck Ins. Exchange, Inc.* (1995) 11 Cal. 4th 1, 34–35 [holding estoppel inapplicable where plaintiffs did not detrimentally rely on initial denial letter because plaintiffs could not reasonably believe that there was potential coverage].)

Here, Killingsworth's statement that Whispering Oaks was not the insured with respect to their suit against Cricket did not amount to a statement that Whispering Oaks could never be an insured under the policy, for any purpose. Nor do plaintiffs point to any statement limiting the bases on which Travelers might dispute coverage for any of the alleged proceedings at issue. We discern no factual basis to estop defendants from relying on the insurance policy's express scope to deny plaintiffs coverage both for their suit against Cricket and for their defense against the other proceedings they have identified.[15]

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[15] Plaintiffs seem to argue that Travelers abandoned them by failing to notify them that the proceedings against them were covered. But that argument does not broaden the issues before us—it applies only if the proceedings against plaintiffs were covered in the first place.

e. *Separate Statement*

Defendants' separate statement contained separate sets of facts addressing their request for summary judgment and their requests for summary adjudication of each cause of action. In defendants' requests for summary adjudication of some of the first six causes of action, defendants stated that summary adjudication was appropriate because they owed plaintiffs no duty to "defend or indemnify." Plaintiffs argue that the entire separate statement should have been stricken because each issue of duty must be addressed separately, and the duty to defend and indemnify are separate issues. (See Cal. Rules of Court, rule 3.1350(d)(1).) We disagree.

Defendants alternatively requested summary adjudication of causes of action, not issues of duty. Their separate statement addressed each cause of action separately. And defendants' contention was that there was no coverage in relation to any of the alleged proceedings, so there was no purpose to be served by repeating the same facts for both the duty to defend and the duty to indemnify. Under both Missouri and California law, there can be no duty to indemnify without a duty to defend under a policy such as this one. (See *Sprint Lumber, Inc. v. Union Ins. Co.* (Mo.Ct.App. 2021) 627 S.W. 3d 96, 114; *Certain Underwriters at Lloyd's of London v. Superior Court* (2001) 24 Cal. 4th 945, 958, 968.)

f. *Plaintiffs' Causes of Action*

i. *Declaratory Judgment*

Plaintiffs' declaratory judgment claim included theories based on an alleged coverage dispute and an alleged dispute about plaintiffs' status as insureds. Plaintiffs contend that defendants failed to carry their initial burden on the declaratory relief claim because defendants addressed only the nonexistence of a duty to defend or indemnify but did not refute every theory in the operative complaint. (See *Teselle v. McLoughlin* (2009) 173 Cal. App. 4th 156, 161–162 ["summary judgment may not be granted when the moving party has failed to 'refute [a] tenable pleaded theor[y]' "].) The implication is that even if Travelers owed plaintiffs no duty to defend or indemnify on the facts alleged, the declaratory relief cause of action remained triable because plaintiffs might in some other circumstances be entitled to benefits under the policy. The trial court implicitly rejected this argument, disposing of the first cause of action because none of the underlying actions fell within the policy's coverage. We agree with the trial court.

Declaratory relief requires a justiciable controversy. (See *Gee v. St. Louis County Board of Election Commissioners* (Mo. Ct. App. 2025) 711 S. W. 3d 593, 602 (*Gee*) [under Missouri law, " '[t]o grant a declaratory judgment, the court must be presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, "consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief;" (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law' "]; *City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 79 [under California law, " '[t]he fundamental basis of declaratory relief is the existence of an *actual, present controversy* over a proper subject' "]; *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal. App. 4th 1559, 1582 (*Wilson & Wilson*) [under California law, controversy must be justiciable]; *Gafcon, Inc. v. Ponsor & Associates* (2002) 98 Cal. App. 4th 1388, 1402 (*Gafcon*) [a moving defendant may dispose of a declaratory relief cause of action at summary judgment "by establishing (1) the sought-after declaration is legally incorrect; (2) undisputed facts do not support the premise for the sought-after declaration; or (3) the issue is otherwise not one that is appropriate for declaratory relief"].)

Here, the justiciable controversy disclosed by plaintiffs' operative complaint concerns Travelers's obligation to cover certain claims. One component of the alleged dispute is plaintiffs' status as insureds under the relevant policy. But if the ultimate controversy is resolved on other grounds, there remains no reason to adjudicate plaintiffs' status as insureds under the policy because there remains at best the hypothetical possibility of a future dispute between these parties regarding plaintiffs' entitlement to coverage for some other loss. (See generally *Gee*, *supra*, 711 S. W. 3d at p. 602; *Wilson & Wilson*, *supra*, 191 Cal. App. 4th at pp. 1582–1585.)

As to the core dispute, defendants demonstrated that the declaration sought would be legally incorrect. (See *Gafcon*, *supra*, 98 Cal. App. 4th at p. 1402.) The predicate issues raised in the operative complaint were not independently appropriate for declaratory relief.

ii. *The Second through Sixth Causes of Action*

Each of the second through sixth causes of action is, as pleaded, predicated on the existence of coverage for at least one of the proceedings identified in plaintiffs' discovery responses. So the absence of coverage negates each cause of action.

Plaintiffs argue that the coverage issue does not resolve their fifth cause of action for fraud because they were harmed by what they characterize as Killingsworth's false statement that they were not insured under the policy, including by relying on the statement to sue Cricket.[16] But the summary judgment motion must respond to the allegations pleaded in the complaint. (*Berlanga v. University of San Francisco* (2024) 100 Cal. App. 5th 75, 87.) And what plaintiffs pleaded was that they relied on the alleged false representations by refraining from enforcing Travelers's putative duty to defend and indemnify them. By demonstrating that Travelers had no duty to provide coverage for the identified proceedings, defendants negated essential elements of the cause of action. (See, e. g., *Dean v. Noble* (Mo.Ct.App. 2015) 477 S. W. 3d 197, 204 [essential elements of fraud in Missouri include "proximately caused injury"]; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal. App. 4th 684, 694 [essential elements of fraud in California include "resulting damage"].)

[16] We cannot discern any theory in plaintiffs' appellate briefing or operative complaint by which the second, third, fourth, or sixth causes of action could proceed absent a coverage obligation.

2. *The Seventh Cause of Action: Conspiracy to Injure*

As the bases for the seventh cause of action, plaintiffs alleged that defendants (1) advised Cricket not to comply with its duty to defend, indemnify, and hold plaintiffs harmless under the lease; and (2) induced Cricket to terminate the lease. Given this framing, the cause of action turns not on plaintiffs' entitlement to coverage under the policy but defendants' alleged involvement in Cricket's decisions to act. On defendants' motion, the trial court ruled that plaintiffs' claim accrued by January 2012, when Cricket terminated the lease, and that even under Missouri's five-year statute of limitations, the seventh cause of action was barred by the statute of limitations.

On appeal, plaintiffs contend that they are asserting a tort claim based on interference with a contract under Missouri law. Although plaintiffs agree that the Missouri statute of limitations is generally five years, they invoke the discovery rule to argue that their claims did not accrue under Missouri law until they suspected Travelers played a role in causing Cricket's breach. Alternatively, plaintiffs contend that Travelers is estopped from relying on the statute of limitations because it concealed the existence of the insurance policy and plaintiffs' status as insureds under the policy. We conclude that the seventh cause of action is time-barred.[17]

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[17] Plaintiffs contend that Missouri substantive law governs the statute of limitations analysis. But they also invoke California law to support their theory of delayed discovery. Neither the trial court nor defendants express an opinion; the trial court in its order and defendants in their appellate brief both opined

a. ***The Statute of Limitations at Summary Judgment***

"The 'statute of limitations . . . is an affirmative defense that "seeks to defeat or avoid a plaintiff's cause of action, and alleges that even if plaintiff's petition is true, plaintiff cannot prevail because there are additional facts that permit the defendant to avoid legal responsibility." ' " (*Wolfe v. Walker* (Mo.Ct.App. 2025) 713 S. W. 3d 536, 542; see also *Norgart v. Upjohn Co.* (1999) 21 Cal. 4th 383, 396 (*Norgart*).)

"If the moving defendant argues that it has a complete defense to the plaintiff's cause of action, the defendant has the initial burden to show that undisputed facts support each element of the affirmative defense. Once it does so, the burden shifts to plaintiff to show an issue of fact concerning at least one element of the defense. [Citation.] If, in anticipation of an affirmative defense, the complaint alleges facts to refute it, the pleadings themselves create 'a material issue which defendant[ ] would have . . . to refute in order to obtain summary [judgment].' [Citation.] In the absence of such allegations, the plaintiff can avoid summary judgment only by presenting evidence sufficient to raise a triable issue concerning the affirmative defense." (*Bacon v. Southern Cal. Edison Co.* (1997) 53 Cal. App. 4th 854, 858; see also *Wang v. Nesse* (2022) 81 Cal. App. 5th 428, 438.)

"While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are

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that the result would be the same under either Missouri or California law. Because we conclude that the result is the same under either body of law, we do not resolve the choice of law issue.

susceptible of only one legitimate inference, summary judgment is proper." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal. 3d 1103, 1112; see also *Bartel v. Chicago Title Ins. Co.* (2025) 111 Cal. App. 5th 655, 679 ["the application of the statute of limitations on undisputed facts is a purely legal question that we review de novo"].)

b. *Applicable Limitations Period*

In their opening brief, plaintiffs contend that they pleaded a Missouri law claim for tortious interference with a contract or business expectancy and conspiracy to interfere with a contract. (See *Rice v. Hodapp* (Mo. 1996) 919 S. W. 2d 240, 245; *Fischer, Spuhl, Herzwurm & Associates, Inc. v. Forrest T. Jones & Co.* (Mo. 1979) 586 S. W. 2d 310, 315; see also *Ixchel Pharma, LLC v. Biogen, Inc.* (2020) 9 Cal. 5th 1130, 1141 [stating elements for tortious interference with contractual relations under California law].) Under Missouri law, the applicable limitations period is five years from accrual. (See Mo. Rev. Stat. §516.120; *D'Arcy & Associates, Inc. v. K.P.M.G. Peat Marwick, L.L.P.* (Mo.Ct.App. 2004) 129 S. W. 3d 25, 29 (*D'Arcy*); *Hartman v. Logan* (Mo.Ct.App. 2020) 602 S. W. 3d 827, 838.) Under California law, the limitations period is two years from accrual. (See *Optronic Technologies, Inc. v. Celestron Acquisition, LLC* (2025) 108 Cal. App. 5th 770, 789.)

Plaintiffs alternatively argue that the limitations period should be longer, relying on Missouri statutes applicable to claims for fraud. (See Mo. Rev. Stat. §516.120(5).) But the seventh cause of action is plainly not a claim for fraud.

c. ***Accrual***

"Generally, ' "a statute of limitations begins to run when the cause of action has accrued to the person asserting it, the accrual being whenever such a breach of duty has occurred, or such a wrong has been sustained, as will give a right then to bring and sustain a suit." ' " (*D'Arcy*, *supra*, 129 S. W. 3d at p. 29; see also *Norgart*, *supra*, 21 Cal. 4th at p. 397.) Absent some basis for modifying the accrual date, plaintiffs' interference claim accrued in or before January 2012.

Plaintiffs' first theory of liability—that Travelers conspired with Cricket to refuse to defend, indemnify, and hold plaintiffs harmless under the lease—is on the face of the operative complaint based on December 2011 e-mails that Killingsworth sent to plaintiffs denying coverage under the Travelers policy. To the extent plaintiffs' seventh cause of action is based on Cricket's failure to honor its obligation to supply insurance under the policy—whether by failing to procure a policy or failing to disclose the policy—plaintiffs were aware of that failure in December 2011. Defendants submitted evidence that by that time, accepting plaintiffs' theories about the proceedings that were subject to the duty to defend, plaintiffs had suffered ascertainable damages flowing from the breach of duty—plaintiffs began requesting coverage in 2010. (See *D'Arcy*, *supra*, 129 S. W. 3d at p. 29 [damage is ascertainable "when it can be discovered or is made known, even if its extent remains unknown"].)

Plaintiffs' second theory of liability—that Travelers induced Cricket to terminate the lease—accrued when Cricket terminated the lease in January 2012. At that time, the alleged breach had occurred and caused plaintiffs ascertainable harm—the loss of benefit of the contract.

d. *Extension of the Limitations Period*

Applying a January 2012 accrual date, plaintiffs' complaint was untimely even under Missouri's five-year limitations period. But "[t]o align the actual application of the limitations defense more closely with the policy goals animating it, the courts and the Legislature have over time developed a handful of equitable exceptions to and modifications of the usual rules governing limitations periods. These doctrines may alter the rules governing either the initial accrual of a claim, the subsequent running of the limitations period, or both." (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal. 4th 1185, 1192 (*Aryeh*); but see *Ambers-Phillips v. SSM DePaul Health Center* (Mo. 2015) 459 S. W. 3d 901, 907 [while Missouri Supreme Court has "recognized the fairness of adopting a discovery rule and of equitable tolling in regard to the statute of limitations, . . . these cases have emphasized that it is up to the legislature to determine whether to adopt a discovery rule or equitable tolling in a particular case"].) These exceptions include the discovery rule and fraudulent concealment.[18] (See *Aryeh*, at

[18] Plaintiffs also use the phrase "equitably tolled" in their appellate reply brief. The cited authority is a California case explaining "that a defendant may be equitably estopped from asserting the statute of limitations when, as a result of intentional concealment, the plaintiff is unable to discover the defendant's actual identity." (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal. 4th 926, 936 (*Bernson*).) This flavor of equitable tolling, which is predicated on a specific type of fraudulent concealment, tolls the statute "until such time as the plaintiff knows, or through the exercise of reasonable diligence should have

p. 1192; *Ambers-Phillips*, at p. 907; *Schultz v. Bank of Am. Merrill Lynch Credit Corp.* (Mo.Ct.App. 2022) 645 S. W. 3d 689, 698; Mo. Rev. Stat. § 516.280.) Plaintiffs invoke or allude to each of these doctrines.

Missouri law permits tolling where a person by an " 'improper act . . . prevent[s] the commencement of an action.' " (*State ex rel. Heart of Am. Council v. McKenzie* (Mo. 2016) 484 S. W. 3d 320, 325.) "Improper acts are 'uniformly held to mean some act on the part of the defendant that would hinder or delay the commencement of a suit, the service of process or some necessary step in relation thereto.' " (*Ibid.*) Fraudulent concealment, also recognized as a basis for tolling the limitations period in California, is among the cognizable "[i]mproper acts." (*Ibid.*; see also *Aryeh*, *supra*, 55 Cal. 4th at p. 1192.) In California, the discovery rule postpones accrual "until the plaintiff discovers, or has reason to discover, the cause of action." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal. 4th 797, 807.) "A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements,' " "wrongdoing, causation, and harm." (*Ibid.*) The discovery rule allows accrual "even if the plaintiff does not have reason to suspect the defendant's identity . . . [Citation.] . . . because the identity of the defendant is not an element of a cause of action." (*Ibid.*) Where necessary to

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discovered, the defendant's identity." (*Ibid.*) It is distinct from the equitable tolling described in *Aryeh*, which "suspend[s] or extend[s] the statute of limitations when a plaintiff has reasonably and in good faith chosen to pursue one among several remedies and the statute of limitations' notice function has been served." (*Aryeh*, *supra*, 55 Cal. 4th at p. 1192.) For the foregoing reasons, we treat this argument as a species of fraudulent concealment.

withstand a demurrer to a complaint that appears on its face untimely, a plaintiff relying on the discovery rule " 'must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' " (*Id*. at p. 808.)

The only allegations in plaintiffs' operative complaint that relate to a potential statute of limitations defense are that (1) plaintiffs did not learn about the "existence" of the Travelers policy until around March 2018, (2) plaintiffs did not have "an opportunity to review the . . . policy . . . in March 2018" when Cricket produced it in litigation, and plaintiffs relied on Killingsworth's December 2011 e-mails for the proposition that plaintiffs were not insured under Cricket's policy with Travelers. While plaintiffs' lack of information about the insurance policy might explain their delay in raising coverage claims against Travelers, their seventh cause of action does not depend on plaintiffs' knowledge of the policy. Rather, the pleaded claim flows from Cricket's actions—Cricket's failure to defend and indemnify plaintiffs or its termination of the lease. Because plaintiffs' allegations about the insurance policy are immaterial to the seventh cause of action, defendants did not need to refute them to carry their initial burden on the seventh cause of action. Rather, defendants carried their initial burden on the seventh cause of action under Missouri or California law by demonstrating that all the generic elements of the cause of action arose, and damages were ascertainable, more than five years before plaintiffs filed their complaint.[19]

In their appellate reply brief, plaintiffs refocus on their difficulty identifying defendants' participation in the termination of the lease. But insofar as plaintiffs have identified their reasons for suspecting that Cricket's breach was tortious, their reasons are that Cricket invoked the lease provision for termination if "Lessee . . . determines that the Premises are not appropriate or suitable for its operations for economic, environmental or technological reasons" without having made any prior complaints. While plaintiffs make passing reference to "conceal[ment]" of Travelers's "role in terminating the lease," they neither explain how Travelers intentionally concealed its participation in Cricket's decision to terminate the lease nor how such concealment delayed the accrual of the cause of action as pleaded. (Cf. *Bernson*, *supra*, 7 Cal. 4th at p. 936.) Put in terms of delayed discovery, plaintiffs fail to explain what facts they did not know in January 2012, the later discovery of which caused them to suspect that Travelers induced Cricket to terminate the lease.[20]

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[19] Plaintiffs contend that it was improper under California Rules of Court, rule 3.1350(d)(1) for defendants to address three distinct grounds for summary adjudication of this cause of action in a single section of the separate statement—combining "a 'cause of action,' an 'issue of duty,' *and* an 'affirmative defense', further combining two defendants in one 'issue.' " But plaintiffs supply neither authority nor argument for their assertion that the perceived deficiency compelled the trial court to strike the separate statement.

[20] Even if plaintiffs' suspicion was aroused by their review of the Travelers policy, there remains no connection between the policy and the seventh cause of action.

B. *Motion to Compel*

Plaintiffs contend that the trial court barred proper discovery of communications between Travelers and Cricket, preventing plaintiffs from developing evidence that "the two colluded to terminate the lease to punish [p]laintiffs for demanding insurance coverage." Defendants argue that it is unnecessary to review the ruling on any motion to compel, and the ruling was in any event sound, because there are no documents responsive to plaintiffs' request for communications between Travelers and Cricket.

We recognize the relevance of the requested discovery to the merits of the seventh cause of action alone. But because the trial court properly deemed the seventh cause of action untimely, plaintiffs' ability to discover communications meant to fortify their substantive claim was immaterial to the summary judgment ruling. Any error in preventing plaintiffs from taking this discovery was harmless.

C. *Costs*

Because plaintiffs did not prevail on any cause of action, we reject their contention that the trial court erred in awarding defendants costs as the prevailing parties. (See Code Civ. Proc., § 1032, subd. (a)(4); see generally *Berkeley Cement, Inc. v. Regents of University of California* (2019) 30 Cal. App. 5th 1133, 1139 [standard of review].) Plaintiffs do not challenge the amount of costs fixed by the trial court.

III. DISPOSITION

The judgment is affirmed.

LIE, J.

WE CONCUR:

GREENWOOD, P. J.

GROVER, J.

Whispering Oaks Residential Care Facility LLC et al. v. Travelers Property Casualty Co. of America et al.
H052423

Appendix B
[Filed: May 16, 2024]

ORDER ISSUED ON SUBMITTED MATTER

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY OF SANTA CLARA CIVIL DIVISION

WHISPERING OAKS RESIDENTIAL CARE FACILITY LLC et al., Plaintiffs, vs. TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA et al., Defendants.	Case No. 18CV336673 ORDER RE: MOTION FOR SUMMARY JUDGMENT

The present motion came on for hearing before the court on May 16, 2024 at 9:00 a.m. in Department 10. The matter having been submitted, the court now finds and orders as follows:

This is an insurance coverage dispute between plaintiffs Whispering Oaks Residential Care Facility LLC ("Whispering Facility"), Whispering Oaks RCF Management Co. Inc. ("Whispering Management"), and Naren Chaganti (collectively, "Plaintiffs") and defendants Travelers Property Casualty Company of America ("Travelers"), Joseph Tancredy, and Robert Killingsworth (collectively, "Defendants").[1] Plain-

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[1] This court (Judge Kirwan) previously granted Killingsworth's motion to quash service of summons on September 8,

tiffs allege that Travelers had a duty to defend or indemnify them in six underlying actions, and that Defendants engaged in a conspiracy with several non-parties to prevent Plaintiffs from obtaining the contractual benefits under its tenant's general commercial liability insurance policy. Travelers and Tancredy have now filed a motion for summary judgment addressing all of the remaining causes of action against them.

For the reasons stated below, the court GRANTS the motion for summary judgment.

I. BACKGROUND

A. The Whispering Oaks Residential Care Facility and The Policy

Chaganti is the sole owner of Whispering Facility and Whispering Management. (Declaration of Naren Chaganti ("Chaganti Decl."), ¶ 1.) Whispering Facility and Whispering Management owned and operated the Whispering Oaks Residential Care Facility ("Whispering Oaks RCF") located at 1450 Ridge Road, Wildwood, Missouri 63021. (Chaganti Decl., ¶¶ 1-2.) Plaintiffs also operated a public water system ("PWS") that supplied water to Whispering Oaks RCF and a neighboring skilled nursing facility. (*Id.* at ¶ 3.) The PWS consists of a 100-foot tall, 100,000-gallon water tower located at the top of a ridge, with a deep

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2022, and the Court of Appeal affirmed that order. Plaintiffs assert that Tancredy is in default, and Defendants' reply ignores this assertion. (Opposition to Defendants' Motion for Summary Judgment/Adjudication (Opp.), pp. 6, 8.) The court's file reflects that Plaintiffs requested entry of default as to Tancredy in July 2022 but that default was not entered by the clerk's office. (See July 20, 2022 Request for Entry of Default.)

water well and a water pumping system. (*Id.* at ¶ 5.) Because the water tower is the highest point in the area, it is a suitable location for wireless communications antennae, and in 1996, AT&T (operating as New Cingular Wireless PCS LLC) entered into a 30-year lease with the property owner at the time to install wireless equipment on the water tower. (*Id.* at ¶¶ 5-6.)

Plaintiffs claim that the PWS is regulated by the Missouri Department of Natural Resources ("DNR" or "Missouri DNR") and that it was classified by the DNR as a Non-Transient Non-Community Water System. (Chaganti Decl., ¶¶ 3-4.)

In April 2008, non-party Cricket Communications Inc. ("Cricket") entered into a commercial lease agreement with Whispering Oaks Health Care Center, Inc. (Chaganti Decl., ¶ 7.) Plaintiffs Whispering Facility and Whispering Management are the successors-in-interest to Whispering Oaks Health Care Center, Inc. on the lease. (*Id.* at ¶ 8.) Under the lease, Cricket was entitled "to lease certain space on a water tank located on its premises for use in Cricket's telecommunication network." (*Id.* at ¶ 9.) The lease agreement also required Cricket to obtain commercial general liability insurance in the amount of $1 million. (*Id.* at ¶ 10.) Travelers issued a commercial general liability policy (the "Policy") to Leap Wireless International for the policy period of September 23, 2009 to September 23, 2010. (Nonmovant's Responses to Moving Party's Separate Statement [] ("SUF") 1.) The Policy identified Cricket Communications Inc. as an additional named insured. (*Ibid.*) The Policy, attached as Exhibit 1 to Defendants' Appendix of

Evidence ("Defendants' Appx."), provides in pertinent part:

SECTION I – COVERAGES
COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

   a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. . . .

   b. This insurance applies to "bodily injury" and "property damage" only if:
      (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the coverage territory";
      (2) The "bodily injury" or "property damage" occurs during the policy period . . . .

(Defendants' Appx., Exh. 1, TRAV 0049 [some boldface omitted].)

SECTION V – DEFINITIONS

* * *

3. “Bodily injury” means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

* * *

13. “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

* * *

17. “Property damage” means:

    a. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that cause it; or
    b. loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.

(Defendants’ Appx., Exh. 1, TRAV 0060–TRAV 0063 [some boldface omitted].)

The Policy had a “Web XTend Liability” endorsement that modified the scope of coverage to include “advertising injury” and “web site injury,” although Plaintiff does not rely on these provisions. In addition, it modified the definition of “Suit” in “Section V –Definitions” as follows:

> “Suit” means a civil proceeding in which damages because of “bodily injury,” “property damage,” “personal injury,” “advertising injury” or “web

site injury" to which this insurance applies are alleged. "Suit" includes:

a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

(Defendants' Appx., Exh. 1, TRAV 0088–TRAV 0089 [some boldface omitted].)

In addition, the Policy was further modified by the Web Xtend Liability endorsement as follows:

COVERAGE B. PERSONAL INJURY, ADVERTISING INJURY AND WEB SITE INJURY LIABILITY

1. Insuring Agreement.

(a) We will pay those sums that the insured become legally obligated to pay as damages because of "personal injury", "advertising injury" or "web site injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal injury", "advertising injury", or "web site injury" to which this insurance does not apply.

(Defendants' Appx., Exh. 1 at TRAV 0085 [some boldface omitted].)

SECTION V – DEFINITIONS
PERSONAL AND ADVERTISING INJURY

The definition of "Personal and advertising injury" (**SECTION V –DEFINITIONS**) is deleted in its entirety and replaced by the following definitions of "advertising injury" and "personal Injury":

* * *

"Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is performed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;

d. Oral, written or electronic publication of material that slanders or libels a person or organization or disparages a person's or organizations' goods, products or services, provided that claim is made or "suit" is brought by a person or organization that claims to have been slandered or libeled, or whose goods, products or services have allegedly been disparaged; or

e. Oral, written or electronic publication of material that appropriates a person's likeness, unreasonably places a person in a false light or gives unreasonable publicity to a person's private life. (Defendants' Appx., Exh. 1 at TRAV 0088 [some boldface omitted].)

B. The Underlying Actions

It is undisputed that on or about January 8–10, 2010, a frozen pipe cut off the water supply to Whispering Oaks RCF and resulted in its closure. (TAC, ¶¶ 19–20; Chaganti Decl., ¶ 25.) On January 11, 2010, St. Louis County in Missouri ordered the closure of Whispering Oaks RCF, and on January 14, 2010, the Missouri DNR sued Plaintiffs for violations of the Missouri Safe Drinking Water Law. (Defendants' Response to Plaintiffs' Separate Statement of Additional Facts [] ("Add'l SUF"), P13–P14.) Plaintiffs allege that Travelers had a duty to defend them in six different matters arising out of the frozen pipe incident:

1. The DNR Suit

The Missouri DNR brought a suit for an injunction and civil penalties against Whispering Oaks RCF under the Missouri Safe Drinking Water Law. The suit alleged that Whispering Oaks RCF failed to comply with state laws and regulations requiring it to have a certified operator for its water system, failed to have an emergency operations plan, failed to maintain water pressure, and failed to monitor for residual disinfectant concentrations. (Defendants' Appx., Exhs. 5–8.) The suit eventually resulted in a jury verdict in favor of the DNR, and the Missouri court entered judgment imposing civil penalties of $135,600.00 and a permanent injunction barring Whispering Oaks RCF from "operating any public water system within the State of Missouri, other than Defendant's public water system located at 1450 Ridge Road." (*Id.*, Exh. 8, p. 5.)

2. The DHSS Suit

The DHSS case arose out of inspections of Whispering Oaks RCF performed by the Missouri Department of Health and Senior Services ("DHSS"). (SUF 8.) The inspection found violations of Missouri law and resulted in the denial of Whispering Management's application for a license to continue operating Whispering Oaks RCF. (*Ibid.*)

Whispering Management and Whispering Facility then filed a complaint with the Administrative Hearing Commission for the State of Missouri on May 29, 2009, appealing the denial of its license application. (Defendants' Appx., Exh. 9.) The commission affirmed the denial of the license on December 7, 2012. Whispering Management then appealed to the Circuit Court of Cole County, which affirmed the decision on May 16, 2013. (*Id.*, Exh. 10.) Whispering Management further appealed the Circuit Court's decision to the Missouri Court of Appeals, which also affirmed on August 5, 2014. (*Id.*, Exh. 11.)

3. The St. Louis County Notice to Vacate

On January 11, 2010, St. Louis County issued a "Notice to Vacate Premises" for Whispering Oaks RCF, requiring Plaintiffs to vacate the facility and transfer residents to state-approved facilities within 48 hours, based on the absence of running water, overflowing toilets and sewage waste, and conditions constituting a health hazard that rendered the building unfit for occupancy. (Defendants' Appx., Exh. 12.)

4. The Cricket Suits

On August 16, 2013, Plaintiffs filed a suit in Missouri state court against AT&T and Cricket Communications, Inc. that was later removed to federal court in the Eastern District of Missouri. (Defendants' Appx., Exhs. 13–16.) According to the complaint in that case, someone unplugged a heating coil that protected the water pipes at Whispering Oaks from freezing. (*Id.*, Exh. 14 at p. 15.) The complaint also alleged that AT&T installed additional equipment and cables on the water tower without permission and that Cricket failed to obtain liability insurance, as required under its lease.

On November 20, 2015, Chaganti filed suit against Cricket in this court, in an action entitled *Chaganti v. Cricket Communications Inc., et al.* (Santa Clara County Superior Court Case No. 2015–1–CV–288323), which is still pending. (Defendants' Appx., Exh. 17.) The complaint in the 2015 case alleges, among other things, that Cricket breached the lease by failing to obtain liability insurance. (*Id.*, Exh. 18.)

5. The Federal Document Subpoenas

The Federal Document Subpoenas are document subpoenas issued in May 2011 by the United States Attorney's Office for the Eastern District of Missouri in connection with a health care fraud investigation of Whispering Oaks RCF, following the 2010 frozen pipe incident. (Defendants' Appx., Exh. 19; Chaganti Decl., ¶ 45.)

6. The Medical Board Disciplinary Action

The Medical Board Disciplinary Action was a disciplinary action from April 2010 against Dr. Surendra Chaganti, the psychiatrist at Whispering Oaks RCF and the brother of Plaintiff Naren Chaganti. (Defendants' Appx., Exh. 22; Chaganti Decl., ¶ 40.)

C. The Present Lawsuit

After several rounds of demurrers, Plaintiffs filed the operative Third Amended Complaint (TAC) on April 5, 2023, asserting seven causes of actions against Defendants:

1. Declaratory judgment;
2. Breach of contract;
3. Breach of duty of good faith and fair dealing;
4. Bad faith;
5. Misrepresentation and/or concealment;
6. Vexatious refusal to pay; and
7. Conspiracy.

The TAC also asserts an eighth cause of action for breach of contract against Jeff Kaplan, K&K Confidential Investigations, and Savannah Moore that are not at issue in the present motion.

Travelers and Tancredy now move for summary judgment, or alternatively, summary adjudication, on each of the seven causes of action against them.

II. PRELIMINARY MATTERS

A. Requests for Judicial Notice

Both parties have filed requests for judicial notice.

Defendants ask the court to take judicial notice of various exhibits submitted with their motion: copies of complaints, judgments, court dockets, motions, and other filings in the various underlying actions involving Plaintiffs and Whispering Oaks RCF. The court GRANTS Defendants' request and takes judicial notice of the documents, including the allegations and claims asserted in the underlying proceedings, *but not* the truth of any factual findings or assertions contained in these documents. (See *People v. Woodell* (1998) 17 Cal. 4th 448, 455 ["'Evidence Code sections 452 and 453 permit the trial court to "take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but [the court] cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." [Citations.]'"] [emphasis in original]; *Steed v. Department of Consumer Affairs* (2012) 204 Cal. App. 4th 112, 120 ["Judicial notice is properly taken of the existence of a factual finding in another proceeding, but not of the truth of that finding. [Citations.]"].)

Plaintiffs ask the court to take judicial notice of state and federal regulations, as well as a Rule of the Missouri Supreme Court, a United States

Environmental Protection Agency (EPA) memorandum with the subject line, "Definition of a Non-Transient, Non-Community Water System" (Exh. 3), and an August 25, 2009 letter from the Missouri DNR (Exh. 6). The EPA memorandum and Missouri DNR letter appear to be official government documents (Evid. Code, § 452, subd. (c)), and so the court GRANTS Plaintiffs' request. At the same time, the court does not take judicial notice of the truth of any disputed contents of the EPA memorandum and Missouri DNR letter. (See *Engine Manufacturers Association v. State Air Resources Board* (2014) 231 Cal. App. 4th 1022, 1032, fn. 7 [taking judicial notice of "state and federal regulations"]; *Ragland v. U. S. Bank National Assn.* (2012) 209 Cal. App. 4th 182, 193–194 [court may not take judicial notice of truth of contents of official government documents].)

B. Defendants' Separate Statement

Plaintiffs argue that Defendants' motion should be denied on the ground that the separate statement does not comply with rule 3.1350 of the California Rules of Court, because it combines issues, such as the duty to defend and indemnify. (Opp. at p. 8.) The court finds that Defendants' separate statement is in substantial compliance with California Rules of Court, rule 3.1350(h) for a motion for summary judgment. The requirement that issues be separately identified applies to separate statements in support of a motion for summary adjudication. (*Truong v. Glasser* (2009) 181 Cal. App. 4th 102, 118.) Here, Defendants have moved for summary judgment and summary adjudication in the alternative, and the court is primarily treating this motion as one for summary judgment. Finally, "Plaintiffs have not explained how any alleged deficiency in [Defendants'] Separate Statement of Material Facts impaired Plaintiffs' ability to marshal evidence to show that material facts were in dispute[.]" (*Ibid.*)

C. Request to File Oversized Brief

Plaintiffs have submitted a request to file an oversized brief. This should have been presented to the court *in advance of the hearing* as an ex parte application, but in any event, the court GRANTS the request.

III. LEGAL STANDARDS

A motion for summary judgment must dispose of the entire action, while a motion for summary adjudication may dispose of a cause of action, affirmative defense, or punitive damages, and may also determine whether a defendant owed a duty to a plaintiff. (Compare Code Civ. Proc., § 437c, subd. (a) with Code Civ. Proc., § 437c, subd. (f).) Nonetheless, "'[a] motion for summary adjudication . . . shall proceed in all procedural respects as a motion for summary judgment.' [Citation.]" (*California Bank & Trust v. Lawlor* (2013) 222 Cal. App. 4th 625, 630.)

The moving party "bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact[.]" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850 (*Aguilar*); see also *Quidel Corp. v. Superior Court* (2020) 57 Cal. App. 5th 155, 163 ["A plaintiff moving for summary adjudication meets its burden if it proves each element of the cause of action. [Citation.]"].) If the party opposing summary judgment then presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Aguilar*, *supra*,25 Cal. 4th at p. 856.)

On summary judgment, "the moving party's declarations must be strictly construed and the opposing party's declaration liberally construed. [Citation.]" (*Hepp v. Lockheed-California Co*. (1978) 86 Cal. App. 3d 714, 717; see *Johnson v. American Standard, Inc*. (2008) 43 Cal. 4th 56, 64 [the evidence is viewed in the light most favorable to the opposing plaintiff; the court must "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor"].)

IV. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT/ADJUDICATION

Defendants move for summary judgment with respect to all remaining causes of action against them in the TAC, arguing that the first six causes of action against them fail because Travelers had no duty to defend or indemnify Plaintiffs in any of the underlying matters arising out of the frozen pipe incident. Defendants further argue that Plaintiffs have no evidence to support their seventh cause of action and that it is time-barred in any event.

A. Choice of Law

The parties do not claim that there is—and the court has not found—a choice of law provision in the Policy. In their opening brief, Defendants rely solely on California law. (See Memorandum of Points and Authorities in Support of Travelers Property Casualty Company of America's and Joseph Tancredy's Motion [] ("MPA").) Plaintiffs insist in their opposition that

Missouri law applies under Civil Code section 1646. On reply, Defendants argue that even if Missouri law applies, they still prevail.

Despite Plaintiffs' insistence that Missouri law applies, they have not shown that there is any conflict between Missouri law and California law on any material issue before the court. In fact, the opposition brief repeatedly emphasizes the ways in which "California law is the same" as Missouri law. (E. g., Opp., p. 11:24; see also Opp., pp. 9:9–26:25.) As a result, even if it were necessary for the court to apply a "governmental interest" choice-of-law analysis to this case—a question that neither side has fully briefed or presented in the insurance policy documents—the court would find no difference in the laws of each jurisdiction. In the end, Defendants are entitled to summary judgment under either California or Missouri law.

B. Whether Travelers Owed a Duty to Defend

"Summary adjudication is appropriate to dispose of an issue of duty." (*Watts Industries, Inc. v. Zurich American Ins. Co.* (2004) 121 Cal. App. 4th 1029, 1038 (*Watts*); see *Doe Run Res. Corp. v. Am. Guar. & Liab. Ins.* (Mo. 2017) 531 S. W. 3d 508, 509 (*Doe Run*) [reversing grant of summary judgment on duty to defend issue].) "In general, interpretation of an insurance policy is a question of law that is decided under settled rules of contract interpretation." (*State of California v. Continental Ins. Co.* (2012) 55 Cal. 4th 186, 194; *Griffitts v. Old Republic Ins. Co.* (Mo. 2018) 550 S. W. 3d 474, 478.) "The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (Civ. Code, § 1638; *Doe Run*, *supra*, 531 S. W. 3d at p. 511 ["When interpreting an insurance policy, this Court gives the policy language its plain meaning, or the meaning that would be attached by an ordinary purchaser of insurance."].)

"'The duty to defend is contractual.'" (*Dua v. Stillwater Ins. Co.* (2023) 91 Cal. App. 5th 127, 136 (*Dua*), quoting *Buss v. Superior Court* (1997) 16 Cal. 4th 35, 47; see *Renco Group, Inc. v. Certain Underwriters at Lloyd's, London* (Mo.Ct.App. 2012) 362 S. W. 3d 472, 479 (*Renco*).) The duty to defend is broad and includes claims against the insured that create a potential for indemnity. (*Dua*, *supra*, 91 Cal. App. 5th at p. 136; see *Renco*, *supra*, 362 S. W. 3d at p. 480.) Nevertheless,"if, as a matter of law, neither the complaint nor the known extrinsic facts indicate any basis for potential coverage, the duty to defend does not arise in the first instance." (*Scottsdale Ins. Co. v. MV Transportation* (2005) 36 Cal. 4th 643, 655; see *Renco*, *supra*, 362 S. W. 3d at p. 479.)

The duty to defend arises "'if the insurer "becomes aware of, or if the third party lawsuit pleads, facts giving rise to the potential for coverage under the insuring agreement."'" (*Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.* (2018) 5 Cal. 5th 216, 222 [quoting *Delgado v. Interinsurance Exchange of Automobile Club of Southern California* (2009) 47 Cal. 4th 302, 308]; *Truck Ins. Exch. v. Prairie Framing, LLC* (Mo.Ct.App. 2005) 162 S. W. 3d 64, 79 (*Truck Ins. Exch.*).) "An insurer's duty to defend depends not upon the ultimate adjudication of policy coverage, but upon facts the insurer knew at the inception of the underlying lawsuit." (*Watts*, *supra*, 121

Cal. App. 4th at p. 1039; *Renco*, *supra*, 362 S. W. 3d at p. 479 ["An insurance company has a duty to defend an insured when the insured is exposed to potential liability to pay based on the facts known at the outset of the case[.]"].)

"When a complaint states multiple claims, some of which are potentially covered by the insurance policy and some of which are not, it is a mixed action. In these cases, 'the insurer has a duty to defend as to the claims that are at least potentially covered, having been paid premiums by the insured therefor, but does not have a duty to defend as to those that are not, not having been paid therefor.'" (*Gonzalez v. Fire Ins. Exchange* (2015) 234 Cal. App. 4th 1220, 1231 (*Gonzalez*) [quoting *Buss v. Superior Court* (1997) 16 Cal. 4th 35, 48]; see also *Superior Equip. Co. v. Maryland Cas. Co.* (Mo.Ct.App. 1998) 986 S. W. 2d 477, 482 ["The presence of some potentially insured claims in complaint gives rise to a duty to defend, even though claims beyond coverage may also be present."].)

As explained in *Gonzalez*:

> This legal framework shapes a party's burden when seeking summary judgment. [Citation.] "To prevail [on the duty to defend], the insured must prove the existence of a *potential for coverage*, while the insurer must establish *the absence of any such potential*. In other words, the insured need only show that the underlying claim *may* fall within policy coverage; the insurer must prove it *cannot*. Facts merely tending to show that the claim is not covered, or may not be covered, but are insufficient to eliminate the possibility that resultant damages (or the nature of the

> action) will fall within the scope of coverage, therefore add no weight to the scales. Any seeming disparity in the respective burdens merely reflects the substantive law." [Citation.]

(*Gonzalez*, *supra*, 234 Cal. App. 4th at pp. 1229–1230, emphasis and alteration original; see *Renco*, *supra*, 362 S. W. 3d at p. 479 ["To extricate itself from a duty to defend the insured, the insurance company must prove that *there is no possibility of coverage*. [Citation.]"], emphasis original.) But "'even where the insurer brings a motion for summary judgment[,]'" the "'insured has the burden of proving its claim falls within the scope of the policy's basic coverage[.]'" (*Gonzalez*, *supra*, 234 Cal. App. 4th at p. 1230 [quoting *Roberts v. Assurance Co. of America* (2008) 163 Cal. App. 4th 1398, 1407]; see also *Truck Ins. Exch.*, *supra*, 162 S. W. 3d at p. 80 [insured bears burden of proving coverage].)

Defendants argue that Travelers had no obligation to defend in any of the six underlying actions, because the Policy only obligates it to defend suits seeking "damages" for "bodily injury[,]" "property damage[,]" "personal injury[,]" "advertising injury[,]" or "website injury" and none of the actions fall within the Policy's coverage. According to Plaintiffs, the frozen pipe incident triggered Travelers' duty to defend because the subsequent suits and proceedings were all interrelated, and each arose "because of property damage." (Opp., p. 12.)

1. The DNR Suit

As noted above, shortly after the frozen pipe incident at Whispering Oaks RCF, the Missouri DNR filed suit in Missouri state court seeking an injunction and civil penalties under the Missouri Safe Drinking Water Law. (Defendants' Appx., Exhs. 5–8.) Defendants argue that Travelers had no obligation to defend the DNR Suit because the complaint for injunctive relief and civil penalties does not constitute a "suit" for "damages" under the Policy. (MPA at pp. 13–15.) Plaintiffs respond that injunctions seeking compliance with environmental laws and actions for civil penalties do constitute "suits" for "damages" under California and Missouri law. (Opp., pp. 15–19.)

Again, "[t]he duty to defend is contractual." (*Dua*, *supra*, 91 Cal. App. 5th at p. 136; *Crown Center Redevelopment Corp. v. Occidental Fire & Casualty Co.* (Mo.Ct.App. 1986) 716 S. W. 2d 348, 365 ["an insurer's duty to defend is purely contractual"].) The Policy defines "property damage" as "physical injury to tangible property, including all resulting loss of use of that property" or "loss of use of tangible property that is not physically injured." Meanwhile, "'Suit' means a civil proceeding in which damages because of 'bodily injury,' 'property damage,' 'personal injury,' 'advertising injury' or 'web site injury' to which this insurance applies are alleged."

The determinative question is therefore whether the DNR Suit (or any other proceeding allegedly related to the frozen pipe incident) constitutes a "suit" in which "damages" because of "property damage" are alleged.

Plaintiffs argue that "[b]oth Missouri and California cover defense of injunction and civil penalties in environmental enforcement actions." (Opp., p. 7:1–2 [citing *Farmland Indus., Inc. v. Repub. Ins. Co.* (Mo. 1997) 941 S. W. 2d 505, 512 (*Farmland*) and *AIU Ins.*

Co. v. Superior Court (1990) 51 Cal. 3d 807, 841–842 (*AIU*)].) These are both CERCLA cases. After considering these decisions, the court is not persuaded that *Farmland* and *AIU* are as broad as Plaintiffs claim.

The *Farmland* court explained that "Farmland's cost of undertaking the actions required by the government under CERCLA [the Comprehensive Environmental Response, Compensation, and Liability Act (42 U. S. C. §9601 et seq.)] or similar state laws are 'damages' within the ordinary meaning of the term," because "the equitable relief at issue is a cost that Farmland is legally obligated to pay as compensation or satisfaction for a wrong or injury." (*Farmland*, *supra*, 941 S. W. 2d at p. 509.) In other words, equitable or non-monetary relief may constitute "damages" if it is compensatory in nature. This concept finds support in the Eighth Circuit's subsequent interpretation of *Farmland* in *State Farm Fire & Casualty Co. v. National Research Center for College & University Admissions* (8th Cir. 2006) 445 F. 3d 1100, 1103 (*State Farm*). There, the defendant argued (like Plaintiffs here) that *Farmland* stands for the broad proposition that "damages" includes "equitable relief" and that an action brought by the Federal Trade Commission (FTC) seeking non-monetary relief was therefore a suit for "damages" covered under an insurance policy. The Eighth Circuit disagreed:

> However, the outcome in *Farmland* depends on the fact that the relief sought in that case (unlike the relief sought here) was compensatory. The Missouri Supreme Court invokes the definition of "damages" as "*compensation* or satisfaction

> imposed by law for a wrong or injury caused by a violation of a legal right." [Citation.] The court reasons that the action required under the consent agreement 'is a cost that Farmland is legally obligated to pay as *compensation* or satisfaction for a wrong or injury.'"

(*State Farm*, *supra*, 445 F. 3d at pp. 1103–1104, emphasis in original.) Based on this interpretation of *Farmland*, the court in *State Farm* determined that because "the relief sought by the FTC—an order that the NRCCUA stop making misrepresentations and make clear and conspicuous disclosures—is not designed to compensate anyone . . . , that relief does not constitute 'damages' under the Policy." (*Id.* at p. 1104.)

Farmland also explained that "fines or penalties are not included within the ordinary meaning of 'damages' " because they are "not compensation or reparation for an injury; rather, [they are] a sum imposed as punishment." (*Farmland*, *supra*, 941 S. W. 2d at pp. 510–511.) The Missouri Supreme Court again focused on the compensation aspect of a suit in *Columbia Casualty Co. v. Hiar Holding, L.L.C.* (Mo. 2013) 411 S. W. 3d 258, holding that an insurer had a duty to defend under a policy covering "property damage" and "advertising injury" for a suit seeking statutory damages under the Telephone Consumer Protection Act (TCPA), because those statutory damages were intended to act as a liquidated damages provision and therefore represented compensable harms as opposed to a penalty. (*Id.* at pp. 267–268, citing *Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, Inc.* (8th Cir. 2005) 401 F. 3d 876, 879.)

California law is similar. In *AIU*, "the Supreme Court held that comprehensive general liability policies, materially similar to those at issue here, could be reasonably understood to cover toxic cleanup costs imposed in litigation under [CERCLA] and related state and federal laws." (*Bullock v. Md. Casualty Co.* (2001) 85 Cal. App. 4th 1435, 1441 (*Bullock*).) The *AIU* Court recognized that the ordinary meaning of the word "damages" requires "'compensation,' in 'money,' 'recovered' by a party for 'loss' or 'detriment' it has suffered through the acts of another." (*AIU*, *supra*, 51 Cal. 3d at p. 826.) The Court reached this conclusion because "the relief sought in the underlying suits at issue here is not punitive. CERCLA, for example, is a strict liability statute that serves essentially remedial goals, irrespective of fault." (*Id*. at p. 836.) The court also recognized that "prophylactic costs – incurred to pay for measures taken in advance of any release of hazardous waste – are not incurred 'because of property damage.'" (*Id*. at p. 843.)

Although Plaintiffs urge the court to adopt a broader reading of *AIU*, "[t]he *AIU* court expressly declined to decide whether the word 'damages' in a general liability insurance policy included the costs of injunctive relief in contexts other than those involving CERCLA. In fact, it characterized the notion as a 'more debatable proposition.'" (*Cutler-Orosi Unified School Dist. v. Tulare County School etc. Authority* (1994) 31 Cal. App. 4th 617, 629 [quoting *AIU*, *supra*, 51 Cal. 3d at p. 839, fn. 17].) In *Bullock*, *supra,* the Court of Appeal explained that "*AIU* does not stand for the proposition that whenever a public agency seeks to recoup costs of enforcement, a judicial award embodying such recoupment constitutes damages for purposes of typical liability policies." (85 Cal. App. 4th at p. 1448.) Instead, *AIU* focused on whether the relief is remedial or prophylactic. The remedies at issue in *Bullock* were "not intended to make anyone whole for, or compensate for the damaging effects of, past conduct. They are intended to avert the *future* loss of housing units that *will* result from the conversion of residential hotel rooms to nonresidential use. In this sense they are prospective only, and are thus the functional equivalent of traditional injunctive remedies, not compensatory damages." ((*Id.* at p. 1446 [emphasis in original].) *Bullock* ultimately concluded that because the underlying complaint sought penalties, it was necessarily punitive in nature and thus not covered by the comprehensive general liability policy. (*Id.* at pp. 1448–1449.)

By contrast, in a case relied on by Plaintiffs, *Watts Industries Inc. v. Zurich American Insurance Co.* (2004) 121 Cal. App. 4th 1029, 1035 (*Watts*), the Court of Appeal held that a suit against water system parts manufacturers by municipalities who claimed their water systems were being contaminated by substandard parts could constitute a suit for "damages" under the policy. Whether viewed as "traditional damages"—*e. g.*, "a court-ordered monetary payment recovered by a party for loss or detriment it has suffered through the acts of another"—" or as reimbursement of government response costs, they constitute "damages" under *AIU*." (*Id.* at pp. 1040–1041.) The Court made this determination because "a municipal water system is a conduit through which water flows continuously, as Zurich acknowledges, the municipality owns all the water in its system at any one time as an entire body" and because "at any one time, a portion of the total water in the system is becoming contaminated. Thus at any one time, the municipality's water, as a whole, is damaged." (*Id.* at p. 1044.)

Here, the original DNR complaint requested an injunction requiring Plaintiffs to comply with regulations concerning safe drinking water, as well as an order imposing penalties. (Defendants' Appx., Exhs. 5–7.) Nothing in the complaint, amended complaint, or the judgment entered in the DNR Suit indicates that in pursuing claims under the Missouri Safe Drinking Water Law, the DNR sought these remedies as compensation for the residents of the facility or the public at large, as damages for harm to public property (as in *Watts*), or to recover the costs of clean up or enforcement (as in *AIU*). Plaintiffs present no contrary evidence in opposition. While they cite *Los Angeles County Metropolitan Transportation Authority v. Superior Court* (2004) 123 Cal. App. 4th 261 for the proposition that a civil penalty provision can sometimes be intended to compensate rather than to punish, in that case, there was at least some indication that the civil penalty under the Unruh Civil Rights Act was intended to compensate. (See *id.* at p. 276.) No such showing has been made here.

As a result, the only reasonable conclusion is that the injunctive relief and civil penalties were prospective in nature and/or intended to punish. They were not intended to compensate anyone for past harm, but rather to discourage further non-compliance. Because there was no compensatory aspect to the relief sought by the DNR, there is no basis for concluding under either California or Missouri law that the DNR Suit was a "suit" for "damages" under the Policy.

Plaintiffs make the additional argument (applying the maxim of statutory construction *expressio unius est exclusio alterius*) that because the Policy excludes coverage for specific types of "penalties" ("arising out of the willful violation of a penal statute or ordinance relating to the sale of pharmaceuticals," arising from the "Telephone Consumer Protection Act," and arising from "[a]ny taxes, fines, interest, penalties or other costs imposed under . . . the Internal Revenue Code" (Defendants' Appx., Exh. 1, TRAV 0101, TRAV 0109, TRAV 0143)), it should not be interpreted to exclude coverage for any other penalties, including punitive civil penalties. (Opp., p. 16.) But the question of what the Policy covers and what it excludes are distinct inquiries. (See *Gonzalez*, *supra*, 234 Cal. App. 4th at p. 1237 ["Determining whether an exclusion applies is unlike our earlier analysis of the Fire policy, which centered on the initial question of *coverage*."] [emphasis original].) Just because something is not expressly excluded from insurance coverage does not necessarily mean that it is included within that coverage. Plaintiffs ultimately have the burden of establishing that the claim falls within the scope of the Policy's coverage, before they can argue that it is not excluded. (See *id.* at p. 1230.)

The court concludes Travelers did not have a duty to defend the DNR Suit.

2. The DHSS and Cricket Suits

Travelers argues that it had no duty to defend either the DHSS or Cricket suits because those were brought by the Plaintiffs against DHSS and Cricket.

The DHSS Suit actually *predates* the frozen pipe incident by several months, having begun in 2009. The letter from the DHSS to Whispering Oaks RCF, dated May 15, 2009, refers to alleged non-compliance "in the areas of Fire Safety Standards, Physical Plant Requirements, Administrative/Personnel and Residential Care Requirements, Resident Funds and Property, and State Statute[.]" (Defendants' Appx., Exh. 9.) Moreover, the Decision by the Administrative Hearing Commission is focused on various problems with the Whispering Oaks RCF that are entirely unrelated to the Cricket lease. (*Id.*, Exh. 10.)

As for the Cricket Suits, while they do have a direct connection to the frozen pipe incident, it is undisputed they are suits brought *by* Plaintiffs in Missouri and California seeking recovery from AT&T and Cricket for losses allegedly arising out of that incident. They are not suits for which Plaintiffs, as additional insureds, would "become *legally obligated to payas damages*" because they are affirmative suits *seeking* damages.

Plaintiffs have not shown that the Policy required Travelers to bring claims on their behalf against DHSS or Cricket. They argue that Travelers had a duty to defend all the suits because they are "inextricably intertwined" with each other, but California courts treat the duty to present a defense as distinct from a contractual obligation to pursue counterclaims or a cross-complaint. (See *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal. App. 4th 1078, 1095 ["Liability insurance policies impose on an insurer the obligations to defend and indemnify an insured, but these policies generally do not impose an obligation to pursue claims for affirmative relief against third parties."]; *James 3 Corp. v. Truck Ins. Exch.* (2001) 91 Cal. App. 4th 1093, 1104

["Under the policy, Truck is contractually obligated to provide the insureds with a defense. However, there is nothing in the policy that contractually obligates Truck to fund and prosecute an insured's affirmative relief counterclaims or cross-complaints."]; *Barney v. Aetna Casualty & Surety Co.* (1986) 185 Cal. App. 3d 966, 975 ["Moreover, Aetna had no duty under the policy to file a cross-complaint on Barney's behalf, for nothing in the policy provisions imposes upon the insurer the duty to prosecute claims of the insured against third parties."].)

The court has been given no reason to believe that the outcome would be any different under Missouri law, because determining an insurer's duty to defend under Missouri law similarly starts with looking at the language of a policy. (See *Allen v. Cont'l Western Ins. Co.* (Mo. 2014) 436 S. W. 3d 548, 553–554; *View Home Owners Ass'n v. Burlington Ins. Co.* (Mo.Ct.App. 2018) 552 S. W. 3d 726, 729–730.)

More fundamentally, Plaintiffs do not explain how, if Travelers had no duty to defend them in the DNR Suit, it could nevertheless be obligated to bring claims on Plaintiffs' behalf to offset any potential liability from that action. Plaintiffs cite cases discussing the "inextricably intertwined" theory and an insurer's obligation to bring "affirmative claims" on the insured's behalf in the context of an insurer's duty to defend. (E. g., *Great West Cas. Co. v. Marathon Oil Co.* (N.D.Ill. 2003) 315 F. Supp. 2d 879, 881 ["Nevertheless, the authority appears virtually uniform in holding that there is a class of affirmative claims which, if successful, have the effect of reducing or eliminating the insured's liability and that the costs and fees incurred in prosecuting such 'defensive' claims are encompassed in an insurer's duty to defend."].) But Plaintiffs cite no authority for the proposition that even if there is *no* duty to defend a suit, there is still an obligation to have brought "affirmative claims" on an insured's behalf.

The court concludes that Travelers had no duty to defend either the DHSS or Cricket Suits.

3. St. Louis County Notice to Vacate.

Soon after the frozen pipe incident, St. Louis County issued a "Notice to Vacate" the Whispering Oaks RCF, effectively shutting it down. (Defendants' Appx., Exh. 12.) The Notice gives two reasons: "No running water service to plumbing fixtures" and "Sewage waste overflowing water closets." (*Id.*) Plaintiffs' only argument in claiming a duty to defend is that this action is an injunction and therefore "is covered for the same reason that the DNR suit is covered." For the reasons discussed above, the Court finds that Travelers had no duty to defend the St. Louis County Notice to Vacate.

4. Federal Document Subpoenas

As noted above, the Department of Justice (DOJ) filed a discovery motion in federal court in Missouri relating to a health care fraud investigation following the 2010 frozen pipe incident. Plaintiffs argue that the subpoenas were "a precursor to a charge" and sought documents relating to the DNR and DHSS cases. (Opp. at p. 20.) But for the reasons stated above, any connection to the DNR or DHSS proceedings is not enough. Furthermore, there is no indication that the DOJ sought "damages" under the Policy.

Therefore, Travelers had no duty to defend the Federal Document Subpoenas.

5. Medical Board Complaint

The Missouri Medical Board Complaint involved proceedings brought against plaintiff Chaganti's brother, Dr. Surendra Chaganti, who is not an additional insured under the Policy. Generally, only a party to an insurance agreement has standing to seek to enforce it. (See *LaBarbera v. Security National Ins. Co.* (2022) 86 Cal. App. 5th 1329, 1340.) None of the Plaintiffs were named in that complaint. A review of the counts in the complaint filed before the Missouri Administrative Hearing Commission shows nothing connecting these proceedings to the frozen pipe incident or anything that would constitute "damages" under the Policy. Plaintiffs do not present a coherent argument for how the Policy could conceivably be interpreted to cover the Medical Board Complaint brought against a non-party over alleged wrongdoing unrelated to Whispering Oaks. The court concludes that Travelers had no duty to defend the Medical Board Complaint.

6. Summary of Conclusions Regarding the First Six Causes of Action

In summary, the court agrees with Defendants that there is no possibility that any of the underlying six actions had the potential to fall within the scope of the Policy's coverage. (See *Gonzalez*, *supra*, 234 Cal. App. 4th at pp. 1229–1231; *Renco*, *supra*, 362 S. W. 3d at p. 479.) As Defendants point out, each of Plaintiffs' first six causes of action necessarily depends on the existence of a duty to defend. The first cause of action for a declaratory judgment seeks a determination that "Travelers had an obligation to defend Plaintiffs" (TAC, ¶ 47) while the second through fourth causes of action (breach of contract, breach of duty of good faith and fair dealing, and bad faith) are each premised on the breach of a contractual duty to defend. (*Id.* at ¶¶ 50, 62, 67.) The fifth cause of action alleges that Plaintiffs were harmed by relying on Travelers' alleged misrepresentation or concealment that the Policy covered them as additional insureds. (*Id.* at ¶ 71.) Plaintiffs' opposition brief makes it clear that this claim is also dependent on the existence of a duty to defend. (See Opp. at p. 23 [arguing with respect to the fifth cause of action that "there are duties to defend and indemnify."].) As to the sixth cause of action for vexatious refusal, it is based on allegation that "Travelers failed to pay for Plaintiffs' defense . . . ." (TAC, ¶ 75; see also Opp., p. 23 ["Travelers . . . breached the duty to defend"].)

Plaintiffs make a perfunctory argument that summary judgment should still be denied because Defendants do not address estoppel under the Unfair Claims Settlement Practices Act (UCSPA). According to Plaintiffs, "[n]oncompliance with the UCSPA estops a defaulting insurer from contesting coverage" under California or Missouri law. (Opp., p. 9.) Even assuming that there is a triable issue as to whether Travelers failed to disclose the Policy and its benefits to Plaintiffs as additional insureds, the California cases they rely on merely provide that a violation estops an insurer from asserting a *statute of limitations* defense to coverage; and the Missouri case they rely on does not even address estoppel. (See *Spray, Gould & Bowers v. Associated Internat. Ins. Co.* (1999)

71 Cal. App. 4th 1260, 1268–1269; *Neufeld v. Balboa Ins. Co.* (2000) 84 Cal. App. 4th 759, 760–761; *Estes v. Bd. of Trs.* (Mo.Ct.App. 2021) 623 S. W. 3d 678, 707.) There is no indication that the UCSPA impacts the scope of coverage under the Policy, which is the dispositive issue here, and there is no question here about the application of any statute of limitations. (See *Gonzalez*, *supra*, 234 Cal. App. 4th at p. 1230 [there is no duty to defend if there is no potential for coverage]; *Renco*, *supra*, 362 S. W. 3d at p. 479.)

The conclusion that Travelers had no duty to defend is also fatal to Plaintiffs' contention that Travelers had a duty to indemnify them. (*Certain Underwriters at Lloyd's of London v. Superior Court* (2001) 24 Cal. 4th 945, 958 ["Where there is a duty to defend, there *may* be a duty to indemnify; but where there is no duty to defend, there *cannot* be a duty to indemnify."] [emphasis in original]; *Sprint Lumber, Inc. v. Union Ins. Co.* (Mo.Ct.App. 2021) 627 S. W. 3d 96, 114 ["'Missouri law is clear that where there is no duty to defend, there is no duty to indemnify.'"].)

The court therefore GRANTS summary judgment. (It would grant summary adjudication as to the first, second, third, fourth, fifth, and sixth causes of action in the TAC.)

C. Conspiracy/Tortious Interference

Defendants also seek summary judgment with respect to Plaintiffs' seventh cause of action for "conspiracy to injure[,]" which the court construes as a claim for contractual interference. (See Opp., pp. 24–26.)

Defendants first argue that regardless of whether it is properly considered a conspiracy claim or a claim for tortious interference, the cause of action fails.

(MPA, pp. 19–21.) According to Defendants, a conspiracy claim fails for the same reasons set forth in the Court's ruling on its demurrer to the Second Amended Complaint: "plaintiffs do not allege and cannot prove that Travelers had any duties under the leases and could be jointly liable with Cricket for breaches of the leases," "[t]he seventh cause of action is now being put to the test by summary judgment," and plaintiffs must "come forward with admissible evidence demonstrating a triable issue of fact." (*Id.* at pp. 20–21.) These arguments, however, fail to account for the initial burden that Travelers must meet as the moving party.

"As our Supreme Court has noted, '[s]ummary judgment law in this state, however, continues to require a defendant moving for summary judgment to present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence.' [Citation.]" (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal. App. 4th 96, 101, quoting *Aguilar*, *supra*, 25 Cal. 4th at p. 854, alteration original.) To meet its initial burden, a defendant """may . . . present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence—as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing.""" (*A.G. v. County of Los Angeles* (2018) 28 Cal. App. 5th 373, 376 [citations omitted].) The court agrees with Plaintiffs that Defendants have not met their initial burden, as Defendants have done nothing more than offer the December 2011 emails produced by Plaintiffs. (Defendants' Appx., Exh. 25.) This is not the equivalent of an admission from Plaintiffs that they have discovered nothing. (See *Chavez v. Glock, Inc.* (2012) 207 Cal. App. 4th 1283, 1306.)

Alternatively, Defendants argue that any tortious interference claim is untimely because it would have accrued by no later than January 24, 2012, when Cricket terminated the lease, and Plaintiffs did not bring suit until more than six years later. (MPA, p. 21; Reply, p. 12.) In response, Plaintiffs argue that the discovery rule applies under Missouri law and that their claim therefore did not accrue until they learned of Defendants role in causing Cricket's breach. (Opp., p. 26.) Statute of limitations issues are normally questions for the trier of fact but "'whenever reasonable minds can draw only one conclusion from the evidence, the question becomes one of law.'" (*Brewer v. Remington* (2020) 46 Cal. App. 5th 14, 28.) The court finds that Plaintiffs' claim is time-barred.

It is undisputed that Cricket sent a letter to Plaintiffs on January 24, 2012, terminating its lease. (Add'l SUF, P26; Chaganti Decl., ¶ 60.) Defendants show that under Missouri law, a tortious interference claim accrues "when damage can be ascertained" and that the limitation period is "five years after the causes's accrual." (*D'Arcy & Assocs., Inc. v. K.P.M.G. Peat Marwick, L.L.P.* (Mo.Ct.App. 2004) 129 S. W. 3d 25, 29–30.) As such, Plaintiffs were required to bring suit by no later than January 24, 2017, well before they filed this lawsuit on October 18, 2018. (See *Goff v. Fowler* (Mo.Ct.App. 2010) 323 S. W. 3d 797, 801 (*Goff*) [applying Missouri law to a Kansas statute of limitations: defendant met its burden of showing that the plaintiff's action was barred by a statute of limitations unless an exception applied based on the face of the petition].)

Plaintiffs insist that under Missouri law, they had 10 years to discover Defendants' alleged wrongdoing and another five years to file suit. Under Missouri Revised Statute section 516.120(5), "all fraud claims must be brought within five years from when the cause of action accrues, which is either when the fraud is discovered or at the end of 10 years after the fraud takes place, whichever occurs first." (*Ellison v. Fry* (Mo. 2014) 437 S. W. 3d 762, 769.) The problem with this contention, however, is that Plaintiffs are not asserting a fraud claim. Thus, the relevant provision is Missouri Revised Statute section 516.280: "the general tolling statute, which sets out a 'discovery rule' for cases in which a defendant conceals the wrong." (*Ibid.*) Plaintiffs have presented no evidence showing that Defendants prevented them from discovering the basis for a tortious interference claim as required under Missouri law. (See Mo. Rev. Stat. § 516.280 ["If any person, by absconding or concealing himself, or by any other improper act, prevent the commencement of an action, such action may be commenced within the time herein limited, after the commencement of such action shall have ceased to be so prevented."].) Instead, Plaintiffs contend that it is Defendants who have the burden to present evidence of when Plaintiffs should have discovered their claim. (Opp., p. 26.) This is incorrect. "[O]nce the moving party establishes that plaintiff's claim is barred by the statute of limitations, the burden shifts to the plaintiff to show that he comes within an exception in the statute to avoid the application of the limitations period to the claim. [Citation.]" (*Goff*, *supra*, 323 S. W. 3d at p. 800.) This is because "[t]olling statutes are treated as exceptions to the applicable statute of limitations, as the burden of proving facts sufficient to toll the statute is upon the party asserting that the statute of limitations has been tolled. [Citation.]" (*Id.* at p. 801.)

California law is in accord. (See *Gryczman v. 4550 Pico Partners, Ltd.* (2003) 107 Cal. App. 4th 1, 6–7 ["Where as here a defendant moving for summary judgment shows, as an affirmative defense, the applicable limitations period ran out before the complaint was filed and the plaintiff relies on the delayed discovery rule the plaintiff has the burden 'to show that a triable issue of one of more material facts exists as to that . . . defense[.]' "].)

Because Plaintiffs have failed to show a triable issue of material fact regarding the application of the statute of limitations to the tortious interference cause of action, it is untimely, and the court would grant summary adjudication as to the seventh cause of action (except that the court is granting summary judgment instead).

V. CONCLUSION

The motion for summary judgment is GRANTED.

Date: May 16, 2024

/s/ Frederick S. Chung
Frederick S. Chung
Judge of the Superior Court

Appendix C
[Filed: Jan. 6, 2026]

IN THE COURT OF APPEAL OF
THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

WHISPERING OAKS RESIDENTIAL CARE FACILITY LLC et al., Plaintiffs and Appellants, v. TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA et al., Defendants and Respondents.	H052423 (Santa Clara County Super. Ct. No. 18CV336673)

BY THE COURT*:

Appellant's petition for rehearing is denied.

Date: 1/06/2026

/s/ Mary Greenwood, P.J.

* Before Greenwood, P. J., Grover, J., and Lie, J.

Appendix D
[Filed: Mar. 25, 2026]

Court of Appeal, Sixth Appellate District –
No. H052423

S294844

IN THE SUPREME COURT OF CALIFORNIA

En Banc

WHISPERING OAKS RESIDENTIAL CARE
FACILITY, LLC, et al.,
Plaintiff and Appellant,

v.

TRAVELERS PROPERTY CASUALTY COMPANY
OF AMERICA, et al.,
Defendants and Respondents.

The petition for review is denied.

GUERRERO
Chief Justice