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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 STEVEN MANDELAS,

11 Plaintiff,

12 v.

13 DANIEL N. GORDON, PC, et al.,

14 Defendants.

CASE NO. C10-0594JLR

ORDER ON MOTION FOR
SUMMARY JUDGMENT

15 This matter comes before the court on Defendant Daniel N. Gordon, PC's
16 ("Gordon") motion for summary judgment (Dkt. # 47). Plaintiff Steven Mandelas
17 opposes Gordon's motion. (Dkt. # 51.) Having considered the submissions of the
18 parties, the record, and the relevant law, and having heard oral argument, the court
19 GRANTS in part and DENIES in part Gordon's motion (Dkt. # 47).
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I. BACKGROUND¹

This action arises out of the efforts of Gordon, an Oregon-based law firm, to collect 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,

¹In 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.)

1 Resident” at 2427 SW 152nd Street, Seattle, WA. (*Id.* Ex. 3.) The declaration of service
2 filed by Rich Marlow, I-5 Legal’s process server, described John Doe as a white male,
3 age 50, with brown hair, who was 5’ 10” and weighed 200 pounds. (*Id.*)

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

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

20 In May 2008, following entry of the corrected judgment, Gordon began to attempt
21 to contact Mr. Mandelas. (Aylworth Aff. Ex. 9; Mandelas Dep. at 16 (stating that his
22 family received calls and that he may have received calls but did not answer calls from

1 blocked numbers.) On June 9, 2008, Mr. Mandelas called Gordon. (Aylworth Aff. Ex.
2 9; Mandelas Dep. at 16.) Gordon's representative told Mr. Mandelas that there was a
3 judgment against him for \$15,000 as a result of the NAF arbitration. (Mandelas Dep. at
4 16.) Mr. Mandelas told Gordon that the debt was in dispute and that he assumed it had
5 been dropped. (*Id.* at 18.) He also told Gordon that he was not in town on the date he
6 was allegedly served, and he asked Gordon to send him a copy of the judgment and
7 related documents. (*Id.*) Gordon sent Mr. Mandelas the documents that he requested.
8 (Aylworth Aff. Exs. 7, 9.) Mr. Mandelas did not challenge I-5 Legal's declaration of
9 service or otherwise contest the state court's entry of judgment.

10 Mr. Mandelas did not contact Gordon after the June 9, 2008 telephone call.
11 (Mandelas Dep. at 21) According to its records, Gordon attempted to call Mr. Mandelas
12 11 times between June 9, 2008 and September 10, 2009, but was unable to reach him.
13 (Aylworth Aff. Exs. 8, 9.) Mr. Mandelas testified that he occasionally received voicemail
14 messages stating that it was important for him to return the call. (Mandelas Dep. 20-21.)
15 The messages, however, did not indicate that they were from a debt collector, and Mr.
16 Mandelas never returned the calls. (*Id.*)³

17 On September 28, 2009, Gordon filed an application for a writ of garnishment
18 with the King County District Court. (Ehrlich Decl. Ex. E.) On October 6, 2009, the
19 state court entered the writ of garnishment. (*Id.* Ex. F.)
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21
22 ³ Mr. Mandelas brings no claims in this action based on the telephone calls or voice
messages.

1 Gordon filed an affidavit with the state court in which it stated that it mailed
2 copies of the writ of garnishment to Mr. Mandelas and to the garnishee on December 3,
3 2009. (Aylworth Aff. Ex. 13.) Mr. Mandelas, however, did not receive the notice of
4 garnishment that Gordon had sent to him. In December 2009, Mr. Mandelas's bank
5 notified him of the order requiring attachment of funds from his bank account; this was
6 the first time Mr. Mandelas learned about the writ of garnishment. (Mandelas Dep. at
7 19.)

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

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

18 II. ANALYSIS

19 A. Summary Judgment Standard

20 Summary judgment is appropriate if the pleadings, the discovery and disclosure
21 materials on file, and any affidavits, when viewed in the light most favorable to the non-
22 moving party, "show that there is no genuine dispute as to any material fact and the

1 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp.*
2 *v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d 652, 658
3 (9th Cir. 2007). The moving party bears the initial burden of showing there is no genuine
4 issue of material fact and that he or she is entitled to prevail as a matter of law. *Celotex*,
5 477 U.S. at 323. If the moving party meets his or her burden, the nonmoving party must
6 go beyond the pleadings and identify facts which show a genuine issue for trial. *Cline v.*
7 *Indus. Maint. Eng’g. & Contracting Co.*, 200 F.3d 1223, 1229 (9th Cir. 2000).

8 **B. FDCPA Claims**

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

3 Whether conduct violates § 1692f requires an objective analysis that takes into
4 account the “the least sophisticated debtor” standard. *See Donohue v. Quick Collect, Inc.*,
5 592 F.3d 1027, 1030 (9th Cir. 2010); *Guerrero*, 499 F.3d at 934. The FDCPA is a strict
6 liability statute, which “should be construed liberally in favor of the consumer.” *Clark v.*
7 *Capital Credit & Collection Serv., Inc.*, 460 F.3d 1162, 1175-76 (9th Cir. 2006)
8 (quotation omitted). The FDCPA “applies to attorneys who ‘regularly’ engage in
9 consumer-debt-collection activity, even when that activity consists of litigation.” *Heintz*
10 *v. Jenkins*, 514 U.S. 291, 299 (1995).

11 Mr. Mandelas does not contend that Gordon used any of the unfair or
12 unconscionable means of debt collection enumerated in § 1692f. Rather, Mr. Mandelas
13 invokes the FDCPA’s general prohibition against unfair or unconscionable means of debt
14 collection and contends that Gordon violated § 1692f by (1) seeking entry of judgment
15 against Mr. Mandelas without giving him notice; (2) purposefully delaying its efforts to
16 collect the debt in order to collect additional interest; and (3) failing to provide notice of
17 the writ of garnishment as required by Washington law.

18 1. Seeking Entry of Judgment without Notice

19 Mr. Mandelas alleges that Gordon used an unfair or unconscionable means of
20 collecting a debt in violation of §1692f when it sought entry of judgment against him
21 without giving him proper notice. Specifically, Mr. Mandelas alleges that Gordon failed
22 to serve him with the summons and complaint in connection with the lawsuit to confirm

1 the 2006 arbitration award; that once he became aware of the order and judgment entered
2 against him he told Gordon that he had not been served and was unaware of the
3 judgment; and that Gordon nevertheless filed a writ of garnishment to collect the
4 judgment. (Am. Compl. ¶¶ 36-41.) Gordon contends that it is entitled to summary
5 judgment on this claim because, as a matter of law, it was not unfair or unconscionable
6 conduct for it to rely on its process server’s facially correct affidavit of service in seeking
7 a default judgment and in filing the writ of garnishment to collect that judgment.

8 In Washington, a “facially correct return of service is presumed valid and, after
9 judgment is entered, the burden is on the person attacking the service to show by clear
10 and convincing evidence that the service was irregular.” *Woodruff v. Spence*, 945 P.2d
11 745, 749 (Wash. Ct. App. 1997). Washington law provides that personal service may be
12 effected by delivering a copy of the summons “to the defendant personally, or by leaving
13 a copy of the summons at the house of his or her usual abode with some person of
14 suitable age and discretion then resident therein.” RCW 4.28.080(15). The Washington
15 Court of Appeals has upheld a return of service as complying with RCW 4.28.080(15)
16 where the return stated that the process server left copies of the summons and complaint
17 with “John Doe.” *Woodruff*, 945 P.2d at 748-49

18 The court concludes that no reasonable trier of fact would conclude that Gordon’s
19 conduct was “unfair or unconscionable” in violation of § 1692f. I-5 Legal, a registered
20 process server, filed a declaration that it had personally served Mr. Mandelas by leaving a
21 copy of the summons at Mr. Mandelas’s address of record with “John Doe, Resident.”
22 (Aylworth Aff. Ex. 3.) Because a facially correct return of service is presumed valid

1 | under Washington law, it was not unfair or unconscionable for Gordon to rely upon the
2 | declaration of service in obtaining an order confirming the arbitration award and
3 | converting it to judgment. The state court accepted the return of service as facially
4 | correct when it entered the judgment. Mr. Mandelas's recourse when he learned of the
5 | judgment was to challenge the entry of default in state court by presenting clear and
6 | convincing evidence that service was improper. *Woodruff*, 945 P.2d at 749. Instead, by
7 | his own admission, Mr. Mandelas did nothing. In light of the fact that Mr. Mandelas
8 | never challenged service or the entry of judgment, it also was not unfair or
9 | unconscionable conduct for Gordon to file an application for a writ of garnishment to
10 | collect the judgment.

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

20 | Finally, the court notes that it has found no authority supporting Mr. Mandelas's
21 | contention that pursuing a collection action based on a facially correct but factually
22 | ineffective return of service is unfair or unconscionable conduct under the FDCPA.

1 Rather, the limited case authority runs contrary to this assertion. *See, e.g., Dillon v.*
2 *Riffel-Kuhlmann*, 574 F. Supp. 2d 1221, 1223-24 (D. Kan. 2008) (granting summary
3 judgment for the defendant law firm because the court found “no support for the
4 proposition that pursuing a collection action without serving the debtor constitutes a
5 violation of the FDCPA.”); *see also Pierce v. Steven T. Rosso, P.A.*, No. Civ. 01-1244
6 DSDJMM, 2001 WL 34624006, at *2 (D. Minn. Dec. 21, 2001) (although improper
7 service might render the collection action a nullity under Minnesota law, it did not
8 provide a legal basis to sustain a claim for violation of § 1692e of the FDCPA).

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

12 2. Purposefully Delaying Collection Efforts

13 Mr. Mandelas alleges that Gordon used an unfair or unconscionable means of
14 collecting a debt in violation of §1692f when it purposefully delayed its efforts to collect
15 the debt. Mr. Mandelas contends that the arbitration award was entered on December 14,
16 2006; that judgment based on the arbitration award was entered on January 23, 2008; and
17 that Gordon took no further action in collecting the judgment until it filed an application
18 for a writ of garnishment on September 28, 2009. (Compl. ¶¶ 47-52.) Mr. Mandelas
19 argues that Gordon had a motive to delay its collection of the debt because, under its fee
20 agreement with CACV, it collected more money on larger debts. (Resp. at 10-12; Ehrlich
21 Decl. Ex. I.) Thus, the longer Gordon allowed interest to accrue on the underlying debt,
22 the more Gordon would eventually earn once it collected the debt. Gordon counters that

1 it is entitled to summary judgment because it made continuous efforts to contact Mr.
2 Mandelas and to collect the debt; Mr. Mandelas has no evidence that any delay was
3 purposeful; and Mr. Mandelas was aware of the debt by June 2008 but made no efforts to
4 contest or resolve the debt. The court agrees with Gordon.

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

21 Second, Mr. Mandelas has presented no evidence that any delay was purposeful.
22 Mr. Mandelas points to the contract between Gordon and CACV as evidence that Gordon

1 purposefully delayed collection of the debt. Although the contract provides for Gordon
2 to receive a percentage of the collected debt, including a percentage of any accrued
3 interest (*see* Ehrlich Decl. Ex. I), the contract on its own is not evidence that any delay in
4 collecting Mr. Mandelas's account was purposeful.⁴

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

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

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18 ⁴Mr. Mandelas also relies on a deposition of Mr. Aylworth that he did not file with his
19 motion. (*See supra* n.1.) Even taking Mr. Mandelas's representations of the contents of that
20 deposition as truthful, however, the court concludes that Mr. Mandelas has not established a
21 genuine issue of material fact that there was purposeful delay. For example, Mr. Mandelas
22 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).)

1 3. Failure to Provide Notice of Writ of Garnishment

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

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

9 1) When a writ is issued under a judgment, on or before the date of service
10 of the writ on the garnishee, the *judgment creditor shall mail or cause to be*
11 *mailed* to the judgment debtor, by certified mail, addressed to the last
12 known post office address of the judgment debtor, (a) a copy of the writ
13 and a copy of the judgment creditor's affidavit submitted in application for
14 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.

15 RCW 6.27.130 (emphasis added).

16 Gordon submitted to the court a notarized "Affidavit / Return of Mailing of Writ
17 of Garnishment" that states that Gordon served the writ, a copy of the judgment, and the
18 notice and claim form pursuant to RCW 6.27.130 upon Mr. Mandelas on December 3,
19 2009. (Aylworth Aff. Ex. 13.) Mr. Mandelas states that he never received the notice
20 required under the statute.

21 By its terms, RCW 6.27.130 does not require proof that the debtor actually
22 received the writ. Instead, it requires proof that the necessary documents were mailed

1 pursuant to the statute. *See* RCW 6.27.130. Because the evidence, even when viewed in
2 the light most favorable to Mr. Mandelas, establishes that Gordon mailed notice of the
3 writ of garnishment in accordance with Washington law, the court grants Gordon's
4 motion for summary judgment on Mr. Mandelas's claim based on failure to provide
5 notice of the writ of garnishment in violation of Washington law.

6 **C. WCAA / WCPA Claims**

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

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

18 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:

19 The operation of a collection agency or out-of-state collection agency without a
20 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
21 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.

22 RCW 19.16.440.

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

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

6 (c) *Any person whose collection activities are carried on in his, her, or its*
7 *true name and are confined and are directly related to the operation of a*
8 *business other than that of a collection agency, such as but not limited to:*
9 *Trust companies; savings and loan associations; building and loan*
10 *associations; abstract companies doing an escrow business; real estate*
11 *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;

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

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

20 Trust Fund was created to provide a convenient means for a law firm to
21 collect debts related to the firm’s business. The firm represented a number
22 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

1 regarded as legal entities, the suits had to be brought in the names of the
2 individual trustees. . . . Trust Fund was created as a non-profit corporation
3 to which the accounts could be assigned, to eliminate the need to bring
4 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.

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

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

14 It is clear that some lawyers may fall within the definition of "collection
15 agency." RCW 19.16.100(3)(c) does not entirely exclude lawyers from
16 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."

17 *Carter v. Suttell & Associates, P.S.*, No. 63628-6-1, 2011 WL 396038, at *7 (Wash. Ct.
18 App. Jan. 13, 2011) (unpublished decision).⁷ The *Carter* court affirmed the trial court's
19 grant of summary judgment to the law firm because the plaintiff did not present any
20 specific facts, aside from its own assertions, that the law firm was acting as a collection

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

1 agency. *Id.* at *8 (“If Suttell indeed was acting as a collection agency, Carter failed to put
2 forth sufficient evidence to reveal an issue of material fact.”).

3 In addition, the majority of Washington federal court decisions, including several
4 involving Gordon, have determined that lawyers are not categorically excluded from
5 regulation as “collection agencies” under the WCAA. *See Lang v. Gordon*, No. C10-
6 0819RSL, 2011 WL 62141, at *2 (W.D. Wash. Jan. 6, 2011); *McLain v. Daniel N.*
7 *Gordon, PC*, No. C09-5362BHS, 2010 WL 3340528, at *8 (W.D. Wash. Aug. 24, 2010);
8 *LeClair v. Suttell & Assoc., P.S.*, No. C09-1047JCC, 2010 WL 417418, at *6 (W.D.
9 Wash. Jan. 29, 2010); *Semper v. JBC Legal Group*, No. C04-2240RSL, 2005 WL
10 2172377, at *3 (W.D. Wash. Sept. 6, 2005). *But see Motherway v. Daniel N. Gordon*,
11 *PC*, No. C09-5605RBL, 2010 WL 2803052, at *4-*5 (W.D. Wash. Jul. 15, 2010)
12 (dismissing WCAA claim and noting that Gordon is not a “collection agency” under the
13 WCAA because, while it “specializes in debt collection legal work, it is first and
14 foremost a law firm.”).

15 In light of the foregoing authorities, the court concludes that the WCAA does not
16 categorically exclude all lawyers from regulation under the WCAA. Rather, under the
17 plain language of the statute, a lawyer or law firm is only excluded if its collection
18 activities are “carried on in his, her, or its true name and are confined and are directly
19 related to the operation of a business other than that of a collection agency.” RCW
20 19.16.100(3)(c).

21 Gordon raises two additional arguments, but they are not well taken. First,
22 Gordon argues that because RCW 19.16.250(5) specifically prohibits collection agencies

1 and their employees from “performing any act or acts, either directly or indirectly,
2 constituting the practice of law,” it does not make sense to hold that a law firm can be a
3 collection agency under the statute. The court disagrees. As the Honorable Robert S.
4 Lasnik points out in *Lang*, “a plain reading of the narrow exemption [in RCW
5 19.16.100(3)(c)] belies that assertion” and “if the legislature had intended such a broad
6 exemption, it could have included it.” *Lang*, 2011 WL 62141, at *2.

7 Second, Gordon argues that if the statute is interpreted to apply to law firms, it is
8 unconstitutional because it purports to regulate the conduct of lawyers and thus violates
9 the separation of powers doctrine. Here, again, the court adopts Judge Lasnik’s analysis:

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

17 *Lang*, 2011 WL 62141, at *3 (citing *Short v. Demopolis*, 691 P.2d 163, 170 (Wash.
18 1984)).

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

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

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

1 Washington. (See Ehrlich Decl. ¶¶ 14-16.) Second, there is no dispute that Gordon
2 satisfies RCW 19.16.100(2)(a), which defines a “collection agency” as “[a]ny person
3 directly or indirectly engaged in soliciting claims for collection, or collecting or
4 attempting to collect claims owed or due or asserted to be owed or due another person.”
5 Gordon’s business is based upon collecting claims owed to its clients, including, in this
6 case, CACV.

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

1 evidence supporting its assertion that the law firm employed “numerous employees that
2 engage in collections work.” *See Carter*, 2011 WL 396038, at *6-8.

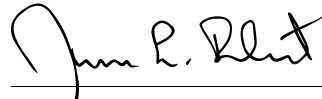
3 Based on the above, the court concludes that Mr. Mandelas has established a
4 genuine issue of material fact regarding whether Gordon’s business activities are
5 “confined and are directly related to the operation of a business other than that of a
6 collection agency.” Therefore, Gordon is not entitled to summary judgment on Mr.
7 Mandelas’s WCAA and WCPA claims.⁸

8 **III. CONCLUSION:**

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

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19 ⁸ Gordon moved for summary judgment on Mr. Mandelas’s WCAA and WCPA claims
20 solely on the ground that it is not subject to the WCAA. However, in light of the court’s rulings
21 on Mr. Mandelas’s FDCPA claims, the court is doubtful that Mr. Mandelas’s WCAA and WCPA
22 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).

Dated this 31st day of March, 2011.



JAMES L. ROBART
United States District Judge

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