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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 TRUNG MA and BETHEL MA, husband and
9 wife and the marital community composed
10 thereof,

11 Plaintiffs,

12 v.

13 ALLSTATE FIRE AND CASUALTY
14 INSURANCE COMPANY, a foreign
15 corporation,

16 Defendant.

CASE NO. C17-1276 RSM

ORDER GRANTING DEFENDANT'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT

17 **I. INTRODUCTION**

18 This matter comes before the Court on Defendant's Motion for Partial Summary
19 Judgment. Dkt. #15. Plaintiffs held an underinsured motorist (UIM) policy with Defendant and
20 seek coverage for damages sustained in an accident in excess of the at-fault driver's policy limits.
21 In addition, Plaintiffs allege that Defendant's debt collector interfered with Plaintiffs' settlement
22 with the at-fault driver and that Defendant contacted Plaintiffs to settle property damage claims
23 after knowing they were represented by counsel. To the extent Plaintiffs' claims are premised
24 on these two events, Defendant seeks dismissal of the claims for bad faith, violations of
25 Washington's Consumer Protection Act (Chapter 19.86, Wash. Rev. Code) ("CPA"), and
26 violations of Washington's Insurance Fair Conduct Act (Wash. Rev. Code § 48.30.015)
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1 (“IFCA”). Neither party has requested oral argument and the Court finds oral argument
2 unnecessary to its resolution of the motion. For the following reasons, the Court grants
3 Defendant’s Motion for Partial Summary Judgment.

4 II. BACKGROUND

5 On or about April 16, 2016, Scott Wemp’s vehicle suddenly left its lane of travel, crossed
6 over the centerline into oncoming traffic, and collided with a vehicle driven by Plaintiff Trung
7 Ma.¹ Dkt. #1-1 at ¶¶ 3.3, 3.4. Mr. Wemp was responsible for the accident. *Id.* at ¶ 3.6; Dkt. #6
8 at ¶ 3.8. Plaintiff suffered damages as a result of the accident. Dkt. #1-1 at ¶¶ 3.8, 3.9.

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10 Mr. Wemp was insured with State Farm. Dkt. #20 at ¶ 3 and Ex. 2. Plaintiff was insured
11 by Defendant and had UIM coverage. Dkt. #1-1 at ¶ 3.1. On May 17, 2016, Defendant was
12 informed that Plaintiffs were represented by Shepherd and Allen, Attorneys at Law (“Plaintiffs’
13 Counsel”), for “a claim for personal injury damages and for any issues concerning underinsured
14 motorist (UIM) and personal injury protection (PIP) coverage.” Dkt. #20 at ¶ 17 and Ex. 13.

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16 At the end of May, 2016, Plaintiffs’ Counsel informed Defendant that Mr. Wemp’s
17 insurance coverage was not adequate to compensate Plaintiffs for their damages and that
18 Plaintiffs planned to settle their claims against Mr. Wemp for the limits of Mr. Wemp’s insurance
19 policy. *Id.* at ¶ 2 and Ex. 1. On June 22, 2016, Defendant informed Plaintiffs’ Counsel that
20 Plaintiffs could settle with Mr. Wemp and State Farm for Mr. Wemp’s policy limits. *Id.* at ¶ 3
21 and Ex. 2. Defendant also waived the right to pursue PIP subrogation. *Id.* Settlement discussions
22 between Plaintiffs’ Counsel, State Farm, and Mr. Wemp followed.

23
24 Meanwhile, in September 2016, Defendant contacted Plaintiff directly, despite him being
25 represented by counsel, and settled his claims for property damage. *Id.* at ¶¶ 13–16 and Exs. 11–

26
27 ¹ The Court will use “Plaintiff” to refer to Mr. Ma and “Plaintiffs” to refer to both Mr. and Mrs. Ma.

1 12. Plaintiff executed a release of property damage claims in favor of State Farm and Mr.
2 Wemp.² *Id.* at ¶ 16 and Ex. 12. Plaintiffs’ Counsel did not learn of the settlement of property
3 damage until February 14, 2017. *Id.* at ¶ 14.

4 By January 20, 2017, Plaintiffs’ Counsel had reached agreement on, but not finalized, a
5 policy limits settlement with State Farm and Mr. Wemp and informed Defendant. *Id.* at ¶ 5, Ex.
6 4. The settlement was confirmed on February 3, 2017, and State Farm indicated that a settlement
7 check would be issued upon receiving Plaintiff’s executed release.³ *Id.* at ¶¶ 6–7 and Ex. 5.

8
9 Despite having already released Mr. Wemp from any claims for property damage and
10 waiving its rights to pursue subrogation of PIP payments, Defendant had a debt collector contact
11 Mr. Wemp on February 6, 2017, in an effort to collect on an “unliquidated tort claim.” *Id.* at ¶ 8
12 and Ex. 5. State Farm informed Plaintiffs’ Counsel that the collection “impacts our settlement”
13 on February 10, 2017. *Id.* at ¶ 8, Ex. 6. On February 14, 2017, and after a flurry of activity
14 between Plaintiffs’ Counsel, State Farm, the debt collector, and Defendant, Defendant informed
15 Plaintiffs’ Counsel that the debt collector had been “advised [] not to pursue our PIP subrogation”
16 as it was “previously waived.” *Id.* at ¶ 12 and Ex. 10. On February 16, 2017, Plaintiffs’ Counsel
17 was finally informed by Defendant that “[t]he entire subrogation claim against Mr. Wemp is
18 closed.” *Id.* at ¶ 20 and Ex. 15. This allowed Plaintiffs’ Counsel to negotiate the settlement
19 payment. *Id.* at ¶ 21.
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23 ² The vehicle that was damaged was actually owned by Plaintiff’s mother. Dkt. #16, Ex. A.

24 ³ Despite indicating that payment would be forthcoming, the settlement check appears to have
25 been attached to the February 3, 2017 letter. Dkt. #20 at Ex. 5. Further supporting this, State
26 Farm wrote to Plaintiffs’ Counsel in March and indicated that on February 3, 2017, “[t]he
27 settlement payment was tendered to you and was not to be negotiated until the settlement
documents were executed and returned.” Dkt. #16 at Ex. M. Regardless, the Court resolves the
discrepancy in favor of Plaintiffs, as the nonmoving party.

III. DISCUSSION

A. Legal Standard

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). Material facts are those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248. In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but “only determine[s] whether there is a genuine issue for trial.” *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O’Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)).

The non-moving party must present significant and probative evidence to support its claim or defense. *Intel Corp. v. Hartford Accident & Indem. Co.*, 952 F.2d 1551, 1558 (9th Cir. 1991). “The mere existence of a scintilla of evidence in support of the [non-moving party’s] position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-moving party].” *Anderson*, 477 U.S. at 251. Neither will uncorroborated allegations and self-serving testimony create a genuine issue of material fact. *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002); *T.W. Elec. Serv. v. Pac. Elec. Contractors Ass’n*, 809 F. 2d 626, 630 (9th Cir. 1987). Rather, the non-moving party must make a “sufficient showing on [each] essential element of her case with respect to which she has the burden of proof” to survive summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

B. Defendant’s Motion

Defendant argues, for a variety of reasons, that Plaintiffs’ claims for bad faith, violation of the CPA, and violation of IFCA, as premised on “alleged interference with a settlement, or

1 relating to a claim for property damage,” should be dismissed. Dkt. #15. Regardless of the merits
2 or Defendant’s other arguments,⁴ Plaintiffs have not provided sufficient evidence of damages
3 and their claims fail on that basis.

4 **1. Plaintiffs’ Claims Require Evidence of Damages**

5 Washington recognizes “[a]n action for bad faith handling of an insurance claim.” *Safeco*
6 *Ins. Co. of Am. v. Butler*, 118 Wash.2d 383, 389, 823 P.2d 499, 503 (1992) (citations omitted).
7 Sounding in tort, the claim is “analyzed applying the same principles as any other tort: duty,
8 breach of that duty, and damages proximately caused by any breach of duty.” *Smith v. Safeco*
9 *Ins. Co.*, 150 Wash.2d 478, 485, 78 P.3d 1274, 1277 (2003) (citation omitted).

10 Washington’s CPA provides certain forms of relief if plaintiffs establish “(1) an unfair or
11 deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4)
12 injury to a person’s business or property, and (5) causation.” *Panang v. Farmers Ins. Co. of*
13 *Wash.*, 166 Wash.2d 27, 37, 204 P.3d 885, 889 (2009) (citing *Hangman Ridge Stables, Inc. v.*
14 *Safeco Title Ins. Co.*, 105 Wash.2d 778, 784, 719 P.2d 531 (1986)). A violation of an insurance
15 regulation can establish an unfair or deceptive act or practice occurring in trade or commerce—
16 satisfying the first two elements—, but a plaintiff still must establish the three remaining
17 elements. *See St. Paul Fire and Marine Ins. Co. v. Onvia, Inc.*, 165 Wash.2d 122, 133–34, 196
18 P.3d 664, 669 (2008).

19 Washington’s IFCA provides that:

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21 Any first party claimant to a policy of insurance who is unreasonably denied a
22 claim for coverage or payment of benefits by an insurer may bring an action in
23 the superior court of this state to recover the actual damages sustained, together
24 with the costs of the action, including reasonable attorneys’ fees and litigation
25 costs, as set forth in subsection (3) of this section.

26 ⁴ Defendant makes several additional arguments as to why Plaintiffs’ claims fail. Because the
27 Court finds that the claims fail for lack of damages, the Court need not reach Defendant’s other
arguments.

1 Wash. Rev. Code § 48.30.015(1). Under IFCA, a plaintiff may recover the actual damages
2 “proximately caused by [the] IFCA violation.” *Schreib v. Am. Family Mut. Ins. Co.*, 129 F. Supp.
3 3d 1129, 1137 (W.D. Wash. 2015) (quoting *Dees v. Allstate Ins. Co.*, 933 F. Supp. 2d 1299, 1312
4 (W.D. Wash. 2013)).

6 **2. Plaintiffs Were Not Harmed by Defendant’s Actions**

7 Plaintiffs do not present evidence that Defendant’s actions caused them any harm with
8 regard to the alleged interference with their settlement with Mr. Wemp and State Farm. Plaintiffs
9 do not submit their own testimony as to how they were damaged. Plaintiffs also do not submit
10 testimony from Mr. Wemp or anyone associated with State Farm to indicate that the unfounded
11 collection action actually hindered the settlement with Plaintiff. Rather, Plaintiffs’ Counsel
12 testifies that “Plaintiffs were deprived of funds they were entitled to for nearly three weeks.”
13 Dkt. #20 at ¶ 24.

15 There are circumstances in which a delayed payment may harm the insured. *See*
16 *Anderson v. State Farm Mut. Ins. Co.*, 101 Wash. App. 323, 333, 2 P.3d 1029, 1035 (2000)
17 (reversing summary judgment where insured alleged loss of interest, financial penalties due to
18 delayed payments, and emotional damages); *Evergreen Intern, Inc. v. Am. Cas. Co. of Reading*
19 *Pa.*, 52 Wash. App. 548, 557, 761 P.2d 964 (1988) (cited by Plaintiffs and finding damage by
20 delay where late payments prevented claimant from rebuilding a dealership and caused the
21 claimant to lose the business). But the mere fact that a payment was delayed does not establish
22 that Plaintiffs were harmed by that delay. On the record before the Court, a jury would be forced
23 to speculate as to whether the delay caused Plaintiffs any actual damage.

25 Plaintiffs’ Counsel also testifies that “Plaintiffs incurred more than \$1,200.00 in attorney
26 fees sorting out the mess created by [Defendant] so that they could finalize settlement with the
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1 tortfeasor.” Dkt. #20 at ¶ 23. But in Washington, “attorney fees are not available as costs or
2 damages absent a contract, statute, or recognized ground in equity.” *Maytown Sand and Gravel,*
3 *LLC v. Thurston Cnty.*, 423 P.3d 223, 247 (2018) (quoting *City of Seattle v. McCreedy*, 131
4 Wash.2d 266, 275, 931 P.2d 156 (1997)). Plaintiffs rely upon the CPA’s and IFCA’s statutory
5 award of “actual damages . . . together with . . . reasonable attorneys’ fees.” Wash. Rev. Code
6 § 19.86.090, § 48.30.015.⁵ But this Court has previously held, under these same statutory
7 provisions, that actual damages and attorneys’ fees are “separate and distinct.” *Schreib*, 129 F.
8 Supp. 3d at 1141. Because Plaintiffs cannot prove damages, their claims related to Defendant’s
9 alleged interference with the settlement fails as a matter of law.
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11 With regard to Defendant’s contact with Plaintiff after learning that Plaintiffs’ Counsel
12 represented him, Plaintiffs do not allege any harm or damage.⁶ Plaintiffs do not allege that the
13 settlement was inadequate in any regard. Accordingly, Plaintiffs’ claims related to Defendant
14 directly contacting Plaintiff after learning he was represented must fail.
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16 IV. CONCLUSION

17 Having reviewed the relevant pleadings, the declarations and exhibits attached thereto,
18 and the remainder of the record, the Court hereby ORDERS:

- 19 1) Defendant’s Motion for Partial Summary Judgment (Dkt. #15) is GRANTED.
- 20 2) Plaintiffs’ claims for bad faith, violations of Washington’s Consumer Protection Act,
21 and violations of Washington’s Insurance Fair Conduct Act related, to the extent they
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23 ⁵ Plaintiff also points to *Olympic S.S. Co., v. Centennial Ins. Co.*, 117 Wash.2d 37, 811 P.2d 673
24 (1991) (providing for fees where “the insurer compels the insured to assume the burden of legal
25 action, to obtain the full benefit of his insurance contract”). But attorneys’ fees are not an inherent
26 benefit of the insurance contract and the alleged violations here did not interfere with Plaintiffs
27 obtaining benefits under their insurance contract with Defendant.

⁶ Defendant also disputes whether Plaintiffs’ Counsel represented Plaintiffs on the property
damage claims. See Dkt. #24 at 3–4; Dkt. #20 at ¶ 17 and Ex. 3.

1 are premised on Defendant interfering with Plaintiffs' policy limit settlement with
2 Mr. Wemp and State Farm or premised on Defendant's direct contact with Plaintiff
3 regarding property damage, are DISMISSED.

- 4 3) Plaintiffs' claims related to the extent of their damages from the collision, whether
5 they are entitled to benefits under their UIM policy with Defendant, and whether
6 Defendant's conduct with regard to their claim for benefits under their UIM policy
7 violated the insurance contract, constituted a tort or a violation of Defendant's duty
8 of good faith, violated Washington's Consumer Protection Act, or violated
9 Washington's Insurance Fair Conduct Act remain pending.
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11 DATED this 26th day of September 2018.

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14 RICARDO S. MARTINEZ
15 CHIEF UNITED STATES DISTRICT JUDGE
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