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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GEORGE TERRY LANGLEY,

Plaintiff,

v.

GEICO GENERAL INSURANCE
COMPANY,

Defendant.

No. 1:14-CV-3069-SMJ

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT’S MOTIONS FOR
SUMMARY JUDGMENT AND
DENYING MOTION FOR
SANCTIONS**

I. INTRODUCTION

Before the Court, without oral argument, are Defendant’s Motion for Partial Summary Judgment Re: Bad Faith; CPA, ECF No. 65, Motion for Partial Summary Judgment Re: Plaintiff’s Loss of Use Claim, ECF No. 73, and Motion to Hold Plaintiff in Contempt and For Sanctions, ECF No. 96. Having reviewed the pleadings and the file in this matter, the Court is fully informed and dismisses Plaintiff’s Bad Faith and Consumer Protection Act (CPA) claims but does not dismiss the loss of use claim and finds sanctions are not warranted at this time.

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1 **II. BACKGROUND**

2 **A. Factual Background¹**

3 At issue in this case is the handling of Plaintiff’s insurance claim under
4 GEICO policy insurance number 4262593512 regarding Plaintiff’s Recreational
5 Vehicle (“RV”). The RV was originally purchased with a salvage title by
6 Sunwest through an online Co-Part auction for \$50,500 on August 16, 2012. In
7 2012 the RV was damaged in a collision, which some estimates indicate the
8 repairs necessary exceed \$134,000. After the collision, salvage bids were sought
9 on the RV, and of the two obtained the highest was for \$10,000.

10 Plaintiff maintains that on September 26, 2012, and again on October 30,
11 2012, he put down a \$40,000 cash down payment. Both \$40,000 cash payments
12 are evidenced by only handwritten receipts. Apparently, the \$80,000 cash was
13 moved from Plaintiff safe to Mr. Walsh’s safe and the payments do not appear as
14 deposits with Mr. Walsh’s Central Valley Bank account. Neither of these down
15 payments is documented by an IRS Form 8300, which must be provided for any
16 cash payment exceeding \$10,000.

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19 ¹ In ruling on the motion for summary judgment, the Court has considered the facts and all reasonable inferences
20 therefrom as contained in the submitted affidavits, declarations, exhibits, and depositions, in the light most
favorable to the party opposing the motion. *See Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).
However, in considering the facts, the Court does not rely on conclusory allegations unsupported by factual data,
Hansen v. United States, 7 F.3d 137, 138 (9th Cir. 1993), nor does the Court rely upon facts contained in affidavits
which directly contradict the affiants prior deposition testimony, *Burrell v. Star Nursery, Inc.*, 170 F.3d 951, 955
(9th Cir. 1999).

1 Plaintiff maintains Sunwest fully repaired and restored the vehicle to like
2 new, showroom floor condition, and subsequently sold it to Plaintiff on November
3 21, 2012, for \$250,000, which after tax and licensing totaled \$270,648. In
4 addition to the \$80,000 cash payments, Plaintiff took out a \$193,520 loan on
5 November 21, 2012. From the loan, \$24,684.52 goes to pay off Plaintiff's
6 previous loan on a different RV purchased from Sunwest, \$112,719.12 apparently
7 pays off a loan taken by Joel Ylvisaker regarding the subject RV, and \$55,084.36
8 went to Sunwest. Assuming \$80,000 was paid in cash, and that the \$112,719.12
9 paid from the loan to Mr. Ylvisaker went toward the purchase or repair of the RV,
10 the total sum ever paid by Plaintiff equals only \$247,803.48.

11 Plaintiff never test drove the vehicle, never drove the vehicle anywhere, and
12 the RV remained parked on a storage lot until it was destroyed by fire on June 10,
13 2013, while being driven to a Pasco dealership by Sunwest employee David
14 Hubbard for help replacing a generator. Plaintiff never licensed the RV for
15 personal use and the RV was licensed only as "Title Purpose Only" (TPO), use tax
16 waived. Sale tax is not paid on a TPO title and no evidence indicates Washington
17 sales tax was ever paid on the RV.

18 On the same day the RV was destroyed by fire, Plaintiff submitted a claim
19 to GEICO for the full alleged purchase price of \$270,648. GEICO undertook an
20 investigation of the claim. GEICO hired United Fire investigator Norm Loftin

1 who determined that the fire was likely caused by improper repair. The muffler
2 was located too close to the main electrical wiring, without a heat shield. GEICO
3 requested the Examination Under Oath (EUO) of Plaintiff on August 12, 2013.
4 Prior to the EUO, Plaintiff provided GEICO with a packet of documents received
5 July 31, 2013, which included Sunwest repair records, licensing records, and
6 banking records. After the EUO, on August 19, 2013, GECIO requested by letter
7 for Plaintiff to supply any additional supporting documentation. No
8 documentation was sent. Throughout the fall of 2013, Defendant made numerous
9 requests for release authorizations and for production of IRS forms documenting
10 the two, \$40,000-cash down payments. As of at least December 30, 2013,
11 production of all bank records had not been completed. No IRS forms
12 documenting the two, \$40,000-cash down payments have ever been produced.

13 Plaintiff maintains that Sunwest spent approximately \$140,000 to fully
14 repair and restore the vehicle to like new condition and that it was inspected by
15 the state patrol and sold on November 21, 2012. Of the records before this Court,
16 the receipts submitted by Sunwest, many of which are handwritten and illegible,
17 total little more than \$50,000. Plaintiff's expert places the vehicles value, based
18 upon a total repair, after a reconstructed title adjustment as \$242,863.66.
19 Defendant's expert maintains that the vehicle was unrepairable, due to hidden
20

1 damage, frame damage, and damage to the house structure, and therefore
2 determined the RV's value never exceeded the salvage value.

3 On February 19, 2014, within 60-days of December 30, 2013, Defendant
4 provided notices that "GEICO is invoking the appraisal provision" and paid
5 Plaintiff the original purchase price for the salvage title RV of \$50,500. At the
6 time of the \$50,500 offer to Plaintiff, Defendant had before it a salvage bid of
7 \$10,000, their expert valuation placing the value at no more than \$20,000, and the
8 \$50,500 purchase price paid by Sunwest. To date, the appraisal process remains
9 ongoing, and the appraisal value of the RV has not been determined.

10 **B. Procedural Background**

11 On May 6, 2014, Plaintiff filed the current lawsuit against Defendant in
12 Yakima County Superior Court, which Defendant subsequently removed to this
13 Court on May 27, 2014. ECF No. 1.

14 On July 1, 2014, Defendant moved to compel compliance with the
15 insurance policy's appraisal provision. ECF No. 5. After the Court granted the
16 appraisal on August 29, 2014, ECF No. 25, Plaintiff sought reconsideration, ECF
17 No. 26, which was denied, ECF No. 30. Subsequently, Defendant moved twice to
18 compel Plaintiff's compliance with the appraisal process, ECF Nos. 31 & 41,
19 which the Court subsequently granted. ECF No. 47.

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1 On November 4, 2014, Defendant moved to dismiss Plaintiff's claim for
2 *Olympic Steamship* attorney fees on the grounds that no denial of coverage
3 occurred. ECF No. 36. On December 8, 2014, the Court dismiss the *Olympic*
4 *Steamship* attorney fee claim based upon Plaintiff concurring that dismissal was
5 proper, ECF No. 37. ECF No. 48.

6 On December 18, 2014, Defendant filed for partial summary judgment on
7 Plaintiff's IFCA claim. ECF No. 49. On February 24, 2015, the Court denied
8 Defendant's motion. ECF No. 81.

9 On January 7, 2015, Plaintiff moved to continue discovery. ECF No. 50.
10 On January 15, 2015, the Court denied Plaintiff leave to depose Defendant's
11 appraiser Gary Halpin, finding no deposition was permitted under the Federal
12 Rules of Civil Procedure, but granted a brief extension of discovery. ECF No. 58.
13 Unlike Mr. Smith, who Plaintiff retained as both a litigation expert and as an
14 appraiser for the appraisal process, the Court found Mr. Halpin was solely utilized
15 as an appraiser, for which the Federal Rules did not require a deposition. *Id.* A
16 few weeks later, Plaintiff again sought a discovery continuance. ECF No. 60. In
17 granting the continuance, the Court permitted Plaintiff to take a Rule 30(b)(6)
18 Deposition of Defendant, ECF No. 67, but before the deposition was taken, the
19 Court granted a Protective Order, ECF No. 79. Among other issues, the
20 Protective Order specifically limited the scope of inquiring into Mr. Halpin and

1 Judge Carrol's relationships with GEICO, as well as, barred inquire into Mr.
2 Halpin selection as an appraiser. *Id.* The Court again reinforced that Mr. Halpin
3 was "the non-testifying appraiser for the insurance policy's appraisal process." *Id.*
4 at 5.

5 Based upon the Court's prior rulings and the pending appraisal, the Court
6 granted a continuance and issued new case deadlines. ECF Nos. 82 & 88.

7 Defendant now seeks sanctions and a finding holding Plaintiff in contempt,
8 ECF No. 73, as well as, dismissal of Plaintiff's bad faith, Consumer Protection
9 Act (CPA), and loss of use claims. ECF No. 65 & 73.

10 **III. MOTIONS FOR SUMMARY JUDGMENT**

11 **A. Legal Standard**

12 Summary judgment is appropriate if the "movant shows that there is no
13 genuine dispute as to any material fact and the movant is entitled to judgment as a
14 matter of law." Fed. R. Civ. P. 56(a). Once a party has moved for summary
15 judgment, the opposing party must point to specific facts establishing that there is
16 a genuine dispute for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
17 the nonmoving party fails to make such a showing for any of the elements
18 essential to its case for which it bears the burden of proof, the trial court should
19 grant the summary judgment motion. *Id.* at 322. "When the moving party has
20 carried its burden under Rule [56(a)], its opponent must do more than simply

1 show that there is some metaphysical doubt as to the material facts. . . . [T]he
2 nonmoving party must come forward with ‘specific facts showing that there is a
3 genuine issue for trial.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
4 U.S. 574, 586-87 (1986) (internal citation omitted) (emphasis in original). When
5 considering a motion for summary judgment, the Court does not weigh the
6 evidence or assess credibility; instead, “the evidence of the non-movant is to be
7 believed, and all justifiable inferences are to be drawn in his favor.” *Anderson v.*
8 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). When considering the summary
9 judgment motion, the Court 1) took as true all undisputed facts; 2) viewed all
10 evidence and drew all justifiable inferences therefrom in non-moving party’s
11 favor; 3) did not weigh the evidence or assess credibility; and 4) did not accept
12 assertions made that were flatly contradicted by the record. *See Scott v. Harris*,
13 550 U.S. 372, 380 (2007); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255
14 (1986).

15 **B. Discussion**

16 Through two partial summary judgment motions, Defendant seeks dismissal
17 of Plaintiff’s Bad Faith, CPA, and Loss of Use claims.

18 1. Bad Faith

19 Insurers have a duty to deal fairly and in good faith with their insureds.
20 RCW 48.01.030. A denial of coverage that is unreasonable, frivolous, or

1 unfounded constitutes bad faith. *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 560
2 (1998). The test for bad faith denial of coverage is not whether the insurer's
3 interpretation is correct, but whether the insurer's conduct was reasonable. *Torina*
4 *Fine Homes v. Mutual of Enumclaw Ins. Co.*, 118 Wash.App. 12, 21 (2003).
5 Whether an insurer acted in bad faith remains a question of fact. *Smith v. Safeco*
6 *Ins. Co.*, 150 Wash. 2d 478, 485 (2003). As to resolving a bad faith claim at
7 summary judgment, the Washington Supreme Court has provided the following:

8 If the insured claims that the insurer denied coverage unreasonably in
9 bad faith, then the insured must come forward with evidence that the
10 insurer acted unreasonably. The policyholder has the burden of
11 proof. The insurer is entitled to summary judgment if reasonable
12 minds could not differ that its denial of coverage was based upon
13 reasonable grounds. If, however, reasonable minds could differ that
14 the insurer's conduct was reasonable, or if there are material issues of
15 fact with respect to the reasonableness of the insurer's action, then
16 summary judgment is not appropriate. If the insurer can point to a
reasonable basis for its action, this reasonable basis is significant
evidence that it did not act in bad faith and may even establish that
reasonable minds could not differ that its denial of coverage was
justified. However, the existence of some theoretical reasonable
basis for the insurer's conduct does not end the inquiry. The insured
may present evidence that the insurer's alleged reasonable basis was
not the actual basis for its action, or that other factors outweighed the
alleged reasonable basis.

17 *Smith v. Safeco Ins. Co.*, 150 Wash. 2d 478, 486 (2003) (citation omitted).

18 Here, the Court finds the record establishes that reasonable minds could not
19 differ that the insurer's conduct was reasonable. Plaintiff's lawsuit is premised
20 upon two key issues 1) that Defendant withheld benefits for over eight months

1 before accepting coverage, and 2) provided a “low-ball” valuation of only
2 \$20,000.

3 First, Defendant had a reasonable basis to conduct an eight month
4 investigation into the purchase price paid for the RV and to determine the RV’s
5 actual value. The RV initially sustained damages approximated at around
6 \$134,000, but the receipts provided to Defendant with the insurance claim totaled
7 little more than \$50,000. Additionally, much of the delay resulted from the
8 continued record requests to demonstrate the purchase price actually paid for the
9 RV. On the day of the fire, Plaintiff made a claim to Defendant for the full
10 purchase price of \$270,648. However, the only evidence of this amount was two
11 paper receipts for \$40,000 cash payments, and a loan disbursement in which only
12 \$55,084.36 went to Sunwest. This necessitated an investigation into the cash
13 payments and where the \$112,719.12 paid from the loan to Mr. Ylvisaker went.
14 Throughout the fall of 2013, Defendant made numerous requests for release
15 authorizations and for production of IRS forms documenting the two, \$40,000-
16 cash down payments. As of at least December 30, 2013, production of all bank
17 records had not been completed and the IRS 8300 forms never were produced to
18 prove the \$40,000 cash payments occurred. “Financial records of the insured are
19 ‘relevant and material’ once the insurance company has reason to broaden its
20 investigation into the insured’s possible financial motive for overvaluing or

1 misrepresenting his claim.” *Keith v. Allstate Indem. Co.*, 105 Wn. App. 251, 255
2 (2001) (citing *Tran v. State Farm Fire and Casualty Co.*, 136 Wn.2d 214, 227
3 (1998)). As the Court has previously stated “[t]his documentation, in light of the
4 two \$40,000 cash payments, was reasonably required by the insurer to determine
5 its liability and the actual amount Plaintiff paid for the vehicle, especially where
6 Plaintiff asserted loss in the full value of his purchase price.” ECF No. 30 at 3.
7 Based upon the record before this Court, assuming in Plaintiff’s favor that the two
8 paper receipts for \$40,000 cash payments are genuine despite the absence of two
9 required IRS Form 8300s, Defendant’s investigation only produced documentary
10 evidence of a total paid price of \$247,803.48. Accordingly, a reasonable basis
11 existed for Defendant’s investigative actions which took eight months to
12 complete. Based upon this record, the Court finds reasonable minds could not
13 differ in finding the investigation was justified.

14 Second, Defendant ultimately paid Plaintiff \$50,500 after its experts
15 determined the RV’s value was \$20,000. Plaintiff maintains this was a bad faith
16 “low-ball” valuation of the RV, resulting in a denial of benefits under the
17 insurance contract. While the valuation of the RV in the appraisal process is
18 ongoing, the ultimate award from the appraisal is immaterial at this time. “The
19 difference between the amount of the offer and the final award alone is
20 insufficient to show that the insurer acted in bad faith or committed an unfair and

1 deceptive act.” *Beasley v. State Farm Mut. Auto. Ins. Co.*, No. C13-1106RSL,
2 2014 WL 1494030, at *5 (W.D. Wash. Apr. 16, 2014) citing *Keller v. Allstate Ins.*
3 *Co.*, 81 Wash.App. 624, 633–34 (1996) (finding, where insured recovered
4 \$75,200 at trial when insurer had only offered \$8,000, the offer of \$8,000, while
5 substantially less than the final recovery, was not a bad faith offer as a matter of
6 law because the record contained a reasonable justification for insurer’s offer at
7 the time it was made). Here, as of February 2014, when Defendant offered
8 \$50,500, Defendant had before it 1) Plaintiff’s claimed purchase price of
9 \$270,648,² 2) the original salvage bid of \$10,000, 3) Poulsbo R.V.’s estimate of
10 \$20,000, 4) repair receipts totaling about \$50,000, and 5) Sunwest’s purchase
11 price of \$50,500. Accordingly, while Defendant’s offer may be proved inaccurate
12 at appraisal, it was sufficiently justified at the time it was made, and therefore
13 under Washington law, this Court finds reasonable minds could not conclude
14 Defendant acted in bad faith. Therefore, Plaintiff’s bad faith claim is dismissed.

15 2. Consumer Protection Act (CPA)

16 To prevail on a CPA claim, Plaintiff must show: 1) an unfair or deceptive
17 act or practice; 2) in trade or commerce; 3) which affects the public interest; 4)
18 that injured the plaintiff’s business or property; and 5) that the unfair or deceptive
19 act complained of caused the injury suffered. *Hangman Ridge Training Stables,*

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² However, of this amount, \$80,000 in cash was not demonstrated by IRS 8300 forms and the loan only provided \$55,084.36 to Sunwest.

1 *Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 784–85 (1986). All five elements
2 must be established. *Id.* However, even where it is found that an insurer made a
3 technical violation of WAC 284.30, an insurer’s reasonable conduct is a defense
4 to a claim of unfair act or practice under the CPA. *Starczewski v. Unigard Ins.*
5 *Co.*, 61 Wn. App. 267 (1991).

6 Here, there may well be technical violations of the WAC, however, the
7 Court is bound to the determination above that Defendant’s conduct was
8 reasonable, which under Washington law preclude a finding by this Court that the
9 CPA was violated. Accordingly, Plaintiff’s CPA claim must be dismissed.

10 3. Loss of Use

11 As articulated in Plaintiff’s Complaint, ECF No. 1-2 at 2, and as developed
12 by case law, the loss of use claim is inherently a matter of damages, which is not
13 an independent claim, but is dependent upon a finding of wrongful conduct by a
14 defendant. “The rule with respect to loss of use of an automobile is that the owner
15 may recover, **as general damages**, the use value of which he is deprived **because**
16 **of** the defendant's wrongful act.” *Holmes v. Raffo*, 60 Wash. 2d 421, 430 (1962)
17 (citations omitted) (emphasis added). Plaintiff’s claim appears to assert that
18 Defendant’s conduct and investigation following the loss of the vehicle deprived
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1 Defendant of a long-awaited trip and the insurance money needed to fully replace
2 the lost vehicle or payoff the loan. ECF No. 1-2 at 2.³

3 Defendant maintains this matter may be resolved on summary judgment
4 because the rights of the parties are fixed at the time of loss, and at the time of loss
5 Plaintiff was unable to use the R.V. The Court disagrees.

6 First, Defendant is correct that at the time of loss, Plaintiff could not legally
7 operate the R.V. on the road, and that Plaintiff testified at the Examination Under
8 Oath (EUO) that he had not used any of the electrical equipment on the R.V.
9 However, loss of use damages includes the present and intended use of the
10 personal property. *See Holmes v. Raffo*, 60 Wash. 2d 421, 430 (1962) (“The value
11 of the use of personal property is not the mere value of its intended use but of its
12 present use. The value of an article to its owner . . . lies in his right to use, enjoy,
13 and dispose of it. . . whether he, in fact, avails himself of his right of use does not
14 in the least affect the value of his use.”).⁴ Additionally, loss of use can include the
15 loss of use of money. *See Griffin v. Allstate Ins. Co.*, 108 Wash. App. 133, 148
16 (Wash. Ct. App. 2001) (noting that “[l]oss of use of money is a recognized

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18 ³ As it has not been addressed by the parties briefing, the Court does not reach the question whether the loss of use
is a permitted damage recoverable under the claims Plaintiff has alleged.

19 ⁴ The Court notes that Defendant’s Reply, ECF No. 99 at 3, contains the first sentence of this quotation both
underlined and bolded. Defendant maintain this sentence stands for the proposition that only present use is
20 permitted. *See* ECF No. 9 at Out of context, that sentence is itself sufficiently vague to possibly include this
interpretation, however, when read in context with the following two sentences, it clearly states the value include
both the 1) “mere value of its intended use” and 2) its “present use.” Counsel is cautioned not to misuse quotations
out of context in the future.

1 damage”). Accordingly, the Court finds Plaintiff’s damages claim does not fail as
2 a matter of law just because he never used the R.V.

3 Defendant also maintains the value of the use is fixed at the time of loss.
4 While it is true that a valuation must be determined as of the date or time of loss,
5 *see* 12 Couch on Ins. § 175:7, each of the examples cited to this Court involve the
6 fixing of the value of the insured item arising under the policy. For example,
7 Defendant’s citation to Couch on Insurances states “[t]he extent of the loss under
8 a property protection policy must be estimated upon the value of the property
9 covered by the contract of insurance, determined as of the date or time of the
10 loss.” Here, the valuation at issue is not the insured vehicle and the claim does not
11 arise as a coverage under the policy. To the contrary, Plaintiff’s loss of use claim,
12 articulated in paragraph 3.5 of the Complaint, ECF No. 1-2 at 2, arises from
13 Defendant’s alleged conduct after the loss of the R.V. and raises the issue of the
14 valuation of the use, not the valuation of the insured vehicle. Neither party has
15 cited,⁵ nor has this Court found, any authority fixing the valuation of use of the
16 vehicle to the date and time of the loss of the vehicle. To the contrary, the
17 Washington Court of Appeals, while reversing a dismissal of a loss of use claim

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19 ⁵ Defendant attempts to rely upon *Price v. City of Seattle*, No. C03-1365RSL, 2006 WL 2691402, at *6 (W.D.
20 Wash. Sept. 19, 2006), for the proposition that loss of use cannot be recovered if a plaintiff cannot legally operate
the vehicle. However, while *Price* noted that many of the propose class members were not legally entitled to
operate their vehicles, it did so in the context of denying class certification. *Id.* at 5-6. *Price* did not find the
inability to legally operate the vehicle precluded the claim for loss of use, instead it simply demonstrated the
infeasibility of Plaintiff’s proposed method of proof of damages for the entire class.

1 as a matter of law, rejected the contention that no loss of use could be recovered
2 when the property was totally destroyed. *Straka Trucking, Inc. v. Estate of*
3 *Peterson*, 98 Wash. App. 209, 213 (1999). While distinguished from prior cases
4 the court noted it was presented with a scenario concerning a “loss of use *before*
5 the tortfeasor pays, or, in alternative terms, with loss of use from the date of the
6 accident to the date on which the tortfeasor pays (or tenders) the full value of the
7 destroyed property.” *Id.* (emphasis in original). Like, *Straka*, Plaintiff’s loss of
8 use claim concerns use after the date of the accident. Therefore, the Court does
9 not find Plaintiff is bound to the value of his use at the time of the loss of the
10 vehicle.

11 Accordingly, the Court is not convinced that Defendant is entitled to
12 summary judgment on the loss of use claim; Defendant’s motion is denied.

13 **IV. CONTEMPT AND SANCTIONS**

14 **A. Legal Standard**

15 “All federal courts are vested with inherent powers enabling them to
16 manage their cases and courtrooms effectively and to ensure obedience to their
17 orders. . . . As a function of this power, courts can dismiss cases in their entirety,
18 bar witnesses, award attorney's fees and assess fines.” *F.J. Hanshaw Enters., Inc.*
19 *v. Emerald River Dev., Inc.*, 244 F.3d 1128, 1136 (9th Cir. 2001) (citations
20 omitted). Sanctions are an appropriate response to “willful disobedience of a

1 court order . . . or when the losing party has acted in bad faith, vexatiously,
2 wantonly, or for oppressive reasons.” *Fink v. Gomez*, 239 F.3d 989, 991 (9th Cir.
3 2001) (internal quotation marks and citations omitted). Appellate courts defer “to
4 the determination of courts on the front lines of litigation [that sanctions are
5 warranted]” because deference “will enhance these courts' ability to control the
6 litigants before them.” *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 404
7 (1990). Accordingly, a district court's findings in a sanctions case are “given great
8 deference.” *F.J. Hanshaw Enters., Inc.*, 244 F.3d at 1135; *see also Adriana Int'l*
9 *Corp. v. Thieren*, 913 F.2d 1406, 1411 (9th Cir. 1990) (“A determination that an
10 order was disobeyed is entitled to considerable weight because a district judge is
11 the best equipped to assess the circumstances of the non-compliance.” (internal
12 quotation marks and citations omitted)).

13 **B. Discussion**

14 Defendant asks this Court to hold Plaintiff in contempt and to impose
15 sanctions. Previously, this Court found Mr. Halpin could not be deposed in this
16 federal litigation and limited the scope of the Rule 30(b)(6) inquiry into
17 Defendant’s relationship, if any, with the appraisal umpire Judge Carrol. *See*
18 ECF Nos. 58 & 79.

19 Subsequent to the Court’s orders, Plaintiff’s policy appraiser and litigation
20 expert, David Smith, wrote the umpire requesting a deposition of Mr. Halpin.

1 ECF No. 97-1. Additionally, Plaintiff's attorney, David Trujillo, wrote the umpire
2 requesting a deposition of Mr. Halpin and for further disclosures of relationships
3 and dealings from Judge Carrol. ECF No. 97-6. Because Plaintiff is seeking from
4 the umpire what this Court already denied, Defendant seeks sanctions.

5 While clearly Plaintiff is attempting to take a second bite at the apple
6 through the appraisal process, this Court finds sanctions cannot be imposed at this
7 time. The Court's ruling on deposing Mr. Halpin was specifically founded upon
8 the Federal Rules of Civil Procedure and the process due in litigating this matter
9 in federal court. By the same measure, the Court's ruling on the Protective Order
10 was for the limited confines of the 30(b)(6) deposition and based upon federal
11 civil procedure and evidence rules. While the appraisal process **is not** "essentially
12 a private arbitration," ECF No. 109 at 2, it is a separate proceeding before an
13 Appraisal Panel with Judge Carrol as umpire, and Mr. Halpin and Mr. Smith as
14 appraisers. Therefore, absent controlling case law or statutory authority, what
15 procedure is to be followed in the appraisal process is best decided by the
16 appraisal panel.⁶ As Mr. Halpin stated, the umpire can "guide us through the
17 procedural aspects." ECF No. 112-2 at 1. This Court's authority is limited to
18 enforcing the contractual rights contained in the insurance policy and deciding
19 whether to accept the appraisal award once the process is completed.

20 ⁶ The Court notes the umpire has already indicated some of the procedures that will be utilized. *See* ECF No. 110-1 at 8 ("Any proposed witnesses will be available for a telephonic interview if requested. Further, more formal discovery will only be permitted by agreement of the insured and insurer or my authorization.").


1 Accordingly, the Court finds nothing impermissible about *asking* the umpire
2 whether a deposition⁷ can be taken and whether the umpire will expand his
3 disclosures, despite this Court denying Plaintiff's requests seeking the same but in
4 a different context. Therefore, Defendant's motion is denied.

5 Accordingly, **IT IS HEREBY ORDERED:**

- 6 **1.** Defendant's Motion for Partial Summary Judgment Re: Bad Faith;
7 CPA, **ECF No. 65**, is **GRANTED**.
- 8 **2.** Defendant's Motion for Partial Summary Judgment Re: Plaintiff's
9 Loss of Use Claim, **ECF No. 73**, is **DENIED**.
- 10 **3.** Defendant's Motion to Hold Plaintiff in Contempt and For Sanctions,
11 **ECF No. 96**, is **DENIED**.

12 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
13 and provide copies to all counsel.

14 **DATED** this 10th day of April 2015.

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16 _____
17 SALVADOR MENDEZ, JR.
18 United States District Judge
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⁷ The Court leaves unaddressed whether the umpire even has this authority.