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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENA MEDIALDEA, *et al.*,

Plaintiffs,

v.

LAW OFFICE OF EVAN L LOEFFLER
PLLC, *et al.*,

Defendants.

No. C09-55RSL

ORDER GRANTING MOTIONS FOR
SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on “Defendants Law Office of Evan L. Loeffler, PLLC and Evan L. Loeffler’s Motion for Summary Judgment,” Dkt. #26, and “Defendant Joehncks’ Motion for Summary Judgment,” Dkt. #28. After the Court’s June 19, 2009 order granting in part defendant Loeffler’s motion to dismiss, Dkt. #22, only two claims remain from plaintiff’s complaint against defendant Loeffler, *id.* at 10-11. Defendant Loeffler now seeks summary judgment on those remaining claims. Defendants Thomas and Patti Joehnck also move for summary dismissal of all claims against them because they “are not ‘debt collectors,’ never communicated with Plaintiffs herein, and Plaintiffs have not been damaged by any conduct of

ORDER GRANTING MOTIONS FOR
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1 the Joehncks.” Dkt. #28 at 1. For the reasons set forth below, the Court grants both summary
2 judgment motions.

3 II. DISCUSSION

4 A. Background¹

5 On February 1, 2008, Josepha and Molly Rombach, landlords of a property rented by Ms.
6 Medialdea, served Ms. Medialdea with a notice demanding overdue rent. The notice also
7 indicated that Ms. Medialdea had failed to pay other outstanding obligations in the amount of
8 \$582.06. On February 2, 2008, Ms. Medialdea was served with a Summons and Complaint for
9 Unlawful Detainer. Dkt. #21, Ex. 2. Attorney Scott Peterson appeared in the case on behalf of
10 Ms. Medialdea ten days later. Dkt. #21, Ex. 6. Although the superior court originally awarded
11 the Rombachs damages for \$2,700 in unpaid rent and \$582.06 for unpaid utilities, Dkt. #21, Ex.
12 12, upon reconsideration it rejected the Rombachs’ claim for unpaid utilities without “making
13 any ruling on whether such amounts are due or not,” Dkt. #21, Ex. 36 at 3. According to
14 defendant Loeffler, it was determined that the Rombachs would sever their claim for utility fees
15 and would pursue the outstanding utility bill in small claims court, which they did. Loeffler
16 Decl., Dkt. #27 ¶¶ 11-12.

17 On June 2, 2008, Mr. Loeffler, counsel for the Rombachs, filed an attorney’s fees motion,
18 Dkt. #21, Ex. 33, in which he sought reimbursement for a \$50 service fee, *id.* at 3. On June 11,
19 2008, the superior court found Ms. Medialdea liable for unlawful detainer, Dkt. #21, Ex. 36, and
20 awarded attorney fees and costs to the Rombachs, Dkt. #21, Ex. 37. The court did not allow
21 reimbursement of the \$50 service fee. Compl., Dkt. #1 ¶ 5.17.

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24 ¹ Defendant Loeffler has offered background facts that were not included in plaintiff’s complaint
25 but which plaintiff does not refute in her response brief. These facts are also supported by the state
26 court record, Dkt. #21.

1 Meanwhile, on January 14, 2008, Tye and Jennifer Barringer were sued in superior court
2 for unlawful detainer and past rent due. Id. ¶ 6.1. Mr. Loeffler represented the plaintiff in that
3 suit as well. Id. The complaint demanded \$140 for late fees, and amount allegedly “not allowed
4 by law or contract.” Id. ¶ 6.3. The person who served process on the Barringers was not
5 registered as a process server in Snohomish County. Id. ¶ 6.6. According to the complaint, Mr.
6 Joehnck, who is not a lawyer, claimed that he was a “law clerk” of the Law Office of Evan L.
7 Loeffler PLLC and brought the motion seeking default judgment against the Barringers to the
8 superior court. Id. ¶ 6.9. This motion, signed by both Mr. Loeffler and Mr. Joehnck, declared
9 that a “service fee” of \$49 was incurred. The Court Commissioner issued a default judgment
10 awarding Mr. Loeffler the costs and fees he requested. Dkt. #20, Ex. 5 at 1. Two months later,
11 the Barringers filed a motion to set aside the default judgment through their counsel Mr.
12 Peterson. Dkt. #20, Ex. 8. On May 8, 2008, the Court Commissioner denied the motion to set
13 aside. Dkt. #20, Ex. 25. The state court docket does not indicate that the Barringers appealed
14 the denial of their motion. See Dkt. #20, Ex. 1.

15 On January 14, 2009, Ms. Medialdea and the Barringers filed suit in federal court,
16 claiming that defendants violated the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.
17 § 1692 *et seq.*, and Washington’s Consumer Protection Act (“CPA”), RCW 19.86, during the
18 course of the litigation over attorney’s fees and costs. Upon defendant Loeffler’s motion to
19 dismiss, Dkt. #5, the Court dismissed all claims brought by the Barringers, Dkt. #22 at 15, and
20 all but two claims brought by plaintiff Medialdea, id. at 10-11.

21 **B. Analysis**

22 Rule 56 provides that summary judgment is appropriate “if the pleadings, the discovery
23 and disclosure materials on file, and any affidavits show that there is no genuine issue as to any
24 material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
25 56(c). The moving party bears the burden “to show initially the absence of a genuine issue

1 concerning any material fact,” Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986) (quoting
2 Adickes v. S.H. Kress & Co., 398 U.S. 144, 159 (1970)), and all evidence must be viewed in the
3 light most favorable to the nonmoving party, Hawkins v. United States, 30 F.3d 1077, 1079 (9th
4 Cir. 1994). Once the moving party makes the required showing, the burden shifts to the
5 nonmoving party to come forward with sufficient evidence to demonstrate that there is a triable
6 issue of fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256-57 (1986).

7 **1. Loeffler’s Summary Judgment Motion**

8 The only remaining claims against defendant Loeffler include plaintiff Medialdea’s
9 allegations that defendant violated 15 U.S.C. § 1692e(2) by seeking reimbursement on behalf of
10 his client in the amounts of \$50 for an unregistered process server and \$582.06 for unpaid
11 utilities.² This provision of the FDCPA prohibits “[t]he false representation of (A) the character,
12 amount, or legal status of any debt; or (B) any services rendered or compensation which may be
13 lawfully received by any debt collector for the collection of a debt.” 15 U.S.C. § 1692e(2).

14 **a. Process Server Fee**

15 Plaintiff contends that defendant Loeffler violated this provision by seeking a \$50
16 reimbursement for an unregistered process server in his motion for attorney’s fees. Compl., Dkt.
17 #1 ¶¶ 5.4 - 5.17. But as this motion was served upon plaintiff’s attorney, not directly to plaintiff,
18 defendant Loeffler is entitled to summary judgment on this issue. In Guerrero v. RJM
19 Acquisitions LLC, 499 F.3d 926 (9th Cir. 2007), the Ninth Circuit held that “when the debt
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21 ² Plaintiff’s suggestion that the Court did not dismiss her claims brought under 15 U.S.C. §
22 1692f, Dkt. #37 at 1-2, ignores the plain language of the Court’s prior order, see Dkt. #22 at 8
23 (“Plaintiffs also assert that defendant violated § 1692f, . . . [however] plaintiffs fail to allege any facts in
24 support of that claim.”); id. at 12 n.5 (“To the extent plaintiffs allege that either or both of these acts
25 violate § 1692f, those claims have already been addressed and dismissed above.”); id. at 15 (“The Court
DISMISSES WITHOUT PREJUDICE all plaintiffs’ claims under § 1692e(5) and § 1692f of the
FDCPA[.]”).

1 collector ceases contact with the debtor, and instead communicates exclusively with an attorney
2 hired to represent the debtor in the matter, the [FDCPA's] strictures no longer apply to those
3 communications," id. at 939. The Ninth Circuit noted that "it appears that Congress viewed
4 attorneys as intermediaries able to bear the brunt of overreaching debt collection practices from
5 which debtors and their loved ones should be protected. Id. at 935; see also id. at 939 ("When an
6 individual is represented by counsel who fields all communications relevant to the debt
7 collection, these concerns [about harassment and intimidation] quickly evaporate. Attorneys
8 possess exactly the degree of sophistication and legal wherewithal that individual debtors do
9 not.").

10 Plaintiff's attempt to distinguish the present case from Guerrero is unavailing. While the
11 communication in Guerrero was a letter directed exclusively to the attorney, id. at 934, the
12 communication in the present case was a motion filed with the superior court and served on
13 plaintiff's attorney. But Guerrero's holding is not limited to private letters from a debt collector
14 to a debtor's counsel; rather, it broadly suggests that "attorneys [are not] as susceptible to the
15 abuses that spurred the need for the legislation to begin with," id. at 935. Plaintiff contends that
16 "[f]iling documents which misrepresent and inflate the amount due in an attempt to obtain a
17 judgment is a violation of the FDCPA. Otherwise all litigation activities of attorneys against
18 represented debtors would be outside of the FDCPA." Dkt. #37 at 6-7. But this alternative is
19 not prohibited by prevailing law. Under Guerrero, any communications sent directly to a debtor
20 are subject to the FDCPA, as are any communications filed in court which are served upon
21 unrepresented debtors.³ Heintz v. Jenkins, 514 U.S. 291 (1995), does not preclude Guerrero's

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23 ³ In an onslaught of prepositional phrases, plaintiff contends that "[a]ny logic that would support
24 the preclusion of application of the FDCPA based on the fact of representation by the debtor by an
25 attorney in the litigation activities in a pending collection case would apply even more so to the role of
the state court judge." Dkt. #37 at 7. But a judge is not an "intermediar[y]" for a litigant, nor is she

1 narrow reading of the FDCPA’s application to represented debtors. In holding that “lawyer[s]
2 who ‘regularly,’ *through litigation*, tr[y] to collect consumer debts” are included in the FDCPA’s
3 definition of “debt collector,” 514 U.S. at 292 (emphasis in original), Heintz did not indicate that
4 all litigation activities are covered under the FDCPA. Moreover, while the communication in
5 Heintz “happened to be sent to a debtor’s counsel,” Guerrero, 499 F.3d at 937 (citing Heintz,
6 514 U.S. at 293), “neither the Court nor the parties addressed the issue” confronted in Guerrero,
7 id. at 937-38, and therefore Heintz offers no “precedential holdings” on this “non-litigated
8 issue[],” id. at 938 (quoting Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285, 1288 (9th
9 Cir. 1985)).

10 The Court need not hold that “practices forbidden by the statute” are automatically
11 “immuniz[ed] . . . when they are directed against a consumer’s lawyer,” Evory v. RJM
12 Acquisitions Funding L.L.C., 505 F.3d 769, 774 (7th Cir. 2007). Rather, an understanding of the
13 purposes behind the FDCPA suggests that “the standard for determining whether particular
14 conduct violates the statute is different when the conduct is aimed at a lawyer than when it is
15 aimed at a consumer.” Id.

16 Since . . . most lawyers who represent consumers in debt-collection cases are
17 knowledgeable about the law and practices of debt collection, since those who are
18 not should be able to inform themselves sufficiently to be able to represent their
19 consumer clients competently, and since the debt collector cannot be expected to
know how knowledgeable a particular consumer’s lawyer is, . . . a representation
by a debt collector that would be unlikely to deceive a competent lawyer, even if
he is not a specialist in consumer debt law, should not be actionable.

20 Id. at 774-75. There is no indication from the evidence before the Court that defendant
21 Loeffler’s representation of the \$50 service fee for an unregistered process server would be
22 likely to deceive a competent lawyer, or that plaintiff’s lawyer was in fact deceived.

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24 charged with “protect[ing]” a litigant in the same manner as is a litigant’s attorney. See Guerrero, 499
25 F.3d at 935.

1 Therefore, plaintiff’s §1692e(2) claim regarding the \$50 process server fee fails as a
2 matter of law.

3 **b. Utility Fees**

4 Plaintiff Medialdea alleges that defendant Loeffler violated § 1692e(2) by seeking to
5 recover \$582.06 for utilities “which were not allowed by law or contract.” Compl. ¶ 5.18.
6 However, defendant Loeffler presents evidence that plaintiff did owe that amount for utilities,
7 see Dkt. #21, Ex. 12 at 2, in accordance with a lease she herself drafted that provided that
8 payment of utility fees would be recoverable in any action for unpaid rent, see Dkt. #21, Ex. 10
9 ¶¶ 3, 8; Dkt. #21, Ex. 31 at 90-91. Indeed, defendant Loeffler attests that plaintiff agreed to pay
10 the money for utilities after the Rombachs filed an action in small claims court. Loeffler Decl. ¶
11 12. Plaintiff does not dispute these facts.

12 Because plaintiff has failed to present any evidence that the “character, amount, or legal
13 status” of the unpaid utility bills represented by defendant Loeffler was “false,” 15 U.S.C. §
14 1692e(2)(A), her FDCPA claim regarding the \$582.06 is dismissed. There is no FDCPA
15 violation where representation of a debt is accurate and collection of that debt is authorized by
16 an agreement between the debtor and her creditor.

17 **c. Injunctive Relief**

18 Although defendant Loeffler indicates that plaintiff Medialdea also requests injunctive
19 relief, Dkt. #26 at 5, plaintiff concedes that her “claim for injunctive relief was based upon the
20 state law claim that has been dismissed,” Dkt. #37 at 1 n.1. Even if plaintiff’s claims for
21 injunctive relief were before the Court, they would be denied as “[e]quitable relief, such as an
22 injunction, is not available in [FDCPA] actions,” Campion v. Credit Bureau Servs., Inc., 206
23 F.R.D. 663, 678 (E.D. Wash. 2001) (citing Sibley v. Fulton DeKalb Collection Serv., 677 F.2d
24 830, 834 (11th Cir. 1982)); see also 15 U.S.C. § 1692k (providing for monetary relief under the
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1 FDCPA).

2 **2. Joehncks' Motion for Summary Judgment**

3 Thomas and Patti Joehnck seek summary dismissal of plaintiffs' claims against them.
4 Dkt. #28. The basis of plaintiffs' claims against the Joehncks is rather unclear. The complaint
5 alleges that Mr. Joehnck is a "debt collector" under the FDCPA, was attempting to collect a
6 debt, and is not licenced to practice law in the State of Washington. Compl. ¶¶ 3.17 - 3.20. The
7 Court finds that summary judgment in favor of the Joehncks is appropriate on several grounds.

8 Plaintiff Medialdea alleges that Mr. Joehnck prepared the Notice to Pay Rent which she
9 was served. Dkt. #40 at 8. But this notice was not the basis for the allegedly improper service
10 charge plaintiff asserts in the complaint. Indeed, in the portion of the complaint entitled "Facts
11 Related to Plaintiff Dena Medialdia" [sic], Compl. ¶ 5, Mr. Joehnck's name is not even
12 mentioned. Instead, a person named Angelo Ortiz, who is not named as a defendant, served the
13 complaint for unlawful detainer upon plaintiff, *id.* ¶ 5.1, even though he was not registered as a
14 process server with the County Auditor. Plaintiff's counsel's "inartfully pleaded" complaint, *see*
15 Dkt. #22 at 10 (quoting *Jones v. Comty. Redev. Agency of L.A.*, 733 F.2d 646, 649 (9th Cir.
16 1984)), gives no indication of the extent to which Mr. Joehnck has any connection to plaintiff
17 Medialdea's FDCPA or CPA claims.

18 Even assuming plaintiff Medialdea claims that Mr. Joehnck violated the FDCPA by
19 trying to procure a process server fee through defendant Loeffler's attorney's fees motion, this
20 claim fails for the same reasons as does the claim against defendant Loeffler. *See supra* Part
21 II.B.1.a. To the extent plaintiff Medialdea claims that Mr. Joehnck unlawfully served her a
22 complaint seeking \$582.06 in utilities, not only has the Court found that this amount was not
23 "false" under § 1692e(2), but also Mr. Joehnck is not a "debt collector" under the FDCPA. *See*
24 15 U.S.C. § 1692a(6)(D) ("The term does not include . . . any person while serving or attempting
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1 to serve legal process on any other person in connection with the judicial enforcement of any
2 debt.”). Additionally, any CPA claims plaintiff Medialdea alleges against Mr. Joehnck have
3 already been dismissed by the Court. In its prior order, the Court indicated that plaintiff
4 Medialdea has not established that she was injured by any allegedly deceitful practices as the
5 superior court denied the request for process server costs. Dkt. #22 at 15; see also Compl. ¶
6 5.17.

7 With regard to the Barringers,⁴ the complaint alleges that Mr. Joehnck presented a motion
8 and order for default judgment to the Court Commissioner while claiming to be a “law clerk” on
9 behalf of the Law Office of Evan L. Loeffler PLLC. Compl. ¶ 6.11. According to the
10 complaint, “[i]n order to increase profits, Evan Loeffler and Loeffler LLC enabled and allowed
11 Thomas Joenck [sic] to engage in the unlicensed practice of law.” Id. ¶ 6.12. But plaintiffs’
12 response to the summary judgment motion contains no facts or evidence regarding the
13 Barringers. It merely asserts that costs were “wrongly requested” in the Barringer matter and
14 that the Barringers were damaged by the judgment entered for process server fees. Dkt. #40 at
15 11. Plaintiffs’ brief also requests that the Barringers be allowed to deny the Joehncks’ Requests
16 for Admission, even though they failed to respond to the requests in a timely manner, because
17 “Jennifer Barringer is out of town” and “Tye Barringer is in a different portion of the state, far
18 from Everett.” Id. at 9.⁵ Plaintiffs have plainly failed to meet their burden on summary
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20 ⁴ As far as the Court is concerned, all of the Barringers’ claims were dismissed as part of the
21 previous order, Dkt. #22. Plaintiffs’ counsel, however, briefly addresses the claims made by the
22 Barringers in his response brief, suggesting that these claims are still at issue. Assuming these claims
are still viable, the Court addresses them in this Order.

23 ⁵ The Joehncks indicate that, on June 19, 2009, their counsel served Requests for Admission
24 upon plaintiffs’ counsel, but that plaintiffs filed no responses or objections within thirty days. Dkt. #28
25 at 8. Plaintiffs address these requests for the first time in their response brief, filed on August 31, 2009.
26 Plaintiffs ask the Court to exercise its discretion to lengthen the time in which they must respond, Dkt.
#40 at 9, but plaintiffs have provided no justification for the delay.

1 judgment.

2 Even if the Court were to entertain the Barringers' claim against Mr. Joehnck under the
3 FDCPA and the CPA, the Court is unwilling to disrupt the determination of the superior court.
4 In their motion to set aside the default judgment, the Barringers argued that the judgment should
5 be vacated because Mr. Joehnck falsely represented himself as a "law clerk." Dkt. #20, Ex. 8 at
6 8-9. The superior court denied the motion. Dkt. #20, Ex. 25. The Court will not allow plaintiffs
7 to use the FDCPA or CPA to collaterally attack or appeal the superior court's determination.

8 The bulk of plaintiffs' response to the Joehncks' summary judgment motion addresses
9 Mr. Joehnck's statements that he was previously represented by Mr. Peterson and that Mr.
10 Peterson had instructed him on how to properly serve documents. See Thomas Joehnck Decl.,
11 Dkt. #30 ¶ 6 ("I believed my attorney would give me correct advice about the law, so I followed
12 both his written instructions and his example when he served process."). Plaintiffs' counsel
13 devotes nearly two-thirds of the response brief to Mr. Peterson's copyright infringement case
14 against Mr. Joehnck and Mr. Peterson's relationship with Mr. Joehnck's company. Dkt. #40 at
15 1-8. Plaintiffs' counsel asserts that Mr. Joehnck's "inconsistent prior statements" in prior
16 litigation "must concern this court" and "the factual issues related to the Joehncks own
17 inconsistent statements should be determined by a jury." Id. at 8. But in focusing on his own
18 relationship with defendants, plaintiffs' counsel seems to have missed the point of the present
19 lawsuit he has brought on behalf of his clients. The Court has little concern for Mr. Peterson's
20 copyright infringement case against the Joehncks; nor is the Court in any position to decide who
21 is to blame for Mr. Joehncks' failure to register as a process server or who is responsible for
22 drafting the templates for the documents that were ultimately served on plaintiffs.⁶ The only
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25 ⁶ Were there any indication that plaintiffs had a credible claim against any defendant, the Court
26 would be inclined to explore whether Mr. Peterson should be disqualified due to a conflict of interests.

1 question before the Court is whether the Joehncks have violated the FDCPA or CPA in their
2 conduct toward plaintiffs. Plaintiffs' counsel has devoted a mere eleven lines of argument to this
3 issue. Id. at 8-9. In light of the paltry information and analysis put forth by plaintiffs on this
4 motion and others, the Court discerns that the failure to address the issue at hand reveals a
5 complete lack of evidence supporting plaintiffs' claims.

6 Therefore, plaintiffs' FDCPA and CPA claims against the Joehncks are dismissed.

7 **III. CONCLUSION**

8 For all of the foregoing reasons, defendant Loeffler's motion for summary judgment (Dkt.
9 #26) is GRANTED. Defendants Evan L. Loeffler, "Jane Doe" Loeffler⁷ and Law Office of Evan
10 L. Loeffler, PLLC are therefore dismissed. The Joehncks' motion for summary judgment (Dkt.
11 #28) is also GRANTED. Defendants Thomas and Patti Joehnck are dismissed.

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13 DATED this 2nd day of October, 2009.

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17 Robert S. Lasnik
18 United States District Judge
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25 ⁷ Defendant indicates that "Jane Doe" Loeffler does not exist. Dkt. #26 at 1 n.1.