

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 22 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOVALK, LLC,

Plaintiff - Appellant,

v.

KINSALE INSURANCE COMPANY,

Defendant - Appellee.

No. 25-2615

D.C. No.

3:22-cv-00290-BAS-LR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cynthia A. Bashant, District Judge, Presiding

Submitted October 20, 2026**
Pasadena, California

Before: BUMATAY, VANDYKE, and MENDOZA, JR., Circuit Judges.

Plaintiff-Appellant Novalk, LLC (“Novalk”) appeals from the district court’s grant of summary judgment in favor of Defendant-Appellee Kinsale Insurance Company (“Kinsale”). We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

We review de novo the district court’s grant of summary judgment. *Westport*

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

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

Ins. Corp. v. Cal. Cas. Mgmt. Co., 916 F.3d 769, 773 (9th Cir. 2019). Summary judgment is proper when, viewing the evidence in the light most favorable to the nonmoving party, “there is no genuine dispute as to any material fact.” Fed. R. Civ. P. 56(a); *Universal Cable Prods., LLC v. Atl. Specialty Ins. Co.*, 929 F.3d 1143, 1151 (9th Cir. 2019) (citation omitted).

1. The district court properly granted summary judgment to Kinsale on the breach of contract claim. Under California law, an insurer is entitled to summary judgment if (1) the insured has breached the duty to cooperate, and (2) the insurer was prejudiced by that breach. *Brizuela v. CalFarm Ins. Co.*, 10 Cal. Rptr. 3d 661, 670 (Ct. App. 2004); *see also Campbell v. Allstate Ins. Co.*, 384 P.2d 155, 156–57 (Cal. 1963). To satisfy the duty to cooperate, the insured need only show substantial performance in “*whatever form*” to make it unreasonable for an insurer to refuse to pay the claim. *McCormick v. Sentinel Life Ins. Co.*, 200 Cal. Rptr. 732, 741 (Ct. App. 1984) (emphasis added). Though breach and prejudice are ordinarily questions of fact, either may be resolved as a matter of law if there are no “genuine issues of material fact.” *Universal Cable*, 929 F.3d at 1151 (citation omitted).

There is no genuine dispute that Novalk breached the duty to cooperate. The parties agree that the insurance policy at issue required Novalk to produce records “as often as Kinsale reasonably requests” in the event of a reported loss. The summary judgment record conclusively established—and Novalk did not dispute—

that Kinsale requested Novalk to produce six categories of information to support Kinsale's investigation of Novalk's claims, and Novalk failed to produce the information for nearly five years. The district court gave Novalk two opportunities to produce the required documents: first, until the grant of partial summary judgment at the close of discovery, and second, through supplemental briefing addressing the post-discovery period. Even at the time of the supplemental briefing, Novalk still did not produce all documents, explain its previous failure to produce, nor indicate when they might be ultimately produced. Novalk indisputably breached the duty to cooperate.

There is also no genuine dispute that Novalk's breach prejudiced Kinsale. Under California law, "an insurer 'may give its own interests consideration equal to that it gives the interests of its insured[s],' " including by investigating where potential policy exclusions apply. *Guebara v. Allstate Ins. Co.*, 237 F.3d 987, 993 (9th Cir. 2001) (quoting *Fraley v. Allstate Ins. Co.*, 97 Cal. Rptr. 2d 386, 392 (Ct. App. 2000) (modification original)). Where "suspicious circumstances" are involved, an insured's failure to provide financial information prejudices the insurer, because without that information, the insurer cannot substantiate the insured's claim. *Abdelhamid v. Fire Ins. Exch.*, 106 Cal. Rptr. 3d 26, 39 (Ct. App. 2010). A five-year delay in producing records as required under the insurance policy clearly prejudiced Kinsale. Without the requested documents regarding Novalk's financial

status, trespasser history, and prior-claim documentation, Kinsale could not determine whether a policy exclusion for fraud, crime, or vandalism applied under the suspicious circumstances of the fire (signs of forced entry, disabled sprinkler system, and an open arson investigation) that gave rise to Novalk's claim. The district court properly granted summary judgment to Kinsale on the breach of contract claim.

2. The district court also properly granted summary judgment to Kinsale on the bad faith claim. To prevail on the bad faith claim, Novalk was required to show “(1) benefits due under the policy [were] withheld; and (2) the reason for withholding benefits [was] unreasonable or without proper cause.” *Love v. Fire Ins. Exch.*, 271 Cal. Rptr. 246, 255 (Ct. App. 1990). Since Novalk did not substantially perform its duty to cooperate under the insurance contract, Novalk cannot satisfy the first element. And without an entitlement to the underlying contract benefits, Novalk cannot maintain a bad faith claim as a matter of law. *See Conestoga Servs. Corp. v. Exec. Risk Indem., Inc.*, 312 F.3d 976, 980 (9th Cir. 2002); *Waller v. Truck Ins. Exch., Inc.*, 900 P.2d 619, 639 (Cal. 1995). Therefore, the district court properly granted summary judgment to Kinsale on the bad faith claim.

AFFIRMED.