

1 **Background**

2 This case concerns a landlord insurance policy issued by Safeco Insurance Policy to
3 Plaintiffs Carol Sherard and Glenn Sherard for a rental house in Monroe, Washington. Relevant
4 provisions of the policy include the following “General Condition[]”:

5 5. Loss Settlement. Covered property losses are settled as follows but not exceeding the
6 applicable limit of liability stated in the Declarations:

7 a. the dwelling under **Coverage A — Dwelling:**

8 (1) We will pay the full cost of repair or replacement, without deduction for
9 depreciation, but not exceeding the smallest of the following amounts:

10 (a) the limit of liability under this policy applying to the dwelling;

11 (b) the replacement cost of that part of the damaged dwelling for equivalent
12 construction and use on the same premises as determined shortly following
13 the loss; or

14 (c) the amount actually and necessarily incurred to repair or replace the
15 damaged dwelling.

16 [. . .]

17 (4) When the cost to repair or replace the damage is more than \$1,000, we will
18 pay the difference between the *actual cash value* and replacement cost only
19 after the damaged or destroyed property has actually been repaired or
20 replaced.

21 (5) You may disregard the replacement cost loss settlement provisions under
22 this policy for loss or damage on an *actual cash value* basis. You may still
23 make claim for any additional liability according to the provisions of this
24 Condition 5. Loss Settlement, provided you notify us of your intent to do so
within 180 days after the date of loss.

(Dkt. No. 19, Smith Decl., Ex. 1 at 31–32.) Also relevant is the following “Definition[]”:

2. “*Actual Cash Value*”

a. When damage to property is economically repairable, *actual cash value* shall
mean the cost of materials and labor that would be necessary to repair the
damage, less reasonable deduction for wear and tear, deterioration and
obsolescence.

b. When damage to property is not economically repairable or loss prevents repair
actual cash value shall mean the market value of property in a used condition
equal to that of the lost or damaged property, if reasonably available on the used
market.

c. Otherwise, *actual cash value* shall mean the market value of new, identical or
nearly identical property, less reasonable deduction for wear and tear,
deterioration and obsolescence.

d. *Actual cash value* shall not include taxes or any expenses unless incurred
following the loss.

1 (Id. at 35.) There is no definition given for “economically repairable.”

2 A further policy “Declaration” reflects that the Sherards purchased “EXTENDED
3 DWELLING COVERAGE—25% OF COV A LIMIT” for an \$8 premium. (Id. at 13.) This
4 “EXTENDED DWELLING COVERAGE” is described in an addendum:

5 For an additional premium, the following is added to Loss Settlement, item 5.a. under
6 General Conditions:

7 (7) We will settle covered losses to the dwelling up to an additional 25% of the
8 limit of liability shown in the Declarations for Coverage A provided you:

9 (a) insure the dwelling to 100% of its replacement cost as agreed by us;

10 (b) accept any yearly adjustments by us of Coverage A reflecting changes
11 in the cost of construction for the area;

12 (c) notify us of any addition or other remodeling which increases the
13 replacement cost of the dwelling \$5,000 or more:

14 i. within 90 days of the start of construction; or

15 ii. before the end of the policy period in which construction begins;
16 and pay any resulting additional premium; and

17 (d) repair or replace the damaged dwelling.

18 If you fail to comply with any of the above provisions, the limit of liability
19 shown in the Declarations for Coverage A shall apply.

20 (Id. at 41.) The Declaration also shows that the coverage “limit” on the dwelling was \$116,100.

21 (Id. at 14.)

22 The parties do not dispute that the insured property experienced a fire on or around July
23 10, 2013, during the policy term. (Dkt. No. 19 at 3; Dkt. No. 21 at 2.) There is also no dispute
24 that fire is covered by the policy and that the Sherards timely notified Safeco of the loss. (Dkt.
No. 21 at 3.) On July 11, Safeco’s adjuster Kurt Abendschein sent a letter to the Sherards
informing them that he was the “main contact” for their claim and also informing them that their
policy limit for Coverage A: Dwelling was \$116,100 with a deductible of \$1,000. (Dkt. No. 29,
Ex. B at 3.) No mention was made of the Sherards’ extended dwelling coverage. On July 19,
Safeco’s adjuster Scott Ames estimated the “replacement cost value” of the house at
\$124,777.70. (See Dkt. No. 22, Ex. A at 19; Dkt. No. 35 at 2; Dkt. No. 21 at 3.) At some point

1 after the fire but by approximately July 26, 2015, the Sherards retained Bud Dyer of Cascade
2 Adjusters to assist them with their claim and Mr. Dyer notified Safeco of his representation. (See
3 Dkt. No. 35 at 3; Smith Decl., Dkt. No. 36, Ex. 7 at 14.) On July 26, 2015, Mr. Abendschein
4 sent Mr. Dyer a letter apparently enclosing the Ames estimate. (See Dkt. No. 36, Ex. 8 at 16–17;
5 Dkt. No. 29, Ex. C.) Mr. Dyer responded on July 29, arguing that a market appraisal on which
6 Safeco had proposed basing the actual cash value was unnecessary because a visual inspection of
7 the property indicated it was “certainly repairable.” (Dkt. No. 29, Ex. C. at SAFECO000160.) He
8 further asserted that “Clearly Mr. Ames has determined that it is economically feasible to repair
9 this home as his estimate to do so totals less than the extended dwelling limits afforded by the
10 policy. This in itself would seem to nullify the need to fall back on a market appraisal in order to
11 establish the actual cash value of this loss.” (Id.) Mr. Abendschein responded on July 30, 2015,
12 in a way that suggested that the determination that a structure is “economically repairable” is
13 made by comparing the policy limits and the estimated replacement cost:

14 Option A —Extended Dwelling Coverage requires that the dwelling is insured to 100%.of
15 its replacement cost. The Coverage A — Dwelling limit is \$116,100. The replacement
16 cost estimate is \$124,777.70 which means the structure is not economically repairable.

17 (Dkt. No. 22, Ex. 2 at 2.) However, Mr. Abendschein did not address Mr. Dyer’s argument that
18 the policy limits measurement should include the 25% greater policy limits provided by the
19 extended dwelling coverage. Mr. Abendschein later stated in his deposition that coverage limits
20 are not applicable to the economically repairable calculation: “We make the determination of
21 economically feasible or economically repairable based on the item’s value. You could have
22 situations where the coverage for the dwelling is grossly under or grossly over the value of that
23 dwelling structure. So the only fair way to do it is to do it by that dwelling’s actual market
24 value.” (Dkt. No. 29, Ex. F. at 26:23–27:4.)

1 On August 7, Mr. Abendschein sent Mr. Dwyer a letter providing him the results of the
2 market value appraisal and informing him a check was sent representing the “actual cash value”
3 of the property as appraised. (Dkt. No. 36, Ex. 10 at 21.) Mr. Dwyer inquired whether the
4 separate repair or replacement cost payment (known as the “depreciation holdback” or
5 “replacement cost holdback”) could be applied to improvements on the Sherards’ residence
6 rather than to this or another rental house; Safeco answered that it could not. (Dkt. No. 36, Ex. 12
7 at 28; id., Ex. 14 at 32–33.) Defendant claims Mr. Dwyer then informed Safeco that the Sherards
8 did not intend to rebuild (Dkt. No. 36, Ex. 15 at 35), but the exhibit in question is more nuanced,
9 complaining that Safeco had thus far failed to reimburse the Sherards for demolition and debris-
10 removal costs that had already been incurred and explaining that “[T]he insured’s have been
11 forced to rely upon funds initially paid as the actual cash value of the loss in order to clear
12 amounts owed by them for services provided. Based on limited funds available at this time, the
13 insured’s cannot proceed with the rebuilding process.” (Id.)

14 Thereafter, the Sherards sought to assign the claim for the replacement payment to their
15 adult daughter, Erin Schlect, who was then in the process of purchasing a new home with her
16 husband. (Dkt. No. 36, Ex. 16.) After a number of communications and research into the
17 question whether such a claim could be assigned, Safeco refused to accept the assignment on
18 March 3, 2014. (Dkt. No. 36, Ex. 22 at 51.) At this time, the Safeco representative noted, “Our
19 loss measurement to date includes an agreed cost of repair with Restoreco to repair the dwelling
20 with like, kind and quality materials for \$124,777.70, which included debris removal costs of
21 \$8,727.06. Since the insured incurred debris removal separately, the net amount applicable to
22 reconstruction is \$116,043.64. Mrs. Sherard’s base limit for the dwelling is \$116,100 and
23 appears to be in line with its replacement cost. This triggers Extended Dwelling Coverage (EDC)
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1 for an additional 25% of the policy limits available. With EDC, Mrs. Sherard’s policy limit is
2 \$145,125.00 if she incurs the replacement of the property [. . .] You have told me Mrs. Sherard
3 has been seeking alternative ways to make her Replacement Cost claim because she feels
4 financially prohibited from rebuilding. Based on the damage figures presented, this doesn’t seem
5 to be the case. She appears to have limits sufficient to cover the costs.” (Dkt. No. 36, Ex. 22 at
6 51.)

7 Plaintiffs differed from the interpretation of the policy to forbid such an assignment, and
8 this suit, alleging breach of contract by failing to properly investigate, adjust, and pay claims as
9 required by the policy, as well as for refusing to allow the assignment of the replacement cost
10 claim; violation of the Washington Consumer Protection Act by violating statutory law and the
11 Washington Administrative Code; bad faith; and violation of the Insurance Fair Conduct Act,
12 ensued.

13 Defendant Safeco now brings a motion for summary judgment, arguing the purported
14 assignment of the claim to Ms. Schlect was invalid, the contractual and extracontractual claims
15 by the Sherards must be dismissed because they disavow any rights under the purportedly
16 assigned policy, and the Shlects’ contractual and extracontractual claims must be dismissed
17 because their primary residence does not qualify as a replacement under the policy and because
18 the purported assignment to them was ineffective. (Dkt. No. 19.)

19 Plaintiffs bring a cross-motion for partial summary judgment, arguing Safeco
20 misrepresented policy provisions as a matter of law by failing to disclose the extended dwelling
21 coverage when discussing available policy limits in violation of WAC 284-30-350 and WAC
22 284-30-330(1); that the term “economically repairable” in the calculation of actual cash value is
23 at minimum ambiguous and should be construed against Safeco to mean it costs less to repair a
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1 structure than is available under the policy limits; that Safeco failed to conduct a reasonable
2 investigation in violation of WAC 284-30-340 by conducting faulty legal research into the post-
3 loss assignment question; and that Safeco failed to adopt reasonable standards for the
4 investigation of the claim in violation of WAC 284-30-330(3) by failing to document the
5 rationale for refusing the assignment of the claim in the claim file or provide standards for
6 evaluating such a request and by using a market appraisal for impermissible purposes.

7 Discussion

8 I. Summary Judgment Standard

9 Summary judgment is appropriate if the evidence, when viewed in the light most
10 favorable to the non-moving party, demonstrates that “there is no genuine dispute as to any
11 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a);
12 See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). If the movant meets this initial burden,
13 then the burden shifts to the non-moving party to “designate specific facts” showing that there is
14 a genuine issue of material fact for trial that precludes summary judgment. Celotex Corp., 477
15 U.S. at 324. An issue of fact is “genuine” if it can reasonably be resolved in favor of either party.
16 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of fact is “material” if it
17 “might affect the outcome of the suit under the governing law.” Id.

18 Under Washington law, “[i]nsurance policies are to be construed as contracts, and
19 interpretation is a matter of law.” State Farm Gen. Ins. Co. v. Emerson, 102 Wn.2d 477, 480
20 (1984). “The entire contract must be construed together in order to give force and effect to each
21 clause,” and be enforced “as written if the language is clear and unambiguous.” Wash. Pub. Util.
22 Dists.’ Utils. Sys. v. Pub. Util. Dist. No. 1 of Clallam Cnty., 112 Wn.2d 1, 10 (1989). If, on the
23 other hand, “a policy provision on its face is fairly susceptible to two different but reasonable
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1 | interpretations, the policy is ambiguous and the court must attempt to discern and enforce the
2 | contract as the parties intended.” Transcon. Ins. Co., 111 Wn.2d at 456–57.

3 | An insurance contract “will be given a practical and reasonable interpretation that fulfills
4 | the object and purpose of the contract rather than a strained or forced construction that leads to
5 | an absurd conclusion, or that renders the contract nonsensical or ineffective.” Wash. Pub., 112
6 | Wn.2d at 11. Insurance contracts are interpreted “as an average insurance purchaser would
7 | understand them and give undefined terms in these contracts their ‘plain, ordinary, and popular’
8 | meaning.” Kish v. Ins. Co. of N. Am., 125 Wn.2d 164, 170 (1994) (quoting Boeing Co. v. Aetna
9 | Cas. & Sur. Co., 113 Wn.2d 869, 877). If, after attempting to discern the parties’ intent, the
10 | insurance contract language remains ambiguous, “the court will apply a meaning and
11 | construction most favorable to the insured, even though the insurer may have intended another
12 | meaning.” Transcon. Ins. Co., 111 Wn.2d at 457.

13 | II. Validity of Attempted Assignment of the Claim for Replacement Cost Holdback

14 | Defendant and Plaintiffs both move for summary judgment on the issue whether the
15 | assignment of the replacement cost holdback was valid in this case. The Court holds in favor of
16 | Defendant’s Motion. The answer to this question turns on law rather than disputed facts. Post-
17 | loss assignments are generally valid in Washington, despite language in the policy forbidding
18 | assignment without the insurer’s permission. See PUD No. 1 v. Int’l Ins. Co., 124 Wn.2d 789,
19 | 800 (1994); Kiecker v. Pacific Indem. Co., 5 Wn. App. 871, 877 (1971). Washington thus
20 | follows the “rule that general stipulations in policies prohibiting assignments of the policy,
21 | except with the consent of the insurer, apply only to assignments before loss, and do not prevent
22 | an assignment after loss.” 3 Couch on Ins. § 35:8. The rationale for this distinction is that “the
23 | purpose of a no assignment clause is to protect the insurer from increased liability, and after
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1 | events giving rise to the insurer’s liability have occurred, the insurer’s risk cannot be increased
2 | by a change in the insured’s identity.” Id.

3 | An insurance policy which requires rebuilding or replacement of the property prior to a
4 | claim for the replacement cost payment is acceptable in Washington, and indeed, a policy with
5 | language similar to the Condition 5 (Loss Settlement) provision in the Sherards’ policy was
6 | interpreted to forbid a claim for the replacement cost payment where the owners had not rebuilt
7 | or replaced the property and had no intention to do so. Hess v. N. Pacific Ins. Co., 122 Wn.2d
8 | 180, 186–87 (1993). The language “. . . we will pay the difference between the actual cash value
9 | and replacement cost only after the damaged or destroyed property has actually been repaired or
10 | replaced” thus means that no claim for the replacement cost has accrued until “actual repair[] or
11 | replace[ment]” has taken place. (See Dkt. No. 19, Smith Decl., Ex. 1 at 32.)

12 | When these two strands of case law are read together, it is clear a claim for the
13 | replacement cost holdback cannot be assigned before “the events giving rise to the insurer’s
14 | liability,” including actual rebuilding or replacement, have occurred. See PUD No. 1, 124
15 | Wn.2d. at 800 (1994) (“The plaintiffs argue, however, that even though a policy specifically
16 | prohibits assignments, an assignment of a claim, a cause of action, or proceeds may nonetheless
17 | be valid if made after the events giving rise to liability have already occurred when the
18 | assignment is made. We agree and affirm the trial court’s summary judgment on the validity of
19 | the assignments. The purpose of a no assignment clause in an insurance contract is to protect the
20 | insurer from increased liability. After the events giving rise to the insurer’s liability have
21 | occurred, the insurer’s risk cannot be increased by a change in the insured’s identity.”)
22 | (emphases added); Kiecker, 5 Wn. App. at 877 (“After a loss has occurred and rights under the
23 | policy have accrued, an assignment may be made without the consent of the insurer, even though
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1 | the policy prohibits assignments.”) (emphasis added). The requirement that an assignment must
2 | be post-loss is necessary but not sufficient where there exists an additional prerequisite to
3 | recovery. If the Court were to hold otherwise, the policy provision limiting the replacement cost
4 | payment to no more than the amount “actually and necessarily incurred” in repair or replacement
5 | would not function as a limit on recovery, as the parties intended. (Dkt. No. 19, Ex. 1 at 31.)
6 | Rather, the insureds could transfer the claim for the entire replacement cost to any third party
7 | interested in purchasing property, and the insurer’s exposure would be certain and not
8 | contingent.

9 | Because the Court holds that no valid assignment took place, The Court need not address
10 | Safeco’s arguments regarding the validity of post-loss assignments absent a “financial interest”
11 | by the assignee in the insured property or the validity of an oral assignment of the replacement
12 | cost holdback under Washington law.

13 | III. Other Issues in Safeco’s Motion

14 | Safeco argues that contractual and extra-contractual claims by either the Sherards or the
15 | Schlects must be dismissed because of the attempted assignment. Although Plaintiffs’
16 | contractual and extra-contractual claims directly relating to the validity of the assignment are
17 | moot in light of the Court’s holding on the validity of the assignment, Plaintiffs still have several
18 | other contractual and extra-contractual claims, including claims relating to Safeco’s
19 | representations as to the policy limit and extended dwelling coverage purchased by the Sherards.
20 | The Sherards may have attempted to assign these claims to the Schlects as well, so the Court
21 | must assess whether this aspect of the assignment was effective.

22 | Safeco notes that generally speaking, an assignment must be in writing to be enforced.
23 | See RCW 4.08.080. Oral assignments may nonetheless be recognized where the assignor
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1 personally testifies to the assignment. MRC Receivables Corp. v. Zion, 152 Wn. App. 625, 631
2 (2009). Here, a declaration by one purported assignor, Mr. Sherard, indicates that the assignors
3 intended to assign “replacement cost proceeds,” not any other claims they may have had.
4 (Sherard Decl., Dkt. No. 23 at 4–5.)

5 The Court concludes that either because the assignment was not writing or because the
6 terms of the assignment included only replacement cost proceeds and not other contractual or
7 extra-contractual claims, no assignment of contractual or extra-contractual claims took place, and
8 any such claims remain with the Sherards. The Court does not agree with Safeco’s unsupported
9 position that simply because the Sherards incorrectly believe they had made a valid assignment,
10 they waive their right to assert otherwise viable claims. (See Dkt. No. 19 at 20–21.) Argument in
11 the alternative is acceptable.

12 Safeco further argues the Sherards cannot prove damages in any of their contractual or
13 extracontractual claims, but the absence of damages for the assignment claim does not
14 necessarily preclude damages for other claims such as the CPA claim regarding
15 misrepresentation of applicable policy limits—claims Safeco does not address in its motion
16 except to argue that they were waived because they did not appear as such in the Amended
17 Complaint and the answer to a damages interrogatory. (Dkt. No. 27 at 6.) The Amended
18 Complaint put Safeco on notice that Plaintiffs were claiming it paid a lower actual cash value
19 payment based on an erroneous interpretation of the undefined phrase “economically repairable”
20 and that Safeco misrepresented the policy limits available pursuant to the purchase of extended
21 dwelling coverage. (See Am. Compl., Dkt. No. 18 at 2.) An imprecise interrogatory response
22 alone does not constitute waiver under these circumstances.

1 The Court therefore grants Safeco’s motion for summary judgment on Plaintiffs’
2 contractual and extracontractual claims with respect to the Schlects only.

3 IV. Plaintiffs’ Motion for Partial Summary Judgment

4 Because the Court finds that no assignment occurred as a matter of law and that Safeco
5 was within its rights to deny the request for the assignment of a claim that had not accrued, the
6 Court denies Plaintiffs’ Motion with respect to claims related to Safeco’s handling of the
7 assignment request. Plaintiffs also ask the Court to grant summary judgment in favor of Plaintiffs
8 on their claim that Safeco failed to adopt and implement reasonable standards for the
9 investigation of an insurance claim by failing to adopt any policy, procedures, or training related
10 to adjustment of their claim as it relates to the interpretation of the phrase “economically
11 repairable,” and to grant summary judgment in favor of Plaintiffs on their claim that Safeco
12 misrepresented policy limits and concealed pertinent policy benefits or coverages in violation of
13 WAC 284-30-350 and engaged in unfair settlement practices by misrepresenting policy limits in
14 violation of WAC 284-30-330(1). (Dkt. No. 28 at 1–2; 12–13.)

15 Plaintiffs first claim they are entitled to an actual cash value payment based on the
16 policy’s definition for “economically repairable” property because their replacement cost limits
17 (with the extended dwelling coverage) exceed Safeco’s estimated cost of repair or replacement.
18 (Dkt. No. 28 at 13–15.) Safeco counters that the phrase “economically repairable” is understood
19 by the industry, its adjusters, and courts in various jurisdictions outside Washington, solely with
20 reference to the market value of the depreciated property prior to the loss. (Dkt. No. 35 at 17–
21 21.) Plaintiffs’ only evidence to counter this argument is that Safeco’s own adjuster appeared to
22 adopt the Sherards’ proposed interpretation of “economically repairable” in explaining to the
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1 Sherards why the non-economically repairable calculation would be used to calculate their actual
2 cash value payment prior to the appraisal:

3 Option A —Extended Dwelling Coverage requires that the dwelling is insured to 100%.of
4 its replacement cost. The Coverage A — Dwelling limit is \$116,100. The replacement
cost estimate is \$124,777.70 which means the structure is not economically repairable.

5 (Abendschein Letter, Dkt. No. 22, Ex. 2 at 2.) While this paragraph is not a model of clarity, it
6 does not amount to a representation by Safeco that contradicts the generally accepted definition
7 of “economically repairable,” but rather a clumsy attempt to respond in the alternative to the
8 argument promoted by Mr. Dwyer in a previous letter. (See Dkt. No. 35 at 6 (citing Abendschein
9 Dep., Dkt. No. 36-1, Ex. 23 at 32:9–33:3).) Because Safeco’s interpretation of the phrase also
10 accords with common sense, the Court denies summary judgment as to any contractual or
11 extracontractual claims based on the meaning of “economically repairable” in the calculation of
12 actual cash value payments under the policy.

13 Plaintiffs next argue Safeco failed to adopt reasonable standards for the investigation of
14 their claim by using an appraisal report in a manner other than to secure financing for the
15 property. (Dkt. No. 28 at 20; 37 at 3–4.) Because Plaintiff has not cited any authority supporting
16 its novel theory that the use of an appraisal report designed for mortgage finance transactions is
17 per se unreasonable when used in the insurance context, the Court denies summary judgment on
18 this WAC-based CPA claim.

19 Finally, Plaintiffs argue the Court should find WAC violations based on
20 misrepresentation of the policy limits as a matter of law. Safeco argues the extended dwelling
21 coverage provision applied only in the event of repair or replacement, the building was not
22 repaired or replaced at the time of the communications about the applicable coverage limits, and
23 Mr. Abendschein accurately stated the base “Coverage A limits” in the absence of repair or
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1 replacement. (Dkt. No. 35 at 16.) This argument regarding affirmative misrepresentations does
2 not assist Safeco with respect to WAC 284-30-350, which provides, “No insurer shall fail to
3 fully disclose to first party claimants all pertinent benefits, coverages or other provisions of an
4 insurance policy or insurance contract under which a claim is presented.” (See Dkt. No 29, Ex. B
5 (July 11, 2013 Abendschein Letter); Ex. D, July 31, 2013 Abendschein Letter.) Plaintiffs may
6 argue to a jury that Mr. Abendschein “[m]isrepresented pertinent facts or insurance policy
7 provisions” in violation of WAC 284-30-330(1) by omitting information about the extended
8 dwelling coverage in the absence of repair or replacement even as the insureds were actively
9 considering whether to repair or replace their property. However, a WAC violation does not give
10 rise to liability in the absence of damages and on this record Plaintiffs have not put forth
11 evidence of damage sufficient for the Court to grant summary judgment in their favor. (In
12 addition, the second violation Plaintiffs allege, a WAC applicable to “insurance producer[s] or
13 title insurance agents,” does not appear to apply because State Farm’s adjuster was not an
14 insurance producer under Washington insurance law. See RCW 48.17.010 (“Insurance
15 producer’ means a person required to be licensed under the laws of this state to sell, solicit, or
16 negotiate insurance.”).) The Court therefore denies summary judgment on Plaintiffs’ CPA claim
17 based on WAC violations.

18 **Conclusion**

19 The Court GRANTS Safeco’s Motion on claims relating to the purported assignment
20 from the Sherards to the Schlects, GRANTS Safeco’s Motion as to claims brought by the
21 Schlects, DENIES Safeco’s Motion as to contractual and noncontractual claims brought by the
22 Sherards, and DENIES Plaintiffs’ Motion in full.
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1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated this 9th day of October, 2015.

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5 Marsha J. Pechman
6 Chief United States District Judge
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