

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TEN BRIDGES, LLC,  
  
Plaintiff,  
  
v.  
  
MIDAS MULLIGAN, LLC, et al.,  
  
Defendants.

CASE NO. C19-1237JLR  
  
ORDER GRANTING MOTION  
FOR SUMMARY JUDGMENT  
ON WCPA COUNTERCLAIM

**I. INTRODUCTION**

Before the court is Defendant Madrona Lisa, LLC’s (“Madrona”) motion for summary judgment on its counterclaim for violation of the Washington Consumer Protection Act (“WCPA”), ch. 19.86 RCW. (Mot. (Dkt. # 75); *see also* Reply (Dkt. # 86).) Plaintiff Ten Bridges, LLC (“Ten Bridges”) opposes the motion and filed a surreply. (Resp. (Dkt. # 84); Surreply (Dkt. # 93).) The court has considered the motions, all submissions filed in support of and in opposition to the motion, the relevant

1 portions of the record, and the applicable law. Being fully advised,<sup>1</sup> the court GRANTS  
2 Madrona's motion for summary judgment on its counterclaim.

## 3 II. BACKGROUND

4 The court discussed the factual background of this case in detail in its September  
5 23, 2021 order granting Defendants Madrona, Midas Mulligan, LLC ("Midas"), Danielle  
6 Gore, and M. Alex Toth's<sup>2</sup> (collectively, "Defendants") motion for summary judgment  
7 on Ten Bridges's second amended complaint. (*See* 9/23/21 Order (Dkt. # 93) at 2-9.)  
8 Accordingly, the court focuses here on the factual background relevant to Madrona's  
9 counterclaim.

10 Madrona's counterclaim arises from a real estate transaction involving non-party  
11 Yukiko Asano. (*See generally* SAC Ans. (Dkt. # 50).) After Ms. Asano's condominium  
12 owners association foreclosed on her condominium unit, Madrona purchased the  
13 condominium at a sheriff's sale. (*See* 8/19/21 Beckett Decl. (Dkt. # 74) ¶ 20.) The sale  
14 resulted in surplus proceeds of \$346,892.95, which were deposited in the King County  
15 Superior Court registry. (*See id.*) As the mortgage debtor, Ms. Asano was entitled to  
16 receive the surplus proceeds. *See* RCW 61.12.150 (surplus proceeds from judicial  
17 foreclosure sales "shall be paid to the mortgage debtor, his or her heirs and assigns"). On  
18 May 15, 2019, however, Ms. Asano assigned her rights to redeem the property and  
19

---

20 <sup>1</sup> Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court finds oral  
21 argument unnecessary to its disposition of the motion, *see* Local Rules W.D. Wash. LCR 7(b)(4).

22 <sup>2</sup> Ms. Gore and Mr. Toth are the sole managers and members of Midas and Madrona.  
(*See* 8/19/21 Toth Decl. (Dkt. # 72) ¶ 2.)

1 receive the surplus proceeds to Ten Bridges in exchange for its promise to pay her the  
2 first \$172,000 it received of any surplus proceeds. (*See* 8/19/21 Beckett Decl. ¶ 46, Ex.  
3 41 (“Asano Quitclaim Deed”).) If Ten Bridges had been permitted to obtain Ms. Asano’s  
4 surplus proceeds pursuant to that agreement, it would have received a net of over 50% of  
5 the surplus proceeds.

6 Ten Bridges notified the King County Sheriff that it intended to redeem Ms.  
7 Asano’s condo; it disputed, however, the redemption price set by Madrona. (*See id.* ¶ 21,  
8 Ex. 17 (Ten Bridges’s Verified Motion for Determination of Redemption Price, *Carlyle*  
9 *Condo. Owners Assoc. v. Asano* (“*Asano*”), No. 18-2-03471-0 SEA (King Cnty. Super.  
10 July 10, 2019)).<sup>3</sup>) Ten Bridges then moved the superior court to determine the correct  
11 redemption amount. (*See id.*) Madrona opposed the motion, arguing that Ten Bridges  
12 had no right to redeem because the agreement between Ten Bridges and Ms. Asano was  
13 void under RCW 63.29.350(1), which places a five-percent cap on fees that a fund-finder  
14 can claim as compensation for locating surplus proceeds. (*See id.* ¶ 22, Ex. 18.) On  
15 August 8, 2019, the superior court ruled in favor of Madrona, holding that the quitclaim  
16 deed between Ms. Asano and Ten Bridges was void and unenforceable because it  
17 violated RCW 63.29.350(1). (*See id.* ¶ 24, Ex. 20 (Order, *Asano* (King Cnty. Super. Aug.  
18 8, 2019).)

19 //

20 //

---

21 <sup>3</sup> The court granted the parties’ unopposed requests to take judicial notice of filings and  
22 orders in the underlying actions in King County and the Washington Court of Appeals. (*See*  
9/23/21 Order at 3 n.3.)

1 Ten Bridges requested and received a different form of quitclaim deed from Ms.  
2 Asano and moved again in the superior court to set the amount required to redeem the  
3 property from Madrona. (*See id.* ¶ 25, Ex. 21.) It contended that because the new  
4 quitclaim deed did not contain the terms that the court had previously found unlawful, it  
5 was severable from the original contract and enforceable. (*See generally id.*) Madrona  
6 again opposed Ten Bridges’s motion. (*See id.* ¶ 26, Ex. 22.) On October 30, 2019, the  
7 superior court again ruled in Madrona’s favor on the ground that the agreement between  
8 Ten Bridges and Ms. Asano was unlawful under RCW 63.29.350(1). (*See id.* ¶ 28, Ex.  
9 24.)

10 Ten Bridges appealed. The Washington Court of Appeals affirmed the superior  
11 court’s orders invalidating Ten Bridges’s agreements with Ms. Asano. *Ten Bridges, LLC*  
12 *v. Guandai*, 474 P.3d 1060, 1063-64 (Wash. Ct. App. 2020), *review denied*, 487 P.3d 515  
13 (Table) (Wash. 2021). Specifically, the Court of Appeals held that the Asano Quitclaim  
14 Deed was void because:

15 In substance, Ten Bridges relied upon having located the surplus funds for a  
16 fee of almost 50 percent of the funds as compensation for obtaining the other  
17 50 percent for [Ms.] Asano . . . . Because Ten Bridges combined the services  
18 of locating surplus funds held by King County and of connecting [Ms.]  
Asano with her surplus funds, both in exchange for more than five percent of  
the returned funds’ value, the [Asano Quitclaim Deed] violated RCW  
63.29.350 and was void.

19 *Id.* at 1069. Ten Bridges subsequently moved for reconsideration and petitioned the  
20 Washington Supreme Court for review; its motion and petition were both denied. (*See*  
21 8/19/21 Beckett Decl. ¶ 29, Ex. 25; *id.* ¶ 32, Ex. 28; *id.* ¶ 24, Ex. 30); *see also Ten*  
22 *Bridges v. Asano*, 487 P.3d 517, 517 (Table) (Wash. 2021).

1 While its appeal of the orders invalidating the agreements was pending, Ten  
2 Bridges moved in the trial court for an order extending the deadline to redeem Ms.  
3 Asano's condominium. (8/20/21 Beckett Decl. (Dkt. # 77) ¶ 2.) The superior court  
4 denied the motion and Ten Bridges again appealed. (*Id.* ¶¶ 2-3.) After the Court of  
5 Appeals affirmed that the agreements between Ten Bridges and Ms. Asano were void,  
6 Madrona asked Ten Bridges to withdraw its appeal of the order denying its motion to  
7 extend. (*Id.* ¶ 4.) Ten Bridges has not done so, and litigation of that appeal continues.  
8 (*Id.*)

9 Madrona asserts that it has incurred a total \$38,829.01 in attorney's fees and  
10 expenses opposing Ten Bridges's motions to redeem and responding to Ten Bridges's  
11 appeals. (8/20/21 Toth Decl. (Dkt. # 76) ¶ 2, Exs. 1 & 2; 9/17/21 Beckett Decl. ¶¶ 6-7.)  
12 It anticipates that it will incur additional fees and expenses if Ten Bridges continues to  
13 pursue its appeal of the trial court's order denying an extension of the redemption period.  
14 (8/20/21 Toth Decl. ¶ 3.)

### 15 III. ANALYSIS

16 Madrona now moves for summary judgment on its WCPA counterclaim and an  
17 award of damages and attorney's fees. The court begins by setting forth the standard of  
18 review before turning to its analysis of Madrona's motion.

#### 19 A. Summary Judgment Standard

20 Summary judgment is appropriate if the evidence viewed in the light most  
21 favorable to the non-moving party shows "that there is no genuine dispute as to any  
22 material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.

1 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Beaver v. Tarsadia Hotels*,  
2 816 F.3d 1170, 1177 (9th Cir. 2016). A fact is “material” if it might affect the outcome  
3 of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute  
4 is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the  
5 non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001)  
6 (citing *Anderson*, 477 U.S. at 248-49).

7 The moving party bears the initial burden of showing there is no genuine dispute  
8 of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at  
9 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can  
10 show the absence of such a dispute in two ways: (1) by producing evidence negating an  
11 essential element of the nonmoving party’s case, or (2) by showing that the nonmoving  
12 party lacks evidence of an essential element of its claim or defense. *Nissan Fire &*  
13 *Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party  
14 meets its burden of production, the burden then shifts to the nonmoving party to identify  
15 specific facts from which a factfinder could reasonably find in the nonmoving party’s  
16 favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 250.

## 17 **B. WPCA Counterclaim**

18 Madrona asserts that it is entitled to judgment as a matter of law on its WPCA  
19 counterclaim. Under the WPCA, a private plaintiff must prove: (1) an unfair or  
20 deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public  
21 interest; (4) causes injury to the plaintiff’s business or property; and (5) that injury is  
22 causally linked to the unfair or deceptive act. *Hangman Ridge Training Stables, Inc. v.*

1 *Safeco Title Ins. Co.*, 719 P.2d 531, 533 (Wash. 1986). Because Madrona’s WCPA  
2 counterclaim is based on Ten Bridges’s established violation of RCW 63.29.350(1), the  
3 first three elements of the claim have been met as a matter of law. *See id.* at 535 (“[A]  
4 per se unfair trade practice exists when a statute which has been declared by the  
5 Legislature to constitute an unfair or deceptive act in trade or commerce has been  
6 violated.”); RCW 63.29.350(2) (stating that practices covered by RCW 63.29.350(1)  
7 “vitally affect[] the public interest” and any violation “is an unfair or deceptive act or  
8 practice in trade or commerce and an unfair method of competition for the purpose of  
9 applying” the WCPA).

10 Madrona contends that it is entitled to summary judgment because there is no  
11 genuine issue of material fact regarding the remaining two elements. (Mot. at 9-13.) It  
12 asserts that suffered injury by incurring attorney’s fees and costs litigating the validity of  
13 the Asano Quitclaim Deed in the *Asano* action; and that the injury was proximately  
14 caused by Ten Bridges’s violation of RCW 63.29.350(1). (*Id.*) It asks the court to enter  
15 judgment in its favor for \$38,829.01 in attorney’s fees and expenses it incurred in  
16 litigating Ten Bridges’s violation of RCW 63.29.350(1), plus \$25,000 in statutory treble  
17 damages under the WCPA. (*Id.* at 16.) It additionally asks the court to award it the  
18 attorney’s fees and costs incurred in this action. (*Id.* (citing RCW 19.86.090 (authorizing  
19 an award of reasonable attorney’s fees and costs of suit)).)

20 Ten Bridges does not dispute Madrona’s proof of any of the five elements of its  
21 WCPA claim. Instead, it asserts that summary judgment should be denied because (1)  
22 Madrona’s counterclaim is barred by *res judicata* (Resp. at 21-22) and (2) its violation of

1 RCW 63.29.350(1) was done in good faith under an arguable interpretation of the law (*id.*  
2 at 6-21). It also opposes an award of treble damages (*id.* at 22) and disputes a portion of  
3 the attorney’s fees sought by Madrona as damages (Surreply at 1-2).<sup>4</sup>

4 1. Res Judicata

5 Ten Bridges asserts that *res judicata* bars Madrona’s counterclaim in this action  
6 because Madrona was required to assert the counterclaim in the underlying *Asano* action.  
7 (*See Resp.* at 21-22.) The court disagrees.

8 As an initial matter, Madrona contends that Ten Bridges cannot assert the  
9 affirmative defense of *res judicata* because it did not plead the defense in its answer to  
10 the counterclaim. (*Reply* at 8; *see also Ans. to Counterclaim* (Dkt. # 64) at 4.) A  
11 defendant, however, may raise an affirmative defense for the first time at summary  
12 judgment if the delay does not prejudice the plaintiff. *Owens v. Kaiser Found. Health*  
13 *Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *see also McGinest v. GTE Serv. Corp.*, 247  
14 F. App’x 72, 75 (9th Cir. 2007). Assuming, without deciding, that Madrona was not  
15 prejudiced by Ten Bridges’s failure to plead the affirmative defense, the court finds that  
16 *res judicata* does not bar Madrona’s counterclaim.

17 The *res judicata* effect of a state court judgment is governed by the laws of the  
18 state in which the court is located. 28 U.S.C. § 1738; *Manufactured Home Communities*

---

19  
20 <sup>4</sup> Ten Bridges also devotes a substantial portion of its briefing to arguing that the  
21 Washington Court of Appeals wrongly decided *Guandai* and that Madrona and Midas violated  
22 RCW 63.29.350(1) in past transactions. (*See, e.g., Resp.* at 1 (referring to *Guandai* as “poorly  
reasoned and results-oriented”), 4-5 (discussing past transactions by Madrona and Midas).)  
Because the court finds that neither argument is relevant to the instant motion, the court does not  
address them further.



1 *Inc. v. City of San Jose*, 420 F.3d 1022, 1031 (9th Cir. 2005). Under Washington law,  
2 “[r]es judicata, or claim preclusion, prevents the same parties from relitigating a claim  
3 that was raised or *could have been raised* in an earlier action.” *Stevens Cnty. v.*  
4 *Futurewise*, 192 P.3d 1, 6 (Wash. Ct. App. 2008) (citing *Roberson v. Perez*, 123 P.3d  
5 844, 848 n.7 (Wash. 2005)) (emphasis added). Here, neither Madrona nor Ten Bridges  
6 was a party to the *Asano* judicial foreclosure action; instead, that action was between Ms.  
7 Asano and her condominium association. (See, e.g., 8/19/21 Beckett Decl. ¶ 21, Ex. 17.)  
8 Madrona and Ten Bridges’s involvement in the matter began only after Ms. Asano’s  
9 condominium was sold at public auction following entry of judgment on the judicial  
10 foreclosure. (See, e.g., *id.*); see also *Guandai*, 474 P.3d at 1064. Thus, Madrona had no  
11 right or opportunity to assert affirmative claims against Ten Bridges in the *Asano* action.  
12 Because Madrona could not have raised its WPCA claim against Ten Bridges in the  
13 *Asano* action, the court concludes that *res judicata* does not bar its assertion of the  
14 counterclaim in this action.

15 2. “Good Faith” Defense

16 Ten Bridges contends that summary judgment on Madrona’s counterclaim is  
17 unwarranted because its violations of RCW 63.29.350(1) were done in good faith under  
18 an arguable interpretation of existing law. (Resp. at 12 (citing *Perry v. Island Sav. &*  
19 *Loan Ass’n*, 684 P.2d 1281, 1289 (Wash. 1984), and *Leingang v. Pierce Cnty. Med.*  
20 *Bureau, Inc.*, 930 P.2d 288, 299 (Wash. 1997)).) Madrona counters that “good faith” is  
21 not a defense where a party’s violation is a per se unfair or deceptive practice under the  
22 WCPA. (Mot. at 13-16; Reply at 2-3.) The court agrees with Madrona.

1           When applying Washington law in a diversity case, the court must apply the law  
2 as it believes the Supreme Court of Washington would apply it. *Gravquick A/S v.*  
3 *Trimble Navigation Intern. Ltd.*, 323 F.3d 1219, 1222 (9th Cir. 2003). In the absence of a  
4 controlling Washington Supreme Court decision, the court must predict how that court  
5 would decide the issue, using intermediate appellate court decisions, statutes, and  
6 decisions from other jurisdictions as interpretive aids. *Id.*; see also *Soltani v. W. & S. Life*  
7 *Ins. Co.*, 258 F.3d 1038, 1045-46 (9th Cir. 2001).

8           No Washington Supreme Court or Court of Appeals decision has applied the  
9 “good faith” defense to a per se violation of the WCPA. Indeed, the parties have  
10 identified only two decisions, both from the United States District Court for the Eastern  
11 District of Washington, that apply the “good faith” defense to a per se violation.

12           *Watkins v. Peterson Enterprises, Inc.*, 57 F. Supp. 2d 1102, 1111 (E.D. Wash.  
13 1999), involved a per se violation of RCW 19.16.440, which states that acts prohibited by  
14 the Washington Collection Agency Act (“WCAA”), RCW 19.16.250, are “unfair acts or  
15 practices or unfair methods of competition” for purposes of applying the WPCA. Noting  
16 that RCW 19.16.440 made no mention of deceptive acts or practices, the court observed,  
17 relying on *Leingang* and *Perry*, that “while [defendant’s] good faith may not be a defense  
18 to a claim that it engaged in deceptive practices, [its] good faith is a defense to a claim  
19 that its practices were per se unfair.” *Id.* (citing *Leingang*, 930 P.2d at 299, and *Perry*,  
20 684 P.2d at 1289). The court held that the defendant could not be held liable under the  
21 WCPA because its interpretation of the law was “arguable even if incorrect.” *Id.* In  
22 determining that the “good faith” defense was available for per se violations of the

1 WCPA, the court did not set forth its analysis, instead relying solely on its citations to  
2 *Leingang* and *Perry*—even though neither case involved a per se violation of the WCPA.  
3 *Id.*; see *Leingang*, 930 P.2d at 297 (finding no per se violation because regulations at  
4 issue did not apply to defendant health care service contractor); *Perry*, 684 P.2d at 1290  
5 n.9 (holding “any claim of a per se violation is unfounded” because the legislature had  
6 not enacted a statute restricting the conduct at issue).

7 *Gray v. Suttell & Associates*, No. 2:09-cv-00251-SAB, 2019 WL 96225 (E.D.  
8 Wash. Jan. 3, 2019), also involved a per se violation of the WCAA. That court relied on  
9 *Perry*, *Leingang*, and *Watkins* for the proposition that the “good faith” defense is  
10 available for per se violations of the WCPA. *Id.* at \*4 (citing *Perry*, 684 P.2d at 1289,  
11 *Leingang*, 930 P.2d at 299, and *Watkins*, 57 F. Supp. 2d at 1111). The *Gray* court  
12 departed from an earlier ruling in the same case that the “good faith” defense is not  
13 available for per se violations of the WCPA. *Id.* In that earlier order, a different judge  
14 had held that because the Washington legislature had, “by statutory enactment, deemed  
15 the operation of a ‘collection agency’ without a license to be a per se unfair act,” the  
16 defendants’ violation of the WCAA was an unfair act for purposes of the WCPA, even if  
17 the defendant collection agency acted in good faith. *Gray v. Suttell & Assocs. P.S.*, No.  
18 2:09-CV-251-RMP, 2016 WL 409706, at \*8 (E.D. Wash. Feb. 2, 2016).

19 The court is not bound by decisions from its sister district courts, and respectfully  
20 disagrees with *Watkins* and the 2019 *Gray* decision. Rather, the court agrees with the  
21 first judge in *Gray*, and concludes that the Washington Supreme Court would likely hold  
22 that “good faith” is not a defense where the legislature has expressly stated that a

1 violation of a statute constitutes a per se unfair or deceptive act or practice for purposes  
2 of applying the WCPA. *See Gray*, 2016 WL 409706, at \*8. Here, the legislature has  
3 decreed that a violation of RCW 63.29.350(1) constitutes a per se unfair or deceptive act  
4 or practice, *see* RCW 63.29.350(2), and the Washington Court of Appeals affirmed that  
5 Ten Bridges violated that statute, *see Guandai*, 474 P.3d at 1069. As a result, the court  
6 concludes that even if Ten Bridges acted under an arguable interpretation of existing law,  
7 it cannot rely on the “good faith” exception to escape liability. Accordingly, the court  
8 GRANTS Madrona’s motion for summary judgment on its WCPA counterclaim.

9 3. Damages

10 Madrona seeks a judgment that it is entitled to an award of damages in the amount  
11 of the fees and costs it has incurred in litigating the *Asano* action, plus treble damages.  
12 (Mot. at 16.) Ten Bridges contends that Madrona is not entitled to treble damages (Resp.  
13 at 22) and disputes a portion of Madrona’s claimed damages (Surreply at 1-2). Madrona  
14 did not address Ten Bridges’s objection to an award of treble damages in its reply. (*See*  
15 *generally* Madrona Reply.)

16 A party injured by a CPA violation may recover his or her actual damages,  
17 together with the costs of the suit, including a reasonable attorney’s fee. RCW  
18 19.86.090. In addition, the court may, in its discretion, award treble damages of three  
19 times the amount of the actual damages sustained, up to a statutory maximum of  
20 \$25,000. *Id.*

21 In its motion, Madrona asserted that it was entitled to an award of \$35,149.01 for  
22 attorney’s fees and expenses it incurred in litigating the validity of the *Asano* Quitclaim

1 Deed under RCW 63.29.350(1) in King County Superior Court and the Washington  
2 Court of Appeals. (Mot. at 16; *see also* 8/20/21 Toth Decl. ¶ 2, Ex. 1.) Ten Bridges did  
3 not dispute this amount. (*See generally* Resp.) With its reply, Madrona asserted an  
4 additional \$3,680.00 in attorney’s fees incurred since the August 20, 2021 filing of the  
5 instant motion for summary judgment. (*See* 9/17/21 Beckett Decl. ¶ 6.) Ten Bridges  
6 argues that these additional fees should be excluded from any award of damages because  
7 they do not relate to the litigation of the validity of the Asano Quitclaim Deed but rather  
8 to collection activity. (Surreply at 2.) Having reviewed the time entries provided with  
9 Madrona’s reply, the court agrees with Ten Bridges that there is a genuine issue of  
10 material fact regarding whether the additional fees relate to the litigation of the validity of  
11 the validity of the Asano Quitclaim Deed. Accordingly, the court DENIES Madrona’s  
12 request for entry of judgment of the total amount of \$38,829.01. The court ORDERS the  
13 parties to submit a joint status report regarding their proposal for resolving their dispute  
14 regarding the \$3,680.00 in additional fees that Madrona sought with its reply.<sup>5</sup>

15 The parties also dispute whether Madrona is entitled to treble damages up to the  
16 statutory maximum of \$25,000. The purposes of the treble damages provision are: “(1)  
17 financial rehabilitation of the injured consumer, (2) encouraging private citizens to bring  
18 actions benefiting the public, (3) deterrence, and (4) punishment.” *Sing v. John L. Scott,*  
19 *Inc.*, 920 P.2d 589, 598 (Wash. Ct. App. 1996), *rev’d on other grounds*, 948 P.2d 816

---

20  
21 <sup>5</sup> In its surreply, Ten Bridges also moves to strike the declaration of Yukiko Asano  
22 attached to the September 17, 2021 Beckett Declaration. (*Id.*; *see also* 9/17/21 Beckett Decl. ¶ 4,  
Ex. 3.) Because the court did not consider Ms. Asano’s declaration in deciding the instant  
motion, the court DENIES the motion to strike as moot.

1 (Wash. 1997). The court finds that these purposes would not be furthered by an award of  
2 treble damages. First, an award of attorney’s fees and costs will provide full financial  
3 rehabilitation to Madrona absent trebling of those damages. Second, it seems unlikely  
4 that an award of treble damages in this case would encourage private citizens to bring  
5 other WCPA actions. Finally, because Ten Bridges has stopped petitioning courts for  
6 surplus funds (*see* 9/13/21 Heald Decl. (Dkt. # 85) ¶ 20), the court concludes that an  
7 award of treble damages would not advance the goals of deterrence and punishment. The  
8 court exercises its discretion under RCW 19.86.090 and DENIES Madrona’s request for  
9 treble damages.

10 4. Attorney’s Fees and Costs

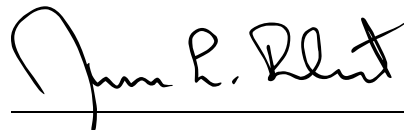
11 Madrona seeks a determination that it is entitled to an award of the attorney’s fees  
12 and costs it incurred in this action pursuant to RCW 19.86.090. (Mot. at 16.) Ten  
13 Bridges does not oppose this request. (*See generally* Resp.) The court GRANTS  
14 Madrona’s request for an award of reasonable attorney’s fees and costs for its successful  
15 prosecution of its WCPA counterclaim. The court reminds Madrona that it must  
16 segregate the fees and costs incurred in its prosecution of its WCPA counterclaim from  
17 fees and costs incurred in defending against Ten Bridges’s claims. *See, e.g., Hume v. Am.*  
18 *Disposal Co.*, 880 P.2d 988, 997 (Wash. 1994) (“If, as in this case, an attorney fees  
19 recovery is authorized for only some of the claims, the attorney fees award must properly  
20 reflect a segregation of the time spent on issues for which attorney’s fees are authorized  
21 from time spent on other issues.”).

22 //

1 **IV. CONCLUSION**

2 For the foregoing reasons, the court GRANTS Madrona’s motion for summary  
3 judgment on its WCPA counterclaim (Dkt. # 75). The court, however, DENIES  
4 Madrona’s request for treble damages and for entry of judgment in the total amount of  
5 \$38,829.01 in fees and costs. The court ORDERS the parties to submit a joint status  
6 report by no later than October 14, 2021, regarding their proposal for resolving their  
7 dispute regarding the \$3,680.00 in additional fees that Madrona sought with its reply.

8 Dated this 6th day of October, 2021.

9  
10 

11 JAMES L. ROBART  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22