

HONORABLE RICHARD A. JONES

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

DARLENE MENDOZA  
GONZALES,

Plaintiff,

vs.

SAFECO INSURANCE  
COMPANY OF AMERICA, a  
foreign company,

Defendant.

Case No. 2:24-cv-01832-RAJ

**ORDER**

**I. INTRODUCTION**

This matter comes before the Court on Defendant Safeco Insurance Company of America’s Motion for Summary Judgment (the “Safeco Motion,” Dkt. # 33), and Plaintiff Darlene Mendoza Gonzales’ Partial Motion for Summary Judgment (the “Gonzales Motion,” Dkt. # 35). The Court has reviewed the Safeco Motion and the Gonzales Motion (collectively, the “Motions”), the submissions in support of and in opposition to the Motions, the balance of the record, and the governing law. Plaintiff requests oral argument on the Gonzales Motion, but the Court finds that oral argument is not necessary to resolve either of the Motions.

1 For the reasons set forth below, the Court **DENIES** each of the Safeco Motion and  
2 the Gonzales Motion in their entirety.

## 3 **II. BACKGROUND<sup>1</sup>**

4 In 2021, Plaintiff Darlene Mendoza Gonzales purchased her home (the  
5 “Property”) in Tacoma, Washington. Dkt. ## 34-1, 34-2. Defendant Safeco Insurance  
6 Company of America (“Safeco”) issued a homeowner’s insurance policy, No.  
7 OH2219404 (the “Policy”) on the Property beginning in 2021. Dkt. # 34-3. The Policy,  
8 which names Plaintiff as the insured, was renewed for subsequent annual policy periods,  
9 including, as relevant here, from May 5, 2023 through May 5, 2024. *Id.* During the  
10 2023-2024 policy period, Plaintiff sustained and submitted claims for two successive  
11 water losses at the Property, one in September 2023 (the “First Loss”) and one in January  
12 2024 (the “Second Loss”). Dkt. ## 34-5, 34-6. Plaintiff’s claim for the Second Loss,  
13 and Safeco’s handling of that claim, forms the basis of this action. However, because the  
14 aftermath of the First Loss is relevant to the parties’ claims in this action, the Court will  
15 provide a brief factual overview of both losses.

16 The First Loss occurred on September 3, 2023, when a hot water supply line burst  
17 and flooded the crawlspace at the Property. Dkt. ## 34-5; 34-8 at 9, 30–31. Safeco  
18 initially agreed to afford partial coverage for the claim and issued payment of \$20,621.97  
19 for dwelling repairs. Dkt. ## 34-16, 34-17. However, Plaintiff disputed the scope of the  
20 repair estimate and submitted independent estimates from two separate contractors. Dkt.  
21 # 34-19. Additionally, Plaintiff requested additional living expenses (ALE) coverage  
22 under the Policy. Dkt. # 34-8 at 25. Safeco reviewed and approved the contractor  
23 estimates provided by Plaintiff, and issued a supplemental check totaling \$55,578.60.  
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25 <sup>1</sup> The following factual allegations are undisputed unless otherwise noted.  
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1 Dkt. ## 34-16, 34-20. Safeco also approved a temporary housing assignment for Plaintiff  
2 pursuant to the Policy’s ALE coverage. Dkt. # 34-8 at 23–24.

3 On January 15, 2024, before repairs related to the First Loss had been completed,  
4 multiple pipes burst throughout the Property, including in the upstairs master bedroom  
5 and the garage, resulting in the Second Loss. Dkt. # 34-27 at 24; Dkt. # 34-28. Safeco  
6 received notice of the Second Loss the following day, and sent correspondence to  
7 Plaintiff acknowledging the incident. Dkt. ## 34-6, 34-22, 34-23. Shortly after the  
8 occurrence of the Second Loss, Plaintiff retained public adjusting firm Pacific Public  
9 Adjusters (“PPA”) to assist with adjustment and negotiation of the Policy. Dkt. # 34-26.  
10 PPA sent Safeco a notice of its representation of Plaintiff on January 26, 2024, and Safeco  
11 acknowledged receipt of PPA’s notice on February 20, 2024. Dkt. ## 34-26, 34-29. A  
12 PPA representative conducted an inspection of the Property on February 16, 2024, while  
13 mitigation work was underway. Dkt. # 47 ¶ 2. PPA prepared a specialized video and  
14 three-dimensional walkthrough, known as an “iGuide,” which depicted the state of the  
15 Property at that point in time. *Id.* ¶ 3.

16 Based on initial reports relating to the incident, Safeco sent PPA a Reservation of  
17 Rights letter on February 22, 2024, and commenced a preliminary investigation into  
18 whether heat had been maintained at the Property at the time of the Second Loss. Dkt. #  
19 34-30. Safeco also relayed that, in addition to Senior Claims Resolution Specialist III  
20 Amber Cruz, field specialist John “J.C.” Windmueller and personal property specialist  
21 Brianna Okoro had been assigned to assist with the claim. Dkt. # 34-31. On February  
22 28, 2024, PPA provided Safeco with its repair estimate of \$211,928.27. Dkt. # 31-33.  
23 The following day, PPA provided Safeco with copies of Plaintiff’s utility bills for the  
24 previous 12 months. Dkt. # 34-34. After reviewing the bills, Safeco advised PPA that  
25 coverage had been afforded for the Second Loss. *Id.* Cruz noted that Windmueller would  
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1 inspect the Property on March 7, 2024, prepare an estimate, and work with PPA and the  
2 involved contractor to “reach an agreed cost of repairs.” *Id.*

3 On March 7, 2024, Windmueller conducted his inspection of the Property. Dkt. #  
4 46-3 at 15–16. Taylor Babb, the owner of PPA, was present at the inspection. *Id.*; Dkt.  
5 # 49. Windmueller’s notes in Safeco’s claim log for the Second Loss provide that Babb  
6 had “had very little information about the claims,” including the location of the damage  
7 from the First Loss, and that Windmueller would “need to be discussing repairs with  
8 handling team for overlap potential of the two claims.” Dkt. # 46-3 at 15. Babb, however,  
9 declares that Windmueller “maintained an abrasive and unprofessional demeanor” and  
10 engaged in “obstructive conduct” throughout the inspection. Dkt. # 49 ¶¶ 5–6.  
11 Windmueller purportedly “refused to acknowledge or inspect specific areas of water  
12 damage [Babb] pointed out,” leading Babb to “conduct[] a comprehensive walkthrough  
13 to document the evidence of damages [Windmueller] ignored.” *Id.* ¶¶ 6–7. Following  
14 the inspection, Windmueller recommended setting a dwelling reserve of \$300,00. Dkt.  
15 # 46-3 at 16. Subsequently, Windmueller requested “an estimate, photos, and scan [*sic*]  
16 for the initial claim damages from 9/3/2023,” corresponding to the First Loss, to assure  
17 that Safeco was “accounting for overlap between the two claims.” Dkt. # 34-36 at 5.  
18 PPA responded: “We do not have an estimate for the original claim, please let us know  
19 how you would like to identify and address the overlap areas.” PPA subsequently  
20 clarified on March 19, 2024 that they were “not involved” prior to the Second Loss and  
21 therefore did “not have a walkthrough of the previous loss.” *Id.* at 4. Windmueller’s  
22 claim log notes from the same day provide :

23 Received the same iGuide scan/walkthru as previously rcvd. Requested an iGuide  
24 for the prior water claim from 9/3/2023. I cannot tell if the scan was done prior to  
25 the water mitigation for this claim, or was done as mitigation had begun on this  
26 claim. I am trying to differentiate the damage/ mitigation for this claim from the

1 last. I did download the previous claims photos, and it appears that damage from  
2 the prior claim makes up a lot of the damage to the home. The PA firm has not  
3 separated out the damages between the two claims, and if they do not have a prior  
iGuide scan, it will be difficult and time consuming to figure out what the damage  
differences are.

4 Dkt. # 46-3 at 15. On April 1, 2024, Windmueller called Washington Restorer, the  
5 mitigation company on the First Loss, and learned that the company “did not take a  
6 matterport/docusketch or any other type of scan at the time.” *Id.* Windmueller noted that  
7 he downloaded the documents sent by Washington Restorer in September 2023 “to  
8 differentiate between the old and new claims.” *Id.*

9 On April 12, 2024, Windmueller conducted an “Initial Tech [Technical] Review”  
10 relating to the Second Loss and sent the review to his manager. Dkt. # 46-4. The Initial  
11 Tech Review includes \$228,249.38 in “DW Base Covered Damages,” and requests  
12 \$238,249.38 in “Total Dwelling Exposure Authority.” *Id.* at 4. Safeco’s claim log  
13 includes Windmueller’s notes from the same day documenting “the repairs on prior claim  
14 estimate,” which were “[c]onfirmed in bid from Runland Painting and Renovations” (a  
15 contractor for with the First Loss). Dkt. # 34-27 at 11–12. Finally, also on April 12,  
16 2024, Safeco prepared an estimate for the Second Loss, reflecting replacement cost value  
17 (RCV) of \$66,791.42 and a net estimate of \$64,412.55. Dkt. # 46-21 at 43.

18 On April 15, 2024, three days after the Initial Tech Review and initial estimate  
19 were completed, Windmueller prepared a revised estimate, with RCV of \$68,577.66 and  
20 a net estimate of \$65,113.53. Dkt. # 46-13 at 42. Cruz provided this estimate to PPA on  
21 April 15, 2024, and issued payment in the amount of \$65,113.53. Dkt. # 46-14. Safeco’s  
22 claim log for the second loss includes notes from Windmueller on this date providing, in  
23 part: “The Following Partial Denial Applies: Damage and mitigation from the prior claim  
24 is not covered under this claim event.” Dkt. # 46-3 at 9.

1 On April 16, 2024, PPA e-mailed Windmueller and other Safeco representatives  
2 requesting, in part, “[a]n estimate that includes item descriptions for every line item” and  
3 “an itemized reconciliation as to why items on our estimate are not considered.” Dkt. #  
4 34-43 at 6–7. In response, Windmueller offered to “discuss the repair estimates for this  
5 claim due to the overlap with the previous water claim.” *Id.* at 4. On May 13, 2024, PPA  
6 followed up with a revised repair estimate, reflecting an updated estimate of structural  
7 repairs totaling \$454,807.32, inclusive of the \$106,442.65 cost of water mitigation. *Id.*  
8 at 52–53. PPA and Safeco agreed to convene a virtual meeting to discuss the claim,  
9 which went forward as scheduled on May 23, 2024 (the “May 23 Meeting”). Dkt. # 34-  
10 44. Windmueller’s notes of the May 23 Meeting, as memorialized in the Safeco claim  
11 log, indicate that he provided an overview of his analysis of the potential overlap between  
12 the claimed damages associated with the First Loss and the Second Loss, as well as other  
13 potential errors on PPA’s revised estimate, and shared his screen to compare the different  
14 iGuide scans for comparative purposes. Dkt. # 34-27 at 3–4. Windmueller’s notes  
15 conclude:

16 [The PPA team] did state that the estimator is not local and wrote the bid remotely  
17 and based it on photos and iGuide scans. . . . Overall, the call was very cordial and  
18 light. They did apologize for not having the most accurate estimate and stated they  
19 would send me photos of the damage to the siding/exterior/osb sheathing in the  
20 primary bedroom under the non-arched window. I stated that I would await that  
21 documentation. I requested an updated repair bid w/o the prior claim items  
22 included and they said they would look into getting that done as they do not write  
23 the estimates. I stated that I spent about two weeks on this estimate, and that I  
24 know the damages and differences between the claims very well, so if they had  
25 questions about my estimate or the repairs in general, they can reach out to me.

26 *Id.* at 4. Plaintiff’s characterization of the May 23 Meeting, however, differs in important  
23 respects. Amanda Collins of PPA, who attended the May 23 Meeting on Plaintiff’s  
24 behalf with a colleague, declares that, during the meeting, PPA “stated that [they] would  
25 review any documentation Safeco could provide regarding the First Loss to determine

1 whether any overlap was appropriate.” Dkt. # 47 ¶ 23. Collins further states that PPA  
2 “never made any ‘apologies’ for ‘inaccuracies’ in [their] estimate.” *Id.* ¶ 24. Rather, the  
3 team “discussed the exterior side and upstairs scope of repairs (both of which were  
4 relatively minor items in terms of the overall repair costs), contingent on supporting  
5 documentation and further evaluation.” *Id.*

6 Following the May 23 Meeting, Windmueller and PPA had no substantive contact  
7 regarding the scope of the disputed claim for several months. In the meantime, Plaintiff  
8 filed an Insurance Fair Conduct Act (“IFCA”) Notice against Safeco, alleging that it  
9 unreasonably failed to cover the Second Loss and timely respond to Plaintiff’s requests  
10 for information and documents in violation of RCW 48.30.010 and RCW 48.30.015. Dkt.  
11 # 46-17. Safeco appears to attribute these developments as resulting from PPA’s failure  
12 to follow through on their commitment to revise the repair estimate as they had previewed  
13 during the May 23 Meeting. *See* Dkt. # 34-46 (July 3, 2024 email from Windmueller to  
14 PPA following up on repair estimate); Dkt. # 34-51 (email from Safeco representative to  
15 PPA referencing PPA’s alleged promise to make “adjustments to the many errors on  
16 [their] submitted estimate.”) PPA, however, ultimately clarified on September 17, 2024  
17 that it did not view “major revisions” as “necessary to [its] estimate.” Dkt. # 34-51 at 3.  
18 They further explained: “As we mentioned in [the May 23 Meeting], we did review the  
19 estimate in comparison to the previous claim. However, we believe that your estimate  
20 significantly underpays and does not fully indemnify our client.” *Id.*

21 Based on the foregoing events, Plaintiff asserts the following causes of action  
22 against Safeco: (1) declaratory judgment; (2) breach of insurance contract; (3) breach of  
23 the duty of good faith and fair dealing; (4) negligent claims handling; (5) violation of the  
24 Consumer Protection Act (“CPA”); (6) injunctive relief; and (7) violation of IFCA. Dkt.  
25 # 1-1 at 3–8. Safeco asserts a counterclaim against Plaintiff for breach of the Policy and  
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1 insurance fraud in violation of Washington common law and RCW 48.01.030,  
2 48.30A.005, and 48.30.230. Dkt. # 9 at 8–10. The Safeco Motion seeks summary  
3 judgment, in Defendant’s favor, on all of Plaintiff’s claims as a matter of law, and  
4 requests dismissal of Plaintiff’s claims for fees. Dkt. # 33 at 29. The Gonzales Motion  
5 seeks summary judgment, in Plaintiff’s favor, on the fraud counterclaim and two other  
6 “discrete aspects” of the remaining claims (characterized by Plaintiff as “the April 2024  
7 lowballing” issue and “the Overlap Issue”). Dkt. # 35 at 1–2.

### 8 III. LEGAL STANDARD

9 Summary judgment is appropriate if there is no genuine dispute as to any material  
10 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).  
11 In resolving motions for summary judgment, a court does not make credibility  
12 determinations or weigh the evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
13 255 (1986). The court’s sole inquiry is “whether the evidence presents a sufficient  
14 disagreement to require submission to a jury or whether it is so one-sided that one party  
15 must prevail as a matter of law.” *Id.* at 251–52. When multiple parties file simultaneous  
16 cross-motions for summary judgment on the same claim, the court “must consider the  
17 appropriate evidentiary material identified and submitted in support of both motions, and  
18 in opposition to both motions, before ruling on each of them.” *Fair Hous. Council of*  
19 *Riverside Cnty., Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001).

20 The party moving for summary judgment bears the initial burden of demonstrating  
21 the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
22 323 (1986). Where the moving party will have the burden of proof at trial, it must  
23 affirmatively demonstrate that no reasonable trier of fact could find other than for the  
24 moving party. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On  
25 an issue where the nonmoving party will bear the burden of proof at trial, the moving  
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1 party can prevail merely by pointing out to the district court that there is an absence of  
2 evidence to support the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325. If the  
3 movant meets its initial burden, the opposing party must set forth specific facts showing  
4 that there is a genuine issue of fact for trial in order to defeat the motion. *Anderson*, 477  
5 U.S. at 250. A movant’s showing of “metaphysical doubt as to the material facts” is  
6 insufficient to demonstrate a triable dispute. *Matsushita Elec. Indus. Co., Ltd. v. Zenith*  
7 *Radio Corp.*, 475 U.S. 574, 586 (1986). Additionally, the court need not “scour the  
8 record in search of a genuine issue of triable fact”; rather, the nonmoving party must  
9 “identify with reasonable particularity the evidence that precludes summary  
10 judgment.” *Kennan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). However, the court  
11 must view the evidence in the light most favorable to the nonmoving party and draw all  
12 reasonable inferences in that party’s favor. *Reeves v. Sanderson Plumbing Prods., Inc.*,  
13 530 U.S. 133, 150-51 (2000).

14 **A. Safeco Motion**

15 a. IFCA Claim

16 To maintain a claim under IFCA, an insured party must demonstrate that the  
17 insurer “unreasonably denied a claim for coverage *or* that the insurer unreasonably  
18 denied payment of benefits.” *Perez-Crisantos v. State Farm Fire and Casualty Co.*, 187  
19 Wash. 2d 669, 683 (Wash. 2017) (internal citations omitted). Safeco seeks summary  
20 judgment of Plaintiff’s IFCA claim on the basis that “there was no denial of coverage”  
21 for the Second Loss. Dkt. # 33 at 18. However, the fact that Safeco did not deny coverage  
22 “does not end the analysis.” *Kislenko v. The Standard Fire Ins. Co.*, No. 3:25-CV-05197-  
23 DGE, 2026 WL 1162397 (W.D. Wash. Apr. 29, 2026) (citing *Morella v. Safeco Ins. Co.*  
24 *of Illinois*, No. C12-0672RSL, 2013 WL 1562032, at \*3 (W.D. Wash. Apr. 12, 2013)).  
25 Rather, “the law is clear that ‘an unreasonably low offer of payment can constitute an  
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1 IFCA violation even if the insurer eventually pays.” *Gaekwar v. Amica Mut. Ins. Co.*,  
2 No. 2:22-CV-1551-BJR, 2023 WL 8236983, at \*4 (W.D. Wash. Nov. 28, 2023) (citing  
3 *Bennett v. Homesite Insurance Company*, 636 F. Supp. 3d 1267, 1274 (W.D. Wash.  
4 2022)). Specifically, the benefits promised in an insurance policy are “effectively  
5 denied” when an insurer:

6 [P]ays or offers to pay a paltry amount that is ***not in line with the losses claimed***,  
7 is not based on a ***reasoned evaluation of the facts*** (as known or, in some cases, as  
8 would have been known had the insurer ***adequately investigated*** the claim), and  
9 ***would not compensate the insured for the loss*** at issue[.]

10 *Morella*, 2013 WL 1562032, at \*3 (emphases added).

11 Safeco acknowledges that insurers can be held liable under IFCA for “constructive  
12 denials,” but argues that Plaintiff’s claim in this case instead reflects a good-faith  
13 valuation dispute, which does not amount to a violation under IFCA. Dkt. # 54 at 6–7  
14 (citing, *inter alia*, *Morella*, 2013 WL 1562032, at \*3); Dkt. # 33 at 19 (citing *Young v.*  
15 *Safeco Ins. Co. of Am.*, 2022 U.S. Dist. LEXIS 159142, \*22 (W.D. Wash. Sept. 2, 2022)).  
16 Plaintiff, on the other hand, maintains that Safeco’s \$65,113.53 offer was “unreasonably  
17 low” and therefore establishes an IFCA claim. Dkt. # 45 at 19 (citing *Taladay v. Metro.*  
18 *Grp. Prop. & Cas. Ins. Co.*, 2016 WL 3681469, at \*2 (W.D. Wash. July 6, 2016).  
19 Therefore, whether Safeco violated IFCA “is contingent on whether the offer is  
20 unreasonably low,” *Gaekwar*, 2023 WL 8236983, at \*4, or was instead the result of “a  
21 reasoned evaluation of the facts,” *Morella*, 2013 WL 1562032, at \*3.

22 The record contains “contradictory evidence” with respect to this issue. *Gaekwar*,  
23 2023 WL 8236983, at \*4. For example, Windmueller’s contemporaneous notes of the  
24 May 23 Meeting indicate that he spent approximately two weeks preparing the estimate,  
25 a timeline which is corroborated by the claim log and the documentation in the record.  
26 Dkt. # 34-27 at 4. Additionally, the claim log includes notes dated April 12, 2024 (the

1 same date as the Initial Tech Review and initial repair estimate for the Second Loss)  
2 attempting to distinguish items from the bid associated with the First Loss. *See* Dkt. #  
3 34-27 at 11–12. These portions of the record demonstrate some degree of reasonable  
4 investigative effort by Windmueller to identify the extent of the alleged “overlap” before  
5 the two claims prior to making the April 2024 offer, suggesting that Safeco’s offer was  
6 “based on a reasoned evaluation of the facts.” *Morella*, 2013 WL 1562032, at \*3.

7 On the other hand, a declaration from PPA owner Taylor Babb<sup>2</sup> suggests that  
8 Windmueller was “obstructive” during the March 7, 2024 inspection and refused to  
9 inspect water damage noted by Babb, including potential damage to boxed replacement  
10 kitchen cabinets. Dkt. # 49 ¶¶ 5–6; Dkt. # 38 ¶¶ 14–21. During the May 23 Meeting, as  
11 justification for denial of Plaintiff’s claim for the cabinets, Windmueller claimed that the  
12 boxes appeared to be dry in the iGuide scan provided by PPA. Dkt. # 34-27 at 3.  
13 Additionally, certain inconsistencies identified by Windmueller as justifications for the  
14 “overlap” theory justifying a reduced estimate are contradicted by other Safeco vendors.  
15 For example, Windmueller’s internal “overlap analysis” notes, documented in the Safeco  
16 claim log, provide that the “[t]hree back bedrooms appear to have been remodeled but  
17 had no damage from this claim.” Dkt. # 34-27 at 12. Windmueller also communicated  
18 his understanding that these rooms were undamaged to PPA by email and during the May  
19 23 Meeting. *See* Dkt. # 34-41 (email from Windmueller to PPA attaching repair estimate  
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21 <sup>2</sup> Safeco characterizes the declarations filed by Plaintiff in support of the Gonzales  
22 Motion and in opposition to the Safeco Motion as “belated declarations filed after the  
23 close of discovery.” Dkt. # 54 at 11. As relevant to Taylor Babb’s declarations, Safeco  
24 construes Babb’s statements about Windmueller’s conduct at the March 7, 2024  
25 inspection, and his reporting of that conduct to Amanda Collins, as unsupported by any  
26 documentation. *Id.* at 4. The Court acknowledges Safeco’s position but finds that the  
Babb and Collins declarations satisfy the requirements of Federal Rule of Civil Procedure  
56(c)(4) and are properly part of the record in this case. Dkt. ## 38–39, 47, 49.

1 and commenting: “[i]t appears that the upstairs was still under some remodeling as  
2 baseboards were not attached in the undamaged bedrooms . . .”); Dkt. # 34-27 at 3 (notes  
3 from May 23 Meeting providing: “Bedrooms upstairs showed no damage.”). However,  
4 during a February 16, 2024 inspection, Safeco’s external estimating vendor noted that, in  
5 at least two of these bedrooms, the mitigation company had removed the baseboards and  
6 “marked moisture trapped in wall.” Dkt. # 34-27 at 22. Additionally, the record suggests  
7 that Windmueller mischaracterized the iGuide scan provided by PPA as a *pre*-mitigation  
8 scan throughout the duration of his investigation, despite evidence to the contrary. *See*  
9 Dkt. # 34-27 at 15 (Windmueller March 19, 2024 note in Safeco claim log, providing: “I  
10 cannot tell if the [February 16, 2024] scan was done prior to the water mitigation for this  
11 claim, or was done as mitigation had begun on this claim.”); Dkt. 34-36 at 2 (March 19,  
12 2024 email from PPA to Windmueller clarifying that “[m]itigation was underway when  
13 [the] scan was done.”); Dkt. # 34-27 at 11–12 (Windmueller April 12, 2024 “overlap  
14 analysis” notes continuing to reference “pre-mit scan”); Dkt. # 34-27 at 3–4  
15 (Windmueller notes from May 23 Meeting continuing to reference “pre-mit scan”); Dkt.  
16 # 47 ¶¶ 5–6 (Collins declaration indicating that Windmueller “seemed to believe” that  
17 February 16, 2024 scan was “made before the Second Loss”); Dkt. # 39 ¶ 33 (Collins  
18 declaration stating that Windmueller “continued to express confusion regarding the  
19 timing of the iGuide and the sequence of the losses” despite clarifications from the PPA  
20 team). Finally, Windmueller’s post-inspection reserve of \$300,000, and his requested  
21 dwelling authority total of \$238,249.38 as calculated in the Initial Tech Review, far  
22 exceed his initial net estimate of \$64,412.55, which was prepared on the same day as the  
23 Initial Tech Review; nowhere is this discrepancy coherently explained by Safeco. These  
24 portions of the record may suggest to a factfinder that the April 2024 offer was not “in  
25 line with the losses claimed,” was not “based on a reasoned evaluation of the facts,” or  
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1 “would not compensate [Plaintiff] for the loss at issue.” *Morella*, 2013 WL 1562032, at  
2 \*3. Accordingly, the record suggests material factual disputes with respect to the  
3 reasonableness of Safeco’s investigation of the Second Loss.

4 In light of the foregoing disputes of material fact, the determination of whether  
5 Safeco’s offer was unreasonably low or was based on a “a reasoned evaluation of the  
6 facts” is a triable question properly left for the jury. *See Gaekwar*, 2023 WL 8236983,  
7 at \*4; *Morella*, 2013 WL 1562032, at \*3. Accordingly, Safeco’s request for summary  
8 judgment on Plaintiff’s IFCA claim is denied. *See Curtis v. State Farm Mutual*  
9 *Automobile Insurance Co.*, 2023 WL 5152560, at \*4 (W.D. Wash. August 10, 2023)  
10 (denying insurer’s motion for summary judgment on IFCA claim because factual disputes  
11 existed as to reasonableness of insurer’s investigation of claim); *Spicher v. American*  
12 *Family Mutual Insurance Co. S.I.*, 2023 WL 5634210, at \*3 (W.D. Wash. August 31,  
13 2023) (denying motion for summary judgment on IFCA claim because  
14 “[r]easonableness’ can rarely be resolved at summary judgment, and the record here  
15 contains conflicting evidence as to reasonableness”).

16 b. Breach of Contract Claim

17 Under Washington law, “[a] breach of contract is actionable only if the contract  
18 imposes a duty, the duty is breached, and the breach proximately causes damage to the  
19 claimant.” *Nw. Indep. Forest. Mfrs. v. Dep’t of Labor & Indus.*, 78 Wash.App. 707, 899  
20 P.2d 6, 9 (1995). An insurer breaches its contractual duties under an insurance policy by  
21 “failing to complete a reasonable investigation before making a compromise offer,  
22 making a compromise offer based on speculation and inaccurate information, and failing  
23 to provide a reasonable explanation for its compromise offer.” *Sagdai v. Travelers Home*  
24 *& Marine Ins. Co.*, 639 F. Supp. 3d 1091, 1103 (W.D. Wash. 2022).

1 Safeco contends that summary judgment should be granted on Plaintiff's  
2 contractual claims because coverage was provided for the Second Loss, Safeco "paid for  
3 repairs supported by documented evidence," and Plaintiff's other claimed damages are  
4 "unsupported in the record." Dkt. # 33 at 22–23. For the reasons described with respect  
5 to Plaintiff's IFCA claim, genuine disputes of material fact exist as to whether Safeco  
6 completed a "reasonable investigation" before making its April 2024 compromise offer  
7 to Plaintiff. *Sagdai*, 639 F. Supp. 3d at 1103. The parties also plainly dispute whether  
8 the offer was based on "speculation" or "inaccurate information" with respect to the  
9 potential overlap. *Id.* Finally, there is a genuine dispute as to whether Safeco provided  
10 a "reasonable explanation" for offer, given what Plaintiff describes as a lack of  
11 itemization or other explanation regarding how Safeco derived its overlap offset  
12 calculation. *Id.* Accordingly, Safeco's request for summary judgment on Plaintiff's  
13 breach of contract claim is denied.

14 c. Bad Faith Claim

15 To prove bad faith, an insured must show the insurer's breach of the insurance  
16 contract was unreasonable, frivolous, or unfounded. *American States Ins. Co. v. Symes*  
17 *of Silverdale, Inc.*, 150 Wn.2d 462, 469-70, 78 P.3d 1266 (2003) (citing *Overton v.*  
18 *Consol Ins. Co.*, 145 Wn.2d 417, 433, 38 P.3d 322 (2002)).

19 Here, genuine disputes of material facts exist as to whether Safeco's alleged  
20 breach of the Policy overemphasized its own interests in making Plaintiff an  
21 unreasonably low offer, or whether Safeco's investigation was otherwise unreasonable  
22 or unfounded based on the facts and circumstances existing at the time it made the  
23 decision in question. *Keller v. Allstate Ins. Co.*, 81 Wn. App. 624, 633, 915 P.2d 1140  
24 (1996). While Safeco argues that PPA "did not cooperatively discuss further updates on  
25 repair estimates after May 2024" in support of its position that the bad faith claim should  
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1 be dismissed, Dkt. # 33 at 25, the Court notes that PPA’s refusal to submit a revised  
2 estimate occurred *after* what Plaintiff views as the operative unreasonable “denial” of her  
3 claim. By contrast, Windmueller has not characterized PPA’s conduct *prior* to the April  
4 2024 offer as uncooperative; on the contrary, he acknowledged in his deposition that PPA  
5 did not impede his investigation and provided any available requested documents and  
6 scans. Dkt. # 46-2 at 22. *See Wilson v. Geico Indem. Co.*, No. C18-226 RAJ, 2018 WL  
7 3869436, at \*4 (W.D. Wash. Aug. 15, 2018) (rejecting insurer’s affirmative defense of  
8 non-cooperation where record indicated that “Plaintiff cooperated and provided  
9 requested information up to the point of [insurer’s] apparent denial of coverage” and  
10 insurer only identified non-cooperation “*after* the denial of coverage”).

11 Accordingly, Safeco’s request for summary judgment on Plaintiff’s bad faith  
12 claim is denied.

13 d. Negligent Claims Handling Claim

14 Safeco seeks summary judgment of Plaintiff’s negligent claims handling claim,  
15 arguing that that “[a]ny allegations that Safeco failed to ‘use ordinary care’ are subject to  
16 dismissal as a matter of law for the same reasons referenced above as grounds for  
17 dismissal of the bad faith action.” Dkt. # 33 at 26 (citing *State Ins. Co. v. Kemper Nat.*  
18 *Ins. Co.*, 94 Wn.App. 602, 612-13, 971 P.2d 953 (1999)). Safeco does not reassert this  
19 argument on Reply. However, for the reasons previously discussed, the Court concludes  
20 that the current record demonstrates a genuine dispute as to whether Safeco used ordinary  
21 care in calculating the alleged “overlap” between the First Loss and the Second Loss  
22 before making its April 2024 offer to Plaintiff. Accordingly, Safeco’s request for  
23 summary judgment on Plaintiff’s negligent claims handling claim is denied.  
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1 e. Consumer Protection Act Claim

2 To prevail on a CPA claim, a plaintiff must prove (1) an unfair or deceptive act or  
3 practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury  
4 to a person's business or property, and (5) causation. *Hangman Ridge Stables, Inc. v.*  
5 *Safeco Title Ins. Co.*, 105 Wash.2d 778, 784 (1986). An insurer's breach of its duty of  
6 good faith constitutes a *per se* violation of the CPA. *See Gingrich v. Unigard Sec. Ins.*  
7 *Co.*, 57 Wash. App. 424, 433, 788 P.2d 1096, 1101 (1990) (citing RCW 48.01.030). For  
8 the reasons already discussed in this Order, the record identifies genuine disputes as to  
9 whether Safeco acted in good faith in its handling of the Second Loss; this alone  
10 precludes summary judgment on the CPA claim. Accordingly, Safeco's request for  
11 summary judgment on Plaintiff's CPA claim is denied.

12 **B. Gonzales Motion**

13 a. Fraud Counterclaim

14 Plaintiff seeks summary judgment on Safeco's fraud counterclaim, on the bases  
15 that Safeco's counterclaim arises solely out of alleged conduct by PPA, not Plaintiff, and  
16 that there is no evidence to support a finding of "intentional" fraud or concealment as  
17 required by the applicable provision in the Policy. Dkt. # 35 at 2-3. As to the first point,  
18 the Court notes that at least one court in this District has imputed the representations of  
19 an insured's public adjuster to the insured. *See Reverse Now VII, LLC v. Or. Mut. Ins.*  
20 *Co.*, 341 F. Supp. 3d 1233, 1238 (W.D. Wash. 2018). While the facts of that case may  
21 be distinguishable from the instant case, the Court will presume in resolving the Gonzales  
22 Motion that PPA's conduct may be imputed to Plaintiff. As to the second point, Safeco  
23 notes that its counterclaim is premised not just on the terms of the Policy, but also on  
24 allegations of insurance fraud in violation of Washington common law and various  
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1 statutes. Dkt. # 42 at 19–20. The Court therefore turns to whether there are any  
2 substantive disputes precluding summary judgment on Safeco’s fraud counterclaim.

3 For reasons similar to those articulated in the portion of this Order addressing  
4 Plaintiff’s IFCA claims, the Court concludes that the issue of whether PPA is liable on  
5 Safeco’s fraud counterclaim presents genuine disputes of material fact. On the one hand,  
6 like Safeco, PPA was entitled to dispute Safeco’s repair estimates in good faith, and there  
7 is certainly evidence in the record reflecting that their correspondence during the claims  
8 process (including their initial estimates and refusal to withdraw or revise their second  
9 estimate after the May 23 Meeting) reflected that disagreement. *See, e.g.*, Dkt. # 55 at  
10 29, 57. On the other hand, there is also some contemporaneous evidence, presented by  
11 Safeco, that PPA acknowledged at least a few discrepancies during the May 23 Meeting,  
12 and did not make any efforts to make revisions—major or minor—to their estimate until  
13 confronted by Safeco regarding the expiration of Plaintiff’s ALE benefits months later.  
14 *See, e.g.*, Dkt. # 34-27 at 3–4; Dkt. # 55 at 65; Dkt. # 46-18. Ultimately, construing the  
15 record in favor of Safeco, the non-movant, the Court concludes that “whether these  
16 disputed factual issues rise to the level of fraud or misrepresentation” is a triable question  
17 for a jury. *Bronsink v. Allied Prop. & Cas. Ins. Co.*, No. C09-751MJP, 2010 WL  
18 2342538, at \*10 (W.D. Wash. June 8, 2010). Accordingly, Plaintiff’s request for  
19 summary judgment on Safeco’s fraud counterclaim is denied.

20 b. Discrete Findings

21 Plaintiff also requests summary judgment on two other “discrete aspects” of the  
22 claims in this case, described respectively as the “April 2024 Lowballing” and (2) the  
23 “Overlap Issue.” Dkt. # 35 at 1–2. As to the April 2024 Lowballing issue, Plaintiff  
24 requests that this Court hold that Safeco “breached its contractual and statutory duties by  
25 issuing an unreasonably low payment in April 2024.” *Id.* at 24. For the reasons identified  
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1 in the discussion of Plaintiff’s IFCA claims, genuine disputes of material fact exist  
2 precluding summary judgment—in favor of either party—as to whether Safeco’s April  
3 2024 offer was “unreasonably low.”

4 As to the Overlap Issue, Plaintiff requests entry of an order holding that: (1) Safeco  
5 violated Washington law by failing to provide notice and a reasonable explanation for its  
6 partial denial of coverage based on the alleged “overlap”; (2) the Policy does not permit  
7 an “overlap” deduction between two separate and distinct loss events; and (3) Safeco is  
8 precluded from asserting an “overlap” reduction to limit coverage for the Second Loss.  
9 *Id.* These requests are similarly inappropriate for resolution at the summary judgment  
10 stage based on the record in this case. While, as Plaintiff notes, there is some evidence  
11 that Safeco internally classified its April 2024 coverage decision on the Second Loss as  
12 a “partial denial” on the basis of the potential for overlap with the First Loss, Dkt. # 46-  
13 3 at 9, Safeco continues to dispute that there was any coverage denial and argues that the  
14 April 2024 offer instead reflects a mere scoping dispute. The Court’s entry of the relief  
15 requested by Plaintiff would risk pre-deciding the disputed issue of whether Safeco’s  
16 April 2024 offer reflected an “unreasonable denial” under IFCA or a good-faith valuation  
17 dispute. And while Plaintiff argues that the “the Policy is silent on a purported limitation”  
18 and “Washington law requires that such silence be construed in favor of coverage,” Dkt.  
19 # 35 at 19, Plaintiff elsewhere acknowledges Washington case law recognizing the  
20 general rule against double recovery. Dkt. # 45 at 1 (citing *Weyerhaeuser Co. v. Com.*  
21 *Union Ins. Co.*, 142 Wash.2d 654, 674–75 (2000)).

22 For these reasons, Plaintiff’s requests for summary judgment on the April 2024  
23 Lowballing issue and the Overlap Issue are denied.  
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