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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

VADIM KEVORKOV, Plaintiff and Appellant, v. GEICO DIRECT, Defendant and Respondent.	B205205 (Los Angeles County Super. Ct. No. LC076266)

APPEAL from a judgment of the Superior Court of Los Angeles County. Leon S. Kaplan, Judge. Reversed and remanded with directions.

Law Office of Bruce Adelstein, and Bruce Adelstein for Plaintiff and Appellant.

Sylvester, Oppenheim & Linde, and Lauren G. Linde for Defendant and Respondent.

Last century, California voters approved Proposition 103 for the stated purpose of protecting consumers from "arbitrary [automobile] insurance rates and practices." (See Historical and Statutory Notes, 42B West's Ann. Ins. Code (2005 ed.) foll. § 1861.01, at p. 259.) Toward that end, Proposition 103 added section 1861.03, subdivision (c)(1), to the Insurance Code, providing that an insurer's "notice of cancellation . . . of a policy for automobile insurance shall be effective only if it is based on one or more of the following reasons: (A) nonpayment of premium; (B) fraud or material misrepresentation affecting the policy or insured; (C) *a substantial increase in the hazard insured against*." (Italics added.)[1] The Insurance Code does not define what constitutes a "substantial increase in the hazard insured against," but the Department of Insurance has promulgated regulations which include this definition: "[P]ermissive use of the insured vehicle by persons other than the [named] insured . . . *to an extent that indicates regular use of the vehicle by such persons*." (See Cal. Code Regs., tit. 10, § 2632.19, subd. (b)(2), italics added.)

The appeal before us today has its genesis in a decision by Geico Direct to cancel (prospectively) Vadim Kevorkov's automobile insurance policy for the stated reason that he was permitting other drivers to use his insured vehicle. Kevorkov responded by suing Geico for breach of contract, tortious breach of the covenant of good faith and fair dealing, and a variety of related causes of action. Geico moved for summary judgment, arguing that it had properly cancelled Kevorkov's policy because he had substantially increased the hazard insured against by permitting other drivers to make "regular use" of his insured vehicle. The trial court granted Geico's motion, and we address Kevorkov's appeal from the ensuing judgment.

We rule that Kevorkov's cause of action for breach of contract should be salvaged because it cannot be held — as a matter of law — that Kevorkov allowed other drivers to make "regular use" of his insured vehicle. We affirm the remainder of the trial court's

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[1] All further section references are to the Insurance Code.

decision because we see nothing in the record to suggest that there is anything more afoot in this case than a contractual dispute over whether Geico properly cancelled Kevorkov's policy. This is not a tort case.

FACTS

In November 2002, Geico issued an automobile insurance policy to Kevorkov. Over the next three and one-half years, Geico either regularly renewed the original policy with Kevorkov, or issued a series of ensuing policies to Kevorkov. In December 2003, at which time a Geico policy was in effect, Kevorkov permitted Gregory Davidov to drive one of Kevorkov's insured cars, and Davidov became involved in an accident. Kevorkov reported the accident to Geico, but advised the insurer that Davidov was going to pay for any damage to Kevorkov's vehicle. Kevorkov did not file a claim for insurance benefits as a result of the accident.

On May 12, 2006, Geico issued the automobile insurance policy, which is involved in Kevorkov's current litigation. The declarations page for the subject policy identified Kevorkov and his wife as the named insureds, and stated that the policy period ran from May 24, 2006, to November 24, 2006. Within the body of the policy itself, Section I set forth the terms of the policy's "Liability Coverages," and, within Section I, the policy stated that liability coverage applied to Kevorkov and his wife, and "any other person using [an insured] auto with [Kevorkov's] permission."

Section V of the policy set forth the "General Conditions," which applied to the policy, and, in accord with section 1861.03, subdivision (c)(1), included the following provision:

> "8. CANCELLATION BY [GEICO] IS LIMITED
>
> "[Geico] will not cancel this policy except for any of the following reasons: [¶] (a) ***You*** do not pay the initial or any additional premium for this policy or fail to pay any premium installment when due to us or our agent. [¶] (b) Fraud or material misrepresentation made by an ***insured*** in obtaining the policy, continuing the policy or in presenting a claim under the policy. [¶] (c) A substantial increase in the hazard insured against."

On May 30, 2006, Kevorkov granted permission to Kevin Petrosian to drive one of Kevorkov's insured cars, and Petrosian became involved in an accident. The damages to Kevorkov's vehicle were covered by Allstate Insurance, not Geico.

On July 11, 2006, Geico mailed Kevorkov the following notice of cancellation of his policy:

> "Every insurance company uses certain standards, together with technical experience and judgment, to determine whether or not it can continue to insure each policyholder. Such things as accident and conviction records, the uses of the car, and many other factors are considered. [¶] After careful study of your individual case, we find that we are unable to continue your insurance protection and must notify you as follows:
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> > "THE INSURANCE PROVIDED BY GEICO . . . UNDER YOUR POLICY . . . IS HEREBY TERMINATED AS OF 12:01 A.M. ON 8/1/2006.
> >
> > "This action has been taken for the following reasons:
>
> "**Permissive use by other than insureds**.
>
> You have the right upon written request made within 90 business days of the date of this form was mailed to you to receive the specific items of information that support the reason(s) for the decision and the names and addresses of any institutional sources that supplied the specific items of information. You also have the opportunity to correct, amend or delete any recorded personal information we may have. . . . [¶] We are sorry to take this action and we urge you to obtain other insurance to be effective as of the termination date of you policy as indicated above."

On July 14, 2006, Geico issued a refund of premiums to Kevorkov in the amount of $1,455.10. On July 24, 2006, the refund of premiums "cleared."

Procedural History

In November 2006, Kevorkov sued Geico. In March 2007, Kevorkov filed a first amended complaint alleging the following causes of action, all of which were predicated on Kevorkov's foundational allegation that Geico had wrongly cancelled his policy:

(1st) breach of contract;

(2d) tortious breach of the covenant of good faith and fair dealing;

(3d) violation of section 790.03;

(4th) violation of section 661;

(5th) violation of section 1861.03, subdivision (c)(1);

(6th) violation of section 11580.09, subdivision (c);

(7th) intentional misrepresentation;

(8th) negligent misrepresentation;

(9th) intentional infliction of emotional distress; and

(10th) negligent infliction of emotional distress.[2]

In August 2007, Geico filed a motion for summary judgment or, in the alternative, summary adjudication of each cause of action. The fundamental basis of Geico's motion rested on his argument that none of Kevorkov's causes of action were viable because each and every cause of action was based on his allegation that Geico had improperly cancelled Kevorkov's automobile insurance policy, and because the evidence showed that Geico had properly cancelled the policy based upon Kevorkov's substantial increase in the hazard against, which the policy insured. More specifically, Geico argued that Kevorkov had substantially increased the hazard covered by his policy by allowing "permissive use" of his vehicle by other drivers, which amounted to "regular use" of his vehicles by other drivers.

Geico supported its motion with evidence showing its underwriting guidelines. Those underwriting guidelines, in conformity with the insurance regulations, noted at the outset of this opinion (see Cal. Code Regs, tit. 10, § 2632.19, subd. (b)(2)), define an increase in hazard in the following terms: "Permissive use by other than the insured . . . to an extent that indicates regular use of the vehicle by such person. . . ." Geico's underwriting guidelines do not stop there, however, and provide a further

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[2] Kevorkov's first amended complaint also alleged an 11th cause of action for violation of Business and Professions Code section 17200. Neither Geico's motion for summary judgment, nor Kevorkov's opposition to the motion, nor either party's briefs on appeal addressed his claim under the unfair competition law, and we consider the claim abandoned.

definition tied to "lending losses." To be specific, Geico's underwriting guidelines further provide: "When the insured has a lending loss, we should offer to add the unreported driver [to the policy as an additional named insured]. If the insured refuses, we should offer a Named Driver Exclusion. If the insured refuses to sign the Named Driver Exclusion, we can cancel or non-renew under this provision. Also, regardless of exclusions, *we will consider a second lending loss in three years as constituting regular use and grounds for cancellation/nonrenewal*." (Italics added.) Citing its "two lending losses" underwriting guideline, Geico argued that it had properly cancelled Kevorkov's policy.

Kevorkov opposed Geico's motion for summary judgment with evidence showing that Geico did not provide him with its underwriting guidelines, either at the time of his purchase of his automobile insurance policy, or at any time subsequent to his purchase of the policy. In other words, Kevorkov essentially argued that Geico had never disclosed its underwriting guidelines to him, and that the guidelines were not part of the parties' contract of insurance. Kevorkov also submitted declarations from two associates who stated that an unnamed Geico representative had told them that Kevorkov would be allowed to grant permissive use of his insured vehicle "twice a month" without having his policy subject to cancellation.

On November 1, 2007, the trial court heard arguments from counsel and took the matter under submission. On November 8, 2007, the trial court entered a minute order granting Geico's motion for summary judgment. In a further ruling attached to its minute order, the trial court set forth its reasons, essentially explaining that Geico had properly cancelled Kevorkov's insurance policy in accord with Geico's underwriting guidelines, i.e., Geico had properly cancelled Kevorkov's policy because two permissive users of his insured vehicle had been involved in accidents within a three-year period. On November 16, 2007, the trial court entered judgment in favor of Geico.

Kevorkov filed a timely notice of appeal.

DISCUSSION

I. Breach of Contract

In a multipart argument, Kevorkov contends that summary adjudication of his first cause of action for breach of contract must be reversed. Kevorkov argues the language in Geico's insurance policy regarding a "substantial increase in the hazard insured against" is ambiguous, and, for this reason, must be interpreted in his favor. Next, Kevorkov says that, juxtaposed against such an interpretation, he presented sufficient evidence to create a triable issue on the question of whether or not he did, in fact, substantially increase the hazard insured against. It follows, concludes Kevorkov, that his breach of contract claim should have survived a summary disposition. We agree with Kevorkov that his cause of action for breach of contract should not have been extinguished in the context of Geico's motion for summary judgment or summary adjudication of issues.

A. Geico's Contractual Right to Cancel the Parties' Policy Is Not Ambiguous

As noted above, the parties' insurance contract included the following provision: "[Geico] will not cancel this policy except for . . . [¶] . . . [¶] [a] substantial increase in the hazard insured against." We agree with Kevorkov that the language in Geico's insurance policy is ambiguous because it is susceptible to two or more (at least) reasonable interpretations, and fails to explain to Kevorkov with any degree of certainty the type of acts, or extent of such acts, which would justify Geico's cancellation of the parties' policy. (See generally *Powerine Oil Co., Inc. v. Superior Court* (2005) 37 Cal.4th 377, 390.) The fact that the policy language tracks the statutory language in section 1861.03, subdivision (c)(1)(C), does not make Geico's policy language any less ambiguous to a reasonable insurance consumer. In short, an insurer's incorporation of statutory language will not save an insurance policy where the incorporated statutory language is, itself, ambiguous.

This does not mean, however, that Kevorkov's ambiguity argument is correct. It is not. The ambiguity found in section 1861.03, subdivision (c)(1)(C), and, by extension, in Geico's policy, has been clarified by the Department of Insurance's regulations, and those regulations must be considered — as a matter of law — to have been incorporated

into the parties' contract of insurance. (See, e.g., *Miracle Auto Center v. Superior Court* (1998) 68 Cal.App.4th 818, 821 [existing laws are considered part of a contract as though they were expressly incorporated into the agreement]; see also *Masonite Corp. v. Pacific Gas & Electric Co*. (1976) 65 Cal.App.3d 1, 8-9 [regulations, which have been adopted by an agency, are considered existing laws and, as such, are considered part of a contract].) As we noted above, California Code of Regulations, title 10, section 2632.19, subdivision (b)(2), defines a "substantial increase in the hazard insured against" to mean "regular use" of an insured vehicle by persons other than the named insured.

So, what all of this means is that the relevant provision in the policy of insurance before us today must be construed to read as follows:

> "Geico will not cancel this policy except for *permissive use of an insured vehicle by persons other than the insured to an extent that indicates regular use of the vehicle by such persons.*"

This interpretation satisfies the requirement that an insurance policy must be given a common sense construction — it protects the legitimate interests of Geico in evaluating the amount of risk which it agreed to cover, and, at the same time, it protects Kevorkov's reasonable expectations in obtaining insurance coverage. Certainly, no consumer may reasonably expect that, in buying his or her own personal insurance, the insurer has also agreed to cover other "regular users" of the insured's vehicle.

We disagree with Kevorkov that the term "*to an extent that indicates regular use of the vehicle by such persons*" is, itself, ambiguous. The language used in an insurance policy, as in any contract, must be given its "plain" or "ordinary and popular" meaning. (*MacKinnon v. Truck Ins. Exchange* (2003) 31 Cal.4th 635, 647-648.) "Regular" use of a vehicle, therefore, means something akin to use of a vehicle that is "of the sort or kind that is expected as usual, ordinary, or average." (See Webster's 9th New Collegiate Dict. (1987) p. 992.) We are satisfied that this definition is sufficiently certain, and we reject

Kevorkov's suggestion that "regular use" must be defined numerically in order to remove any ambiguity.[3]

At the same time, we reject Geico's reliance on its underwriting guidelines for yet another definition, to wit, "regular use" means "two lending losses within three years." We fail to understand the relevance of Geico's internal underwriting guidelines because we see no evidence in the record showing that they were incorporated into the parties' contract of insurance. We see no provision in the Department of Insurance's regulations which corresponds with Geico's attempt — by its underwriting guidelines — to define the term "regular use" to include "two lending losses" in a prescribed period. In short, Geico has not explained to us how its underwriting guidelines are binding on Kevorkov.

B. The Evidence Does Not Show as a Matter of Law that Kevorkov Allowed Other Drivers to Make "Regular Use" of His Insured Vehicle

The evidence presented by Geico in support of its motion for summary judgment essentially established two facts: (1) a permissive user of Kevorkov's insured vehicle was involved in an accident in December 2003; and (2) another permissive user of his insured vehicle was involved in a second accident in May 2006. We simply cannot hold as a matter of law that this evidence established "regular use" of Kevorkov's insured vehicle by other drivers as a matter of law — i.e., use of his vehicle that is of the sort or kind that is expected as usual, ordinary or average.

In the final analysis, Kevorkov's case boils down to this bottom line: a trier of fact must decide whether or not Kevorkov allowed other drivers to make "regular use" his insured vehicle. If Kevorkov did so, then Geico acted properly when it cancelled his policy, and there was no breach of contract. If Kevorkov did not, then Geico should not have cancelled his policy, and there was a breach of contract.[4]

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[3] If we understand his arguments correctly, Kevorkov appears to suggest that the term "regular use" should be interpreted to mean use of a vehicle "twice per month."

[4] Our decision to reverse summary adjudication of Kevorkov's cause of action for breach of contract would be the same even assuming we accepted Geico's position that

II. Bad Faith

In a two-step argument, Kevorkov contends that summary adjudication of his second cause of action for tortious breach of the implied covenant of good faith and fair dealing, i.e., "bad faith," must be reversed. Kevorkov first argues that, in the event he shows that Geico breached the parties' contract of insurance by cancelling his policy, he will thereby also have established that Geico violated section 1861.03, subdivision (c)(1). In his next breath, Kevorkov argues that an insurer's violation of section 1861.03, subdivision (c)(1), in and of itself, necessarily establishes the tort of "bad faith." We disagree.

The only case cited by Kevorkov is *Williams v. State Farm Fire & Casualty Co*. (1990) 216 Cal.App.3d 1540 (*Williams*). We do not read *Williams* to support the proposition that an insurer's violation of an Insurance Code section necessarily establishes a tortious breach of an insurance policy in bad faith.

In *Williams*, a State Farm agent advised plaintiffs that the insurer would not issue earthquake insurance for their new home because of its hillside location, but nonetheless accepted an application and provided a proof of insurance to the plaintiff's lender so that escrow could close. Shortly thereafter, State Farm cancelled the plaintiffs' homeowners' insurance policy because their home's hillside location did not meet the insurer's underwriting rules. Plaintiffs then sued State Farm, alleging that its cancellation of the policy violated the earthquake insurance law (see § 10081 et seq.), and that State Farm had breached the implied covenant of good faith and fair dealing. (*Williams*, *supra*, 216 Cal.App.3d at p. 1543.) The trial court granted State Farm's motion for summary

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"regular use" means "two lending losses in three years." Our review of the evidence persuades us that there is an unresolved question of fact regarding whether there actually were "two lending losses in three years." In opposition to Geico's motion for summary judgment, Kevorkov presented evidence showing that Geico did not pay out any money, under any policy, in connection with either of the two accidents in which Kevorkov's insured vehicle was involved. We see nothing in Geico's arguments, which persuades us that "two losses" means the same thing as "two accidents."

judgment, and Division Three of the First District Court of Appeal affirmed, finding there had been no statutory violation, which meant their could be no breach of the implied covenant of good faith and fair dealing. In other words, *Williams* essentially holds that an insurer does not act in "bad faith" when it obeys the Insurance Code.

Kevorkov argues that the implicit and obverse rule to be derived from *Williams* is that, if there *is* an Insurance Code violation, then "bad faith" *is* established. We just do not see that *Williams* supports such a conclusion. *Williams* teaches that an insurer who acts in conformity with and obeys the Insurance Code cannot be said to have acted in "bad faith." *Williams* does not teach that an Insurance Code violation, in and of itself, establishes bad faith, and more relevant law suggests otherwise.

A *tortious* breach of the covenant of good faith and fair dealing in an insurance contract has two elements. First, the insurer must withhold benefits due under a policy, and, second, the insurer's conduct must involve something more than a mere breach of the policy, and must have been affected "unreasonably and in bad faith." (See, e.g., *Egan v. Mutual of Omaha Ins. Co*. (1979) 24 Cal.3d 809, 818; see also Judicial Council of Cal. Civil Jury Instructions, CACI No. 2330 [bad faith is more than "a mere failure to exercise reasonable care"], and CACI No. 2337 [factors to consider in evaluating insurer's conduct].)

Geico's evidence showed (1) it cancelled Kevorkov's policy after learning that two permissive users of Kevorkov's insured vehicle were involved in accidents within a period of three years, and (2) it based its decision on its underwriting guidelines. This showing established that Geico's decision was not unreasonable or arbitrary. Kevorkov's evidence did not show that Geico acted unreasonably. In summary, the evidence in the record shows, at most, that Geico's decision to cancel Kevorkov's policy resulted from a poor decision vis-à-vis its evaluation of whether he was permitting other drivers to make "regular use" of his insured vehicle. There is nothing in the record to show that Geico acted in "bad faith."

III. Misrepresentation

Kevorkov contends summary adjudication of his seventh cause of action for intentional misrepresentation (fraud) and eighth cause of action for negligent misrepresentation must be reversed because his evidence showed that Geico misrepresented the *meaning* of terms in the parties' policy. Framing his argument another way, Kevorkov contends Geico may be held liable for misrepresenting how it would define the term "a substantial increase in the hazard insured against" if and when a question arose about cancelling his policy. In short, Kevorkov argues Geico may be held liable on a misrepresentation theory based on statements to this effect: "You can allow your friend to use your vehicle as often as twice a month, even though your friend is not a named insured under Geico's policy," and "Geico will not cancel the policy if the frequency of such accident is no more than twice a year." Kevorkov's arguments on appeal do not persuade us to overturn the trial court's decision to summarily adjudicate his misrepresentation claims.[5]

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[5] In support of his opposition to Geico's motion for summary judgment, Kevorkov offered two identical declarations, one from Kevin Petrosian and the other from Nick Avetesian. Both declarants stated that they had spoken with a "representative" at Geico (unnamed) sometime in the fall of 2002, prior to the time that Kevorkov first purchased an insurance policy from the insurer. According to both Petrosian and Avetesian, the following exchanges took place during their conversations with Geico's representative:

> "4. I asked Geico's representative as to whether Geico allowed its insured to lend his vehicle to a friend who is not a named insured under the Geico's policy, and Geico's representative responded to me as 'yes.'
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> "5. I asked Geico's representative as to how often Geico allowed its insured to lend his vehicle to a friend who is not a named insured under the Geico's policy, and Geico's representative's answer to me was as follows: 'You can allow your friend to use your vehicle as often as twice a month, even though your friend is not a named insured under Geico's policy.'
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> "6. I asked Geico's representative whether such permissive use by the said friend would constitute a reason for cancellation of Geico's insurance, and Geico's representative responded to me as 'no.'

To cut to the chase, we agree with the trial court that Geico's misrepresentations, assuming they were in fact uttered, *did not cause* any damages to Kevorkov. Generously construed, Kevorkov's complaint and his arguments below and on appeal are premised on some form of "fraud in the inducement" claim. The problem with such a claim is that, no matter how Kevorkov's case is dissected, his damages, if any, were caused by Geico's decision to *cancel* his policy, not by anything that Geico did to *induce* him to purchase the policy in the first place. The bottom line is that Kevorkov desired a policy, paid for a policy, was covered by a policy while it was in effect, and had no objections to the policy or its coverage until such time as it was cancelled. Geico's representations, be they wrongful or not, did not cause Kevorkov to suffer any damages.

> "7. I asked Geico's representative as to what would happen if such friend who is not a named insured under the Geico's policy, would get into an accident when driving the car with the permission of Geico's insured, and Geico's representative's answer to me was that Geico would cover such accident, if the accident [was] caused by the said friend.
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> "8. I asked Geico's representative whether Geico would cancel its insured's policy for the reason of the accident, involving Geico's insured's friend, permissively using the insured's car, and Geico's representative answer to me was as follows: 'Geico will not cancel the policy if the frequency of such accident is no more than twice a year.'
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> "9. I asked Geico's representative as to what Geico meant by the term 'substantial increase in hazard insured against,' and Geico's representative's response to me was that it's some egregious circumstances such as DUI. Geico's representative did not mention permissive use in his explanation of the term 'substantial increase in hazard insured against.' " (Capitalization omitted.)

The trial court sustained Geico's hearsay objections to the declarations, and admitted these statements, but not for the truth of the matter asserted.

Our conclusion is reinforced by the statement in Kevorkov's declaration that, "[a]s a result of Geico's *actions*, which are the subject of this lawsuit, [he] suffered monetary damages as well as emotional distress, mental anguish, pain and suffering." (Italics added.) Kevorkov's vague assertion that he was damaged is unconnected to any statement made by any person affiliated with Geico. The predominant "action" about which Kevorkov complains is Geico's decision to cancel his policy.

IV. Emotional Distress

Kevorkov contends summary adjudication of his ninth cause of action for intentional infliction of emotional distress must be reversed because a wrongful cancellation of an insurance policy, standing alone, establishes "outrageous" conduct. Kevorkov offers no authority for his position, and we find he is simply wrong. "Outrageous" conduct within the meaning of the tort of intentional infliction of emotional distress means conduct that is "so extreme that it goes beyond all possible bounds of decency." (CACI No. 1602.) In this case, Geico did nothing more than prospectively cancel an insurance policy. Geico did not leave Kevorkov uncovered against an existing claim, nor steal his premiums, nor do any act of any kind which might be construed as "outrageous." The evidence in this case shows no more than a dispute over whether Geico properly exercised its contractual right to cancel Kevorkov's policy. A straightforward contract dispute of this nature does not amount to "outrageous" conduct, not even where, as Kevorkov implicitly posits, the defendant is an insurance company.

Kevorkov contends summary adjudication of his 10th cause of action for negligent infliction of emotional distress must be reversed because an insurer's wrongful decision to cancel a policy establishes "negligent" conduct for which the insured is entitled to an award of money damages for any resulting emotional harm. Again, Kevorkov offers no legal authority for his argument, and, again, we find he is wrong. In the event that Geico wrongly cancelled Kevorkov's policy, then his remedy is afforded by contract law, not negligence law.

V. The Remaining Causes of Action

Kevorkov has not offered any argument challenging the trial court's summary disposition of his statutory causes of action, and we consider those claims abandoned.

VI. Geico's Motion for Sanctions on Appeal

Geico has filed a motion to strike portions of Kevorkov's appendix, and a motion for sanctions on appeal. We dismiss the motion to strike as moot because, even with the challenged material, we find Kevorkov's arguments on appeal fall short of meeting his burden of showing reversible error with the exception of his claim for breach of contract. We also deny Geico's motion for sanctions. First, we have agreed with Kevorkov that his cause of action for breach of contracts should go forward. Second, Geico's motion for sanctions is based on the materials which Geico has challenged by its motion to strike. Assuming that Kevorkov relied on materials which should not have been included as part of his record on appeal, we find Geico's objections to be much ado about nothing. The materials did not significantly advance Kevorkov's appeal, nor overly burden Geico in opposing the appeal.

DISPOSITION

The summary judgment is reversed. The cause is remanded to the trial court with directions to vacate its order granting Geico's motion for summary judgment, and to enter a new order denying Geico's motion for summary adjudication of Kevorkov's first cause of action for breach of contract, and granting Geico's motion for summary adjudication of Kevorkov's second cause of action for tortious breach of the covenant of good faith and fair dealing; third cause of action for violation of section 790.03; fourth cause of action for violation of section 661; fifth cause of action for violation of section 1861.03, subdivision (c)(1); sixth cause of action for violation of section 11580.09, subdivision (c); seventh cause of action for intentional misrepresentation (fraud); eighth cause of action for negligent misrepresentation; ninth cause of action for intentional infliction of emotional distress; and 10th cause of action for negligent infliction of emotional distress.

The parties are to bear their own costs on appeal.

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BIGELOW, J.

We concur:

RUBIN, Acting P. J.

FLIER, J.