

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4

5 MERVYN L. DE AMARAL, et al.,
6

7 Plaintiff(s),

No. C 12-3580 PJH

8 v.

**ORDER DENYING MOTION TO DISMISS
AND DENYING MOTION TO STRIKE**

9 GOLDSMITH & HULL, et al.,
10

Defendant(s).
_____ /

11 Defendants' motion to dismiss and motion to strike came on for hearing before this
12 court on December 5, 2012. Plaintiffs Mervyn De Amaral and Jody Lin De Amaral
13 ("plaintiffs") appeared through their counsel, Fred Schwinn. Defendants Goldsmith & Hull
14 and Eric Scott Mintz ("defendants") appeared through their counsel, Jack Hull. Having read
15 the papers filed in conjunction with the motions and carefully considered the arguments and
16 relevant legal authority, and good cause appearing, the court hereby DENIES defendants'
17 motion to dismiss and DENIES defendants' motion to strike for the reasons stated at the
18 hearing, and as follows.

19 Defendants' motion to dismiss is largely premised on the argument that "the mere
20 filing of a lawsuit" cannot constitute a violation of the Fair Debt Collection Practices Act
21 ("FDCPA") or its state-law equivalent. However, the Supreme Court rejected this argument
22 in a unanimous opinion, holding that "the Act applies to attorneys who 'regularly' engage in
23 consumer-debt-collection activity, even when that activity consists of litigation." Heintz v.
24 Jenkins, 514 U.S. 291, 299 (1995). Plaintiffs' complaint does adequately allege that a false
25 statement was made in connection with defendants' filing of a state court suit, and is thus
26 sufficient for purposes of Rule 12(b)(6). Accordingly, defendants' motion to dismiss is
27 DENIED.

28 Defendants' motion to strike is based on a very similar argument - that their filing of

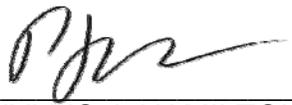
1 a lawsuit was a “constitutionally protected act[] in furtherance of a person’s right to petition
2 or free speech under the United States or California Constitution.” Dkt. 22 at 5. However,
3 because Heintz establishes that a plaintiff can properly assert a FDCPA claim based on the
4 filing of a lawsuit, plaintiffs’ complaint in this case is not the appropriate subject of a motion
5 to strike. Defendants’ motion to strike is thus DENIED.

6 Finally, both parties have filed requests for judicial notice. The court finds that the
7 state court complaint in LHR v. De Amaral is indeed implicated by plaintiffs’ complaint in
8 this case, and the request for judicial notice of that document is GRANTED. The remainder
9 of the parties’ requests for judicial notice are DENIED, as they relate to documents that are
10 not implicated by plaintiffs’ complaint.

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IT IS SO ORDERED.

Dated: December 5, 2012



PHYLLIS J. HAMILTON
United States District Judge