Draft for Discussion and Comment:

Consumer, Money, and Debt Law

Proposed New Practice Area for Limited License Legal Technicians

Summary
The Limited License Legal Technician (LLLT) Board invites comment on a proposed new practice area: Consumer, Money, and Debt Law. This new practice area is designed to provide economic protection for the public and to provide legal assistance for certain financial matters, with a focus on consumer debt issues and other problems which contribute to consumer credit problems. For example, LLLTs licensed in this practice area would be able to assist clients with issues related to legal financial obligations, debt collection and garnishment defense, identity theft, preparing for small claims court, and filing protection orders.

Introduction
The practice area was developed by a New Practice Area Committee of the LLLT Board in a workgroup chaired by LLLT Board member Nancy Ivarinen. The workgroup is requesting input from other interested parties prior to formalizing the request to the Supreme Court.

While researching new practice areas for LLLTs, the workgroup considered:

- whether the new practice area would increase access to justice for potential clients with moderate or low incomes;
- whether there is a demonstrable unmet legal need in that area;
- whether it's possible to include consumer/client protection for those who use LLLTs;
- whether the new area would provide a viable practice so LLLTs can afford to maintain a business;
- whether the substantive practice area classes can be developed and taught by the law schools in a three-class series, one per quarter, for five credits each; and
- whether there are experts available to help develop the curriculum and teach the classes.

In order to appropriately vet the potential new practice areas, the workgroup considered:

- statistics and reports discussing the legal need;
- comments by invited subject matter experts who explained what the practice areas entail;
- comments by these experts on what the LLLT could potentially do;
- committee discussion about the LLLT being properly trained in a limited scope within the practice area; and
- whether the practice area could be regulated appropriately so that the needs of the clients would be met, while also assuring that the clients would be protected.

The Better Business Bureau (BBB), the Attorney General's Consumer Protection Division, the Federal Trade Commission, and some organizations funded by United Way offer services related to consumer debt, such as debt management, debt renegotiation; and changing the behavior of businesses that prey upon low and moderate income consumers.

These services have been in existence for decades, and yet the demonstrated need in the Civil Legal Needs Study clearly shows that consumers with debt related legal issues are unaware of these services, do not believe these organizations can or will help them, have not been helped when using these services, or have needs that exceed the scope of the services these organizations can provide.

The proposed practice area is intended to help meet these significant unmet legal needs while giving LLLTs additional practice area options for expanding their businesses.

Evidence of Unmet Need

The starting point of the workgroup's analysis was identifying the unmet need that could be addressed by LLLTs licensed in a consumer law practice area. The workgroup found convincing evidence supporting the existing legal need for consumer law assistance in studies conducted at both the state and national levels. The workgroup also looked at statistics received from county-based volunteer legal services providers and the statewide Moderate Means Program, which demonstrated a consistent legal need in the consumer law area among low and moderate income people.

Statistics from State and Federal Studies

- The 2003 (Statewide 0-400% of Federal Poverty Level) and 2015 (Statewide, 0-200% of Federal Poverty Level) Civil Legal Needs Studies identified Consumer, Financial Services, and Credit among the three most prevalent problems that people experience and seek legal help to address. There was an increase in legal need in this area from 27% to 37.6% between 2003 and 2014.
- The Legal Services Corporation June 2017 Report: The Justice Gap (National, 0-125% of Federal Poverty Level) identified consumer issues as the second highest problem area for people at this income level.

Moderate Means Program Data

- The WSBA Moderate Means Program (Statewide, 200-400% of Federal Poverty Level) identified consumer issues as the second highest problem area. In addition, data provided by the program showed that consumer law represented 10% of the 2,321 requests for service from October 26, 2016 to October 27, 2017. Of the 233 consumer law requests, 74 related to bankruptcy or debtor relief and 71 were in collections, repossession, and garnishment.
- Data from the Moderate Means Program on requests for service from January 1, 2015 through May 1, 2017, show 523 of 3,062 requests for service in consumer law matters, about 17% of the total requests over that 28 month period.

Statistics from Volunteer Legal Service Providers

- The King County Bar Association's Neighborhood Legal Clinics 2016 data showed that 15% (1,298 of 8,259) of legal issues addressed at the clinic were consumer law related.
- From 2012-2017 the King County based Northwest Consumer Law Center received 2,499 requests for service, all directly related to consumer law needs.
- Over the last three years, the Tacoma-Pierce County Bar Association Volunteer Legal Services had an average of 160 clients per year visit their Bankruptcy Clinic and an average of about 43 clients per year attend the Foreclosure – Home Justice Clinic.

How LLLTs Can Meet the Legal Need

When reviewing the Civil Legal Needs Studies, the workgroup noted that it was unclear whether or not legal assistance would materially address the consumer law problems the subjects were reporting, and if so, whether that assistance could be provided through some method other than direct representation exclusively by a lawyer.

The workgroup discussed many examples of consumer legal problems that may not have a legal remedy, such as a debt collection lawsuit where the money is owed. While discussing each example, the workgroup saw advantages to providing the consumer with legal advice, even if there did not appear to be a legal resolution to the issue. For example, in a debt collection lawsuit, the statute of limitations on collection of the debt may have passed, so the debtor may not be obligated to pay even though the debt is owed. For those debtors who do have defenses or where collection agencies are attempting to collect a legitimate debt in an unfair or illegal manner, a LLLT could be a valuable consumer protection tool. Even for consumers who have no defense to a lawfully pursued debt collection lawsuit, having the assistance of a LLLT throughout the process of responding to a lawsuit would speed judicial efficiency, as the defendant would understand the procedures and be able to respond in an appropriate and strategic way.

The extensive collection of self-help resources offered on washingtonlawhelp.org regarding consumer debt confirms that many consumers already face this issue pro se, and would undoubtedly benefit from consulting with an affordable provider of legal services in this area.

The workgroup enlisted the advice of practitioners and other experts in the various areas of law to identify the legal work which could be effectively performed by LLLTs and provide an economically sustainable practice area. The workgroup identified that Consumer, Money and Debt Law LLLTs should be able to:

- offer advice regarding all identified topics
- fill out certain forms
- engage in limited negotiation in regard to particular issues
- attend specific hearings to advise the client and assist in answering procedural questions

- attend depositions
- prepare paperwork for mediation, and
- attend any administrative proceeding related to the practice area.

The workgroup carefully weighed the pros and cons of each of the above actions and determined that allowing this range of actions would greatly increase the quality of service that LLLTs could provide to their clients.

Target Clients and Scope

The target clients of this practice area are moderate and low income people with consumer debt or credit problems, or those to whom a small amount of debt is owed. The workgroup narrowly prescribed the focus of the recommended scope in order to provide a maximum benefit to these clients. The workgroup also identified limitations designed to ensure that LLLTs will provide service to consumers who currently do not have resources in this area.

The *2015 Civil Legal Needs Study* noted that the average number of legal problems per household has increased from 3.3 in 2003 to 9.3 in 2014. In addition, the legal problems that low-income people experience are interconnected in complex ways. Consumer debt, for example, can be exacerbated by landlord/tenant issues, divorce, identity theft, lack of access to benefits, problems with an employer, lack of exposure to options such as bankruptcy, and domestic violence and other protection orders.

The workgroup thought holistically about this range of issues which often go hand in hand with consumer debt and credit problems and identified a range of actions which could appropriately be performed by a LLLT in the areas of protection orders, bankruptcy education, wage theft, and identity theft. Including these areas as part of the consumer law relief a LLLT will be able to provide will allow LLLTs to proactively help their clients to break the cycle of debt creation.

Proposed Consumer, Money, and Debt Law LLLT Practice Area

Scope	Proposed Permitted Actions & Proposed Limitations
Legal Financial Obligations (LFOs)	***Proposed Permitted Actions:*** Assistance filling out forms (e.g., Motion for Order Waiving or Reducing Interest on LFO, Order to Waive or Reduce Interest on LFO)
Small Claims	***Proposed Permitted Actions:*** Assistance preparing the Notice of Small Claim, Certificate of Service, Response to Small Claim, Small Claims Orders, Small Claims Judgment, and counterclaims Preparation for mediation and trial Obtaining and organizing exhibits

Commented [JP1]: Workgroup supportive of LLLTs working within the area of Legal Financial Obligations (LFOs).

Commented [JP2]: Concerns raised regarding LLLTs crossing into being considered a debt collector. Also, this area is highly regulated and some SMEs had concerns LLLTs would not be able to comply with all regulations.

Student Loans	***Proposed Permitted Actions:*** Negotiation of debt or payment plans Modifications, loan forgiveness and debt relief Discharge

Debt Collection Defense and Assistance	***Proposed Permitted Actions:*** Negotiation of debt Assistance filling out Complaints, Answers and Counterclaims Affirmative Defenses including Statute of Limitations defenses Reporting Fair Debt Collection Act violations, including statute of limitations and state collection agency statute violations Reporting to Regulatory Agencies ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court ($100,000)

Garnishment	***Proposed Permitted Actions:*** Negotiation Voluntary Wage Assignments Assistance filling out forms (Application for Writ of Garnishment, Continuing Lien on Earnings, Return of Service, Notice Exemption Claim, Release of Writ of Garnishment, Motion and Cert. for Default Answer to Writ of Garnishment, Application for Judgment, Motion/Order Discharging Garnishee, Satisfaction of Judgment) Exemption Claims, including assistance at court hearings ***Proposed Limitations:*** LLLTs can assist only with debts valued at less than the jurisdictional limits set by the District Court (usually $100,000) LLLTs may render legal services for debt collection only when there is a direct relationship with the original creditor and may not act as or render legal services for collection agencies or debt buyers as defined under RCW 19.16. No prejudgment attachments No executions on judgments

Commented [JP3]: Workgroup has determined to limit this area to federal loans only.

Commented [JP4]: Within the workgroup some SMEs expressed opposition to LLLTs negotiating settlements and raised concerns about LLLTs falling under the debt adjustor act.

Commented [JP5]: The workgroup has determined this would be helpful to LLLTs who are currently practicing within family law. A few SMEs have raised concerns about complexity of regulations in this area and do not support LLLTs completing garnishments.

Identity Theft	***Proposed Permitted Actions:*** Advise regarding identity theft Best practices for protecting information Contacting credit bureaus Reporting to law enforcement and other agencies such as Federal Trade Commission
Wage complaints and Defenses	***Proposed Permitted Actions*:** Representation in negotiations or hearings with Labor and Industries Accompany and assist in court Advice and reporting regarding Minimum Wage Act Advice and reporting regarding Fair Labor Standards Act Actions permitted under RCW 49.48 (Wages-Payment-Collection) Actions permitted under RCW 49.52 (Wages-Deductions-Contributions-Rebates) ***Proposed Limitations**:* LLLTs may not represent clients in wage claims which exceed the jurisdictional limit set by the District Court ($100,000)

~~Loan Modification & Foreclosure Defense and Assistance~~	~~***Proposed Permitted Actions:***~~ ~~Accompany and advise in mandatory mediation process~~ ~~Assist with non-judicial foreclosure actions and defenses under RCW 61.24.040~~ ~~Advise regarding power of sale clauses and the Notice of Sale Right of Redemption~~ ~~***Proposed Limitations:***~~ ~~LLLTs would be prohibited from assisting with non-judicial foreclosures if the LLLT does not meet the requirements of RCW 61.24.010.~~ ~~No judicial foreclosures~~
Protection Orders	***Proposed Actions:*** Selecting and completing pleadings for Protection Orders for domestic violence, stalking, sexual assault, extreme risk, adult protection, harassment, and no contact orders in criminal cases
Bankruptcy Awareness and Advice	***Proposed Actions:*** Explain the options, alternatives, and procedures as well as advantages and disadvantages Refer to budget & counseling agency Refer to bankruptcy attorney ***Proposed Limitation:*** No assistance with bankruptcy filing in court

Commented [JP6]: The workgroup is supportive LLLTs practicing within the area of Identity Theft.

Commented [JP7]: The workgroup has determined the need to limit this area to L&I claims.

Commented [JP8]: The workgroup decided to remove this area from the proposed scope.

Commented [JP9]: The workgroup supports LLLTs practicing within the area of protection orders.

Commented [JP10]: The workgroup is supportive of this area with the requirement that LLLTs do not provide bankruptcy advice and refer clients to a bankruptcy attorney.

The LLLT Board will coordinate with the Washington law schools in the development of the

practice area curriculum and ensure that appropriate faculty is available to teach the curriculum. The LLLT Board may modify the proposed practice area based on:

1. consideration of public comments;
2. issues discovered during the drafting of new practice area regulations; and
3. issues that arise during the law schools' development of the practice area curriculum.

Please provide comments to the LLLT Board via email to LLLT@wsba.org by July 16, 2018.

MICHAEL HEATHERLY ◆ ATTORNEY

P.O. Box 937
Bellingham, WA 98227

September 7, 2018

Supreme Court of the State of Washington
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Transmitted via email

Re: Comment on Proposal Regarding Addition of Practice Area for Limited License Legal Technicians

Dear Justices of the Washington Supreme Court:

I am writing to support the addition of Consumer, Money & Debt as the next practice area available in the Limited License Legal Technician program. I am commenting in my personal capacity, not as a representative of my employer, LAW Advocates, the volunteer lawyer program for Whatcom County. However, my opinion is informed by my three years of experience as full-time executive director of that organization as well as my prior 24 years as a private practice civil lawyer in this community.

I am surprised to hear comments that sufficient resources already exist to assist individuals with legal difficulties involving finances. That is certainly not the case in our community. Although our county's population now exceeds 200,000, we have perhaps a half-dozen private attorneys in the county who handle consumer debt cases. And those practitioners' practices are geared mostly toward bankruptcy filings, where assets usually exist to support an attorney fee. Obviously, it is economically unfeasible for attorneys to take cases where clients have so few assets that attorney fees are out of the question. This leaves most of this work to someone other than experienced creditor/debtor attorneys.

A few for-profit and nonprofit organizations provide various levels of education and general advice on debt and credit issues, but they do not provide legal representation. Ours is the only organization in our county that provides that service. (Northwest Justice Project has an office in Bellingham, but it does virtually no creditor/debtor work other than occasionally as a supplemental service to an existing client.) But while we accept consumer debt cases, all we are able to do in most instances is refer the clients to one particular attorney who has agreed to take a limited number of such cases pro bono. We have been unable to find an attorney to provide a more comprehensive debt clinic as we have done at times in the past. Also, the cases we take must meet our financial qualifications, which restrict our services to those whose income is less than 200 percent of the federal poverty guideline. Individuals with income above that—who often are still low-income by any reasonable definition--have nowhere to turn for legal assistance. Sadly, if we see those individuals again it is usually after they have become entirely indigent and show up in our Homeless Disability or Street Law programs.

We have only one licensed LLLT in our community. Fortunately, she has provided considerable volunteer work for us. She regularly serves at our Street Law clinic, where she is able to answer family law questions within the authority of her license. She sometimes supplements the work of a family law attorney at the clinic and other times is the only family law specialist available. As our community also faces a dramatic shortage of family law attorneys, having a LLLT available in that legal field is extremely valuable for our

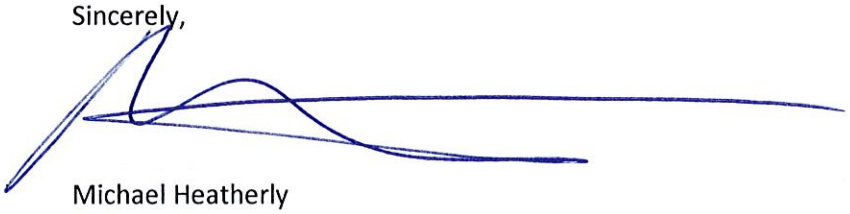
◆ Phone: (360) 671-6079 Ext. 24 ◆ northwestdrg@mhpro57.com

organization. A LLLT who was licensed to do similar work in the Consumer, Money & Debt field would be a godsend.

Even before I became executive director of a legal aid organization I believed that innovations such as the LLLT program were essential in providing legal assistance to the vast number of individuals who cannot afford to hire a lawyer in the conventional fashion. I am even more convinced of that from what I see every day at LAW Advocates, where we serve over 1,000 clients per year but are unable to help many times more who need it. We constantly field questions from elderly people struggling with medical debt, young families with exorbitant credit card balances because of home or auto repair, and recent college graduates unable to keep up with student loans. Consumer, Money & Debt is one of the highest areas of demand for services and one of the areas with the lowest supply of attorneys. That is undoubtedly true in our county and I suspect it is true statewide, especially in more rural areas that have even fewer attorneys and other social services available.

I enthusiastically encourage the court to approve Consumer, Money & Debt as the next practice area for the LLLT program.

Sincerely,



Michael Heatherly
WSBA #20803

From: Cameron Fleury
To: Christy Carpenter; Limited License Legal Technician
Subject: Re: Do not expand (or keep) the LLLT program
Date: Sunday, November 18, 2018 12:28:46 PM

Dear Ms. Carpenter and LLLT expansion Board,

Following up on my thoughts, below, I would add that another consideration that people are missing is the ***type*** of education lawyers get. Law school does not provide the nuts-and-bolts education that LLLTs are getting. Instead, the classes are run as Socratic dialogues using appellate opinions as the topic matter. That's a wholly different kind of education. As we are told repeatedly, it teaches us how to "think like a lawyer." What does that mean? It means we spend 3 years studying lots and lots of edge cases and complex cases, where the answers aren't obvious. It means we are trained in applying principles to fact patterns to create arguments. It means we learn how small changes in the facts can cause complete reversals in the outcome. And because even small details are critical, it teaches us to ask our clients the hard questions, as well as the seemingly trivial questions, to probe the weak spots of the client's case. The research never stops because our cases have tremendous scope (real property, tax, estate planning, debtor/creditor, corporations, criminal, etc. etc.), which is a point missed by virtually everyone who doesn't practice family law. The best metaphor from the medical field is the practice of separating conjoined twins; it's messy, enormously complex and highly emotional. While it takes new attorneys some time to learn the nuts-and-bolts of family law practice, they have the skillset to incorporate that knowledge into, whereas the LLLT's cannot incorporate the "thinking like a lawyer" into their programs.

I will be the first to admit, there are paralegals out there with the knowledge and experience to do a fine job as a Family Law attorney. That is what APR 6 and 9 are for.

I also believe the Court Facilitator programs are wonderful and that would be an appropriate use for LLLT's.

Regards,
Cameron

From: DRAWboard@groups.io [mailto:DRAWboard@groups.io] **On Behalf Of** Cameron Fleury
Sent: Friday, November 16, 2018 11:21 AM
To: Christy Carpenter <christy@mylllt.com>
Subject: Re: [DRAWboard] Do not expand (or keep) the LLLT program

Dear Ms. Carpenter,

I appreciate your thoughtful email regarding the LLLT issue. I am very happy to hear your experience is that of assisting low income parties. Unfortunately, not only was the income level restriction removed altogether, but the actual practice seems to reflect that your situation is not common among the LLLT's. In fact, just recently there was a matter on the Temporary Order calendar in King County where a LLLT was requesting an award of $5,000 for temporary fees, so I am certain your

experience is not that of all LLLT's. To let you know I am not some "rich snobby lawyer", I was awarded the Pierce County Pro Bono attorney of the year award in 2007 for my work with low income parties and setting up processes in the PCSC to assist Pro Se parties in the divorce process. My experience is that, as a group, family law attorneys (who are overall paid much less than other practice areas) are very generous of their time to assist parties with low bono and pro bono work.

Regarding education and testing, etc., it seems to me that having a lower requirement for education and certification to be able to represent any group of individuals must be saying one of two things, either: 1) the requirements in place are too stringent for all and should be lowered, or 2) low income individuals are less deserving of the same protections as higher income parties. Neither of which I believe to be appropriate.

Regarding the current status of the APR's, the RPC's and the LLLT program as a whole, as you have certainly seen recently, the Membership of the Bar have begun to become aware of these issues and have been working to elect representatives to the BOG to address these concerns (and others). In fact, because of the vast divide between those who chose to create the LLLT program (and other issues affecting attorneys) and those who want the BOG to be representative of the constituents, the entire structure of the WSBA is being reviewed and is likely to become bifurcated so that licensing and discipline are separate from other functions. In other words, where the Bar leadership has brought the situation over the last 7 years, or so, is to the brink of destruction of the WSBA as we know it.

Regards,
Cameron

From: Christy Carpenter [mailto:christy@mylllt.com]
Sent: Wednesday, November 14, 2018 7:05 AM
To: Cameron Fleury <CJF@mcgavick.com>
Subject: Re: Do not expand (or keep) the LLLT program

Dear Mr. Fleury,

I am a member of the WSBA Limited License Legal Technician Board and its New Practice Area Workgroup. Thank you for taking the time to submit your comment to the Board regarding the new practice area that we are currently studying: Consumer, Money, and Debt.

The LLLT Board is mandated by the Washington Supreme Court under APR 28 to continue to recommend practice areas for LLLTs. The workgroup is currently reviewing all comments and considering input from lawyers and other legal service providers regarding the particular consumer, money, and debt issues that we are considering recommending to the Supreme Court that LLLTs may handle in a limited capacity. The workgroup may modify the proposed permitted actions and limitations based on the comments and input submitted.

If you are interested in participating in the workgroup meetings during the remainder of this year, they will be held on Monday, November 19 and Monday, December 10 from 10 a.m. to noon. Please see the LLLT Board page for more information.

As a legal technician who has been practicing for more than one year, I would like to speak to your comment that legal technicians are "not assisting the target market (low income persons with access to justice issues)." In reviewing the clients who have retained me to assist them with their family law matters, I note that more than half have incomes below 200% of the poverty level, and many others are just above that. I charge only flat fees, such as $900 for a divorce with children, and $700 for a child support modification. In my 20+ years' experience as a paralegal, these are fees that are well below what an attorney would charge for the same work for a pro se client (drafting the required pleadings, giving legal advice, and assisting with procedural matters). Many of my clients came to me after being turned away from one or more attorneys for whom they could not afford to pay an advance fee deposit. I realize that this is anecdotal information, but in speaking with my fellow legal technicians, I am comfortable making the general statement that the majority of our clients are "low income" and have "access to justice issues."

As to you concern about the "potential harm to the public with allowing under-trained LLLT's into the area" of creditor-debtor law, please be assured that if this practice area were to be recommended to and approved by the Supreme Court of Washington, any legal technician wishing to practice in this area would be required to successfully complete three quarters of practice-specific coursework through the University of Washington School of Law, as well as pass a practice-specific Bar exam as to the same. It's also important to note that it is highly likely that many LLLT-candidates for this potential practice area could include paralegals who already have years of experience doing this type of work.

As LLLTs, we too have "paid our dues in schooling, testing, CLE requirements and disciplinary supervision if/when needed." LLLTs are required to successfully complete one year of core education in paralegal studies as well as the practice-specific education at the Law School. Many of us also hold bachelor's degrees. We must pass a rigorous LLLT bar exam with both practice-specific and professional responsibility components. And, as a requirement of our licensure, we are subject to a background check and a review of character and fitness, just as attorneys are. Finally, we are required to complete continuing legal education and are subject to similar disciplinary actions as attorneys.

I hope that I have been able to successfully address some of your concerns. Please feel free to contact me if you would like to discuss the LLLT profession or the work of the LLLT Board. I am honored to be a pioneer member of this group of legal professionals and I am happy to chat about it.

Sincerely,

Christy Carpenter
Limited License Legal Technician

myLLLT.com
A Legal Technician Firm

2367 Tacoma Ave S, Tacoma, WA 98402
(253) 457-0967

christy@myLLLT.com
www.myLLLT.com

From: Cameron Fleury <CJF@mcgavick.com>
Sent: Tuesday, May 15, 2018 4:34 PM
To: Limited License Legal Technician
Subject: Do not expand (or keep) the LLLT program

To Whom it May Concern:

Thank you for requesting input from Members.

First, by way of full disclosure, let me say that I am opposed to the entire LLLT program. While it may have been well-intentioned to start, the reality is that the LLLT's are not providing a stop-gap for low income persons to avoid being Pro Se. They are competing directly with, and at the same rates, as attorneys and we are being forced to subsidize them with our Dues. The entire program was "sold" as providing low income assistance, which was almost immediately dropped. Then it was "sold" as being a test that once substantial data had been collected and analyzed, if the program was a "success" then it would be considered to be expanded. The truth is that there has not been anything near enough data to support any conclusions (even whether they are harmful) at this time.

Barreling forward at breakneck speed to expand into as many areas of practice as possible is helping Community Colleges and the WSBA Staff dedicated to the LLLT program. It is not assisting the target market (low income persons with access to justice issues), it is in direct competition with those of us who paid our dues in schooling, testing, CLE requirements and disciplinary supervision if/when needed.

That said, I strongly believe that before even considering whether to expand the LLLT program, it should at least be in existence long enough to support a reliable conclusion it is 1) a benefit to the public, 2) does not financially harm attorneys, and 3) does not harm the public (failure to properly distribute retirements, calculate support deviations, address various consequences of different distributions of a marital estate, etc. etc. etc.).

I do not practice debtor/creditor law, but I can envision many issues with allowing under-trained LLLT's into the area and the potential harm to the public.

Regards,

Cameron J. Fleury
WSBA #23422

WASHINGTON WAGE CLAIM PROJECT

810 THIRD AVENUE, SUITE 500
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 340-1840
FACSIMILE: (206) 682-2305
EMAIL: DAVID@WASHINGTONWAGECLAIMPROJECT.ORG

November 19, 2018

By Email Only

Jaimie Patneaude
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
jaimiep@wsba.org

Dear LLLT Board,

Regretfully, I am unable to represent the Washington Wage Claim Project (WWCP) at today's November 19th meeting. I wanted to attend because access to justice for low wage workers is our mission. However, this afternoon the WWCP is filing an opposition to a summary judgment motion that raises complicated legal and factual issues requiring all of our efforts. Our clients worked at SeaTac airport for an Avis subcontractor. Coverage under the SeaTac minimum wage ordinance involves a complicated issue of ordinance interpretation. Because of events in a class action and DLI, there are even more complex res judicata and collateral estoppel issues. The case we are working on right now is a good example of why the WWCP has reservations about allowing unsupervised non-lawyers to represent workers in wage and hour matters.

The Washington Wage Claim Project was launched in September 2015 as a non-profit designed to increase access to justice for low wage workers with wage claims. Our mission is consistent with both private counsel representation of wage claims and the LLLT's goal of increasing access to justice. We are in favor of any developments that will be an overall benefit to workers in resolving wage claims.

Wage and hour violations are common in Washington State. For example, immigrant workers performing piece rate construction work — thousands of Washington workers — routinely work 45-60 hour workweeks without receiving overtime premium pay, even though they have an unquestionable right to overtime premium pay. Unpaid overtime is rampant. Off-the-clock work is also a widespread problem.

Wage and hour violations are seldom remedied. Workers may not know about their rights, and current employees are rightfully afraid or retaliation. Workers may also believe it will cost them

too much money in order to advance their claims. The WWCP was launched with the goal of increasing representation of low wage workers with wage claims. In 3 years, our 2-3 attorneys have represented many dozens of workers and recovered over $7 million in wages for unpaid workers. Virtually none of our work involves "routine" claims. We need to draw on a wide range of legal knowledge and the ability to do legal reasoning in every case.

For example, the federal and Washington minimum wage and overtime statutes each have dozens of exemptions. Federal coverage is complicated. Recently, there are complex local government wage ordinances. Even a seemingly simple issue — what is "work" — is quite complex, both legally and with regard to proof issues. These exemption and coverage issues are often dispositive. Damages issues are routinely complex — particularly when dealing with salaried workers who are not paid overtime. Non-hourly workers' damages vary 300% depending on factually and legally nuanced issues. Fairly often, small individual damages issues present appropriate class issues which, if recognized, can lead to one case that resolves wage claims for hundreds or thousands of workers.

Distinguishing between small individual claims and class claims also require significant legal experience. Workers, as a group, would be disserved if individual practitioners missed proper class claims in pursuing small claims. The undersigned's practice since 1995 has been exclusively representing low wage workers with wage claims; I graduated 40 years ago magna cum laude from Cornell Law School. This field of legal practice requires all of my legal experience and knowledge to provide adequate representation. I have also engaged in attorney training on wage and hour issues through dozens of CLEs and authorship of the WSTLA/WSAJ Employment Law Desktop wage and hour chapter. I do not believe LLLTs could be adequately trained to properly represent wage claimants in litigation. The issues are too complicated.

I am also concerned about individuals charging fees to low wage workers. Fee shifting is a part of every wage claim - typically one-way fee shifting is available to workers only. At the WWCP, we represent workers in exchange for assignment of fee claims. We advance all costs and do not take any percentage of wages. I am concerned that LLLTs may ask workers to advance expenses or pay for services they can ill afford. Fee shifting also serves a deterrent function. It means that offending employers bear the cost of wage litigation — not the public and not the workers.

At the WWCP I believe we have done well in representing a large number of low wage workers with a small operation. We have worked with community groups to educate the public. We have also provided mentoring to private counsel who accept these cases.

There have been three major changes in access to justice in King County over the past several years. One, the Seattle Office of Labor Standards has a robust and expanding enforcement arm

that has quickly become the gold standard of enforcement. It is large enough and strategic-focused to make a significant dent in Seattle wage and hour violations. The Fair Work Center also has a wage claim function that includes attorneys and law students, which may reap rewards as law students graduate with wage claim skills and interest. With help from the City of Seattle, including work by the WWCP, there are many community organizations that are educating low wage workers and facilitating wage claims.

The Washington Department of Labor & Industries is obligated to handle certain wage payment claims under RCW Chapter 49.48. The claims are limited to minimum wage act and willful violations of statutes, contracts and ordinances under RCW 49.52.050. "Willful" violation claims are defeated by a bona fide dispute, even if the underlying statute, contract or ordinance claim is meritorious. L&I agents seem overworked and often unable to adequately enforce workers' rights. Still, they handle hundreds of claims statewide every year.

I have been thinking about how to have non-attorneys increase low wage worker access to justice. There is room for trained paralegals, who could play a role in intake and document review. But that would need to be supervised by counsel because of the complexity of issues. I do not see a role for unsupervised LLLTs.

Again, I am sorry that I could not attend today's meeting, but complex wage claims prevented my attendance. We are very willing to meet with you to discuss anything related to these issues.

Very Truly Yours,

David N. Mark

RCW 18.28.010

Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Debt adjuster," which includes any person known as a debt pooler, debt manager, debt consolidator, debt prorater, or credit counselor, is any person engaging in or holding himself or herself out as engaging in the business of debt adjusting for compensation. The term shall not include:

(a) Attorneys-at-law, escrow agents, accountants, broker-dealers in securities, or investment advisors in securities, while performing services solely incidental to the practice of their professions;

(b) Any person, partnership, association, or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, consumer finance businesses, consumer loan companies, trust companies, mutual savings banks, savings and loan associations, building and loan associations, credit unions, crop credit associations, development credit corporations, industrial development corporations, title insurance companies, insurance companies, or third-party account administrators;

(c) Persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt adjusting, perform credit services for their employer;

(d) Public officers while acting in their official capacities and persons acting under court order;

(e) Any person while performing services incidental to the dissolution, winding up or liquidation of a partnership, corporation, or other business enterprise;

(f) Nonprofit organizations dealing exclusively with debts owing from commercial enterprises to business creditors;

(g) Nonprofit organizations engaged in debt adjusting and which do not assess against the debtor a service charge in excess of fifteen dollars per month.

(2) "Debt adjusting" means the managing, counseling, settling, adjusting, prorating, or liquidating of the indebtedness of a debtor, or receiving funds for the purpose of distributing said funds among creditors in payment or partial payment of obligations of a debtor.

(3) "Debt adjusting agency" is any partnership, corporation, or association engaging in or holding itself out as engaging in the business of debt adjusting.

(4) "Fair share" means the creditor contributions paid to nonprofit debt adjusters by the creditors whose consumers receive debt adjusting services from the nonprofit debt adjusters and pay down their debt accordingly. "Fair share" does not include grants received by nonprofit debt adjusters for services unrelated to debt adjusting.

(5) "Financial institution" means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(6) "Third-party account administrator" means an independent entity that holds or administers a dedicated bank account for fees and payments to creditors, debt collectors, debt adjusters, or debt adjusting agencies in connection with the renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt.

[**2015 c 167 § 1.** Prior: **2012 c 56 § 1; 1999 c 151 § 101; 1979 c 156 § 1; 1970 ex.s. c 97 § 1; 1967 c 201 § 1.**]

NOTES:

Information—Report—2012 c 56: See note following RCW **19.230.350**.

Part headings not law—1999 c 151: "Part headings used in this act are not any part of the law." [**1999 c 151 § 2401.**]

Effective date—1999 c 151: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [**1999 c 151 § 2402.**]

Effective date—1979 c 156: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1979." [**1979 c 156 § 14.**]

Severability—1979 c 156: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [**1979 c 156 § 13.**]

RCW 19.16.100

Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Board" means the Washington state collection agency board.

(2) "Claim" means any obligation for the payment of money or thing of value arising out of any agreement or contract, express or implied.

(3) "Client" or "customer" means any person authorizing or employing a collection agency to collect a claim.

(4) "Collection agency" means and includes:

(a) Any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person;

(b) Any person who directly or indirectly furnishes or attempts to furnish, sells, or offers to sell forms represented to be a collection system or scheme intended or calculated to be used to collect claims even though the forms direct the debtor to make payment to the creditor and even though the forms may be or are actually used by the creditor himself or herself in his or her own name;

(c) Any person who in attempting to collect or in collecting his or her own claim uses a fictitious name or any name other than his or her own which would indicate to the debtor that a third person is collecting or attempting to collect such claim;

(d) Any person or entity that is engaged in the business of purchasing delinquent or charged off claims for collection purposes, whether it collects the claims itself or hires a third party for collection or an attorney for litigation in order to collect such claims;

(e) Any person or entity attempting to enforce a lien under chapter 60.44 RCW, other than the person or entity originally entitled to the lien.

(5) "Collection agency" does not mean and does not include:

(a) Any individual engaged in soliciting claims for collection, or collecting or attempting to collect claims on behalf of a licensee under this chapter, if said individual is an employee of the licensee;

(b) Any individual collecting or attempting to collect claims for not more than one employer, if all the collection efforts are carried on in the name of the employer and if the individual is an employee of the employer;

(c) Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; lawyers; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

(d) Any person who on behalf of another person prepares or mails monthly or periodic statements of accounts due if all payments are made to that other person and no other collection efforts are made by the person preparing the statements of account;

(e) An "out-of-state collection agency" as defined in this chapter; or

(f) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of the person is not the collection of debts.

(6) "Commercial claim" means any obligation for payment of money or thing of value arising out of any agreement or contract, express or implied, where the transaction which is the subject of the agreement or contract is not primarily for personal, family, or household purposes.

(7) "Debtor" means any person owing or alleged to owe a claim.

(8) "Director" means the director of licensing.

(9) "Licensee" means any person licensed under this chapter.

(10) "Out-of-state collection agency" means a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state, but does not include any person who is excluded from the definition of the term "debt collector" under the federal fair debt collection practices act (15 U.S.C. Sec. 1692a(6)).

(11) "Person" includes individual, firm, partnership, trust, joint venture, association, or corporation.

(12) "Statement of account" means a report setting forth only amounts billed, invoices, credits allowed, or aged balance due.

[**2015 c 201 § 3.** Prior: **2013 c 148 § 1; 2003 c 203 § 1;** prior: **2001 c 47 § 1; 2001 c 43 § 1; 1994 c 195 § 1; 1990 c 190 § 1; 1979 c 158 § 81; 1971 ex.s. c 253 § 1.**]

NOTES:

Effective date—2013 c 148 §§ 1 and 3: "Sections 1 and 3 of this act take effect October 1, 2013." [**2013 c 148 § 4.**]

2010 WL 3340528
Only the Westlaw citation is currently available.

This decision was reviewed by West editorial staff and not assigned editorial enhancements.

United States District Court, W.D. Washington, at Tacoma.

Christine Renee McLAIN, Plaintiff,
v.
Daniel N. GORDON, PC, Defendant.

No. C09–5362BHS.
|
Aug. 24, 2010.

Attorneys and Law Firms

Alex Weisberg, Weisberg & Meyers, LLC, Phoenix, AZ, Jon N. Robbins, Weisberg & Meyers, Loon Lake, WA, Joseph I. Hochman, Hochman Legal Group, Issaquah, WA, for Plaintiff.

J. Kurt Kraemer, Kjersten Turpen, McEwen Gisvold LLP, Portland, OR, for Defendant.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

BENJAMIN H. SETTLE, District Judge.

***1** This matter comes before the Court on the parties' cross motions for summary judmgent, Dkt. 61 (Defendant's motion) and Dkt. 65 (Plaintiff's motion). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby grants summary judgment in favor of Defendant.

I. PROCEDURAL HISTORY

On June 28, 2010, Defendant Daniel N. Gordon, PC ("Gordon") moved the Court to enter summary judgment as to all claims asserted by Plaintiff ("Mclain"). On July 7, 2010, Mclain filed a cross motion for summary judgment. Both parties filed responses and replies to the respective motions. Dkts. 71, 73, 75, 79. The Court set these motions to be considered at the same time, on July 30, 2010.

II. FACTUAL BACKGROUND

This matter concerns Gordon's attempt to collect debt allegedly owed by Mclain on behalf of a third-party creditor, Gordon's client. Mclain alleges the following facts in support of her claims:

> 7. At various and multiple times prior to the filing of the instant complaint, including within the one year preceding the filing of this complaint, Defendants contacted Plaintiff in an attempt to collect an alleged outstanding debt. Defendants' conduct violated the FDCPA and RCW § 19.16 in multiple ways, including but not limited to:
>
> (a) Falsely representing the character, amount, or legal status of Plaintiff's debt, including agreeing to settle the debt for $1300 if paid by March 31 st, and adding capricious additional money demands when Plaintiff paid the $1300 approximately 1 week late, stating first that Plaintiff owed and additional $100, then stating that if Plaintiff did not pay immediately it would rise to an additional $325.00 (§ 1692e(2)(A));
>
> (b) Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff, including serving a summons and complaint on Plaintiff that simulated actual legal process, whereas no lawsuit had actually been filed in the court specified on the documents (§ 1692e(10));
>
> (c) Failing to provide Plaintiff with the notices required by 15 USC § 1692g, either in the initial communication with Plaintiff, or in writing within 5 days thereof (§ 1692g(a));
>
> (d) Where Defendants had not yet made an attempt to contact Plaintiff's counsel or had not given Plaintiff's counsel sufficient time to respond to the initial attempt to communicate with Plaintiff's counsel, and where Plaintiff's counsel had not given Defendants permission to contact Plaintiff directly, communicating with Plaintiff directly after learning that Plaintiff is being represented by counsel (§ 1692c(a)(2);

(e) Using false representations and deceptive practices in connection with collection of an alleged debt from Plaintiff. Defendants misrepresented the identity of its client to Plaintiff. Defendants served Plaintiff with process for a lawsuit against Plaintiff for an unpaid debt on or about March 8, 2009. The summons served on Plaintiff stated that the owner of the debt was MRC Receivables Corp. Plaintiff then called Defendants to discuss settlement of the debt after she became alarmed at the prospect of being sued. In this conversation, Defendants agreed to accept $1300 as payment in full of the debt. On March 9, 2009, Defendant sent a letter memorializing the agreement. On the March 9 letter Defendant stated that the current creditor for the debt is Midland Credit Management, Inc. Plaintiff does not know the identity of the current creditor, so it is unclear whether it was the letter or the process served on Plaintiff that misrepresented the identity of the collector, but Plaintiff presumes that only one creditor owns the debt, and that is [sic] a misrepresentation for Defendants to state that someone other than the true current creditor owns the debt (§ 1692e(10));

***2** (f) Using unfair or unconscionable means against Plaintiff in connection with an attempt to collect a debt. Plaintiff used unfair and unconscionable means when it threatened to request that a Washington State Court give an order preemptively absolving them from any liability under the FDCPA for unlawful contacting third parties in an attempt to collect a debt. In Defendants' complaint, served on Plaintiff on or around March 8, 2009, Defendants requests the following relief from the court: "The Court should authorize Plaintiff, its agents, attorneys and assigns to reveal the existence of Defendants' debt to such third persons and entities for the purpose of collecting any judgment entered by this court." By this, Plaintiff requested that the court authorize Plaintiff to take action prohibited by the FDCPA. This is because Defendants' asked the Court to authorize Defendants to disclose the existence of the debt to any third party as long as Defendants' purpose in doing so was to collect on its judgment, where as the FDCPA limits lawful third-party contacts to those that are reasonably necessary to collect on the judgment. If the court granted such a request, it would have authorized Defendants to take actions that were for the purpose of collecting on a judgment but were not reasonably necessary to do so. Asking a court to grant Plaintiff the authority to violate the FDCPA would be an unconscionable tactic. Serving Plaintiff with a complaint requesting such authority is a threat to take action that cannot legally be taken (§ 1692f; § 1692e(5)); ....

Dkt. 14 (Second Amended "Complaint") at 3–6. [1]

Mclain contends that Gordon's collection efforts, as alleged, violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), and Chapter 19.16 of the Revised Code of Washington ("RCW"). *See* Complaint ¶ 10 (Count I). Mclain also alleges that Gordon's practices, as alleged, violated the Washington Collection Agency Act ("WCAA"), which is a per se violation of the Washington Consumer Protection Act ("WCPA"). *See id.* ¶ 11 (Count II). Finally, Mclain alleges that Gordon's practices, as alleged, constituted common law invasion of privacy by intrusion. *See id.* ¶ 12 (Count III).

III. DISCUSSION

A. Summary Judgment Standard

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 586, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some metaphysical doubt"). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 253, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n,* 809 F.2d 626, 630 (9th Cir.1987).

***3** The determination of the existence of a material fact is often a close question. The Court must consider the substantive evidentiary burden that the nonmoving party must meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson,* 477 U.S. at 254; *T.W. Elec. Serv., Inc.,* 809 F.2d at 630. The Court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec. Serv., Inc.,* 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan v. Nat'l Wildlife Fed'n,* 497 U.S. 871, 888–89, 110 S.Ct. 3177, 111 L.Ed.2d 695 (1990).

B. The FDCPA

The FDCPA is a federal consumer protection statute. It prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Like other statutes of its kind, the FDCPA strikes a cautious balance between protecting the public and allowing debt collectors reasonable leeway to conduct legitimate business. *See, e.g.,* S.Rep. No. 95–382, at 1 (1977), reprinted in 1977 U.S.C.C.A.N. 1695, 1696, 1698–99 (the statute prohibits "improper conduct" and dishonest collection practices "without imposing unnecessary restrictions on ethical debt collectors"); *see also Clark v. Capital Credit & Collection Servs., Inc.,* 460 F.3d 1162, 1169–70 (9th Cir.2006). The statute itself contains a list of proscribed practices; this list is non-exhaustive. *See Clark,* 460 F.3d at 1170 n. 4. Courts interpret the FDCPA in accordance with the "least sophisticated consumer" standard, ensuring that the "FDCPA protects all consumers, the gullible as well as the shrewd ... the ignorant, the unthinking and the credulous." *Clark v. Capital Credit & Collection Servs., Inc.,* 460 F.3d at 1171; *see also Swanson v. S. Or. Credit Serv.,* 869 F.2d 1222 (9th Cir.1988).

C. Parties' Cross Motions for Summary Judgment

1. Count I, Alleged Violation of FDCPA

Mclain alleges that Gordon's collection practices constitute a violation of the FDCPA. In opposition, Gordon argues that no facts can support such a claim and, therefore, moves the Court to enter summary judgment on this issue. *See* Dkt. 61 at 5.

a. Proper Notice, 15 U.S.C. 1692(g)(a)

Mclain alleges that Gordon failed "to provide Plaintiff with the notices required by 15 U.S.C. § 1692g, either in the initial communication with Plaintiff, or in writing within 5 days thereof (§ 1692g(a))." Complaint ¶ 7(c). Section 1692g(a) provides that a debt collector shall "send the consumer a written notice" of his rights within five days of the initial communication. In opposition, Gordon contends it satisfied the requirements of this statute. *See, e.g.,* Dkt. 73 at 2.

***4** In challenging the propriety of notice, Mclain argues that the address on the letters (notices) mailed by Gordon was missing the word "East" on the street name and, therefore, may have been mailed to an incorrect address. Dkt. 71 at 2.[2] Mclain argues that perhaps there are more than one 152nd Streets in Tacoma, which would have resulted in Mclain being unable to receive these letters. In support her contention, Mclain relies on the common law "mail box" rule, which provides that "proper and timely mailing of a document raises a rebuttable presumption that it is received by the addressee." Dkt. 71 (quoting *Anderson v. United States,* 966 F.2d 487, 491 (9th Cir.1992). However, several problems exist with Mclain's position.

First, Mclain's "misaddressing the notice" argument is not well taken. Mclain does not argue that the letters (notices) were not sent by Gordon. Mclain does not argue that Gordon did not supply the proper notices within the five letters sent to Mclain. *See* Affidavit of Matthew R. Aylworth (Aylworth Aff., Dkt. 63) ¶ 3. Rather, Mclain relies solely on this misaddressing argument. Problematic for Mclain is that she admits that she received a letter regarding the challenged debt, which was delivered by mail to her home address, missing the word "East" from the address. *See* Declaration of Joe Hochman (Hochman Decl., Dkt. 72), Ex. I (letter dated March 9, 2009, regarding an agreed settlement of the debt). Further, Mclain was personally served with an unfiled summons and complaint at the same address. Aylworth Aff. ¶ 5.

Second, and significant to the resolution of this issue, is that receipt of the requisite notice is not critical. *Mahon v. Credit Bureau of Placer County Inc.,* 171 F.3d 1197, 1201

(9th Cir.1999) ("Nowhere does the statute require receipt of the Notice"). Indeed, "[t]he plain language of section 1692g(a) does not require that a Validation of Debt Notice must be received by a debtor. Instead, the plain language states that such a Notice need only be sent to a debtor." *Id.*

Based on the foregoing, Mclain's "multiple 152 Street" theory is a strained but failed attempt to create a material question of fact. Therefore, the Court grants summary judgment in favor of Gordon on this issue.

b. False Representation, 15 U.S.C. 1692e(2)(A), 1692f(1)

Mclain alleges that Gordon violated § 1692e(2)(A) by "[f]alsely misrepresenting the character, amount, or legal status of Plaintiff's debt...." Complaint ¶ 7(a). This section of the FDCPA provides, in pertinent part:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> * * *
>
> (2) The false representation of-
>
> (A) the character, amount, or legal status of any debt
>
> 15 U.S.C. § 1692e.

The parties agree that RCW 19.16.250 governs what may be collected by Gordon from Mclain. In addition to the principal amount of debt owed it is illegal to "[c]ollect or attempt to collect ... any sum other than allowable interest, collection costs or handling fees expressly authorized by statute, and in the case of suit, attorney's fees and taxable court costs...." RCW 19.16.250(18); *see also* RCW 19.16.250(19) (preventing the attempt to secure by contract, stipulation, promise or acknowledgment funds other than those permitted by subsection (18)).

***5** In the instant case, Gordon initially sent a letter notifying Mclain of a debt in the amount of $1741.73. This amount consisted of principal in the amount of $1248 and other costs. Mclain does not dispute that the $1741.73 was comprised of principal and other sums recoverable under RCW 19.16.250(18). In a letter dated March 9, 2009, Gordon informed Mclain that it was willing to settle her debt in full for $1300 "with the stipulation that said amount will be received by this office no later than 3/31/09." Mclain did not meet this deadline; therefore, the condition precedent upon which the settlement was made did not occur. The parties do not dispute that Mclain attempted to renegotiate the deadline for this payment. Gordon agreed to renegotiate and extend the deadline to April 2009, provided Mclain paid $1400 instead of $1300. Aylworth Aff., Ex. 9, p. 15–17, 19–20; RCW 19.16.250(18). *See, e.g.,* Dkt. 65 at 10.

Mclain argues this incremental increase of $100 is without justification and would constitute an illegal collection under RCW 19.16.250, thereby violating § 1692(e)(2)(A). However, Mclain's logic is flawed. If Gordon was permitted to collect the $1741.73 [3] in the first place, which is not disputed by Mclain, Gordon was also permitted to negotiate a settlement for lower than this amount, which it attempted to do. When Mclain did not meet the condition precedent, paying the full $1300 by a certain date, their settlement agreement was inoperative. Accordingly, Gordon was again entitled to negotiate a settlement for less than the amount owed, given that the amount sought was permitted under the applicable rules. Therefore, the incremental $100 does not invoke the rules upon which Mclain relies to establish a violation of the FDCPA under § 1692e(2)(A). In short, Gordon never attempted to collect funds that were not permitted to be collected under RCW 19.16.250.

Additionally, Mclain makes the same argument to support her claim that Gordon violated 15 U.S.C. § 1692f(1) (attempting to collect a sum not authorized by law). The Court concludes that this claim is not actionable for the same reason Mclain's argument under § 1692(e)(2)(A) fails.

Because the Court concludes that Gordon did not violate § 1692e(2)(A) (false representation of debt) or § 1692f(1) (collection of an unauthorized sum), it grants summary judgment in favor of Gordon on these issues.

c. Contacting of Third Parties, 15 U.S.C. § 1692c(b)

Mclain alleges that Gordon violated § 1692c(b) when it requested leave from a court to contact third parties regarding the Mclain's alleged debt. Complaint ¶ 7(f).

In opposition, Gordon correctly notes that the FDCPA expressly permits making such a request of a court. *See* 15 U.S.C. § 1692c(b) (debt collector may not communicate with third parties in connection with the collection of any debt, except with, among other things, "the express permission of a court of competent jurisdiction[.]")

***6** Mclain predicates her argument on the fact that Gordon did not have justification for making such a request of a court. *See* Dkt. 71 at 5–6. However, violating 15 U.S.C. § 1692c(b) occurs when an improper communication to third parties is made, not when a party requests leave to make proper contact regarding the debt. In other words, whether or not Gordon's request was justified is a question for the court from which it sought leave. It is not, however, a material question of fact as to whether Gordon made such improper contact which would constitute a violation of 15 U.S.C. § 1692c(b).

Because no allegations of improper contact have been made by Mclain, this argument is a nonstarter and summary judgment on this issue is granted in favor of Gordon.

d. Serving an Unfiled Summons/Complaint, § 1692e(10), § 1692e(5)

15 U.S.C. § 1692e(10) proscribes "the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." Mclain argues that Gordon's service upon her of an unfiled summons/complaint constituted a false representation or deceptive means of collection because the documents served represented to be authorized by a court of Washington State in violation of § 1692e(10). Complaint ¶ 7(b); *see also* Dkt. 71 at 8 (referring to this action as a scare tactic to provoke payment of the debt owed).

In this circuit, the standard for discerning whether a statement is materially false or misleading was announced in *Swanson v. S. Oregon Credit Serv., Inc.,* 869 F.2d 1222, 1229 (9th Cir.1989). If the least sophisticated debtor would "likely be misled" by a communication from a debt collector, the debt collector has violated the Act. *Id.* at 1225.

The Court cannot find that Mclain was likely misled to believe that the service of process was authorized by Pierce County Superior Court. In the first place, nothing in the document was false. The summons merely states that a lawsuit has been started, which it had: service begins a lawsuit under Washington Superior Court Civil Rule 3. More importantly, the Court finds that reading the first page of the summons would have provided Plaintiff with adequate information about the status of her suit. The summons says, in no uncertain terms, "You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the plaintiff." (Pierce County Summons (Aylworth Aff, Ex. 7 at 1)). Upon reading this sentence, even the least sophisticated consumer would likely understand that the lawsuit had not yet been filed, and would likely therefore understand that the state court had not issued it.

Finally, the Court is unwilling to hold that service of an unfiled complaint violates the FDCPA, because the ramifications of this rule would require debt collectors to always file first and then serve. This is simply too sweeping of a proposition for the Court to countenance and is not required by either legislative act or court rule. There are legitimate reasons to serve unfiled complaints. For instance, a debt collector may wish to portray to a consumer honestly that it may file the summons and complaint if the debtor refuses to respond through less formal means. This may, in some cases, lead to the conservation of judicial resources and filing fees.

***7** Therefore, the Court grants summary judgment in favor of Gordon on this issue. [4]

e. Misrepresenting Identity of Gordon's Client, § 1692e(10)

The FDCPA proscribes "the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(10). "A statement cannot mislead unless it is material, so a false but non-material statement is not actionable." *Whal v. Midland Credit Mgmt., Inc.,* 556 F.3d 643, 646 (7th Cir.2009). The Sixth Circuit reached the same conclusion. *See Miller v. Javitch, Block & Rathbone,* 561 F.3d 588, 596 (6th Cir.2009) (concluding that a false but non-material statement is not actionable under § 1692e). "Whether conduct violates § § 1692e or 1692f requires an objective analysis that considers whether the least sophisticated debtor would likely be misled by a communication. *Donohue v. Quick Collect, Inc.,* 592 F.3d 1027, 1033 (9th Cir.2010) (collecting

cases) (internal citations omitted). The *Donohue* court held that "false but non-material representations are not likely to mislead the least sophisticated consumer and therefore are not actionable" under § 1692e. *Id.*

Mclain contends Gordon misrepresented the identity of its client to whom the debt was owed, which would violate § 1692e(10). Complaint ¶ 7(e). The parties do not dispute the basic facts surrounding this allegation. Gordon personally served a summons/complaint on Mclain, which named MRC Receivables Corp. ("MRC") as the creditor. Mclain thereafter called Gordon and arranged for a settlement of the debt owed to MRC. Gordon then mailed Mclain a confirmation of that agreement (the "Agreement"), which provided that the debt was owed to Midland Credit Management, Inc. ("Midland").[5] *See* Hochman Decl., Ex. A (summons/complaint), Ex. E (agreement to settle, identifiing Midland). The issue, as Mclain contends, is that she did not ever know of Midland. Her debt as identified in the summons/complaint and Gordon's prior letters all named MRC Receivables Corp. ("MRC") as the owner of the debt at issue. Mclain argues, "[h]ow could [Mclain] know which was the correct creditor. Clearly, the identity of the creditor is a material misrepresentation...." Dkt. 71 at 11.

The Court is not persuaded by Mclain's argument. Mclain herself admitted she was not confused by this letter. Deposition of Christine Mclain at 32 (Dkt. 62–2 at 7) (stating that she was not confused about anything in the Agreement). Mclain has submitted no evidence that she settled multiple debts for this amount during this time, which could have potentially caused confusion.

The Court finds that naming Midland as the creditor, while false, was not material and, therefore, not actionable. The Court also concludes that such an error would not likely confuse the least sophisticated consumer. This conclusion is consistent with case law. *See, e.g., Donohue,* 592 F.3d at 1033.

***8** Therefore, the Court grants summary judgment on this issue in favor of Gordon.

2. Count II, Alleged Violation of WCAA and WCPA

Gordon argues that the WCAA does not apply to Gordon because the statute excludes the activities of "any person ... directly related to the operations of a business other than a collection agency ... such as ... lawyers." RCW 19.16.100(3)(c). Gordon seems to be arguing that its status as a law firm grants it total immunity, but Gordon was acting as a collection agency for MRC; it was not, for example, collecting debts owed to it by a client for legal services. *Semper v. JBC Legal Group,* C04–2240–RSL, 2005 WL 2172377, at *3 (W.D.Wash. Sept.6, 2005).

In *Semper,* Judge Lasnik squarely addressed this issue:

> Defendant JBC Legal Group PC violated RCW 19.16.110 when it acted as a collection agency within the State of Washington without first obtaining a license. Pursuant to RCW 19.16.100(2)(a), a "collection agency" means "any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person." In this case, JBC has attempted to collect a claim asserted to be owed to an entity called Outsource Recovery Management. Nonetheless, JBC argues that it is not a "collection agency" because RCW 19.16.100(3)(c) excludes from that term "[a]ny person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as ... lawyers...." When read as a whole and in light of the interpreting case law, Washington's Collection Agency Act applies to entities such as JBC which seek to collect debts that are unrelated to JBC's (or its affiliated company's) non-debt collector business. If, for example, JBC were seeking to recover fees owed to it by a client for legal services rendered, such activities would not make JBC a "collection agency." *See Berry v. Fleury,* 111 Wash.App. 1048, 2002 WL 1011541 (Wn.App. May 20, 2002). The same result would probably arise if JBC were collecting debts owed to an affiliated company as long as those debts arose from a business other than the collection of debts. *See* RCW 19.16.100(3)(f); *Trust Fund Servs. v. Aro Glass Co.,* 89 Wash.2d 758, 761–62, 575 P.2d 716 (1978). The debt JBC sought to collect from plaintiff is not "directly related to the operation of a business other than that of a collection agency"-its affiliate company purchased the alleged debt from a third-party merchant for the sole purpose of collecting on the instrument. Despite the fact that JBC is a law firm, its actions in this case are those of a collection agency subject to regulation under the Collection Agency Act.

Id. The Court is persuaded by and adopts this reasoning. Therefore, the Court concludes that Mclain has pled sufficient facts to survive Gordon's motion for summary judgment on this issue, which would thereby invoke the WCPA. However, it is unclear whether Mclain's WCAA/WCPA claim survives summary judgment as a general matter.

***9** It appears to the Court that Mclain's argument to establish a violation of the WCAA is predicated on her argument that Gordon allegedly attempted to collect sums not authorized by law. This argument was rejected above (Gordon merely agreed to a higher debt settlement that still remained lower than the amount owed). Mclain offers no substantive basis on which her WCAA/WCPA claim can survive in light of the foregoing.

Therefore, Mclain's WCAA/WCPA claim is denied.

3. Count III, Alleged Violation of Common Law Invasion of Privacy

Finally, Mclain alleges that Gordon's debt collection practices violate the common law of invasion of privacy by intrusion. This claim is also derivative to the remainder of the claims. Indeed, to support this claim, Mclain argues "[Gordon] surprised and frightened an unsuspecting Plaintiff with an unfiled summons and complaint, then arbitrarily raised the settlement amount and demanded payment of an additional $100.00." Dkt. 71 at 24 (attempting to refute Gordon's argument that this claim is not actionable).

Therefore, because this claim is derivative of the other claims discussed herein, the Court grants summary judgment in favor of Gordon on this issue.

IV. ORDER

Therefore, it is hereby **ORDERED** that Gordon's motion for summary judgment is **GRANTED** as discussed herein, and Mclain's motion for partial summary judgment is **DENIED.**

All Citations

Not Reported in F.Supp.2d, 2010 WL 3340528

Footnotes

1 Mclain withdrew her claim that Gordon violated 15 U.S.C. § 1692c(a)(2) when he allegedly contacted Mclain while she was represented by counsel. Dkt. 71 at 24. Therefore, summary judgment is proper on this issue, but is not dispositive with respect to Mclain's other FDCPA claims against Gordon. *See Taylor v. Perrin, Landry, deLaunay & Durand,* 103 F.3d 1232, 1238 (5th Cir.1997) (permitting an FDCPA claim to be raised on the basis of a single violation).

2 Mclain's proper address is "Christine Mclain, 3918 152nd Street Court East, Tacoma, Wa 97446." The challenged letters (notices) were mailed to "Christine Mclain, 3918 152nd Street Ct., Tacoma, WA 98446." The only difference between the addresses at issue is the missing "East" in the address used by Gordon.

3 The amount sought to be recovered by Gordon eventually reached upwards of $1868.53 for the apparent failure to respond to prior letters regarding the debt owed. However, for the sake of example and to reduce confusion, the Court relies on the initial debt described in Gordon's March 17, 2008, letter to Mclain. Dkt. 63–2 at 1.

4 This same analysis applies to Mclain's argument that the service of such a summons/complaint was an unconscionable tactic to collect debt, which, if true, would violate § 1692e(5). The Court will not adopt such a rule.

5 Mclain dismissed any claims originally filed against Midland. Dkt. 60 (stipulation to dismiss Midland from this action).

895 F.Supp.2d 1097
United States District Court,
W.D. Washington,
at Seattle.

Martha MORITZ, Plaintiff,
v.
DANIEL N. GORDON, P.C., et al., Defendants.

Case No. C11–1019JLR.
|
Sept. 11, 2012.

Synopsis

Background: Debtor filed suit against law firm alleging that its attempts to collect debt on behalf of its debt collector client violated Fair Debt Collection Practices Act (FDCPA), Washington Consumer Protection Act (CPA), and Washington Collection Agency Act (WCAA). Both sides moved for summary judgment.

Holdings: The District Court, James L. Robart, J., held that:

[1] genuine issue of material fact as to whether defendant made meaningful disclosures precluded summary judgment on FDCPA claim;

[2] genuine issues of material fact precluded summary judgment on issue of bona fide error defense under FDCPA; but

[3] defendant's violation of Washington's licensing requirements for debt collectors was not, standing alone, a violation of FDCPA;

[4] as matter of first impression, serving as a shareholder, officer, or director of a debt collecting corporation is not, in itself, sufficient to hold individual liable as a debt collector under FDCPA;

[5] attorney, as shareholder in firm organized as a professional corporation (PC), was not personally liable, as debt collector, for any of firm's alleged FDCPA violations;

[6] law firm was as an "out-of-state collection agency" under WCAA; but

[7] WCAA applied only to licensees; and

[8] debtor's payment of valid debt was not injury to business or property under Washington CPA.

Motions granted in part and denied in part.

West Headnotes (26)

[1] Federal Civil Procedure
Hearing and Determination

Federal rule governing summary judgment does not require court to provide a hearing prior to ruling on summary judgment motion where party opposing motion does not request it. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

Cases that cite this headnote

[2] Federal Civil Procedure
Hearing and Determination

Oral argument prior to court's ruling on motion for summary judgment is not necessary where non-moving party suffers no prejudice. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

Cases that cite this headnote

[3] Finance, Banking, and Credit
Practices prohibited or required in general

Finance, Banking, and Credit
Harassment and abuse

The FDCPA comprehensively regulates the conduct of debt collectors, imposing affirmative obligations and broadly prohibiting abusive practices. Fair Debt

Collection Practices Act, § 802 et seq., 15 U.S.C.A. § 1692 et seq.

1 Cases that cite this headnote

[4] **Finance, Banking, and Credit**

"Least sophisticated consumer" test in general

Whether conduct violates FDCPA requires an objective analysis that takes into account the least sophisticated debtor standard. Fair Debt Collection Practices Act, § 802 et seq., 15 U.S.C.A. § 1692 et seq.

1 Cases that cite this headnote

[5] **Finance, Banking, and Credit**

Debt Collection Practices

Finance, Banking, and Credit

Strict liability in general

The FDCPA is a strict liability statute, which should be construed liberally in favor of the consumer. Fair Debt Collection Practices Act, § 802 et seq., 15 U.S.C.A. § 1692 et seq.

Cases that cite this headnote

[6] **Finance, Banking, and Credit**

Harassment and abuse

"Meaningful disclosure" requirement of FDCPA requires that caller seeking to collect a debt must state his or her name and capacity, and disclose enough information so as not to mislead recipient as to the purpose of the call. Fair Debt Collection Practices Act, § 806(6), 15 U.S.C.A. § 1692d(6).

1 Cases that cite this headnote

[7] **Federal Civil Procedure**

Debt collection practices, cases involving

Genuine issue of material fact as to whether debt collector's telephone calls and voicemail messages to debtor provided meaningful disclosure as to the purpose of its call, as required under FDCPA, precluded summary judgment in debtor's action against debt collector for violations of the Act. Fair Debt Collection Practices Act, §§ 806(6), 807(11), 15 U.S.C.A. §§ 1692d(6), 1692e(11).

1 Cases that cite this headnote

[8] **Finance, Banking, and Credit**

Debt collection practices

Finance, Banking, and Credit

Debt collection practices

Under the FDCPA, the bona fide error defense is an affirmative defense, for which the debt collector has the burden of proof. Fair Debt Collection Practices Act, § 813(c), 15 U.S.C.A. § 1692k(c).

Cases that cite this headnote

[9] **Finance, Banking, and Credit**

Debt collection practices

To qualify for the FDCPA bona fide error defense, defendant must prove that: (1) it violated the FDCPA unintentionally; (2) the violation resulted from a bona fide error; and (3) it maintained procedures reasonably adapted to avoid the violation. Fair Debt Collection Practices Act, § 813(c), 15 U.S.C.A. § 1692k(c).

Cases that cite this headnote

[10] **Federal Civil Procedure**

Debt collection practices, cases involving

Genuine issues of material fact as to whether debt collector maintained procedures reasonably adapted to avoid violation of FDCPA's meaningful disclosure requirement, and whether in telephone calls to debtor debt collector's employee intended to mislead debtor by failing to make disclosures that she was attempting to collect a debt, precluded summary judgment to debt collector on claim of bona fide error defense in debtor's suit alleging FDCPA violations. Fair Debt Collection Practices Act, §§ 806(6), 807(11), 813(c), 15 U.S.C.A. §§ 1692d(6), 1692e(11), 1692k(c).

2 Cases that cite this headnote

[11] **Finance, Banking, and Credit**

Practices prohibited or required in general

Debt collector's violation of Washington state's licensing requirements for debt collectors was not, standing alone, a violation of FDCPA's prohibition on use of unfair or unconscionable means to collect a debt. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

2 Cases that cite this headnote

[12] **Finance, Banking, and Credit**

Disputed debts;validation notices and responses thereto

Even if debt collector's failure to itemize amount of debt in its initial collection letters to debtor was a violation of Washington law, such communications did not violate FDCPA's prohibition on use of unfair or unconscionable means to collect a debt, given that collector had otherwise complied with FDCPA notice provisions. Fair Debt Collection Practices Act, §§ 808, 809, 15 U.S.C.A. §§ 1692f, 1692g.

3 Cases that cite this headnote

[13] **Finance, Banking, and Credit**

Debt collectors and debt collection in general

Finance, Banking, and Credit

Debt collection practices

Since the FDCPA imposes personal, not derivative, liability, serving as a shareholder, officer, or director of a debt collecting corporation is not, in itself, sufficient to hold an individual liable as a "debt collector." Fair Debt Collection Practices Act, § 803(6), 15 U.S.C.A. § 1692a(6).

1 Cases that cite this headnote

[14] **Finance, Banking, and Credit**

Debt collection practices

A shareholder, officer, or director of a debt collecting corporation may be personally liable for violations of FDCPA if the individual: (1) materially participated in collecting the debt at issue; (2) exercised control over the affairs of the business; (3) was personally involved in the collection of the debt at issue; or (4) was regularly engaged, directly and indirectly, in the collection of debts. Fair Debt Collection Practices Act, § 803(6), 15 U.S.C.A. § 1692a(6).

2 Cases that cite this headnote

[15] **Finance, Banking, and Credit**

Attorneys and law firms;legal services

Attorney, as shareholder in law firm organized as a professional corporation (PC), which represented debt collectors as part of its practice, was not personally liable, as a debt collector, for firm's alleged violations of FDCPA; even though attorney had allegedly drafted the firm's policy regarding employees' compliance with FDCPA telephone disclosures, there was no evidence that this policy had ever led to any FDCPA violation. Fair Debt Collection Practices Act, § 803(6), 15 U.S.C.A. § 1692a(6).

2 Cases that cite this headnote

[16] **Antitrust and Trade Regulation**

Nature and Elements

To prevail on a Washington Consumer Protection Act (CPA) claim, a plaintiff must establish five distinct elements: (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; and (5) causation. West's RCWA 19.86.090.

6 Cases that cite this headnote

[17] **Antitrust and Trade Regulation**

Debt collection

A plaintiff may establish an unfair or deceptive act or practice occurring in trade or commerce for purposes of a Washington Consumer Protection Act (CPA) claim by proving certain violations of the Washington Collection Agency Act (WCAA). West's RCWA 19.16.440, 19.86.090.

5 Cases that cite this headnote

[18] Finance, Banking, and Credit

Licensing and registration of debt collectors

Law firm was as an "out-of-state collection agency," as required for licensure under Washington Collection Agency Act (WCAA); firm which was located in Oregon represented collection agency client in attempting to collect debt from Washington resident and had initiated action in Washington state court, obtained state court judgment in Washington, conducted garnishment proceedings within the state, and communicated directly with the Washington debtor. West's RCWA 19.16.100(2)(a), 19.16.110.

1 Cases that cite this headnote

[19] Finance, Banking, and Credit

Licensing and registration of debt collectors

Washington Collection Agency Act's (WCAA) prohibition on unfair collection practices did not apply to out-of-state law firm collecting a debt, on behalf of its client, from Washington debtor, since firm was not licensed as a debt collector under the WCAA; WCAA applied only to licensees, not collection agencies or out-of-state collection agencies. West's RCWA 19.16.110, 19.16.250.

2 Cases that cite this headnote

[20] Antitrust and Trade Regulation

Public impact or interest;private or internal transactions

The public interest element of a Washington Consumer Protection Act (CPA) claim may be satisfied, per se, by a showing of conduct in violation of a statute containing a specific legislative declaration of public interest impact. West's RCWA 19.86.090.

Cases that cite this headnote

[21] Federal Civil Procedure

Debt collection practices, cases involving

Genuine issue of material fact as to whether public interest was impacted by out-of-state law firm's debt collection practices in Washington state precluded summary judgment to firm in debtor's action alleging violation of Washington Consumer Protection Act (CPA). West's RCWA 19.86.090.

Cases that cite this headnote

[22] Antitrust and Trade Regulation

Reliance;causation;injury, loss, or damage

Antitrust and Trade Regulation

Grounds and Subjects

Personal injuries are not compensable damages under Washington Consumer Protection Act (CPA), since injuries must be to a plaintiff's "business or property." West's RCWA 19.86.090.

Cases that cite this headnote

[23] Antitrust and Trade Regulation

Reliance;causation;injury, loss, or damage

Antitrust and Trade Regulation

Grounds and Subjects

Damages

Injury to Property or Property Rights

Pain and suffering and emotional distress damages are not compensable injuries under the Washington Consumer Protection Act (CPA), since injuries must be to a plaintiff's

"business or property." West's RCWA 19.86.090.

Cases that cite this headnote

[24] **Federal Civil Procedure**

Debt collection practices, cases involving

Genuine issue of material fact as to whether $7.75 debtor incurred in postage for sending a letter to out-of-state law firm via certified mail as a result of firm's unlicensed debt collection activities in Washington state constituted compensable damages under Washington Consumer Protection Act (CPA) precluded summary judgment to law firm in debtor's suit alleging CPA violations. West's RCWA 19.86.090.

Cases that cite this headnote

[25] **Antitrust and Trade Regulation**

Reliance;causation;injury, loss, or damage

Antitrust and Trade Regulation

Grounds and Subjects

Damages

Injury to Property or Property Rights

Emotional distress, worry, and embarrassment are not compensable injuries under the Washington Consumer Protection Act (CPA) since injuries must be to a plaintiff's "business or property." West's RCWA 19.86.090.

Cases that cite this headnote

[26] **Antitrust and Trade Regulation**

Debt collection

Debtor's payment of debt in response to out-of-state law firm's unlawful collection activities was not an "injury to business or property" supporting allegations that firm had violated Washington Consumer Protection Act (CPA), since amount debtor paid was less than total amount she owed, and the original debt was valid. West's RCWA 19.86.090.

1 Cases that cite this headnote

Attorneys and Law Firms

***1100** Aaron Radbil, Weisberg & Meyers, LLC, Phoenix, AZ, Mathew J. Cunanan, DC Law Group, PLLC, Renton, Jon N Robbins, Weisberg & Meyers, LLC, Loon Lake, WA, for Plaintiff.

J. Kurt Kraemer, Portland, OR, for Defendants.

ORDER ON CROSS–MOTIONS FOR SUMMARY JUDGMENT

JAMES L. ROBART, District Judge.

I. INTRODUCTION

[1] **[2]** Before the court are: (1) Defendants Daniel N. Gordon, P.C. ("DNG") and ***1101** Daniel N. Gordon's motion for summary (Def. Mot. (Dkt. # 42)); and (2) Plaintiff Martha Moritz's motion for partial summary judgment (Moritz Mot. (Dkt. # 45)). After the summary judgment motions were filed, Ms. Moritz filed a notice of voluntary withdrawal of her claims against Defendants under 15 U.S.C. §§ 1692b and 1692c. (Not. of Withdrawal (Dkt. # 59).) The court thus DENIES as MOOT the portions of Defendants' motion for summary judgment addressing these claims. With respect to the remaining issues raised in the parties' briefing, the court has considered the submissions of the parties, the balance of the record, and the relevant law, and deemed oral argument unnecessary.[1] Thus being fully apprised, the court GRANTS in part and DENIES in part Defendants' motion (Dkt. # 42) and GRANTS in part and DENIES in part Ms. Moritz's motion (Dkt. # 45).

Also pending before the court is Ms. Moritz's motion for leave to file supplemental authority (Dkt. # 60) in support of her motion for partial summary judgment (Dkt. # 45) and in opposition to Defendants Daniel N. Gordon, P.C. ("DNG") and Daniel N. Gordon's motion for summary judgment (Dkt. # 42). Ms. Moritz seeks to file a contract produced by Defendants in discovery after the parties had submitted their summary judgment motions. Ms. Moritz contends that the contract is relevant to her claim that

DNG committed an unfair or deceptive act or practice in violation of the Washington Consumer Protection Act, RCW ch. 19.16. In light of the court's rulings herein, the court DENIES as MOOT Ms. Moritz's motion for leave (Dkt. # 60).

II. BACKGROUND

This case involves Ms. Moritz's contacts with DNG while DNG attempted to collect a debt that Ms. Moritz owed its client, CACV of Colorado, LLC ("CACV"). On or about February 27, 2006, DNG mailed certain documents to the Washington State District Court for Whatcom County for filing, including a complaint on behalf of CACV against Ms. Moritz. (1st Radbil Decl. (Dkt. # 58) Ex. A at 2 (2/27/06 Cover Letter).) The cover letter identified DNG as "Attorney and Counselor at Law." (*Id.*) On or about March 13, 2006, the Whatcom County District Court filed CACV's complaint. (Aylworth Decl. (Dkt. # 44) Ex. 1 (State Ct. Compl.).) The complaint alleged that Ms. Moritz was indebted to CACV in the amount of $3,070.67 from January 12, 2006, plus interest at a rate of 12% per annum, and sought to recover this debt. (*Id.* Ex. 1 ¶ 4.) Below Mr. Gordon's signature on behalf of DNG, the complaint stated in bold font: "This Communication is from a Debt Collector." (*Id.* Ex. 1 at 3.)

In April 2006, Ms. Moritz contacted DNG, and the parties set up a payment plan. (Aylworth Decl. ¶ 7; 1st Kraemer Decl. (Dkt. # 43) Ex. 1 (Moritz Dep.) at ***1102** 17:7–11, 20:15–25.) Ms. Moritz, however, failed to make all of the necessary payments. (Aylworth Decl. ¶ 7.) On January 15, 2007, DNG mailed a motion and declaration for default judgment, judgment, and supporting documents to the Whatcom County District Court for filing. (1st Radbil Decl. Ex. A at 3 (1/15/07 Cover Letter).) On January 29, 2007, the state court entered a default judgment against Ms. Moritz in the total amount of $3,979.12, plus interest at the rate of 12% per annum. (Aylworth Decl. Ex. 2 (Mot. for Default Judgment and Judgment).)

On November 15, 2007, DNG mailed a writ of garnishment and a copy of the state court judgment to the Whatcom County District Court for filing. (1st Radbil Decl. Ex. A at 4 (11/15/07 Cover Letter).) In July 2008, DNG issued a garnishment to Talasaea Consultants, Inc. ("Talasaea"), but the company answered that Ms. Moritz had not been employed there since May 23, 2008. (Aylworth Decl. ¶ 9, Ex. 3 (Ans. to Garnishment).)

On March 18, 2009, DNG mailed Ms. Moritz a letter confirming that she owed $5,619.43 and agreeing to accept monthly payments of $50.00. (2d Radbil Decl. (Dkt. # 46) Ex. 9 (3/18/09 Letter); *see also* 1st Kraemer Decl. Ex. 1 (Moritz Dep.) at 37:21–22.) Ms. Moritz, however, did not make monthly payments as agreed. (Aylworth Decl. ¶ 10.)

On July 1, 2010, Ms. Moritz spoke with DNG about the possibility of a new payment plan and told DNG that she was employed at Talasaea. (*Id.* ¶ 11.) That same day, DNG contacted Talasaea to verify Ms. Moritz's employment in order to issue garnishment. (*Id.* ¶ 12.) Also on July 1, 2010, DNG sent Ms. Moritz a letter confirming the payment plan, as well as a $6,384.14 balance on Ms. Moritz's debt owed to CACV. (2d Radbil Decl. Ex. 10 (7/1/10 Letter).)

On August 30, 2010, DNG employee Tasha Pierce called Ms. Moritz and left a voicemail message asking for a return call. (2d Radbil Decl. Ex. 7 (DNG Collection Notes) at GORD00040.) That same day, DNG sent Ms. Moritz a letter in which it agreed to a third payment plan that Ms. Moritz had set up. (*Id.* Ex. 11 (8/30/10 Letter); Aylworth Decl. ¶ 13.) Ms. Moritz did not make timely payments. (Aylworth Decl. ¶ 13.)

On November 1, 2010, Ms. Pierce called and left a second voicemail message for Ms. Moritz asking Ms. Moritz to call DNG. (2d Radbil Decl. Ex. 7 at GORD00043.) Ms. Pierce left similar voicemail messages for Ms. Moritz on November 29, 2010, and November 30, 2010. (*Id.*)

In December 2010, Ms. Moritz advised DNG that she was attempting to take out a loan in order to settle the debt to CACV. (Aylworth Decl. ¶ 14; 1st Kraemer Decl. Ex. 1 (Moritz Dep.) at 43:8–15.) On December 29, 2010, DNG sent a letter to Ms. Moritz confirming that it would accept $3,006.05 in full settlement of the debt owed to CACV. (2d Radbil Decl. Ex. 12 (12/29/10 Letter).) On both December 29, 2010, and December 30, 2010, Ms. Pierce left voicemail messages for Ms. Moritz asking for a return call. (*Id.* Ex. 7 at GORD00045–46.)

In January 2011, Ms. Pierce left four voicemail messages for Ms. Moritz asking Ms. Moritz to contact DNG. (*Id.* Ex. 7 at GORD00047–48.) On January 10, 2011, DNG mailed Ms. Moritz a letter confirming that it had not

received payment and stating that the total amount due was $5,900.54. (*Id.* Ex. 13 (1/10/11 Letter).) On January 17, 2011, DNG mailed Ms. Moritz another letter in which it agreed to accept $4,581.05 in full settlement if DNG received payment by January 31, 2011. (*Id.* Ex. 14 (1/17/11 Letter).) Also on January 17, 2011, Ms. Moritz sent DNG a ***1103** letter disputing the validity of her debt pursuant to the Fair Debt Collection Practices Act. (Moritz Aff. (Dkt. # 47) Ex. 1 (Moritz Letter).) When the loan Ms. Moritz was pursuing fell through, DNG moved forward with garnishing Talasaea. (Aylworth Decl. ¶¶ 14, 15.) Ultimately, Ms. Moritz satisfied the state court judgment against her. (2d Radbil Decl. Ex. 3 (Aylworth Dep.) at 134:16–135:1.)

On June 17, 2011, Ms. Moritz initiated the instant action against Defendants. (Compl. (Dkt. # 1).) In her amended complaint, she alleges that Defendants violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.,* and the Washington Consumer Protection Act ("CPA"), RCW ch. 19.86. (Am. Compl. (Dkt. # 28) ¶ 1.) Ms. Moritz's CPA claim relies on her assertion that DNG violated the Washington Collection Agency Act ("WCAA"), RCW ch. 19.16. (*Id.*)

III. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate if the evidence, when viewed in the light most favorable to the non-moving party, demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Galen v. Cnty. of L.A.,* 477 F.3d 652, 658 (9th Cir.2007). The moving party bears the initial burden of showing there is no genuine issue of material fact and that he or she is entitled to prevail as a matter of law. *Celotex,* 477 U.S. at 323, 106 S.Ct. 2548. "Where non-moving party bears the burden of proof at trial, the moving party need only prove that there is an absence of evidence to support the non-moving party's case." *In re Oracle Corp. Sec. Litig.,* 627 F.3d 376, 387 (9th Cir.2010) (international citations omitted). If the moving party meets his or her burden, then the non-moving party "must make a showing sufficient to establish a genuine dispute of material fact regarding the existence of the essential elements of his case that he must prove at trial" in order to withstand summary judgment. *Galen,* 477 F.3d at 658. In adjudicating cross-motions for summary judgment, the court "evaluate[s] each motion separately, giving the nonmoving party in each instance the benefit of all reasonable inferences." *ACLU of Nevada v. City of Las Vegas,* 466 F.3d 784, 790–91 (9th Cir.2006) (citations omitted); *see also Friends of Columbia Gorge, Inc. v. Schafer,* 624 F.Supp.2d 1253, 1263 (D.Or.2008).

B. Defendants' Motion for Summary Judgment

1. Fair Debt Collection Practices Act Claims

[3] **[4]** **[5]** Ms. Moritz's federal claims are based on Defendants' alleged violations of the FDCPA. (*See generally* Am. Compl.) The FDCPA comprehensively regulates the conduct of debt collectors, imposing affirmative obligations and broadly prohibiting abusive practices. *Gonzales v. Arrow Fin. Servs., LLC,* 660 F.3d 1055, 1060–61 (9th Cir.2011). Whether conduct violates the FDCPA requires an objective analysis that takes into account the "the least sophisticated debtor" standard. *See Donohue v. Quick Collect, Inc.,* 592 F.3d 1027, 1030 (9th Cir.2010); *Guerrero v. RJM Acquisitions LLC,* 499 F.3d 926, 934 (9th Cir.2007). The FDCPA is a strict liability statute, which "should be construed liberally in favor of the consumer." *Clark v. Capital Credit & Collection Servs., Inc.,* 460 F.3d 1162, 1175–76 (9th Cir.2006) (quotation omitted).

For the purposes of the FDCPA, a consumer is any person obligated or allegedly obligated to pay a debt. 15 U.S.C. § 1692a(3). Ms. Moritz qualifies as a consumer ***1104** because it is undisputed that she owed a debt. (*See* Am. Compl. ¶ 18.) A debt collector, for the purposes of the FDCPA, is any person "who uses any instrumentality of interstate state commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). The parties do not dispute that DNG is a debt collector for the purposes of the FDCPA, but they dispute whether Mr. Gordon similarly qualifies. The court begins with Ms. Moritz's FDCPA claims against DNG and then turns to her claims against Mr. Gordon. [2]

a. 15 U.S.C. § 1692d(6) Claim Against DNG

[6] Section 1692d of the FDCPA prohibits a debt collector from engaging "in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." 15 U.S.C. § 1692d. In addition to this general ban on harassing or abusive conduct, § 1692d provides a non-exclusive list of six prohibited acts, including "the placement of telephone calls without meaningful disclosure of the caller's identity." 15 U.S.C. § 1692d(6). The Ninth Circuit has not yet addressed what is required to satisfy the "meaningful disclosure" element of § 1692d(6), however district courts in the Circuit increasingly agree that meaningful disclosure "requires that the caller must state his or her name and capacity, and disclose enough information so as not to mislead the recipient as to the purpose of the call." *Hosseinzadeh v. M.R.S. Assoc., Inc.,* 387 F.Supp.2d 1104, 1112 (C.D.Cal.2005); *see also Costa v. Nat'l Action Fin. Serv.,* 634 F.Supp.2d 1069, 1074 (E.D.Cal.2007); *Gordon v. Credit Bureau of Lancaster & Palmdale,* No. CV 11–2272(PSG) (PJWx), 2012 WL 1813668, at *2 (C.D.Cal. Apr. 20, 2012) (adopting the standard set forth in *Hosseinzadeh*); *Koby v. ARS Nat. Serv., Inc.,* No. CIV 09CV0780 JAHJMA, 2010 WL 1438763, at *3 (S.D.Cal. Mar. 29, 2010) (noting increasing consensus). Because these district courts' understanding of "meaningful disclosure" aligns with the remedial nature of the FDCPA, the court adopts their understanding here.

DNG argues that it is entitled to summary judgment on Ms. Moritz's § 1692d(6) claim because its employees made the requisite meaningful disclosures during their communications with Ms. Moritz. (Def. Mot. at 7–8.) Ms. Pierce, the DNG employee Ms. Moritz contends left the improper messages, testified that she left a standard voicemail message that said: "This message is for Martha Moritz. This is Tasha Pierce calling from the debt collection law firm of Daniel N. Gordon, PC. Please return my phone call at 1(800) 311–8566." [3] (1st Kraemer Decl. Ex 2 (Pierce Dep.) at 29:14–30:1.) She also testified that this standard voicemail message has not changed since the beginning of her employment. (*Id.* Ex. 2 at 29:24–30:1.) Matthew Aylworth, an attorney with DNG, similarly testified that that DNG employees are instructed to leave voicemail messages that say: "This is [employee's name] from the debt collection law firm of Daniel ***1105** N. Gordon, P.C. Please call me back." (2d Radbil Decl. Ex. 3 (Aylworth Dep.) at 106:5–8.) Based on the foregoing evidence, a reasonable jury could conclude that Ms. Pierce left DNG's standard voicemail message on Ms. Moritz's answering machine and that the message meets the meaningful disclosure requirement of § 1692d(6); it provided Ms. Moritz with the name of the caller and would have informed a reasonable recipient of the message about the nature of the communication. As such, the court concludes that DNG has satisfied its initial burden on summary judgment of presenting evidence establishing its entitlement to judgment as a matter of law.

The burden thus shifts to Ms. Moritz to create a genuine issue of material fact for trial. To do so, Ms. Moritz presents her own testimony that the voicemail messages left by Ms. Pierce did not disclose that the calls were from a debt collector but only stated: "Hi, this is Tasha Pierce from Attorney Daniel Gordon's office. I need a call back at 1–800." (2d Radbil Decl. Ex. 5 (Moritz Dep.) at 80:18–21.) Ms. Moritz also submits evidence that DNG's policy on voicemail messages instructed employees to disclose only the employee's name and phone number (*id.* Ex. 8 (DNG Policy)), and that DNG required its employees to leave voicemail messages consistent with its policies and procedures (Ans.(Dkt. # 30) ¶ 46). [4] Ms. Moritz has also submitted the testimony of Brandy Nelson, a former manager with DNG, that DNG employees were instructed to leave a standard voicemail message that did not indicate that the call was from a debt collector. [5] (2d Radbil Decl. Ex. 1 (Nelson Dep.) at 143:6–144:24.) Rather, according to Ms. Nelson, DNG employees "were instructed to only say their name and where they were calling and a call-back number." (*Id.* Ex. 1 at 144:22–24.) Ms. Nelson testified that typically the DNG collectors would say: "Hi this is [employee's name] calling from Daniel N. Gordon, PC. Please give me a call back at this 800 number." (*Id.* Ex. 1 at 143:6–10.)

[7] Finally, Ms. Moritz relies on DNG's business records to support her contention that Ms. Pierce did not make the required disclosures in her voicemail messages. (Resp. to Def. Mot. (Dkt. # 53) at 5–7.) Ms. Pierce testified that she is required to enter very detailed notes on every communication she has with a consumer into DNG's History Notes software. (1st Kraemer Decl. Ex. 2 (Pierce Dep.) at 21:16–23:12.) She also testified that she is required to note whenever she provides the consumer with a "mini-Miranda" warning, which is DNG's method

of informing the customer that an employee is calling about collecting a debt.[6] (*Id.*) Some of Ms. Pierce's History Notes entries related to Ms. Moritz's account indicate that she a ***1106** "mini-Miranda," however, many others do not indicate that Ms. Pierce provided a mini-Miranda warning to Ms. Moritz. (*Compare* 2d Radbil Decl. Ex. 7 at GORD00044–45 (History Notes with no notation that mini-Miranda was provided), *with* 3d Radbil Decl. (Dkt. # 54) Ex. A at GORD00035–36 (History Notes with notation that the mini-Miranda was provided).) Viewing the evidence summarized above in the light most favorable to Ms. Moritz, the court concludes that there is a genuine issue of material fact regarding the contents of Ms. Pierce's voicemail messages to Ms. Moritz and whether the voicemail messages complied with the meaningful disclosure requirement of § 1692d(6).

[8] **[9]** DNG nevertheless argues that even if Ms. Pierce left voicemail messages that did not comply with § 1692d(6)'s meaningful disclosure requirement, it is entitled to summary judgment based on the bona fide error defense. (Reply to Def. Mot. (Dkt. # 56) at 4.) "Although the FDCPA is a strict liability statute, it excepts from liability those debt collectors who satisfy the 'narrow' bona fide error defense." *McCollough v. Johnson, Rodenburg & Lauinger, LLC,* 637 F.3d 939, 948 (9th Cir.2011) (citation omitted). The defense provides:

> A debt collector may not be held liable in any action brought under [the FDCPA] if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

15 U.S.C. § 1692k(c). "The bona fide error defense is an affirmative defense, for which the debt collector has the burden of proof." *McCollough,* 637 F.3d at 948 (citation omitted). "Thus, to qualify for the bona fide error defense, the defendant must prove that (1) it violated the FDCPA unintentionally; (2) the violation resulted from a bona fide error; and (3) it maintained procedures reasonably adapted to avoid the violation." *Id.*

[10] DNG argues that the bona fide error defense applies because any messages left in the manner claimed by Ms. Moritz were contradictory to policy and training. (Reply to Def. Mot. at 4.) As discussed above, however, there are genuine issues of material fact regarding DNG's policies regarding the content of voicemail messages. Additionally, there is no evidence in the record regarding Ms. Pierce's intent. Summary judgment, therefore, is improper based on the bona fide error defense. For the foregoing reasons, the court denies DNG's motion for summary judgment with respect to Ms. Moritz's 15 U.S.C. § 1692d(6) claim.

b. 15 U.S.C. § 1692e(11) Claim Against DNG

Section 1692e of the FDCPA prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. The statute provides a non-exhaustive list of conduct that is a violation of § 1692e, including:

> The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

15 U.S.C. § 1692e(11). Most courts that have considered the issue have concluded ***1107** that "voicemails are communications that must conform to the disclosure requirements of section 1692e(11)." *Lensch v. Armada Corp.,* 795 F.Supp.2d 1180, 1189 (W.D.Wash.2011) (collecting cases, including those within the Ninth Circuit).

DNG contends that it is entitled to summary judgment on Ms. Moritz's § 1692e(11) claim for the same reasons it asserted with respect to Ms. Moritz's § 1692d(6) claim. (*See* Def. Mot. at 7–8; Reply to Def. Mot. at

2–5.) Ms. Moritz also asserts the same arguments and evidence regarding her § 1692e(11) claim as she did on her § 1692d(6) claim. (*See* Resp. to Def. Mot. at 2–7.) For the reasons explained above, there are genuine issues of material fact regarding the contents of the voicemail messages Ms. Pierce left for Ms. Moritz, particularly whether she disclosed that the call was from a debt collector. Accordingly, the court denies Defendants' motion for summary judgment with respect to Ms. Moritz's 15 U.S.C. § 1692e(11) claim.

c. 15 U.S.C. § 1692f Claim Against DNG

Section 1692f prohibits a debt collector from "us[ing] unfair or unconscionable means to collect any debt." 15 U.S.C. § 1692f. Section 1692f enumerates eight specific violations that are not intended to limit the applicability of the statute, *id.,* none of which are implicated in this matter. Rather, Ms. Moritz's complaint alleges that DNG violated § 1692f's general prohibition of "unfair or unconscionable means to collect any debt" by collecting Ms. Moritz's debt "without being licensed pursuant to Washington law, thus avoiding review by state authorities." (Am. Compl. ¶ 90.) There is no dispute that DNG is not licensed under Washington law. (Ans. ¶ 23.)

DNG argues that it is entitled to summary judgment because (1) there is no evidence that that DNG was required to be licensed pursuant to Washington law, and (2) violations of state law are not *per se* violations of the FDCPA. (Def. Mot. at 8.) For the reasons explained below, the court concludes that, viewing the evidence in Ms. Moritz's favor, no rational jury could find that the alleged violations of Washington law also violated the FDCPA. For purposes of this discussion, the court assumes the truth of Ms. Moritz's assertions that DNG violated Washington law by acting without a license and by sending debt collection letters to Ms. Moritz that did not itemize the amount of the debt as required by Washington law. (*See* Resp. to Def. Mot. at 11; Moritz Mot. at 7.)

The controlling authority on this issue is *Wade v. Regional Credit Association,* 87 F.3d 1098 (9th Cir.1996). In *Wade,* the defendant called the debtor and sent her a collection notice without a permit as required by Idaho law. *Id.* at 1099. The Ninth Circuit refused to find that the mere violation of the state licensing law constitutes a violation of the FDCPA and held that a debt collection practice in violation of state law is not *per se* a FDCPA violation. *Id.* at 1100. Instead, the court analyzed the substance of the allegedly improper communications to determine whether they constituted independent violations of the FDCPA. *Id.* at 1100. With respect to § 1692f's prohibition against unfair or unconscionable means of collecting, the court concluded that the "notice was relatively innocuous, and not 'unconscionable' in either a legal or lay sense." *Id.* The court also declined to follow district courts that had found that collection agencies violated the FDCPA by engaging in collection activities without the required state licenses, finding them "either inapposite or unpersuasive." *Id.* at 1100–01, 1101 n. 3.

For example, in disagreeing with the district court's decision in *Gaetano v. Payco* ***1108** *of Wisconsin, Inc.,* 774 F.Supp. 1404 (D.Conn.1990), the Ninth Circuit wrote:

> In *Gaetano,* the court found that the collector's unlicensed actions violated that section because the collector "deprived the plaintiff of her right as a consumer debtor residing within the state to have the defendant's qualifications as a collection agency reviewed by state authorities." 774 F.Supp. at 1415 n. 8. If Wade was deprived of such a right, her remedy lies in Idaho state law, not in Section 1692f of the FDCPA.

Wade, 87 F.3d at 1100–01. In short, the *Wade* court did not find any import in the defendant's failure to obtain a license in violation of state law and instead focused on the defendant's actions and whether they violated the FDCPA independent of any state-law violation. *See Taylor v. Quall,* 471 F.Supp.2d 1053, 1062 (C.D.Cal.2007) (citing Wade for the proposition that instead of finding a state law violation a *per se* FDCPA violation, "the [c]ourt must determine whether any alleged state-law violation also constitutes a violation of one of the enumerated sections of the FDCPA"); *see also Khosroabadi v. N. Shore Agency,* 439 F.Supp.2d 1118, 1123–25 (S.D.Cal.2006).

[11] Applying the *Wade* analysis to the instant dispute, the court concludes that any violation of Washington's licensing requirements does not itself establish a violation of the FDCPA. *See Wade,* 87 F.3d at 1100–01. Ms. Moritz attempts to distinguish *Wade* on the basis that it interpreted Idaho regulations of collection agencies, which are different from Washington's corresponding regulations. (Resp. to Def. Mot. at 9.) There is no indication in the *Wade* opinion, however, that the specific

content of the Idaho regulations had any bearing on the court's decision. As such, the court is not persuaded that *Wade* does not govern here. Ms. Moritz also asserts that courts "routinely" find violations of state laws that mandate licensure by collection agencies to constitute violations of the FDCPA. (Resp. to Def. Mot. at 9–10 (citing a number of district court decisions).) Yet most of the cases Ms. Moritz relies upon are not from the Ninth Circuit, where *Wade* is binding authority, and the only case from within this Circuit was decided before *Wade.* Moreover, a number of the cases Ms. Moritz cites were discussed in *Wade* and found to be unpersuasive, and Ms. Moritz offers no explanation for why the court should follow this authority in light of the *Wade* court's comments. *See Wade,* 87 F.3d at 1100 n. 3. Therefore, the court declines to follow the district court decisions relied upon by Ms. Moritz.

[12] Rather, the court must determine whether DNG's actions constitute independent violations of the FDCPA. *See Wade,* 87 F.3d at 1100–01; *Taylor,* 471 F.Supp.2d at 1062. Ms. Moritz points to a specific action taken by DNG that may be a violation of Washington law: failing to itemize the amount of Ms. Moritz's debt in its collection letters to her. (*See* Resp. to Def. Mot. at 11.) Ms. Moritz does not assert, however, that such a failure is an independent violation of the FDCPA, and the court has discerned no such violation based on its review of the statute. *See generally* 15 U.S.C. §§ 1692a, 1692g; *see also* 15 U.S.C. § 1692g (setting forth the requirements for the initial written communication with a consumer, which does not include the itemization required by Washington law); *Dunlap v. Credit Protection Ass'n, L.P.,* 419 F.3d 1011, 1012 (9th Cir.2005) (per curiam) (concluding that the notice provisions set forth in 15 U.S.C. § 1692g are sufficient to apprise debtors of their rights). When viewed from the perspective of the least sophisticated debtor and in the light most favorable to Ms. Moritz, no reasonable jury could conclude that the omission from the ***1109** letters of the itemized amounts constitutes an unconscionable or unfair attempt to collect a debt under the FDCPA. Accordingly, the court concludes that DNG is entitled to summary judgment on Ms. Moritz's 15 U.S.C. 1692f claim.

d. FDCPA Claims Against Mr. Gordon

The Ninth Circuit has not yet decided the question of whether an individual employee or shareholder, officer, or director of a debt collecting corporation may be held personally liable as a "debt collector" under the FDCPA. *See Robinson v. Managed Accounts Receivables Corp.,* 654 F.Supp.2d 1051, 1061 (C.D.Cal.2009); *Schwarm v. Craighead,* 552 F.Supp.2d 1056, 1073 (E.D.Cal.2008). There is a split among persuasive authority. The Sixth Circuit and the majority of district courts that have considered the issue have concluded that employees can be held personally liable under the FDCPA. *Robinson,* 654 F.Supp.2d at 1061 (collecting cases). On the other hand, the Seventh Circuit has held that employees cannot be held personally liable under the FDCPA unless the plaintiff can pierce the corporate veil. *Id.*

[13] **[14]** District courts in the Ninth Circuit have followed the Sixth Circuit's approach. *See, e.g., Robinson,* 654 F.Supp.2d at 1061; *Schwarm,* 552 F.Supp.2d at 1071–73; *Townsend v. Nat'l Arbitration Forum, Inc.,* No. CV 09–9325–VBF(RNBx), 2012 WL 12736, at *12 (C.D.Cal. Jan. 4, 2012); *Smyth v. Merchants Credit Corp.,* No. C11–1879RSL, 2012 WL 588744, at *2–*3 (W.D.Wash. Feb. 22, 2012). The court agrees with the reasoning in these cases, particularly that articulated in *Schwarm.* Accordingly, the court concludes that "because the FDCPA imposes personal, not derivative, liability, serving as a shareholder, officer, or director of a debt collecting corporation is not, in itself, sufficient to hold an individual liable as a 'debt collector.' " *Schwarm,* 552 F.Supp.2d at 1073. Rather, the FDCPA "requires that the individual 'regularly collect or attempt to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.' " *Id.* (quoting 15 U.S.C. § 1692a(6)) (alterations in *Schwarm*). Based on this standard, courts have found an individual personally liable if "the individual 1) materially participated in collecting the debt at issue; 2) exercised control over the affairs of the business; 3) was personally involved in the collection of the debt at issue; or 4) was regularly engaged, directly and indirectly, in the collection of debts." *Id.* (internal quotations and citations omitted).

[15] Mr. Gordon asserts that he cannot be held personally liable under the FDCPA because there is no evidence that he was involved in the collection of Ms. Moritz's debt. (Def. Mot. at 5–8.) In response, Ms. Moritz has submitted the following evidence in support of her argument that Mr. Gordon is individually liable under

the FDCPA: Mr. Gordon requires all collectors to sign a memo stating that no one would leave a message for a debtor at a place of employment (3d Radbil Decl. Ex. C (Aylworth Dep. from *McLain v. Daniel N. Gordon, P.C.*) at 114:12–15:6); Mr. Gordon (along with other attorneys at DNG) drafts FDCPA compliance-related materials (*id.* Ex. D (Aylworth Dep. from *Mandelas v. Daniel N. Gordon, P.C.*) at 127:23–128:2); Mr. Gordon solicits new clients (2d Radbil Decl. Ex. 4 (Aylworth Dep. from *McLain v. Daniel N. Gordon, P.C.*) at 42:10–43:9; *id.* Ex. 2 (Nelson Aff.) ¶ 22); and Mr. Gordon convinces clients that he does not need to be licensed in Washington (*id.* Ex. 2 ¶ 22).[7] (Resp. to ***1110** Def. Mot. at 21–23.) Ms. Moritz argues that these actions both directly and indirectly caused the alleged violations at issue here. (*Id.* at 22–23.)

Viewing the evidence in Ms. Moritz's favor, the court concludes that she has failed to raise a genuine issue of material fact as to Mr. Gordon's liability for any of the alleged FDCPA violations. First, because Ms. Moritz does not allege or present evidence that Mr. Gordon or DNG employees left improper messages for her at her place of employment, the fact that Mr. Gordon drafted a policy forbidding employees from leaving such messages is irrelevant to the instant lawsuit. Second, even if Mr. Gordon drafted FDCPA compliance-related materials, there is no evidence that he drafted any of the policies that led to the alleged FDCPA violations here. Third, Mr. Gordon's solicitation of clients did not cause the allegedly improper voicemails, and is therefore inapplicable to Ms. Moritz's § 1692d and § 1692e claims. Finally, for the same reasons discussed above with respect to Ms. Moritz's § 1692f claim against DNG, her parallel claim against Mr. Gordon fails as a matter of law. For these reasons, the court grants Mr. Gordon's motion for summary judgment on all of Ms. Moritz's FDCPA claims against him.

2. Washington Consumer Protection Act Claim Against DNG

[16] To prevail on a CPA claim, a plaintiff must establish five distinct elements: "(1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; [and] (5) causation." *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d 778, 719 P.2d 531, 533 (1986). DNG's motion for summary judgment on Ms. Moritz's CPA claim primarily focuses on whether Ms. Moritz has presented evidence of an unfair or deceptive act or practice occurring in trade or commerce. (Def. Mot. at 9–13.) With respect to the remaining elements, DNG also contends that there is no evidence supporting Ms. Moritz's claim. (*Id.* at 12–13; Reply to Def. Mot. at 7; Resp. to Moritz Mot. (Dkt. # 51) at 7–18.) The court will address the elements of Ms. Moritz's CPA claim below.

a. Unfair or Deceptive Act or Practice Occurring in Trade or Commerce

[17] A plaintiff may establish an unfair or deceptive act or practice occurring in trade or commerce for purposes of a CPA claim by proving certain violations of the WCAA. RCW 19.16.440; *Evergreen Collectors v. Holt*, 60 Wash.App. 151, 803 P.2d 10, 12–13 (1991). In particular, the WCAA states:

> The operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW.

RCW 19.16.440. Ms. Moritz's CPA claim is premised upon DNG's alleged violation ***1111** of RCW 19.16.110, RCW 19.16.250(8), and RCW 19.16.260. (Am. Compl. ¶¶ 96, 101, 103, 105.) The court will begin by considering whether the undisputed evidence establishes that DNG violated RCW 19.16.110 and then turn to Ms. Moritz's RCW 19.16.250 and RCW 19.16.260 claims.

RCW 19.16.110 provides in relevant part: "No person shall act, assume to act, or advertise as a collection agency or out-of-state collection agency as defined in this chapter, except as authorized by this chapter, without first having applied for and obtained a license from the director." RCW 19.16.110. Here, there is no dispute that DNG is not

licensed as a collection agency or out-of-state collection agency. (Ans. ¶ 23.) DNG argues that it is entitled to summary judgment on Ms. Moritz's CPA claim because it is not required to be licensed under RCW 19.16.110. (Def. Mot. at 9–13.) In response, Ms. Moritz contends that DNG qualifies as an out-of-state collection agency or, in the alternative, a collection agency. (Resp. to Def. Mot. at 12–21.)

Under the WCAA, the term "collection agency" includes "[a]ny person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person." RCW 19.16.100(2)(a). Excluded from this definition is an "out-of-state collection agency," which is defined in relevant part as "a person whose activities within this state are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission, from the person's location in another state on behalf of clients located outside of this state...." [8] RCW 19.16.100(3)(e), 19.16.100(4). Also excluded from the definition of "collection agency" is "[a]ny person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to: ... lawyers...." RCW 19.16.100(3)(c).

[18] Here, the undisputed evidence establishes that DNG operated as an out-of-state collection agency. Both DNG and CACV are located outside of Washington. (2d Radbil Decl. Ex. 6 (DNG Resp. to Req. to Admit) ¶¶ 4, 5.) At all times relevant to this lawsuit, Ms. Moritz resided in Washington. (*See, e.g., id.* Exs. 9–14 (Letters Addressed to Ms. Moritz in Washington).) Additionally, DNG admits that it attempted to collect a debt from Ms. Moritz (*id.* Ex. 6 ¶ 4), and the evidence before the court is that all of DNG's actions taken to collect that debt—including initiating the action in Whatcom County, obtaining the state court judgment, conducting garnishment proceedings, and communicating with Ms. Moritz and others—occurred through interstate communications from Oregon to Washington. (*See, e.g.,* 1st Radbil Decl. Ex. A (Interstate Communications Regarding Whatcom County Action); 2d Radbil Decl. Exs. 9–14 (Interstate Letters to Ms. Moritz).) That some of DNG's debt collection activities included litigation does not change the basic fact that all of DNG's activities were taken in an attempt to collect the debt owed to CACV.

DNG makes four arguments in an attempt to avoid the conclusion that it acted as an out-of-state collection agency. First, DNG asserts that it is excluded from the definition of an "out-of-state collection agency" because its "collection activities are carried on in ... its true name and are ***1112** confined and are directly related to the operation of a business other than that of a collection agency"—that is, a law firm. (Resp. to Moritz. Mot. at 8, 8 n. 7 (citing RCW 19.16.100(3)(c)).) Yet DNG's proposed statutory construction is contrary to the plain meaning of the statute. Out-of-state collection agencies and some lawyers are both excluded from the definition of "collection agency," however the exclusion related to lawyers is not reiterated in the definition of "out-of-state collection agency." *See* RCW 19.16.100(3), (4). If the legislature intended to exclude law firms who qualify as out-of-state collection agencies from the licensing requirements of the WCAA, it would have included such an exclusion in its definition of "out-of-state collection agency." Because it did not do so, the court declines to adopt DNG's proposed construction of the statute.

Second, DNG argues that it does not fall within the definition of an "out-of-state collection agency" because it is a law firm retained by clients to litigate disputes. (Def. Mot. at 11 n. 6 (citing Aylworth Decl. ¶ 3).) This general claim, however, does not establish that DNG's activities in Washington reach beyond attempting to collect debts or that DNG uses means other than interstate communications to do so. Accordingly, it does not create a genuine issue of fact regarding whether DNG is an out-of-state collection agency for purposes of the WCAA.

Third, DNG asserts that lawyers engaged in the practice of law are not subject to the WCAA because the statute prohibits licensees from "[p]erform[ing] any act or acts, either directly or indirectly, constituting the practice of law." RCW 19.16.250(5). The court has previously rejected this argument because "a plain reading of the narrow exemption [in RCW 19.16.100(3)(c)] belies that assertion" and "if the legislature had intended such a broad exemption, it could have included it." *Mandelas v. Gordon,* 785 F.Supp.2d 951, 961 (W.D.Wash.2011) (quoting *Lang v. Gordon,* No. C10–0819RSL, 2011 WL 62141, at *2 (W.D.Wash. Jan. 6, 2011)) (alteration in *Mandelas*).

Finally, DNG contends that it is not an out-of-state collection agency because it "appeared before the Whatcom County District Court in the underlying collection case by filing a complaint and pursuing it to judgment." (Resp. to Moritz Mot. at 8 n. 7.) As such, DNG maintains, it did "much more to collect Ms. Moritz's debt than limiting itself to the means of interstate communications." (*Id.*) Yet in light of the evidence discussed above that all of DNG's contacts with the Whatcom County District Court were achieved by means of interstate communications via the United States mail, the court is not persuaded that DNG's activities in Washington extended beyond attempting to collect Ms. Moritz's debt by means of interstate communications.

In sum, the court concludes that the undisputed evidence submitted by the parties establishes that DNG acted as an out-of-state collection agency without a license in violation of RCW 19.16.110. This violation establishes per se the first two elements of a CPA claim as articulated in *Hangman Ridge,* 719 P.2d at 533. *See* RCW 19.16.440. As such, the court denies DNG's motion for summary judgment on the issue of whether it violated RCW 19.16.110.

As additional grounds for establishing an unfair or deceptive act or practice occurring in trade or commerce, Ms. Moritz alleges that DNG violated RCW 19.16.250(8) and RCW 19.16.260. (Am. Compl. ¶¶ 101, 103, 105.) In support of its motion for summary judgment, DNG contends that RCW 19.16.250(8) is inapplicable because DNG is not a licensee under the WCAA, and there is no evidence in the ***1113** record that it violated RCW 19.16.260. (Def. Mot. at 12–13.) For the reasons described below, the court agrees with DNG on both issues.

[19] First, the plain language of the WCAA provides that RCW 19.16.250 applies to "licensees," not "collection agencies" or "out-of-state collection agencies." [9] RCW 19.16.250 ("No licensee or employee of a licensee shall...."); RCW 19.16.440 ("[T]he commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 [is] declared to be [an] unfair act[ ] or practice[ ] ... for the purpose of the application of the [CPA]."). If the legislature had intended RCW 19.16.250 to apply to unlicensed collection agencies and unlicensed out-of-state collection agencies, it could have used such language in drafting the statute. Here, it is undisputed that DNG is not licensed under the WCAA, and therefore, although DNG may be held liable for acting as an unlicensed out-of-state collection agency under RCW 19.16.110, the WCAA does not provide for additional liability under RCW 19.16.250.

Second, Ms. Moritz makes no response to DNG's argument regarding RCW 19.16.260. (*See generally* Resp. to Def. Mot.; Moritz Mot.; Reply to Moritz Mot.) As such, she has failed prevent summary judgment on this issue by presenting sufficient evidence to create a genuine issue of material fact for trial. Further, the WCAA does not make a violation of RCW 19.16.260 a per se unfair act or practice or unfair method of competition in the conduct of trade or commerce for the purposes of the CPA. *See* RCW 19.16.440. Thus even if Ms. Moritz had presented evidence that DNG violated RCW 19.16.260, she has not articulated why such a violation supports her CPA claim. For these reasons, the court grants summary judgment to DNG on the issues of whether it violated RCW 19.16.250 and RCW 19.16.260.

b. Public Interest Impact

[20] The public interest element of a CPA claim may be satisfied in several ways. *See Hangman Ridge,* 719 P.2d at 536–39. In certain situations, the public interest element is satisfied per se by a showing of conduct in violation of a statute containing a specific legislative declaration of public interest impact. *Id.* at 538; *Stephens v. Omni Ins. Co.,* 138 Wash.App. 151, 159 P.3d 10, 24 (2007), *aff'd sub nom. Panag v. Farmers Ins. Co. of Wash.,* 166 Wash.2d 27, 204 P.3d 885 (Wash.2009). The WCAA, however, does not contain the required declaration of public interest impact. [10] "Whether the public has an interest is therefore an issue to be determined by the trier of fact." *Stephens,* 159 P.3d at 24; *see also Behnke v. Ahrens,* 280 P.3d 496, 503 (Wash.Ct.App.2012).

[21] DNG nevertheless contends that it is entitled to summary judgment on Ms. Moritz's CPA claim because she has presented no evidence related to any public interest impact. (Def. Mot. at 12–13; Reply to Def. Mot. at 7; Resp. to Moritz Mot. at 16.) The court disagrees. Where a complaint involves "essentially a private dispute" the following factors are relevant to whether there is a public interest impact:

> ***1114** (1) Were the alleged acts committed in the course of defendant's business? (2) Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining positions?

Stephens, 159 P.3d at 24 (quoting *Hangman Ridge,* 719 P.2d at 538). "[I]t is the likelihood that additional plaintiffs have been or will be injured in exactly the same fashion that changes a factual pattern from a private dispute to one that affects the public interest." *Hangman Ridge,* 719 P.2d at 538. Here, Ms. Moritz has directed the court's attention to the matter of *Snyder v. Daniel N. Gordon, P.C.,* No. C 11–1379RAJ, which is currently pending before another court in the Western District of Washington. (Reply to Moritz Mot. at 12.) In *Snyder*, the court recently denied DNG's motion for summary judgment on the question of whether it violated the WCAA by collecting debts without a license and concluded that DNG had violated the statute. 2012 WL 3643673, at *6–*7 (W.D.Wash. Aug. 24, 2012). Additional evidence in the record further supports a conclusion that that DNG likely attempted to collect debts from other persons in violation of the WCAA. (*See, e.g.,* 2d Radbil Decl. Ex. 15 (Nelson Dep. in *McLain v. Daniel N. Gordon, P.C.*) at 37:8–10.) This evidence creates a triable fact regarding whether DNG's violation of the WCAA affects the public interest. Accordingly, the court denies DNG's motion for summary judgment on the issue of public interest impact.

c. Injury to Business or Property Caused by Violation of WCAA

[22] **[23]** The final elements of a CPA claim are that the defendant's conduct caused injury to the plaintiff in his or her business or property. "The injury involved need not be great, but it must be established." *Hangman Ridge,* 719 P.2d at 539. Because the injury must be to the plaintiff's "business or property," "[p]ersonal injuries are not compensable damages under the CPA." *Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.,* 122 Wash.2d 299, 858 P.2d 1054, 1064 (1993). Specifically, pain and suffering and emotional distress damages are not compensable CPA injuries. *White River Estates v. Hiltbruner,* 134 Wash.2d 761, 953 P.2d 796, 797 n. 1 (1998). Further, the Washington Supreme Court has explained:

> [N]o monetary damages need be proven, and ... nonquantifiable injuries, such as loss of goodwill would suffice for this element.... A loss of use of property which is causally related to an unfair or deceptive act or practice is sufficient injury to constitute the fourth element of a Consumer Protection Act violation. The injury element will be met if the consumer's property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.

Mason v. Mortgage Am., Inc., 114 Wash.2d 842, 792 P.2d 142, 148 (1990) (internal citations omitted). "To establish the causation element in a CPA claim, a plaintiff must show that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Carlile v. Harbour Homes, Inc.,* 147 Wash.App. 193, 194 P.3d 280, 290 (2008) (citing *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.,* 162 Wash.2d 59, 170 P.3d 10, 22 (2007)).

[24] **[25]** The basis for DNG's summary judgment motion with respect to the elements of injury and causation is that Ms. Moritz has submitted no evidence in support these elements. (Def. Mot. at 12–13; Reply to Def. Mot. at 7.) Ms. Moritz, however, has submitted evidence that she incurred ***1115** a postage charge of $7.75 for sending a letter to DNG via certified mail as a result of DNG's unlicensed collection activities. [11] (Moritz Aff. ¶¶ 2–4, Ex. 2; 2d Radbil Decl. Ex. 5 (Moritz Dep.) at 51:13–52:7.) DNG responds that Ms. Moritz cannot claim such injury when she was unable to identify her damages or her injury in her deposition. (Resp. to Moritz Mot. at 16–17.) Yet contrary to DNG's assertions, evidence of Ms. Moritz's postage charges does not directly contradict the deposition testimony to which DNG cites, and the court will consider it in ruling on the cross-motions for summary judgment. (*Compare* 2d Kraemer Decl. (Dkt. # 52) Ex. 1

(Moritz Dep.) at 72:8–73:17, *with* Moritz Aff. ¶¶ 2–4, Ex. 2.) Thus taking Ms. Moritz's evidence into account, the court concludes that Ms. Moritz has presented evidence of an injury that was caused by DNG's unlicensed collection activity, and that summary judgment in DNG's favor on this issue is improper.

C. Ms. Moritz's Motion for Partial Summary Judgment

1. Fair Debt Collection Practices Act Claims Against DNG

Ms. Moritz moves for summary judgment on her claims against DNG under § 1692d(6) and § 1692e(11) of the FDCPA. (Moritz Mot. at 9–13.) The parties present the same arguments and evidence as they did in support of and opposition to DNG's motion for summary judgment on these issues. Viewing this evidence in DNG's favor, the court concludes that there are genuine issues of material fact that preclude summary judgment on these claims for the same reasons articulated above with respect to DNG's motion for summary judgment. Accordingly, the court denies Ms. Moritz's motion for partial summary judgment with respect to her FDCPA claims against DNG.

2. Washington Consumer Protection Act Claim Against DNG

Ms. Moritz also moves for summary judgment on her CPA claim against DNG. (Moritz Mot. at 13–23.) For the same reasons articulated above with respect to DNG's motion for summary judgment, the court concludes that Ms. Moritz has established that DNG violated the WCAA by acting as an unlicensed out-of-state collection agency, but that Ms. Moritz has failed to establish that DNG violated RCW 19.16.250(8). The court further concludes, for the same reasons stated above, that DNG's violation of the WCAA does not impact the public interest per se, but that Ms. Moritz has presented sufficient evidence of an identical injury to others to bring the issue before a trier of fact. Finally, with respect to the injury and causation elements, the court concluded above that Ms. Moritz presented undisputed evidence that she incurred a $7.75 postage fee as a result of DNG's unlicensed collection activities. This conclusion applies equally with respect to Ms. Moritz's motion for partial summary judgment.

The court must address one further issue, however, with respect to Ms. Moritz's alleged injury. She contends that she is entitled to damages in the amount she remitted to DNG in payment of the underlying debt owed to CACV because DNG's collection efforts were unlawful given that it lacked the requisite license. (Moritz Mot. at 22–23; *see also* Am. Compl. ¶ 108.) Ms. Moritz asserts that she paid DNG $2,250.00 to satisfy the underlying debt, and DNG does not dispute this fact. (Moritz Mot. at 23 (citing 2d Radbil Decl. Ex. 3 (Aylworth Dep.) at 134:10–135:1; ***1116** Moritz Aff. ¶ 10).) This amount was less than the total amount of principal and interest that Ms. Moritz owed CACV on the underlying debt. (*See* Am. Compl. ¶ 25.)

The court has been unable to locate a Washington State CPA case that addresses whether a plaintiff who pays a valid debt in response to unlawful collection activities is injured in the amount paid, nor has Ms. Moritz cited any. Rather, Ms. Moritz relies on the proposition from *Mason* quoted above that "[a] loss of use of property which is causally related to an unfair or deceptive act or practice is sufficient injury to constitute the fourth element of a [CPA] violation." (Moritz Mot. at 22 (quoting *Mason,* 792 P.2d at 148).) In *Mason,* the purchasers of a mobile home brought an action against the seller and lender to recover for breach of contract and violation of the CPA. 792 P.2d at 143. Even though the agreement between the purchasers and the lender provided that the purchasers would grant a deed of trust to secure their obligation to the lender, the lender had them sign over their real property by way of a quitclaim deed. *Id.* at 144. With respect to the fourth element of a CPA violation, the court reasoned that even setting aside the actual monetary damage caused by the defendants' breaches of their contracts with the purchasers, the purchasers would have been able to establish injury to their property given their loss of title to their real property. *Id.* at 149. The court consequently concluded that notwithstanding the actual damage award, the purchasers would have been entitled to reasonable attorneys' fees and costs under the CPA. *Id.*

Although *Mason* provides guidance regarding when a party may be injured within the meaning of the CPA, it does not establish that loss of use of property results in actual damages under the statute. Indeed, there is no indication in the *Mason* opinion that the court awarded actual damages for the purchasers' temporary loss of title. Furthermore, even if the court had awarded such

damages, *Mason* does not dictate that the same result is appropriate here because there is no dispute that Ms. Moritz owed CACV the amounts collected, whereas the lender in *Mason* acquired the purchasers' property in contravention of their agreement. Accordingly, *Mason* does not support Ms. Moritz's contention that she is entitled to a return of the amounts paid to DNG to settle her debt to CACV.

Ms. Moritz also relies on *Hamid v. Stock & Grimes,* 876 F.Supp.2d 500, 2012 WL 2740869 (E.D.Pa. Jul. 9, 2012). (Moritz Mot. at 22–23.) In *Hamid,* the court agreed with the plaintiff that the defendant violated the FDCPA by filing an underlying debt collection action against her when the action was barred by the applicable statute of limitations. *Id.* at *1. With respect to damages, the plaintiff argued that she should be able to recover as actual damages the amounts she paid to the defendant to settle the state court action. *Id.* The court denied the defendant's motion *in limine* and concluded that the plaintiff could present evidence to the jury of the amount she paid to settle the state court action. *Id.* at *3. The court reasoned: "It is clear from its underlying purpose that debtors may recover for violations of the FDCPA even if they have defaulted on a debt. It follows that debtors may recover the amount paid to settle a debt, if the debt collector violated the FDCPA in making the collection, as occurred here." *Id.* at *2.

[26] Hamid is distinguishable from the instant dispute because no statute of limitations barred CACV's state court action against Ms. Moritz. Indeed, there is no argument here that CACV could not collect ***1117** the debt owed from Ms. Moritz; the only issue is whether DNG violated Washington law in doing so. Other courts have found that plaintiffs are not injured in the amount collected when the plaintiff owed the debt even where the debt collector violated state law in doing so. *See Gray v. Suttell & Assocs.,* No. CV–09–251–EFS, 2012 WL 1067962, at *6 (E.D.Wash. Mar. 28, 2012) ("To the extent that Mr. Scott alleges an injury as a result of the garnished amount [of the debt he owed] based solely on the underlying debt and interest thereon, Mr. Scott fails to allege an injury to his business or property [for the purposes of his CPA claim]."); *Flores v. The Rawlings Co., LLC,* 117 Hawai'i 153, 177 P.3d 341, 358 (2008) (finding that although the defendant's collection activities might have violated state statutes, the plaintiffs were not injured by paying the underlying debt because the debt was valid); *Camacho v. Auto. Club of S. Cal.,* 142 Cal.App.4th 1394, 1405, 48 Cal.Rptr.3d 770 (2006) (finding that the plaintiff could not establish an injury from the allegedly unfair collection practice where he conceded liability and owed the amounts that were collected). Based on these cases, the court concludes that Ms. Moritz cannot recover the amounts she paid to DNG because those amounts were less than the total amount she owed to CACV on a valid debt. In sum, the court grants in part and denies in part Ms. Moritz's motion for summary judgment with respect to her CPA claim against DNG.

IV. CONCLUSION

For the foregoing reasons, the court GRANTS in part and DENIES in part Defendants' motion for summary judgment (Dkt. # 42), GRANTS in part and DENIES in part Ms. Moritz's motion for partial summary judgment (Dkt. # 45), and DENIES as MOOT Ms. Moritz's motion for leave to file supplemental authority (Dkt. # 60).

All Citations

895 F.Supp.2d 1097

Footnotes

1 Defendants have requested oral argument with respect to both motions. Federal Rule of Civil Procedure 56 does not require a hearing where the opposing party does not request it. *See, e.g., Demarest v. United States,* 718 F.2d 964, 968 (9th Cir.1983). Moreover, oral argument is not necessary where the non-moving party suffers no prejudice. *Houston v. Bryan,* 725 F.2d 516, 517–18 (9th Cir.1984). "When a party has [had] an adequate opportunity to provide the trial court with evidence and a memorandum of law, there is no prejudice [in a refusal to grant oral argument]." *Partridge v. Reich,* 141 F.3d 920, 926 (9th Cir.1998) (quoting *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev. Corp.,* 933 F.2d 724, 729 (9th Cir.1991)) (alterations in *Partridge*). "In other words, a district court can decide the issue without oral argument if the parties can submit their papers to the court." *Id.* Here, the issues have been thoroughly briefed by the parties and oral argument would not be of assistance to the court. Accordingly, the court denies Defendants' request for oral argument.

2 The court has considered only evidence of alleged violations that occurred within the FDCPA's one-year statute of limitations. *See* 15 U.S.C. § 1692k(d).

3 Ms. Moritz argues that Ms. Pierce was not certain of her testimony and that, contrary to DNG's argument, the evidence does not incontrovertibly demonstrate that the message left by DNG provided the requisite disclosures. (Resp. to Def. Mot. (Dkt. # 53) at 3.) The court, however, is satisfied that Ms. Pierce's testimony, if believed, could support a jury verdict in DNG's favor.

4 DNG argues that Ms. Nelson testified that some of the information on the policy document DNG produced was outdated. (Resp. to Moritz Mot. (Dkt. # 51) at 4.) Nevertheless, Ms. Nelson's testimony does not specifically indicate that the policy regarding the contents of the voicemail message was outdated.

5 DNG argues that Ms. Nelson's testimony on this point is contradicted by her testimony that DNG's policy on verbal communications with a consumer is to disclose that the call is from a debt collection agency. (Resp. to Moritz Mot. at 6; 2d Kraemer Decl. (Dkt. # 52) Ex. 3 (Nelson Dep. in *McLain v. Daniel N. Gordon, PC*) at 65:7–11.) Because the court must view the evidence in the light most favorable to Ms. Moritz when considering DNG's motion for summary judgment, any apparent contradiction in Ms. Nelson's testimony does not warrant granting summary judgment in Defendants' favor.

6 Ms. Nelson similarly testified that a DNG employee should make a notation when he or she provides a consumer a mini-Miranda warning. (3d Radbil Decl. (Dkt. # 54) Ex. B (Nelson Dep.) at 103:16–23.)

7 Ms. Moritz also asserts that "the language of DNG's collection letters to consumers was drafted and approved by Gordon." (Resp. to Def. Mot. at 22.) The portion of the record to which she cites, however, does not support this assertion. (*See* 2d Radbil Decl. Ex. 4 at 4–8.) The court will not scour the record in an attempt to locate facts supporting Ms. Moritz's assertion. *See Little v. Cox's Supermarkets,* 71 F.3d 637, 641 (7th Cir.1995) ("a district court is not required to scour the record [to look] for factual disputes [or] ... to piece together appropriate arguments"); *Greenwood v. F.A.A.,* 28 F.3d 971, 977 (9th Cir.1994) ("Judges are not like pigs, hunting for truffles buried in briefs." (citation omitted)).

8 There is one exception to the definition of "out-of-state collection agency," but it is not applicable here. *See* RCW 19.16.100(4).

9 The WCAA defines a "licensee" as "any person licensed under this chapter." RCW 19.16.100(9).

10 Ms. Moritz incorrectly argues that establishing a violation of the WCAA establishes the public interest element per se. (*See* Moritz Mot. at 20; Reply to Moritz Mot. at 11–12.) Although the CPA provides that an unfair or deceptive act or practice is per se injurious to the public when it "[v]iolates a statute that incorporates this chapter ...," RCW 19.86.093, the WCAA does not incorporate the CPA; it merely references the CPA, *see* RCW 19.16.440.

11 Ms. Moritz also contends that DNG's conduct caused her emotional distress, worry and embarrassment. (Moritz Mot. at 21.) Such damages, however, are not compensable under the CPA. *White River Estates,* 953 P.2d at 797 n. 1.

End of Document

2005 WL 2172377
Only the Westlaw citation is currently available.
United States District Court,
W.D. Washington.

Jehan SEMPER, Plaintiff,
v.
JBC LEGAL GROUP, et al., Defendants.

No. C04-2240L.
|
Sept. 6, 2005.

Attorneys and Law Firms

Jehan Semper, Seattle, WA, pro se.

Stephen A. Bernheim, Edmonds, WA, for Defendants.

ORDER GRANTING IN PART CROSS-MOTIONS FOR DISPOSITIVE RELIEF

LASNIK, J.

***1** This matter comes before the Court on "Plaintiff's Motion for Summary Judgment Resolving All Claims" (Dkt.# 33) and "JBC's Motion to Dismiss and For Summary Judgment Resolving All Claims" (Dkt.# 29). Plaintiff has asserted that defendants violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.,* the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.,* and various Washington statutes, and that defendants invaded her privacy by placing her in a false light. Plaintiff demands an award of maximum statutory damages, a determination of actual and punitive damages, an award of attorney's fees and costs, and such other proceedings as are just and proper.

Summary judgment is appropriate when, viewing the facts in the light most favorable to the nonmoving party, there is no genuine issue of material fact which would preclude the entry of judgment as a matter of law.[1] The party seeking summary dismissal of the case "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact ." *Celotex Corp. v. Catrett,* 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (quoting Fed.R.Civ.P. 56(c)). Once the moving party has satisfied its burden, it is entitled to summary judgment if the non-moving party fails to designate "specific facts showing that there is a genuine issue for trial." *Celotex Corp.,* 477 U.S. at 324. "The mere existence of a scintilla of evidence in support of the non-moving party's position is not sufficient," however, and factual disputes whose resolution would not affect the outcome of the suit are irrelevant to the consideration of a motion for summary judgment. *Arpin v. Santa Clara Valley Transp. Agency,* 261 F.3d 912, 919 (9th Cir.2001); *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). In other words, "summary judgment should be granted where the nonmoving party fails to offer evidence from which a reasonable jury could return a verdict in its favor." *Triton Energy Corp. v. Square D Co.,* 68 F.3d 1216, 1221 (9th Cir.1995).

Taking the evidence presented in the light most favorable to the non-moving party, the Court finds as follows:

1. Plaintiff misapprehends the effect of the rule that pro se litigants are held to a less stringent pleadings standard than litigants who are represented by counsel. Although the rule requires that the allegations of a pro se complaint be liberally construed when determining whether a viable claim has been asserted and that strict compliance with procedural/technical rules will not be expected of pro se litigants, it does not alter the summary judgment standard or otherwise give pro se non-prisoner litigants multiple opportunities to present their evidence. "[P]ro se litigants in the ordinary civil case should not be treated more favorably than parties with attorneys of record." *Jacobsen v. Filler,* 790 F.2d 1362, 1364 (9th Cir.1986).

***2** 2. Defendant JBC Legal Group PC violated § 1692e(2) of the FDCPA and RCW 19.16.250(14) and (18), all of which preclude a debt collector from demanding amounts, fees, or costs that are not authorized by the debt instrument or governing law. In its letter dated September 3, 2004, JBC demanded payment of statutory fees of $234.54 and a return fee of $25.00, in addition to an amount close to, but not exactly, the face value of the dishonored check.[2] Defendants assert that the

demanded fees are authorized by RCW 62A.2-709(1) or RCW 62A.3-515. The Court disagrees. JBC is clearly not a "seller" under RCW 62A.2-709(1) and has not incurred the types of damages, such as the costs of stopping deliveries or of caring for goods after the buyer's breach, identified as "incidental damages" under RCW 62A.2-710. Even if the Court assumes that JBC could have lawfully demand payment of certain reasonable handling fees under RCW 62A.3-515(a), there is no evidence that JBC complied with the mandatory notice requirements of RCW 62A.3-520. Thus, by demanding payment of amounts, costs and fees that were not consistent with the debt instrument or authorized by statute, JBC made false representations regarding the debt owed by the debtor in this case.

3. In the second count listed in her motion for summary judgment (Motion, Dkt. # 33 at 3), plaintiff states that defendants' attempt "to collect a debt that is in fact not owing ... was false, misleading and unfair" under § 1692e and/or § 1692f of the FDCPA. Defendants point out that the dishonored check supported the initial report of a claim to the consumer reporting agencies. Plaintiff does not address this argument in her reply. The Court finds that, except as specifically noted herein, the original report of a debt in collection was not a false, deceptive, misleading, unfair, or unconscionable means of collecting on the alleged debt. [3]

4. Defendant JBC Legal Group, PC violated § 1692e(3) of the FDCPA, which precludes the "false representation or implication ... that any communication is from an attorney." The September 3, 2004, letter was written on JBC Legal Group PC letterhead and identifies four attorneys, the bars of which they are members, and the three offices maintained by JBC Legal Group. The signature block of the September 3rd letter states:

JBC Legal Group, PC

Compliance Department

Although the letter was not signed by a lawyer, an unsophisticated consumer would infer that an attorney was involved given the nature of the communication, the use of a law firm's letterhead, and the lack of any indication that the communication was administrative or otherwise generated by a non-lawyer employee of the firm. Mr. Boyajian has acknowledged that the September 3rd letter was prepared by "employees in JBC's Compliance Department." The implication that the communication was from an attorney is false and violates the statute.

To the extent plaintiff argues that the use of attorney letterhead, in and of itself, constitutes a threat to sue in violation of § 1692e(5) of the FDCPA, the Court disagrees. Plaintiff requested additional information regarding the nature of a disputed claim and defendants answered. There is no implicit or explicit threat that JBC would file suit in its effort to collect on the dishonored check.

***3** 5. Defendant JBC Legal Group PC violated § 1692e(8) of the FDCPA, which precludes the communication "to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed." When plaintiff realized that a collections item was showing up on her credit report, she informed both Equifax and JBC of the dispute and requested additional information from JBC. Based solely on its own determination that plaintiff had failed to establish the merits of her dispute, JBC did not inform Equifax that the claim was, in fact, disputed. The FDCPA sets forth specific procedures and methods that must be used by debt collectors when attempting to collect outstanding debts: the statute does not give debt collectors the authority to determine unilaterally whether a dispute has merit or whether to comply with the requirements of the FDCPA in a given case. JBC's "failure to communicate that a disputed debt is disputed" violated the statute.

JBC also violated § 1692e(8) when it notified Equifax that plaintiff made a payment on the alleged debt on March 20, 2003. There is no evidence that plaintiff ever made a payment on the alleged debt, the information mirrors that contained in JBC's activity report related to plaintiff's file, and defendants knew or should have known that either the payment report was false or continued efforts to collect $337.72 were unwarranted (had plaintiff in fact paid the $234.54 recorded on JBC's activity report, the alleged outstanding debt would have been reduced to $103.18).

Finally, JBC's initial communication to the credit reporting agency regarding the status of the account that was in collections contained false representations regarding the client for whom JBC was attempting to recover the debt. As of August 14, 2004, JBC provided information to Equifax identifying its client as "ORM Bradlees." Not only was there no such entity, but there is

no evidence that Bradlees was ever a client of JBC. JBC's argument that it was simply trying to give the debtor as much information regarding the provenance of the debt as possible does not alter the fact that its representation regarding its client was false and violated 15 U.S.C. § 1692e(8).

6. Defendant JBC Legal Group PC violated RCW 19.16.110 when it acted as a collection agency within the State of Washington without first obtaining a license. Pursuant to RCW 19.16.100(2)(a), a "collection agency" means "any person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person." In this case, JBC has attempted to collect a claim asserted to be owed to an entity called Outsource Recovery Management. Nonetheless, JBC argues that it is not a "collection agency" because RCW 19.16.100(3)(c) excludes from that term "[a]ny person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as ... lawyers...." When read as a whole and in light of the interpreting case law, Washington's Collection Agency Act applies to entities such as JBC which seek to collect debts that are unrelated to JBC's (or its affiliated company's) non-debt collector business. If, for example, JBC were seeking to recover fees owed to it by a client for legal services rendered, such activities would not make JBC a "collection agency." *See Berry v. Fleury,* 111 Wash.App. 1048, 2002 WL 1011541 (Wn.App. May 20, 2002). The same result would probably arise if JBC were collecting debts owed to an affiliated company as long as those debts arose from a business other than the collection of debts. *See* RCW 19.16.100(3)(f); *Trust Fund Servs. v. Aro Glass Co.,* 89 Wash.2d 758, 761-62, 575 P.2d 716 (1978). The debt JBC sought to collect from plaintiff is not "directly related to the operation of a business other than that of a collection agency"-its affiliate company purchased the alleged debt from a third-party merchant for the sole purpose of collecting on the instrument. Despite the fact that JBC is a law firm, its actions in this case are those of a collection agency subject to regulation under the Collection Agency Act.

***4** 7. Plaintiff has not identified any provision of state or federal law that was violated by defendants' alleged coding of her account number. [4] To the extent defendants used this coding system in its attempt to collect fees and amounts in excess of those permitted by law, the legality of such activity has been considered elsewhere (*see* ¶ 2 of this Order).

8. Although JBC and Outsource Recovery Management ("ORM") are closely related, they are separate legal entities. Plaintiff has provided no evidence in support of her vague argument that the corporate forms should be disregarded. JBC's identification of ORM as its client and the holder of the debt instrument at issue is neither false nor misleading. [5]

9. Defendants' September 3, 2004, letter satisfied the notice requirements of § 1692g(a) of the FDCPA. The five day period identified in the statute begins to run with the initial communication from the debt collector to the consumer. In this case, the initial communication contained the necessary information regarding the amount of the debt, name of the creditor, etc. No additional notices were required.

10. Defendant JBC violated § 1692g(b) of the FDCPA when it failed to "cease collection of the debt ... until the debt collector obtains verification of the debt...." JBC argues that its provision of all the "information about the debt that it had" satisfies the verification requirement. *See* Affidavit of Jack Boyajian, Dkt. # 31 at ¶ 10. Defendants' argument fails on both the facts and the law. In the first place, JBC did not provide plaintiff with all the information it had regarding the alleged debt: for reasons unexplained, it chose to withhold the only documentation of the debt, the check itself, from plaintiff until after this suit was filed. Secondly, defendants understate the burden placed on debt collectors once a consumer challenges the information on her credit report. At that point, § 1692g(b) imposes an obligation on the debt collector to cease all debt collection activity while it verifies with the original creditor (or through other reliable means) that the amount being demanded is still due and owing. This requirement is designed to "eliminate the ... problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." S.Rep. No. 95-382 at 4 (1977). Simply repeating the second- or third-hand information in the debt collector's file accomplishes neither goal and is insufficient under the statute. *See Mahon v. Credit Bureau of Placer County Inc.,* 171 F.3d 1197, 1203 (9th Cir.1999) (debt collector properly verified debt by contacting the original creditor, verifying the nature and balance of the outstanding debt, reviewing the

efforts the original creditor made to obtain payment, and establishing that the balance remained unpaid); *Sambor v. Omnia Credit Servs., Inc.,* 183 F.Supp.2d 1234, 1233 (D.Hawai'i 2002) (stating by way of example that a debt collector seeking to collect amounts owed to a credit card company would have to cease attempts to collect the debt if a fire destroyed the credit card company's records, thereby precluding verification of the debt); *Spears v. Brennan,* 745 N.E.2d 862, 878-79 (Ind.App.2001) (a copy of the original debt instrument does not verify that there is an existing unpaid balance and does not satisfy the verification requirement of § 1692g(b)). [6] In the case at hand, defendants made no effort to verify that the debt represented by the dishonored check was still owing and therefore failed to satisfy the verification requirement of the FDCPA. [7] Until the debt was verified, all further attempts to collect on the debt, including defendants' September 3rd letter and any subsequent reports to the credit reporting agencies, violated § 1692g(b).

***5** 11. Section 1692j(a) of the FDCPA states, "[i]t is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating." The Court has already determined that JBC and ORM are separate legal entities. Because JBC was actually involved in the collection efforts, its generation of the September 3, 2004, letter does not violate § 1692j(a).

12. Defendants seek a summary determination that plaintiff's recovery of statutory damages under the FDCPA is limited to no more than $1000. [8] The language of § 1692k and existing case law show that the FDCPA limits damages, above and beyond all actual damages, to $1,000 for each proceeding rather than $1,000 for each violation of the statute. Pursuant to 15 U.S.C. § 1692k(a)(2)(A), statutory damages "in the case *of any action* by an individual" shall not exceed $1,000 (emphasis added). "This statutory language clearly implies that statutory damages are limited for an individual plaintiff to $1,000 for each action or proceeding. There is no language in § 1692k or any where else in the FDCPA which on its face authorizes statutory damages of $1,000 for each violation of the statute." *Barber v. Nat'l Revenue Corp.,* 932 F.Supp. 1153, 1155 (W.D.Wis.1996). *See also Wright v. Fin. Serv. of Norwalk,* 22 F.3d 647, 650-51 (6th Cir.1994). Because Congress drafted § 1692k(a)(2)(A) using the $1,000 for each "action" language, plaintiff's statutory damages under the FDCPA will be limited to $1,000. [9]

13. Section 1681s-2(b) of the Fair Credit Reporting Act ("FCRA") provides that "[a]fter receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency," the furnisher of information to a consumer reporting agency shall follow certain procedures established to ensure that accurate information is being provided. Pursuant to § 1681i(a)(2) and interpreting case law, the notice that triggers the debt collector's investigative duties under § 1681s-2(b) must come from the credit reporting agency, not the consumer. *Young v. Equifax Credit Information Services, Inc.,* 294 F.3d 631, 639-40 (5th Cir.2002); *Peasley v. Verizon Wireless (VAW) LLC,* 364 F.Supp.2d 1198, 1200 (S.D.Cal.2005); *Stafford v. Cross Country Bank,* 262 F.Supp.2d 776, 784 (W.D.Ky.2003); *Whisenant v. First Nat'l Bank & Trust Co.,* 258 F.Supp.2d 1312, 1316 (N.D.Okla.2003). Defendants have produced JBC's computerized account summary sheet which contains no indication that JBC received or replied to any inquiries from Equifax on the alleged debt. Affidavit of Jack Boyajian, Dkt. # 31 at ¶ 13. [10] Although plaintiff disputes the accuracy of JBC's computerized records (as well as the veracity of Mr. Boyajian's statements) and has provided evidence that Equifax did, in fact, contact JBC regarding the alleged debt, [11] there is a genuine issue of fact which cannot be resolved in the context of this motion for summary judgment.

***6** Defendants argue that even if the Court assumes that Equifax contacted JBC regarding plaintiff's dispute, her § 1681s-2(b) claim fails because the original collection notice was not false and because JBC took the steps identified in the statute. As discussed elsewhere, the credit information provided to Equifax in the first instance was false insofar as it did not accurately reflect the face value of the dishonored check, the fees and costs that could be recovered, or the name of the original creditor. Had JBC simply compared the information it had provided to the credit reporting agencies with the check in its possession, these discrepancies would have come to light and would

have required corrective action under § 1681s-2(b)(1)(E). [12] Notwithstanding the "scant" information provided by the consumer regarding the nature of her dispute (*see Westra v. Credit Control of Pinellas,* 409 F.3d 825, 827 (7th Cir.2005)), defendants' investigation was not reasonable given that it did not uncover even the most obvious inaccuracies in its reporting.

14. There is no private right of action for violations of § 1681s-2(a) of the FCRA. Pursuant to 15 U.S.C. § 1681s-2(d), subsection (a) "shall be enforced exclusively as provided under section 1681s of this title by the Federal agencies and officials and the State officials identified" therein. Plaintiff's fourteenth and fifteenth counts fail as a matter of law.

15. Plaintiff has not identified any provision of state or federal law that was violated by defendants' alleged failure to maintain written policies and procedures regarding the handling of consumer and credit reporting agency inquiries. The adequacy of a debt collector's policies generally becomes an issue when the debt collector asserts the good faith defense available under § 1692k(c). In this case, defendants argue that their claim handling procedures and reporting activities satisfy the requirements of the applicable state and federal laws: they are not asserting that their conduct was unintentional or the result of a bona fide error. Even if the Court assumes that defendants failed to maintain adequate procedures for purposes of § 1692(k), such a failure is not a basis upon which additional liability can be imposed.

16. Plaintiff has asserted a claim for punitive damages, apparently under § 1681n of FCRA. As noted above, however, plaintiff does not have standing to assert claims under § 1681s-2(a) and there are genuine issues of fact which preclude a finding of liability under § 1681s-2(b). Plaintiff's claim for an award of punitive damages is not yet ripe.

17. Under Washington law, the false light branch of an invasion of privacy claim arises "when someone publicizes a matter that places another in a false light if (a) the false light would be highly offensive to a reasonable person and (b) the actor knew of or recklessly disregarded the falsity of the publication and the false light in which the other would be placed." *Eastwood v. Cascade Broadcasting Co.,* 106 Wash.2d 466, 470-71, 722 P.2d 1295 (1986). Plaintiff asserts that, following receipt of her dispute letter (if not earlier), defendants knew or recklessly disregarded discovering the falsity of their continuing publication of a bad debt on her credit report. Defendants argue that the negative claim on plaintiff's credit report was not "publicized" because there is no evidence that any of plaintiff's existing or potential creditors reviewed the report during the relevant time frame. Defendants are incorrect on the facts. Plaintiff's credit report indicates that six existing or potential creditors reviewed her report between November 2004 and April 2005. Fourth Affidavit of Jehan Semper, Dkt. # 65 at Ex. J. In addition, plaintiff has provided evidence that one of her existing creditors closed her credit card account in July 2005 in part because of a "DEROGATORY PUBLIC RECORD OR COLLECTION FUND" identified through "a review of information provided by a consumer reporting agency." Fourth Affidavit of Jehan Semper, Dkt. # 65 at Ex. H. [13]

***7** Defendants also argue that plaintiff's invasion of privacy/false light claim should be dismissed because, given the limited nature of the disclosure, a report of bad credit "does not compare to the highly offensive communications cited in case law as worthy of compensation under this cause of action." Reply to Motion to Dismiss, Dkt. # 52 at 11. *See Fisher v. Dep't of Health,* 125 Wash.App. 869, 879, 106 P.3d 836 (2005). Defendants' publication was accessible to anyone authorized to obtain a credit report on plaintiff (including credit card companies, potential landlords, and other creditors) and it publicly accused plaintiff of the very conduct that would make her appear undesirable to the intended audience. At the very least, there is an issue of fact regarding whether such disclosure would be "highly offensive" to a reasonable person.

18. Plaintiff has sued both JBC Legal Group PC and its president, Jack Boyajian for the violations of federal and state law discussed above. Plaintiff argues that Mr. Boyajian should be held liable under the FDCPA, the FCRA, and state law because he directs the activities of JBC. Although a lawyer and his law firm may be "debt collectors" under the relevant statutes (*see Heintz v. Jenkins,* 514 U.S. 291, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995)), Mr. Boyajian did not personally participate in the generation of the September 3, 2004, letter and plaintiff has not provided any evidence other than his position within JBC to support her claim that he is responsible for the reporting and debt collection activities of which she complains. The Court finds that Mr. Boyajian is not a

"debt collector" as defined in § 1692a(6) of the FDCPA because he did not personally use or direct the use of the instrumentalities of interstate commerce or the mails to collect a debt from plaintiff. [14] Nor is Mr. Boyajian a "person" who could be liable under § 1681s-2(b) of FCRA. There is no evidence that Mr. Boyajian, as opposed to JBC, reported that plaintiff's account was in collections: any duty to investigate and correct the original report would belong to JBC. Pursuant to RCW 19.16.100(3)(a), employees of a "collection agency" are not, in and of themselves, "collection agencies" even when they are directly involved in the attempts to obtain payment on a debt. There is no indication in the statute that an officer of a corporation who was not involved in the debt collection activities would be liable for corporate violations of the Collection Agencies Act.

19. There are genuine issues of fact regarding the extent of plaintiff's emotional and pecuniary damages. Plaintiff's testimony, combined with the documents showing the availability of lucrative employment in New York and the loss of credit, raise a genuine issue of fact regarding the amount of actual damages attributable to JBC's conduct. The extent to which plaintiff will be permitted to testify regarding the Equifax' "alert" service and defendant will be permitted to submit evidence regarding other suits filed by plaintiff will be determined at trial.

***8** 20. In her opposition to defendants' motion to dismiss, plaintiff requests a declaration that no debt related to the disputed check is due or owing. Because neither party has contacted Banco Popular and/or Bradlees, it is impossible to determine whether plaintiff or an authorized agent wrote check number 332 to Bradlees or whether the debt reflected on that check has been satisfied. Although both parties have acknowledged that the check can no longer be enforced, its validity at the time it was written cannot be determined on the record presented.

21. To the extent the Court has not specifically ruled on an evidentiary objection raised by the parties, the evidence or issue to which it relates was deemed irrelevant to the above legal analysis (such as whether plaintiff attempted to locate a branch office of Banco Popular). Although such evidence has not been stricken, it did not inform the Court's judgment.

22. Plaintiff's unauthorized sur-reply has not been considered.

For all of the foregoing reasons, plaintiff's and defendants' motions for summary judgment are GRANTED in part. Plaintiff is entitled to judgment as a matter of law on her claims that defendant JBC Legal Group PC violated §§ 1692e(2), 1692e(3), 1692e(8), and 1692g(b) of the FDCPA, RCW 19.16.110, and RCW 19.16.250(14) and (18). There are genuine issues of material fact which preclude summary judgment for either party on plaintiff's invasion of privacy/false light claim, her 15 U.S.C. § 1681s-2(b) claim, and on her demand for actual and punitive damages. The undisputed facts of this case show, however, that defendant Jack Boyijian cannot be held liable on any of plaintiff's claims and that JBC has not violated §§ 1692e(5), 1692g(a), or 1692j(a) of the FDCPA or § 1681s-2(a) of the FCRA: defendants are entitled to judgment on those claims.

The Clerk of Court is directed to send a copy of this Order to defendant at the following addresses:

JBC Law Group PC

c/o Karen Nations

10020 Hardy Drive

Overland Park, KS 66212

knations@boyajianlaw.com

All Citations

Not Reported in F.Supp.2d, 2005 WL 2172377

Footnotes

1 Although defendants request that certain claims be dismissed on the pleadings pursuant to Fed.R.Civ.P. 12(b)(6), the parties have submitted evidence outside the record that the Court has not excluded. Because all parties have had an opportunity to present evidence related to the matters raised in the motions, they shall be considered under Fed.R.Civ.P. 56.

2 Defendants misstated the amount of the alleged debt by reporting the "Original Amount Owed" as $78 and/or $78.18 (depending on the communication) instead of the $79.18 shown on the dishonored check. Defendants have not attempted to explain this discrepancy which would, of course, make it more difficult for the consumer to identify the source and confirm the accuracy of the collections notice.

To the extent plaintiff objects to the Court's consideration of the check itself, the objection is overruled. Even if the check is hearsay, it can be admitted to explain why defendants placed a collection notice on her credit report in the first place and to show what a review of defendants' files would have revealed regarding the debt. Mr. Boyajian's testimony regarding the check, which simply describes the check and how it came to be held by Outsource Recovery Management, has also been considered.

3 As discussed further below (*see* ¶ 20), neither party has provided sufficient information for the Court to determine whether plaintiff or an authorized agent wrote the disputed check back in 1998. Having failed to show that the check was written by another Jehan Semper or that it was otherwise invalid at its inception, plaintiff cannot succeed on her most general claims under § 1692e and § 1692f of the FDCPA.

4 Defendants' request to strike those allegations that are based on information and belief, rather than admissible evidence, is GRANTED. The Court has not considered the unsupported allegations contained in paragraphs 15 and 16 of plaintiff's motion (Dkt.# 33) or paragraph 2 of plaintiff's opposition (Dkt.# 48).

5 Mr. Boyajian has personal knowledge regarding (a) the relationship between JBC and ORM and (b) the process through which ORM came into possession of the disputed check. His statements regarding these issues have been considered.

6 Even the case on which defendants rely, *Chaudhry v. Gallerizzo,* 174 F.3d 394, 406 (4th Cir.1999), shows that verification of the debt involves confirming with the original creditor that the amount being demanded is what is still owed.

7 The Court has been unable to locate two cases identified by plaintiff as *"Coito v. Unifund Corporation,* (9th Cir2004) CV01-00379, Decided January 4, 2004" and *"Boatley v. Dicm Corporation,* (9th Cir2004) CV03-0762, Decided March 24, 2004." These cases are not listed on the Ninth Circuit's website and the case numbers are not in the form used by that court. The U.S. Party/Case Index supplied by plaintiff in support of the *Boatley* cite indicates that the case was decided by the District Court of Arizona (see the initials "azdc" under the heading "Court"). Unfortunately, the case is not reported in the Federal Supplement, is not published on Westlaw, and is unavailable to this Court. Defendants' request to strike plaintiff's references to *Boatley* is, therefore, GRANTED.

8 Defendants have not sought an interpretation of the FCRA damage provisions.

9 This ruling does not impact plaintiff's right to seek actual damages under the FDCPA above and beyond whatever statutory damages are awarded.

10 Mr. Boyajian's testimony that JBC did not, in fact, receive notice of plaintiff's dispute from Equifax is not based on personal knowledge and is therefore inadmissible. Plaintiff's motion to strike this testimony (*see* Opposition to Defendants' Motion to Dismiss, Dkt. # 48 at 4) is granted. The Court has, however, considered Mr. Boyajian's statements regarding JBC's normal business practices as it relates to the issuance of an initial notice of debt and the maintenance of JBC's computerized account summaries.

11 Defendants' objection to the Equifax credit reports (*see* Reply to Motion to Dismiss, Dkt. # 52 at 8) is overruled: to the extent the reports are being offered for the truth of the matter asserted, they may be admissible under Fed. R. Ev. 803(6) as records of regularly conducted activity. Defendants' objection to plaintiff's testimony regarding the meaning of various entries on her credit report (*see* Opposition at 15) is also overruled: plaintiff may testify based on her personal experience with her own credit reports.

12 The FCRA does not provide any indication as to the level of investigation required under § 1681s-2(b)(1). The investigation requirement for furnishers of information is, however, "analogous to the requirement imposed upon credit reporting agencies under § 1681i(a) to reinvestigate a consumer's dispute regarding information contained in his credit report" and, therefore, furnishers of credit are required to conduct a reasonable investigation. *Bruce v. First U.S.A. Bank, Nat'l Ass'n,* 103 F.Supp.2d 1135, 1143 (E.D.Mo.2000). In *Bruce,* the Court employed two factors to determine whether a furnisher of information engaged in adequate investigation of a disputed debt: "(1) whether the consumer has alerted the agency that the initial source of the information may be unreliable or if the agency knows or should know that the source is unreliable, and (2) the cost of verifying the accuracy of the source versus the possible harm of reporting inaccurate information." *Bruce,* 103 F. Supp 2d at 1143. Whether such an investigation has been conducted is generally a question of fact for the

jury but can be determined as a matter of law if the reasonableness of defendants' investigation is beyond question. *See Westra v. Credit Control of Pinellas,* 409 F.3d 825, 827 (7th Cir.2005).

13 Defendants' objection to the late disclosure of the Household Bank letter (*see* Defendants' Reply to Motion to Dismiss, Dkt. # 52 at 9) is overruled. The letter was not written until June 15, 2005, ten days after discovery closed and two weeks before defendants filed their dispositive motion. Given the fact that the letter only recently came into existence and plaintiff's status as a pro se litigant, her disclosure of the letter on July 18, 2005, as an exhibit to her opposition memorandum was timely.

14 Plaintiff's argument that Mr. Boyijian admitted that he is a debt collector under the FDCPA is unpersuasive. The admission to which defendants responded in the affirmative uses the ambiguous phrase “Defendant(s) is” and does not clearly admit the proposition that Mr. Boyijian himself is a debt collector.

785 F.Supp.2d 951
United States District Court,
W.D. Washington,
at Seattle.

Steven MANDELAS, Plaintiff,
v.
Daniel N. GORDON, PC, et al., Defendants.

Case No. C10–0594JLR.
|
March 31, **2011**.

Synopsis

Background: Debtor brought action against law firm attempting to collect debt, alleging violations of the Fair Debt Collection Practices Act (FDCPA), the Washington Collection Agency Act (WCAA), and the Washington Consumer Protection Act (WCPA). Defendant moved for summary judgment.

Holdings: The District Court, James L. Robart, J., held that:

[1] law firm did not act unfairly or unconscionably, as would violate the FDCPA, in seeking entry of default judgment against debtor or in filing application for writ of garnishment to collect the judgment;

[2] law firm did not purposefully delay its efforts to collect debt after obtaining judgment against debtor based on arbitration award, as would violate the FDCPA;

[3] law firm could qualify as "collection agency" under the WCAA; and

[4] fact issue precluded summary judgment, in WCAA claim.

Motion granted in part, and denied in part.

West Headnotes (9)

[1] Finance, Banking, and Credit
Debt Collection Practices

The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

Cases that cite this headnote

[2] Finance, Banking, and Credit
"Least sophisticated consumer" test in general

Whether conduct violates the Fair Debt Collection Practices Act (FDCPA) requires an objective analysis that takes into account the least sophisticated debtor standard. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

Cases that cite this headnote

[3] Finance, Banking, and Credit
Debt Collection Practices

Finance, Banking, and Credit
Strict liability in general

The FDCPA is a strict liability statute, which should be construed liberally in favor of the consumer. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

Cases that cite this headnote

[4] Finance, Banking, and Credit
Attorneys and law firms;legal services

The FDCPA applies to attorneys who regularly engage in consumer debt collection activity, even when that activity consists of litigation. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

Cases that cite this headnote

[5] **Finance, Banking, and Credit**
Summons, complaints, and other process and filings

Law firm did not act unfairly or unconscionably, as would violate the Fair Debt Collection Practices Act (FDCPA), in seeking entry of default judgment against debtor or in filing application for writ of garnishment to collect the judgment in Washington state court, even though the law firm failed to properly serve debtor, where law firm reasonably relied on process server's facially correct return of service in seeking default judgment, under Washington law, and the debtor did not challenge the entry of default in state court. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f; West's RCWA 4.28.080(15).

6 Cases that cite this headnote

[6] **Process**
Presumptions and burden of proof

In Washington, a facially correct return of service is presumed valid and, after judgment is entered, the burden is on the person attacking the service to show by clear and convincing evidence that the service was irregular. West's RCWA 4.28.080(15).

1 Cases that cite this headnote

[7] **Finance, Banking, and Credit**
Practices prohibited or required in general

Law firm did not purposefully delay its efforts to collect debt after obtaining judgment against debtor based on arbitration award, as would violate the Fair Debt Collection Practices Act (FDCPA), where law firm made continuous efforts to contact the debtor and collect the debt, and debtor took no action to resolve the debt after finding out that there was an outstanding judgment against him. Fair Debt Collection Practices Act, § 808, 15 U.S.C.A. § 1692f.

1 Cases that cite this headnote

[8] **Finance, Banking, and Credit**
Persons and transactions subject to or protected by regulation

Law firm could qualify as "collection agency" under the Washington Collection Agency Act (WCAA), as the Act did not categorically exclude all lawyers. West's RCWA 19.16.100(2)(a), (3)(c).

3 Cases that cite this headnote

[9] **Federal Civil Procedure**
Debt collection practices, cases involving

Genuine issue of material fact as to whether law firm's activities were confined to and directly related to the operation of a business other than that of a collection agency precluded summary judgment on question of whether law firm qualified as unlicensed collection agency, in debtor's action against law firm, under the Washington Collection Agency Act (WCAA). West's RCWA 19.16.100(2)(a), (3)(c), 19.16.110.

2 Cases that cite this headnote

Attorneys and Law Firms

***952** Craig J. Ehrlich, Weisberg & Meyers, LLC, Phoenix, AZ, Jon N. Robbins, Loon Lake, WA, Joseph I. Hochman, Hochman Legal Group, Issaquah, WA, for Plaintiff.

J. Kurt Kraemer, Kjersten Turpen, McEwen Gisvold, LLP, Portland, OR, for Defendants.

ORDER ON MOTION FOR SUMMARY JUDGMENT

JAMES L. ROBART, District Judge.

This matter comes before the court on Defendant Daniel N. Gordon, PC's ("Gordon") motion for summary

judgment (Dkt. # 47). Plaintiff Steven Mandelas opposes Gordon's motion. (Dkt. # 51.) Having considered the submissions of the parties, the record, and the relevant law, and having heard oral argument, the court GRANTS in part and DENIES in part Gordon's motion (Dkt. # 47).

I. BACKGROUND [1]

This action arises out of the efforts of Gordon, an Oregon-based law firm, to collect ***953** a debt that Mr. Mandelas owed to former Defendant CACV of Colorado, LLC ("CACV"). [2] On December 14, 2006, the National Arbitration Forum ("NAF") entered an arbitration award against Mr. Mandelas and in favor of CACV. (Aylworth Aff. (Dkt. # 49) ¶ 2.) Gordon did not represent CACV in the arbitration proceedings. (*Id.*) In February 2007, CACV forwarded its claim against Mr. Mandelas to Gordon for collection. (*See id.* Ex. 9.)

On February 27, 2007, Gordon issued a summons in connection with a lawsuit that it planned to file in King County District Court to confirm the arbitration award. (*Id.* Ex. 1.) In April 2007, Gordon hired a process server, I–5 Legal, to serve Mr. Mandelas. (*Id.* Ex. 9.) On October 7, 2007, I–5 Legal served the summons and the application for an order to confirm arbitration award by leaving copies of the documents with "John Doe, Resident" at 2427 SW 152nd Street, Seattle, WA. (*Id.* Ex. 3.) The declaration of service filed by Rich Marlow, I–5 Legal's process server, described John Doe as a white male, age 50, with brown hair, who was 5#10# and weighed 200 pounds. (*Id.*)

Although the declaration of service states that the process server delivered the documents to Mr. Mandelas's correct address, Mr. Mandelas did not receive the documents. Mr. Mandelas resided at the 152nd Street address, but he was not home on October 7, 2007. (Ehrlich Decl. (Dkt. 52 (sealed), 67 (redacted)) Ex. M ("Mandelas Dep.") at 15.) Instead, he was in Palm Springs, California between October 4, 2007 and Thanksgiving, 2007. (*Id.*) No man fitting John Doe's description resided in Mr. Mandelas's home, and although Mr. Mandelas had given copies of his keys to his mother and to a female friend, he does not know of any man fitting John Doe's description who would have been at his home to accept service on October 7, 2007. (*Id.* at 7–8, 15.)

On October 31, 2007, Gordon filed the application to confirm the arbitration award in King County District Court. (Aylworth Aff. Ex. 8 at 2.) I–5 Legal filed the declaration of service. Mr. Mandelas made no filing in response to the application to confirm the arbitration award. On January 23, 2008, the state court entered the order confirming the arbitration award and entered judgment against Mr. Mandelas in the amount of $15,052.42, plus 12% interest from the date of the arbitration award. (*Id.* Ex. 4.) The court entered a corrected judgment on May 12, 2008. (*Id.* Ex. 5.)

In May 2008, following entry of the corrected judgment, Gordon began to attempt to contact Mr. Mandelas. (Aylworth Aff. Ex. 9; Mandelas Dep. at 16 (stating that ***954** his family received calls and that he may have received calls but did not answer calls from blocked numbers).) On June 9, 2008, Mr. Mandelas called Gordon. (Aylworth Aff. Ex. 9; Mandelas Dep. at 16.) Gordon's representative told Mr. Mandelas that there was a judgment against him for $15,000 as a result of the NAF arbitration. (Mandelas Dep. at 16.) Mr. Mandelas told Gordon that the debt was in dispute and that he assumed it had been dropped. (*Id.* at 18.) He also told Gordon that he was not in town on the date he was allegedly served, and he asked Gordon to send him a copy of the judgment and related documents. (*Id.*) Gordon sent Mr. Mandelas the documents that he requested. (Aylworth Aff. Exs. 7, 9.) Mr. Mandelas did not challenge I–5 Legal's declaration of service or otherwise contest the state court's entry of judgment.

Mr. Mandelas did not contact Gordon after the June 9, 2008 telephone call. (Mandelas Dep. at 21) According to its records, Gordon attempted to call Mr. Mandelas 11 times between June 9, 2008 and September 10, 2009, but was unable to reach him. (Aylworth Aff. Exs. 8, 9.) Mr. Mandelas testified that he occasionally received voicemail messages stating that it was important for him to return the call. (Mandelas Dep. 20–21.) The messages, however, did not indicate that they were from a debt collector, and Mr. Mandelas never returned the calls. (*Id.*) [3]

On September 28, 2009, Gordon filed an application for a writ of garnishment with the King County District Court. (Ehrlich Decl. Ex. E.) On October 6, 2009, the state court entered the writ of garnishment. (*Id.* Ex. F.)

Gordon filed an affidavit with the state court in which it stated that it mailed copies of the writ of garnishment to Mr. Mandelas and to the garnishee on December 3, 2009. (Aylworth Aff. Ex. 13.) Mr. Mandelas, however, did not receive the notice of garnishment that Gordon had sent to him. In December 2009, Mr. Mandelas's bank notified him of the order requiring attachment of funds from his bank account; this was the first time Mr. Mandelas learned about the writ of garnishment. (Mandelas Dep. at 19.)

On December 8, 2009, Mr. Mandelas called Gordon regarding the garnishment. (*Id.*) Gordon's representative told Mr. Mandelas that there was a judgment against him for $17,441. (*Id.*) Mr. Mandelas eventually received a copy of the writ of garnishment from Gordon on December 21, 2009. (*Id.* at 10.)

On April 8, 2010, Mr. Mandelas filed the instant lawsuit. (Compl. (Dkt. # 1); Am. Compl. (Dkt. # 4) (addressing formatting problems in the original complaint).) Mr. Mandelas claims that Gordon's conduct in collecting the debt violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.,* the Washington Collection Agency Act ("WCAA"), ch. 19.16 RCW, and the Washington Consumer Protection Act ("WCPA"), ch. 19.86 RCW.

II. ANALYSIS

A. Summary Judgment Standard

Summary judgment is appropriate if the pleadings, the discovery and disclosure materials on file, and any affidavits, when viewed in the light most favorable to the nonmoving party, "show that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Galen* ***955** *v. County of Los Angeles,* 477 F.3d 652, 658 (9th Cir.2007). The moving party bears the initial burden of showing there is no genuine issue of material fact and that he or she is entitled to prevail as a matter of law. *Celotex,* 477 U.S. at 323, 106 S.Ct. 2548. If the moving party meets his or her burden, the nonmoving party must go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.,* 200 F.3d 1223, 1229 (9th Cir.2000).

B. FDCPA Claims

[1] "The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices." *Guerrero v. RJM Acquisitions LLC,* 499 F.3d 926, 938 (9th Cir.2007). Section 1692f of the FDCPA prohibits a debt collector from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f. In addition to this general ban on unfair or unconscionable means of debt collection, § 1692f provides a non-exclusive list of eight prohibited means of debt collection. *Id.* § 1692f(1)-(8). This list includes, but is not limited to, such actions as collecting an amount not expressly authorized by agreement or permitted by law; soliciting a postdated check for the purpose of threatening or instituting criminal prosecution; depositing or threatening to deposit a postdated check prior to the date on the check; taking or threatening to take nonjudicial action to effect dispossession or disablement of property under certain conditions; charging any person for communications regarding the debt; communicating about the debt by postcard; or including information on the outside of an envelope that would indicate that the communication is for collection purposes. *Id.*

[2] **[3]** **[4]** Whether conduct violates § 1692f requires an objective analysis that takes into account the "the least sophisticated debtor" standard. *See Donohue v. Quick Collect, Inc.,* 592 F.3d 1027, 1030 (9th Cir.2010); *Guerrero,* 499 F.3d at 934. The FDCPA is a strict liability statute, which "should be construed liberally in favor of the consumer." *Clark v. Capital Credit & Collection Serv., Inc.,* 460 F.3d 1162, 1175–76 (9th Cir.2006) (quotation omitted). The FDCPA "applies to attorneys who 'regularly' engage in consumer-debt-collection activity, even when that activity consists of litigation." *Heintz v. Jenkins,* 514 U.S. 291, 299, 115 S.Ct. 1489, 131 L.Ed.2d 395 (1995).

Mr. Mandelas does not contend that Gordon used any of the unfair or unconscionable means of debt collection enumerated in § 1692f. Rather, Mr. Mandelas invokes the FDCPA's general prohibition against unfair or unconscionable means of debt collection and contends that Gordon violated § 1692f by (1) seeking entry of judgment against Mr. Mandelas without giving him notice; (2) purposefully delaying its efforts to collect the debt in order to collect additional interest; and (3) failing

to provide notice of the writ of garnishment as required by Washington law.

1. *Seeking Entry of Judgment without Notice*

[5] Mr. Mandelas alleges that Gordon used an unfair or unconscionable means of collecting a debt in violation of § 1692f when it sought entry of judgment against him without giving him proper notice. Specifically, Mr. Mandelas alleges that Gordon failed to serve him with the summons and complaint in connection with the lawsuit to confirm the 2006 arbitration award; that once he became aware of the order and judgment entered against him he told Gordon that he had not been served and was unaware of the judgment; and that Gordon nevertheless filed a writ of garnishment to collect the judgment. (Am. Compl. ¶¶ 36–41.) Gordon contends ***956** that it is entitled to summary judgment on this claim because, as a matter of law, it was not unfair or unconscionable conduct for it to rely on its process server's facially correct affidavit of service in seeking a default judgment and in filing the writ of garnishment to collect that judgment.

[6] In Washington, a "facially correct return of service is presumed valid and, after judgment is entered, the burden is on the person attacking the service to show by clear and convincing evidence that the service was irregular." *Woodruff v. Spence,* 88 Wash.App. 565, 945 P.2d 745, 749 (1997). Washington law provides that personal service may be effected by delivering a copy of the summons "to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein." RCW 4.28.080(15). The Washington Court of Appeals has upheld a return of service as complying with RCW 4.28.080(15) where the return stated that the process server left copies of the summons and complaint with "John Doe." *Woodruff,* 945 P.2d at 748–49

The court concludes that no reasonable trier of fact would conclude that Gordon's conduct was "unfair or unconscionable" in violation of § 1692f. I–5 Legal, a registered process server, filed a declaration that it had personally served Mr. Mandelas by leaving a copy of the summons at Mr. Mandelas's address of record with "John Doe, Resident." (Aylworth Aff. Ex. 3.) Because a facially correct return of service is presumed valid under Washington law, it was not unfair or unconscionable for Gordon to rely upon the declaration of service in obtaining an order confirming the arbitration award and converting it to judgment. The state court accepted the return of service as facially correct when it entered the judgment. Mr. Mandelas's recourse when he learned of the judgment was to challenge the entry of default in state court by presenting clear and convincing evidence that service was improper. *Woodruff,* 945 P.2d at 749. Instead, by his own admission, Mr. Mandelas did nothing. In light of the fact that Mr. Mandelas never challenged service or the entry of judgment, it also was not unfair or unconscionable conduct for Gordon to file an application for a writ of garnishment to collect the judgment.

Mr. Mandelas also argues that Gordon's conduct was unfair or unconscionable because Gordon did not independently investigate and confirm that I–5 Legal had properly served Mr. Mandelas when it knew that I–5 Legal had, on occasion, improperly served debtors in the past. Mr. Mandelas has not cited competent evidence in support of this assertion. (*See* supra n. 1.) Even taking this assertion as true, however, the court concludes that no reasonable trier or fact would find that Gordon's conduct was unfair or unconscionable in light of Washington law, which presumes a facially correct return of service to be valid and places the burden of challenging a facially correct return of service on the defaulted defendant.

Finally, the court notes that it has found no authority supporting Mr. Mandelas's contention that pursuing a collection action based on a facially correct but factually ineffective return of service is unfair or unconscionable conduct under the FDCPA. Rather, the limited case authority runs contrary to this assertion. *See, e.g., Dillon v. Riffel–Kuhlmann,* 574 F.Supp.2d 1221, 1223–24 (D.Kan.2008) (granting summary judgment for the defendant law firm because the court found "no support for the proposition that pursuing a collection action without serving the debtor constitutes a violation of the FDCPA."); *see also Pierce v. Steven T. Rosso, P.A.,* No. Civ. 01–1244 DSDJMM, 2001 WL 34624006, at *2 (D.Minn. Dec. 21, 2001) (although improper ***957** service might render the collection action a nullity under Minnesota law, it did not provide a legal basis to sustain a claim for violation of § 1692e of the FDCPA).

For these reasons, the court grants Gordon's motion for summary judgment on Mr. Mandelas's claim that Gordon violated the FDCPA by seeking entry of judgment without providing notice.

2. *Purposefully Delaying Collection Efforts*

[7] Mr. Mandelas alleges that Gordon used an unfair or unconscionable means of collecting a debt in violation of § 1692f when it purposefully delayed its efforts to collect the debt. Mr. Mandelas contends that the arbitration award was entered on December 14, 2006; that judgment based on the arbitration award was entered on January 23, 2008; and that Gordon took no further action in collecting the judgment until it filed an application for a writ of garnishment on September 28, 2009. (Compl.¶¶ 47–52.) Mr. Mandelas argues that Gordon had a motive to delay its collection of the debt because, under its fee agreement with CACV, it collected more money on larger debts. (Resp. at 10–12; Ehrlich Decl. Ex. I.) Thus, the longer Gordon allowed interest to accrue on the underlying debt, the more Gordon would eventually earn once it collected the debt. Gordon counters that it is entitled to summary judgment because it made continuous efforts to contact Mr. Mandelas and to collect the debt; Mr. Mandelas has no evidence that any delay was purposeful; and Mr. Mandelas was aware of the debt by June 2008 but made no efforts to contest or resolve the debt. The court agrees with Gordon.

First, Mr. Mandelas's assertion that no collection activity occurred between January 2008 and September 2009 is not supported by the record. Rather, the evidence shows that Gordon attempted to contact Mr. Mandelas on multiple occasions during that timeframe. Gordon filed the application to confirm the arbitration award on October 31, 2007. The state court entered judgment in January 2008, and entered an amended judgment in May 2008. After the amended judgment was entered, Gordon began to attempt to contact Mr. Mandelas. (Aylworth Aff. Ex. 9.) In June 2008, Mr. Mandelas contacted Gordon, and Gordon sent him the documents related to the entry of judgment immediately thereafter. (*Id.* Exs. 7 & 9; Mandelas Dep. at 18.) Mr. Mandelas did not contact Gordon after he received the documents, nor did he challenge the entry of judgment or dispute the debt. Gordon's contemporaneous records show that it attempted to call Mr. Mandelas in July, August, September, and December 2008, as well as in January, February, July, and September 2009. (Aylworth Aff. Ex. 9.) In September 2009, Gordon prepared the writ of garnishment. (Ehrlich Decl. E.) Even viewed in the light most favorable to Mr. Mandelas, this record does not demonstrate an unreasonable, let alone unfair or unconscionable, delay.

Second, Mr. Mandelas has presented no evidence that any delay was purposeful. Mr. Mandelas points to the contract between Gordon and CACV as evidence that Gordon purposefully delayed collection of the debt. Although the contract provides for Gordon to receive a percentage of the collected debt, including a percentage of any accrued interest (*see* Ehrlich Decl. Ex. I), the contract on its own is not evidence that any delay in collecting Mr. Mandelas's account was purposeful. [4]

***958** Finally, Mr. Mandelas has directed the court to no authority that delay, alone, constitutes unfair or unconscionable conduct under the FDCPA, and the delay Mr. Mandelas describes is not consistent with the types of unfair or unconscionable conduct proscribed by § 1692f. *See* 15 U.S.C. § 1692f(1)-(8). In addition, in light of the undisputed facts that Mr. Mandelas took no action to resolve the debt despite knowing as early as June 2008 that there was an outstanding judgment against him and that Gordon was attempting to collect it, Mr. Mandelas's argument that he "could not possibly have avoided or lessened the subject injury" falls short. (*See* Resp. at 18.)

For the foregoing reasons, the court concludes that no rational trier of fact would conclude that Gordon used an unfair or unconscionable means of collecting a debt by purposefully delaying its collection efforts, and grants Gordon's motion for summary judgment on this claim.

3. *Failure to Provide Notice of Writ of Garnishment*

Mr. Mandelas alleges that Gordon used unfair and unconscionable means of collecting a debt in violation of § 1692f when it failed to provide him notice of the writ of garnishment in violation of Washington law. Gordon moves for summary judgment on the ground that its conduct was not unfair or unconscionable because it provided the notice required by Washington's garnishment statute.

Washington law sets forth the following requirements for service of a writ of garnishment upon a debtor:

> 1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the *judgment creditor shall mail or cause to be mailed* to the judgment debtor, by certified mail, addressed

> to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim form prescribed in RCW 6.27.140. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

RCW 6.27.130 (emphasis added).

Gordon submitted to the court a notarized "Affidavit / Return of Mailing of Writ of Garnishment" that states that Gordon served the writ, a copy of the judgment, and the notice and claim form pursuant to RCW 6.27.130 upon Mr. Mandelas on December 3, 2009. (Aylworth Aff. Ex. 13.) Mr. Mandelas states that he never received the notice required under the statute.

By its terms, RCW 6.27.130 does not require proof that the debtor actually received the writ. Instead, it requires proof that the necessary documents were mailed ***959** pursuant to the statute. *See* RCW 6.27.130. Because the evidence, even when viewed in the light most favorable to Mr. Mandelas, establishes that Gordon mailed notice of the writ of garnishment in accordance with Washington law, the court grants Gordon's motion for summary judgment on Mr. Mandelas's claim based on failure to provide notice of the writ of garnishment in violation of Washington law.

C. WCAA / WCPA Claims

Mr. Mandelas alleges that Gordon violated the WCAA by purposefully delaying the collection of the debt in violation of RCW 19.16.250(14); by failing to provide notice of the writ of garnishment as required under state law;[5] and by conducting collection activities and bringing an action in a Washington state court without being licensed as a collection agency in violation of RCW 19.16.110 and RCW 19.16.260. Mr. Mandelas's WCPA claims are based on the same alleged violations of the WCAA.[6] Gordon contends that it is entitled to summary judgment on all of Mr. Mandelas's WCAA and WCPA claims because law firms are not subject to the WCAA.

1. A Law Firm May Qualify as a Collection Agency under the WCAA

[8] The WCAA defines "collection agency" as "[a]ny person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person." RCW 19.16.100(2)(a). The WCAA excludes the following from the definition of "collection agency":

> (c) *Any person whose collection activities are carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency, such as but not limited to:* Trust companies; savings and loan associations; building and loan associations; abstract companies doing an escrow business; real estate brokers; property management companies collecting assessments, charges, or fines on behalf of condominium unit owners associations, associations of apartment owners, or homeowners' associations; public officers acting in their official capacities; persons acting under court order; *lawyers*; insurance companies; credit unions; loan or finance companies; mortgage banks; and banks;

RCW 19.16.100(3)(c) (emphasis added). Gordon seizes upon the word "lawyers" in this exclusion and argues that the statute categorically exempts law firms from regulation as collection agencies under the WCAA.

No published Washington case has addressed whether lawyers are categorically excluded from regulation as a "collection agency" under RCW 19.16.100(3)(c). In *Trust Fund Services v. Aro Glass Co.*, 89 Wash.2d 758, 575 P.2d 716 (1978), the Washington Supreme Court held that an ***960** entity created as an alter ego of a law firm was not subject to the CAA. The court observed that:

> Trust Fund was created to provide a convenient means for a law firm to collect debts related to the firm's business. The firm represented a number of health and welfare and pension trust funds. In the normal course of business, it was frequently necessary for the funds to bring actions against employers to recover unpaid contributions. Since the funds were not regarded as legal entities, the suits had to be brought in the names of the individual trustees.... Trust Fund was created as a non-profit corporation to which the accounts could be assigned, to eliminate the need to bring collection actions in the names of the trustees. Trust Fund has no assets, no separate clients, no employees and no office. It is merely the alter ego of the law firm and its only activities are related directly to that firm's business.

Id. at 718. The *Trust Fund* court did not hold that law firms are always excluded from regulation as collection agencies; nor was it confronted with the situation where a law firm's sole business is the collection of debts on behalf of its clients, as Mr. Mandelas has alleged in this case.

Recent case authority indicates a growing consensus that the WCAA does not exclude all law firms from regulation as collection agencies. In a recent unpublished decision, the Washington Court of Appeals considered allegations similar to those at issue in this case and observed that the WCAA does not categorically exclude law firms from regulation:

> It is clear that some lawyers may fall within the definition of "collection agency." RCW 19.16.100(3)(c) does not entirely exclude lawyers from ever qualifying as a "collection agency." It merely excludes those who are collecting debts "directly related to the operation of a business other than that of a collection agency."

Carter v. Suttell & Associates, P.S., No. 63628–6–I, **2011** WL 396038, at *7 (Wash.Ct.App. Jan. 13, **2011**) (unpublished decision).[7] The Carter court affirmed the trial court's grant of summary judgment to the law firm because the plaintiff did not present any specific facts, aside from its own assertions, that the law firm was acting as a collection agency. *Id.* at *8 ("If Suttell indeed was acting as a collection agency, Carter failed to put forth sufficient evidence to reveal an issue of material fact.").

In addition, the majority of Washington federal court decisions, including several involving Gordon, have determined that lawyers are not categorically excluded from regulation as "collection agencies" under the WCAA. *See Lang v. Gordon,* No. C 10–0819RSL, **2011** WL 62141, at *2 (W.D.Wash. Jan. 6, **2011**); *McLain v. Daniel N. Gordon, PC,* No. C09–5362BHS, 2010 WL 3340528, at *8 (W.D.Wash. Aug. 24, 2010); *LeClair v. Suttell & Assoc., P.S.,* No. C09–1047JCC, 2010 WL 417418, at *6 (W.D.Wash. Jan. 29, 2010); *Semper v. JBC Legal Group,* No. C04–2240RSL, 2005 WL 2172377, at *3 (W.D.Wash. Sept. 6, 2005). *But see Motherway v. Daniel N. Gordon,* PC, No. C09–5605RBL, 2010 WL 2803052, at *4–*5 (W.D.Wash. Jul. 15, 2010) (dismissing WCAA claim and noting that Gordon is not a "collection agency" under the WCAA because, while it "specializes in debt collection legal work, it is first and foremost a law firm.").

In light of the foregoing authorities, the court concludes that the WCAA does not categorically exclude all lawyers from regulation under the WCAA. Rather, under the plain language of the statute, a lawyer ***961** or law firm is only excluded if its collection activities are "carried on in his, her, or its true name and are confined and are directly related to the operation of a business other than that of a collection agency." RCW 19.16.100(3)(c).

Gordon raises two additional arguments, but they are not well taken. First, Gordon argues that because RCW 19.16.250(5) specifically prohibits collection agencies and their employees from "performing any act or acts, either directly or indirectly, constituting the practice of law," it does not make sense to hold that a law firm can be a collection agency under the statute. The court disagrees. As the Honorable Robert S. Lasnik points out in *Lang,* "a plain reading of the narrow exemption [in RCW 19.16.100(3)(c)] belies that assertion" and "if the legislature had intended such a broad exemption, it could have included it." *Lang,* **2011** WL 62141, at *2.

Second, Gordon argues that if the statute is interpreted to apply to law firms, it is unconstitutional because it

purports to regulate the conduct of lawyers and thus violates the separation of powers doctrine. Here, again, the court adopts Judge Lasnik's analysis:

> [T]he WCAA can be constitutionally applied to attorneys who are engaged in collecting debts on behalf of third parties. In essence, lawyers who are acting as debt collectors are engaging in the entrepreneurial aspects of law rather than practicing law. Applying the WCAA and CPA to that type of conduct does not run afoul of the separation of powers doctrine. Rather, it is no different than applying other generally applicable statutes, such as the criminal laws, to attorneys.

Lang, **2011** WL 62141, at *3 (citing *Short v. Demopolis,* 103 Wash.2d 52, 691 P.2d 163, 170 (1984)).

In sum, the court concludes that law firms are not categorically excluded from regulation as collection agencies under the WCAA.

2. There is a Genuine Issue of Material Fact Regarding Whether Gordon is an Unlicensed Collection Agency

[9] The court concludes that Mr. Mandelas has established a genuine issue of material fact regarding whether Gordon must be licensed as a collection agency under RCW 19.16.110. First, it is undisputed that Gordon is not licensed as a collection agency in Washington. (*See* Ehrlich Decl. ¶¶ 14–16.) Second, there is no dispute that Gordon satisfies RCW 19.16.100(2)(a), which defines a "collection agency" as "[a]ny person directly or indirectly engaged in soliciting claims for collection, or collecting or attempting to collect claims owed or due or asserted to be owed or due another person." Gordon's business is based upon collecting claims owed to its clients, including, in this case, CACV.

Third, Mr. Mandelas has provided the court with evidence establishing a genuine issue of material fact regarding whether Gordon's collection activities "are carried on in his, her, or its true name and are confined and are directly related to the operation of a business *other than that of a collection agency.*" RCW 19.16.100(3)(c) (emphasis added). Although Gordon is nominally a law firm, its primary purpose is the collection of consumer debts. (*See* Ehrlich Decl. Ex. J ("Aylworth Dep. (McLain)") at 36, 55.) Gordon employs only two attorneys; but it employs 13 to 18 non-attorney "collectors" in a "collection department." (*Id.* at 22–25.) The collectors attempt to collect debt from consumers before any efforts are made to file suit. (*Id.* at 23–24.) Under Gordon's standard processes, its non-attorney collectors attempt to collect debts on behalf of Gordon's clients before Gordon ever files suit, ***962** and Gordon undertakes litigation only where "voluntary collection isn't possible." (*See* Ehrlich Decl. Exs. G ("Dispute Validation Procedure"), H ("Account Flow").) Gordon has directed the court to no evidence that it conducts any business that is unrelated to its collection activities. In light of this evidence, the instant case is distinguishable from *Carter,* in which the court affirmed summary judgment for the law firm in part because the plaintiff put forth no evidence supporting its assertion that the law firm employed "numerous employees that engage in collections work." *See Carter,* **2011** WL 396038, at *6–8.

Based on the above, the court concludes that Mr. Mandelas has established a genuine issue of material fact regarding whether Gordon's business activities are "confined and are directly related to the operation of a business other than that of a collection agency." Therefore, Gordon is not entitled to summary judgment on Mr. Mandelas's WCAA and WCPA claims. [8]

III. CONCLUSION:

For the foregoing reasons, the court GRANTS in part and DENIES in part Gordon's motion for summary judgment (Dkt. # 47). The court GRANTS Gordon's motion with respect to Mr. Mandelas's claims that Gordon violated the FDCPA by seeking entry of judgment without notice, by purposefully delaying collection efforts, and by garnishing Mr. Mandelas's bank accounts without notice. The court DENIES Gordon's motion with respect to Mr. Mandelas's claim that Gordon violated the WCAA and WCPA because Mr. Mandelas has established a genuine issue of material fact regarding whether Gordon is subject to regulation under the WCAA.

All Citations

785 F.Supp.2d 951

Footnotes

1 In his response to Gordon's motion, Mr. Mandelas cites the transcript of the April 1, 2010 deposition of Matthew Aylworth taken in this case, which he purports to have filed as Exhibit L to the Ehrlich Declaration. (*See* Ehrlich Decl. (Dkt. 52 (sealed), 67 (redacted)) ¶ 12.) Mr. Ehrlich, however, attached Mr. Aylworth's December 17, 2010 deposition, which did not contain the cited information. (*See* Ehrlich Decl. Ex. L.) Recognizing that this was likely a clerical error, the court ordered Mr. Mandelas to file a new or amended declaration of Mr. Ehrlich attaching the transcript of Mr. Aylworth's April 1, 2010 transcript. (Dkt. # 76.) Mr. Mandelas has not provided the court with an Exhibit L that corresponds to the Ehrlich Declaration and that contains the information cited in his response. (*See* Dkt. 79, 83.)

The court does not include in its recitation of facts any evidence from Exhibit L to the Ehrlich Declaration because it is not properly before the court. *See* Fed.R.Civ.P. 56(c) (factual positions in support of or in opposition to a motion for summary judgment must be supported by admissible evidence). Nevertheless, as discussed below, even if Mr. Mandelas had filed the correct deposition, it would not have affected the result in this case.

2 In December 2010, Mr. Mandelas entered into a settlement with CACV and voluntarily dismissed it from this lawsuit. (Dkt. # 34.)

3 Mr. Mandelas brings no claims in this action based on the telephone calls or voice messages.

4 Mr. Mandelas also relies on a deposition of Mr. Aylworth that he did not file with his motion. (*See* supra n. 1.) Even taking Mr. Mandelas's representations of the contents of that deposition as truthful, however, the court concludes that Mr. Mandelas has not established a genuine issue of material fact that there was purposeful delay. For example, Mr. Mandelas makes much of CACV's request that Gordon note Mr. Mandelas's file as “NEMO,” which stands for “need money.” (*See* Resp. at 11.) Mr. Mandelas states that CACV made this request on August 10, 2008. (*See id.*) CACV's request that Gordon take action on the account is not evidence that Gordon purposefully delayed its collection efforts. In addition, the court observes that this request was made only two months after Gordon responded to Mr. Mandelas's call regarding the judgment, and Gordon's records show that it attempted to call Mr. Mandelas four times in August 2008. (*See* Aylworth Aff. Ex. 9; Mot at 7–8 (summarizing records).)

5 Mr. Mandelas does not state which provision of the WCAA Gordon allegedly violated by this conduct. (*See* Am. Compl. ¶¶ 60–62.)

6 Certain violations of the WCAA constitute unfair or deceptive acts or practices occurring in the conduct of trade or commerce within the meaning of the WCPA:

> The operation of a collection agency or out-of-state collection agency without a license as prohibited by RCW 19.16.110 and the commission by a licensee or an employee of a licensee of an act or practice prohibited by RCW 19.16.250 are declared to be unfair acts or practices or unfair methods of competition in the conduct of trade or commerce for the purpose of the application of the Consumer Protection Act found in chapter 19.86 RCW.

RCW 19.16.440.

7 Because *Carter* is an unpublished decision of the Washington Court of Appeals, the court considers it only as persuasive, rather than precedential, authority.

8 Gordon moved for summary judgment on Mr. Mandelas's WCAA and WCPA claims solely on the ground that it is not subject to the WCAA. However, in light of the court's rulings on Mr. Mandelas's FDCPA claims, the court is doubtful that Mr. Mandelas's WCAA and WCPA claims based on Gordon's alleged purposeful delay and improper notice of the writ of garnishment remain viable. (*See* Am. Compl. ¶¶ 55–59, 60–62.) In a separate order, therefore, the court orders Mr. Mandelas to show cause why the court should not grant summary judgment on these claims pursuant to Federal Rule of Civil Procedure 56(f)(2).

FILED
DECEMBER 6, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

FIRESIDE BANK fka FIRESIDE THRIFT CO., a California corporation, Appellant, v. JOHN W. ASKINS and LISA D. ASKINS, husband and wife and their marital community comprised thereof, Respondents.	)	No. 34918-7-III PUBLISHED OPINION

KORSMO, J. — Cavalry Investments appeals from a decision of the superior court determining that violations of the Washington Collection Agency Act (CAA), ch. 19.16 RCW, needed to be remedied by stripping the debt to the principal and declaring the debt paid. Concluding that an email communication between attorneys does not constitute a violation of the CAA and that CR 60 was not a proper method of presenting the debtors' theory of the case, we reverse and remand for further proceedings.

FACTS

A used car loan bearing an interest rate of 18.95 percent issued in 2004 to respondents John and Lisa Askins is the basis for this case. According to the Askins, the car was returned in 2006, supposedly in satisfaction of the balance of the loan, and no

further loan payments were made. However, this transaction was not reduced to writing. Fireside Bank, the assignee on the loan note, asserted that it repossessed the vehicle in December 2006, and sold it the following month for $4,200.

Fireside then filed suit seeking the balance of the note. The Askins did not appear in the action and ultimately a default judgment was entered against them on September 28, 2007, in the amount of $7,754.39, plus prejudgment and postjudgment interest. Clerk's Papers (CP) at 13. After collecting some money from the Askins over the years via garnishment, Fireside in 2012 sold the note to appellant Cavalry Investments, a debt collection agency. The two creditors issued 19 writs of garnishment between 2008 and 2015. A total of $10,849.16 was collected by the writs.

With collection efforts against them continuing, the Askins obtained an attorney. Their attorney contacted Cavalry's counsel in November 2015, and requested an accounting. Three months later, the Askins' counsel asked Cavalry's attorney to enter a satisfaction of judgment. Cavalry's counsel did not agree that the judgment had been satisfied and sent an email to counsel on April 7, 2016, containing an amortization schedule explaining the balance still owed. Both the email and the amortization schedule bore the notice: "This is an attempt to collect a debt. Any information obtained will be used for that purpose." CP at 372. The schedule also reported that the remaining debt had been calculated by adding $643 in attorney fees and $280 or $285 in collection costs

for each writ of garnishment. The spreadsheet concluded that the Askins still owed $15,820.89.

The Askins then requested, and the court granted, a show cause hearing pursuant to CR 60 to determine that the debt had been paid. The hearing request also asked for additional relief, including: quashing the most recent writ of garnishment, entry of a satisfaction of judgment, return of all money paid in excess of the debt principal, finding a violation of the CAA for attempting to collect unlawful amounts, and awarding sanctions and damages. CP at 403. The motion relied on the schedule contained in the April 7 email between counsel.

The parties argued the matter before the Honorable David Frazier of the Whitman County Superior Court, the same judge who had signed the judgment nine years earlier. Cavalry argued that the April 7 email accounting had been erroneous and that the proper accounting showed that a balance remained. Judge Frazier considered the email accounting and found that the CAA had been violated by Cavalry requesting more costs than they were entitled to collect in violation of RCW 19.16.250(21). He ordered the judgment stripped to its principal pursuant to RCW 19.16.450 and declared the judgment satisfied. CP at 427.

Cavalry moved for reconsideration and argued, with two alternative accountings attached, that the debt remained unsatisfied and that the matter should be set for trial. The Askins argued that the original ruling was proper and that Fireside Bank also had

violated the CAA before Cavalry acquired the debt. Judge Frazier heard oral argument on the motion and took the matter under advisement before subsequently entering an order denying reconsideration. The order on reconsideration stated, in part, that the court's original ruling was based on efforts to claim more in attorney fees and costs than was legally permissible, and that the new accounting could not cure the earlier error. CP at 462-63.

Cavalry timely appealed to this court. An amicus curiae, the Statewide Poverty Action Network, filed a brief in support of the Askins. A panel heard oral argument of the case.

ANALYSIS

Cavalry's appeal presents us with two significant questions. First, was the accounting contained in the email between the attorneys an effort to collect a debt under the CAA? Second, could the Askins pursue violations of the CAA under the provisions of CR 60? We first consider the relevant statutes before turning to the two questions presented.

The CAA is a counterpart of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692-1692o, and constitutes our state's effort to regulate debt collection practices by in-state and out-of-state collection agencies. *Panag v. Farmer's Ins. Co. of Wash.*, 166 Wn.2d 27, 53, 204 P.3d 885 (2009). Those who make collection efforts in this state must be licensed, RCW 19.16.110, and also must not violate a lengthy

list of prohibited debt collection practices. RCW 19.16.250. Violations of these two statutes are actionable under the Washington Consumer Protection Act (CPA), ch. 19.86 RCW. *See* RCW 19.16.440.

In addition, a violation of any of the practices prohibited by RCW 19.16.250 results in the creditor losing its right to collect any costs or interest, and limits collection to only the original judgment principal. RCW 19.16.450. Among the prohibited practices are efforts to attempt to collect "any sum other than allowable interest, collection costs or handling fees expressly authorized by statute." RCW 19.16.250(21).

Washington's garnishment statute authorizes the imposition of attorney fees and other allowable costs. RCW 6.27.090(2). The attorney fee was $250 at the onset of this litigation, but was raised to $300 in 2012. *See* LAWS OF 2012, ch. 159, § 2. In order to recover costs or attorney fees, the plaintiff must obtain a judgment specifying the amount recovered. *Watkins v. Peterson Enters., Inc.*, 137 Wn.2d 632, 647, 973 P.2d 1037 (1999).

With these understandings in mind, we turn to the questions presented by this appeal.

April 7 Email between Counsel

The initial order granting the Askins' motion was predicated in part on the incorrect figures used in the April 7 email between the two attorneys. To the extent that the trial court considered that accounting to constitute a violation of the CAA, it erred.

Communications between opposing attorneys do not constitute an effort to collect debt under the CAA.

The CAA defines "debtor" as "any person owing or alleged to owe a claim." RCW 19.16.100(7). Many of the prohibited practices involve improper communication practices between collection agencies and debtors. *E.g.*, RCW 19.16.250(8), (9), (11), (13), (14), (15), (16), (17), (18). A collection agency is prohibited from communicating directly with a debtor who is represented by counsel. RCW 19.16.250(12).

These provisions of the CAA prohibit collection agencies, including attorneys or other agents, from contacting the debtor. They simply do not apply to communications with a debtor's attorney. The federal courts have reached the same conclusion under the FDCPA. "The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors from abuse, harassment, and deceptive collection practices." *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). Similarly, the purpose of the CAA is to "ensure [collection agencies] deal fairly and honestly with alleged debtors." *Panag*, 166 Wn.2d at 54.

Neither act categorically excludes attorneys from its scope. *Paris v. Steinberg & Steinberg*, 828 F. Supp. 2d 1212, 1220 (W.D. Wash. 2011) ("The [CAA] does not exempt attorneys attempting to collect a debt owed to a third party . . . ."); *Heintz v. Jenkins*, 514 U.S. 291, 299, 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995) ("[The FDCPA] applies to attorneys who 'regularly' engage in consumer-debt-collection activity, even when that

activity consists of litigation."). However, the FDCPA's "purposes are not served by applying its strictures to communications sent only to a debtor's attorney." *Guerrero*, 499 F.3d at 938; *see also Kropelnicki v. Siegel*, 290 F.3d 118, 128 (2d Cir. 2002) ("Where an attorney is interposed as an intermediary between a debt collector and a consumer, we assume the attorney, rather than the FDCPA, will protect the consumer from a debt collector's fraudulent or harassing behavior."). Thus, "when the debt collector ceases contact with the debtor, and instead communicates exclusively with an attorney hired to represent the debtor in the matter, the [FDCPA's] strictures no longer apply to those communications." *Guerrero*, 499 F.3d at 939.

We believe the *Guerrero* principle governs here. Accordingly, we conclude that a communication by a creditor's attorney to a debtor's attorney, even if in violation of a provision of the CAA, does not itself constitute a violation of the CAA. The communication may still be of evidentiary value in subsequent litigation, but it does not constitute a prohibited communication to a debtor.

The trial court appeared to rely heavily upon the email communication in its original ruling. Although we reverse for the reasons stated in the next section and remand for additional action, we expressly note that sending the amortization schedule to the Askins' attorney could not itself constitute a violation of the CAA. The schedule itself, though, may still be of some evidentiary value to the parties. We believe that any

future consideration of this communication will be consistent with the views expressed in this opinion.

Use of CR 60 to Obtain Affirmative Relief

The Askins brought the show cause hearing under CR 60 to establish a satisfaction of the judgment and other affirmative relief. We conclude that this was not a proper method of establishing a violation of the CAA.

CR 60 allows relief from judgment in several circumstances, including:

> (b)(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

We believe this provision probably was the one relied on in the request for relief, although the calendaring order simply stated "CR 60."

"'Rule 60(b) is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment.'" *Geonerco, Inc. v. Grand Ridge Prop. IV, LLC*, 159 Wn. App. 536, 542, 248 P.3d 1047 (2011) (applying federal standard to CR 60(b) and quoting *Delay v. Gordon*, 475 F.3d 1039, 1044-45 (9th Cir. 2007)). The party seeking vacation of a judgment under CR 60(b) bears the burden of establishing entitlement to relief. *Puget Sound Med. Supply v. Dep't of Soc. & Health Servs.*, 156 Wn. App. 364, 373 n.9, 234 P.3d 246 (2010). The effect of vacating a judgment is that it "is of no force or effect

and the rights of the parties are left as though no such judgment had ever been entered." *In re Estate of Couch*, 45 Wn. App. 631, 634, 726 P.2d 1007 (1986).

CR 60(b) allowed the Askins to establish that the judgment had been satisfied through their payments, but they did not directly attempt to do so. Instead, they sought to show a violation of the CAA, invoke the remedy of RCW 19.16.450, and, once applying that remedy, claim that the judgment was satisfied. While this novel approach had the benefit of limiting the expenses of the parties by reducing the case to a motion, it appears to run counter to legislative intent that the CAA be enforced through the CPA. RCW 19.16.440. It also required Cavalry to essentially defend against a CPA action without such a case having been initiated and without being allowed to engage in relevant discovery, while conversely permitting the Askins to litigate a CPA claim without filing one. Although the trial court did not grant all relief available under the CPA, it granted enough to exceed the scope of its authority under CR 60.

Without applying the RCW 19.16.450 remedy, it is unclear on this record whether the trial judge believed the Askins had met their burden under CR 60(b)(6). Although we recognize that all parties benefit from the simplified and less expensive motion practice, it was not a practice available under the rule. We therefore reverse and remand for

further proceedings and without prejudice to seeking relief outside the strictures of CR 60.[1]

Reversed and remanded.

Korsmo, J.

WE CONCUR:

Fearing, J.

Siddoway, J.

[1] This case should settle. In light of the fact that Fireside appears to have collected, or attempted to collect, fees and costs that it was not entitled to collect, it may be prudent for Cavalry to abandon its efforts to collect on the debt and enter a satisfaction of judgment rather than defend Fireside's actions.

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** APPLICATION FOR WRIT OF GARNISHMENT **(APL)**

I. APPLICATION

1.1 Plaintiff has a judgment wholly or partially unsatisfied, against the defendant, in the court from which the writ is being sought.

1.2 The amount alleged to be due is the balance of the judgment or amount of claim, $, plus interest and estimated garnishment costs as indicated in the writ.

1.3 Plaintiff has reason to believe, and does believe, that , whose residence and/or business location is is:
(Garnishee)

[ ] indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law; or
[ ] the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law.

1.4 The garnishee [ ] is [ ] is not the employer of the defendant.

II. CERTIFICATION

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated _____, at _____ Washington.

_____
Signature

_____COURT OF WASHINGTON
COUNTY OF _____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Writ of Garnishment (Debts Other Than Earnings – After Judgment)** **(WRG or $WRG)** ☐ This garnishment is based on a judgment or order for: ☐ child support ☐ private student loan debt

The State of Washington to: _____ (Garnishee)
And to: _____ (Defendant(s))

The plaintiff in this action has applied for a Writ of Garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy the indebtedness is $_____consisting of:

Balance of Judgment or Amount of Claim:		$_____
Interest under Judgment from _____to _____:		$_____
Taxable Costs and Attorneys' Fees:		$_____
Estimated Garnishment Costs:		
Filing and Ex Parte Fees:	$_____	
Service and Affidavit Fees:	$_____	
Postage and Costs of Certified Mail:	$_____	
Answer Fee or Fees:	$_____	
Garnishment Attorney Fees:	$_____	
Other:	$_____	
Total estimated garnishment costs:		$_____
TOTAL:		$_____
Plus Per Day Rate of Estimated Interest:		$ _____ Per day

YOU ARE COMMANDED, unless otherwise directed by the court, by the attorney of record for the plaintiff, or by this writ, not to pay any debt, other than earnings, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or

transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served. Any such payment delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE ALSO COMMANDED to answer this writ according to the instructions in this writ and in the answer forms and, within 20 days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, at the addresses listed at the bottom of this writ.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first paragraph and any processing fee if one is charged and release all additional funds or property to defendant.

IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED**,** A JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST, ATTORNEY FEES, AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THIS WRIT, ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR EFFECTS IN YOUR POSSESSION OR CONTROL.

JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR COSTS AND FEES INCURRED BY THE PLAINTIFF.

☐ Witness, the Honorable _____, Judge of the above-entitled Court, and the seal thereof, on _____(date).

_____ _____
Attorney for Plaintiff (or Plaintiff, if no Attorney) Clerk of the Court

_____ By:_____
Address

_____ _____
Name of Defendant Address

_____ _____
Address of Defendant

☐ This writ is issued by the undersigned attorney of record for plaintiff under the authority of Chapter 6.27 RCW, and must be complied with in the same manner as a writ issued by the clerk of the court.

Dated: _____

_____
Attorney for Plaintiff WSBA No.

_____ _____
Address Address of the Clerk of the Court

_____ _____
Name of Defendant

_____
Address of Defendant

STATEMENT OF PLAINTIFF'S COUNSEL TO BANKING INSTITUTION

(The following information is to be provided only if the garnishee is a banking institution.)

Counsel for the plaintiff states that:

1. The defendant's last known residence is:

_____
_____
_____

2. The defendant's last known business is:

_____
with address at:
_____
_____

3. The defendant's last known occupation, trade, or profession is:

_____
_____
with address at:
_____
_____

4. The defendant's federal tax identification number is:

_____

5. The defendant's account number is:

_____

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Writ of Garnishment for Continuing Lien on Earnings (WRG or $WRG)** ☐ This garnishment is based on a judgment or order for: ☐ child support. ☐ private student loan debt

The State of Washington to: _____ (Garnishee)

And to: _____ (Defendant(s))

The plaintiff in this action has applied for a Writ of Garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy the indebtedness is $_____consisting of:

Balance of Judgment or Amount of Claim:		$_____
Interest under Judgment from _____ to _____:		$_____
Taxable Costs and Attorneys' Fees:		**$**_____
Estimated Garnishment Costs:		
Filing and Ex Parte Fees:	$_____	
Service and Affidavit Fees:	$_____	
Postage and Costs of Certified Mail:	$_____	
Answer Fee or Fees:	$_____	
Garnishment Attorney Fees:	$_____	
Other:	$_____	
Total estimated garnishment costs:		$_____
TOTAL:		$_____
Plus Per Day Rate of Estimated Interest:		$ _____ Per day

THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue from the date the previously served writ or writs terminate and through the last payroll period ending on or before 60 days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT.

YOU ARE COMMANDED, unless otherwise directed by the court, by the attorney of record for the plaintiff, or by this writ, not to pay any debt, whether earnings subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time this writ was served. Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE ALSO COMMANDED to answer this writ according to the instructions in this writ and in the answer forms and, within 20 days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant at the addresses listed at the bottom of this writ.

If, at the time this writ was served, you owed the defendant any earnings (that is wages, salary, commission, bonus, tips, or other compensation for personal services or any periodic payments pursuant to a nongovernmental pension or retirement program), the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of 75 percent of disposable earnings or a minimum amount determined by reference to the employee's pay period, to be calculated as provided in the answer. However, if this writ carries a statement in the heading of either "This garnishment is based on a judgment or order for child support," the basic exempt amount is 50 percent of disposable earnings; or "This garnishment is based on a judgment or order for private student loan debt," the basic exempt amount is the greater of 85 percent of disposable earnings or 50 times the minimum hourly wage of the highest minimum wage law in the state at the time the earnings are payable.

YOU MAY DEDUCT A PROCESSING FEE FROM THE REMAINDER OF THE EMPLOYEE'S EARNINGS AFTER WITHHOLDING UNDER THIS WRIT. THE PROCESSING FEE MAY NOT EXCEED TWENTY DOLLARS FOR THE FIRST ANSWER AND TEN DOLLARS AT THE TIME YOU SUBMIT THE SECOND ANSWER.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first paragraph and any processing fee, if one is charged, and release all additional funds or property to defendant.

IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED**,** A JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST, ATTORNEY FEES, AND COSTS WHETHER OR

NOT YOU OWE ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THIS WRIT, ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR EFFECTS IN YOUR POSSESSION OR CONTROL.

JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR COSTS AND FEES INCURRED BY THE PLAINTIFF.

☐ Witness, the Honorable _____, Judge of the above-entitled Court, and the seal thereof, on _____(date).

_____ _____
Attorney for Plaintiff (or Plaintiff, if no Attorney) Clerk of the Court

_____ By:_____
Address

_____ _____
Name of Defendant Address

_____ _____
Address of Defendant

☐ This writ is issued by the undersigned attorney of record for plaintiff under the authority of Chapter 6.27 RCW, and must be complied with in the same manner as a writ issued by the clerk of the court.

Dated _____

_____
Attorney for Plaintiff WSBA No.

_____ _____
Address Address of the Clerk of the Court

_____ _____
Name of Defendant

_____
Address of Defendant

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Certification of Mailing (Garnishment) (CRML)**

The undersigned STATES that:

1.1 I am a citizen of the State of Washington, I am over the age of 18 years, and I am not a party to this action.

1.2 On _____ (date) at _____ a.m./p.m. (time) at _____ (city and state of mailing), I mailed to defendant(s) _____ at _____ (mailing address) by postage prepaid certified mail, return receipt requested or electronic return receipt delivery confirmation requested, the following document(s):

[ ] Writ of Garnishment (Debts other than Earnings)
[ ] Writ of Garnishment for Continuing lien on Earnings
[ ] Judgment Creditor's writ application
[ ] Notice of Garnishment and of Your Rights
[ ] Exemption Claim
[ ] Notice to Defendant of Non-Responsive Exemption Claim
[ ] Other:_____
[ ] Other:_____

The return receipt (green card), or the certified envelope if unclaimed or undeliverable, or electronic return receipt delivery confirmation is attached to this certification.

1.3 On _____ (date) at _____ a.m./p.m. (time) at _____ (city and state of mailing), I mailed to garnishee _____ at _____ (mailing address) by postage prepaid certified mail, return receipt requested, or electronic return receipt delivery confirmation requested, the following document(s):

[ ] For debts other than earnings:
- Writ of Garnishment (Debts Other than Earnings); and
- Answer to Writ of Garnishment (Debts other than Earnings); and
- Check or money order made payable to the garnishee in the amount of twenty dollars ($20).

[ ] For Continuing Lien on Earnings:
[ ] Writ of Garnishment for Continuing Lien on Earnings; and
- First Answer to Writ of Garnishment for Continuing Lien on Earnings

[ ] Second Answer to Writ of Garnishment for Continuing Lien on Earnings

[ ] Notice of Default Against Garnishee
[ ] Other:_____
[ ] Other:_____

The return receipt (green card) or electronic return receipt delivery confirmation is attached to this certification.

I CERTIFY under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated:_____at _____, Washington.

Fees:
Service _____
Postage _____
Total _____

_____
Signature

_____
Name and Title

Serving the writ of garnishment:

Service of the writ of garnishment (debts other than earnings) is invalid unless the writ is served with an answer form and a check or money order made payable to the garnishee in the amount of twenty dollars ($20) for the answer fee.

Service of the writ of garnishment for continuing lien on earnings is invalid unless the writ is served with an answer form.

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Return of Service (Garnishment) (RTS)**

The undersigned **states** that:

1.1 I am a citizen of the State of Washington, I am over the age of 18 years, and I am not a party to this action.

1.2 On _____ (date) at _____ a.m./p.m. (time) at _____ (city and state of service), I served on **defendant(s)** _____ at _____ (address) the following document(s):

[ ] Writ of Garnishment (Debts Other than Earnings)
[ ] Writ of Garnishment for Continuing Lien on Earnings
[ ] Judgment Creditor's writ application
[ ] Notice of Garnishment and of Your Rights
[ ] Exemption Claim
[ ] Notice to Defendant of Non-Responsive Exemption Claim
[ ] Other:_____
[ ] Other:_____

1.3 Service on the defendant(s) was made by delivery to _____,

[ ] the defendant(s) named in paragraph 1.2 above.
[ ] a person of suitable age and discretion residing at the usual abode of defendant(s).
[ ] the _____(president, registered agent, secretary, cashier, partner, etc.) of_____ (name of corporation, partnership, etc.).

1.4 On _____ (date) at _____ a.m./p.m. (time) at _____ (city and state of service), I served on **garnishee** _____ at _____ _____ (address) the following document(s):

[ ] For Debts Other Than Earnings:
- Writ of Garnishment (Debts Other Than Earnings); and
- Answer to Writ of Garnishment (Debts Other Than Earnings); and
- Check or money order made payable to the garnishee in the amount of twenty dollars ($20).

[ ] For Continuing Lien on Earnings:
[ ] Writ of Garnishment for Continuing Lien on Earnings; and
- First Answer to Writ of Garnishment for Continuing Lien of Earnings.

[ ] Second Answer to Writ of Garnishment for Continuing Lien on Earnings.

[ ] Notice of Default Against Garnishee
[ ] Other:_____
[ ] Other:_____

1.5 Service on the garnishee was made by delivery to _____,

[ ] the garnishee named in paragraph 1.4 above.
[ ] a person of suitable age and discretion residing at the garnishee's usual abode.
[ ] the _____ (president, registered agent, secretary, cashier, partner, etc.) of_____ (name of corporation, partnership, etc.).

I **certify** under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated:_____, at _____Washington.

Fees: Service _____
Postage _____
Total _____

_____
Signature

_____
Name and Title

Serving the writ of garnishment:

Service of the writ of garnishment (debts other than earnings) is invalid unless the writ is served with an answer form and a check or money order made payable to the garnishee in the amount of twenty dollars ($20) for the answer fee.

Service of the writ of garnishment for continuing lien on earnings is invalid unless the writ is served with an answer form.

_____COURT OF WASHINGTON
COUNTY OF _____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Notice to Federal Government Garnishee** **(NT)**

TO: THE GOVERNMENT OF THE UNITED STATES AND
ANY DEPARTMENT, AGENCY, OR DIVISION THEREOF

You have been named as the garnishee in the above-entitled cause. A Writ of Garnishment accompanies this Notice. The Writ of Garnishment directs you to hold the nonexempt earnings of the named defendant, but does not instruct you to disburse the funds you hold.

BY THIS NOTICE THE COURT DIRECTS YOU TO WITHHOLD ALL NONEXEMPT EARNINGS AND DISBURSE THEM IN ACCORDANCE WITH YOUR NORMAL PAY AND DISBURSEMENT CYCLE, TO THE FOLLOWING:

_____ County _____ Court Clerk

Cause No:_____

Address: _____

_____

PLEASE REFERENCE THE DEFENDANT EMPLOYEE'S NAME AND THE ABOVE CAUSE NUMBER ON ALL DISBURSEMENTS.

The enclosed Writ also directs you to respond to the Writ within twenty (20) days, but you are allowed thirty (30) days to respond under federal law.

☐ Dated:_____ Clerk of the Court

By: _____
Deputy Clerk

☐ This notice is issued by the undersigned attorney of record for plaintiff under the authority of RCW 6.27.370, and must be complied with in the same manner as a notice issued by the court.

Dated: _____ _____
Attorney for Plaintiff WSBA No.

NOTICE OF GARNISHMENT AND OF YOUR RIGHTS
(Effective January 1, 2018)

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the Garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the Writ of Garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount is calculated. If the garnishment is for child support, the exempt amount paid to you will be a percent of your disposable earnings, which is 50 percent of that part of your earnings remaining after your employer deducts those amounts which are required by law to be withheld.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security, Veteran's Benefits, Unemployment Compensation, or any federally qualified pension, such as a state or federal pension, individual retirement account (IRA), or 401K plan, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts property of your choice (including up to $500 in a bank account) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

NOTICE OF GARNISHMENT AND OF YOUR RIGHTS
(Effective June 7, 2018)

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the Garnishee held or controlled. This notice of your rights is required by law.

YOU HAVE THE FOLLOWING EXEMPTION RIGHTS

WAGES. If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the Writ of Garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount is calculated. If the garnishment is for child support, the exempt amount paid to you will be a percent of your disposable earnings, which is 50 percent of that part of your earnings remaining after your employer deducts those amounts which are required by law to be withheld. If the garnishment is for private student loan debt, the exempt amount paid to you will be the greater of the following: A percent of your disposable earnings, which is 85 percent of the part of your earnings remaining after your employer deducts those amounts which are required by law to be withheld, or 50 times the minimum hourly wage of the highest minimum wage law in the state at the time the earnings are payable.

BANK ACCOUNTS. If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security, Veteran's Benefits, Unemployment Compensation, or any federally qualified pension, such as a state or federal pension, individual retirement account (IRA), or 401K plan, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

OTHER EXEMPTIONS. If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts property of your choice (including up to $2,500 in a bank account if this garnishment is for private student loan debts or up to $500 in a bank account for all other debts) and certain other property such as household furnishings, tools of trade, and a motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim

form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**No.** **Exemption Claim** (Writ to garnish funds or property held by a financial institution) **(EXMPCL)**

INSTRUCTIONS:

1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.

2. Make two copies of the completed form. Deliver the original form by first class mail or in person to the clerk of the court, whose address is shown at the bottom of the Writ of Garnishment. Deliver one of the copies by first class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 weeks) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

☐ The account contains payments from:

☐ TANF, SSI, or other public assistance. I receive $ _____ monthly.
☐ Social Security. I receive $ _____ monthly.

☐ Veteran's Benefits. I receive $ _____ monthly.
☐ Unemployment Compensation. I receive $ _____ monthly.
☐ Child support. I receive $ _____ monthly.
☐ Pensions and retirement accounts including, but not limited to, U. S. Government Pension, federally qualified pension, individual retirement account (IRA) 401K, 403(b) and any state retirement system listed in RCW 41.50.030. I receive $ _____ monthly.
☐ Other: Explain _____

_____

☐ $2,500 exemption if this garnishment is for private student loan debts.

☐ $500 exemption for all other debts.

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

☐ No money other than from above payments are in the account.
☐ Moneys in addition to the above payments have been deposited in the account.
(Explain:)

_____
_____
_____

OTHER PROPERTY:

☐ Describe property: (If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

_____
_____
_____
_____

Print: Your name	If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
Your signature	Signature of husband, wife, or state registered domestic partner

Address	Address (if different from yours)
Telephone number	Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Exemption Claim** (Writ directed to employer to garnish earnings) **(EXMPCL)**

INSTRUCTIONS:

1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.

2. Make two copies of the completed form. Deliver the original form by first class mail or in person to the clerk of the court, whose address is shown at the bottom of the Writ of Garnishment. Deliver one of the copies by first class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 weeks) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

☐ Name and address of employer who is paying the benefits:

_____

_____

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

☐ I claim the maximum exemption.

IF EARNINGS ARE GARNISHED FOR PRIVATE STUDENT LOAN DEBT:

☐ I claim the maximum exemption.

Print: Your name	If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
Your signature	Signature of husband, wife, or state registered domestic partner
Address	Address (if different from yours)
Telephone number	Telephone number (if different from yours)

CAUTION: If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.

_____ COURT OF WASHINGTON

COUNTY OF _____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Claim of Exemption (EXMPCL)**

1. The undersigned claim(s) the following described property or money as exempt from execution:

_____

_____

_____

_____

_____

2. The undersigned believe(s) the property is exempt because:

_____

_____

_____

_____

_____

Print: Your name	If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
Your signature	Signature of husband, wife, or state registered domestic partner

Address	Address (if different from yours)
Telephone number	Telephone number (if different from yours)

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Notice to Defendant of Non-Responsive Exemption Claim (NTDEF)**

The Exemption Claim submitted by you (copy attached) does not state a valid claim of exemption to the Writ of Garnishment and creates no issue of exemption to be determined by the court.

Your Exemption Claim fails to create an issue needing judicial resolution for the following reason(s):

☐ The Exemption Claim has been submitted in blank and/or does not assert a claim of exemption;

☐ Exemption(s) specific to bank accounts are claimed and the Writ of Garnishment herein is not directed to a bank;

☐ Exemption(s) specific to Child Support Garnishments are claimed and the Writ of Garnishment herein is not issued for enforcement of a judgment for child support;

☐ Exemption(s) specific to Private Student Loan Debt are claimed and the Writ of Garnishment herein is not issued for enforcement of a private student loan debt;

☐ Exemption(s) specific to pension or retirement benefits are claimed and the Writ of Garnishment is not directed to the garnished party's employer or other pension or retirement benefit provider;

☐ Exemption(s) specific to other personal property are claimed, and the Writ of Garnishment is directed to a bank, employer or other holder of monetary amounts owed to the garnished party.

NO COURT HEARING TO DETERMINE YOUR RIGHT TO HAVE ANY FUNDS OR PROPERTY EXEMPTED FROM GARNISHMENT IS CURRENTLY SCHEDULED.

If you believe you have valid exemption rights different from those claimed in your recently submitted Exemption Claim and you wish to have a court hearing to determine those exemption rights, you must submit another Exemption Claim which specifies the exemption(s) to which you believe you are entitled. Another Exemption Claim form is being provided to you with this notice.

YOU MUST SUBMIT ANY ADDITIONAL EXEMPTION CLAIM ACCORDING TO THE DIRECTIONS CONTAINED IN THE EXEMPTION CLAIM AND WITHIN THE LATER OF (1) 28 DAYS FROM THE DATE ON THE WRIT OF GARNISHMENT, OR (2) SEVEN DAYS FROM THE DATE THIS NOTICE IS POSTMARKED OR SERVED ON YOU.

Dated: _____

_____

_____
Printed/Typed Name

WSBA #: _____

Of: _____

Attorney(s) for: _____

NOTE ON USAGE:

WPF GARN 01.0570, NOTICE TO DEFENDANT OF NON-RESPONSIVE EXEMPTION CLAIM is not a statutory form. Do not use this form unless this procedure is authorized by local court rule in the jurisdiction in which the form is to be filed.)

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** RELEASE OF WRIT OF GARNISHMENT [ ] Full Release **(RL)** [ ] Partial Release **(PRL)**

TO: THE ABOVE-NAMED GARNISHEE

You are hereby directed by the attorney for plaintiff, under the authority of Chapter 6.27 RCW, to release the writ of garnishment issued in this cause on [date], as follows:

[ ] full release;
[ ] partial release [indicate the extent to which the garnishment is released]:

You are relieved of your obligation to withhold funds or property of the defendant to the extent indicated in this release. Any funds or property covered by this release which have been withheld, should be returned to the defendant.

Dated: _____

_____
Attorney for Plaintiff WSBA#

Print/Type Name

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** MOTION AND CERTIFICATION FOR DEFAULT AGAINST GARNISHEE **(MTDJ)**

Plaintiff, by and through its attorney undersigned, moves this court for a default order and judgment against garnishee.

THE UNDERSIGNED states the following: (1) that the Writ of Garnishment previously issued herein was properly served on garnishee as indicated by the certification of service/mailing filed herein; (2) that garnishee has not served nor filed an answer or response to the writ; (3) that the time for responding to said writ has expired (20 days, RCW 6.27.100); and (4) that PURSUANT TO RCW 9A.72.085, I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: _____

_____
Signature of Attorney or Plaintiff

Print or Type Name

COURT OF WASHINGTON

COUNTY OF

Plaintiff, vs. Defendant (s), Garnishee.	**NO.** NOTICE OF DEFAULT AGAINST GARNISHEE **(NT)**

TO:

Please take notice that the undersigned intends to present a default judgment against garnishee in the above-captioned cause, copy enclosed, ten (10) or more days after mailing this Notice.

Dated: _____

_____
Signature of Attorney or Plaintiff

Print or Type Name

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** DEFAULT ORDER AND JUDGMENT AGAINST GARNISHEE **(DFJGGD)**

JUDGMENT SUMMARY

1. Judgment Creditor:
2. Judgment Debtor:
3. Judgment Principal (Writ Amount): $
4. Service Costs (Credit)/Debit: $
5. Other Amounts (Interest Accrued): $
6. TOTAL JUDGMENT AMOUNT: $
7. Judgment to Bear Interest at: %
8. Attorney for Judgment Creditor

ORDER AND JUDGMENT

THIS MATTER having come on regularly upon plaintiff's motion for default; it appearing that garnishee was properly served with a Writ of Garnishment, that no answer has been filed or served, that the time for filing such answer has expired, and that proper notice of presentation of this default has been given; and the court being otherwise fully advised; NOW, THEREFORE, IT IS

ORDERED that garnishee is in default and that plaintiff is granted judgment against garnishee as set forth in the above judgment summary.

Dated: _____

JUDGE/COURT COMMISSIONER

Presented by:

_____
Signature of Attorney

_____COURT OF WASHINGTON
COUNTY OF _____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Answer to Writ of Garnishment** (Debts Other Than Earnings) **(ANWRGR)**

SECTION I: On the date the Writ of Garnishment was issued (the date appearing on the last page of the writ):

(A) The defendant:
☐ was employed by garnishee.
☐ was not employed and has never been employed by garnishee.
☐ was previously employed by the garnishee and the last date of employment was_____.

(B) The defendant ☐ did ☐ did not maintain a financial account with garnishee; and

(C) The garnishee ☐ did ☐ did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in your possession or control on the bottom of the last page of this answer form or attach a schedule if necessary.)

SECTION II: At the time of service of the Writ of Garnishment on the garnishee there was due and owing from the garnishee to the above-named defendant $ _____.

If there is any uncertainty about your answer give an explanation on the last page or on an attached page.

SECTION III: An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanied schedules, and to the best of my knowledge and belief it is true, correct, and complete.

Signature of Garnishee Defendant	Date
Signature of person answering for Garnishee	Connection with Garnishee
Print name of person signing	Address of Garnishee

Use this space to list all of defendant's property or effects in your possession or control or to explain any uncertainty about your answer:

_____COURT OF WASHINGTON
COUNTY OF_____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **First Answer to Writ of Garnishment for Continuing Lien on Earnings (ANWRGR)**

SECTION I: If you are withholding the defendant's nonexempt earnings under a previously served writ for a continuing lien, answer only sections I and III of this form and mail or deliver the forms as directed in the writ. Withhold from the defendant's future nonexempt earnings as directed in the writ, and a second set of answer forms will be forwarded to you later.

If you are NOT withholding the defendant's earnings under a previously served writ for a continuing lien, answer this ENTIRE form and mail or deliver the forms as directed in the writ. A second set of answer forms will be forwarded to you later for subsequently withheld earnings.

ANSWER: I am presently holding the defendant's nonexempt earnings under a previous writ served on _____ (date) that will terminate not later than _____ (date).

On the date the Writ of Garnishment was issued as indicated by the date appearing on the last page of the writ,

(A) The defendant: (check one) ☐ was ☐ was not employed by garnishee. If not employed and you have no possession or control of any funds of defendant, indicate the last day of employment:_____; and complete section III of this answer and mail or deliver the forms as directed in the writ;

(B) The defendant: (check one) ☐ did ☐ did not maintain a financial account with garnishee; and

(C) The garnishee: (check one) ☐ did ☐ did not have possession of or control over any funds, personal property, or effects of the defendant. (List all of defendant's personal property or effects in your possession or control on the bottom of the last page of this answer form or attach a schedule if necessary.)

SECTION II: At the time of service of the Writ of Garnishment on the garnishee, there was due and owing from the garnishee to the above-named defendant $ _____.

This writ attaches a maximum of _____ % (percent) of the Defendant's disposable earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a nongovernmental pension or retirement program). Calculate the attachable amount as follows:

Gross Earnings: $ _____ (1)

Less deductions required by law (Social Security, federal withholding tax, etc. Do not include deductions for child support orders or Government liens here. Deduct child support orders and liens on line 7): $ _____ (2)

Disposable Earnings (subtract line 2 from line 1): $ _____ (3)

Enter _____ % (percent) of line 3 $ _____ (4)

Enter one of the following exempt amounts*: $ _____ (5)
If paid Weekly $_____ Semi-monthly $_____
Bi-weekly $_____ Monthly $_____
*These are minimum exempt amounts that the defendant must be paid. If your answer covers more than one pay period, multiply the preceding amount by the number of pay periods and/or fraction thereof your answer covers. If you use a pay period not shown, prorate the monthly exempt amount.

Subtract the larger of lines 4 and 5 from line 3: $ _____ (6)

Enter amount (if any) withheld from this paycheck for on-going government liens such as child support: $ _____ (7)

Subtract line 7 from line 6. This amount must be held out for the plaintiff: $ _____ (8)

This is the formula that you will use for withholding each pay period over the required sixty-day garnishment period. Deduct any allowable processing fee you may charge from the amount that is to be paid to the defendant.

If there is any uncertainty about your answer give an explanation on the last page or on an attached page.

SECTION III: An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanied schedules, and to the best of my knowledge and belief it is true, correct, and complete.

_____ _____
Signature of Garnishee Defendant Date

Signature of person answering for Garnishee

Connection with Garnishee

Print name of person signing

Address of Garnishee

If necessary, use this space to supplement your answer from the first and second pages:

_____COURT OF WASHINGTON
COUNTY OF _____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Second Answer to Writ of Garnishment for Continuing Lien on Earnings (ANWRGR)**

SECTION I: ANSWER SECTION II OF THIS FORM WITH RESPECT TO THE TOTAL AMOUNT OF EARNINGS WITHHELD UNDER THIS GARNISHMENT, INCLUDING THE AMOUNT, IF ANY, STATED IN YOUR FIRST ANSWER, AND WITHIN TWENTY DAYS AFTER YOU RECEIVE THESE FORMS, MAIL OR DELIVER THEM AS DIRECTED IN THE WRIT.

Nonexempt amount due and owing stated in the first answer $ _____
Nonexempt amount accrued since the first answer $ _____
TOTAL AMOUNT WITHHELD $ _____

SECTION II: At the time of service of the Writ of Garnishment on the garnishee, there was due and owing from the garnishee to the above-named defendant $ _____.

This writ attaches a maximum of _____% (percent) of the defendant's disposable earnings (that is, compensation payable for personal services, whether called wages, salary, commission, bonus, or otherwise, and including periodic payments pursuant to a nongovernmental pension or retirement program). Calculate the attachable amount as follows:

Gross Earnings: $ _____ (1)

Less deductions required by law (Social Security, federal withholding tax, etc. Do not include deductions for child support orders or government liens here. Deduct child support orders and liens on line 7): $ _____ (2)

Disposable Earnings (subtract line 2 from line 1): $ _____ (3)

Enter _____% (percent) of line 3 $ _____ (4)

Enter one of the following exempt amounts*: $ _____ (5)
If paid Weekly $_____ Semi-monthly $_____
Bi-weekly $_____ Monthly $_____
*These are minimum exempt amounts that the defendant must be paid. If your answer covers more than one pay period, multiply the preceding amount by the number of pay periods and/or fraction thereof your answer covers. If you use a pay period not shown, prorate the monthly exempt amount.

Subtract the larger of lines 4 and 5 from line 3: $ _____ (6)

Enter amount (if any) withheld from this paycheck for on-going government liens such as child support: $ _____ (7)

Subtract line 7 from line 6. This amount must be held out for the plaintiff: $ _____ (8)

This is the formula that you will use for withholding each pay period over the required sixty-day garnishment period. Deduct any allowable processing fee you may charge from the amount that is to be paid to the defendant.

If there is any uncertainly about your answer give an explanation on the last page or on an attached page.

SECTION III: An attorney may answer for the garnishee.

Under penalty of perjury, I affirm that I have examined this answer, including accompanied schedules, and to the best of my knowledge and belief it is true, correct, and complete.

_____ _____
Signature of Garnishee Defendant Date

_____ _____
Signature of person answering for Garnishee Connection with Garnishee

_____
_____ _____
Print name of person signing Address of Garnishee

If necessary, use this space to supplement your answer from the first and second pages:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____.

_____ COURT OF WASHINGTON
COUNTY OF_____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Application for Judgment on Answer and Order to Pay (APL)**

The plaintiff or plaintiff's attorney undersigned, applies to this court for a Judgment on Answer and Order to Pay.

THE UNDERSIGNED states the following: (1) the Writ of Garnishment previously issued was properly served on garnishee as indicated by the certification of service/mailing filed herein; (2) the garnishee answered or responded to the writ; (3) it appears from the garnishee's answer that the garnishee was indebted to the defendant in an amount that was not exempt when the Writ of Garnishment was served; and (4) there is no unresolved exemption claim and there is no dispute (controversion).

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: _____

_____
Signature of Attorney or Plaintiff

_____
Print or Type Name WSBA No.

_____COURT OF WASHINGTON
COUNTY OF_____

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** **Judgment on Answer and Order to Pay** **(JDAGD)**

I. JUDGMENT SUMMARY

Judgment Creditor: _____
Garnishment Judgment Debtor (Garnishee): _____
Garnishment Judgment Amount: $_____
Costs Judgment Debtor (Defendant): _____
Costs Judgment Amount (Costs and Attorneys' Fees): $_____
Judgments to Bear Interest at: _____ %
Attorney for Judgment Creditor: _____

II. BASIS

IT APPEARING THAT garnishee was indebted to defendant in the nonexempt amount of $ _____; that at the time the Writ of Garnishment was issued defendant was employed by or maintained a financial institution account with garnishee, or garnishee had in its possession or control funds, personal property, or effects of defendant; and that plaintiff has incurred recoverable costs and attorney fees of $_____; now, therefore, it is hereby

III. ORDER

ORDERED that plaintiff is awarded judgment against garnishee in the amount of $_____; that plaintiff is awarded judgment against defendant in the amount of $_____ for recoverable costs:

If this is a superior court order, garnishee shall pay its judgment amount to (check one) [ ] plaintiff [ ] plaintiff's attorney through the registry of the court, and the clerk of the

court shall note receipt thereof and forthwith disburse such payment to (check one) [ ] plaintiff [ ] plaintiff's attorney.

If this is a district court order, garnishee shall pay its judgment amount to (check one) [ ] plaintiff [ ] plaintiff's attorney, and if any payment is received by the clerk of the court, the clerk shall forthwith disburse such payment to [ ] plaintiff [ ] plaintiff's attorney.

[If payment is to be made directly to plaintiff, insert the following sentence: Any payment directed to plaintiff shall be mailed to the following address: _____ _____.]

Garnishee is advised that the failure to pay its judgment amount may result in execution of the judgment, including garnishment.

Dated: _____ _____
JUDGE/COMMISSIONER

Court Address:_____

_____

Presented by:

_____
Plaintiff or Plaintiff's Attorney/WSBA No.

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** MOTION/ORDER DISCHARGING GARNISHEE **(MT, ORDMGD)**

MOTION

The undersigned moves the court for an order discharging (Garnishee) based upon the following statement:

Dated: _____

_____
Signature of Attorney or Plaintiff

ORDER

The court having considered plaintiff's motion for an order discharging the garnishee herein, ORDERS that the above-named garnishee be DISCHARGED.

Dated: _____

_____
JUDGE/COURT COMMISSIONER

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s), Garnishee.	**NO.** SATISFACTION OF JUDGMENT AGAINST GARNISHEE **(STFJG)**

WHEREAS plaintiff obtained judgment against garnishee on (date), and the judgment has been fully satisfied; NOW THEREFORE, full satisfaction of judgment is hereby acknowledged and the clerk of the court is hereby authorized and directed to cancel, fully satisfy and discharge the judgment.

Attorney for Plaintiff, or if no Attorney, Plaintiff

STATE OF WASHINGTON)
) : ss
COUNTY OF)

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (title) of (name of corporation) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:_____

NOTARY PUBLIC in and for the State of Washington
Residing at:
My commission expires:

COURT OF WASHINGTON
COUNTY OF

Plaintiff,

vs.

Defendant(s).

NO.

SATISFACTION OF JUDGMENT AGAINST DEFENDANT(S)
(STFJG)

WHEREAS plaintiff obtained judgment against defendant(s) on (date), and the judgment has been fully satisfied; NOW THEREFORE, full satisfaction of judgment is hereby acknowledged and the clerk of the court is hereby authorized and directed to cancel, fully satisfy and discharge the judgment.

Attorney for Plaintiff, or if no Attorney, Plaintiff

STATE OF WASHINGTON)
) : ss
COUNTY OF)

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (title) of (name of corporation) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:

NOTARY PUBLIC in and for the State of Washington
Residing at:
My commission expires:

COURT OF WASHINGTON
COUNTY OF

Plaintiff, vs. Defendant(s).	**NO.** PARTIAL SATISFACTION OF JUDGMENT AGAINST DEFENDANT(S) **(PRTSJG)**

WHEREAS plaintiff obtained judgment against defendant(s) on (date), and the judgment has been partially satisfied in the amount of $; NOW THEREFORE, partial satisfaction of judgment is hereby acknowledged and the clerk of the court is hereby authorized and directed to partially cancel, satisfy and discharge the judgment in the indicated amount.

Attorney for Plaintiff, or if no Attorney, Plaintiff

STATE OF WASHINGTON)
) : ss
COUNTY OF)

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (title) of (name of corporation) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

[ ] I certify that I know or have satisfactory evidence that (name) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:

NOTARY PUBLIC in and for the State of Washington
Residing at:
My commission expires: