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NO. 96931-1
IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

(United States District Court, Western District of Washington, Case
No. C18-1173RSL (Consolidated with Case No. C18-1254RSL))

CERTIFICATION FROM THE UNITED STATES DISTRICT
COURT, WESTERN DISTRICT OF WASHINGTON IN

KRISTA PEOPLES,
Appellee/Plaintiff,

v.

UNITED SERVICES AUTOMOBILE ASSOCIATION, ET AL.,
Appellant/Defendants

AND

JOEL STEDMAN, ET AL.
Appellees/Plaintiffs,

v.

PROGRESSIVE DIRECT INSURANCE COMPANY,
Appellant/Defendant.

APPELLEE/PLAINTIFF KRISTA PEOPLES' ANSWERING BRIEF

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I. INTRODUCTION

The Personal Injury Protection (“PIP”) statute requires that insurers pay “*all reasonable*” medical expenses for treating an insured’s injuries arising from a covered accident.¹ Insurers, like USAA, charge insureds a separate premium to obtain PIP coverage and the “offer (of) PIP coverage implicates public policy.”²

The PIP statute’s requirement is enforced in part by WAC 284-30-330, which makes it an “unfair” practice for an insurer to deny payment of an insurance claim without first conducting a reasonable investigation of its duty to pay. The requirement to pay *all reasonable* treatment services submitted on a PIP claim is also enforced by WAC 284-30-395, which makes it an “unfair” practice for an auto insurer to deny payment of a PIP claim without first determining that the health care provider’s fee for his/her service was not reasonable. The regulation only applies to auto insurers and to PIP claims for payment of medical expenses arising from a covered accident. *Id.* The WAC regulation and the PIP statute’s

¹ RCW 48.22.005(7) (emphasis added).

² *Durant v. State Farm Mut. Auto. Ins.*, 191 Wn.2d 1, 14 (2018) (citing *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 620-21, 160 P.3d 31 (2007)).

requirement “reflect Washington’s strong public policy in favor of full compensation of medical benefits for victims of road accidents.”³

Despite the PIP statute’s requirement to pay *all* reasonable expenses submitted on a PIP claim, the Defendant USAA Casualty and USAA insurance companies (“USAA) do not do so. Instead, USAA automatically denies payment of any PIP claim for any treatment bill submitted by any insured if the provider’s fee for his/her services is more than \$9.99 above the amount represented by the 80th percent of charges for the same service in a database of provider charges compiled by the Milliman Corporation. Despite the requirements of the WAC, USAA conducts no investigation at all into the reasonableness of the provider’s fee before denying payment and it makes no determination before denying payment that the provider’s fee for his/her services is unreasonable. USAA’s denial of the PIP claim is based solely on its Milliman database threshold and conditions its payment of PIP claims solely on the provider’s charge meeting this database threshold.

Plaintiff Krista Peoples (“Peoples”) is a USSA insured and the appointed representative of the class of all USAA Washington

³ *Durant*, 191 Wn.2d at 14.

insureds who were denied payment of their PIIP claims based on USAA's practice of conditioning payment on its database threshold. She alleges that USAA's practice violates the PIP statute and WAC regulations, and because such violations are *per se* unfair practices under the Consumer Protection Act, RCW 19.86.020, she alleges that USAA's practice violates the CPA.

After removal of her class action to federal court, the court denied USAA's motion to dismiss Peoples's CPA claim. In doing so, the court rejected USAA's argument that her unfair insurance practice claim was a claim for "personal injury" rather than for monetary loss or "injury to property" caused by USAA's unfair denial of her PIP claim. The court ruled that Ms. Peoples alleged she sustained "injury to her property and damages including, but not limited to, reduced insurance benefits, investigative expenses and out-of-pocket costs caused by USAA's practice."⁴ Indeed, Ms. Peoples paid her provider's bill when USAA denied her PIP claim.

⁴ Order Consolidating and Certifying, Dkt. 50 at 6. Respondent's references to the record transmitted by the federal district court refer to the docket numbers of the district court filings as "Dkt. ___." The district court record was transmitted to this Court on March 4, 2019. See Dkt. 51. Pleadings generated subsequent to the transmission are included as an appendix to this brief.

Nevertheless, the court certified two legal questions to this Court in order to confirm its understanding of Washington law that the alleged economic loss proximately caused by the insurer's unfair CPA practice was "injury to property" under the CPA:

1. With regards to the injury to "business or property" element of a CPA claim, can insureds in Ms. Peoples' and/or Mr. Stedman's circumstances, who were physically injured in a motor vehicle collision and whose Personal Injury Protection ("PIP") benefits were terminated or limited in violation of WAC 284-30-330, bring a CPA claim against the insurer to recover out-of-pocket medical expenses and/or to compel payments to medical providers?

2. With regards to the "injury to business or property" element of a CPA claim, can insureds in Ms. Peoples' and/or Mr. Stedman's circumstances, who were physically injured in a motor vehicle collision and whose Personal Injury Protection ("PIP") benefits were terminated or limited in violation of WAC 284-30-330, bring a CPA claim against the insurer to recover excess premiums paid for the PIP coverage, the costs of investigating the unfair acts, and/or the time lost complying with the insurer's unauthorized demands?

II. SUMMARY OF ARGUMENT- ANSWERS

Answer to Question No. 1: Yes. An insured can recover economic loss proximately caused by an auto insurer's failure to pay her PIP insurance claim based on an unfair practice that terminates or limits coverage in violation of WAC 284-30-330 and/or WAC 284-30-395. The insured may recover out-of-pocket

expenses in the form of money USAA should have paid on the PIP claim to the insured or her provider and/or may seek to compel USAA to pay the provider. Recovery of money damages proximately caused by the insurer's unfair practice as well as injunctive relief enjoining continued violation of the law are remedies under the CPA. RCW 19.86.090.

Violations of USAA's duty under the PIP statute to pay "all reasonable" medical expenses incurred as a result of a subject accident and violations of the WAC are *per se* unfair CPA practices as a matter of law. The district court found that the injury for which Peoples seeks compensation is for monetary loss caused by USAA's *per se* unfair CPA practice.⁵ She does not seek damages for personal injury arising from the negligence of the third-party driver who caused the accident. *Id.* She does not allege that USAA caused injury to her "body." She alleges USAA's unfair CPA practice caused injury to her "pocket book."

Because Washington is a "no-fault" auto insurance state, USAA's duty to pay the insured's PIP claim is not conditioned on the fault of the third-party driver. Unlike a medical malpractice or

⁵ Order Consolidating and Certifying, Dkt. 50 at 5.

negligence claim, USAA's duty to pay is *required* by statute and WAC regulations. The third-party driver's negligence that caused her personal injury is *irrelevant* to USAA's duty to pay and its unfair practice that resulted in economic loss to Plaintiff.

Contrary to USAA's argument, the proper focus on a CPA claim is not only whether the injury alleged by the plaintiff is for "injury to property" – which has been broadly defined to include diminishment of the plaintiff's money, even if minimal – but also on the *act of the defendant* that caused the claimed injury. When the defendant's unfair practice is a "but for" cause of injury to the plaintiff in the form of diminishment of the plaintiff's money, the CPA is clear on its face: the plaintiff "may bring an action for damages" and also "enjoin" the unfair practice. RCW 19.86.090.⁶

Even though USAA's unfair business practice was a "but for" cause of monetary loss to its insured, USAA contends that it should be treated as a claim for "personal injury" because it is derivative of the personal injury caused by the negligence of the other driver.

This is unwarranted. Peoples is not suing USAA for personal injury. USAA's unfair business practice is a separate and distinct

⁶ See also *Indoor Billboard/Washington, Inc. v. Integra Telecom of Wash.*, 162 Wn.2d 59, (2007) (adopting "cause in fact" or "but for" standard for CPA "causation" element).

act by a different party from the negligence of the third-party driver that caused Peoples' personal injury.

USAA's argued for exception to the CPA for "derivative claims" is not only contrary to the plain language of the CPA but also Washington's strong public policy protecting insureds from unfair insurance claims practices. It would create an enormous loophole for any insurer, not just an auto insurer, who engages in an unfair or bad faith denial of a medical insurance claim and cannot be squared with prior Washington case law authority.⁷

USAA's "derivative claim" exception for unfair or bad faith denials of PIP insurance claims cannot be squared as well with the Insurance Commissioner's authority to regulate unfair practices that includes a *specific* regulation making it an unfair practice for an auto insurer to deny payment of a PIP claim for medical expenses without first determining that the expense was unreasonable. WAC 284-30-395. Adopting USAA's view would nullify the regulation's plain language, which makes a violation of WAC 284-30-395 an "unfair" practice and hence, a *per se* violation of the CPA.

⁷ See Order Consolidating and Certifying, Dkt. 50 at 3 (describing cases).

USAA also misreads the Court's decision in *Ambach v. French*, 167 Wn.2d 167 (2009), which did not involve an insurer's unfair practice in denying PIP claims, or WAC 284-30-330 or WAC 284-30-395. USAA's cited federal cases are similarly unpersuasive because, as the district court found here, the cases fail to provide a meaningful analysis of *Ambach's* holding and instead "grabbed hold" of dicta in *Ambach* to reach their erroneous decision on Washington.⁸ Nor do the federal cases cited by USAA address WAC 284-30-395, which relates solely to unfair practices by auto insurers in denying PIP medical expense claims or *Williams v. Lifestyle Lift Holding, Inc.*, 175 Wn. App. 62 (2013). As the district court found, *Williams* provides a persuasive analysis of *Ambach* and holds that plaintiff's monetary loss caused by a defendant's unfair or deceptive business act *does give rise to a CPA claim* if it is a separate act from the defendant's professional negligence that caused the plaintiff's personal injuries.⁹

Indeed, this Court has held that business practices that cause monetary loss may give rise to a CPA claim for injury to property, even if the plaintiff's claim relates to defendant's

⁸ *Id.*, Dkt. 50 at 4-5.

⁹ *Id.*, Dkt. 50 at 6.

professional negligence in causing other injury. See *Short v. Demopolis*, 103 Wn.2d 52, 60 (1984) (monetary loss due to law firm's unfair billing practice states a CPA claim even though derivative of professional negligence claim because the practice relates to the entrepreneurial aspect of the law firm's business.).

Answer to Question No. 2: Yes. CPA "injury" is broadly defined and includes expenses for investigating the insurer's unfair practice and loss of value of the premiums paid for PIP coverage.¹⁰

III. STATEMENT OF THE CASE

A. Plaintiff's Class CPA Claim is for Economic Loss

This class action arises from USAA's practice of denying payment of PIP claims for reasonable medical expenses incurred by insureds in covered auto accidents.¹¹ USAA's practice is to

¹⁰ See, *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn. 2d 27 (2009); *Folweiler Chiropractic PS v. American Fam. Ins. Co.*, 5 Wn. App. 829 (2018) *rev. denied* 193 Wn. 2d 1001(2019); see also *Coppinger v. Allstate Ins. Co.*, 2018 U.S. Dist. LEXIS 1101(W.D. Wash. Jan. 3, 2018) at *2 ("To state a cognizable CPA claim based on an insurer's non-payment of medical expenses, the complaint must assert that the insured "received an insurance policy not conforming with [her] expectations." *Sadler v. State Farm Mut. Auto Ins. Co.*, C07-0995-TSZ, 2008 U.S. Dist. LEXIS 71665 at *28 (W.D. Wash. Sept. 22, 2008).

¹¹ See *generally* Comp., Dkt.1-1. The class claim relates to USAA's practice of denying payment of "reasonable" charges on PIP claims. Ms. Peoples also alleges a separate individual claim for USAA's failure to pay her "necessary" treatment expenses in addition to failing to pay her "reasonable" treatment expenses. Because the certified questions relate to the injury element of a CPA claim and Ms. Peoples alleges the same loss of money and other types of economic injury arising from denying her necessary treatment charges as

automatically deny payment of any fee for any treatment service billed by any provider from anywhere in Washington based solely on the fee being more than \$9.99 above the 80th percentile of charges for the same treatment service in the Milliman database of provider charges. The charge is automatically denied by a computer that simply compares the fee with the 80th percentile amount and denies payment of any fee that is more than \$9.99 above the 80th percentile amount. There is no other factor considered other than this 80th percentile database threshold.¹²

The USAA adjuster assigned to the PIP claim does not investigate the reasonableness of the fee for *that* provider to bill for his/her services based on the provider's years of experience, board certification, credentials, reputation for quality of service in the community, overhead costs, the age of the patient, the severity of the injuries or any other individual factor that would be appropriately considered in determining the reasonableness of a professional health care provider's fee for his/her services. The adjuster simply

denying her "reasonable" charges, she focuses here on the class claim for purposes of clarity and brevity.

¹² See Compl., Dkt. 1-1 at ¶¶30-32, 54; see also Pl.'s Resp. to Defs.' Mot. to Dismiss, Dkt. 31 at 7-8.

pays the amount set by the computer as the reimbursement amount without even knowing how the amount was set.¹³

The USAA adjuster then sends the provider and the insured an “Explanation of Reimbursement” or “EOR” form with the lower reimbursement amount set by the computer along with a check for that amount.¹⁴ The EOR gives an “RF” reason code as the reason for the denial of full payment and reduced amount. The EOR states that the RF code means the provider’s fee exceeds a “reasonable amount for the service provided.”¹⁵

But in fact, as noted, the USAA adjuster does not investigate the reasonableness of the provider’s fee or determine that the fee is an unreasonable amount for *that* provider to charge for his/her services before denying full payment of the PIP claim. The adjuster just sends a reduced check to the provider at the amount set by the computer at the 80th percentile database threshold.¹⁶

¹³ USAA adjusters are located in USAA’s San Antonio, Texas headquarters and have testified that they have no idea what a reasonable fee would be for a Washington provider for a treatment service or how the reimbursement amount in the EOR is set. See Exhibits 6-9 to Donckers Decl., Dkt. 32-1 and 32-2 (excerpts of deposition testimony from USAA adjusters Morales, McDaniel, and Benitez and USAA claims manager Whitehead.)

¹⁴ Compl. at ¶¶26-30; Pl.’s Resp. to Defs.’ Mot. to Dismiss, Dkt. 31 at 8-9.

¹⁵ See Compl., Dkt. 1-1, at Ex. 1 (including ‘RF_2’ reductions on EORs).

¹⁶ *Id.*, Dkt. 1-1 at ¶¶31-32.

Indeed, USAA admits that when denying payment of a provider's fee based on its 80th percentile practice, it is *not* saying or determining that the fee is unreasonable. It is not saying that a fee that is one cent more than \$9.99 above the 80th percentile threshold is unreasonable. It is only setting a reimbursement amount that is based on a database percentile and nothing more.¹⁷ Similarly, Milliman, the company that compiles the database, testified that it does not tell USAA what reasonable fee to pay for a provider's service. The Milliman database cannot be used to set reimbursements for providers. It's not designed for that purpose.¹⁸

As Milliman admits, one reason for this is that its data is incomplete. It does not state what similar providers charge for a service in any Washington city. The 80th percentile amount is *not* what 80% of providers in an area charge. It could be what only 20% charge or may not represent what any providers charge at all because there may not be any charge in the Milliman database for the same treatment service from the provider's city.¹⁹

¹⁷ See Ex. 7 to Donckers Decl., Dkt. 10 at 102-103 (excerpt of deposition of Rule 30(b)(6) representative of USAA)

¹⁸ See Ex. 11 to Donckers Decl., Dkt. 32-2 at 32-34 (excerpt of deposition of Rule 30(b)(6) representative of Milliman).

¹⁹ *Id.*, Dkt. No. 32-2 at 48-49.

Ms. Peoples and the certified class sued USAA alleging that its database limitation violates the PIP statute's requirement that insurers pay *all* reasonable expenses arising from a covered accident on a PIP claim. The practice also violates the requirement in WAC 284-30-330 that insurers do a reasonable investigation of their duty to pay an insurance claim before denying payment and the requirement in WAC 284-30-395 that auto insurers not deny payment of a PIP claim without first determining that the provider's charge is unreasonable, unnecessary, not covered or was not incurred within 3 years of the accident. WAC 284-30-395. These are the only grounds for denying a PIP medical expense claim. *Id.*

Violations of the Insurance Code or WAC regulations are *per se* violations of the CPA. So Peoples alleged that USAA's practice violated the CPA and caused her economic injury in a number of ways, including "out-of-pocket expenses" caused by USAA's failure to pay the provider's bill that she now had to pay. She also claimed reduced PIP benefits and that she lost the full value of the premium dollar paid to USAA for her \$10,000 in PIP coverage. She also incurred costs investigating USAA's failure to pay her PIP claim.²⁰

²⁰ See Compl., Dkt. 1-1 at ¶3; Order Consolidating and Certifying, Dkt. 50 at 6.

Peoples alleged each form of economic loss was caused by USAA's practice.²¹ Indeed, USAA's practice of making automatic, computer generated denials at its Milliman 80th percentile threshold is the *only* cause for why her PIP claim was not paid and the only cause for her claimed economic losses. *Id.*

B. The PIP Statute Guarantees \$10,000 in Coverage

The PIP statute *requires* that auto insurers offer coverage that provides a *minimum* of \$10,000 in "medical and hospital benefits." RCW 48.22.095. "The statutory requirement to offer PIP coverage implicates public policy." ²²

"Medical and hospital benefits" are defined by the statute to mean "*payments for all reasonable and necessary*" medical expenses arising from a covered accident. RCW 48.22.005(7) (emphasis added). The definition's use of the word "payments" means that insurers have an affirmative duty to actually make "payments" for *all* reasonable expenses on a PIP claim.²³

²¹ Compl., Dkt. 1-1 at 16-18.

²² *Durant*, 191 Wn.2d at 14 citing *Sherry v. Fin. Indem. Co.*, 160 Wn.2d 611, 620-21, 160 P.3d 31 (2007).

²³ See *Folweiler Chiropractic PS v. Am. Family Ins. Co.*, 5 Wn. App. 2d 829 (2018), *review denied*, 193 Wn. 2d 1001(2019).

The terms “reasonable” and “all” are not defined in the statute and are given their dictionary definition.²⁴ the term “reasonable” is given a very broad meaning and is not limited to an insurer’s definition. *Id.* at 13-15. The term “all” is defined in the dictionary to mean “every, all manner, all kinds.”²⁵ Accordingly, an insurer must actually make “payments” of “every, all manner, all kinds” of “reasonable” expenses on a PIP claim. Peoples alleges USAA does not do that. It does not pay “every, all manner, all kinds” of reasonable expenses. It pays only those amounts that are no more than \$9.99 above its 80th percentile threshold.

C. USAA is Paid a Separate Premium for Coverage

USAA charges the insured a *separate* premium to provide the required \$10,000 in PIP benefits. Washington consumers have paid USAA hundreds of millions of dollars in PIP premiums since 2013 for their \$10,000 in PIP coverage.²⁶ This is important because as this Court observed in *Sherry*, 160 Wn. 2d at 624:

Generally speaking, people purchase PIP coverage to cover the immediate costs of an accident, such as medical expenses and loss of income....

²⁴ See *Durant*, 191 Wn.2d at 11-12.

²⁵ See e.g., Am. Heritage College Dictionary 94 (2nd ed. 1982).

²⁶ See Ex. 3 to Donckers Decl., Dkt. 32-1 (chart from Office of Washington Insurance Commissioner).

So when Ms. Peoples' PIP claim was denied, she lost the full value of the premium dollar she paid USAA for her PIP benefits and allegedly suffered "reduced insurance benefits."²⁷

D. Negligence is Irrelevant to CPA Claim against USAA

Washington is a "no-fault" automobile insurance state with regard to PIP coverage. See *Sherry*, 160 Wn. 2d at 624. This means when insureds are injured in an accident, they are entitled to have their reasonable treatment services paid by their *own* auto insurer without regard for who was at fault for the accident and without worrying that they will not have the money to pay for the treatment. *Sherry, supra.*, at 624 stating:

[E]ven if Sherry were 100 percent negligent and the sole cause of the accident, FIC [her insurer] would still have to pay Sherry the full PIP policy limits.

This is important here because it means that the negligence of the other driver in causing the accident and the insured's injuries is totally irrelevant to the insurer's duty to pay "full PIP policy limits" of \$10,000. As noted, when an insurer like USAA fails to do so, the insured has not received the benefit of her "full PIP policy limits."²⁸

²⁷ Order Consolidating and Certifying, Dkt. 50 at 6.

²⁸ See *Durant*, 191 Wn.2d at 11 (citing *Britton v. Safeco Ins. Co. of Am.*, 104 Wn. 2d 518, 531 (1985) (holding that "where Legislature has mandated a certain

E. USAA’s Practice is Inconsistent WAC Regulations

WAC 284-30-330 requires that an insurer investigate the reasonableness of a provider’s charge for treating a PIP claimant *before* denying full payment of the bill. *Folweiler*, 5 Wn. App. 2d at 839-40. With regard to the reasonableness of the charge submitted on a PIP claim, WAC 284-30-395 prohibits an insurer from denying payment unless the insurer has first determined that the amount billed is unreasonable. *See Durant*, 191 Wn.2d at 13-14.

The insurer must make an *individualized* assessment of the reasonableness of that provider’s fee before denying payment. *Folweiler* at 839-40. The insurer cannot simply rely solely and exclusively on the 80th or 85th percentile of a database of charges to deny payment based on the reasonableness of the charge. It must undertake an individualized assessment. *Id.* Violations of WAC 284-30-330 and 284-30-395 are “unfair” practices.

F. District Court Denies USAA’s Motion to Dismiss

On July 9, 2018, Peoples filed this class action in King County Superior Court on behalf of USAA insureds who had their PIP claims for payment of medical expenses denied by USAA

amount and kind of coverage, insurer cannot avoid that obligation by policy clause which has not been authorized by legislature.”)).

based on an EOR that stated that the amount billed exceeds a reasonable amount for the services provided. She had “whiplash” injuries from a covered accident when she was “rear-ended” by another driver and opened a PIP claim.²⁹

As a USAA insured, Ms. Peoples had PIP coverage of a minimum of \$10,000 for her medical expenses arising from the accident.³⁰ But when her treating providers submitted their bills to USAA for payment on her PIP claim, USAA denied payment of some of the bills based on its database threshold even though the provider’s fee for his/her services was reasonable. *Id.* at ¶¶ 23-24.

When USAA denied payment of these bills, the EOR sent to the provider and the insured showed an “RF” reason code as the explanation for the denial. The EOR says the RF code means that full payment was denied because the provider’s fee allegedly “exceeded a reasonable amount for the service provided.” *Id.* at ¶ 28. But in fact, as discussed, whenever an RF code appears in the EOR it means that the denial was based solely on the fee exceeding USAA’s database threshold and no other reason.

²⁹ Compl., Dkt. 1-1 at ¶¶7-9; see also Decl. of Peoples, Dkt. .33 at ¶¶1-6.

³⁰ Compl., Dkt. 1-1 at ¶¶11-22.

When one of her providers threatened her with a collections action on the unpaid bills, Ms. Peoples paid the bills USAA failed to pay due to its database practice. She also incurred costs investigating why the bills were not paid and responding to USAA.³¹

After removing the Peoples class action to federal court, USAA moved to dismiss. The district court denied the motion finding that Ms. Peoples set out a legally cognizable CPA claim based on USAA's practice of denying or limiting PIP claims based on its database threshold.³² In a separate order consolidating a similar type of CPA claim against Progressive and certifying questions to this Court, the district court discussed at length the issue of whether Washington law permits Peoples to bring a CPA claim against her auto insurer for failing to pay her PIP claims for reasonable medical expenses.³³ The court concluded it did and rejected USAA's assertion that the CPA claim was barred because Ms. Peoples's claim was "derivative" of the negligence of the other driver in causing her whiplash injury. *Id.* at 6-7. It nevertheless found certification of the issue to this Court appropriate. *Id.* at 7-9.

³¹ Peoples Decl., Dkt. 33 at ¶¶1-6.

³² Order Den. Defs' Mot. to Dismiss, Dkt. 49.

³³ Order Consolidating and Certifying, Dkt. 50 at 3-6.

G. USAA's Argument Also Rejected in Prior CPA Case

In 2012, a Washington provider, *MySpine LLC*, filed a class action CPA claim against USAA based on the same database practice.³⁴ USAA moved to dismiss arguing in part that the plaintiff's claim was based on "personal injury" damages sustained by the insured in the subject accident and was therefore barred under the CPA. Citing *Williams*, the Superior Court, Judge Theresa Doyle, rejected USAA's argument, Order at 2:

Defendant USAA next argues that MySpine's CPA claims are based on personal injuries. A CPA claim is not available for a personal injury claim. *Ambach v. French*, 167 Wn.2d 167, 173. However, MySpine's CPA claim here is not based on personal injuries but rather is based on USAA's practice of discounting its billings under the insured's PIP coverage. Accordingly, this claim can be brought under the CPA. *Williams v. Lifestyle Lift Holding*, 175 Wash. App. 62, 302 P.3d 523 (2013) (botched plastic surgery procured through deceptive advertising can form basis of CPA claim).

The Superior Court's analysis is similar to the analysis of the federal district court here. USAA did not appeal the *MySpine* order.

IV. LEGAL ARGUMENT

A. Question One: An Insured's Out-of-Pocket Medical Expenses or Unpaid Provider Bills Arising from Illegal PIP Claim Denials is "Injury" under the CPA.

³⁴ See Ex. 1 to Donckers Decl., Dkt. 32-1 (Order Den. USAA's Mot. to Dismiss in *MySpine LLC. V. USAA Cas. Ins. Co.*)

Insureds who are physically injured in a motor vehicle accident and whose PIP benefits were limited in violation of the PIP statute, WAC 284-30-300, or WAC 284-30-395, can bring a CPA claim against the insurer to recover out-of-pocket medical expenses. They can also bring a CPA claim to enjoin the insurer from failing to pay PIP benefits in violation of the PIP statute and WAC regulations by compelling the insurer to pay the provider's outstanding bill. The CPA expressly provides for such remedies for economic loss caused by an unfair practice. RCW 19.86.090.

Ms. Peoples's claim against her insurer, USAA, is not a claim for "personal injury" caused by USAA's act of negligence. Her claim is that USAA's unfair insurance practice that violates the PIP statute and WACs is a *per se* unfair CPA practice that caused her only economic loss not personal injury. A violation of the PIP statute or WAC regulations is a *per se* unfair CPA practice.³⁵

A rule that would create an unwarranted "derivative claim" exception to CPA protection for unfair insurance practices and *per se* violations of the CPA would be inconsistent with the CPA's plain language. RCW 19.86.090. It would also be inconsistent in the

³⁵ See, *Folweiler*, 5 Wn. App. 2d. at 839; *Neigel v. Harrell*, 82 Wn. App. 782, 784 (1996).

context of a PIP insurance claim with “Washington’s strong public policy in favor of full compensation of medical benefits for victims of road accidents” reflected in the PIP statute and WAC 284-30-395.³⁶

Prior Washington precedent also supports an insured’s bad faith or *per se* unfair practice CPA claim against an insurer whose business practice violates the PIP statute and WACs and causes the insured economic loss even if the diminution in the insured’s money or property is minimal.³⁷ And, as the federal district court ruled here, *Ambach* does not hold otherwise. In *Ambach* unlike Ms. Peoples’s claim against her insurer, the plaintiff sued her surgeon for professional malpractice alleging the defendant surgeon’s single act of negligence in performing the surgery caused her both personal injury and economic loss. This Court held her claim was more properly viewed as a personal injury action based on the defendant’s single act of negligence than a CPA action for monetary loss caused by an unfair business practice.

In contrast, Ms. Peoples is not suing USAA for personal injury. She is not suing for economic loss caused by USAA’s negligence that also caused her personal injuries. Her sole claim

³⁶ *Durant*, 191 Wn. 2d at 14.

³⁷ See Order Con. and Certifying, Dkt. 50 at 3-4 (discussing Washington cases).

against her insurer is for a business practice that violates the Insurance Code and WAC regulations and caused her only monetary loss in the form of unpaid bills, loss of the value of her PIP premiums, investigative and other out-of-pocket expenses.

The Court of Appeals analysis in *Williams* of *Ambach's* holding also confirms that insureds are not barred from bringing the type of CPA claim for economic loss alleged by Ms. Peoples. As the district court found here, *Williams* has a more persuasive analysis of *Ambach* and Washington law and the liberal construction of the CPA mandated by the legislature, than prior federal court decisions that ignored *Ambach's* holding and instead “grabbed hold” of language in *Ambach* that lead to an erroneous analysis of the insured’s CPA claim under Washington law.

1. The CPA’s Language on its Face, Supports the Claim

The CPA, RCW 19.86.090 states in pertinent part:

Any person who is injured in his or her business or property by a violation of RCW 19.86.020..., may bring a civil action in superior court to enjoin further violations to recover the actual damages sustained by him or her, or both, together with costs of the suit, including a reasonable attorney fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained.

The CPA is to be “liberally construed that its beneficial purposes may be served.” RCW 19.86.920; *see also Panag*, 166 Wn. 2d at 37 (*citing Short v. Demopolis*, 103 Wn.2d 52, 61 (1984)). This Court does not impose additional conditions for bringing suit under the CPA that are not in the statute’s plain language. *Panag* at 38. Instead, the CPA is enforced on its stated terms. *Id.*

RCW 19.86.020 prohibits unfair practices in trade or commerce. A violation of RCW 19.86.020 may be shown when an insurer violates the Insurance Code or engages in a practice declared to be an “unfair practice” by regulation. *Folweiler*, 5 Wn. App. 2d. at 839; *Neigel*, 82 Wn. App. at 784. Ms. Peoples’s allegations state a violation of RCW 19.86.020 based on violations of the PIP statute, WAC 284-30-330 and WAC 284-30-395.

“Injury to property” under the CPA is broadly defined. *See Panag*, 166 Wn. 2d at 57 (internal citation omitted):

[T]he injury requirement is met upon proof the plaintiff’s ‘property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.’

Indeed, this Court has recognized that CPA ‘injury’ is met by a delay in payment of two weeks of an amount owed, or by costs incurred to investigate the defendant’s unfair or deceptive practice,

or diminution or loss of value of the plaintiff's property. *Id.* at 57-58, 63. Ms. Peoples alleges each form of CPA "injury to property" here. She alleges her money was diminished by USAA's failure to pay provider bills she then owed and paid, and that she incurred expenses for investigating USAA's failure to pay. She lost the full value in her property rights to PIP coverage and the full \$10,000 in PIP benefits she bought from USAA by her PIP premium. Even if this diminution is minimal or unquantifiable, each is CPA "injury." *Id.*

On its face, Ms. Peoples states a cognizable CPA claim under of RCW 19.86.090 and "may bring a civil action" to enjoin USAA's practice and recover damages for her economic loss. On its face, RCW 19.86.090 has no "derivative" claim exception.

Nor is there any exception or condition on the face of the statute that besides alleging monetary loss or diminution of a property interest, which this Court has consistently recognized as "injury to property," an insured has to prove her economic loss was not "derivative" of an injury producing accident caused by the negligent act of a third-party. When the sole *proximate cause* of the plaintiff's economic loss is her insurer's unfair practice, prior precedent recognizes that plaintiff may recover that loss from the

defendant through a CPA action.³⁸ Adding a “derivative” claim exception is unwarranted given the statute’s plain language.

2. Washington Precedent Supports People’s Claim

Citing *Keodalah v. Allstate Ins. Co.*, 3 Wn. App. 2d 312 (2018), *Nelson v. Geico Gen. Ins. Co.*, 192 Wn. App. 1007, 2016 WL 112475 (2016), *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323 (2000), *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 98 Wn. App. 487 (1999) and *Escalante v. Sentry Ins. Co.*, 49 Wn. App. 375, 387 (1987), the district court here found:

It is relatively common for Washington drivers who believe their insurance company failed to make a good faith investigation of their claim or otherwise violated applicable insurance regulations to bring a CPA claim against the insurer. These claims seek payment under the terms of the policies – including payments and reimbursements of medical expenses – and have been permitted to proceed despite the connection to “personal injuries.”³⁹

USAA ignores the district court’s analysis except to note that there was no express ruling in the cited cases that unpaid medical expenses were CPA “injury,” even though USAA admits each case stands for the proposition that the plaintiff asserting her insurer failed to pay medical expenses in violation of the WAC insurance regulations and Washington law states a cognizable CPA claim.

³⁸ See *Indoor Billboard*, 162 Wn.2d 59 (2007); *Folweiler*, 5 Wn. App. 2d. at 839.

³⁹ Order Consolidating and Certifying, Dkt. 50 at 3.

3. ***Ambach* is Distinguishable; It's Holding is Irrelevant**

USAA relies heavily on *Ambach* for its argument, while actually ignoring *Ambach*'s facts and holding. As the district court found, *Ambach*'s facts and holding are clearly distinguishable and inapplicable to its certified questions for a number of reasons: First, *Ambach* simply did not involve a CPA claim based on the insurer's unfair or bad faith denial of a medical expense insurance claim.

Second, *Ambach* did not involve a defendant insurer's unfair business practice that caused only economic loss to the insured in the form of monetary loss, out-of-pocket costs, and diminution of the insured's property interest in her coverage. In *Ambach*, a patient, Ms. Ambach, sued her surgeon, Dr. French, for medical malpractice alleging he had negligently performed her shoulder surgery by inserting rods into her shoulder. In addition to her malpractice claim for injuries caused by the negligent surgery, she alleged a CPA claim that his negligence caused her increased costs.

The *Ambach* Court held that the CPA claim was properly dismissed because *Ambach* admitted that her loss was "part and parcel" of her personal injury claim against *that defendant* and that

all of her damages rose from a single act of negligence by *that defendant*. 167 Wn. 2d at 175 (emphasis added):

Where plaintiffs are both physically and economically injured *by one act*, courts generally refuse to find injury to ‘business or property’ as used in the consumer protection laws.

The critical consideration was *not* that French’s claim was derivative of her “personal injuries.” The critical consideration was that her CPA claim was derivative of the doctor’s single act of *negligence* that caused her personal injury even though she also claimed economic loss. While economic loss is “injury to property” under the CPA, the proximate cause of Ms. French’s loss was part and parcel of her malpractice claim based on the defendant doctor’s negligence and not an unfair or deceptive practice. Thus when there is a *singular negligent act* by the *same* defendant doctor that causes both personal injury and economic loss, the claim is more properly considered one for professional malpractice and personal injury and not for a violation of the CPA.

The facts here are clearly distinguishable. Ms. Peoples is not suing the third-party driver who caused the motor vehicle accident for negligence in causing her personal injuries. She is suing a defendant who has no relationship to the third-party driver, USAA.

She is suing her insurer that owes a non-delegable duty under the PIP statute to provide “full PIP benefits.”

Ms. Peoples is also suing her insurer for violation of an insurance regulation, WAC 284-30-395, that applies *only* to auto insurers and *only* applies to a PIP medical expense claim. The WAC renders the insurer liable for failing to pay a reasonable *medical expense* on a *Personal Injury Protection* claim without first determining that the expense is unreasonable.

Ms. Peoples is suing her insurer for a *per se* unfair practice that is directly based on the insurer’s violation of the PIP statute and WACs. Her claim is not *derivative* of the third-party driver’s negligence. She is seeking *no-fault* insurance benefits. The third-party driver’s negligence is irrelevant to the insurer’s duty to pay.

Ambach does not apply and has no bearing on the answer to the certified questions. Ms. Peoples is not suing the negligent driver who caused the accident and her personal injuries. She is suing a *different* defendant, USAA, for causing her economic loss from unpaid bills that USAA should have paid under the PIP statute and for failing to investigate and determine that her provider’s bills were not reasonable *before* denying payment as required by the WAC. She is not suing USAA for the *same* act of negligence as the third-

party driver's act of negligence. She was *not both* "physically and economically injured" by USAA's unfair acts. The act causing economic loss is USAA's violation of the PIP statute and WAC. It is not the same act that caused Ms. Peoples' personal injury.

Ambach is properly understood in the context of its stated concern that plaintiffs not "transform" every medical malpractice case into a CPA case by artfully pleading monetary loss caused by the defendant doctor's negligence. 167 Wn. 2d at 175. In other words, the 'transformation' of concern to the Court was not transforming personal injury into "injury to property." It was transforming a medical malpractice case based on the defendant's negligence into a CPA case by pleading 'injury to property' caused by the same act of negligence. In such a case any economic loss was not properly considered to be caused by an unfair or deceptive act but by a single act of professional negligence.

Ambach's policy concern does not apply to Ms. Peoples's CPA claim. Instead, the compelling concern is enforcement of "Washington's strong public policy in favor of full compensation of medical benefits for victims of road accidents" reflected in the PIP statute and WAC 284-30-395. *Durant*, 191 Wn. 2d at 14. That

concern is not implicated by *Ambach*'s holding and *Ambach* should not be used to eviscerate the strong public policy that does apply.

4. The Court Properly Found *Ambach* Inapplicable

After a careful analysis of Washington precedent and *Ambach*, the district court correctly concluded that *Ambach*'s holding and rationale did not apply to Ms. Peoples' CPA claim.⁴⁰ In doing so, the court relied on the Washington Court of Appeals analysis in *Williams*. It disagreed with other contrary federal court decisions which "had grabbed hold" of language from *Ambach* suggesting CPA claims that were so connected to the insured's personal injuries were barred under the CPA.⁴¹ In fact, *Ambach* does not state that an unfair practice or bad faith claim against an insurer that is "derivative" of the plaintiff's personal injuries fails to constitute injury to business or property sufficient to sustain an action under the CPA. *Id.* The statement is a fiction of the federal courts' own making in those cases. It is not in *Ambach*.

5. *Williams* Shows Peoples has a Valid CPA Claim

In *Williams*, the plaintiff, Ms. Williams, sued her surgeon, Dr. Santos, alleging his negligence caused her personal injury and

⁴⁰ Order Consolidating and Certifying, Dkt 50 at 5-6.

⁴¹ *Id.*, Dkt. 50 at 5.

sued his employer, Seattle Plastic, under the CPA for economic loss caused by Seattle Plastic's deceptive advertising. In holding that the trial court erred in dismissing Williams's CPA claim, the court distinguished *Ambach* and stated at 73:

Here, it is true Williams brought a personal injury claim relating to her treatment by Dr. Santos and his employer, Seattle Plastic. Like in *Ambach*, the personal injury claim was rejected by a jury. But unlike in *Ambach*, Williams was not claiming to be "physically and economically injured by one act." *Ambach*, 167 Wn. 2d at 174. The act that caused the alleged personal injury to Williams was the surgery; the acts that caused her alleged consumer injury were the advertising and sales techniques. Williams' Consumer Protection Act claim does not depend on proof that she sustained a personal injury as a result of the surgery. It depends on proof that the surgery was deceptively marketed, like a used car advertised as being new. That distinguishes *Ambach*.

As in *Williams*, the act that caused Ms. Peoples' personal injury here, i.e. the other driver's negligence, is not the act that caused her consumer injury. Her CPA injury is economic loss due to USAA's unfair practice of denying payment of reasonable and necessary bills on PIP claims. Indeed, because Washington is a no-fault state, the other driver's negligent act is irrelevant to her CPA claim against USAA. Had Ms. Peoples caused the accident, USAA would still be required under the PIP statute to pay all reasonable and necessary expenses incurred by her and would still

be required under the WAC to investigate her PIP claim *before* denying payment. USAA's failure to fulfill its affirmative duties under the statute and WAC were the acts giving rise to Ms. Peoples' economic loss and CPA injury.

6. USAA's Federal Cases are Unpersuasive

As discussed, USAA cites several federal district court cases that dismissed CPA claims against insurers relating to their denial of a medical expense claim on the erroneous belief that *Ambach* created a "derivative" claim exception to a CPA claim for "injury to property" where the insured's claim was somehow connected to a claim for personal injury made against a *different* defendant.⁴² As the district court here found, these prior federal cases are unpersuasive because they grabbed hold of language in *Ambach* suggesting that a personal injury action cannot be "transformed" into a CPA action for "injury to property" by clever pleading.

But as the district court here noted, that language is not *Ambach's* holding and *Ambach's* holding, which focuses on whether the plaintiff's personal injury claim and CPA claim arises from a *single* negligent act by the *same* defendant, simply does not

⁴² See Order Consolidating and Certifying, Dkt. 50 at 5 (discussing federal cases).

apply to Ms. Peoples's claim against her insurer. Equally, the district court noted that the federal cases do not address *Williams* or other Washington cases that limited *Ambach's* holding to its facts, like Judge Doyle's ruling in *MySpine, supra.* and Judge Yu's ruling in *Hayes v. USAA Cas. Ins. Co.*⁴³

But in any event, Ms. Peoples is not seeking to "transform" a "personal injury" claim caused by USAA's negligence into a CPA claim for "economic loss" or "injury to property" caused by the same act of negligence that caused her personal injury. Her claims against her insurer have nothing to do with negligence or personal injuries. They are based on her statutory rights to full PIP benefits under the PIP statute, WAC 284-30-395 and WAC 284-30-330.

The federal cases are also unpersuasive because they do not address Washington's strong public policy of full compensation for victims of motor vehicle accidents through the payment of full PIP benefits as reflected in the PIP statute and WAC regulations. Nor do the federal courts address WAC 284-30-395, let alone explain how the Insurance Commissioner's authority to regulate

⁴³ Order Consolidating and Certifying, Dkt. 50 at 6 (*citing Hayes v. USAA Cas. Ins. Co.*, 185 Wn. App. 1055, 2015 Wash. App. LEXIS 314, *15 (Feb. 17, 2015) and noting that then-Judge Mary I. Yu rejected the insurer's argument that a CPA claim challenging the way the insurer handled PIP claims was a claim for personal injuries...").

what is characterized in the regulation as an “unfair” practice would have any meaning under their analysis. The WAC regulation only applies to an insurer’s denial of a PIP claim for payment of *medical* expenses and makes violation of the regulation an “unfair” practice. Under the cited federal court cases, WAC 284-30-395 simply could not exist because violations of the WAC are *per se* unfair practices that violate the CPA. *Folweiler*, 5 Wn. App. 2d. at 839.⁴⁴

7. The Insurer’s Unfair Act is also a Key Inquiry

Citing two Sixth Circuit RICO cases that have not been followed by any other circuit, USAA argues that the only relevant inquiry with regard to “injury to property” is the “nature of the injury” and not the identity of the defendant. But USAA misapplies the court’s statements and those cases. In *Brown v. Ajax Paving Industries, Inc.*, the Sixth Circuit dismissed the plaintiff worker’s federal RICO claim against an insurer and doctor for fraud in the administration of his state workers compensation benefits because he had no “property interest” in receiving future benefits that had not yet been approved for payment by the state. 752 F.3d 656, 658

⁴⁴This Court has not followed federal cases that too narrowly construe the CPA. *Klem v. Wash. Mut. Bank*, 176 Wn. 2d 771, 785 (2013) (criticizing federal court’s decision in *Minnick v. Clearwire US*, 683 F.Supp. 2d 1179 (W.D. Wash. 2010) as taking too narrow a view of the scope of “unfair practices” under the CPA.)

(6th Cir. 2014). In *Jackson v. Sedwick Claims Management Services, Inc.*, the Sixth Circuit acknowledged that its view that a worker lacks a property interest in future worker's compensation benefits was at odds with its prior precedent and if the worker had such a property interest he would have a RICO claim for "injury to property." 731 F.3d 556, 566 (6th Cir. 2013). In addition, the court there stated that its decision was based on "comity" and the belief that federal law and federal courts under RICO should not intrude on the state's rights to determine how its workers compensation program is administered. Workers' compensation is a traditional area of state regulation. *Id.* Ms. Peoples's claims are clearly distinguishable. She and other USAA Washington insureds *do* have a property interest in the PIP insurance benefits paid for with their PIP premiums.⁴⁵ And the PIP statute and WAC regulations express the state's strong public policy in favor of full PIP benefits.⁴⁶

Even so, "economic loss" is CPA "injury to property." *Panag, supra*. So if the only inquiry is the nature of Ms. Peoples's alleged

⁴⁵ See, *Miller v. Paul Revere Life Ins. Co.*, 81 Wn. 2d 302, 311 (1972) (the right to insurance benefits is "property interest."); *In re Marriage of Leland*, 69 Wn. App. 57, 72 (1993) (same).

⁴⁶ *Ambach* illustrates that a key inquiry beyond the plaintiff's alleged injury is the defendant's act that gives rise to the injury such that when the alleged economic loss caused by the defendant's single act of negligence also caused the plaintiff's personal injury, her claim is properly considered a claim for personal injury, not a CPA claim for economic loss caused by an unfair practice.

“injury,” then her claim for economic loss caused by USAA’s unfair practice meets the CPA’s “injury to property” element. On its face the CPA is clear, when the plaintiff alleges that her “injury to property” was proximately caused by an insurer’s unfair business practice that violates RCW 19.86.020, then she has stated a CPA claim. *Indoor Billboard*, 162 Wn.2d at 74; *Williams*, 175 Wn. App. at 72. Whether the insured may also have a separate cause of action for negligence against the driver who caused the accident and her injuries, i.e. a different party, is irrelevant to her claim against her insurer for denial of her statutory PIP benefits.

8. Without a CPA Claim there is No Effective Remedy

USAA concedes that under its narrow view of the CPA that imposes a “derivative claim” exception to protection from its alleged unfair PIP claim practice, the insured is left with only a common law breach of contract claim against it. Appellant’s Br. at 29. It then argues that the remedies afforded by a common law breach of contract claim are sufficient. *Id.*

But the only remedy available on a contract claim is to obtain payment of the PIP claims USAA should have paid in the first place. The insured would not recover the attorney fees and

litigation costs the insured necessarily incurs to get the PIP benefits the insured has already paid USAA a separate premium to receive.

Nor would a contract claim provide the remedies the legislature felt necessary to ensure “private attorney general” actions under the CPA to protect consumers against unfair business practices. Those remedies include the “costs of suit,” reasonable attorney fees, and treble damages, as well as injunctive relief to enjoin the insurer’s unfair practice. RCW 19.86.090.

The legislature has mandated that the CPA be liberally construed and that it provide broad protection for consumers against unfair business practices. *See Klem, supra*. It has also declared that the business of insurance affects the public interest and granted the Insurance Commissioner broad authority to regulate unfair insurance practices. RCW 48.01.030; RCW 48.02.060. Consistent with that authority, the Commissioner has declared the violation of WAC regulations relating to unfair claims handling practice including the denial of PIP medical expense claims to be “unfair practices” under the CPA.

Indeed, the Washington authority cited by the federal district court makes clear that the CPA is the primary vehicle by which unfair or bad faith denials of an insurance claim are remedied: “It is

relatively common for Washington drivers who believe their insurance company failed to make a good faith investigation of their claim or otherwise violated applicable insurance regulations to bring a CPA claim against the insurer.”⁴⁷

A common law breach of contract claim does not afford the relief provided by the CPA and would be totally ineffective. As the district court found in certifying Peoples’s CPA claim for class adjudication, even if the insureds had claims in the hundreds to thousands of dollars, “that amount pales in comparison to the costs of litigation.”⁴⁸ Accordingly, the court found that “individual litigation of each claim...would prove uneconomic for potential plaintiffs.” *Id.*

Extra-contractual remedies are necessary to ensure protection of the public interest in the business of insurance. Enforcement of WAC regulations through the CPA is the process envisioned by the legislature, the Insurance Commissioner, and Washington courts. A mere breach of contract claim is insufficient.⁴⁹

⁴⁷ Order Consolidating and Certifying, Dkt. 50 at 3.

⁴⁸ See Order Granting Mot. for Class Certification, Dkt. 60 at 7 at Appendix A.

⁴⁹ USAA misrepresents the Motion to Amend in the district court to add a contract claim. It had nothing to do with the certified questions. As the court’s order shows it was based on Milliman’s deposition in another case revealing that USAA was breaching its PIP policy because Milliman’s data was so limited that it was impossible to determine what Washington providers charged for their services. In granting the motion, the court credited plaintiff’s account as new information warranting the amendment. See Order, Dkt.62 at 4 (May 7, 2019) at Appendix B.

A. Question Number Two: CPA Injury Includes Loss of Value of the Insured's Premium Dollar, the costs of investigating the unfair acts and the time lost complying with the insurer's unauthorized demands

The district court asks whether “injury to business or property” in the plaintiff’s circumstances includes “excess premiums paid for PIP coverage, the costs of investigating the unfair acts, and/or the time lost complying with the insurer’s unauthorized demands.”⁵⁰ The answer is clearly “yes” because each is a form of monetary or economic loss and CPA “injury” is broadly construed to include even a minimal diminution of property or economic loss that is not quantifiable. See *Panag*, 166 Wn. 2d at 55-58, 63.

Initially, though, USAA misconceives the question as an inquiry about “damages” recoverable on the CPA claim but it is clear in context that the court is asking about other possible forms of economic loss that could be regarded as “injury to property.” This Court should not deprive the district court of its guidance because, contrary to USAA’s assertions, each form of economic loss was sufficiently expressed in the record before the district court in the underlying cases to prompt the district court’s inquiry.

⁵⁰ Order Consolidating and Certifying, Dkt. 50 at 8.

The civil rules of procedure only require “notice” pleading. The district court obviously felt it had adequate notice that the plaintiffs’ claims for economic loss included the above types of loss for purposes of certifying questions to this Court. It makes no sense to deprive it of guidance and force it to instead proceed on its own.

Indeed, the types of economic loss alleged arise necessarily from the insured’s circumstances. As discussed, USAA was required by the PIP statute to offer its insureds a minimum of \$10,000 in PIP benefits and charged its insureds a separate PIP premium to obtain this coverage. When USAA failed to pay its insured’s PIP claim for reasonable medical expenses incurred in a covered accident based on its database limitation, it necessarily deprived the insured of the full value of her insurance benefits.

Washington courts recognize an interest in the proceeds of an insurance policy as a property interest.⁵¹ Accordingly, Ms. Peoples’ has suffered a diminution of her property interest in full PIP benefits of \$10,000 by USAA’s unfair denial of her PIP claim for payment of her provider’s fees. The district court’s question simply highlights the “flip-side” of this economic loss as

⁵¹ See *Miller*, 81 Wn. 2d at 311; *In re Marriage of Leland*, 69 Wn. App. at 72.

the payment of “excessive premiums” to get the \$10,000 in PIP benefits. That excess can be measured by the amount USAA did not pay her providers and should have paid because that amount has now been effectively “tacked onto” the PIP premium Ms. Peoples already paid USAA to get her \$10,000 in PIP benefits. Under the circumstances of Ms. Peoples’s claim, this type of diminution in the value of her PIP premium dollar is CPA “injury.”

Similarly, under the circumstances, USAA’s denials based on its database limitation necessarily forces the insured to incur costs associated to investigating why the provider’s bill was denied and to respond to USAA’s denial. First, as discussed, when a USAA adjuster denies payment based on USAA’s database limitation, the insured and provider are sent an EOR with an RF reason code for the denial. The EOR does not state the basis for the denial nor does it reveal it was based on USAA’s Milliman 80th percentile database threshold for paying PIP medical expenses. Instead the EOR demands further information from the insured and provider to substantiate the charges in order to be paid.⁵² The EOR

⁵² See Compl., Dkt. 1-1 at Ex. 1

does not say what this information is or what would be sufficient for USAA to pay the charges in full. *Id.*

USAA also sends the insured a letter saying that to be paid the full charge, the insured or provider must send in additional information.⁵³ Like the EOR, the letter does not explain USAA's Milliman 80th percentile method for denying payment in the first place or the information necessary for full payment. *Id.*

Under the circumstances then, the insured has to investigate why USAA denied payment and to respond to its demand to get the charges paid. Since the denials were based on an unfair practice that violates WAC 284-30-330 and WAC 284-30-395, the insured has incurred costs of investigating USAA's unfair acts and/or lost time complying with USAA's unauthorized demands just to get what she was entitled to receive in the first place, i.e. full PIP benefits.

Washington courts recognize that these types of economic losses are "injury to property" under the CPA. *See Panag*, 166 Wn.2d at 57-58, 63; *see also Folweiler*, 5 Wn. App. 2d. at 839. USAA appears to concede as much but instead erroneously argues that they arise from Ms. Peoples's personal injuries and hence are

⁵³ *Id.*, Dkt. 1-1 at Ex. 1 (Titled, "How to Obtain Answers to Questions about USAA's Explanation of Reimbursement (EOR) and How to Submit a Formal Appeal").

not cognizable under the CPA. Appellant's Br. at 31-32. For the reasons already discussed in detail above, USAA is wrong. The economic losses Ms. Peoples sustained are not dependent on the injuries she incurred by the negligence of the third-party driver who caused the accident. The losses were proximately caused by the unfair business practices of her insurer, USAA.

V. CONCLUSION

Ms. Peoples respectfully submits that this Court should answer "yes" to both questions certified by the district court.

DATED: June 3, 2019

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that on this date I electronically filed the attached document via the Washington State Appellate Courts' Portal and caused service on all counsel of record via the Portal.

DATED this 3rd day of June, 2019, at Seattle, Washington.

s/ Nerissa Tigner
Nerissa Tigner, Paralegal

Appendix A

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KRISTA PEOPLES,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE
ASSOCIATION, *et al.*,

Defendants.

NO. C18-1173RSL

ORDER GRANTING MOTION FOR
CLASS CERTIFICATION

This matter comes before the Court on “Plaintiffs’ Motion for Class Certification of CPA Claim, Appointment of Class Representative and Counsel, and Order Identifying Class Members.” Dkt. # 23. Having reviewed the memoranda, declarations, and exhibits submitted by the parties,¹ the Court finds as follows:

I. BACKGROUND

Plaintiff alleges that defendants United Services Automobile Association and USAA Casualty Insurance Company (collectively “USAA”) engaged in per se unfair acts in the business of insurance by unlawfully curtailing her benefits under the Personal Injury Protection (“PIP”) provisions of her automobile policy. According to plaintiff, USAA refused to pay (or

¹ This matter can be decided on the papers submitted. Defendants’ request for oral argument is DENIED.

1 limited payment for) medical provider bills whenever an automated review process indicated
2 that the charges for a particular procedure exceeded a certain threshold established in a database
3 maintained by the actuarial firm Milliman, Inc. Plaintiff alleges that the failure to investigate or
4 otherwise make an individualized determination regarding the reasonableness or necessity of the
5 provider's charges before denying payment violates the PIP statute and Washington's insurance
6 regulations. Plaintiff filed this lawsuit on behalf of similarly situated insureds asserting a claim
7 under the Washington Consumer Protection Act ("CPA") and seeks to certify a class comprised
8 of:
9

10 All Washington insureds who from September 1, 2015 to July 5, 2018 ("Class
11 period") had their PIP claims for reimbursement of medical expenses reduced by
12 Defendant USAA based solely on an Explanation of Reimbursement ("EOR")
13 form sent to the insured's provider stating that the bill exceeded a "reasonable
14 amount for the service provided."

15 Dkt. # 101 at ¶ 71.

16 II. DISCUSSION

17 A. Prerequisites of a Class

18 Pursuant to Fed. R. Civ. P. 23(a), a plaintiff may sue in a representative capacity on
19 behalf of a class only if:
20

- 21 (1) the class is so numerous that joinder of all members is impracticable;
- 22 (2) there are questions of law or fact common to the class;
- 23 (3) the claims or defenses of the representative parties are typical of the claims or
24 defenses of the class; and
- 25 (4) the representative parties will fairly and adequately protect the interests of the
26 class.

1 A court must conduct a rigorous analysis to determine whether a purported class satisfies the
2 prerequisites of Rule 23. Mazza v. Am. Honda Motor Co., 666 F.3d 581, 588 (9th Cir. 2012).
3 The Rule “does not set forth a mere pleading standard:” the party seeking class certification must
4 “affirmatively demonstrate his compliance with the Rule -- that is, he must be prepared to prove
5 that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.” Wal-
6 Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) (emphasis in original).
7

8 (1) Numerosity

9 Plaintiff asserts that there are at least 1,100 Washington insureds whose bills were denied
10 or reduced based solely on an automated computerized review of the charges. USAA does not
11 dispute that the class is so numerous that joinder would be impracticable.
12

13 (2) Commonality

14 In order to satisfy the commonality criterion, the class members’ claims “must depend
15 upon a common contention of such a nature that it is capable of classwide resolution.” Wal-Mart
16 Stores, Inc. v. Dukes, 564 U.S. 338, 338 (2011). A class meets the commonality requirement
17 when “the common questions it has raised are ‘apt to drive the resolution of the litigation’ no
18 matter their number.” Jimenez v. Allstate Ins. Co., 765 F.3d 1161, 1165 (9th Cir. 2014). As
19 defendants’ opposition makes abundantly clear, the key common question capable of classwide
20 resolution is whether USAA’s denial or reduction of insurance benefits solely because the
21 provider’s charge for a certain procedure or treatment exceeds a database threshold violates
22 (i) the statutory obligation to pay “all reasonable and necessary expenses” arising from a covered
23 automobile accident, (ii) the regulatory requirement that insurers conduct a reasonable
24 investigation before denying full payment of a claim, and/or (iii) the regulatory prohibition
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1 against denying or limiting payment of a claim on any ground not specified in WAC 284-30-
2 395(1). If one of those common questions is resolved in plaintiff's favor, other common
3 questions arise, such as:

- 4 a) Whether the alleged violation is a per se violation of the CPA.
5
6 b) Whether the amount of unpaid medical bills as reflected in the EORs is an
7 appropriate measure of the injury caused by the denial or limitation of payment or
8 whether the injury is limited to only those unpaid bills which were, in fact,
9 reasonable and covered by the policy.
10
11 c) Whether unpaid medical bills are "injury to business or property" for purposes
12 of the CPA.

13 Each of these questions relates to USAA's liability under the CPA and will drive the
14 resolution of the claim. In addition, the answer to these questions will be the same for every
15 class member. Commonality is satisfied.

16 (3) Typicality

17 The typicality requirement "ensures that the interests of the class representative aligns
18 with the interests of the class." Just Film, Inc. v. Buono, 847 F.3d 1108, 1116 (9th Cir. 2017)
19 (internal quotation marks omitted). The named plaintiffs' claims need not be identical to those of
20 the absent class members, but they must be reasonably similar in light of the injuries suffered
21 and the conduct that allegedly caused the injuries. Parsons v. Ryan, 754 F.3d 657, 685 (9th Cir.
22 2014); Torres v. Mercer Canyons, Inc., 835 F.3d 1125, 1141 (9th Cir. 2016). Class certification
23 is not appropriate if there is a danger that the absent class members will suffer because their
24 representative is preoccupied with defenses unique to him or herself. Hanon v. Dataproducts
25 Corp., 976 F.2d 497, 508 (9th Cir. 1992).

26 USAA suggests that Ms. Peoples has a unique vulnerability related to standing that makes

1 her atypical and an inadequate class representative. Although the factual and legal basis of this
2 argument are unclear, it appears that USAA intends to argue that a lawsuit brought by Ms.
3 Peoples' healthcare provider to recover unpaid invoices deprived Ms. Peoples of any injury,
4 such that she lacks standing in this matter. USAA does not state, much less show, that the
5 healthcare provider covered all uninsured amounts, nor has it provided legal authority to support
6 the implication that a provider's unsuccessful claim for unpaid invoices bars an insured's CPA
7 claim for violations of Washington's insurance code. The Court finds that plaintiff's claims are
8 virtually identical to those of the absent class members, and USAA's speculative assertion of a
9 standing issue is not likely to derail her focus and does not make her claims atypical.
10

11 **(4) Adequacy of Representation**

12 Two questions determine adequacy: "(1) do the named plaintiffs and their counsel have
13 any conflicts of interest with other class members and (2) will the named plaintiffs and their
14 counsel prosecute the action vigorously on behalf of the class?" Evon v. Law Offices of Sidney
15 Mickell, 688 F.3d 1015, 1031 (9th Cir. 2012) (quoting Hanlon v. Chrysler Corp., 150 F.3d 1011,
16 1020 (9th Cir. 1998)). As discussed above, the named plaintiff's claims and interests are aligned
17 with those of the class, and there is no reason to suspect that she will not pursue the CPA claim
18 to the fullest extent possible. Nor is there any indication that plaintiff's chosen counsel will not
19 adequately represent the interests of the class.
20

21 **B. Maintenance of a Class under Rule 23(b)(3)**

22 Plaintiff argues that the provisions of Rule 23(b)(3) apply, pursuant to which the Court is
23 required to find:
24

25 that the questions of law or fact common to the members of the class predominate
26

1 over any questions affecting only individual members, and that a class action is
2 superior to other available methods for the fair and efficient adjudication of the
3 controversy. The matters pertinent to the findings include: (A) the class members'
4 interests in individually controlling the prosecution or defense of separate actions;
5 (B) the extent and nature of any litigation concerning the controversy already
6 begun by or against class members; (C) the desirability or undesirability of
7 concentrating the litigation of the claims in the particular forum; (D) the likely
8 difficulties in managing a class action.

8 **(1) Common Issues Predominate**

9 The first Rule 23(b)(3) finding involves “the relationship between the common and
10 individual issues.” Hanlon, 150 F.3d at 1022. “When common questions present a significant
11 aspect of the case and they can be resolved for all members of the class in a single adjudication,
12 there is clear justification for handling the dispute on a representative rather than on an
13 individual basis.” Id. If Ms. Peoples is able to establish the facts surrounding USAA’s claims
14 handling procedures, that those procedures violate Washington insurance regulations, that the
15 amount of unpaid provider bills is an appropriate measure of the injury caused by the violation,
16 and that those unpaid bills constitute injury to business or property under the CPA, the evidence
17 presented will establish defendants’ liability not only to Ms. Peoples, but also to the absent class
18 members. If plaintiff’s theory of the case prevails, the only individual issue will be the tabulation
19 of unpaid medical expenses as revealed in each class member’s EORs. The Court finds that the
20 many common legal and factual questions predominate over the tallying of individual losses.
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23 As USAA points out, it is entirely possible that plaintiff will not prevail on one or more of
24 these issues. She may, for example, be unable to show that USAA’s method of evaluating the
25 reasonableness of a provider’s charge violates Washington insurance regulations. If that is the
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1 case, the CPA claim will fail on a class-wide basis. If, on the other hand, plaintiff is unable to
2 establish that USAA adjusted PIP claims in a uniform way or that the appropriate remedy for a
3 violation of the insurance code is payment of all unpaid amounts (whether reasonable or not),
4 plaintiff's theory of the case falls apart and decertification may then be appropriate. At this point
5 in the proceeding, however, virtually all of the questions regarding defendants' liability are
6 common even if the answers may ultimately show that classwide relief is inappropriate.

8 (2) Superiority of Class Action

9 The second Rule 23(b)(3) consideration requires the court to evaluate alternative
10 mechanisms of dispute resolution based on the factors listed in Rule 23(b)(3)(A)-(D). See Zinser
11 v. Accufix Research Institute, Inc., 253 F.3d 1180, 1190 (9th Cir. 2001). USAA offers no
12 alternative to class litigation other than for the putative class members to proceed with individual
13 claims. Given those choices, the Court finds the class action to be superior. Although putative
14 class members may have individual claims in the hundreds or even thousands of dollars, that
15 amount pales in comparison to the costs of litigation. The Court is unaware of other litigation
16 pending against USAA for the claims plaintiff asserts, and neither party has identified any
17 particular hardship or inconvenience that may arise from adjudicating all class members' claims
18 in this district. Requiring individual litigation of each claim "would not only unnecessarily
19 burden the judiciary, but would prove uneconomic for potential plaintiffs." Hanlon, 150 F.3d at
20 1023. These factors suggest that individual class members do not have a significant interest in
21 litigating their claims separately or in choosing their own forum. Thus, the first three factors of
22 Rule 23(b)(3) weigh in favor of class action treatment. See Brown v. Consumer Law Associates,
23 LLC, 283 F.R.D. 602, 615-16 (E.D. Wash. 2012).

1 The fourth factor, difficulties in managing the class action, may at some future time
2 warrant reconsideration of this Order, but it does not support a refusal to certify the class in the
3 first instance. If plaintiff prevails on the common questions discussed above, there will be no
4 difficulty in adjudicating defendants' liability on a classwide basis. Individual damages awards
5 would then be calculated from the EORs. In those circumstances, managing this single class
6 action will be efficient and vastly superior to managing separate suits. If, however, it becomes
7 clear that USAA did not adjust PIP claims in a uniform manner or that proof of injury to
8 business or property will require individual trials, the superiority of the class action as a means
9 of adjudicating the controversy in a fair and efficient way would be subject to question.
10

11 III. CONCLUSION

12
13 For all of the foregoing reasons, it is hereby ORDERED that the following class is
14 certified pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3):

15 All Washington insureds who from September 1, 2015 to July 5, 2018 ("Class
16 period") had their PIP claims for reimbursement of medical expenses reduced by
17 Defendant USAA based solely on an Explanation of Reimbursement ("EOR")
18 form sent to the insured's provider stating that the bill exceeded a "reasonable
19 amount for the service provided."

20 Krista Peoples is hereby appointed representative of the certified class. Plaintiffs' counsel is
21 designated as counsel for the class. The Court further orders defendants to provide a full and
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1 complete answer to Interrogatory No. 1 of “Plaintiff’s First Set of Interrogatories and Requests
2 for Production” (Dkt. # 7-1 at 68) within fourteen (14) days of the date of this Order.

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4 DATED this 26th day of April, 2019.

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7 Robert S. Lasnik
8 United States District Judge
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Appendix B

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KRISTA PEOPLES,

Plaintiff,

v.

UNITED SERVICES AUTOMOBILE
ASSOCIATION, *et al.*,

Defendants.

Case No. C18-1173RSL

ORDER GRANTING PLAINTIFF’S
MOTION TO AMEND COMPLAINT

This matter comes before the Court on “Plaintiff’s Motion to Amend Complaint.”
Dkt. #53. For the following reasons, plaintiff’s motion is GRANTED.

INTRODUCTION

Plaintiff Krista Peoples is an insured of defendants United Services Automobile Association and USAA Casualty Insurance Company (collectively “USAA”). Dkt. #1-1 at ¶ 11. On September 26, 2015, plaintiff was involved in an automobile accident in Seattle, Washington. *Id.* at ¶ 7. Plaintiff sought medical treatment for injuries sustained during the accident and submitted a claim for reimbursement under the Personal Injury

1 Protection (PIP) coverage of her policy. Id. at ¶¶ 17, 22. USAA denied full payment of
2 plaintiff’s medical expenses. Id. at ¶ 34.

3 Under the Washington PIP statute, RCW 48.22.005(7), insurers are required to
4 cover all “reasonable and necessary” medical expenses incurred by an insured as a result
5 of injuries sustained in an automobile accident. Plaintiff’s complaint alleges that USAA
6 uses an automated, computerized program to determine whether submitted claims
7 “exceed[] a reasonable amount for the service provided.” Id. at ¶ 30. Plaintiff alleges that
8 USAA does not independently investigate bills before denying coverage. Id. at ¶¶ 28–30.
9 Plaintiff alleges that this practice violates the Consumer Protection Act (CPA), RCW
10 19.86, and moved for class certification of the CPA claim under Fed. R. Civ. P. 23(a) and
11 (b)(3). Id.; Dkt. #23.

12 On March 8, 2019, while the class certification motion was pending, plaintiff
13 moved to amend her complaint. Dkt. #53. Plaintiff seeks to add an individual and a class
14 claim for breach of contract. Id. The proposed amendments include allegations that
15 defendants’ automated computer review relies on a sample of nationwide fees and does
16 not distinguish reasonable charges within a specific geographic area. Id. at 4–5. On April
17 26, 2019, the Court granted plaintiff’s motion to certify the following class for purposes
18 of the CPA claim. Dkt. #60.

19 All Washington insureds who from September 1, 2015 to July 5, 2018 (“Class
20 period”) had their PIP claims for reimbursement of medical expenses reduced by
21 Defendant USAA based solely on an Explanation of Reimbursement (“EOR”) form sent to the insured’s provider stating that the bill exceeded a “reasonable
22 amount for the service provided.”

1 Id. at 8. Defendants do not oppose plaintiff’s proposed addition of an individual breach of
2 contract claim. Dkt. #57 at 2. Defendants object only to the addition of a class claim. Id.

3 DISCUSSION

4 Courts “should freely give leave [to amend] when justice so requires.” Fed. R.
5 Civ. P. 15(a)(2). The discretion in granting leave to amend is “to be applied with extreme
6 liberality.” Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051–52 (9th Cir.
7 2003). Courts consider five factors in granting leave to amend: (1) bad faith, (2) undue
8 delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the
9 pleading has previously been amended. Allen v. City of Beverly Hills, 911 F.2d 367, 373
10 (9th Cir. 1990) (citing Foman v. Davis, 371 U.S. 178 (1962)). Courts must grant all
11 inferences in favor of allowing amendment. Griggs v. Pace Am. Group, Inc., 170 F.3d
12 877, 880 (9th Cir. 1999). The party opposing amendment has the burden of showing that
13 amendment is not warranted. DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 187 (9th
14 Cir. 1987).

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18 This motion is plaintiff’s first motion to amend her complaint. Plaintiff argues that
19 defendants will not be prejudiced by the amendment and that none of the other factors
20 apply. Dkt. #53 at 6. Defendants argue that plaintiff unduly delayed filing her motion to
21 amend and that they would be prejudiced by adding the proposed class contract claim.
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24 Dkt. #57 at 2.

25 **A. Undue Delay**

26 This Court has defined “undue delay” as a “delay that prejudices the nonmoving
27 party or imposes unwarranted burdens on the court.” Mansfield v. Pfaff, No. C14-
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0948JLR, 2014 WL 3810581, at *4 (W.D. Wash. Aug. 1, 2014). Defendants argue that
1 plaintiff unduly delayed filing this motion because plaintiff's counsel has known about
2 the information giving rise to the proposed contract claim since at least 2013. Id. at 6.
3 Plaintiff asserts that she learned of the information after "recent discovery" in "litigation
4 against USAA in another state" (Dkt. #53 at 1, 4), and the record is insufficient to
5 determine whether plaintiff was aware of all of the facts at the time of her initial
6 complaint. Even if plaintiff knew this information at the time of her original pleading,
7 that fact alone does not constitute an adequate basis for denying leave to amend because
8 defendant has not shown prejudice as a result of the alleged delay. Kische USA LLC v.
9 Simsek, No. C16-0168JLR, 2017 WL 698790, at *4 (W.D. Wash. Feb. 22, 2017).
10 Plaintiff's motion was filed before the deadline for amending pleadings, the close of
11 discovery, and the dispositive motions deadline. See MidMoutain Contractors, Inc. v.
12 Am. Safety Indem. Co., No. C10-1239JLR, 2013 WL 12116509, at *3 (W.D. Wash. May
13 7, 2013) (finding no undue delay where defendant knew about theory raised in its motion
14 to amend at the time of the original pleading when no major litigation dates had passed).
15 The Court does not find a basis for undue delay.
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21 **B. Prejudice**

22 Plaintiff's amended complaint can cause prejudice when it delays the proceeding
23 and causes additional discovery. Sampson v. Knight Transportation, Inc., No. C17-0028-
24 JCC, 2017 WL 4168273, at *2 (W.D. Wash. Sept. 19, 2017). While USAA asserts that
25 adding a breach of contract claim will necessitate further discovery, it does not identify
26 what classwide discovery is necessary or suggest that this discovery would be especially
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costly or drawn-out. Dkt. #57 at 4–5. Plaintiff points out that defendants have never

1 sought discovery of the claims related to their automatic review practices. Dkt. #59 at 3.

2 A review of the Court’s order granting class certification suggests that the new breach of

3 contract claim involves similar issues affecting the same class of similarly situated

4 insureds: the proposed class claim is based upon the same disputed review practice as the

5 CPA claims in plaintiff’s initial complaint. Dkt. #60.

6
7 Defendants’ need to investigate the new claim does not justify a denial of

8 plaintiff’s motion to amend. Wizards of the Coast LLC v. Cryptozoic Entm't LLC, 309

9 F.R.D. 645, 652 (W.D. Wash. 2015) (“[D]elay alone is not sufficient to establish

10 prejudice, nor is a need for additional discovery.”). Plaintiff will file a motion for class

11 certification on the proposed breach of contract claim, and defendants will have the

12 opportunity to respond. Defendants have two options in response to the new motion for

13 class certification: (1) reply substantively on the merits or (2) request further discovery

14 utilizing the procedure in Fed. R. Civ. P. 56(d).¹

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25 ¹ To the extent defendants request discovery, defendants must specifically identify the topics
26 about which they need discovery, the nature of the discovery, and the particular facts they expect
27 to obtain. See Family Home & Fin. Ctr., Inc. v. Fed. Home Loan Mortg. Corp., 525 F.3d 822,
28 827 (9th Cir. 2008) (explaining the requirements under Rule 56(d) and noting that “[f]ailure to
comply with these requirements is a proper ground for denying discovery”) (internal citations
omitted) (quoting California ex rel. Cal. Dep’t of Toxic Substances Control v. Campbell, 138
F.3d 772, 779 (9th Cir.1998)).

CONCLUSION

For the foregoing reasons, plaintiff’s motion to amend is GRANTED. Plaintiff shall file her amended complaint within fourteen days of this order, and shall file the certification motion related to the contract claim on or before June 7, 2019.

Dated this 7th day of May, 2019.

Robert S. Lasnik
Robert S. Lasnik
United States District Judge

BRESKIN JOHNSON TOWNSEND PLLC

June 03, 2019 - 4:49 PM

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