

1 settlement. (Doc. 11 ¶ 38.) Plaintiff paid for the settlement with its own funds (Doc. 11 ¶
2 39) and subsequently filed the present action. Defendant has moved for summary
3 judgment. (Doc. 74.)

4 **II. Standard of Review**

5 A court shall grant summary judgment if the pleadings and supporting documents,
6 viewed in the light most favorable to the non-moving party, “show[] that there is no
7 genuine dispute as to any material fact and the movant is entitled to judgment as a matter
8 of law.” Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23
9 (1986). Material facts are those facts “that might affect the outcome of the suit under the
10 governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A genuine
11 dispute of material fact arises if “the evidence is such that a reasonable jury could return a
12 verdict for the nonmoving party.” *Id.*

13 The party moving for summary judgment bears the initial burden of informing the
14 court of the basis for its motion and identifying those portions of the record, together with
15 affidavits, which it believes demonstrate the absence of a genuine issue of material fact.
16 *Celotex*, 477 U.S. at 323. If the movant is able to do such, the burden then shifts to the
17 non-movant who, “must do more than simply show that there is some metaphysical doubt
18 as to the material facts,” and instead must “come forward with ‘specific facts showing
19 that there is a genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
20 475 U.S. 574, 586-87 (1986). At this stage, the function of the judge is “not himself to
21 weigh the evidence and determine the truth of the matter but to determine whether there
22 is a genuine issue for trial.” *Anderson*, 477 U.S. at 249; *see also Scott v. Harris*, 550 U.S.
23 372, 380 (2007).

24 **III. Discussion**

25 Defendant has moved for summary judgment on the grounds that because it did
26 not unreasonably withhold consent to fund Plaintiff’s settlement, Plaintiff’s claims for
27 breach of contract and bad faith must fail. (Doc. 74 at 9-22.) The Court agrees and
28 addresses each in turn.

1 **A. Consent to Settlement**

2 In determining whether Defendant reasonably refused to provide its consent to
3 Plaintiff's settlement with Teamsters, Arizona law governs. *Geico Gen. Ins. Co. v.*
4 *Tucker*, 71 F.Supp.3d 985, 987 (D. Ariz. 2014) ("Where a federal court has jurisdiction
5 by virtue of diversity of citizenship of the parties, the court must follow state law.").
6 Insurance policies are considered contracts between the insurer and the insured, *Liberty*
7 *Ins. Underwriters, Inc. v. Weitz Co.*, 215 Ariz. 80 ¶ 7, 158 P.3d 209, 212 (App. 2007), the
8 provisions of which are construed (1) in accordance with their "plain and ordinary
9 meaning," *Lennar Corp. v. Auto-Owners Ins. Co.*, 214 Ariz. 255 ¶ 23, 151 P.3d 538, 546
10 (App. 2007), and (2) to "effectuate the parties' intent." *Liberty*, 215 Ariz. at ¶ 8, 158 P.3d
11 at 212. In the context of insurance, questions of reasonableness can be resolved by the
12 Court as a matter of law when the position of the parties turns on "the interpretation of
13 standard language in the form policies." *See Lennar Corp. v. Transamerica Ins. Co.*, 227
14 Ariz. 238, ¶ 19, 256 P.3d 635, 641 (App. 2011).

15 Plaintiff claims Defendant's refusal to consent to the Teamsters settlement was
16 unreasonable and thus, constituted a breach of duty owed to Plaintiff under the terms of
17 its policy. (Doc. 11 at ¶¶ 53-54.) The record shows that both parties focus on the
18 reasonableness of Defendant's decision to not consent to Plaintiff's settlement terms with
19 Teamsters. (Doc. 11 at 6-8; Doc. 74 at 9-14; Doc. 87 at 8-17; Doc. 98 at 7-15.) Plaintiff's
20 insurance policy reads, in part:

21 The Insureds shall not admit or assume any liability, enter
22 into any settlement agreement, stipulate to any judgment, or
23 incur any Defense Costs without the prior written consent of
24 the Insurer. Only those settlements, stipulated judgments and
25 Defense Costs which have been consented to by the Insurer
26 shall be recoverable as Loss under the terms of this policy.
27 The Insurer's consent shall not be unreasonably withheld,
28 provided that the Insurer shall be entitled to effectively
 associate in the defense, the prosecution and the negotiation
 of any settlement of any Claim that involves or appears
 reasonably likely to involve the Insurer.

1 (Doc. 1-1 at 15).

2 In the context of a prospective settlement, an insurance company is obligated “to
3 give equal consideration to both the interests of itself and of its insured.” *Bills v. Ariz.*
4 *Prop. & Cas. Ins. Guar. Fund*, 194 Ariz. 488, ¶ 10, 984 P.2d 574, 578 (App. 1999). It is
5 undisputed that when approached by Plaintiff with the terms of Teamsters’ proposed
6 settlement, Defendant considered the terms and undertook an assessment of a variety of
7 factors, including several other cases that were similar in nature to Teamsters’ claims
8 against Plaintiff, the parties’ pleadings, Judge Broomfield’s rulings, as well as the
9 decisions of the U.S. Department of Justice and the U.S. Securities and Exchange
10 Commission to not take enforcement action against Plaintiff. (Doc. 75 at ¶¶ 41-57.)
11 Defendant concluded that settlement was premature—and likely unnecessary—because
12 of the probability that Plaintiff would prevail on appeal. (Doc. 75 at ¶¶ 59-62.) Moreover,
13 Defendant concluded that even in the unlikely event that Plaintiff did not prevail on
14 appeal, there were a variety of other hurdles that Teamsters would have to overcome in
15 order to recover a “substantial judgment” against Plaintiff. (Doc. 75 at ¶¶ 63-64.) By
16 conducting this extensive analysis weighing the Teamsters settlement, taken in
17 conjunction with the express terms of Plaintiff’s policy, it is clear that Defendant fulfilled
18 its obligation to Plaintiff by considering the terms of the Teamsters’ settlement and that
19 Plaintiff’s breach of contract claim must fail as a matter of law.

20 **B. Bad faith claims**

21 Plaintiff claims that Defendant acted in bad faith when it refused to consent to
22 fund Plaintiff’s settlement with Teamsters. (Doc. 11 at ¶¶ 57-71; Doc. 87 at 17-18.)
23 Under Arizona law, “[t]o establish a claim for bad faith, an insured must prove the
24 insurer acted unreasonably and either knew its conduct was unreasonable or acted with
25 such reckless disregard that knowledge of unreasonableness may be imputed to it.”
26 *Sobieski v. Am. Standard Ins. Co. of Wis.*, 240 Ariz. 531, ¶ 11, 382 P.3d 89, 92 (App.
27 2016); *Clearwater v. State Farm Mut. Auto. Ins. Co.*, 164 Ariz. 256, 260, 792 P.2d 719,
28 723 (Ariz. 1990). The standard against which Defendant’s actions are gauged is one of

1 reasonably. *Regal Homes, Inc. v. CNA Ins.*, 217 Ariz. 159, ¶ 50, 171 P.3d 610, 622
2 (App. 2007). Plaintiff has failed to set forth facts from which a reasonable juror could
3 find that Defendant acted unreasonably, or knew that it was acting unreasonably, when it
4 refused to consent to Plaintiff's settlement with Teamsters. The absence of such facts
5 turns the reasonableness of Defendant's refusal to consent into a question of law.
6 *Evanston Ins. Co. v. OEA, Inc.*, 566 F.3d 915, 920 (9th Cir. 2009). Just as Plaintiff's
7 breach of contract claims fails as a matter of law because of the reasonableness of
8 Defendant's actions, so too must Plaintiff's claims of bad faith against Defendant fail as a
9 matter of law.

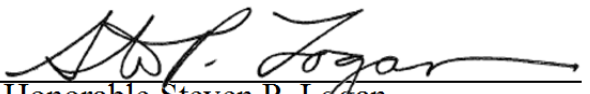
10 **IV. Conclusion**

11 Plaintiff's claims against Defendant fail as a matter of law. Plaintiff has failed to
12 set forth any disputed facts that would lead a reasonable juror to conclude that Defendant
13 failed to meet its obligation to consider Plaintiff's settlement with Teamsters per the
14 express terms of Plaintiff's insurance policy. Accordingly,

15 **IT IS ORDERED:**

- 16 1. That Defendant's Motion for Summary Judgment (Doc. 74) is **granted**;
- 17 2. That the Clerk of Court shall terminate this action and enter judgment
18 accordingly.

19 Dated this 26th day of October, 2017.

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21 
22 Honorable Steven P. Logan
23 United States District Judge
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