

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA
3

4 DAMIAN M. MIRANDA, an individual

5 Plaintiff,

6 v.

7 LAW OFFICE OF D. SCOTT CARRUTHERS,
8 a general partnership, DENNIS
9 SCOTT CARRUTHERS,

10 Defendants.

1:10-cv-01487 OWW SMS

MEMORANDUM DECISION AND ORDER
RE PLAINTIFF'S MOTION TO
STRIKE AND MOTION FOR PARTIAL
SUMMARY JUDGMENT

(DOCS. 7, 22)

11 I. INTRODUCTION

12 Plaintiff Damian M. Miranda ("Plaintiff") proceeds with this
13 action for violations of the Fair Debt Collection Practices Act,
14 15 U.S.C. § 1692 et seq. ("FDCPA") and the California Rosenthal
15 Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788-
16 1788.30 ("CA FDCPA") against Law Office of D. Scott Carruthers
17 ("Defendant Law Office") and Dennis Scott Carruthers ("Defendant
18 Carruthers") (together, "Defendants"). Before the court are
19 Plaintiff's motion to strike Defendants' affirmative defenses
20 (Doc. 7) and Plaintiff's motion for partial summary judgment
21 (Doc. 22). Defendants filed a notice of non-opposition to
22 Plaintiff's motion to strike (Doc. 18) and an opposition to
23 Plaintiff's motion for partial summary judgment (Doc. 25), to
24 which Plaintiff replied (Doc. 27).
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1 II. MOTION TO STRIKE

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3 A. LEGAL STANDARD

4 Federal Rule of Civil Procedure 12(f) provides that a court
5 "may strike from a pleading an insufficient defense. . . ." Fed.
6 R. Civ. P. 12(f). An affirmative defense is insufficiently pled
7 if it does not give the plaintiff fair notice of the nature of
8 the defense. *Wyshak v. City Nat'l Bank*, 607 F.2d 824, 827 (9th
9 Cir. 1979). The function of a Rule 12(f) motion to strike is to
10 avoid the expenditure of time and money that might arise from
11 litigating spurious issues by dispensing with those issues prior
12 to trial. *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.
13 1993), *rev'd on other grounds*, *Fogerty v. Fantasy, Inc.*, 510 U.S.
14 517, 114 S.Ct. 1023 (1994).
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17 B. ANALYSIS

18 Plaintiff moves to strike Defendants' twenty-three
19 affirmative defenses raised in Defendants' Answer to Plaintiff's
20 Complaint:

21 1. The Plaintiff and each of its claims alleged therein do
22 not state facts sufficient to constitute a claim against D.
23 Scott Carruthers and Law Offices of D. Scott Carruthers upon
which relief may be granted.

24 2. Any recovery against D. Scott Carruthers and Law Offices
25 of D. Scott Carruthers, if any, must be reduced to the
26 extent Plaintiff has failed to mitigate, minimize or avoid
damages for which recovery is sought herein.

27 3. Plaintiff's claim against D. Scott Carruthers and Law
28 Offices of D. Scott Carruthers may be barred or limited, in

1 whole or in part, by the doctrine of waiver, unclean hands,
2 laches and/or estoppel.

3 4. Plaintiff's causes of actions are barred by the
4 applicable statute of limitations.

5 5. Plaintiff's causes of action are barred by accord and
6 satisfaction.

7 6. Plaintiff's causes of action are barred by the doctrine
8 of release.

9 7. Any recovery against D. Scott Carruthers and Law Offices
10 of D. Scott Carruthers, if any, must be reduced to the
11 extent Plaintiff owed money which was the basis of the
12 Action being filed.

13 8. Plaintiff's causes of action are barred against D. Scott
14 Carruthers and Law Offices of D. Scott Carruthers because it
15 had a good faith belief in the validity of the claims being
16 asserted against crosscomplainant.

17 9. Plaintiff's complaint is barred by the failure to comply
18 with the mandatory provisions of CCP § 428.50(a).

19 10. The alleged actions of D. Scott Carruthers and Law
20 Offices of D. Scott Carruthers were proper and did not
21 violate any provision of Fair Credit Reporting or Fair Debt
22 Collection.

23 11. The alleged actions of D. Scott Carruthers and Law
24 Offices of D. Scott Carruthers were proper and did not
25 violate any provision of the California Rosenthal Act,
26 California Civil Code § 1788 et seq.

27 12. That at all times mentioned in the cross-complaint, D.
28 Scott Carruthers and Law Offices of D. Scott Carruthers
acted lawfully and with his legal rights with a good faith
belief in the exercise of that right, and in furtherance of
a legitimate business purpose. Further, D. Scott Carruthers
and Law Offices of D. Scott Carruthers acted in good faith
in the honest belief that the acts, conduct and
communications, if any, of D. Scott Carruthers and Law
Offices of D. Scott Carruthers were justified under the
circumstances based upon information reasonably available to
him.

1 13. Plaintiff failed to give D. Scott Carruthers and Law
2 Offices of D. Scott Carruthers the right to arbitrate.

3 14. Assuming arguendo that D. Scott Carruthers and Law
4 Offices of D. Scott Carruthers violated a statute alleged in
5 the complaint, which proposition D. Scott Carruthers and Law
6 Offices of D. Scott Carruthers denies, such violation was
7 not intentional and resulted from a bona fide error,
8 notwithstanding the maintenance of procedures reasonably
9 adapted to avoid such error.

10 15. At all times mentioned in the complaint, D. Scott
11 Carruthers and Law Offices of D. Scott Carruthers maintained
12 reasonable procedures created to prevent any type of
13 intentional violations of the Fair Debt Collection Practices
14 Act.

15 16. The alleged actions of D. Scott Carruthers and Law
16 Offices of D. Scott Carruthers were not accompanied by
17 actual malice, intent to harm or injure and/or will to or
18 toward Defendant.

19 17. D. Scott Carruthers and Law Offices of D. Scott
20 Carruthers alleges that if Defendant, or either of them,
21 were damaged in any sum or the sums alleged, which damage D.
22 Scott Carruthers and Law Offices of D. Scott Carruthers
23 denies, the Defendant's damages, and each of them, are
24 limited by and to those provided for by 15 U.S.C. §
25 1692K(a), and each of its sub-parts.

26 18. Any damages suffered by Defendant, or each of them, were
27 caused by or contributed to by the conduct of Defendant
28 and/or their agents, servants, employees, or
representatives, and were not caused by the acts or
omissions of D. Scott Carruthers and Law Offices of D.
Scott Carruthers, or its agents, servants, employees, or
representatives, and therefore Defendant claims for damages,
if any, which are expressly denied, are barred by or must be
reduced by the percentages of fault attributable to
Defendant, or each of them.

19 19. Any injury or damage suffered or sustained by Defendant,
20 or each of them, was in whole or in part proximately caused
21 by persons or entities other than D. Scott Carruthers and
22 Law Offices of D. Scott Carruthers.

23 20. Defendant's damages, if any, were caused by intervening
24 and/or supervening causes, and were not caused by D. Scott

1 Carruthers and Law Offices of D. Scott Carruthers.

2 21. Any liability of D. Scott Carruthers and Law Offices of
3 D. Scott Carruthers, which is expressly denied, is solely
4 vicarious, imputed, or imposed by law. Defendant's damages,
5 if any, which are expressly denied, must be reduced by the
percentage of fault attributable to the acts or omissions of
all other persons, whether or not such persons are parties.

6 22. Defendant claims are barred or reduced by the doctrine
7 of offset.

8 23. D. Scott Carruthers and Law Offices of D. Scott
9 Carruthers alleges that if cross-complainant, or either of
10 them, were damaged in any sum or the sums alleged, which
11 damage D. Scott Carruthers and Law Offices of D. Scott
Carruthers denies, the Defendant's damages, and each of
them, are limited by and those to provided for by
California Civil Code § 1788.30(a) and § 1788.30(b).

12 Doc. 6, 8-11.

13 Plaintiff contends that the affirmative defenses are not
14 pled with sufficient particularity to provide Plaintiff with fair
15 notice of the defenses being advanced and do not raise the
16 alleged defenses beyond the speculative level. Defendants filed a
17 notice of non-opposition to Plaintiff's motion to strike its
18 affirmative defenses. (Doc. 18). Absent opposition, Plaintiff's
19 motion to strike is GRANTED.
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22 III. MOTION FOR PARTIAL SUMMARY JUDGMENT

23 Plaintiff moves for partial summary judgment as to liability
24 under the FDCPA and CA FDCPA. Plaintiff reserves the issue of
25 damages, attorney's fees, and costs for trial.
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1 A. FACTUAL BACKGROUND

2 Plaintiff is a natural person from whom Defendant Law Office
3 Carruthers sought to collect a debt allegedly owed to Allwell
4 Financial Services Inc. (SUMF ¶ 1). Plaintiff is a "debtor" as
5 defined by California Civil Code section 1788.2(h). (SUMF ¶ 2).

6 Defendant Law Office sent Plaintiff a letter on April 12,
7 2010. (SUMF ¶ 10). The letter is a "communication" as that term
8 is defined in 15 U.S.C. §1692a(2). (SUMF ¶ 3). The obligation
9 that Defendant Law Office sought to collect from Plaintiff is a
10 "debt" as defined by § 1788.2(d) of the CA FDCPA and § 1692a(5)
11 of the FDCPA. (SUMF ¶¶ 4, 5).

12 Defendant Law Office regularly engages in debt collection on
13 its own behalf or on behalf of others. (SUMF ¶ 9). Defendant Law
14 Office is a "debt collector" as that term is defined by 15 U.S.C.
15 §1692a(6) of the federal FDCPA. (SUMF ¶ 7). Defendant Carruthers
16 is the sole principal, officer, director and employee, agent or
17 other person of Defendant Law Office who prepared, reviewed and
18 caused to be mailed the April 12, 2010 letter to Plaintiff. (SUMF
19 ¶ 12). The financial and legal relationship between Defendant
20 Carruthers and Defendant Law Office is the same. (SUMF ¶ 14).

21 Defendants prepared, reviewed and caused to be filed a
22 lawsuit entitled *Allwell Financial Services, Inc. v. Damian M.*
23 *Miranda* in the Superior Court of California, County of Kern on
24 July 22, 2010. (SUMF ¶¶ 11, 14).

1 B. LEGAL STANDARD

2 Summary judgment is proper if "the pleadings, the discovery
3 and disclosure materials on file, and any affidavits show that
4 there is no genuine issue as to any material fact and that the
5 movant is entitled to judgment as a matter of law." Fed. R. Civ.
6 P. 56.

7
8 The moving party bears the initial burden of "informing the
9 district court of the basis for its motion, and identifying those
10 portions of the pleadings, depositions, answers to
11 interrogatories, and admissions on file, together with the
12 affidavits, if any, which it believes demonstrate the absence of
13 a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477
14 U.S. 317, 323, 106 S.Ct. 2548 (1986) (internal quotation marks
15 omitted). A fact is material if it could affect the outcome of
16 the suit under the governing substantive law; "irrelevant" or
17 "unnecessary" factual disputes will not be counted. *Anderson v.*
18 *Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

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20 If the moving party would bear the burden of proof on an
21 issue at trial, it must "affirmatively demonstrate that no
22 reasonable trier of fact could find other than for the moving
23 party." *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th
24 Cir. 2007). In contrast, if the non-moving party bears the burden
25 of proof on an issue, the moving party can prevail by "merely
26 pointing out that there is an absence of evidence" to support the
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1 non-moving party's case. *Id.*

2 When the moving party meets its burden, the "adverse party
3 may not rest upon the mere allegations or denials of the adverse
4 party's pleadings, but the adverse party's response, by
5 affidavits or as otherwise provided in this rule, must set forth
6 specific facts showing that there is a genuine issue for trial."
7 Fed. R. Civ. P. 56(e).
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9 In ruling on a motion for summary judgment, a court does not
10 make credibility determinations or weigh evidence. See *Anderson*,
11 477 U.S. at 255. Rather, "[t]he evidence of the non-movant is to
12 be believed, and all justifiable inferences are to be drawn in
13 his favor." *Id.* Only admissible evidence may be considered in
14 deciding a motion for summary judgment. Fed. R. Civ. P. 56(e).
15 "Conclusory, speculative testimony in affidavits and moving
16 papers is insufficient to raise genuine issues of fact and defeat
17 summary judgment." *Soremekun*, 509 F.3d at 984.
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20 C. ANALYSIS

21 1. First Cause of Action: Violation of Fair Debt
22 Collection Practices Act

23 The FDCPA was enacted "to eliminate abusive debt collection
24 practices by debt collectors, to insure that those debt
25 collectors who refrain from using abusive debt collection
26 practices are not competitively disadvantaged, and to promote
27 consistent State action to protect consumers against debt
28 collection abuses." 15 U.S.C. § 1692(e). To establish a violation

1 of the FDCPA, a plaintiff must show that: (1) plaintiff is a
2 consumer; (2) plaintiff has been the object of collection
3 activity arising from a consumer "debt" within the meaning of the
4 FDCPA; (3) defendant is a "debt collector" as defined by the
5 FDCPA; and (4) defendant has engaged in an act or omission in
6 violation of the prohibitions or requirements of the FDCPA. See
7 *Turner v. Cook*, 362 F.3d 1219, 1227-28 (9th Cir. 2004). The FDCPA
8 imposes strict liability; debt collectors are liable for
9 violations that are not knowing or intentional. *Reichert v. Nat'l*
10 *Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008). There is,
11 however, a "narrow exception" to strict liability for "bona fide
12 errors." *Clark v. Capital Credit & Collection Serv., Inc.*, 460
13 F.3d 1162, 1177 (9th Cir. 2006). Whether a debt collector's conduct
14 violates the FDCPA is judged from the standpoint of the least
15 sophisticated debtor: "If the least sophisticated debtor would
16 'likely be misled' by a communication from a debt collector, the
17 debt collector has violated the Act." *Guerrero v. RJM*
18 *Acquisitions LLC*, 499 F.3d 926, 934 (9th Cir. 2007). False but
19 non-material misrepresentations are not likely to mislead the
20 least sophisticated consumer, and therefore are not actionable
21 under the FDCPA. *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027,
22 1033 (9th Cir. 2010).

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26 Defendants do not dispute that Plaintiff is a consumer, or
27 that she was the object of collection activity arising from
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1 consumer debt. Defendants also do not contest that they are debt
2 collectors within the meaning of the FDCPA. At issue is whether
3 there is any triable issue of material fact that Defendants
4 violated the FDCPA.

5
6 a) FDCPA § 1692e(10)

7 (1) Pending Court Proceedings

8 Plaintiff argues that he is entitled to partial summary
9 judgment on Defendants' liability for violation of Section
10 1692e(10) of the FDCPA, which provides:

11 A debt collector may not use any false, deceptive, or
12 misleading representation or means in connection with the
13 collection of any debt. Without limiting the general
14 application of the foregoing, the following conduct is a
violation of this section: . . .

15 (10) The use of any false representation or deceptive
16 means to collect or attempt to collect any debt or to obtain
information concerning a consumer.

17 15 U.S.C. § 1692e(10).

18 Plaintiff asserts that the April 12, 2010 letter is
19 deceptive because the least sophisticated debtor would be misled
20 into believing that a lawsuit had already been filed. The April
21 12, 2010 letter states in bold capital letters:

22 "NOTICE OF PENDING COURT PROCEEDINGS"

23 Doc. 22-3, 3.

24 Defendants assert that this phrase is not misleading because
25 the letter was sent to Plaintiff after their client had already
26 made the decision to file a lawsuit against Plaintiff, and the
27

1 lawsuit was filed before knowledge of Plaintiff's FDCPA claim
2 existed. Doc. 25-3, ¶ 3. Defendants submit a dictionary¹
3 definition of pending to argue that their use of the word
4 "pending" was correct and not misleading:

5 *prep.* 1. while awaiting; until: *pending his return*. 2. In
6 the period until the decision or conclusion of; during:
7 *pending the negotiations*. -*adj.* 3. Remaining undecided;
8 awaiting decision. 4. Hanging; impending.

9 Doc. 25-4, Ex. B.

10 It is undisputed that Defendants did not file *Allwell*
11 *Financial Services, Inc. v. Damian M. Miranda* until July 22,
12 2010, three months after the April 12, 2010 letter. (SUMF ¶¶ 11,
13 14). Under the fourth definition of pending, Defendants'
14 statement that court proceedings are "pending" is not false,
15 i.e., that a lawsuit is impending. The letter, however, must be
16 viewed from the vantage point of the "least sophisticated
17 debtor." *Guerrero*, 499 F.3d at 934. "If the least sophisticated
18 debtor would 'likely be misled' by a communication from a debt
19 collector, the debt collector has violated the Act." *Id.* Most
20 debtors, not only the least sophisticated debtor, would interpret
21 "NOTICE OF PENDING COURT PROCEEDINGS" to mean that a lawsuit has
22 already been filed; i.e., that court proceedings had been
23 initiated and existed. The FDCPA imposes strict liability, even
24 for violations that are not knowing or intentional. *Reichert v.*
25 *Nat'l Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008).

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¹ Defendants do not specify or cite the dictionary.

1 Plaintiff's motion for summary judgment as to liability
2 under FDCPA § 1692e(10) for the statement "NOTICE OF PENDING
3 COURT PROCEEDINGS" as false is GRANTED.
4

5 (2) Inevitability of Judgment

6 Plaintiff further asserts that the April 12, 2010 letter is
7 deceptive because the least sophisticated investor would be
8 misled into believing that the filing of the lawsuit would
9 inevitably result in judgment against him or her. The April 12,
10 2010 letter states:

11 If this suit results in a judgment, the balance will
12 increase as you will be liable for all court costs, attorney
13 fees, back interest, and service costs. When the judgment is
14 obtained it will legally give me the right to seek and
attach any real or personal assets that you may own.

15 Doc. 22-3, 3. Plaintiff focuses on the word "When" in the second
16 sentence. The first sentence, however, states "If this suit
17 results in judgment." Whether the statement "When the judgment
18 is obtained" would cause the least reasonable investor to believe
19 that judgment is guaranteed is disputed and cannot be determined
20 as a matter of law. This argument is contrived and itself
21 distorts the plain language of the communication.
22

23 Plaintiff's motion for partial summary judgment as to
24 Defendant's liability under 15 U.S.C. § 1692e(10) for the phrase
25 "When the judgment is obtained" is DENIED.
26

27 b) FDCPA § 1692f

28 Plaintiff moves for partial summary judgment on Defendants'

1 violation of 15 U.S.C. § 1692f, which prohibits the use of
2 "unfair or unconscionable means to collect or attempt to collect
3 any debt." 15 U.S.C. § 1692f. The FDCPA does not define "unfair"
4 or "unconscionable," but Section 1692f provides eight examples of
5 violative conduct "without limiting the general application" of
6 the statute. See 15 U.S.C. § 1692f. Although this list is not
7 exhaustive, "[n]o evidence has been offered of any conduct by the
8 defendants in the least comparable with the conduct condemned."
9 *Fox v. Citicorp Credit Serv., Inc.*, 15 F.3d 1507, 1519 (9th Cir.
10 1994). Plaintiff simply argues the legal conclusion that
11 Defendants' actions were "undoubtedly unfair and unconscionable."
12 Plaintiff has not met his burden on summary judgment.

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14 Plaintiff's motion for partial summary judgment as to
15 Defendant's liability under 15 U.S.C. § 1692f is DENIED.
16

17 c) FDCPA § 1692g(a)(3)

18 Plaintiff argues that Defendants failed to comply with the
19 verification requirements of 15 U.S.C. § 1692g(a)(3)-(4), which
20 requires:
21

22 Within five days after the initial communication with a
23 consumer in connection with the collection of any debt, a
24 debt collector shall, unless the following information is
25 contained in the initial communication or the consumer has
26 paid the debt, send the consumer a written notice
27 containing-- . . .

28 (3) a statement that unless the consumer, within thirty days
after receipt of the notice, disputes the validity of the
debt, or any portion thereof, the debt will be assumed to be
valid by the debt collector;

1 (4) a statement that if the consumer notifies the debt
2 collector in writing within the thirty-day period that the
3 debt, or any portion thereof, is disputed, the debt
4 collector will obtain verification of the debt or a copy of
5 a judgment against the consumer and a copy of such
6 verification or judgment will be mailed to the consumer by
7 the debt collector;

8 15 U.S.C. § 1692g(a) (3)-(4) .

9 It is undisputed that the April 12, 2010 letter does not
10 contain any verification language. In his declaration, Defendant
11 Carruthers states: "My client had already sent Mr. Miranda a
12 letter advising him of his validation rights." Doc. 25-3, ¶ 3.
13 Only the "initial communication" triggers the validation and
14 notice requirements of 15 U.S.C. § 1692g, even though subsequent
15 debt collectors may send communications to the debtor for the
16 same debt. *Senftle v. Landau*, 390 F.Supp.2d 463, 473 (D. Md.
17 2005); *Nichols v. Byrd*, 435 F.Supp.2d 1101, 1107 (D. Nev. 2006)
18 (holding that where a validation notice had been sent by a debt
19 collector, another debt collector hired to litigate for
20 collection of the same debt need not supply a second validation
21 notice); *Ditty v. CheckRite, Ltd., Inc.*, 973 F.Supp. 1320, 1329
22 (D. Utah 1997) ("Section 1692g does not require another debt
23 collector, undertaking collection efforts after a validation
24 notice has been timely sent, to provide additional notice and
25 another thirty-day validation period."). Whether Defendant
26 Carruther's client sent Plaintiff a letter advising him of his
27 validation rights in compliance with 15 U.S.C. § 1692g raises a
28

1 genuine issue of material fact.

2 Plaintiff's motion for partial summary judgment as to
3 Defendants' liability under 15 U.S.C. § 1692g is DENIED.
4

5 2. Second Cause of Action: Violation of California
6 Rosenthal Fair Debt Collection Practices Act

7 Plaintiffs contend that they are entitled to partial summary
8 judgment as to Defendants' liability under the CA FDCPA.

9 a) Debt Collector

10 Defendants assert that they are not debt collectors within
11 the meaning of the CA FDCPA. Cal. Civ. Code § 1788.2(c) defines
12 "debt collector" as:

13 [A]ny person who, in the ordinary course of business,
14 regularly, on behalf of himself or herself or others,
15 engages in debt collection. The term includes any person who
16 composes and sells, or offers to compose and sell, forms,
17 letters, and other collection media used or intended to be
used for debt collection, but does not include an attorney
or counselor at law.

18 Cal. Civ. Code § 1788.2(c).

19 Plaintiff agrees that Defendant Carruthers is not a debt
20 collector under Cal. Civ. Code § 1788.2(c). Citing two district
21 court cases, Plaintiff argues that Defendant Law Firm is a debt
22 collector within the meaning of CA FDCPA. *See Abels v. JBC Legal*
23 *Group, P.C.*, 227 F.R.D. 541, 547-48 (N.D. Cal. 2005) ("Since the
24 legislature specifically excluded attorneys from the statute but
25 was silent on law firms, this Court presumes that the legislature
26 did not intend to exclude law firms."); *Navarro v. Eskanos &*

1 *Adler*, 2007 WL 549904 at *5 (N.D. Cal. 2007). Other courts have
2 reached the same conclusion. See *Robinson v. Managed Accounts*
3 *Receivables Corp.*, 654 F.Supp.2d 1051, 1061 (C.D. Cal. 2009)
4 (holding that a law firm may be a debt collector under the
5 California FDCPA); *Owens v. Brachfeld*, 2008 WL 3891958 at *3
6 (N.D. Cal. 2008); *Silva v. Jason Head, PLC*, 2010 WL 4593704 at *5
7 (N.D. Cal. 2010). Defendants do not address Plaintiff's argument
8 that Defendant Law Firm is a debt collector under CA FDCPA, and
9 does not provide any contradictory authority. Evidence has been
10 submitted that Defendant Law Firm regularly engages in debt
11 collection. (SUMF ¶ 7). Defendant Law Firm is a debt collector
12 under CA FDCPA.
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15 b) CA FDCPA § 1788.13(j)

16 California Civil Code § 1788.13(j) prohibits debt collectors
17 from collecting or attempting to collect consumer debts by the
18 "false representation that a legal proceeding has been, is about
19 to be, or will be instituted unless payment of a consumer debt is
20 made." Cal. Civ. Code § 1788.13(j). As discussed above, the April
21 12, 2010 letter would cause the least sophisticated debtor to
22 believe that a lawsuit had already been filed.
23

24 Summary judgment is GRANTED as to Defendant Law Firm's
25 liability under Cal. Civ. Code § 1788.13(j).
26

27 c) CA FDCPA § 1788.17

28 California Civil Code § 1788.17 incorporates by reference

1 the provisions of the FDCPA. As discussed above, summary judgment
2 is granted in part under the FDCPA.

3 Summary judgment is GRANTED as to Defendant Law Firm's
4 liability under Cal. Civ. Code § 1788.17.

5
6 IV. CONCLUSION

7 For the reasons stated:

- 8 1. Plaintiff's motion to strike is GRANTED.
9 2. Plaintiff's motion for partial summary judgment is GRANTED
10 in part and DENIED in part.
11 3. Plaintiff shall submit a proposed form of order consistent
12 with this memorandum decision within five (5) days following
13 electronic service of this memorandum decision.

14 SO ORDERED.

15
16 DATED: May 23, 2011

/s/ Oliver W. Wanger
Oliver W. Wanger
United States District Judge