

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

LINDA D. SWARTZLANDER,  
Plaintiff,  
v.  
CAPITAL MANAGEMENT  
SERVICES, LP;  
Defendants.

Case No.: 19cv580-WQH-BGS

**ORDER**

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendant Capital Management Services, LP. (ECF No. 14).

**I. PROCEDURAL BACKGROUND**

On March 29, 2019, Plaintiff Linda D. Swartzlander filed a complaint against Defendant Capital Management Services, LP. (ECF No. 1). Plaintiff brings claims for violation of the federal Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, and California's Rosenthal Fair Debt Collection Practices Act (RFDCPA), Cal. Civ. Code § 1788, based on allegations that Defendant sent debt collection letters that confused Plaintiff as to her rights and liabilities.

On June 3, 2019, Plaintiff filed an amended complaint, the operative Complaint in this action, claiming the same violations. (ECF No. 13).

1 On June 17, 2019, Defendant filed the Motion to Dismiss on the grounds that  
 2 Plaintiff's allegations relate to letters sent to Plaintiff's attorney, which are not actionable  
 3 under the FDCPA, and on the grounds that the RFDCPA claim is derivative of the flawed  
 4 FDCPA claim. (ECF No. 14).

5 On July 8, 2019, Plaintiff filed a response in opposition to the Motion. (ECF No.  
 6 15).

7 On July 15, 2019, Defendant filed a reply in support of the Motion. (ECF No. 16).

## 8 **II. LEGAL STANDARD**

9 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a  
 10 claim upon which relief can be granted." In order to state a claim for relief, a pleading  
 11 "must contain . . . a short and plain statement of the claim showing that the pleader is  
 12 entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) "is proper only  
 13 where there is no cognizable legal theory or an absence of sufficient facts alleged to support  
 14 a cognizable legal theory." *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035,  
 15 1041 (9th Cir. 2010) (quotation omitted). Stating a claim for relief "requires more than  
 16 labels and conclusions, and a formulaic recitation of the elements of a cause of action will  
 17 not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P.  
 18 8(a)(2)). When considering a motion to dismiss, a court must accept as true all "well-  
 19 pleaded factual allegations." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "[A]ccepting  
 20 all factual allegations in the complaint as true and drawing 'all reasonable inferences in  
 21 favor of the nonmoving party,'" the plaintiff's "allegations must 'plausibly suggest an  
 22 entitlement to relief.'" *Gregg v. Haw., Dep't of Pub. Safety*, 870 F.3d 883, 886–87 (9th  
 23 Cir. 2017) (first quoting *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999); then  
 24 quoting *Iqbal*, 556 U.S. at 681). "[E]stablishing only a 'possible' entitlement to relief . . .  
 25 [does] not support further proceedings"; rather, the plaintiff must allege "facts tending to  
 26 exclude the possibility" that the defendant's "alternative explanation is true." *Eclectic*  
 27 *Props. E. v. Marcus & Millichap Co.*, 751 F.3d 990, 996–97 (9th Cir. 2014); *see also In re*  
 28 *Century Aluminum Co. Sec. Litig.*, 729 F.3d 1104, 1105 (9th Cir. 2013) ("To render their

1 explanation plausible, plaintiffs must do more than allege facts that are merely consistent  
2 with both their explanation and defendants' competing explanation."").

### 3 **III. FDCPA CLAIM**

4 Defendant contends that the FDCPA claim fails because the violation is premised  
5 on allegations regarding collection letters that were addressed to and received by Plaintiff's  
6 attorney. Defendant contends that communications to a consumer's attorney are not  
7 actionable under the FDCPA, as determined by the Court of Appeals in the controlling case  
8 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934 (9th Cir. 2007). Defendant asserts  
9 that the communications were directed to Plaintiff's attorney alone.

10 Plaintiff contends that the letters are actionable under the FDCPA because the letters  
11 were "sent to Plaintiff *through* her attorneys." (ECF No. 15 at 14). Plaintiff contends that  
12 *Guerrero* does not control this matter because in *Guerrero*, the debt collector sent letters  
13 directly to the debtor's attorney after the debtor hired that attorney for representation  
14 related to that debt, and after the attorney requested that communications be sent to the  
15 attorney rather than the debtor. Plaintiff contends that the letters in *Guerrero* were not  
16 directed to the debtor because there was no demand for payment. Plaintiff asserts that, in  
17 this case, Plaintiff hired the attorney for bankruptcy representation before receiving the  
18 debt collection letter. Plaintiff asserts that, in this case, the letters demanded payment and  
19 included payment coupons and reference Plaintiff's FDCPA rights.

20 The FDCPA prohibits debt collectors from engaging in abusive, deceptive, and  
21 unfair practices in the collection of consumer debts. *See* 15 U.S.C. § 1692. To state a  
22 claim under the FDCPA, a plaintiff must allege facts that establish that (1) the plaintiff has  
23 been the object of collection activity arising from a consumer debt, (2) the defendant  
24 attempting to collect the debt qualifies as a "debt collector" under the FDCPA, and (3) the  
25 defendant has engaged in a prohibited act or has failed to perform a requirement imposed  
26 by the FDCPA. *Castriotta v. Paradise Valley Fed. Credit Union*, No. 17CV0031-WQH-  
27 BGS, 2017 WL 3337247, at \*4 (S.D. Cal. Aug. 3, 2017).

1 The FDCPA provisions relevant in this case include §§ 1692e, e(2)(A), and e(10),  
 2 which provide:

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

6 . . . .

(2) The false representation of--

7 (A) the character, amount, or legal status of any debt . . . .

8 . . . .

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

10 In addition, § 1692f prohibits “unfair or unconscionable means to collect or attempt to  
 11 collect any debt,” and § 1692g(b) provides:

12 If the consumer notifies the debt collector in writing within the thirty-day  
 13 period . . . that the debt . . . is disputed . . . the debt collector shall cease  
 14 collection of the debt . . . until the debt collector obtains verification of the  
 15 debt . . . and a copy of such verification . . . is mailed to the consumer by the  
 16 debt collector. . . . Any collection activities and communication during the 30-  
 day period may not overshadow or be inconsistent with the disclosure of the  
 17 consumer’s right to dispute the debt . . . .

18 In *Guerrero*, the Court of Appeals stated,

19 A consumer and his attorney are not one and the same for purposes of the Act.  
 20 . . . . Congress viewed attorneys as intermediaries able to bear the brunt of  
 overreaching debt collection practices from which debtors and their loved  
 21 ones should be protected. . . . Congress did not view attorneys as susceptible  
 to the abuses that spurred the need for the legislation to begin with . . . .

22 The purpose of the FDCPA is to protect vulnerable and unsophisticated  
 23 debtors from abuse, harassment, and deceptive collection practices. . . .

24 When an individual is represented by counsel who fields all communications  
 25 relevant to the debt collection, these concerns quickly evaporate. Attorneys  
 possess exactly the degree of sophistication and legal wherewithal that  
 26 individual debtors do not.

1 499 F.3d at 935–36, 938–39. The court stated that “we hold that communications directed  
2 only to a debtor’s attorney, and unaccompanied by any threat to contact the debtor, are not  
3 actionable under the Act.” *Id.* at 936.

4 In this case, Plaintiff alleges that she “retained counsel to file for bankruptcy and . .  
5 . provided her bankruptcy counsel’s information to her creditors.” (ECF No. 13 ¶ 10).  
6 Plaintiff alleges that on March 16, 2019 and March 19, 2019, Defendant sent letters “to  
7 Plaintiff at her bankruptcy attorney’s office” stating that her debt would be assumed valid  
8 “[u]nless you notify this office” to dispute the debt within thirty days. *Id.* ¶¶ 11, 13.  
9 Plaintiff alleges,

10 [T]he letters were clearly sent to Plaintiff for the following reasons: 1) . . .  
11 Plaintiff . . . is the sole individual who could dispute the validity of the subject  
12 debt; 2) the letters advise Plaintiff that interest, late charges and other charges  
13 are still accruing on the subject debt; and 3) the letters have detachable  
payment coupons for Plaintiff to return to Defendant with Payment.

14 *Id.* ¶ 15. Plaintiff attaches copies of the letters to the Complaint. (Exs. A–B to Compl.,  
15 ECF Nos. 13-1 at 2, 13-2 at 2). A dotted line and the phrase “please detach and return top  
16 portion with payment to address listed below” separate the address blocks and a summary  
17 of the debt information from the body of the letter. *Id.* The letters read, “Dear MICHAEL  
18 REID: This company has been engaged by DISCOVER BANK to resolve your client’s,  
19 Linda Swartzlander, delinquent debt.” *Id.* The letters state that interest will continue to  
20 accrue. The letters provide statutory disclosures and procedures for disputing the debt.  
21 The letters set forth addresses, phone numbers, and websites for responding to the letters  
22 and obtaining information. The pronoun “you” appears throughout the letters.

23 The Court concludes that Defendant did not direct the letters to Plaintiff within the  
24 meaning of *Guerrero* by sending the letters according to the information Plaintiff provided  
25 to her creditors regarding her attorney. *See* 499 F.3d at 939 (“Only at that point did RJM  
26 contact Attorney Paer *as requested* . . .”). The allegations that the letters included the  
27 pronoun “you” and referenced the debt owed by Plaintiff do not bring Plaintiff’s claims  
28 within the scope of the FDCPA. The allegations that the letters referenced Plaintiff’s

FDCPA rights do not bring Plaintiff's claims within the FDCPA. *See id.* at 932 (“[W]e cannot conclude that RJM continued to collect a debt in violation of the Act merely because . . . it included in a letter to a debtor’s counsel a statement the Act generally requires.”). The allegations that the letters were sent to an attorney hired by Plaintiff for representation in bankruptcy, rather than debt collection, do not bring Plaintiff’s claims within the FDCPA. *See id.* at 937 (approving of dismissal of FDCPA claims based on settlement negotiations between an attorney and a debt collector, after the debt collector had ceased collection efforts on the disputed debt, and “[c]ounsel for the consumer then contacted the debt collector to alert it that the consumer might file for bankruptcy”) (citing *Zaborac v. Phillips & Cohen Assocs., Ltd.*, 330 F. Supp. 2d 962, 965 (N.D. Ill. 2004)). Plaintiff fails to allege facts to support an FDCPA claim.

#### IV. SUPPLEMENTAL JURISDICTION OVER STATE LAW CLAIM

Defendant moves for dismissal of Plaintiff’s state law cause of action. (ECF No. 14-1 at 10). Plaintiff asserts that this Court properly has § 1367 supplemental jurisdiction over the RFDCPA claim based on federal question jurisdiction over the FDCPA claim. (ECF No. 13 at 2).

The federal supplemental jurisdiction statute provides:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a). “The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if . . . the district court has dismissed all claims over which it has original jurisdiction[.]” 28 U.S.C. § 1367(c).

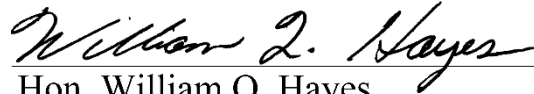
Having dismissed the only federal claim asserted by Plaintiff against Defendant, the Court declines to exercise supplemental jurisdiction over the remaining state law claims pursuant to 28 U.S.C. § 1367(c). *See San Pedro Hotel Co., Inc. v. City of L.A.*, 159 F.3d 470, 478 & n.12 (9th Cir. 1998) (upholding district court declining to exercise

1 supplemental jurisdiction and requiring no further explanation by district courts acting in  
2 accordance with 28 U.S.C. § 1367(c)(3)); *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087,  
3 1091 (9th Cir. 2008) (“The decision whether to continue to exercise supplemental  
4 jurisdiction over state law claims after all federal claims have been dismissed lies within  
5 the district court’s discretion.”) (quoting *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir.  
6 2007)).

7 **V. CONCLUSION**

8 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant Capital  
9 Management Services, LP (ECF No. 14) is GRANTED. Any motion to file an amended  
10 complaint must be filed within thirty (30) days of the date of this order in accordance with  
11 Local Rule 7.1.

12 Dated: July 30, 2019

13   
14 Hon. William Q. Hayes  
15 United States District Court  
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