

1
2
3
4 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

5 GEORGE TERRY LANGLEY,

No. 1:14-CV-3069-SMJ

6 Plaintiff,

7 v.

8 GEICO GENERAL INSURANCE
COMPANY,

**ORDER GRANTING
PLAINTIFF'S MOTION FOR
RECONSIDERATION AND
VACATING GRANT OF
SUMMARY JUDGMENT**

9 Defendant.
10

11 Before the Court, without oral argument, is Plaintiff George Langley's
12 Motion for Reconsideration of the Court's April 10, 2015 Order, ECF No. 125.
13 Plaintiff requests the Court to reconsider its decision to grant Defendant's Motion
14 for Partial Summary Judgment, and allow Plaintiff's bad faith and Consumer
15 Protection Act claims to proceed on their merits. Having reviewed the pleadings
16 and the file in this matter, the Court is fully informed and grants the motion.

17 **I. LEGAL STANDARD FOR RECONSIDERATION**

18 A motion for reconsideration is "appropriate if the district court (1) is
19 presented with newly discovered evidence, (2) committed clear error or the initial
20 decision was manifestly unjust, or (3) if there is an intervening change in

1 controlling law.” *Sch. Dist. No. 1J v. AC&S, Inc.*, 5 F.3d 1255 at 1263 (9th Cir.
2 1993). “[A] motion for reconsideration should not be granted, absent highly
3 unusual circumstances.” *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665
4 (9th Cir. 1999). A motion for reconsideration may not be used to raise arguments
5 or present evidence for the first time when they could reasonably have been raised
6 earlier in the litigation. *Id.*; *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877,
7 890 (9th Cir. 2000). After reviewing the arguments and evidence available prior to
8 the grant of partial summary judgment, the Court finds that reconsideration is
9 appropriate in this case to rectify clear error.¹

10 **II. PLAINTIFF’S BAD FAITH CLAIM**

11 Summary judgment is appropriate if the “movant shows that there is no
12 genuine dispute as to any material fact and the movant is entitled to judgment as a
13 matter of law.” Fed. R. Civ. P. 56(a). “If, however, reasonable minds could differ
14 that the insurer's conduct was reasonable, or if there are material issues of fact
15 with respect to the reasonableness of the insurer's action, then summary judgment
16

17 ¹ The Court notes it also retains discretion to revisit partial summary judgment motions pursuant
18 to Fed. R. Civ. P. 54(b). “[A]ny order or other decision, however designated, that adjudicates
19 fewer than all the claims . . . does not end the action as to any of the claims or parties and may
20 be revised at any time before the entry of a judgment adjudicating all the claims and all the
parties’ rights and liabilities.” *Id.* Accordingly, a partial summary judgment order is not a final
judgment, but interlocutory in nature. *See, e.g.*, 11 Moore’s Federal Practice § 56.130 (Matthew
Bender 3d Ed.). A district court “retains the power to reconsider and modify its interlocutory
judgments, including partial summary judgments, at any time prior to final judgment when such
is warranted.” *American Canoe Ass’n v. Murphy Farms, Inc.*, 326 F.3d 505, 514-515 (4th Cir.
2003).

1 is not appropriate.” *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 486 (2003). In
2 partially granting Defendant’s Motion for Partial Summary Judgment, ECF No.
3 65, the Court erroneously found the record established reasonable minds could not
4 differ that the insurer’s conduct was reasonable. ECF No. 119. In fact, reasonable
5 minds could reach different opinions regarding the reasonableness of Defendant’s
6 investigation.

7 A reasonable basis existed for Defendant to investigate Plaintiff’s claim.
8 “Financial records of the insured are ‘relevant and material’ once the insurance
9 company has reason to broaden its investigation into the insured’s possible
10 financial motive for overvaluing or misrepresenting his claim.” *Keith v. Allstate*
11 *Indem. Co.*, 105 Wn. App. 251, 255 (2001) (citing *Tran v. State Farm Fire and*
12 *Casualty Co.*, 136 Wn.2d 214, 227 (1998)). However, the Court cannot say that,
13 as a matter of law, the duration or nature of Defendant’s investigation was
14 reasonable as well.

15 The record and the pleadings available to the Court when it considered
16 Defendant’s motion, as articulated in ECF No. 119, fail to demonstrate there is
17 “no genuine dispute as to any material fact and the movant is entitled to judgment
18 as a matter of law.” Fed. R. Civ. P. 56(a). Plaintiff has offered receipts accounting
19 for the R.V.’s full alleged purchase price of \$270,648, and has stated the same in
20 depositions. *See, e.g.*, ECF No. 6-4. Defendant, in support of the claim that its

1 investigation was reasonable as a matter of law, argues there is little support for
2 Plaintiff's claimed purchase price as well as other conditions of the sale and repair
3 of the R.V. ECF No. 65. These facts, which bear on "key issues in this case," ECF
4 No. 132-9, are contested. Indeed, Defendant's Motion for Partial Summary
5 Judgment admits "[t]he facts of the sale and the sale price are very much in
6 dispute." ECF No. 65.

7 To prevail on a motion for summary judgment, there "must be no disputed
8 facts pertaining to 'the reasonableness of the insurer's action in light of all the
9 facts and circumstances of the case.'" *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478,
10 486 (2003) (quoting *Industrial Indem. Co. of the Northwest, Inc. v. Kallevig*, 114
11 Wn.2d 907, 920 (1990)). Reasonableness is a question of fact, *see, e.g., id.*, and
12 "should be determined as a matter of law only in the 'clearest cases.'" *Service*
13 *Chevrolet, Inc. v. Sparks*, 99 Wn.2d 199, 205 (1983) (quoting *Browning v. Ward*,
14 70 Wn.2d 45, 48(1966)). The facts surrounding Plaintiff's purchase of the R.V.
15 are disputed and, if material, do not justify dismissing Plaintiff's bad faith claim
16 as a matter of law.

17 Finally, "a showing of harm is an essential element of an action for bad
18 faith handling of an insurance claim." *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d
19 383, 389 (1992). Without the element of damages, a tort action for bad faith
20 cannot survive. *Id.* Here, however, the Court has already found that "Plaintiff's

1 damages claim does not fail as a matter of law” ECF No. 119. Accordingly,
2 Defendant is not entitled to summary judgment on Plaintiff’s bad faith claim.

3 **III. PLAINTIFF’S CONSUMER PROTECTION ACT CLAIM**

4 In the Court’s April 10, 2015 Order granting, *inter alia*, summary judgment
5 on this claim, the Court held that “there may well be technical violations of the
6 WAC, however, the Court is bound to the determination above that Defendant’s
7 conduct was reasonable, which under Washington law preclude[s] a finding by
8 this Court that the CPA was violated.” ECF No. 119. As a result, Plaintiff’s CPA
9 claim was dismissed. In light of the Court’s current finding, that Defendant did
10 not act reasonably as a matter of law, Plaintiff’s CPA claim must also be revisited.

11 To prevail on a CPA claim, Plaintiff must show: (1) an unfair or deceptive
12 act or practice; (2) in trade or commerce; (3) which affects the public interest; (4)
13 that injured the plaintiff’s business or property; and (5) that the unfair or deceptive
14 act complained of caused the injury suffered. *Hangman Ridge Training Stables,*
15 *Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784–85 (1986). All five elements
16 must be established. *Id.*

17 “The CPA is to be liberally construed to serve its purpose, *i.e.*, to protect the
18 public, and foster fair and honest competition.” *State Farm Fire and Cas. Co. v.*
19 *Huynh*, 92 Wn. App. 454, 458 (1998). The insurance commissioner has defined
20 several unfair methods of competition or unfair or deceptive acts or practices in

1 the business of insurance, which are codified in WAC 284-30-330. Committing
2 any one of these acts or practices constitutes a per se “unfair or deceptive act or
3 practice in trade or commerce that impacts the public interest.” *James E. Torina*
4 *Fine Homes, Inc. v. Mut. Of Enumclaw Ins. Co.*, 118 Wn. App. 12, 20-21 (2003).
5 However, even where it is found that an insurer made a technical violation of
6 WAC 284-30-330, an insurer’s reasonable conduct is a defense to a claim of
7 unfair act or practice under the CPA. *Starzewski v. Unigard Ins. Co.*, 61 Wn.
8 App. 267, 273 (1991). As an element of every CPA action, the insured must also
9 establish it was harmed by the insurer’s conduct. *Coventry Assocs. v. Am. States*
10 *Ins. Co.*, 136 Wn.2d 269, 276 (1998).

11 The Court has already determined “there may well be technical violations
12 of the WAC,” ECF No. 119, and “Plaintiff’s damages claim does not fail as a
13 matter of law” *Id.* Whether Defendant was entitled to summary judgment on
14 Plaintiff’s CPA claim therefore hinged on the reasonableness of Defendant’s
15 conduct as a complete defense. Now that the Court has found Defendant’s conduct
16 was not as a matter of law reasonable, Plaintiff’s CPA claim must also be
17 permitted to proceed on its merits.

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

- 19 **1.** Plaintiff’s Motion for Reconsideration of the Court’s April 10, 2015
20 Order, **ECF No. 125**, is **GRANTED**.

