UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PEGGY CERALDI, Plaintiff,	:	CIVIL CASE NO. 3:17-CV-1628 (JCH)
v.	:	
LINDA STRUMPF AND U.S. EQUITIES CORPORATION, Defendants.	:	MAY 19, 2020

RULING ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (DOC. NO. 90) AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (DOC. NO. 91)

I. INTRODUCTION

Plaintiff, Peggy Ceraldi ("Ceraldi"), brings this action asserting violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., against defendants Linda Strumpf ("Strumpf") and U.S. Equities Corporation ("Equities"), and the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. § 42–110a et seq., against Equities. See Complaint ("Compl.") (Doc. No. 1) ¶ 1.

Presently before the court is Ceraldi's Motion for Partial Summary Judgment (Doc. No. 90) and defendants' Motion for Summary Judgment (Doc. No. 91). For the reasons that follow, the motions are granted in part and denied in part.

II. FACTS[1]

Peggy Ceraldi ("Ceraldi") is a Connecticut resident that had a Chase credit card she used for personal purposes. Defendants' Local Rule 56(a)(2) Statement in

[1] The undisputed facts are taken from Defendants' Local Rule 56(a)(2) Statement of Facts in Opposition ("Def. LR 56(a)(2)") (Doc. No. 92-1), Defendants' Local Rule 56(a)(1) Statement of Facts in Support ("Def. LR 56(a)(1)") (Doc. No. 90-2), and Plaintiff's Local Rule 56(a)(2) Statement of Facts in Opposition ("Pl. LR 56(a)(2)") (Doc. No. 93-1).

Opposition ("Def. LR 56(a)(2)") (Doc. No. 12), ¶¶ 1, 2. U.S. Equities Corporation ("Equities") is a purchaser of defaulted consumer debt. Id. ¶ 3. Linda Strumpf ("Strumpf") is an attorney who regularly represents creditors, including Equities, in collection actions. Id. ¶ 6.

On January 26, 2011, Equities filed a lawsuit against Ceraldi in Connecticut State Superior Court ("state court") regarding Ceraldi's default on her Chase credit card account.[2] Defendants' Local Rule 56(a)(1) Statement of Facts in Support ("Def. LR 56(a)(1)") (Doc. No. 90-2), ¶ 1. The state court complaint requested post-judgment interest at a rate of ten percent. Id. ¶ 2. On May 31, 2011, Equities obtained a judgment against Ceraldi. Id. ¶ 3. The amount of the judgment awarded was $33,921.25, plus "post judgment interest pursuant to General Statutes Sec. 37-3a and General Statutes Sec. 52-356d(e)."[3] Id. ¶ 4 (quoting Order on Motion for Default Judgment ("Default Judgment Order") (Doc. No. 9-2), at 4). The court, however, did not state in its Order the rate of post-judgment interest.[4] Def. LR 56(a)(2) ¶ 12. Ceraldi

[2] Ceraldi does not specifically respond to this statement. Instead, Ceraldi states that she "admits all paragraphs, except for paragraphs 15, 22 and 24." Pl. LR 56(a)(2) at 1. Accordingly, paragraphs 1–14, 16–21, and 23 are deemed admitted.

[3] Section 37-3a of the Connecticut General Statutes provides, in relevant part, that "interest at the rate of ten percent a year, and no more, may be recovered and allowed in civil actions . . . including actions to recover money loaned at a greater rate, as damages for the detention of money after it becomes payable." Conn. Gen. Stat. § 37-3a.

Section 52-356d(e) provides that "[i]nterest on a money judgment shall continue to accrue under any installment payment order on such portion of the judgment as remains unpaid." Conn. Gen. Stat. § 52-356d(e).

[4] In response to this statement, defendants "deny that the state court judgment does not provide for the accrual of post-judgment interest at rate of ten percent per annum." Def. LR 56(a)(2) ¶ 12. However, defendants do not contest that the Default Judgment Order did not expressly the rate of post-judgment interest. The statement is therefore deemed admitted.

subsequently filed a Motion to Vacate the Judgment (in 2011) and Motion for Disallowance (in 2013); both motions were denied. Def. LR 56(a)(1) ¶¶ 5, 6.

On December 12, 2016, in response to a request from Ceraldi, defendants notified Ceraldi that the judgment balance was $42,894.36. Id. ¶ 7. By that time, Ceraldi had already paid over $10,000 on the judgment. Def. LR 56(a)(2) ¶ 10. Defendants' accounting for the balance of the judgment reflected accrual of post-judgment interest at a rate of 10 percent per year. Id. ¶ 11.

After learning of the defendants' application of the 10 percent post-judgment interest rate, Ceraldi filed a motion for protective order in state court. Def. LR 56(a)(1) ¶ 9. This Motion was denied. Ceraldi then filed a motion to open the judgment, which the state court denied on September 18, 2017. Id. ¶¶ 11, 13. Ceraldi's appeal followed. Id. ¶ 14. On September 28, 2017, during the pendency of that appeal, Ceraldi commenced this lawsuit. See Compl.

On April 4, 2018, Equities filed a Motion for Clarification with the state court, seeking clarification of the rate of post-judgment interest awarded in the Default Judgment Order. Def. LR 56(a)(1) ¶ 16. On April 30, 2018, the state court issued a Clarification Order stating that "[t]he Court intended that the interest rate be set at the allowable rate of ten percent per year in accordance with the statute." [5] Id. ¶ 17 (quoting

[5] The Clarification Order stated:

> Motion to clarify the court's order granting judgment and post judgment interest is granted. The order stated that "judgment enters for the plaintiff against the defendant in the amount of $35,895, plus $2,683.05 in attorneys fees, $343.20 in costs, plus post judgment interest pursuant to General Statutes Sec. 37-3-a and General Statutes Sec. 52-356d(e)." General Statutes Sec. 37-3a provides that post judgment interest is allowed "at the rate of ten percent a year, and no more." The Court intended that the interest rate

Order Regarding Motion for Clarification ("Clarification Order") (Doc. No. 91-3), at 15). Ceraldi appealed the Clarification Order. On December 18, 2018, the Connecticut Appellate Court reversed the lower court and remanded the case, with direction to dismiss the Motion for Clarification and to correct the judgment to reflect that no post-judgment interest had been awarded. Id. ¶ 19; see also U.S. Equities Corp. v. Ceraldi, 186 Conn. App. 610, 617 (2018). One week before issuing this ruling, the Appellate Court had affirmed the trial court's denial of Ceraldi's Motion for a Protective Order. Def. LR 56(a)(1) ¶ 15; see also U.S. Equities Corp. v. Ceraldi, 186 Conn. App. 903 (2018).

III. STANDARD

A motion for summary judgment will be granted if the record shows no genuine issue as to any material fact, and the movant is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the initial burden of establishing the absence of a genuine dispute of material fact. Celotex Corp. v. Cartrett, 477 U.S. 317, 323 (1986). If the moving party satisfies that burden, the nonmoving party must set forth specific facts demonstrating that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A genuine issue exists where the evidence is such that a reasonable jury could decide in the non-moving party's favor. See, e.g., Rojas v. Roman Catholic Diocese of Rochester, 660 F.3d 98, 104 (2d Cir. 2011) (citing Anderson, 477 U.S. at 252).

> be set at the allowable rate of ten percent per year in accordance with the statute. Case law does allow for interest to be set at a rate up to ten percent. However, the court granted judgment in accordance with the plaintiff's request for relief set forth in the plaintiff's complaint dated December 9, 2010, which requested "statutory post judgment interest of 10 percent per annum.["]

Clarification Order (Doc. No. 91-3) at 15.

The court's role at summary judgment "is to determine whether genuine issues of material fact exist for trial, not to make findings of fact." O'Hara v. Nat. Union Fire Ins. Co. of Pittsburgh, 642 F.3d 110, 116 (2d Cir. 2011). Unsupported allegations do not create a material issue of fact and cannot overcome a properly supported motion for summary judgment. See Weinstock v. Columbia Univ., 224 F.3d 33, 41 (2d Cir. 2000). A party who opposes summary judgment "cannot defeat the motion by relying on the allegations in his pleading, or on conclusory statements, or on mere assertions that affidavits supporting the motion are not credible." Gottlieb v. County of Orange, 84 F.3d 511, 518 (2d Cir. 1996). Rather, a party opposing summary judgment "must come forth with evidence sufficient to allow a reasonable jury to find in [its] favor." Brown v. Henderson, 257 F.3d 246, 252 (2d Cir. 2001). The evidence offered in opposition to a motion for summary judgment must be both admissible and must be sufficient to raise a genuine issue of material fact. See LaSalle Bank National Ass'n v. Nomura Asset Capital Corp., 424 F.3d 195, 205 (2d Cir. 2005); Santos v. Murdock, 243 F.3d 681, 683 (2d Cir. 2001).

IV. DISCUSSION

Defendants contend that they are entitled to judgment as a matter of law with respect to both the FDCPA and the CUTPA claims. See Defendant's Memorandum in Support ("Def. Mem.") (Doc. No. 91-1), at 1, 2. Ceraldi contends that summary judgment should enter in her favor on both these claims and that punitive damages remain for trial. See Plaintiff's Memorandum in Support ("Pl. Mem.") (Doc. No. 90-1), at 15.

A. FDCPA

The FDCPA provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Section 1692e includes a non-exhaustive list of conduct that violates the statute, including "(2) [t]he false representation of—(A) the character, amount, or legal status of any debt." Id. § 1692e(2)(A). A single violation of section 1692e is sufficient to hold a debt collector liable pursuant to FDCPA. See 15 U.S.C. § 1692k (establishing civil liability for "any debt collector who fails to comply with any provision of this subchapter").

1. Post-judgment interest

Ceraldi contends that the defendants violated the FDCPA by unilaterally adding to the judgment post-judgment interest at a rate of 10 percent per year. See Pl. Mem. at 3–5. The court agrees. The state court's Default Judgment Order against Ceraldi provided:

> Judgment enters for the plaintiff against the defendant, in the amount of $30,895, plus $2,683.05 in attorneys fees, $343.20 in costs, plus post judgment interest pursuant to General Statutes Sec. 37-3a and General Statutes Sec. 52-356d(e).

Default Judgment Order (Doc. No. 9-2), at 1. The judgment, however, did not set forth the rate of post-judgment interest, which, pursuant to section 37-3a of the Connecticut General Statutes, could be no more than 10 percent per year. See Conn. Gen. Stat. § 37-3a (emphasis added). As the Appellate Court observed, "that omission precluded both the plaintiff and the defendant from knowing what postjudgment interest was to be applied." U.S. Equities Corp., 186 Conn. App. at 615. Despite this omission, the defendants unilaterally imposed post-judgment interest at a rate of 10 percent per year,

which represents the maximum allowed under the law, not the amount actually awarded. This action is a clear violation of the FDCPA. See, e.g., Goins v. JBC & Assocs., P.C., No. 3:02–CV–1069 (MRK), 2004 WL 2063562, at *3 (D. Conn. Sept. 3, 2004) ("[T]he amount demanded in the November 2001 letter would still be misleading because according to Defendants, that letter included a maximum possible recovery from a civil lawsuit, an amount that had not yet been awarded by any court."); Goins v. JBC & Assocs., P.C., 352 F. Supp. 2d 262, 269 (D. Conn. 2005) ("[T]he letter claims an amount representing not only the actual debt owed, but the maximum obtainable statutory damages that could be awarded against plaintiff in a civil action.").

In response to Ceraldi's FDCPA claim, the defendants rely entirely on the bona fide error defense. See Def. Mem. at 5–10. To qualify for the bona fide error defense, a debt collector must prove, "by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c). Defendants' describe this defense as follows:

> Defendants erroneously believed that application of post-judgment interest at a rate of ten percent was neither false nor misleading because they relied on the state court's judgment and Clarification Order, which explicitly provided for post-judgment interest at a rate of ten percent.

Def. Mem. at 13. This argument and the evidence that defendants put forward in support fail to create a material issue of fact on defendants' bona fide error defense.

First, contrary to what the defendants state, the state court judgment did not provide for post-judgment at a rate of ten percent. The defendants' statement stands in direct contradiction to the text of the state court's Default Judgment Order, which clearly omits an annual rate, and merely references a statute permitting (but not requiring)

post-judgment interest at a maximum rate of 10 percent per year. The defendants' statement also stands in direct contradiction to the findings of the Appellate Court. See supra p. 6, 7. The defendants' alleged "reliance" on the Clarification Order similarly fails. The state court issued its Clarification Order (which modified the judgment to include post-judgment interest at a rate of 10 percent per year) on April 30, 2018—sixteen months after the defendants informed Ceraldi that they had unilaterally imposed post-judgment interest at a rate of 10 percent. [6] See Def. LR 56(a)(2) ¶ 7, 11. Thus, defendants' erroneous belief was not made in reliance on the original Default Judgment Order or the Clarification Order. Instead, the FDCPA violation resulted from the defendants' mistaken belief that, absent a rate of post-judgment interest expressly set by the state court, defendants were entitled to set a rate at the maximum amount allowed under the statute. However, case law in Connecticut is clear that, when a trial court fails to include a specific rate of interest pursuant to section 37-3a, "there is no default interest rate that automatically applies as a matter of law." U.S. Equities Corp., 186 Conn. App. at 615 n.7 (citing Ulrich v. Fish, 112 Conn. App. 837, 844 (2009)). For this reason, the defendants' bona fide error defense fails.

In Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., the Supreme Court held that the bona fide error defense provided by section 1692k(c) is not available to debt collectors who misinterpret the legal requirements of the FDCPA. 559 U.S. 573, 604-05 (2010). Because the issue before the Supreme Court in that case involved a

[6] The Clarification Order did not state that the original state court judgment set any annual percentage rate for the accrual of post-judgment interest. Instead, it only stated that the state court had "intended that the interest rate be set at . . . ten percent per year." Clarification Order (Doc. No. 91-3), at 15 (emphasis added). Despite the court's intention to set this interest rate, the original Default Judgment Order included no annual rate. The Clarification Order's addition of interest to the original judgment was subsequently struck down by the Appellate Court as an improper modification of a final judgment. See U.S. Equities Corp., 186 Conn. App. at 615.

misinterpretation of the FDCPA, it declined to decide whether the defense would apply to mistakes of state law. Id. at 580 n.4. In the decade following Jerman, district courts have disagreed on this question. "On one side, several courts have concluded that defendants whose misinterpretation of state law led them to violate the FDCPA had committed a bona fide error." Barenbaum v. Hayt, Hayt & Landau, LLC, No. 18-CV-4120, 2019 WL 4305761, at *8 (E.D. Pa. Sept. 10, 2019) (collecting cases). Other courts have extended the reasoning of Jerman and held that the bona fide error defense does not apply to mistakes of state law. Id. (collecting cases).

This court finds the reasoning of the latter group of decisions to be more persuasive. In Jerman, the Supreme Court observed that "ignorance of the law will not excuse any person, either civilly or criminally," id. at 581 and that "when Congress has intended to provide a mistake-of-law defense to civil liability, it has often done so more explicitly than" in section 1692k(c), id. at 583. The Court further noted that section 1692k(c)'s use of the term "procedures" indicates a mechanical kind of process whereas "legal reasoning is not a mechanical or strictly linear process." Id. at 587. Although Jerman did not explicitly address mistake of state law, this reasoning applies with equal force to mistakes of state law. See Barenbaum, 2019 WL 4305761, at *8-9 (noting the same); Harden v. Autovest, L.L.C., No. 15-CV-34, 2016 WL 6997905, at *2 (W.D. Mich. Nov. 30, 2016); McDermott v. Marcus, Errico, Emmer & Brooks, P.C., 911 F. Supp. 2d 1, 82 (D. Mass. 2012); see also Ballou v. Law Offices Howard Lee Schiff, P.C., 713 F. Supp. 2d 79, 82 (D. Conn. 2010).

Here, any error on the part of the defendants in interpreting the Default Judgment Order or its reference to section 37-3a of the Connecticut General Statutes is an error

based on state law. Such mistakes of law do not provide a basis for a section 1692k(c) defense. See Gervais v. Riddle & Assoc., P.C., 479 F. Supp. 2d 270, 279 (D. Conn. 2007) (citing cases in which the Second Circuit has held that the bona fide error defense does not apply to mistakes of law). Therefore, summary judgment is granted in Ceraldi's favor on Ceraldi's FDCPA claim insofar as it applies to the defendants' application of post-judgment interest.

2. Pre-judgment interest and attorney's fees

Although the majority of Ceraldi's submissions focuses on the issue of post-judgment interest, Ceraldi also contends that the defendants violated the FDCPA by incorrectly applying pre-judgment interest and attorney's fees. See Pl. Mem. at 8–12. Specifically, Ceraldi contends that "there was no provision in the Chase contract allowing 24% [pre-judgment] interest" and that "the contract did not allow for attorney's fees for a debt buyer." Id. at 10, 12.

Unlike the post-judgment interest, see supra p. 6, the pre-judgment interest, attorney's fees, and costs were included in the original Default Judgment Order. See Default Judgment Order (Doc. No. 9-2) at 4. In her Motion for Protective Order and her Motion to Open Judgment, Ceraldi made the same arguments she makes now: contending that the pre-judgment interest rate was usurious and that the trial court's award of attorney's fees was excessive. See Motion for Protective Order (Doc. No. 9-3), at 12, 13; see also Motion for to Open Judgment (Doc. No. 9-3), at 17-19). The state court rejected these arguments.[7] See Order re Motion to Open Judgment (Doc. No. 9-

[7] The state trial court originally dismissed Ceraldi's Motion for Protective Order as procedurally improper, and instructed her to file a motion to open judgment. See Order re Protective Order (Doc No. 9-2), at 16. Ceraldi's subsequent Motion to Open Judgment was then denied. See Order re Motion to Open Judgment (Doc. No. 9-2), at 20.

3) at 20. After Ceraldi appealed these decisions, the Appellate Court affirmed the judgment of the lower court.[8] See U.S. Equities Corp., 186 Conn. App. at 903. Ceraldi's attempt to now raise arguments previously rejected by the state courts must fail.

Pursuant to the Rooker-Feldman doctrine, federal district courts may not exercise subject matter jurisdiction over actions that seek appellate review of state court judgments. The Second Circuit has established four requirements for applying the Rooker-Feldman doctrine: (1) the federal court plaintiff must have lost in state court; (2) the plaintiff must complain of injuries caused by the state court judgment; (3) the plaintiff must invite the district court to review and reject that judgment; and (4) the state court must have rendered judgment before federal district court proceedings commenced. See Hoblock v. Albany County Bd. of Elections, 422 F.3d 77, 85 (2d Cir. 2005). Here, the two procedural requirements are clearly met. Ceraldi lost in state court when a default judgment was entered against her, and again when the state court denied her Motion to Open Judgment. The Default Judgment Order was entered on May 31, 2011, and the Order denying the Motion to Open Judgment was entered on September 18, 2017, both occurring before Ceraldi filed the instant Complaint (on September 28, 2017). As to the two substantive requirements, the injuries Ceraldi complains of—allegedly usurious pre-judgment interest and excessive attorney's fees—were directly caused by the underlying state court judgment; therefore, a redress for those injuries

[8] The following week, the Appellate Court also vacated the lower court's Clarification Order (which modified the judgment to include post-judgment interest at a rate of 10 percent per year) and remanded the case with direction to correct the judgment to reflect that no post-judgment interest was awarded. U.S. Equities Corp., 186 Conn. at 617.

would necessarily require this court to review and reject that judgment. See Vossbrinck v. Accredited Home Lenders, Inc., 773 F.3d 423, 427 (2d Cir. 2014) (noting that Rooker-Feldman bars claims that "require the federal court to sit in review of the state court judgment"); see also Francis v. Nichols, No. 16-CV-1848, 2017 WL 1064719, at *4 (S.D.N.Y. Mar. 21, 2017).

The defendants' Motion for Summary Judgment is therefore granted as to Ceraldi's FDCPA claim relating to prejudgment interest and attorney's fees.

B. CUTPA

Ceraldi also contends that Equities' actions violated the Connecticut Unfair Trade Practices Act ("CUTPA"), Conn. Gen. Stat. 42–110a et seq. See Pl. Mem. at 12–14. CUTPA prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42–110b(a). Although Ceraldi does not assert a formal cause of action under CUTPA, she alleges that the same conduct underlying her FDCPA claim constitutes a violation of CUTPA. See Pl. Mem. at 13. She seeks punitive damages against Equities for these CUTPA violations. See Compl. ¶ 32.

Defendants first contend that Ceraldi's CUTPA is barred by the litigation privilege. Def. Mem. at 11. The Connecticut Supreme Court has held that the litigation privilege protects statements or actions that any individual makes, in the context of a judicial proceeding, from giving rise to most type of tort claims. MacDermid Inc. v. Leonetti, 310 Conn. 616, 627 (2013). In Gabriele v. Am. Home Mortgage Servicing, Inc., 503 F. App'x 89, 96 (2d Cir. 2012), the Second Circuit held that the litigation privilege barred CUTPA claims against a law firm related to its conduct during the course of a state foreclosure action. The Court of Appeals concluded that the "alleged

misconduct, consisting of the filing of court documents, was performed as part of its legal representation of Deutsche Bank in the state debt collection action, and did not consist of entrepreneurial work such as advertising and bill collection" and thus "is immune from liability under the CUTPA." Id.; see also SNET Information Servs. v. Vecchitto, No. CV-05-4016132, 2007 WL 4212699, at *3 (Conn. Super. Ct. 2007). The litigation privilege can also apply to a party's communications for the purposes of preparing for trial or a hearing. See Kelley v. Bonney, 221 Conn. 549, 573–74 (1992) ("It is uncontradicted that Bonney's discussion with Waller was conducted for the purpose of marshaling evidence against the plaintiff to be used to support the complaint" and thus "given the particular factual circumstances of Bonney's communications," they were "absolutely privileged").

The undisputed facts demonstrate that Equities' conduct is not protected by the litigation privilege. Ceraldi complains—and the record demonstrates—that Equities unilaterally set the rate of post-judgment at 10 percent per year. Equities did so outside the context of ongoing judicial proceedings and, indeed, without authorization from the court.[9] This conduct is therefore not protected by the litigation privilege. Davis v. Hunt Leibert Jacobson, P.C., 3:12-CV-1102 (JBA), 2014 WL 5798585, at *5 (D. Conn. Nov. 7, 2014) ("Such conduct was not in furtherance of litigation and thus is not protected by the litigation privilege.").

[9] As previously discussed, on April 30, 2018, the state court issued a Clarification Order stating that it had intended to set post-judgment interest at a rate of ten percent per year. It is undisputed that, prior to this Clarification Order, no court had explicitly set the interest rate at 10 percent. Furthermore, the Appellate Court ultimately reversed the state court's Clarification Order.

Equities further contends that Ceraldi has failed to satisfy CUTPA's requirement of showing "ascertainable loss." To prevail on a claim under CUTPA, a plaintiff must demonstrate that she suffered "ascertainable loss of money or property, real or personal" as a result of the conduct prohibited by the statute. Conn. Gen. Stat. § 42–110g(a); see Hinchliffe v. Am. Motors Corp., 184 Conn. 607, 615, (1981) ("The ascertainable loss requirement is a threshold barrier which limits the class of persons who may bring a CUTPA action seeking either actual damages or equitable relief.").

In her Complaint, Ceraldi's allegations of ascertainable loss are as follows: "In addition to such ascertainable loss as paying the filing fee, plaintiff suffered the loss of use of her money as well as garden variety of emotional distress." Compl. ¶ 32. The court first concludes that "garden variety emotional distress" is not ascertainable loss under CUTPA. In Di Teresi v. Stamford Health System, Inc., the Appellate Court analyzed the Superior Court's treatment of emotional distress claims under CUTPA and concluded that "emotional distress does not constitute an ascertainable loss of money or property for purposes of CUTPA." 149 Conn. App. 502, 512 (Conn. App. 2014). As to Ceraldi's claim involving the "loss of use of her money," defendants contend that this claim must fail because Ceraldi has not paid any post-judgment interest. Def. Mem. at 13. Although Strumpf has stated under oath that she has not collected any post-judgment interest from Ceraldi, see Affidavit of Linda Strumpf ("Strumpf Aff.") (Doc. No. 91-3) ¶ 6, it is also undisputed that, by December 2016, Ceraldi had paid over $10,000 on the judgment, see Def. LR 56(a)(2) ¶ 10. The court finds it unlikely that the defendants intended these payments go towards paying down the principal only.

Because the court finds that Ceraldi's state court filings constitute ascertainable loss, the court need not address this issue.

The filing fees that Ceraldi paid in challenging Equities' conduct in state court constitute ascertainable loss.[10] "A plaintiff can satisfy her burden by showing that she 'paid the debt, acted in reliance on the [collection] letter, [. . .] or responded to the letter in any way.'" Goins, 2004 WL 2063562, at *3 (quoting Maguire v. Citicorp Retail Services, Inc., 147 F.3d 232, 238 (2d Cir. 1998)). Although Ceraldi did not pay the post-judgment interest unilaterally imposed by Equities, she acted in reliance of Equities' wrongful conduct when filing the Motion for a Protective Order and a Motion to Open Judgment. And when the state court denied these motions, Ceraldi filed an appeal. The filing fees that Ceraldi incurred in state court challenging Equities' conduct constitute an ascertainable loss of money.

The defendants contend that Ceraldi failed to mitigate these costs, and that such failure undermines her CUTPA claim. See Defendant's Reply Memorandum ("Def. Reply") (Doc. No. 95), at 7. However, defendants did not tender their offer until April 16, 2018. Id. By this time, Ceraldi had already filed her motions for protective order and to open the judgment. Because Ceraldi had already incurred these costs, the defendants' mitigation argument fails. Defendants further argue that courts "have denied finding that fees incurred in a lower court action constitute actual damages." Def. Reply at 7 (quoting Evanauskas v. Strumpf, No. 00-CV1106 (JCH), 2001 WL 777477, at *5 (D.

[10] The court notes that Ceraldi has specified that the "filing fee" does not relate to the litigation costs incurred in the present action, which could not be used to support her present CUTPA claim. See Jones v. Midland Funding, LLC, 755 F. Supp. 2d 393, 398 (D. Conn. 2010) ("Expenses incurred by the plaintiff in consulting an attorney and bringing this suit do not constitute ascertainable loss under CUTPA.").

Conn. June 25, 2001)).[11] However, the Connecticut Supreme Court has observed that "[t]he term 'loss' necessarily encompasses a broader meaning than the term 'damage,' [and] is a deprivation, detriment [or] injury that is capable of being discovered, observed or established." Marinos v. Poirot, 308 Conn. 706, 713–14 (Conn. 2013). The fees that Ceraldi incurred in state court as a result of defendants' conduct fits within this definition.

Concluding that Ceraldi has demonstrated an ascertainable loss, the court now considers whether Equities' conduct violated CUTPA. CUTPA provides, in relevant part, that "[n]o person shall engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce." Conn. Gen. Stat. § 42–110b(a). In general, there are three criteria for determining whether an act or practice is "unfair" within the meaning of CUTPA:

> (1) [W]hether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise—in other words, it is within at least the penumbra of some common law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers, [competitors, or other businesspersons]. . . . All three criteria do not need to be satisfied to support a finding of unfairness. A practice may be unfair because of the degree to which it meets one of the criteria or because to a lesser extent it meets all three.

Ventres v. Goodspeed Airport, LLC, 275 Conn. 105, 154–55 (2006).

Ceraldi contends, and the record demonstrates, that Equities unilaterally assessed post-judgment interest at a rate of 10 percent per year and did so pursuant to

[11] In Evanauskas, there was no showing that the fees plaintiff incurred in opening a state court judgment were caused by the FDCPA violations. See 2001 WL 777477, at *5. Here, Ceraldi has shown that the defendants' improper assessment of post-judgment interest caused her to incur the costs associated with her state court filings. See Motion for Protective Order (Doc. No. 9-3), at 12 ("Equities is adding interest at 10% a year, even though the court did not award interest in any specific amount.").

a Default Judgment Order that failed to specify any annual rate. Such an action is within the "the penumbra of some common law, statutory, or other established concept of unfairness." Id.; see also U.S. Equities Corp., 186 Conn. App. at 615 n.7 ("If, however, a trial court fails to include a specific rate of interest pursuant to § 37-3a, as in the present case, there is no default interest rate that automatically applies a matter of law.") (citing Ulrich v. Fish, 112 Conn. App. 837, 844 (2009)). This alone preclude summary judgment in the defendants' favor.

Whether a practice is unfair and thus violates CUTPA is an issue of fact, and "the facts found must be viewed within the context of the totality of circumstances." Ulster Savings Bank v. 28 Brynwood Lane, Ltd., 134 Conn. App. 699, 715 (2012). Here, the facts paint a mixed picture. On the one hand, Equities' violated Connecticut law by unilaterally imposing a rate of post-judgment interest. On the other hand, Equities imposed the rate it had sought in its original complaint, this rate was allowed under the statute, the state court later clarified that it had intended to award post-judgment interest at that rate, and Equities immediately stopped applying post-judgment interest as soon as the Appellate Court determined that no post-judgment interest had been properly awarded. Based on these facts, the court cannot conclude that, as a matter of law, Equities engaged in unfair or deceptive acts. See e.g., Normand Josef Enterprises v. Connecticut Nat'l Bank, 230 Conn. 486, 524–25 (1994) (holding that a "a technical violation" of the statute involving which "did not offend public policy, implicate the concept of unfairness or cause the type of substantial injury that CUTPA was designed to address"); Jacobs v. Healey Ford–Subaru, Inc., 231 Conn. 707, 729 (1995) (holding violations of certain provisions of the Retail Installment Sales Financing Act and the

Uniform Commercial Code did not violate CUTPA where trial referee concluded that the defendant's statutory noncompliance was not unfair, deceptive or oppressive). Summary judgment is therefore denied as to Ceraldi's Motion insofar as it relates to her CUTPA claim. For similar reasons, summary judgment is denied as to defendants' Motion insofar as it relates to punitive damages under CUTPA.

C. Set-off

Finally, the defendants contend that, because Ceraldi does not contest the existence of the debt owed by her to the defendants, they are entitled to setoff the judgment against her. Allowance of an offset lies within the court's discretion and "allows entities that owe each other money to apply their mutual debts against each other, thereby avoiding the absurdity of making A pay B when B owes A." Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 18 (1995).

Here, the court declines to allow this equitable remedy at this time. The defendants direct this court's attention to two cases in which courts have held that state court judgments can be set off against FDCPA judgments. See Def. Mem. at 19, 20 (citing Lundsted v. JRV Holdings, LLC, No. 14-CV-13981, 2016 WL 1665154 (E.D. Mich. Apr. 27, 2016) and Brown v. Manduaric Law Group, LLC, No. 13-CV-04703, 2014 WL 2860631 (N.D. Cal. June 23, 2014)). However, these courts allowed setoff only after a fixed amount had been awarded to the plaintiff on his FDCPA claim. See Lundsted, 2016 WL 1665154, at *1; Brown, 2014 WL 2860631, at *5 ("Plaintiff's judgment in this action against CACH is reduced by $2,000.00, such that Plaintiff's total judgment against CACH is now $8,002.86, the amount awarded in attorney's fees."). Here, there has been no court award or consent judgment. Indeed, the issue of

damages remain for trial. The court therefore concludes that defendants' request for setoff is premature.

V. CONCLUSION

For the forgoing reasons discussed above, Defendants' Motion for Summary Judgment (Doc. No. 91) is denied in part and granted in part. Defendants' Motion is granted as to plaintiff's FDCPA claim relating to pre-judgment interest. It is denied in all other respects. Plaintiff's Motion for Partial Summary Judgment (Doc. No. 90) is denied in part and granted in part. Plaintiff's Motion is granted as to liability on her FDCPA claim relating to post-judgment interest. It is denied in all other respects.

SO ORDERED.

Dated this 19th day of May 2020 at New Haven, Connecticut.

/s/ Janet C. Hall
Janet C. Hall
United States District Judge