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

8 CRAIG SPURLOCK,

CASE NO. 2:23-cv-00467-JHC

9 Plaintiff,

ORDER

10 v.

11 STATE FARM FIRE AND CASUALTY
12 COMPANY,

13 Defendant.

14
15 **I**

16 **INTRODUCTION**

17 This matter comes before the Court on the parties' cross motions for summary judgment.
18 Dkt. ## 53, 57. Plaintiff Craig Spurlock submitted a claim under his homeowners insurance
19 policy (the Policy) after water backed up into the crawl space under his house. Dkt. # 54 at 177.
20 The insurer, Defendant State Farm Fire and Casualty Company, denied the claim. *Id.* at 278.
21 Spurlock sued State Farm, claiming breach of contract, bad faith, violation of Washington's
22 Consumer Protection Act (CPA), RCW § 19.86.010, *et seq.*, and violation of the Insurance Fair
23 Conduct Act (IFCA), RCW § 48.30.015. Dkt. # 1.
24

1 State Farm then reassigned Spurlock’s claim to James Trout, an independent claims
2 adjuster who contracted with State Farm. *Id.* at 173. Trout contacted Spurlock on March 26,
3 2022, and asked him where the sump pump was located. *Id.* According to Trout’s notes in the
4 file, Spurlock “stated that the sump pump was located on the outside of the house.” *Id.* Trout
5 asked Spurlock to send photos of the sump pump, which Spurlock did. *Id.*

6 According to the claim file, after speaking with Trout, Spurlock called Nelson, who
7 “explained that the claim was reassigned.” *Id.* at 172. The case file says Spurlock said that the
8 sump pump is located “in the foundation of the crawl space.” *Id.*

9 Trout contacted the contractor who was working on the mitigation at Spurlock’s home.
10 *Id.* A note in the case file states that Trout contacted the contractor because he “was wanting to
11 determine the cause of the damage, [the contractor] stated that it was a failed sump pump under
12 the home.” *Id.* The note states that the contractor “confirmed that the sump pump is located in
13 [a] hole outside the entrance to the crawlspace.” *Id.*

14 Mark Mullins, the State Farm agent who sold the Policy to Spurlock, sent the photos of
15 Spurlock’s sump pump to Trout. *Id.* at 171. According to the case file, Trout and Mullins “had a
16 difference of opinion on a coverage determination.” *Id.*; *see also id.* at 319–23 (photos
17 provided). Trout testified in his deposition that from looking at the photos, he believed that the
18 sump pump was located “[o]utside the interior of the home.” *Id.* at 258.

19 Trout issued a payment to Spurlock for the mitigation costs. *Id.* at 169. On April 11,
20 2022, he sent Spurlock a letter denying the claim. *Id.* at 278. Trout testified at his deposition
21 that he believed the cause of the loss was “the surface water from the rain that accumulated
22 under the house.” *Id.* at 266. He said that “the insured had said that it was more than likely due
23 to a large amount of rainfall that had happened at the time of the loss. And with the sump pump
24 being located outside of the interior of the house, once it came out of the sump pump, it would be

1 considered surface water, which accumulated under the house which would not be covered under
2 the endorsement.” *Id.* at 266–67.

3 The April 11 letter states, “Based on our investigation, it was determined the damages to
4 your home were due to flood and water that did not enter the dwelling through a sewer or drain
5 or overflowed from within the sump pump. Therefore, [BUSD] endorsement HO-2622.1
6 coverage was not triggered for this loss.” *Id.* at 278.

7 Spurlock said in his deposition that he knew that State Farm denied the coverage based
8 on the location of the sump pump because, “after some investigation with [Mullins] . . . [he]
9 explained to me that they said the sump pump wasn’t directly underneath the walls of my house.
10 It’s in the crawl space, but it wasn’t underneath immediate walls of the house.” Dkt. # 64 at 8.

11 B. Insurance Policy

12 The Policy provides that State Farm “will pay for accidental direct physical loss to the
13 property described in Coverage A, unless the loss is excluded or limited in **SECTION I-**
14 **LOSSES NOT INSURED** or otherwise excluded or limited in this policy.” Dkt. # 54 at 26
15 (emphasis in original). The Policy excludes “any loss that is caused by one or more of the items
16 below, regardless of whether the loss occurs abruptly or gradually, involves isolated or
17 widespread damage, occurs on or off the *residence premises*, arises from natural or external
18 forces, or occurs as a result of any combination of these c. Water.” Dkt. # 54 at 29–30
19 (emphasis in original). “Water” is defined as:

- 20 (1) flood;
21 (2) surface water. This does not include water solely caused by the release of water
22 from a swimming pool, spigot, sprinkler system, hose, or hydrant;
23 (3) waves (including tidal wave, tsunami, and seiche);
24 (4) tides or tidal water;
(5) overflow of any body of water (including any release, escape, or rising of any
body of water, or any water held, contained, controlled, or diverted by a dam, levee,
dike, or any type of water containment, diversion, or flood contra device);

1 (6) spray or surge from any of the items c.(1) through c.(5) described above, all
2 whether driven by wind or not;

3 (7) water or sewage from outside the *residence premises* plumbing system that
4 enters through sewers or drains, or water or sewage that enters into and overflows
5 from within a sump pump, sump pump well, or any other system designed to
6 remove subsurface water that is drained from the foundation area;

7 (8) water or sewage below the surface of the ground, including water or sewage
8 that exerts pressure on, or seeps or leaks through a *building structure*, sidewalk,
9 driveway, swimming pool, or other structure;

10 (9) seepage or leakage of water, steam, or sewage that occurs or develops over a
11 period of time.”

12 *Id.* at 30 (emphasis in original). The BUSD endorsement says:

13 *We* will pay for accidental direct physical loss to the *dwelling* and covered personal
14 property located within the *dwelling*, caused by back-up of water or sewage, subject
15 to the following:

16 a. The back-up must be directly and immediately caused solely by water or sewage:

17 (1) from outside the *residence premises* plumbing system that enters
18 through a sewer or drain located inside the interior of the *dwelling*; or

19 (2) that enters into and overflows from within a sump pump, sump pump
20 well, or any other system located inside the interior of the *dwelling* designed
21 to remove subsurface water drained from the foundation area.

22 *Id.* at 9 (emphasis in original). The Policy defines “dwelling” as “the *building structure* on the
23 *residence premises* used as the primary private residence and includes structures attached to the
24 *dwelling*.” Dkt. # 54 at 15 (emphasis in original). The Policy defines “building structure” as “a
structure fully enclosed with permanent walls and a roof. A permanent wall or roof does not
include any kind of temporary materials including but not limited to tarps, plastic sheeting, or
other similar material.” *Id.* at 14–15. A “building structure” includes:

a. the foundation supporting the structure, including:

(1) slabs;

(2) basement walls;

(3) crawl space walls

(4) footings; and

1 (5) gravel, stone, or sand, used as fill material and located not more than 12
2 inches directly below a slab described in item a.(1), including water supply
lines, domestic water pipes, and sewer pipes located within this fill material.

3 *Id.* at 15.

4 The parties cross move for summary judgment. Spurllock moves for partial summary
5 judgment, arguing that State Farm breached the insurance contract when it denied his claim,
6 breached its duty of good faith, and violated the CPA and IFCA. Dkt. # 53 at 1. He also moves
7 for summary judgment dismissal of State Farm’s affirmative defenses. *Id.* State Farm moves for
8 summary judgment, arguing that it did not breach the insurance contract. Dkt. # 57 at 1. State
9 Farm also argues that the breach of contract, bad faith, CPA, and IFCA claims fail, saying that it
10 did not unreasonably deny coverage. *Id.* at 7–8.

11 **III**
12 **DISCUSSION**

13 A. Summary Judgment Standards

14 Summary judgment is warranted if the movant shows that there is no genuine dispute of
15 any material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P.
16 56(a). The moving party is entitled to judgment as a matter of law when the nonmoving party
17 fails to make an adequate showing on an essential element of a claim on which the nonmoving
18 party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no
19 genuine issue of fact for trial when the record, taken as a whole, could not lead a rational trier of
20 fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475
21 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not
22 simply “some metaphysical doubt”); Fed. R. Civ. P. 56(e). Underlying facts are viewed in the
23 light most favorable to the non-moving party. *Matsushita*, 475 U.S. at 587.
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1 B. Spurlock’s Motion for Partial Summary Judgment

2 Spurlock moves for partial summary judgment. Dkt. # 53. Spurlock asks the Court to
3 determine that State Farm (1) breached the insurance contract when it denied his claim, (2)
4 breached its duty of good faith, (3) violated the CPA, and (4) and violated IFCA. *Id.* at 1.
5 Spurlock asks the Court to reserve the question of proximate cause and damages for the jury. *Id.*
6 Spurlock also moves for summary judgment dismissal of State Farm’s affirmative defenses. *Id.*
7 at 25.

8 1. Breach of contract

9 Spurlock says that “State Farm’s denial of coverage without actually determining the
10 cause of the loss breached” the insurance contract. Dkt. # 53 at 14. State Farm does not address
11 this argument in its response to Spurlock’s motion but does discuss it in its reply in defense of its
12 own motion for summary judgment. See Dkt. ## 61, 73. It says, “Causation has never been the
13 issue and is not in dispute,” and the BUSD endorsement is “[t]he only Policy language at issue.”
14 Dkt. # 73 at 2, 6. Indeed, neither party offers an alternative cause for the water back up, and
15 State Farm offers no other basis for its denial of the claim in its briefing in the cross motions.
16 See Dkt. ## 53, 57. Both parties say that the backup was caused by water overflowing from
17 within the sump pump and sump pump well. See Dkt. ## 73 (State Farm says that causation “has
18 never been in dispute or at issue regarding coverage,” because Spurlock himself said that he
19 believed that heavy rain caused the sump pump to overflow and fill the crawl space), 65 (“[I]t is
20 undisputed that the damage to Mr. Spurlock’s home was in fact caused by water that overflowed
21 from within his sump pump.”).

22 Spurlock then says that State Farm’s denial of coverage breached the insurance contract
23 because the sump pump was located “inside the interior of the dwelling,” and is thus covered by
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1 the Policy.¹ Dkt. # 53 at 17. State Farm counters that under the BUSP endorsement, the sump
2 pump was located outside the house, so it was not covered under the policy. Dkt. # 61 at 3.

3 “Whether coverage exists is a two-step process. The insured must prove that the policy
4 covers [the] loss. Thereafter, to avoid coverage, the insurer must prove that specific policy
5 language excludes the insured’s loss.” *Graff v. Allstate Ins. Co.*, 113 Wash. App. 799, 803, 54
6 P.3d 1266, 1268 (2002). But courts ultimately determine whether the insurance company has
7 breached the contract “by characterizing the perils contributing to the loss, and determining
8 which perils the policy covers and which it excludes.”² *Id.* (quoting *Bowers v. Farmers Ins.*
9 *Exch.*, 99 Wash. App. 41, 44, 991 P.2d 734, 736 (2000)).

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13 ¹ Spurlock also says that State Farm cannot rely on the argument that it denied coverage based on
14 the location of the sump pump because that justification was not included in the denial letter. Dkt. # 53 at
15 15. Under Washington law, insurers may not “introduce[] new or changed bases for denying insurance
16 coverage once litigation has begun.” *Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1235,
17 1245 (W.D. Wash. 2014). The insured must show “prejudice or the insurer acted in bad faith when the
18 insurer failed to raise all its grounds for denial in its initial denial letter.” *Id.* (quoting *Hayden v. Mutual*
19 *of Enumclaw Ins. Co.*, 141 Wash.2d 55, 63, 1 P.3d 1167 (2000)). Spurlock cannot show that he was
20 prejudiced because he learned that State Farm denied his claim based on the location of the sump pump
21 around the time of the denial. See Dkt. # 64 at 8–9. Further, whether State Farm’s failure to include this
22 reasoning in its denial of benefits letter is a breach of its duty of good faith is a question of fact for the
23 jury. Thus, the Court considers State Farm’s argument that it denied the claim based on the location of
24 the sump pump.

18 Spurlock advances another theory as to how State Farm breached its insurance contract. He says
19 that, because the Policy covers “all-risks,” “State Farm’s denial of coverage without actually determining
20 the cause of the loss breached” the Policy. Dkt. # 53 at 14. Because this Order concludes that the sump
21 pump is covered under BUSD endorsement, the Court does not consider Spurlock’s argument.

20 ² Spurlock says that the Court should apply the “efficient proximate cause rule” in this case. “The
21 efficient proximate cause rule applies only where two or more independent forces operate to cause the
22 loss. ‘When, however, the evidence shows the loss was in fact occasioned by only a single cause, albeit
23 one susceptible to various characterizations, the efficient proximate cause analysis has no application.’”
24 *Kish v. Ins. Co. of N. Am.*, 125 Wash. 2d 164, 170, 883 P.2d 308, 311 (1994) (quoting *Chadwick v. Fire*
Ins. Exch., 17 Cal.App.4th 1112, 1117, 21 Cal.Rptr.2d 871 (1993)). The efficient proximate cause rule
“permit[s] coverage when an insured peril sets other excluded perils into motion which ‘in an unbroken
sequence and connection between the act and final loss, produce the result for which recovery is sought.’”
Id. Here, the efficient proximate cause doctrine does not apply because neither party has pointed to any
other potential cause of the water back-up.

1 As discussed above, the evidence shows, and the parties agree, that water overflowing
2 from within the sump pump or sump pump well caused the water intrusion at issue. Thus, to
3 determine whether State Farm breached the insurance contract, the Court must interpret the terms
4 of the BUSD endorsement.

5 Courts “interpret insurance policy provisions as a matter of law.” *Am. Best Food, Inc. v.*
6 *Alea London, Ltd.*, 168 Wash. 2d 398, 404, 229 P.3d 693, 695 (2010). “When interpreting an
7 insurance policy, [the court] give[s] the language its plain meaning, construing the policy as the
8 average person purchasing insurance would.” *Robbins v. Mason Cnty. Title Ins. Co.*, 195 Wash.
9 2d 618, 626, 462 P.3d 430, 434 (2020). Courts interpret any ambiguity in the policy in favor of
10 the insured. *Id.* at 626, 462 P.3d at 434–35.

11 The BUSD endorsement says that State Farm covers water back-up in a dwelling if the
12 loss is caused by water “that enters into and overflows from within a sump pump, sump pump
13 well, or any other system located *inside the interior of the dwelling* designed to remove
14 subsurface water drained from the foundation area.” Dkt. # 54 at 9 (emphasis added and bold
15 emphasis in original). Thus, the question is whether Spurlock’s sump pump was “located inside
16 the interior of the *dwelling*” per the terms of the Policy.

17 The Policy defines “dwelling” as “the *building structure* on the *residence premises* used
18 as the primary private residence and includes structures attached to the *dwelling*.” Dkt. # 54 at
19 15 (emphasis in original). The Policy defines “building structure” as “a structure fully enclosed
20 with permanent walls and a roof.” *Id.* at 14–15. A “building structure” includes “the foundation
21 supporting the structure, including . . . crawl space walls.” *Id.* at 15.

22 The definition of dwelling “includes structures attached to the dwelling.” *Id.* The Policy
23 defines “building structure” but not “structure.” *Id.* The Policy does not use the word
24 “structure” as a shorthand for “building structure”; it uses the terms in different contexts, which

1 indicates that “structure” is different from “building structure.” Webster’s defines “structure” as
2 “something constructed or built.” *Webster’s Third New International Dictionary* 2267 (2002).

3 Spurlock’s expert, Wes Snowden, described the area of the sump pump: “[T]he sump
4 pump enclosure is a buck-out on the foundation wall for that pump to sit in. The walls and the
5 floor of the buck-out are concrete and physically tied back to the foundation. This condition is
6 clearly part of the foundation.” Dkt. # 70 at 5. He said that the “buck-out” was part of the
7 original foundation of the house. *Id.* at 21. The parties describe the “buck-out” as the “sump
8 pump well.” *See* Dkt. # 57 at 2. Snowden further described the “buck-out” as “the original
9 crawlspace access to the house.” Dkt. # 70 at 22. State Farm does not dispute that the sump
10 pump is in a “buck out”—or sump pump well—in the ground next to the house, which is
11 attached to the walls of the foundation and allows entrance to the crawl space under the house.
12 *See* Dkt. # 57 at 3. Further, it is clear from the photos and the expert’s uncontested description
13 that the “buck out” was constructed or built. *See, e.g.,* Dkt. # 54 at 319–23. Thus, the “buck
14 out” where the sump pump is located is a structure attached to the dwelling. Under the BUSD
15 endorsement, the sump pump was located “inside the interior of the dwelling” because it was
16 inside the “buck out,” which is included in the definition of dwelling. And if there is any
17 ambiguity—which the Court does not see here—it must be interpreted in favor of Spurlock.
18 State Farm has not pointed to any other basis on which it could deny coverage. Thus, State Farm
19 breached its contract when it denied coverage. The Court grants Spurlock’s motion for summary
20 judgment as to the breach of contract claim.

21 2. Bad faith

22 Insurers owe a duty of good faith to the insured that arises from a fiduciary relationship
23 between the parties. *Tank v. State Farm Fire & Cas. Co.*, 105 Wash. 2d 381, 385–86, 715 P.2d
24 1133, 1136 (1986). Because of the fiduciary duty, “an insurance company’s duty of good faith

1 rises to an even higher level than that of honesty and lawfulness of purpose toward its
2 policyholders: an insurer must deal fairly with an insured, giving equal consideration *in all*
3 *matters* to the insured’s interests.” *Id.* (emphasis in original).

4 A breach of an insurance contract is not automatically considered bad faith. *See Smith v.*
5 *Safeco Ins. Co.*, 150 Wash. 2d 478, 484, 78 P.3d 1274, 1277 (2003). Rather, “[t]o succeed on a
6 bad faith claim, the policyholder must show the insurer’s breach of the insurance contract was
7 unreasonable, frivolous, or unfounded.” *Id.*; *see also Anderson v. State Farm Mut. Ins. Co.*, 101
8 Wash. App. 323, 329–30, 2 P.3d 1029, 1033 (2000) (“An insurer acts in bad faith when it
9 overemphasizes its own interests. The determinative question is reasonableness of the insurer’s
10 actions in light of all the facts and circumstances of the case.”).

11 But denial of coverage “without reasonable justification, constitutes bad faith.” *Indus.*
12 *Indem. Co. of the Nw. v. Kallevig*, 114 Wash. 2d 907, 917, 792 P.2d 520, 526 (1990). An insurer
13 denies coverage “without reasonable justification when it denies coverage based upon suspicion
14 and conjecture. In other words, an insurer must make a good faith investigation of the facts
15 before denying coverage and may not deny coverage based on a supposed defense which a
16 reasonable investigation would have proved to be without merit.” *Id.*

17 RCW § 48.30.010(2) empowers the Washington Insurance Commissioner to promulgate
18 regulations defining unfair practices. Violations of these regulations amount to bad faith when
19 the insured can show that the insurer acted in an unreasonable, frivolous, or unfounded way. *See*
20 *Tank*, 105 Wash. 2d at 386, 715 P.2d at 1136 (“[T]he Insurance Commissioner, pursuant to
21 legislative authority under RCW § 48.30.010, has promulgated regulations defining specific acts
22 and practices which constitute a breach of an insurer’s duty of good faith.” (citing WAC 284–
23 30–300 et seq.)); *see also Rizzuti v. Basin Travel Serv. of Othello, Inc.*, 125 Wash. App. 602,
24

1 616, 105 P.3d 1012, 1019 (2005) (applying the “unreasonable, frivolous, or unfounded” standard
2 in analyzing whether the insurer violated the insurance regulations in bad faith).

3 Generally, bad faith is a question of fact for the jury, but a court can resolve the question
4 as a matter of law if reasonable minds could not differ on the issue. *Smith*, 150 Wash. 2d at 484,
5 78 P.3d at 1277. “If the insurer can point to a reasonable basis for its action, this reasonable
6 basis is significant evidence that it did not act in bad faith.” *Id.* at 486, 78 P.3d at 1278.

7 Spurlock says that State Farm acted in bad faith in the way it handled and denied the
8 claim. Dkt. # 53 at 20. He says that State Farm violated five regulations:

- 9 • WAC 284-30-330(1) (“Misrepresenting pertinent facts or insurance policy
10 provisions.”)
- 11 • WAC 284-30-330(4) (“Refusing to pay claims without conducting a reasonable
12 investigation.”)
- 13 • WAC 284-30-330(13) (“Failing to promptly provide a reasonable explanation of
14 the basis in the insurance policy in relation to the facts or applicable law for
15 denial of a claim.”)
- 16 • WAC 284-30-350(1) (“No insurer shall fail to disclose to first party claimants all
17 pertinent benefits, coverages or other provisions of an insurance policy.”).
- 18 • WAC 284-30-380(1) (“The insurer must not deny a claim on the grounds of a
19 specific policy provision, condition, or exclusion unless reference to the specific
20 provision, condition, or exclusion is included in the denial. The denial must be
21 given to the claimant in writing and the claim file of the insurer must contain a
22 copy of the denial.”).

1 *Id.* Spurlock also says that State Farm acted in bad faith under common law standards by (1)
2 failing to investigate, (2) speculating about the cause of the loss, (3) misrepresenting the policy
3 language and concealing the wrongful denial, and (4) interpreting the photos in a light most
4 favorable to the insurer. *Id.* at 21–22. The Court considers each of Spurlock’s bad faith
5 arguments in turn.

6 a. WAC 284-30-330(1) – Misrepresentation

7 Spurlock says that State Farm misrepresented the insurance policy provisions in its
8 coverage denial letter as prohibited by WAC 284-30-330(1). Dkt. # 53 at 20. He says that
9 “State Farm misrepresented the language of Mr. Spurlock [*sic*] policy when it denied him all
10 coverage on April 11, 2022.” *Id.*

11 State Farm counters that Spurlock was “specifically advised in the April 11, 2022, denial
12 letter why coverage was denied.” Dkt. # 61 at 9. While the letter includes a copy of the entire
13 BUSD endorsement, it does not say that coverage was denied because State Farm determined
14 that the sump pump was not located in the dwelling. Dkt. # 54 at 278. The letter denying
15 coverage says: “Based on our investigation, it was determined the damages to your home were
16 due to flood and water that did not enter the dwelling through a sewer or drain or overflowed
17 from within the sump pump. Therefore, endorsement HO-2622.1 coverage was not triggered for
18 this loss.” *Id.* While the letter does not explain why State Farm denied coverage, Spurlock does
19 not point to any misrepresentation in the letter. Viewing the evidence in the light most favorable
20 to State Farm, based on the information presented, the Court cannot conclude as a matter of law
21 that the carrier made a misrepresentation in violation of the regulation. Thus, the Court denies
22 summary judgment on this claim.

1 b. WAC 284-30-330(4) – Investigation

2 Under WAC 284-30-330(4), “Refusing to pay claims without conducting a reasonable
3 investigation” is an unfair trade practice. Spurlock says that State Farm denied the claim
4 “without conducting a reasonable investigation” because it did not determine the cause of the
5 water intrusion in the crawl space. Dkt. # 53 at 20. Spurlock’s insurance coverage expert said
6 that State Farm’s investigation did not meet industry standards because it never “conclusively
7 determined exactly how the water backed up into the crawlspace and the living spaces in the
8 dwelling.” Dkt. # 68 at 60.

9 State Farm responds that its investigation was reasonable because it focused on
10 determining whether there was coverage under the BUSD endorsement. Dkt. # 61 at 10. State
11 Farm interviewed Spurlock, requested information about the location of the sump pump,
12 including pictures, and interviewed the mitigation contractor. *Id.* Based on this, State Farm says
13 that its “investigation was reasonable, timely, adequate in scope, and not based on guesswork or
14 speculation.” *Id.* State Farm does not dispute that it did not take additional steps to conclusively
15 determine the cause of the water intrusion. *See* Dkt. # 73 at 7 (arguing that State Farm need not
16 determine the exact cause). Viewing the foregoing in the light most favorable to State Farm, the
17 Court concludes that there is at least an issue of fact as to whether State Farm’s failure to further
18 investigate the cause of the water intrusion was unreasonable, frivolous, or unfounded.³ Thus,
19 the Court denies summary judgment on the investigation claim.

20
21 ³ Spurlock’s investigation claim appears to rest on shaky logic. The only deficiency that Spurlock
22 identifies in the investigation is that State Farm did not determine the cause of the water intrusion. But
23 both parties agree that the water came from the sump pump and Spurlock does not point to any evidence
24 of another, different cause of the water intrusion. *See Capelouto v. Valley Forge Ins. Co.*, 98 Wash. App.
7, 19, 990 P.2d 414, 420 (1999) (holding that insurer’s decision to deny coverage without further
investigation was not bad faith because the coverage decision would not have been changed through
further investigation). State Farm’s coverage decision turned on its interpretation of the insurance policy,
not a lack of evidence about the incident. Spurlock has failed to put forward any evidence that State Farm
acted unreasonably in its investigation of the claim. *See Smith*, 150 Wash. 2d at 486, 78 P.3d at 1277 (“If

1 c. WAC 284-30-330(13) and WAC 284-30-380(1) – Failure to
2 provide a reasonable explanation for the denial of coverage

3 WAC 284-30-330(13) provides that “[f]ailing to promptly provide a reasonable
4 explanation of the basis in the insurance policy in relation to the facts or applicable law for
5 denial of a claim” is an unfair trade practice. WAC 284-30-380(1) provides that “[t]he insurer
6 must not deny a claim on the grounds of a specific policy provision, condition, or exclusion
7 unless reference to the specific provision, condition, or exclusion is included in the denial.” The
8 denial must be in writing. *Id.*

9 Spurlock says that State Farm “failed to reasonably explain its denial of coverage” and
10 “failed to cite any exclusion that applied to crawlspace damage in its denial letter,” in violation
11 of WAC 284-30-330(13) and WAC 284-30-380(1). Dkt. # 53 at 21. He says, “the denial letter
12 critically failed to address the cause of the water damage” and “State Farm has offered no reason
13 for its failure to address the cause of the loss.” Dkt. # 65 at 8–9. In a deposition, State Farm’s
14 expert admitted that “[i]n the [denial] letter there is no specific language saying how the loss did
15 occur.” Dkt. # 54 at 156.

16 State Farm responds that the letter does contain a reasonable explanation for the denial of
17 coverage because it includes the full BUSD policy language. Dkt. # 61 at 11. Further, in his
18 deposition, Spurlock testified that Mullins, the insurance agent, told him that his claim was
19 denied based on the location of the sump pump. Dkt. # 64 at 8. It is undisputed that the denial
20 letter does not explain State Farm’s reason for denying the claim. Viewing the foregoing in a

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22 the insured claims that the insurer denied coverage unreasonably in bad faith, then the insured must come
23 forward with evidence that the insurer acted unreasonably. The policyholder has the burden of proof.”).

24 But in its motion for summary judgment, State Farm makes a bare bones argument that it did not
act in bad faith because its denial of the insurance claim was reasonable. Dkt. # 57 at 8. Thus, because
State Farm does not challenge Spurlock’s bad faith investigation argument, the Court cannot grant
summary judgment to State Farm on this claim.

1 light most favorable to State Farm, the Court concludes that there is an issue of fact as to whether
2 the carrier's explanations for the denial of coverage rise to the level of unreasonable, frivolous,
3 or unfounded. Thus, the Court denies summary judgment on this claim.

4 d. WAC 284-30-350(1) – Failure to disclose all benefits of the Policy

5 Spurlock says that State Farm failed to disclose “all pertinent benefits, coverages or other
6 provisions of [the] insurance policy” because State Farm did not inform Spurlock that his policy
7 contained an ALE benefit, in violation of WAC 284-30-350(1). Dkt. # 53 at 21. WAC 284-30-
8 350(1) provides that “[n]o insurer shall fail to disclose to first party claimants all pertinent
9 benefits, coverages or other provisions of an insurance policy.” State Farm responds that it did
10 not fail to disclose the ALE benefit because “State Farm was never advised by Spurlock that his
11 home was uninhabitable.” Dkt. # 61 at 12.

12 The record of the case intake in the file shows that a State Farm employee answered “No”
13 to the prompt: “Indicate: Has the caller indicated the named insured's home is uninhabitable or
14 involves a total loss to a detached structure(s), based on the facts of loss or information they
15 provided? If uncertain, ask the caller.” Dkt. # 63 at 9. Nelson, the original claims adjuster on the
16 case, said that she did not “address additional living expense coverage” when she spoke with
17 Spurlock about his claim because he said that his “home was habitable.” Dkt. # 54 at 234. She
18 then said, “I don't recall having a specific conversation about additional living expenses. My
19 question would have been, ‘Is your home habitable? Yes or no?’” *Id.* at 235. But, in his
20 deposition, Spurlock said that he “expressed that the heater didn't work” and “We had record
21 lows that year. I don't know what else to tell them. If the heat's not working, I have no
22 heating.” Dkt. # 64 at 9.

23 The ALE provision of the Policy provides that “[w]hen a loss insured causes the
24 residence premises to become uninhabitable, [State Farm] will pay the reasonable and necessary

1 increase in cost incurred by an insured to maintain their normal standard of living for up to 24
2 months.” Dkt. # 54 at 22. The Policy does not define “uninhabitable.” The question is whether
3 it was unreasonable, frivolous, or unfounded for State Farm to determine that Spurlock’s home
4 was habitable given the circumstances presented. Viewing the evidence in the light most
5 favorable to State Farm, the Court determines that this is a question of fact. Thus, the Court
6 denies summary judgment on this issue.

7 e. Common law violations of good faith

8 Spurlock says that State Farm denied the claim in bad faith under Washington common
9 law in various ways. Dkt. # 53 at 21; *Kallevig*, 114 Wash. 2d at 917, 792 P.2d at 526 (1990)
10 (“An insurer does not have a reasonable basis for denying coverage and, therefore, acts without
11 reasonable justification when it denies coverage based upon suspicion and conjecture. In other
12 words, an insurer must make a good faith investigation of the facts before denying coverage and
13 may not deny coverage based on a supposed defense which a reasonable investigation would
14 have proved to be without merit.”).

15 Spurlock says that State Farm failed to investigate and denied the claim “based upon
16 suspicion and conjecture” because it did not determine the cause of the loss and the adjuster
17 speculated that the loss was caused by rainwater accumulating under the house. Dkt. # 53 at 22–
18 23. For the reasons outlined above in Section III.B.2.b. and c, the Court denies summary
19 judgment on these bases.

20 Spurlock also says that State Farm acted in bad faith by “misrepresenting the policy
21 language and concealing its wrongful denial.” *Id.* at 22. For the reasons outlined above in
22 Section III.B.2.a., the Court denies summary judgment on this basis.

23 Finally, Spurlock says that State Farm acted in bad faith because it interpreted the
24 photographs of the sump pump in a light most favorable to State Farm. *Id.* Essentially, Spurlock

1 says that State Farm put its own interests before Spurlock’s in its assessment that the sump pump
2 was not located within the dwelling. *See Anderson*, 101 Wash. App. at 329–30, 2 P.3d at 1033
3 (“An insurer acts in bad faith when it overemphasizes its own interests.”). Whether State Farm’s
4 assessment of the photographs was an unreasonable, frivolous, or unfounded presents a question
5 of fact. Thus, the Court denies summary judgment on this issue.

6 3. CPA

7 To prevail on a CPA claim, the moving party must show: “(1) [an] unfair or deceptive act
8 or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff
9 in his or her business or property, [and] (5) causation.” *Hangman Ridge Training Stables, Inc. v.*
10 *Safeco Title Ins. Co.*, 105 Wash. 2d 778, 719 P.2d 531, 533 (1986). Violations of Washington’s
11 insurance regulations promulgated under RCW 48.30.010, including WAC 284–30–330, WAC
12 284–30–350, and WAC 284-30-380, are “per se unfair trade practice[s]” under the CPA.
13 *Anderson*, 101 Wash. App. at 332, 2 P.3d at 1035; *see also Kallevig*, 114 Wash. 2d at 921, 792
14 P.2d at 529 (“A violation of WAC 284–30–330 constitutes . . . a per se unfair trade practice.”).
15 In addition, a “breach of an insurer’s duty of good faith constitutes a per se CPA violation.”
16 *Tank*, 105 Wash. 2d at 394, 715 P.2d at 1140.

17 Spurlock says that State Farm’s alleged bad faith outlined in Section III.B.2 also breaches
18 the CPA. Because Spurlock’s bad faith claims present issues of material fact, the Court denies
19 summary judgment on Spurlock’s CPA claim.

20 4. IFCA

21 Under the IFCA, “[a]ny first party claimant to a policy of insurance who is unreasonably
22 denied a claim for coverage or payment of benefits by an insurer may bring an action in the
23 superior court of this state to recover the actual damages sustained, together with the costs of the
24 action, including reasonable attorneys’ fees and litigation costs.” RCW § 48.30.015(1). To

1 succeed on an IFCA claim, the insured must show that the insurer *unreasonably* denied a claim
2 or benefit of the insurance contract. *Perez-Crisantos v. State Farm Fire & Cas. Co.*, 187 Wash.
3 2d 669, 680, 389 P.3d 476, 413 (2017). A denial is not unreasonable simply because the Court
4 determines that the insurer’s interpretation of a contract was incorrect. *See Wright v. Safeco Ins.*
5 *Co. of Am.*, 124 Wash. App. 263, 279, 109 P.3d 1, 10 (2004) (“The test for bad faith denial of
6 coverage is not whether the insurer’s interpretation is correct, but whether the insurer’s conduct
7 was reasonable.”); *Beasley v. GEICO Gen. Ins. Co.*, 23 Wash. App. 2d 641, 668, 517 P.3d 500,
8 517 (2022) (noting that there is overlap between IFCA and bad faith claims); *see also Merrill v.*
9 *Crown Life Ins. Co.*, 22 F. Supp. 3d 1137, 1148 (E.D. Wash. 2014) (denying summary judgment
10 for the IFCA claim even though the court determined that the insurer breached the unambiguous
11 terms of the contract because whether the denial was unreasonable was a question of fact).

12 Spurlock says that there is no genuine dispute of fact that State Farm unreasonably denied
13 coverage. Dkt. # 53 at 24. State Farm says that its denial of coverage was “based on a
14 reasonable interpretation of the Policy.” Dkt. # 61 at 8. Dkt. # 59 at 15.

15 Although the Court has determined that Spurlock’s claim is covered under the Policy,
16 State Farm has shown that reasonable minds could differ as to whether its denial of coverage was
17 unreasonable under the circumstances. *See* Dkt. # 59 at 15 (Spurlock’s insurance coverage
18 expert noting that State Farm’s denial of coverage “could be a reasonable construction of the
19 policy”). Viewing the facts in the light most favorable to State Farm, whether State Farm acted
20 reasonably in denying the claim presents a question of fact for the jury. Thus, the Court denies
21 summary judgment as to the IFCA claim.

1 5. Affirmative defenses

2 In its answer, State Farm raises 22 affirmative defenses. Dkt. # 7 at 9–10. Spurlock
3 moves for summary judgment on these.⁴ Dkt. # 53 at 25. He says that State Farm has failed to
4 sufficiently support the essential elements of its affirmative defenses. *Id.* at 25–26. In its
5 response, State Farm withdraws affirmative defenses 1–4, 9, 18–22. Dkt. # 61 at 13. State
6 Farm’s remaining affirmative defenses are: (5) “Failure to mitigate damages;” (6) “Contributory
7 negligence;” (7) “Plaintiff’s damages, in whole or in part, may have been caused by his own acts
8 and omissions or his failure to comply with the Policy’s terms;” (8) “Assumption of risk;” (10)
9 “Plaintiff’s damages, in whole or in part, may have resulted from pre-existing or intervening
10 conditions or events, and any recovery should be reduced accordingly;” (11) “Fraud;” (12)
11 “Misrepresentation;” (13) “To the extent that plaintiff has intentionally concealed or
12 misrepresented any material fact or circumstance relating to the subject Water Loss, the Policy is
13 void and plaintiff is not entitled to recover any damages;” (14) “Illegality;” (15) “Plaintiff’s
14 subject Water Loss, in whole or in part, is not a covered peril under the Policy;” (16) “Plaintiffs’
15 coverage under the Policy excludes diminution of value of the subject Property unrelated to the
16 Water Loss and any award should be reduced accordingly;” and (17) “Payment.” Dkt. # 57 at
17 10–11. The Court considers each of State Farm’s arguments in turn.

18 a. Failure to mitigate damages and related defenses

19 State Farm says that affirmative defenses (5), (6), (7), (8), and (10) all present questions
20 of fact. In his deposition, Spurlock testified that he has not taken any other steps to repair the
21

22 ⁴ Although Spurlock says that it moves to strike State Farm’s affirmative defenses, he cites the
23 summary judgment standard, and the motion does not meet the timing requirements for a motion to strike
24 under Rule 12(f). *See Kohler v. Islands Restaurants, LP*, 280 F.R.D. 560, 565 (S.D. Cal. 2012) (noting
that a motion to strike must be brought within 21 days of the defendant filing its answer). Thus, the Court
construes this motion as a motion for summary judgment on the affirmative defenses.

1 damage to his home after the water intrusion in March 2022. Dkt. # 59 at 23. He testified that
2 his house “sits exactly the same way it did when [State Farm] denied the claim. Nothing’s been
3 done since.” *Id.* State Farm says that this “evidence goes directly to State Farm’s affirmative
4 defenses concerning Spurlock’s failure to properly care for his residence in the wake of the water
5 damage in 2022.” Dkt. # 61 at 16. Spurlock testified that he did not conduct additional work or
6 get an estimate on the cost to fix the water damage because contractors would charge him to
7 assess the damage, and he could not afford to pay the amount. Dkt. # 64 at 12. This evidence,
8 viewed in a light most favorable to State Farm, demonstrates material questions of fact as to
9 whether Spurlock failed to mitigate his damages by repairing the water damage. The evidence
10 also shows that there are a material questions of fact as to whether Spurlock’s failure to repair
11 the water damage shows that: Spurlock was contributorily negligent for any damages; Spurlock’s
12 “acts and omissions or his failure to comply with the Policy’s terms” caused the damages; that
13 Spurlock assumed the risk by not addressing the water damages in his home, and that Spurlock’s
14 damages resulted in part from “intervening conditions or events.” Thus, the Court denies
15 Spurlock’s motion for summary judgment as to affirmative defenses (5), (6), (7), (8), and (10).

16 b. Misrepresentation and related defenses

17 State Farm says that affirmative defenses (11), (12), (13), and (14) all present questions
18 of fact as to whether Spurlock misrepresented to State Farm that his sump pump was located
19 within his dwelling. Dkt. # 61 at 17. As the Court discussed above, because the sump pump was
20 located within the dwelling, as defined in the Policy, Spurlock did not misrepresent the location
21 of the sump pump. Thus, the Court grants Spurlock’s motion for summary judgment on State
22 Farm’s affirmative defenses (11), (12), (13), and (14).

1 c. Covered peril

2 State Farm says that, because Spurlock's claim was not covered by the Policy, the Court
3 should deny Spurlock's affirmative defense (15), which states, "Plaintiff's subject Water Loss, in
4 whole or in part, is not a covered peril under the Policy." But because the Court determines that
5 Spurlock's claim was covered by the Policy, the Court grants Spurlock's motion for summary
6 judgment on affirmative defense (15).

7 d. Diminution in value

8 State Farm says that there are questions of fact as to the amount of damages, thus
9 summary judgment as to State Farm's affirmative defense (16) on diminution of value is not
10 proper. The Policy provides that the "loss does not include and [State Farm] will not pay for,
11 any *diminution in value*." Dkt. # 54 at 32 (emphasis in original). State Farm says that Spurlock
12 seeks "numerous damages, including, but not limited to 'compensatory damages' and 'economic
13 and non-economic damages.'" Dkt. # 61 at 18. And Spurlock has asked that the question of
14 damages be reserved for the jury. Because diminution of value goes to the question of damages,
15 the Court denies the motion as to this affirmative defense.

16 e. Payment

17 State Farm says that its affirmative defense that it made payments to Spurlock, (17),
18 presents material issues of fact. *Id.* at 19. The Court agrees; State Farm has presented evidence
19 that it paid Spurlock \$ 2,957.85 for mitigation work. Dkt. # 54 at 284. Moreover, this
20 affirmative defense goes to the damages issue, which Spurlock has requested be reserved for
21 trial. Thus, the Court denies Spurlock's motion as to this defense.

22 C. State Farm's Motion for Summary Judgment

23 State Farm says that, as a matter of law, it did not breach the insurance contract.
24 Dkt. # 57 at 1. State Farm also says that the Court should dismiss the breach of contract, bad

1 faith, CPA, and IFCA claims because State Farm did not unreasonably deny coverage. Dkt. # 57
2 at 1.

3 1. Breach of contract

4 State Farm says that there is no breach of contract because it correctly determined that the
5 claim was not covered. *Id.* at 9. It says that “Spurlock does not expressly cite to a provision of
6 the Policy that it alleges State Farm breached.” *Id.* But Spurlock points to the BUSD
7 endorsement. Dkt. # 69 at 12. He says that “[t]here can be no material dispute that Mr.
8 Spurlock’s sump pump and the sump pump well that it sat inside were both located inside the
9 walls of his home’s foundation, and therefore squarely covered under State Farm’s policy
10 language requiring it to be ‘located inside the interior of the *dwelling* designed to remove
11 subsurface water drained from the foundation area.’” *Id.* (emphasis in original).

12 As discussed *supra* Section III.B.1, the Court agrees. State Farm breached the insurance
13 contract by denying coverage based on the location of the sump pump. Under the BUSD
14 endorsement, the sump pump is located within the sump pump well, which is included in the
15 definition of dwelling in the Policy. Thus, the Court denies State Farm’s motion for summary
16 judgment on this issue.

17 2. Bad faith, CPA, and IFCA

18 State Farm moves for summary judgment on Spurlock’s bad faith, CPA, and IFCA
19 claims because it says that its denial of coverage and interpretation of the insurance policy was
20 reasonable. Dkt. # 57 at 7.⁵ State Farm says that it originally granted coverage because it
21 believed that the sump pump was located within the crawl space, and when it learned that the

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23 ⁵ State Farm’s motion does not address any of Spurlock’s bad faith arguments in detail beyond a
24 generalized argument that State Farm did not unreasonably deny coverage. Dkt. # 57 at 6–7. And State
Farm discusses bad faith and IFCA together. *Id.* Thus, the Court considers only whether there is a
material question of fact about whether State Farm unreasonably denied coverage.


1 sump pump was in the “buck-out,” or sump pump well, the adjuster reasonably requested photos
2 and talked to the mitigation contractor to understand where the sump pump was located.
3 Dkt. # 61 at 5. State Farm also points to the depositions of Spurlock’s coverage expert, Damian
4 Arguello, who said State Farm’s interpretation of the policy “could” be reasonable. Dkt. # 54 at
5 156. Considering this evidence and the evidence discussed above regarding these claims as
6 raised in Spurlock’s motion for summary judgment, all in the light most favorable to Spurlock,
7 the Court concludes that there is a dispute of material fact as to whether State Farm’s denial of
8 coverage was unreasonable. The Court denies State Farm’s motion for summary judgment as to
9 the bad faith, CPA, and IFCA claims.

10 **IV**

11 **CONCLUSION**

12 For the above reasons, the Court GRANTS Spurlock’s motion for summary judgment as
13 to his breach of contract claim and affirmative defenses (11), (12), (13), (14), and (15). The
14 Court DENIES Spurlock’s motion as to his bad faith, CPA, IFCA, and remaining affirmative
15 defenses. The Court DENIES State Farm’s motion summary judgment.

16 Dated this 6th day of December, 2024.

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19 John H. Chun
20 United States District Judge
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