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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HEATHER A. SMILLIE, Plaintiff and Appellant, v. STATE FARM GENERAL INSURANCE COMPANY, Defendant and Respondent.	B268353 (Los Angeles County Super. Ct. No. BC504414)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rafael A. Ongkeko, Judge. Affirmed.

Deborah A. Smillie for Plaintiff and Appellant.

LHB Pacific Law Partners, Michael J. McGuire and Anne M. Master for Defendant and Respondent.

SUMMARY

A lawsuit against the insurer on a homeowner's insurance policy must be brought within 12 months after inception of the loss. This one-year limitation period is tolled "from the time an insured gives notice of the damage to his insurer . . . until coverage is denied." (*Prudential-LMI Commercial Ins. v. Superior Court* (1990) 51 Cal.3d 674, 693 (*Prudential-LMI*).)

In this case, the insurer closed the case (because the insureds failed to submit necessary documents) and reopened it later (when the insureds gave further information), on three different occasions. When the insurer closed the case for the second time, the insurer told the insureds that the time for filing suit was running, and specified the time periods already included in the one-year limit (the time before the insureds notified the insurer of the loss, and the time between the first closing and later re-opening of the claim). The insureds ignored this advice, taking the position that the time to file suit was continuously tolled, without regard to periods during which the insurer had closed the claim, and eventually filed this lawsuit accordingly.

The trial court granted the insurer's motion for summary adjudication of three of the insureds' causes of action based on the time bar. The trial court later granted the insurer's separate motion for summary judgment on the remaining claim by one of the insureds for intentional infliction of emotional distress.

We affirm the judgment.

FACTS AND PROCEDURAL BACKGROUND

Defendant State Farm General Insurance Company issued a homeowner's policy to Deborah A. Smillie covering her home in Redondo Beach. The parties insured included Ms. Smillie's adult daughter, plaintiff Heather Smillie. In March 2010, water from a

broken toilet tank damaged the residence and personal property in it.

Both Deborah and Heather Smillie were plaintiffs in the ensuing lawsuit. This appeal involves only Heather Smillie. (Deborah Smillie brought an appeal after all her claims were resolved adversely based on the time bar, but we dismissed her appeal as untimely.) We will refer to Heather Smillie as plaintiff, to Deborah Smillie as Ms. Smillie, and to both collectively as plaintiffs.

1. The Chronology of Events

Following is a chronology of pertinent events.

On March 10, 2010, the loss occurred. There was damage to the home and to many items of personal property.

On March 29, 2010, Ms. Smillie reported the loss to defendant.

In April 2010, defendant conducted inspections and made payments to Ms. Smillie for repairs to the home. On April 29, 2010, defendant sent a supplemental payment for covered repairs, and stated that: "We await your completed personal property inventory form. Once we receive this, we can continue with the handling of your claim."

On May 27, 2010, defendant wrote to Ms. Smillie again, stating defendant needed "[s]igned & completed Personal Property Inventory Forms [(PPIF)], and supporting ownership documentation," and "[o]nce we receive this information from you, we will be able to proceed with the handling of your claim."

On June 25, 2010, defendant sent Ms. Smillie another letter with statements identical to those in the May 27 letter.

On July 19, 2010, defendant's "activity log" shows defendant received a call from Ms. Smillie stating she was "in

process of getting all info together & submitting PPIF." According to Ms. Smillie, she contacted defendant on July 19 (and also on August 13, 20 and 27, 2010) about "her concerns regarding the dwelling repair estimates, and the lack of any remediation services offered or implemented by [defendant] given the observance by [defendant] of excess moisture and/or mold in the damaged rooms, and Plaintiffs' extensive personal property."

On July 23, 2010, defendant wrote to Ms. Smillie, again stating it needed personal property inventory forms with supporting documentation in order to proceed with the handling of Ms. Smillie's claim, and drawing attention to the insureds' duties after a loss.

On July 30, 2010, defendant sent a letter telling Ms. Smillie of various duties of a policyholder ("[r]egardless of whether you wish to make a claim"), and of the one-year time limit for suit against the defendant. The letter stated:

> "The one year period referred to does not include the time we take to investigate your claim. The time from the date of loss (March 10, 2010) to the date you reported your claim to your agent does count in computing the amount of time that has already expired. The one year suit limitation period is again running as of the date of this letter."

Defendant's activity log also shows defendant closed the claim on July 30, 2010.

The next entry in defendant's activity log is on August 27, 2010, when Ms. Smillie called defendant. (As noted above, Ms. Smillie says she contacted defendant on August 13 and August 20 as well. These contacts are not reflected in defendant's logs.) The entry indicates Ms. Smillie called defendant, and was "very upset because [defendant] closed her

claim," and that defendant "explained why claim was closed and how easily it could be reopened." Ms. Smillie asked for a new claim representative, and asked that the new claim representative call her on Monday, August 30, 2010.

On September 1, 2010, Ms. Smillie called stating she "never received a call from a claim rep." Defendant "re-opened claim and transferred call to claim rep." The new representative reviewed the dwelling repair estimates in the file, and noted there was "mention about moisture in the baseboard and vinyl, but there is no mention of offering EWS [(emergency water service)] or any estimates to include EWS in [defendant's] estimate." The new claims representative told Ms. Smillie that defendant could send a company to perform emergency remediation services, and Ms. Smillie accepted that offer.

Activity on Ms. Smillie's claim, including dwelling repair and personal property, continued for the next 14 months. (In April 2011, defendant retained a law firm to assist with Ms. Smillie's claim, and the firm advised Ms. Smillie that any future communications should be directed to attorney E. Kenneth Purviance.)

On November 8, 2011, defendant (Mr. Purviance) sent a check "in further payment of [Ms. Smillie's] contents claim," and again closed Ms. Smillie's claim, advising her that it "will now close its file" because all benefits had been paid. Mr. Purviance's letter quoted the policy provision requiring suit to be filed within one year after the date of loss, and stated:

> "The time between the March 10, 2010 date of the loss and the date you reported the loss to State Farm is included in the one year period, as is the approximate one month period between July 30 and September 1, 2010 when your

> claim was closed due to your failure to respond to State Farm's requests for information pertaining to your contents claim. The one year limitation is again running as of the date of this letter."[1]

The November 8, 2011 letter also informed Ms. Smillie her policy provided for additional replacement costs benefits if total loss items were replaced within two years of the loss, and that the file would be re-opened if replacement cost documentation were submitted.

On November 22, 2011, Ms. Smillie sent an email message to Mr. Purviance, stating that "this claim is far from over"; that defendant had not paid all benefits due under the policy; that she was "compiling the claims correspondence for submission to the Department of Insurance"; and, among other things, thanking Mr. Purviance "for advising of your version of the one-year statute of limitations. To that end, please state specifically how many days are left in that one year. Of course, breach of written contract carries a four-year statute, and bad faith breach carries a two-year statute, so, you know . . . ." (Ellipsis in original.) Ms. Smillie also asserted there were two errors in the personal property inventory amounts.

On December 2, 2011, defendant's activity log shows defendant "reviewed contents inventory item #28 for 2 metal

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[1] Defendant's November 8, 2011 letter also acknowledged Ms. Smillie's request for a copy of the insurance policy, and stated a copy would be provided under separate cover. Defendant provided a copy by letter dated November 21, 2011, and stated that "[a]ll policy provisions and conditions quoted in our previous correspondence still apply."

frames @ $35.00 each which have been clean/repaired vs. ACV. Payment provided for second frame @ $38.42 ($35.00 + tax)."

On December 8, 2011, Mr. Purviance responded to Ms. Smillie's November 22, 2011 email. The letter enclosed a check for $38.42, saying defendant had "adjusted inventory item No. 28 as requested in your letter." The letter also stated:

> "As for the one year contractual limitation on suit, the loss was stated to have occurred on March 10, 2010, but was not reported until March 29, 2010, some 19 days later. The file was closed for 33 days, between July 30, 2010 and September 1, 2010. As of my letter to you of November 8, 2011, 313 days remained of the one year contractual limitation period."

On December 22, 2011, Ms. Smillie submitted replacement cost documentation for certain items of personal property, thus reopening her claim.

On April 19, 2012, defendant issued Ms. Smillie a check in payment of replacement cost benefits she requested on March 28, 2012. The parties agree that after defendant's letter of April 19, 2012, the parties had no further communications about any aspect of the claim.

On March 29, 2013, Ms. Smillie and her daughter Heather filed this lawsuit, alleging causes of action for breach of the insurance contract, tortious breach of the implied covenant of good faith and fair dealing, unfair business practices, and intentional infliction of emotional distress.

2. The Summary Adjudications

On October 30, 2014, the court entered an order granting defendant's motion for summary adjudication of plaintiffs' causes of action for breach of contract, breach of the implied covenant of

good faith and fair dealing, and unfair business practices, on the ground they were barred by the policy's one-year suit limitation.

The court denied summary adjudication of Heather Smillie's cause of action for intentional infliction of emotional distress, without prejudice to defendant's right to file a motion for summary judgment of that claim on grounds other than the one-year suit limitation.[2]

On August 28, 2015, the trial court held a hearing on defendant's motion for summary judgment of the remaining claim for intentional infliction of emotional distress. (We will relate the relevant facts in our legal discussion of this claim, *post*.) Plaintiff did not appear. After hearing argument from defendant, the trial court took the matter under submission and later granted the motion, finding the conduct alleged did not amount to extreme or outrageous conduct and plaintiff did not show she suffered severe emotional distress.

On September 18, 2015, the trial court entered judgment against Heather Smillie, who filed a timely appeal.

DISCUSSION

Plaintiff contends the trial court erred in both its summary adjudication rulings. We conclude she is mistaken on both counts.

1. The Standard of Review

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) Summary

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[2] Judgment was entered against Deborah Smillie on December 17, 2014. As mentioned earlier, Ms. Smillie's appeal was dismissed as untimely.

judgment is appropriate where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Id.,* subd. (c).)

Our Supreme Court has made clear that the purpose of the 1992 and 1993 amendments to the summary judgment statute was " 'to liberalize the granting of [summary judgment] motions.' " (*Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 542 (*Perry*); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 854.) It is no longer called a "disfavored" remedy. "Summary judgment is now seen as a 'particularly suitable means to test the sufficiency' of the plaintiff's or defendant's case." (*Perry,* at p. 542.) On appeal, "we take the facts from the record that was before the trial court . . . . ' "We review the trial court's decision de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained." ' " (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1037, citations omitted.)

2. The Time Bar Issue

The substance of plaintiff's claim is that *Prudential-LMI* mandates the continuous equitable tolling of the one-year limitation period, from the date notice was given until "the date of the last claim settlement or denial," no matter what happens between those dates. Plaintiff is mistaken in this view of the law.

Several cases are pertinent to our conclusion.

a. *Prudential-LMI*

In *Prudential-LMI*, the Supreme Court established the equitable tolling principle, and explained the policy considerations supporting equitable tolling. The principle, as mentioned above, is "to allow the one-year suit provision . . . to

run from the date of 'inception of the loss,' . . . but to toll it from the time an insured gives notice of the damage to his insurer . . . until coverage is denied." (*Prudential-LMI, supra,* 51 Cal.3d at p. 693.) The court agreed with the observation that " '[i]n this manner, the literal language of the limitation provision is given effect; the insured is not penalized for the time consumed by the company while it pursues its contractual and statutory rights to have a proof of loss, call the insured in for examination, and consider what amount to pay; and the central idea of the limitation provision is preserved since an insured will have only 12 months to institute suit.' " (*Ibid.*)

Prudential-LMI explained that equitable tolling "eliminat[es] the unfair results that often occur in progressive property damage cases. First, it allows the claims process to function effectively, instead of requiring the insured to file suit *before* the claim has been investigated and determined by the insurer. Next, it protects the reasonable expectations of the insured by requiring the insurer to investigate the claim without later invoking a technical rule that often results in an unfair forfeiture of policy benefits. . . . [G]ood faith and fair dealing require an insurer to investigate claims diligently before denying liability. [Citation.] Third, a doctrine of equitable tolling will further our policy of encouraging settlement between insurers and insureds, and will discourage unnecessary bad faith suits that are often the only recourse for indemnity if the insurer denies coverage after the limitation period has expired. [Citation.] [¶] Equitable tolling is also consistent with the policies underlying the claim and limitation periods—e.g., the insurer is entitled to receive prompt notice of a claim and the

insured is penalized for waiting too long after discovery to make a claim." (*Prudential-LMI, supra,* 51 Cal.3d at p. 692.)

b. *Singh v. Allstate Ins. Co.*

In *Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135 (*Singh*), the court held that an insured's request for reconsideration of an insurance claim does not create an additional period of equitable tolling. (*Id.* at p. 145; see *id.* at p. 148 ["once an unequivocal denial has been made, the insured's later requests for reconsideration do not serve the purposes of and do not extend the period of equitable tolling"].) The court explained that "the policies underlying equitable tolling cease to exist once the carrier has received notice, investigated the claim, and denied coverage. At the stage of a request for reconsideration, the carrier has already received notice of the claim and had an opportunity to investigate. The policyholder has not been required to file suit before the carrier has even decided the claim; the claim has already been denied and the plaintiff knows of a potential basis for suit." (*Id.* at p. 145.)

Further, *Singh* tell us, "if the carrier's conduct after denying coverage expressly waives the one-year limit, or . . . induces the policyholder to forbear from filing suit, the doctrines of waiver and estoppel will avoid injustice on that score." (*Singh, supra,* 63 Cal.App.4th at p. 145.) And, "beginning a new period of equitable tolling based merely on a *request* for reconsideration would be anomalous. By the simple expedient of making many requests for reconsideration, claimants could extend the one-year statute at will with successive periods of tolling." (*Ibid.*)

Singh rejected the plaintiffs' contention that the absence of further equitable tolling when a policyholder requests reconsideration " 'would permit insurers to send out cursory

"denial" letters in the very early stages of claims investigation solely to commence the running of the one-year limitations period.' " (*Singh, supra,* 63 Cal.App.4th at p. 148.) The court pointed out that a "quick and cursory denial, without adequate investigation, would not be in good faith," and "the policyholder would receive early notice of the basis for a bad faith claim." (*Ibid.*)

c. *Ashou v. Liberty Mutual Fire Ins. Co.*

Ashou v. Liberty Mutual Fire Ins. Co. (2006) 138 Cal.App.4th 748 (*Ashou*) also discusses the equitable tolling principles stated in *Prudential-LMI* and *Singh*, albeit in the context of a statutory revival of otherwise time-barred insurance claims arising out of the Northridge earthquake. *Ashou* held that "an insurer's reopening and reconsideration of an earthquake claim tolls the revived one-year period to bring earthquake claims . . . ." (*Ashou*, at p. 753.)

Ashou observed that "while an insurer is contractually obligated to conduct a timely investigation of an *initial* claim, an insurer has no such obligation with respect to a request for reconsideration of a denied claim." (*Ashou, supra,* 138 Cal.App.4th at p. 762.) "As one of the purposes of equitable tolling is to allow the insurers time to conduct full investigations into claims made, equitable tolling should only apply—in the context of a previously denied claim—when the insurer has agreed to reopen and reinvestigate the claim. Application of equitable tolling from the time of a *request* to reopen the claim would require insurers to respond to all such requests or risk being subject to suit on those claims *indefinitely*." (*Id.* at pp. 762-763.)

d. This case

None of *Prudential-LMI, Singh* or *Ashou* is precisely on point with this case, where defendant's closures of the claim occurred, in the first instance (July 30, 2010), because there was nothing more to investigate in the absence of any documentation from Ms. Smillie, and in the second instance (November 8, 2011), because all benefits (according to defendant) had been paid. Nonetheless, the principles discussed in the cases leave us in no doubt that plaintiff's claim is time-barred.

Prudential-LMI is, of course, controlling. A claim is equitably tolled from the date of notice to the insurer "to the time the insurer formally denies the claim in writing." (*Prudential-LMI, supra,* 51 Cal.3d at p. 678.) This case does not involve a "formal denial of coverage," as in *Prudential-LMI*. (*Id.* at p. 700.) But the same principles, supported by the same policy considerations, necessarily apply when an insurer closes a claim with written notice to the policyholder that the statute of limitations is running. To conclude otherwise would allow the policyholder to keep a claim open indefinitely, without providing the insurer with any basis for further investigation. That is not the purpose of equitable tolling.

In short, nothing in *Prudential-LMI* suggests that an insurer cannot close a claim—and end the tolling period—when the insurer has nothing to investigate, so long as the insurer formally notifies the insured that the claim is closed. The policy considerations supporting equitable tolling do not support the notion that equitable tolling must continue until the insured is satisfied; it continues until the insurer completes its investigation, makes payment on the claim, and advises the insured in writing that the time to file suit is running. And

nothing in *Prudential-LMI* tells us that the insurer may not close a claim and then reopen it when the insured provides a basis acceptable to the insurer for further investigation. The principles expressed in *Singh* and *Ashou*—that an insured's request for reconsideration does not operate to extend the tolling period, and that equitable tolling in the case of a denied claim should only apply when the insurer has agreed to reopen and reinvestigate—likewise support the proposition that an insurer may close and reopen a claim, with tolling stopping and starting again accordingly. That is what happened here.

To recap: The parties agree that 19 days of the one-year period ran between the loss and notice to the insurer. The parties further agree that the one-year period was running from April 19, 2012 (the date of defendant's last payment to Ms. Smillie) and March 29, 2013, when suit was filed—a period of 344 days. That is 363 days.

In addition, there were two occasions on which defendant closed its file and expressly explained to Ms. Smillie, in writing, how the one-year time limit for filing suit is calculated, and that the one-year limit was running: on July 30, 2010, and again (after reopening the claim on September 1, 2010) on November 8, 2011. On both of those occasions, there is no evidence plaintiffs did anything to request or demand re-opening of the claim until two weeks—14 days in each case—after defendant's notification to Ms. Smillie. The one-year time to file suit was running during those periods. Indeed, under *Singh* and *Ashou*, the time limit was running not just until Ms. Smillie asked for further adjustment of her claim, but until defendant agreed to reopen the case. We need not parse these time periods, because any one of

them easily puts the filing of the complaint well beyond the one-year time bar.

Plaintiff insists that recognizing "multiple, discrete tolling periods" is a "violation of law and equity" and "allows for the possibility that the one-year suit provision may run before a claim has been denied or settled." Plaintiff does not explain how this is so, and it is not so. Plaintiff asserts the trial court's ruling "is precisely the unfair result that *Prudential* was designed to eradicate, and constitutes a miscarriage of justice . . . ." This too is untrue, and plainly contradicted by the record in this case.[3]

There is nothing inequitable about permitting an insurer to close a claim when it has nothing further to investigate or has determined that all benefits have been paid. (Cf. *Singh, supra,*

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[3] In her reply brief, plaintiff contends the trial court should have disregarded defendant's separate statement, asserting it did not include the material facts that the claim was closed on July 30, 2010 and on November 8, 2011, and was reopened on December 22, 2011. She is wrong; the separate statement is sufficiently clear on each point. Fact No. 8 describes the July 30, 2010 letter as explaining the operation of the one-year time bar, and advising "that the one-year period was running as of the date of the letter." Fact No. 17 describes the November 8, 2011 letter in detail, including that "because all benefits had been paid, [defendant] would close its file," and describing the periods during which the one-year time bar was running, including that "the one-year period was again running as of the date of the letter." Fact No. 17 also states the November 8 letter informed Ms. Smillie that if she submitted documents regarding replacement costs, defendant would reopen the claim. Fact No. 20 states that in a December 22, 2011 letter, "Smillie provided . . . replacement amounts, including documentation regarding same . . . ." There was no violation of separate statement requirements.

63 Cal.App.4th at p. 143 ["The extension of a courtesy, to look at anything else that plaintiffs might have to offer, did not render the denial equivocal."].) A policyholder who disagrees with the insurer's determinations is on notice of its right to sue the insurer, where the insurer (as in this case) expressly advises the policyholder of its right to sue, and explains the calculation of the time bar.

Ms. Smillie's choice to ignore defendant's calculation of the one-year time period in its November 8, 2011 letter to her was contrary to governing legal principles and unsupported by the policy considerations underlying equitable tolling: "allow[ing] the claims process to function effectively," instead of requiring the insured to sue before the insurer has fully investigated the claim; "protect[ing] the reasonable expectations of the insured" by requiring the insurer to investigate the claim without later invoking a technical rule to bar suit; encouraging settlement and discouraging unnecessary bad faith suits when coverage is denied after the limitation period has expired. (*Prudential-LMI, supra,* 51 Cal.3d at p. 692.) None of those considerations are promoted under plaintiff's view of the law. (Cf. *Singh, supra,* 63 Cal.App.4th at p. 142 ["The justifications for equitable tolling are absent, once the carrier has initially denied the claim. The policies supporting the shortened limitation period are then fully applicable, and no reason for further tolling exists."].)

On a final note, plaintiff challenges the trial court's evidentiary rulings, saying "[t]here was no way" that the trial court could properly have sustained all of defendant's objections to her evidence, and the trial court "made incorrect evidentiary rulings" on defendant's evidence. These are not reasoned arguments that evidentiary rulings are erroneous, and are

therefore insufficient on appeal. (*Salas v. Department of Transportation* (2011) 198 Cal.App.4th 1058, 1061 (*Salas*) [the plaintiffs "forfeited their challenge to the evidentiary rulings by failing to properly present such challenges with specificity as to each objection and reasoned argument and authority as to why the court's evidentiary rulings were an abuse of discretion"].)[4]

In sum, plaintiffs produced no evidence contradicting the undisputed facts related above, and those facts require the conclusion the one-year time bar expired well before plaintiffs filed suit. Summary adjudication of plaintiff's claims was therefore proper.

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[4] Plaintiff identifies only two items of evidence. First, she complains the trial court sustained defendant's objection to Exhibit 6 (Ms. Smillie's handwritten notes), while at the same time Exhibit 6 was "identified in the trial court's order as evidentiary support for its decision granting summary adjudication." The mention of Exhibit 6 in the trial court's October 30, 2014 order granting summary adjudication (drafted by defendant) was plainly a mistake (no such mention occurred in the trial court's August 11, 2014 summary judgment ruling), and it is equally plain the trial court did not in fact rely on Ms. Smillie's notes, which are irrelevant (as the trial court ruled). Second, plaintiff complains about the admission of defendant's activity log notes (though her own evidence includes excerpts from the same activity log notes). The basis for her complaint seems to be that the activity log does not refer to the December 8, 2011 letter from Mr. Purviance, and does not show the case was closed on November 8, 2011, or re-opened on December 22, 2011. (Other documents do.) These are not reasoned arguments and do not support a claim of evidentiary error. (*Salas, supra,* 198 Cal.App.4th at pp. 1061, 1074.)

3. The Intentional Infliction of Emotional Distress Issue

a. Background and undisputed facts

It is undisputed that plaintiff's claim for intentional infliction of emotional distress is based on a telephone conversation between Matthew Willey, defendant's claim team manager for Ms. Smillie's claim, and plaintiff. (This conversation, and other conversations that preceded it, concerned a check defendant had issued payable jointly to Ms. Smillie and a lender shown on defendant's records, but whose home equity line of credit had been closed for several years.) Specifically, the parties agree (Fact No. 32) that:

> "The conversation that forms the basis of Heather Smillie's IIED claim is the March 30, 2011 telephone conference with TM [(team manager)] Willey. Heather Smillie claims that during this call TM Willey 'mocked' her. Heather Smillie claims that TM Willey responded in the affirmative to Heather Smillie's question 'Are you acting this way out of spite?' Heather Smillie also asserts that TM Willey accused her of lying about the existence of a second mortgagee. Heather Smillie described TM Willey comments during this call as being really unprofessional. During this call Heather Smillie alleges she was hysterical. Heather Smillie also allegedly became 'hysterical', 'could not be consoled' and 'suffered a panic attack'."[5]

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[5] It is also undisputed (Fact No. 16) that: "On April 1, 2011, TM Willey received a telephone call from Heather Smillie regarding [the lender whose credit line no longer existed]. During the call, Heather Smillie went from screaming to crying and back again. Heather Smillie would not provide TM Willey an

Other undisputed facts include these: In September 2010, plaintiff left a voicemail message for defendant's representative including a profanity. On March 14, 2011, Ms. Smillie called another customer representative, Mr. Enriquez, a name he described as "inappropriate." On March 17, 2011, Ms. Smillie called Mr. Enriquez, who tried to explain the status of the claim. Ms. Smillie informed him "that Heather Smillie was experiencing a mental breakdown" and put plaintiff on the phone. Plaintiff was crying, and "Smillie/Heather Smillie hung up the phone" before Mr. Enriquez could fully discuss the claim. A week later, Mr. Enriquez returned a call from Ms. Smillie and attempted to explain the steps required regarding the mortgagees on the settlement check, but "she yelled and hung up the phone." It is further undisputed that the next day, March 25, 2011, Mr. Willey wrote to Ms. Smillie. Among other points, he stated he had been informed by his staff that she (Ms. Smillie) had been verbally abusive, and that "further communications must be in writing," and his staff members "will not be required to speak with you directly . . . ."

Plaintiff's July 7, 2015 declaration elaborates on her claim: "During my telephone conversations with Matthew Willey, on or about March 30 and/or April 1, 2011, I again explained that the equity line with First Federal Bank had been closed several years prior thereto, . . . that we needed the money immediately to pay

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opportunity to call the underwriting department and kept him on the phone for over an hour. TM Willey discontinued the conversation, but Heather Smillie called him back and she was upset. He again discontinued the call and Heather Smillie called back. Heather Smillie eventually agreed to give TM Willey an hour to verify information with underwriting."

the contractors, that the delay in payment was causing my mother and I financial hardship and severe emotional distress. I pleaded with Matthew Willey to reissue the check omitting the name of First Federal Bank, rendering the check non-negotiable. Mr. Willey laughed at and mocked me, made fun of my mother, and accused my mother and I of lying about a second mortgage . . . . I was crying hysterically, and asked Mr. Willey if he was refusing to re-issue the check 'out of spite,' to which he responded, 'Yes.' I screamed out to my mother that Matthew Willey admitted that he was refusing to re-issue the check 'out of spite.' That was so cruel. No one was helping us, and my mother had been paying insurance premiums for years. I became hysterical, and could not be consoled. I suffered a panic/anxiety attack, vomiting, muscle spasms, depression, night terrors and increased anxiety, which continue to the present. I lost trust in authority figures, and am fearful of them. I feel like I lost my innocence, which will haunt me the rest of my life. We were living in an oppressive situation, and Mr. Willey refused to speak with my mother. I have been diagnosed with recurrent depressive disorder, generalized anxiety disorder and post traumatic stress disorder. Because of my recurrent depressive disorder, when I go into a state of depression, I cannot handle matters as well as someone else, and the depression can last for days. In addition, in an invalidating environment, such as that created by State Farm, I am unable to control my emotions. In such situations, I am highly sensitive, highly reactive, and slow to return to my normal emotional level."

Plaintiff's declaration also stated that after her conversations with Mr. Willey, she did not see her psychotherapist for several weeks. "I was afraid to leave the

house, due to my inability to function. I was sad and anxious. I did not want to talk about the problems with the house. I was inconsolable. I did not feel that it was safe for me to drive a car while I was upset and crying." Ms. Smillie submitted a declaration similarly describing plaintiff's conversation with Mr. Willey and her reactions to the conversation.

It is undisputed that plaintiff had panic attacks before March 30, 2010; gets panic attacks frequently "and they could occur once a day"; and plaintiff "does not assert a claim for medical expenses with regard to her IIED claim." It is further undisputed that Ms. Smillie testified she "could not control Heather Smillie with regard to communications regarding the Claim," and Heather Smillie is "verbally abusive" and "cannot calm down."

b. Plaintiff's opposition separate statement and defendant's reply

Plaintiff's separate statement in opposition contained 58 "additional undisputed material facts." Plaintiff's additional facts documented the history of the loan that had been paid off but remained in defendant's records, and described various matters concerning the handling of the claim from April 2010 through April 2011. (Plaintiff describes these additional facts as "the entire invalidating course of conduct exhibited by [defendant] throughout the claims-handling process.")

Defendant's reply, presented in separate statement format, consisted of objections to each of plaintiff's additional facts on the primary ground of irrelevance. Defendant also filed separate evidentiary objections as required by the California Rules of Court, rule 3.1354. The trial court sustained most of defendant's objections, overruling two of them.

Plaintiff contends defendant did not comply with statute and court rules, because defendant did not state whether the additional facts were disputed or not, and therefore the trial court should have disregarded defendant's response to plaintiff's opposition. Plaintiff is wrong; neither the statute nor the rules specify the content or format of the moving party's reply to the opposition papers. (See Code Civ. Proc., § 437c, subd. (b); Cal. Rules of Court, rule 3.1350.) When the moving party objects to the opposing party's evidence on the ground it is inadmissible, there is no obligation to state whether or not such inadmissible evidence is disputed.

Plaintiff further contends the trial court's order sustaining defendant's objections was "in violation of due process" because the court's order identifies and rules on defendant's objections using the numbers in the separate statement (43 to 100), rather than defendant's separate evidentiary objections (numbered 1-37). We reject plaintiff's claim, which unnecessarily elevates form over substance. The scope and purport of the trial court's rulings is perfectly clear, and plaintiff offers no argument or authorities to suggest any of the evidentiary rulings were erroneous. (*Salas, supra,* 198 Cal.App.4th at p. 1061.)

c. The applicable law

A cause of action for intentional infliction of emotional distress requires, among other things, extreme and outrageous conduct causing the plaintiff to suffer severe or extreme emotional distress. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050.) "A defendant's conduct is 'outrageous' when it is so ' " 'extreme as to exceed all bounds of that usually tolerated in a civilized community.' " ' " (*Id.* at pp. 1050-1051.) Liability " ' "does not extend to mere insults, indignities, threats,

annoyances, petty oppressions, or other trivialities." [Citation.]' " (*Id.* at p. 1051; see *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 496 [" 'Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.' "].)

It is " ' "for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous as to permit recovery." ' " (*Fowler v. Varian Associates, Inc.* (1987) 196 Cal.App.3d 34, 44 (*Fowler*).)

d. Application to this case

As in *Fowler*, "[n]o fact in the record would permit a finding that [defendant's] conduct was outrageous." (*Fowler, supra,* 196 Cal.App.3d at p. 44.) According to plaintiff, Mr. Willey "laughed at and mocked [her]," accused her "of lying about a second mortgage," and said "yes" when plaintiff asked if he "was refusing to re-issue the check 'out of spite.' " The conduct described is insulting and annoying, but we cannot conclude it amounts to anything more than "petty oppressions" or "other trivialities." (*Hughes v. Pair, supra,* 46 Cal.4th at p. 1051.) Certainly we cannot conclude the described conduct " ' " 'exceed[s] all bounds of that usually tolerated in a civilized community.' " ' " (*Ibid.*)

Plaintiff cites *Golden v. Dungan* (1971) 20 Cal.App.3d 295, 303, footnote 6 (*Golden*), for the proposition that " '[t]he extreme and outrageous character of the conduct may arise from the actor's knowledge that the other is peculiarly susceptible to emotional distress, by reason of some physical or mental condition or peculiarity. The conduct may become heartless, flagrant, and outrageous when the actor proceeds in the face of such knowledge, where it would not be so if he did not know.' "

Plaintiff contends, in substance, that because defendant "was aware that Heather suffered from mental illness," the principle stated in *Golden* applies to prevent summary judgment.

We are not persuaded. Plaintiff does not explain what Mr. Willey said or did to "mock" her. Mr. Willey's admission that he was acting "out of spite" is at most a petty oppression, and while it is offensive to laugh at and accuse another of lying, that conduct plainly does not exceed the bounds tolerated in a civilized community. (*Hughes v. Pair, supra,* 46 Cal.4th at p. 1051.) The fact defendant knew plaintiff had an unspecified mental illness does not change that conclusion.

In short, the conduct described was not " 'heartless, flagrant, and outrageous,' " and plaintiff fails to quote the rest of the statement in *Golden* about susceptibility to emotional distress: " 'It must be emphasized again, however, that major outrage is essential to the tort; and the mere fact that the actor knows that the other will regard the conduct as insulting, or will have his feelings hurt, is not enough.' " (*Golden, supra,* 20 Cal.App.3d at p. 303, fn. 6.) There was no "major outrage" here, and consequently recovery is not permitted.

DISPOSITION

The judgment is affirmed. Defendant shall recover its costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J. SORTINO, J.*

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.