

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MAURICEO DAWSON,

Plaintiff,

v.

GENESIS CREDIT MANAGEMENT, LLC,

Defendant.

CASE NO. C17-0638-JCC

ORDER

This matter comes before the Court on Plaintiff's motion for partial summary judgment (Dkt. No. 16) and motion to strike (Dkt. No. 18). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in part Plaintiff's motion for partial summary judgment (Dkt. No. 16), and GRANTS in part and DENIES in part Plaintiff's motion to strike (Dkt. No. 18).

I. BACKGROUND

Plaintiff Mauriceo Dawson ("Dawson") brings this lawsuit against Defendant Genesis Credit Management, LLC, ("Genesis") for alleged violations of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, and the Washington Collection Agency Act ("WCAA"), Revised Code of Washington section 19.16.250.

From 2008 to 2014, Dawson lived at the Sunset Park apartments ("Sunset") in Seattle. (Dkt. No. 16-2 at 1–2.) In January 2014, Dawson signed a new six-month lease agreement that

1 converted into a month-to-month tenancy upon expiration. (Dkt. No. 16-1 at 13.) At some point
2 in November 2014, Dawson informed Sunset that he was terminating his tenancy and would
3 vacate the apartment by the end of the month. (*Id.* at 3; Dkt. No. 17-1 at 9.)

4 After Dawson moved out, Sunset identified several charges that he allegedly owed under
5 the lease agreement. (Dkt. No. 16-1 at 9.) In June 2016, Sunset assigned the unpaid debt to
6 Genesis for collection. (*Id.* at 8.) Genesis called Dawson multiple times to try and collect the
7 debt. (Dkt. Nos. 16-1 at 21–27, 16-2 at 4.) On December 29, 2016, Genesis filed a lawsuit in
8 King County District Court seeking a judgment on the debt. (Dkt. No. 16-1 at 29–30.)

9 Dawson claims that Genesis made misleading statements about the debt, and that he did
10 not owe the amount sought. (Dkt. No. 16 at 8.) He seeks summary judgment on the issue of
11 Genesis’s liability under FDCPA and WCAA. (*Id.* at 2.) If Genesis violated WCAA, Dawson
12 also asks the Court to rule that he is entitled to collect civil penalties under the Washington State
13 Consumer Protection Act (“CPA”), Revised Code of Washington section 19.86.140. (*Id.* at 12.)

14 **II. DISCUSSION**

15 **A. Dawson’s Motion to Strike**

16 Dawson moves to strike the declarations of Mary Cobley and Crystal Salas, and a
17 document titled “Notice of Intention to Vacate,” all of which were attached to Genesis’s
18 response. (Dkt. No. 18 at 2–7.)¹ Dawson argues that the declarations should be stricken because
19 they lack foundation and contain inadmissible hearsay. (*Id.* at 2.) Declarations presented at
20 summary judgment must be made on personal knowledge, set out facts that would be admissible
21 in evidence, and show that the declarant is competent to testify on the matters stated. Fed. R. Civ.
22 P. 56(c)(4). So long as a party complies with Federal Rule of Civil Procedure 56, “it does not
23 necessarily have to produce evidence in a form that would be admissible at trial . . .” *Block v.*

24 ¹ Genesis filed a surreply opposing Dawson’s motion to strike (Dkt. No. 20). Genesis’s
25 filing was improper because surreplies are only allowed when authorized by the Court or when
26 they contain a request to strike material from a reply brief. *See* Local Civ. R. 7(g). Neither
situation applies in this case, and the Court will not consider Genesis’s surreply.

1 *City of Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001). Cobley is Sunset’s custodian of
2 records and Salas is Genesis’s President. (Dkt. Nos. 17-1, 17-2.) The Court finds that their
3 declarations contain testimony that could be admissible at trial and for which both declarants are
4 competent to testify. To the extent that statements in the declarations do not meet the
5 requirements of Rule 56, they will not be considered by the Court.

6 Dawson asserts that Genesis did not provide the Notice of Intention to Vacate document
7 in discovery, despite the company’s agent testifying during her deposition that she was unaware
8 of such a document. (Dkt. No. 18-2 at 7.) The Court can exclude information that was
9 improperly withheld in discovery. Fed. R. Civ. P. 37(c)(1). Here, it is appropriate to exclude the
10 document because Genesis did not produce it until its response to summary judgment, despite
11 Dawson’s specific inquiry about whether such a document existed. (Dkt. No. 18-2 at 7.) The
12 Court therefore STRIKES the Notice of Intention to Vacate Document (Dkt. No. 17-1 at 8).

13 **B. Summary Judgment Standard**

14 “The court shall grant summary judgment if the movant shows that there is no genuine
15 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
16 Civ. P. 56(a). In making such a determination, the Court must view the facts and justifiable
17 inferences to be drawn therefrom in the light most favorable to the nonmoving party. *Anderson v.*
18 *Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Once a motion for summary judgment is properly
19 made and supported, the opposing party “must come forward with ‘specific facts showing that
20 there is a *genuine issue for trial*.’” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.
21 574, 587 (1986) (quoting Fed. R. Civ. P. 56(e)). When the party moving for summary judgment
22 also bears the burden of persuasion at trial, “to prevail on summary judgment it must show that
23 the evidence is so powerful that no reasonable jury would be free to disbelieve it.” *Shakur v.*
24 *Schriro*, 514 F.3d 878, 890 (9th Cir. 2008) (citation and internal quotation marks omitted).

25 **C. The Fair Debt Collections Practices Act**

26 Congress enacted FDCPA to eliminate abusive debt collection practices by debt

1 collectors. 15 U.S.C. § 1692. The statute imposes strict liability on debt collectors, meaning
2 violations do not have to be knowing or intentional. *Reichert v. Nat'l Credit Sys., Inc.*, 531 F.3d
3 1002, 1005 (9th Cir. 2008). Whether a debt collector's conduct violates FDCPA provisions
4 "requires an objective analysis that considers whether 'the least sophisticated debtor would likely
5 be misled by a communication.'" *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1033 (9th Cir.
6 2010). In the Ninth Circuit, whether an FDCPA violation has occurred is a question of law.
7 *Tourgeman v. Collins Fin. Servs., Inc.*, 755 F.3d 1109, 1119 (9th Cir. 2014).

8 There is no dispute between the parties that Genesis is a debt collector subject to FDCPA
9 liability or that the debt it sought to collect falls within the statute's purview. Dawson asserts that
10 Genesis violated § 1692e and § 1692f of the FDCPA. (Dkt. No. 16 at 9–11.)² Under § 1692e, "A
11 debt collector may not use any false, deceptive, or misleading representation or means in
12 connection with the collection of any debt." Under § 1692f, "A debt collector may not use unfair
13 or unconscionable means to collect or attempt to collect any debt."

14 First, Dawson asserts that Genesis misrepresented the amount owed. When Sunset
15 assigned Dawson's debt to Genesis in June 2016, it listed the principal as \$1,632.67, with
16 interest of \$391.52, for a total debt of \$2,309.19. (Dkt. No. 16-1 at 8.) Dawson has produced
17 evidence that a Genesis representative called him in June 2016 and asserted that he owed
18 between \$2000 and \$4000. (*See* Dkt. Nos. 16-1 at 21–27, 16-2 at 5.) Genesis does not dispute
19 that these communications occurred or provide evidence as to how Dawson could have owed up
20 to \$4000, when the total debt assigned by Sunset was for \$2,309.19. (Dkt. No. 16-1 at 8.)

21 Second, Dawson alleges that there is no legal basis for some or all of the underlying debt
22 Genesis attempted to collect. Sunset provided an itemized list of charges when it assigned
23 Dawson's debt to Genesis. (Dkt. No. 16-1 at 11–12.) These included: a penalty for giving
24

25 ² While Dawson lists several provisions under each section that Genesis allegedly
26 violated, it is not necessary to address each provision individually because "a single violation of
any provision of the Act is sufficient to establish civil liability under the FDCPA." *Taylor v.*
Perrin, Landry, deLaunay & Durand, 103 F.3d 1232, 1238 (5th Cir. 1997).

1 insufficient notice of termination; a prorated charge for rent, parking, and utilities for the period
2 when Dawson failed to vacate the apartment; a charge for unreturned parking permits; the cost of
3 drywall and blinds; and a charge for painting and painting supplies. (*Id.* at 11.)

4 While the Court finds that there are material disputes of fact regarding the propriety of
5 some of these charges³, the undisputed evidence demonstrates that there was no basis for others.
6 For example, Dawson points out that his lease did not require tenants to return parking permits or
7 allow Sunset to impose a fee if permits were unreturned. (Dkt. No. 16-2 at 3–4.) The lease is
8 silent about parking permits, and Genesis has not provided any evidence to show Dawson was
9 obligated to pay the \$100 fee that was included in his total debt. (Dkt. No. 16-1 at 13–15.)

10 Similarly, Dawson argues that the lease did not require him to pay for painting. The lease
11 documents that Dawson signed while he lived at Sunset provided that if a tenant resided their
12 longer than 18 months, they are not charged for painting. (*Id.* at 13, 19.) There is no dispute that
13 Dawson resided at Sunset since 2008. (*See* Dkt. No. 16-1 at 17.) Nor does Genesis provide any
14 evidence to rebut Dawson’s assertion that the lease did not require him to pay the \$465 painting
15 charge included in his total debt.

16 The Court finds that Genesis’s conduct violated § 1692e because its attempts to collect on
17 the debt included false representations about the amount owed that would have misled the least
18 sophisticated debtor. *See* 15 U.S.C. § 1692e(2); *Donohue*, 592 F.3d at 1033. In addition, the
19 Court finds that the communications violated § 1692f because they were an unfair attempt to
20 collect amounts that were not expressly authorized by the assignment Genesis received from
21 Sunset in June 2016, nor legally owed by Dawson. *See* 15 U.S.C. § 1692f(1).⁴ The same conduct
22

23 ³ There is a genuine dispute regarding whether Dawson provided sufficient notice to
24 vacate the apartment and returned the keys before he vacated. (*Compare* Dkt. Nos. 16-2 at 2–3
25 *with* 17-1 at 9–10.) Viewed in the light most favorable to Genesis, Dawson could have been
26 liable for penalties under the lease agreement.

⁴ Having found Genesis liable under § 1692e and § 1692f, the Court does not find it
necessary to discuss Dawson’s other arguments regarding liability. “The fact that numerous
violations of the FDCPA are predicated upon one set of circumstances *should* be considered and

1 by a debt collector can violate multiple provisions of the FDCPA. *Clark*, 460 F.3d at 1177.

2 Genesis asserts that it was “entitled to rely on their client’s information” when it
3 attempted to collect from Dawson. (Dkt. No. 17 at 4.) (citing *Clark*, 460 F.3d at 1177). Genesis
4 overstates the extent to which it can rely on Sunset’s representations regarding Dawson’s debt. A
5 debt collector can avoid liability if it “shows by a preponderance of the evidence that the
6 violation was not intentional and resulted from a bona fide error notwithstanding the
7 maintenance of procedures reasonably adapted to avoid such an error.” 15 U.S.C. § 1692k(c).
8 This is an affirmative defense for which the debt collector has the burden of proof at trial. *Fox v.*
9 *Citicorp Credit Servs., Inc.*, 15 F.3d 1507, 1514 (9th Cir. 1994).

10 Genesis cannot assert the bona fide error defense because the Court previously struck it
11 from Genesis’s answer. (See Dkt. No. 15.) The Court gave Genesis an opportunity to amend its
12 answer to include additional facts in support of its defense, but it never did so. (*Id.*) Genesis
13 cannot avoid liability by merely stating that it was allowed to rely on Sunset’s representations.
14 The Court finds that Dawson has met his burden to show Genesis violated FDCPA and
15 GRANTS Dawson’s motion for summary judgment on the issue of Genesis’s liability.

16 **D. The Washington Collection Agency Act**

17 The WCAA is Washington’s counterpart to the FDCPA. *Panag v. Farmers Ins. Co. of*
18 *Washington*, 204 P.3d 885, 897 (Wash. 2009). “Like the FDCPA, it prohibits collection agencies
19 from making false representations as to the legal status of a debt, threatening the debtor with
20 impairment of credit rating, attempting to collect amounts not actually owed, or implying legal
21 liability for costs not actually recoverable, such as attorney fees or investigation fees, among
22 other practices.” *Id.* (citing Wash. Rev. Code § 19.16.250).

23 WCAA does not provide a debtor with a cause of action. *Genschorck v. Suttell &*
24 *Hammer, P.S.*, No. 12-CV-0615-TOR, slip op. at 3 (E.D. Wash. Nov. 21, 2013) (citing *Connelly*

25 _____
26 [] it is best considered during the calculation of damages.” *Clark v. Capital Credit & Collection*
Servs., Inc., 460 F.3d 1162, 1178 (9th Cir. 2006) (emphasis in original).

1 *v. Puget Sound Collections, Inc.*, 553 P.2d 1354 (Wash. 1976)). Rather, a violation of WCAA
2 represents a per se violation of the CPA. Wash. Rev. Code. § 19.16.440; *Evergreen Collectors v.*
3 *Holt*, 803 P.2d 10, 12 (Wash. Ct. App. 1991). Once a plaintiff establishes a per se violation of the
4 CPA, she need only demonstrate that the violation proximately caused injury to her person or
5 property. *Panag*, 204 P.3d at 885 (citation omitted).

6 1. Per Se Violations of Consumer Protection Act.

7 Dawson argues that Genesis violated two provisions of WCAA. The first prohibits “the
8 collection, or attempted collection, of any amounts in addition to the principal of a claim other
9 than allowable interest, collection costs, or handling fees expressly authorized by statute”
10 Wash. Rev. Code § 19.16.250(21). The second prohibits a collection agency from
11 “represent[ing] or imply[ing] that the existing obligation of the debtor may be or has been
12 increased by the addition of attorney fees, investigation fees, service fees, or any other fees or
13 charges when in fact such fees or charges may not legally be added to the existing obligation of
14 such debtor.” Wash. Rev. Code § 19.16.250(15). Dawson asserts that Genesis violated both
15 provisions when it misrepresented the amount of debt he actually owed. (Dkt. No. 16 at 12.)

16 The Court finds that Genesis violated Revised Code of Washington section 19.16.250(21)
17 when it attempted to collect amounts not owed by Dawson. The Washington Supreme Court has
18 noted that WCAA protects consumers against attempts to collect “amounts not actually owed.”
19 *Panag*, 204 P.3d at 897. As stated above, the undisputed evidence demonstrates that some of the
20 debt Genesis attempted to collect from Dawson—e.g. for unreturned parking permits and
21 painting—were not owed. *See* Part II.C. *supra*. These amounts are in addition to the principal of
22 a claim, and Genesis violated the statute when it attempted to collect them from Dawson.

23 The Court does not find, however, that Genesis’s conduct violated Revised Code of
24 Washington section 19.16.250(15). Dawson has not presented evidence that Genesis represented
25 that his debt had been or would be increased with the types of charges listed in the statute. While
26 Dawson characterizes amounts not owed as “charges,” the statute specifically lists the applicable

1 fees and charges—e.g. attorney fees, investigation fees, and service fees. Wash. Rev. Code
2 § 19.16.250(15). Genesis did not add or threaten to add such fees to Dawson’s obligation.

3 2. Injury and Causation

4 Having proved a per se violation of the CPA, Dawson must demonstrate that Genesis’s
5 violation caused him to be injured in his person or property. “A plaintiff must establish that, but
6 for the defendant’s unfair or deceptive practice, the plaintiff would not have suffered an injury.”
7 *Panag*, 204 P.3d at 900 (citation omitted). A plaintiff need not remit debt payments in order to
8 prove injury. *Id.* at 902. The Washington State Supreme Court has held that the expenses
9 incurred in consulting a lawyer about a debt or the costs of investigating a debt are sufficient to
10 demonstrate an injury under the CPA. *Id.* (citations omitted).

11 The Court finds that Dawson has provided sufficient evidence to demonstrate Genesis’s
12 collection efforts caused him to be injured. In his declaration, Dawson asserts that he was forced
13 to take several hours off of work to deal with Genesis’s collection efforts and incurred costs
14 when he sought the services of an attorney to determine what his legal obligations were based on
15 Genesis’s representations regarding his debt. (Dkt. No. 18-1 at 2.) Contrary to Genesis’s position
16 that “[t]he complaint lacks any factual allegations that would support a finding of actual
17 damages,” the CPA does not require proof of actual damages. (Dkt. No. 17 at 6.); *Nordstrom*,
18 *Inc. v. Tampourlos*, 733 P.2d 208, 211 (Wash. 1987) (the CPA “uses the term ‘injured’ rather
19 than suffering ‘damages.’ This distinction makes it clear that no monetary damages need be
20 proven, and that nonquantifiable injuries, such as loss of goodwill would suffice”)
21 Moreover, but for Genesis’s attempts to collect amounts not owed, Dawson would not have
22 incurred an injury. The Court finds that Dawson has met his burden to show Genesis violated
23 CPA, and GRANTS Dawson’s motion for summary judgment on the issue of Genesis’s liability.

24 **E. Civil Penalties Under RCW 19.86.140**

25 Dawson asks the Court to rule that he is entitled to civil penalties for Genesis’s violations
26 of the CPA. Genesis counters that civil penalties are not a remedy available to private plaintiffs.

1 Defendants who commit unfair or deceptive practices in violation of the Consumer
2 Protection Act are subject to civil penalties. Rev. Code. Wash. § 19.86.140. “Every person who
3 violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand
4 dollars for each violation.” *Id.* The only Washington court opinions to comment on the
5 applicability of the civil penalties provision have stated it is not recoverable by private plaintiffs.
6 *See Aungst v. Roberts Const. Co.*, 625 P.2d 167, 169 (Wash. 1981) (“Moreover, under RCW
7 19.86.140, every person who is liable to private parties for violations of RCW 19.86.020, .030 or
8 .040 is also subject to a civil penalty *if sought by the Attorney General.*”) (emphasis added)
9 (citing *Stigall v. Courtesy-Chevrolet-Pontiac, Inc.*, 551 P.2d 763 (Wash. Ct. Appl. 1976)).

10 The Court is not aware of a case that supports Dawson’s position. Indeed, in those cases
11 where courts have granted civil penalties, the plaintiff was the State of Washington. *See, e.g.*,
12 *State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc.*, 553 P.2d 423 (Wash. 1976); *State v.*
13 *Mandatory Poster Agency, Inc.*, 398 P.3d 1271 (Wash. Ct. App. 2017). Dawson’s position is
14 based on the statutory construction principle *expressio unius est exclusio alterius*.⁵ Dawson points
15 out that the statute is silent about who can seek civil penalties for violations of Revised Code of
16 Washington section 19.86.020 whereas it expressly states that “with respect to violations of
17 RCW 19.86.030 and 19.86.040 the attorney general, acting in the name of the state, may seek
18 recovery of such penalties in a civil action.” Wash. Rev. Code § 19.86.140.

19 The Court disagrees with Dawson’s interpretation for two reasons. First, *expressio unius*
20 *est exclusio alterius* would support the conclusion that private citizens cannot recover civil
21 penalties because the provision explicitly mentions the attorney general—in other words, private
22 citizens are excluded from recovery because they are not mentioned. Second, the CPA’s civil-
23 suit provision provides the remedies available to plaintiffs and does not include civil penalties.

25 ⁵ The rule that when one or more things of a class are expressly mentioned others of the
26 same class are excluded. Clifton Williams, “*Expressio Unius Est Exclusio Alterius*”, 15 Marq. L.
Rev. 191 (1931).

1 Wash. Rev. Code § 19.86.090. That provision reads: “Any person who is injured in his or her
2 business or property by a violation of RCW 19.86.020 . . . [may] recover the actual damages
3 sustained by him or her, or both, together with the costs of the suit, including a reasonable
4 attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to
5 an amount not to exceed three times the actual damages sustained . . .” *Id.* That provision
6 neither mentions civil penalties nor references Revised Code of Washington section 19.86.140.

7 The Court cannot conclude that Dawson can recover civil penalties under the CPA.

8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiff’s motion for partial summary judgment (Dkt. No. 16)
10 and motion to strike (Dkt. No. 18) are GRANTED in part and DENIED in part. The Court
11 RULES that:

- 12 1. The Notice of Intent to Vacate document (Dkt. No. 17-1 at 8) is STRICKEN.
- 13 2. Genesis violated 15 U.S.C. § 1692e and § 1692f.
- 14 3. Genesis violated Revised Code of Washington section 19.16.250(21).
- 15 4. Genesis’s violation of Revised Code of Washington section 19.16.250(21) was also a
16 violation of Revised Code of Washington section 19.86.020.
- 17 5. Dawson is not entitled to recover civil penalties under Revised Code of Washington
18 section 19.86.140.

19 DATED this 27th day of November.

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21 
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23 John C. Coughenour
24 UNITED STATES DISTRICT JUDGE
25
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