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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

STANISLAV SARKISYANTS,

Plaintiff - Appellant,

v.

STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY; et al.,

Defendants - Appellees.

No. 05-17403

D.C. No. CV-04-03299-JSW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jeffrey S. White, District Judge, Presiding

Submitted November 7, 2007\*\*  
San Francisco, California

Before: KLEINFELD, SILVERMAN, and W. FLETCHER, Circuit Judges.

The district court correctly ordered summary judgment in favor of State Farm in denying Sarkisyants' claim for breach of an insurance contract. "An

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

insured's compliance with a policy requirement to submit to an examination under oath is a prerequisite to the right to receive benefits under the policy.”<sup>1</sup> Sarkisyants did not attend a reasonably requested second examination under oath, despite numerous requests. State Farm fairly denied Sarkisyants' claim after numerous requests and nine reminder letters in nine months.

The district court correctly ordered summary judgment in favor of State Farm in denying Sarkisyants' claim for breach of the implied covenant of good faith and fair dealing. An insurer may be liable for breach of the implied covenant of good faith and fair dealing when it withholds policy benefits unreasonably or without proper cause.<sup>2</sup> State Farm acted reasonably with good cause.

The district court properly denied Sarkisyants' claim for punitive damages. To recover punitive damages, Sarkisyants must prove by clear and convincing evidence that State Farm is guilty of malice, fraud or oppression.<sup>3</sup> Sarkisyants

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<sup>1</sup>Brizuela v. Calfarm Ins. Co., 116 Cal. App. 4th 578, 587 (2004).

<sup>2</sup>California Shoppers, Inc. v. Royal Globe Ins. Co., 175 Cal. App. 3d 1, 54 (1985).

<sup>3</sup>Cal. Civ. Code § 3294(a).

asserts that State Farm denied his claim because of his nationality, but provides no evidence to support this allegation.

Further, we do not take judicial notice of the State Bar of California disciplinary letter offered by Sarkisyants. Generally, we will not take notice of facts outside the district court record.<sup>4</sup> The disciplinary letter was not the result of a judicial proceeding, and therefore we have no reason here to make an exception to this general rule.

AFFIRMED.

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<sup>4</sup>United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992).