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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 VANESSA CAMPER,

7 Plaintiff,

8 v.

9 STATE FARM FIRE AND CASUALTY
COMPANY,

10 Defendant.

Case No. C20-5283 TLF

ORDER GRANTING MOTION FOR
RECONSIDERATION

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12 This matter comes before the Court on defendant's Motion for Reconsideration of
13 the Court's Order Denying Defendant's Motion for Partial Summary Judgment. Dkt. 30.
14 The parties have briefed the pending motion. Dkt. 30, 34, 35. For the reasons set forth
15 below, the Court grants defendant's motion for reconsideration and amends the Court's
16 previous Order (Dkt. 29).

17 FACTUAL AND PROCEDURAL BACKGROUND

18 Plaintiff Vanessa Camper's residence sustained flood damage on May 17, 2017.
19 Complaint, Dkt. 1, at 2; Declaration of George A. Thornton (plaintiff's counsel), Dkt. 18,
20 at 2. At the time, plaintiff had a homeowner's insurance policy by defendant State Farm
21 Fire and Casualty Company. Declaration of Vanessa Camper, Dkt. 17, at 2. Plaintiff
22 alleged breach of the policy conditions and sued for policy coverage in King County
23 Superior Court on May 15, 2018. Decl. Thornton, Dkt. 18 at 4. Defendant removed the
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1 lawsuit to federal court, where proceedings continued before the Honorable Benjamin
2 H. Settle through discovery and dispositive motion practice. See docket of *Camper v.*
3 *State Farm Fire and Casualty Company et al*, case no. 3:18-cv-05486-BHS (“*Camper*
4 *I*”).

5 In *Camper I*, plaintiff sought to pursue additional claims against defendant arising
6 out of the operative facts. Decl. Thornton, Dkt. 18, at 4. Finding no plain legal prejudice
7 to defendant, Judge Settle permitted plaintiff to voluntarily dismiss her claims without
8 prejudice to bring a second lawsuit. Decl. Thornton, Plaintiff’s Exhibit F, Order Granting
9 Plaintiff’s Motion to Dismiss (*Camper I*), Dkt. 18, at 45-46.

10 On March 25, 2020, plaintiff filed her second lawsuit before this Court, pursuing
11 claims for declaratory judgment, breach of contract, negligent claim handling, violation
12 of the Consumer Protection Act, violations of the Insurance Fair Conduct Act (IFCA) and
13 insurance bad faith. Dkt. 1, at 9-11.

14 Defendant filed a motion for partial summary judgment arguing that the Court
15 should dismiss plaintiff’s claims for declaratory judgment and breach of contract as
16 barred by the terms of the relevant insurance policy. Dkt. 14. Defendant argued that
17 these claims are barred under the insurance policy’s contractual suit limitation clause
18 which states:

19 Suit Against Us. No action shall be brought unless there has been
20 compliance with the policy provisions. The action must be started within
one year after the date of loss or damage.

21 Declaration of Michael S. Rogers, Defendant’s Exhibit 1, Plaintiff’s Policy with
22 Defendant State Farm, Dkt. 15-1 at 27.

1 The Court issued an Order Denying Defendant’s Motion for Partial Summary
2 Judgment. Dkt. 29. The Court held that a latent ambiguity existed in the suit limitation
3 provision, as applied to the narrow circumstances presented in this action. Dkt. 29 at 6.
4 Specifically, the Court held that although the term “action” frequently means “lawsuit,”
5 based on the language of the suit limitation provision and considering the statutory
6 language of RCW 48.18.200, the term “action” could also reasonably refer to “cause of
7 action” or “right of action.” Dkt. 29 at 6-7. Accordingly, the Court followed the reasonable
8 interpretation more favorable to plaintiff, and held that plaintiff complied with the one
9 year suit limitation provision by filing the original lawsuit within one year of the loss. Dkt.
10 29 at 6-9.

11 Defendant filed this Motion for Reconsideration of the Court’s Order Denying
12 Defendant’s Motion for Partial Summary Judgment. Dkt. 30. Defendant argues that the
13 Court should grant the Motion for Reconsideration because the Court’s previous Order
14 incorrectly interpreted the language of the suit limitation provision, erred in applying
15 RCW 48.18.200(1)(c) and reached a conclusion contrary to Washington law. Dkt. 30.

16 Plaintiff opposes defendant’s Motion for Reconsideration. Dkt. 34. Plaintiff
17 concedes that the term “action” in the suit limitation provision refers to commencing a
18 lawsuit, but argues that plaintiff met the requirements of the provision by timely filing the
19 complaint in *Camper I*. Dkt. 34 at 5. Plaintiff maintains that an ambiguity exists because
20 the suit limitation provision does not address a situation in which an insured timely
21 commences an action, voluntarily dismisses the action and subsequently refiles the
22 same action. Dkt. 34 at 5-6.

1 MOTION FOR RECONSIDERATION

2 Motions for reconsideration are generally disfavored under the Court’s local
3 rules:

4 Motions for reconsideration are disfavored. The court will ordinarily deny
5 such motions in the absence of a showing of manifest error in the prior
6 ruling or a showing of new facts or legal authority which could not have
7 been brought to its attention earlier with reasonable diligence.

8 Local Rules W.D. Wash. CR 7(h)(1). Such motions are an “extraordinary remedy,” and
9 “should not be granted, absent highly unusual circumstances, unless the district court is
10 presented with newly discovered evidence, committed clear error, or if there is an
11 intervening change in the controlling law.” *Kona Enters., Inc. v. Estate of Bishop*, 229
12 F.3d 877, 890 (9th Cir. 2000) (internal citations omitted).

13 Defendant has correctly noted that the Court’s previous order cites to a portion of
14 RCW 48.18.200(1)(c) that is not applicable to this action. Dkt. 30. Additionally, the
15 Court’s previous Order addressed how the term “action” in the suit limitation clause
16 should be interpreted and how it would be understood by an insured. Dkt. 29. Plaintiff
17 has clarified that her position is that the term “action” in the suit limitation clause refers
18 to a lawsuit. Dkt. 34 at 5. The parties’ agreement regarding the meaning of the term
19 “action” materially alters the Court’s analysis of defendant’s previous motion.
20 Accordingly, the Court grant’s defendant’s Motion for Reconsideration and amends the
21 Court’s Order as set forth below.

1 AMENDED ORDER

2 Summary judgment is supported if the materials in the record “show that there is
3 no genuine issue as to any material fact and that the movant is entitled to judgment as a
4 matter of law.” Federal Rule of Civil Procedure (FRCP) 56 (a),(c). The moving party
5 bears the initial burden to demonstrate the absence of a genuine dispute of material fact
6 for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A genuine dispute
7 concerning a material fact is presented when there is sufficient evidence for a
8 reasonable jury to return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*,
9 477 U.S. 242, 252 (1986). In this context, materiality means the fact is one that is
10 “relevant to an element of a claim or defense and whose existence might affect the
11 outcome of the suit”; thus, materiality is “determined by the substantive law governing
12 the claim.” *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n*, 809 F.2d 626, 630
13 (9th Cir. 1987).

14 The non-moving party is required to show that genuine issues of material fact
15 “can be resolved only by a finder of fact *because they may reasonably be resolved in*
16 *favor of either party.*” *California Architectural Building Prods., Inc. v. Franciscan*
17 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987) (quoting *Anderson*, 477 U.S. at
18 250) (emphasis in original). When the Court considers a motion for summary judgment,
19 “[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to
20 be drawn in [their] favor.” *Anderson*, at 255. Yet the Court is not allowed to perform the
21 jury’s function – the Court may not weigh evidence, draw legitimate inferences from
22 facts, or decide credibility. *Id.* If the moving party meets their initial burden, an adverse
23 party may not rest upon the mere allegations or denials of his pleading; his or her
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1 response, by affidavits or as otherwise provided in FRCP 56, must set forth specific
2 facts showing there is a genuine issue for trial. FRCP 56(c). The Court may not
3 disregard evidence solely based on its self-serving nature. *Nigro v. Sears, Roebuck &*
4 *Co.*, 784 F.3d 495, 497 (9th Cir. 2015). “The district court can disregard a self-serving
5 declaration that states only conclusions and not facts that would be admissible
6 evidence.” *Id.*

7 Under the Erie Doctrine, a federal court considering a case that is under diversity
8 jurisdiction will apply federal procedural law, and the substantive state law of the forum
9 state. *Erie R.R. v. Tompkins*, 304 U.S. 64, 78 (1938); *Freund v. Nycomed Amersham*,
10 347 F.3d 752, 761 (9th Cir. 2003). If the Court considers an issue of state law that has
11 not yet been addressed by the appellate courts of the state, the Court predicts how the
12 state supreme court “would probably rule in a similar case.” *King v. Order of United*
13 *Commercial Travelers*, 333 U.S. 153, 161 (1948).

14 Contract interpretation is generally a question of law for the Court. *See Berg v.*
15 *Hudesman*, 115 Wn.2d 657, 663 (1990). The Court must apply state law to the
16 substantive issues raised. *See Hanna v. Plumer*, 380 U.S. 460, 470-74 (1965).
17 Washington courts give a “term [within a contract] its ‘plain, ordinary, and popular’
18 meaning.” *McLaughlin v. Travelers Commercial Ins. Co.*, 196 Wn.2d 631, 648 (2020)
19 (citing *Boeing Co. v. Aetna Cas. & Sur. Co.*, 196 Wn.2d 869, 877 (1990)) (quotation
20 omitted). Further, courts construe the language of an insurance policy with the “same
21 construction that an average person purchasing insurance would give the contract.” *Id.*
22 at 642 (citing *Woo v. Fireman’s Funds Ins. Co.*, 161 Wn.2d 43, 52 (2007)) (quotation
23 omitted). If the language of a contract is clear and unambiguous, the Court “may not
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1 modify the contract or create ambiguity.” *Id.* at 649 (citing *Kitsap County v. Allstate Ins.*
2 *Co.*, 136 Wn.2d 567, 576 (1998) (internal citation omitted).

3 “Where the parties’ contractual language is ambiguous, the principal goal of
4 construction is to search out the parties’ intent.” *Jones Assocs., Inc. v. Eastside Props.,*
5 *Inc.*, 41 Wn.App. 462, 467 (1985). “A term will be deemed ambiguous if it is susceptible
6 to more than one reasonable interpretation.” *Holden v. Farmers Ins. Co. of Wash.*, 169
7 Wn.2d 750, 756 (2010). “[A]mbiguous contract language is strictly construed against the
8 drafter.” *Jones Asosc.*, 41 Wn. App. at 468. Furthermore, ambiguity in an insurance
9 policy “must be resolved in favor of the insured.” *Webb v. USAA Cas. Ins. Co.*, 12 Wn.
10 App. 2d 433, 445 (2020).

11 The parties dispute whether the one-year contractual limitation clause on
12 lawsuits against defendant applies when a suit properly filed within one year of the date
13 of loss is dismissed without prejudice after that deadline. If this were so, then after one
14 year following the date of loss, claims voluntarily dismissed with the intent of promptly
15 continuing the litigation under a new lawsuit would be barred without the benefit of
16 tolling.

17 Insurance contracts may include reasonable limitations on liability, including
18 limitations on suit. *Ashburn v. Safeco Ins. Co.*, 42 Wn. App. 692, 695, *review denied*
19 105 Wn.2d 1016 (1986). Suit limitations in insurance policies are permitted by
20 Washington law, so long as the specified period is no less than one year from the date
21 of the loss. RCW 48.18.200(1)(c). A suit limitation clause is treated as a contractual
22 modification of a statute of limitation. *W. Beach Condo. V. Commonwealth Ins. Co. of*
23 *Am.*, 11 Wn. App. 2d 791, 801 (2020); *Yakima Asphalt Paving Co. v. Dep’t of Transp.*,

1 45 Wn. App. 663, 665 (1986) (treating suit limitation clauses as a contractual agreement
2 to shorten a statutory limitation period). An insurer need not prove prejudice from late
3 filing to rely on an insured's failure to file suit within the contract limitation period. *Simms*
4 *v. Allstate Ins. Co.*, 27 Wn. App. 872, 877 (1980).

5 A. Continuing Litigation – Fed. R. Civ. P. 41(2)

6 For the reasons set forth below, this action cannot be considered a continuation
7 of the previously filed action in *Camper I*.

8 Plaintiff concedes that the term “action” in the suit limitation clause refers to
9 commencing a lawsuit and argues that plaintiff complied with this provision by filing
10 *Camper I*. Dkt. 34. Plaintiff contends that the current litigation is a continuation of
11 *Camper I*, and therefore this action is not barred by the suit limitation clause. Dkt. 34.

12 When considering the effects of a party's voluntary dismissal, with regards to a
13 statute of limitations, Washington case law generally tracks federal case law. *Beckman*
14 *v. Wilcox*, 96 Wn. App. 355, 359 (1999). Voluntary dismissal pursuant to Federal Rule of
15 Civil Procedure 41(a) does not toll the applicable statutes of limitations. *James v. Price*
16 *Stern Sloan*, 283 F.3d 1064, 1066 (9th Cir. 2002) (“plaintiff assumes the risk that, by the
17 time the case returns to district court, the claim will be barred by the statute of
18 limitations or laches”); *Ford v. Sharp*, 758 F.2d 1018, 1024 (5th Cir. 1985) (“For
19 purposes of the statute of limitations, the plaintiff receives no credit or tolling for the time
20 that elapsed during the pendency of the original suit.”).

21 Under both Washington case law and federal case law, a suit filed after a
22 voluntary dismissal is not treated as a continuation of the previous suit, rather the Court
23 must proceed as if the previous suit had never been filed. *Humphreys v. United States*,

1 272 F.2d 411, 412 (9th Cir. 1959) (“[A] suit dismissed without prejudice pursuant to Rule
2 41(a)(2) leaves the situation the same as if the suit had never been brought in the first
3 place.”); *Morris v. Swedish Health Servs.*, 148 Wn. App. 771, 777 (2009) (“Washington
4 has interpreted the voluntary dismissal rule as rendering the proceeding a nullity and
5 leaving the parties as if the action had never been brought.”) (quotation omitted) (citing
6 *Beckman v. Wilcox*, 96 Wn. App. 355, 359 (1999)).

7 To comply with the suit limitation clause, plaintiff was required to commence this
8 action within one year after the date of loss or damage. The date of loss is May 17,
9 2017. For purposes of *Camper I*, plaintiff complied with the suit limitation clause by
10 commencing the action on May 15, 2018. However, because *Camper I* was terminated
11 pursuant to Fed. R. Civ. P. 41(a)(2), for purposes of the suit limitation clause, the Court
12 is required to treat *Camper I* as if it had never been brought in the first place.

13 Accordingly, the *present* litigation must comply with the suit limitation clause. Plaintiff
14 filed this action on March 25, 2020, more than two years after the date of loss. Further,
15 plaintiff has made no showing that the suit limitation period should be tolled.

16 Based on the foregoing, because plaintiff commenced this action more than two
17 years after the date of loss, plaintiff did not comply with the suit limitation clause.

18 Therefore, plaintiff’s breach of contract claim is barred by the suit limitation clause.

19 B. Public Policy

20 For the reasons set forth below, the suit limitation clause does not violate Federal
21 Rule of Civil Procedure 41(a).

1 Plaintiff argues that the Court should refuse to enforce the suit limitation clause
2 as void against public policy because it contravenes Federal Rule of Civil Procedure
3 41(a). Dkt. 16, 34.

4 Federal Rule of Civil Procedure 41(a)(1) specifies when a plaintiff may voluntarily
5 dismiss an action without prejudice without a court order. Fed. R. Civ. P. 41(a)(1).
6 Federal Rule of Civil Procedure 41(a)(2) explains when an action may be dismissed at
7 the plaintiff's request with a Court order. Fed. R. Civ. P. 41(a)(2).

8 The suit limitation clause in question does not prevent plaintiff from exercising
9 her right to voluntarily dismiss an action and does not prevent a Court from granting
10 plaintiff's request to voluntarily dismiss an action without prejudice. Additionally, when a
11 complaint is voluntarily dismissed pursuant to Rule 41, the Court is required to treat any
12 subsequently filed suits as a new independent action, not a continuation of the
13 dismissed action. *Humphreys*, 272 F.2d at 412; *Morris*, 148 Wn. App. at 777.
14 Accordingly, application of the suit limitation clause in this action would not violate the
15 language or purpose of Federal Rule of Civil Procedure 41.

16 C. Waiver

17 Finally, plaintiff argues that the Court should hold that defendant waived the
18 application of the suit limitation clause. Dkt. 16 at 8-10.

19 Court's disfavor implied waivers of contractual rights and require the party
20 asserting waiver prove an intention to relinquish a contractual right. *Or. Mut. Ins. Co. v.*
21 *Barton*, 109 Wn. App. 405, 418 (2001).

22 First, plaintiff argues that defendant waived application of the suit limitation
23 clause by not identifying this provision as grounds for denying coverage in a March 17,
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1 2020 letter. Dkt. 16 at 9. This argument is unpersuasive because the suit limitation
2 clause is not an appropriate ground for denial of coverage. Suit limitation clauses act as
3 a modification to the statute of limitation, they do not extinguish the underlying coverage
4 obligation. *W. Beach Condo.*, 11 Wn. App. 2d at 799, 801.

5 While suit limitation clauses can bar the recovery of judicial remedies for breach
6 of contract, insurers may still have an independent statutory obligation to provide
7 insurance coverage, enforceable by extracontractual claims. *W. Beach Condo.*, 11 Wn.
8 App. 2d at 804-05. Accordingly, the suit limitation clause would have been an
9 inappropriate ground to deny coverage in this action. Therefore, defendant's failure to
10 identify the suit limitation clause as grounds for denying coverage does not indicate an
11 intention to relinquish the application of this provision.

12 Next, plaintiff argues that defendant waived application of the suit limitation
13 clause in its objection to plaintiff's motion for voluntary dismissal in *Camper I*.
14 Defendant's objection in *Camper I* argues that the Court should either dismiss the action
15 with prejudice or impose sanctions because the dismissal would prejudice defendant.
16 See, *Camper v. State Farm Fire and Casualty Company*, Case No. 3:18-cv-5486-BHS,
17 Dkt. 60.¹ Defendant's argument that it would be prejudiced by a voluntary dismissal six
18 days before trial does not indicate an intention to waive the suit limitation clause.

19 Plaintiff has failed to make a showing that defendant intentionally relinquished or
20 waived application of the suit limitation clause.

23 ¹ The Court takes judicial notice of defendant's objection in *Camper I* pursuant to Federal Rule of
24 Evidence 201. See, *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 157 (1969) (the Court "may
25 properly take judicial notice of the record in [previous] litigation between the same parties.").

1 CONCLUSION

2 Based on the foregoing discussion, the suit limitation clause does not violate
3 public policy and is applicable to this action. This action cannot be considered a
4 continuation of the previously dismissed action in *Camper I*. Therefore, because plaintiff
5 did not file this action within one year of the date of loss, plaintiff's breach of contract
6 claim is barred by the suit limitation clause, and the Court Orders as follows:

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- 8 • Defendant's Motion for Reconsideration (Dkt. 30) is GRANTED;
 - 9 • Defendant's Motion for Partial Summary Judgment (Dkt. 14) is GRANTED;
 - 10 • Plaintiff's Claim No. 1 for declaratory judgment on plaintiff's breach of
11 contract claim is DISMISSED and Plaintiff's Claim No. 2 for breach of
12 contract is DISMISSED.
 - 13 • Plaintiff's remaining claims alleging violations of the Insurance Fair
14 Conduct Act; insurance bad faith; negligent claim handling; and violations
15 of the Consumer Protection Act may continue in this litigation.

16 Dated this 13th day of May, 2021.

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Theresa L. Fricke
19 United States Magistrate Judge