UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JS-6

CIVIL MINUTES - GENERAL

Case No.	2:20-cv-06062-SVW-JC	Date	March 29, 2021
Title	*Aigerim Moldasheva v. Hunter Warfield, Inc.*		

Present: The Honorable	STEPHEN V. WILSON, U.S. DISTRICT JUDGE
Paul M. Cruz	N/A
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
N/A	N/A

Proceedings: ORDER GRANTING MOTION FOR SUMMARY JUDGMENT [21]

I. Introduction

Before the Court is a motion for summary judgment filed by Defendant Hunter Warfield, Inc. in this action asserting claims under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.* and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788 *et seq*. For the reasons stated below, the motion for summary judgment is GRANTED.

II. Factual Background

On August 24, 2018, Plaintiff Aigerim Moldasheva and her husband, Nurlan Nishbayer[1], entered into an agreement to lease an apartment in the Elan Scripps Terrace complex in San Diego. Dkt. 21, Defendant's Ex. A. The lease terminated on August 31, 2019, when it would automatically become a month-to-month lease unless notice of termination was given within 30 days. *Id.* On June 26, 2019, Plaintiff and Nishbayer emailed their property manager, informing her that they would be moving out at the end of the lease term in August. Dkt. 25, Plaintiff's Ex. A. The property manager responded by providing a 30-day notice packet and requesting that it be submitted by August 1, 2019. *Id.* The record does not indicate whether or when the notice packet was submitted.

[1] Nurlan Nishbayer is not a party to this case. *See* Dkt. 1.

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On December 6, 2019, Elan Scripps Terrace mailed a statement to Plaintiff and her husband listing an outstanding balance of $2,735.89. Dkt. 21, Defendant's Ex. I. The statement included charges for property damage, utilities, and monthly rent for September and half of October. *Id.* at 3-5. The bill went unpaid and was assigned to Defendant for collection in February 2020. Dkt. 21, Defendant's Exs. B-C.

Shortly after the assignment, Defendant began calling Plaintiff's and her husband's phone numbers. *Id.* Between February 28 and April 6, 2020, 29 calls were placed before Plaintiff answered her first call– 8 of those calls were made to Plaintiff's phone number. *Id.* The first call to be answered was a call to Plaintiff's husband's phone on April 2, 2020. Defendant's Ex. C.[2] Plaintiff's husband stated that he moved out of the apartment in August, expressed confusion about the December bill, and hung up. Dkt. 21, Defendant's Ex. F.

The second call to be answered was placed to Plaintiff's phone on April 6, 2020. Defendant's Ex. B. Plaintiff explained that she moved out and paid for her last month in the apartment in August, gave notice of termination by email more than 30 days in advance, and asserted that she accordingly did not owe anything. Dkt. 21, Defendant's Ex. G. Plaintiff suggested several times that the collection agent was perpetrating a scam. *Id.* The collection agent then said, "hold on, let me get you over to a manager." *Id.* Plaintiff responded, "I don't want to talk to you anymore. I told you, I paid." *Id.* The recording ends at that point. No response or any sound is audible from the collection agent's line. Defendant's file reflects the following note from this phone call: "spoke to dtr at 4620 dtr said does not owe act said we are trying to scam her and hung up." Defendant's Ex. B.

After the call, Defendant mailed Plaintiff documentation supporting the debt. Defendant's Exs. B, I. Defendant then called Plaintiff's number five more times between April 14, 2020 and April 28, 2020. Defendant's Ex. B.

The third and final call to be answered related to this debt was placed to Plaintiff's husband on April 21, 2020. Defendant's Ex. C. Plaintiff's husband said, "I don't owe anything." The collection

[2] Defendant states in its brief and in the label of its exhibit that this call took place on March 2, 2020. However, that date appears to be contradicted by Defendant's Exhibit C, which lists a call on April 2 but not on March 2. The date of this phone call is immaterial to the Court's legal analysis.

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agent responded, "Unfortunately you do owe." Plaintiff's husband then said, "Please, please stop call me." The collections agent responded, "Sir, doesn't make it go away. You want me stop calling? No problem, I'll stop calling you. Doesn't make this [unintelligible] go away though." Dkt. 21, Defendant's Ex. H. Defendant's file reflects the following entry from this phone call: "dtr said does not owe stop calling and hung up." Ex. C. No further calls were placed to Plaintiff's husband's number. *Id.*

III. Legal Standard

Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). The moving party bears the initial responsibility of informing the court of the basis of its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, admissions, or affidavits that demonstrate the absence of a triable issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In determining a motion for summary judgment, all reasonable inferences from the evidence must be drawn in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). A genuine issue exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party," and material facts are those "that might affect the outcome of the suit under the governing law." *Id.* at 248.

"If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." *McIndoe v. Huntington Ingalls Inc.*, 817 F.3d 1170, 1173 (9th Cir. 2016) (quoting *R.W. Beck & Assocs. v. City & Borough of Sitka*, 27 F.3d 1475, 1480 n.4 (9th Cir. 1994)). "Arguments based on conjecture or speculation are insufficient...." *Id.* (quoting *R.W. Beck & Assocs.*, 27 F.3d at 1480 n.4).

IV. Application

a. Article III Standing

As a threshold matter, Defendant argues that Plaintiff lacks Article III standing to bring her FDCPA claims. The Court agrees in part.

"[T]he 'irreducible constitutional minimum' of standing consists of three elements.... The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision.... The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements...." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016) (citations omitted) (hereafter, "*Spokeo I*").

The injury in fact element requires "an invasion of a legally protected interest which is (a) concrete and particularized … and (b) 'actual or imminent, not 'conjectural' or hypothetical.'" *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted). In this context, the term "concrete" means "real," and not "abstract." *Spokeo, Inc.*, 136 S. Ct. at 1549. "[E]ven when a statute has allegedly been violated, Article III requires such violation to have caused some real—as opposed to purely legal—harm to the plaintiff." *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1112 (9th Cir. 2017) (hereafter, "*Spokeo II*"). While tangible harms, such as economic loss, are easier to recognize, intangible harms require further analysis to determine whether they are concrete. *Id.* at 1112.

Whether an intangible impact on a plaintiff amounts to a concrete injury depends not only on how the plaintiff is affected by the defendant's conduct but also on what interests are protected by the statute allegedly violated. The Ninth Circuit has articulated the following two-part test to determine whether the violation of a statute creates a concrete injury: "(1) "whether the statutory provisions at issue were established to protect [a plaintiff's] concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests." *Spokeo II*, 867 F.3d at 1113. The Court concludes that this analysis plays out differently for Plaintiff's different sets of FDCPA claims.

i. Invasion of Privacy

Two of Plaintiff's statutory claims protect against the substantive right to be free from "invasions of privacy," which is specifically cited in the FDCPA's findings and declaration of purpose as an abusive practice that the Act will address. *See* 15 U.S.C. § 1692(a) ("Abusive debt collection practices contribute to the ... invasions of individual privacy."). 15 U.S.C. § 1692d protects debtors against conduct by debt collectors "the natural consequence of which is to harass, oppress, or abuse any person

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in connection with the collection of a debt." Section 1692d(5) specifically prohibits "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." Section 1692c(a)(1) protects debtors from communications "at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer."

Several Ninth Circuit cases have recognized that statutes protecting the right of privacy do protect against a concrete interest, and that alleging a violation of such a statute is sufficient to confer Article III standing. "Privacy rights have long been regarded 'as providing a basis for a lawsuit in English or American courts.'" *Patel v. Facebook, Inc.*, 932 F.3d 1264, 1271 (9th Cir. 2019) (quoting *Spokeo I*, 136 S. Ct. at 1549). The Ninth Circuit has specifically recognized that an analogous statute, the Telephone Consumer Protection Act ("TCPA"), does protect against a concrete interest in privacy. *See Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 (9th Cir. 2017). The court noted that "[u]nsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients," and this interest is sufficiently concrete that "[a] plaintiff alleging a violation under the TCPA 'need not allege any *additional* harm beyond the one Congress has identified.'" *Id.* at 1043. Sections 1692(a)(1) and 1692d protect against the same interest in privacy and solitude by prohibiting inconvenient or excessive debt collection calls. Consequently, just as with the TCPA, Plaintiff need only allege the harm identified in the statute to establish Article III standing. [3]

Here, Plaintiff has identified precisely the harm that Congress sought to mitigate in these subsections of the FDCPA. Plaintiff argues that Defendant's excessive phone calls, including after she

[3] The Court need not engage in a detailed legislative history to determine that sections 1692c(a)(1) and 1692d(5) do protect against a concrete interest. Two factors are considered in assessing whether an intangible harm prohibited by Congress protects against a concrete interest: (1) the judgment of Congress in articulating chains of causation and identifying injuries, and (2) whether the intangible harm has a close relationship to traditional common law claims. *See Campbell v. Facebook, Inc.*, 951 F.3d 1106, 1116-17 (9th Cir. 2020) (citing *Spokeo I*, 136 S. Ct. at 1549). The similarity of these subsections to common law privacy torts and nuisance actions renders unnecessary any further analysis of whether the interests at issue are concrete. *See id.* at 1117 ("Violations of the right to privacy have long been actionable at common law." (quoting *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 983 (9th Cir. 2017))); *Van Patten*, 847 F.3d at 1042-43 ("Actions to remedy defendants' invasions of privacy, intrusion upon seclusion, and nuisance have long been heard by American courts, and the right of privacy is recognized by most states." (citing *Restatement (Second) of Torts* § 652(B))).

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allegedly requested that they stop, infringed on her right to privacy. Because Plaintiff has alleged a violation of the concrete interest protected by §§ 1692c(a)(1) and 1692d(5), Plaintiff does have Article III standing to sue Defendant for violating those provisions. *See Campbell*, 951 F.3d at 1117 (When ... a statutory provision identifies a substantive right that is infringed any time it is violated, a plaintiff bringing a claim under that provision 'need not allege any further harm to have standing.'" (quoting *Eichenberger v. ESPN, Inc.*, 876 F.3d 979, 983-84 (9th Cir. 2017))).

ii. False or Misleading Statements and Unfair Practices

Although Plaintiff does have Article III standing to bring her claims under §§ 1692c(a)(1) and 1692d(5), the Court agrees with Defendant that Plaintiff lacks Article III standing to bring her claims under §§ 1692e and 1692f.

Sections 1692e and 1692f protect against entirely different interests. Section 1692e prohibits debt collectors from using any "false, deceptive, or misleading representation or means in connection with the collection of any debt." Section 1692f prohibits "unfair or unconscionable means to collect or attempt to collect any debt." These sections target a different set of potential consequences of abusive debt collection practices identified in the Congressional findings: "personal bankruptcies," "marital instability," and "loss of jobs." 15 U.S.C. § 1692(a).

The violation of these provisions may in some cases produce tangible harm, which is *per se* a concrete injury. *See Spokeo I*, 136 S. Ct. at 1549. However, Plaintiff does not allege any tangible harms as a result of alleged false or misleading representations or unfair or unconscionable debt collection practices. At her deposition, Plaintiff testified that the only impact of the debt collection calls was that she found them "annoying," and that she was "frustrated," "unhappy," and "upset" when Defendant called. Dkt. 27-1 ("Moldasheva Depo").[4]

[4] To the extent Plaintiff is arguing, as alleged in the complaint, that the debt collection calls resulted in harms to Plaintiff's cell phone, Dkt. 1 ¶ 21, there is no evidence supporting these allegations in the summary judgment record.

Regardless of whether these sections are considered to protect against concrete interests under the first prong of the two-part test articulated in *Spokeo II*,[5] Plaintiff has not established Article III standing under the second prong because she has not shown that the alleged violations "in this case actually harm, or present a material risk of harm," to any concrete interest.

Plaintiff's theory of liability under §§ 1692e and 1692f is that Plaintiff never owed the underlying debt, and therefore Defendant's calls were false or misleading and constitute an unfair practice. Oppo. at 16-19. However, there is no genuine dispute that Plaintiff was never actually misled or confused by any of Defendant's statements or conduct. On the only live conversation she had with Defendant, Plaintiff insisted throughout the call that she did not owe the debt, and never indicated that she was even beginning to waver in that position as a result of Defendant's statements. Defendant's Ex. G. Likewise, when asked at her deposition how the calls had impacted her, Plaintiff refers to frustration, annoyance, and unhappiness, but never expresses that she was confused or even contemplated that she might actually owe the debt. Moldasheva Depo., at 29-30, 61-62. There is also no evidence in the record that Plaintiff detrimentally relied on the asserted validity of the underlying debt.

Moreover, none of Defendant's statements to Plaintiff even created a material risk of confusing or misleading Plaintiff or inducing any detrimental reliance. On the April 6 recording, the collection agent says that Plaintiff has a balance with Elan Scripps that is in collection, states the amount of the balance, offers to send a verification of the debt and to provide a website to obtain more information, and describes information in the documents supporting the debt. Defendant's Ex. G. There is nothing false or misleading about any of the collection agent's statements, and the agent never threatens to take any kind of legal action. *Id.* The only other communication to Plaintiff in the record is the debt verification letter, which simply reiterates the balance due and the rate of interest, includes various legal

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[5] The Court briefly notes that several district courts have concluded that §§ 1692e and 1692f do protect against concrete interests. *See Avina v. Patenaude & Felix, APC*, 2021 WL 873336, at *4 (S.D. Cal. 2021) (collecting cases). However, as the Eleventh Circuit has noted, these sections do differ drastically from traditional common law causes of action for fraud and negligent representation because they do not require proof of reliance or damages, precisely the elements which require a plaintiff to show a personal impact from a defendant's misrepresentations. *See Trichell v. Midland Credit Mgmt.*, 964 F.3d 990, 998 (11th Cir. 2020) ("[U]nder our common-law tradition, 'there can be no recovery if the plaintiff is none the worse off for the misrepresentation, however flagrant it may have been.'" (citing *Prosser & Keaton on the Law of Torts* § 110)).

notices which Plaintiff does not challenge, and attaches Plaintiff's final bill from her former landlord and her lease agreement. Defendant's Ex. I.

Consequently, the alleged violations of §§ 1692e and 1692f in this case did not actually harm or present a material risk of harm to Plaintiff's interests. *Cf. Cohen v. Rosicki, Rosicki & Assocs., P.C.*, 897 F.3d 75, 81-82 (2d Cir. 2018) (real risk of harm existed where plaintiff alleged that defendants misled by incorrectly identifying creditor); *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 547 (9th Cir. 2020) (FDCPA plaintiff lacked Article III standing based on confusion alone). Accordingly, while the Court concludes that Plaintiff has Article III standing to bring her claims under §§ 1692c(a)(1) and 1692d(5), she lacks standing to sue Defendant under §§ 1692e and 1692f.

b. FDCPA Claims

i. § 1692d(5)

Under 15 U.S.C. § 1692d, "[a] debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt." The statute also enumerates particular conduct that is a *per se* violation of the section, including "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number." *Id.* § 1692d(5). "[C]oncurrent claims for violations of § 1692d and § 1692d(5) must be treated as a single claim under § 1692d(5) where, as here, the underlying conduct fits 'squarely within § 1692d(5).'" *Hollis v. LVNV Funding*, 2019 WL 1091336, at *3 (C.D. Cal. 2019) (citation omitted).

"Courts have held that the question whether a debt collector's conduct in attempting to contact a debtor by telephone amounts to harassment or annoyance in violation of these provisions ultimately turns on evidence regarding the volume, frequency, pattern, or substance of the phone calls." *Kuntz v. Rodenburg LLP*, 838 F.3d 923, 926 (8th Cir. 2016) (quoting *Kavalin v. Global Credit & Collection Corp.*, 2011 WL 1260210, at *4 (W.D.N.Y. 2011)). There has been wide disagreement and inconsistent results among district courts about how much and what kind of evidence suffices to survive summary judgment. *See Krapf v. Nationwide Credit Inc.*, 2010 WL 2025323 (C.D. Cal. 2010) (comparing district court case granting summary judgment for plaintiff to district court case granting summary judgment for defendant where the "volume and frequency of calls were nearly identical"). Nevertheless, many district courts have held that a claim under § 1692d "may be resolved as a matter of law when the summary judgment record establishes that no reasonable jury could find the requisite level of harassment." *Kuntz*, 838 F.3d at 926 (collecting cases); *see, e.g., Carman v. CBE Grp., Inc.*, 782 F. Supp. 2d 1223, 1232 (D. Kan. 2011); *Jiminez v. Accounts Receivable Mgmt., Inc.*, 2010 WL 5829206, at *4-*5 (C.D. Cal. 2010); *Katz v. Capital One*, 2010 WL 1039850, at *3 (E.D. Va. 2010); *Saltzman v. I.C. Sys., Inc.*, 2009 WL 3190359, at *7 (E.D. Mich. 2009).

Here, Plaintiff has failed to meet her burden to show that Defendant's calls were made with the intent to abuse, harass, or annoy under § 1692d(5). A total of 14 calls were placed to Plaintiff's phone number from February 28 to April 28. Defendant's Ex. B. Only once were multiple calls placed on the same day. *Id.* Only twice were calls placed on consecutive days. *Id.*[6] No calls were placed on most days during this period. *Id.* Nothing about the timing or frequency of these calls indicates an intent to abuse, harass, or annoy. *Cf. Jiminez*, 2010 WL 5829206, at *2, *5 (granting summary judgment for Defendant where debt collector made 69 calls over a 115-day period and only once attempted to contact Plaintiff multiple times on the same day).

When Plaintiff did speak with a collection agent on April 6, 2020, the call lasted only 5 minutes. Defendant's Ex. G. The agent made no threats or demands. *Id.* The agent simply explained the existence and source of the debt. *Id.* When Plaintiff tried to explain that she had already paid and stated that she thought the collection agent was perpetrating a scam, the collection agent offered to send Plaintiff documentation and to give Plaintiff a website to find out more information about the debt. *Id.* When Plaintiff again argued that the collection agent was doing something inappropriate, the agent told Plaintiff to "hold on" because he was going to transfer her to a manager. *Id.* Nothing about the content of this single call itself indicates an intent to harass, abuse, or annoy. *Id.*

After the April 6 call, documents verifying the debt were mailed to Plaintiff. Defendant's Ex. B, I. No calls were placed to Plaintiff until one week after the verification documents were mailed.

[6] It is unclear from the record whether the two entries listed on April 6, 2020, the day of Plaintiff's only live telephone conversation with Defendant, correspond to different calls. Defendant's Ex. B. Because inferences are drawn in favor of the non-moving party on summary judgment, the Court assumes the two entries do correspond to distinct calls.

Defendant's Ex. B. Only five additional calls were placed in the three weeks after the live phone conversation. *Id.*

Although, as mentioned above, there is little uniformity among the district court cases, those denying summary judgment tend to involve a significantly greater volume and frequency of calls than those at issue here. *See*, *e.g.*, *Ammons v. Diversified Adjustment Serv., Inc.*, 2019 WL 5064840, at *6 (debt collector called Plaintiff 77 times in 73 days, sometimes up to five times per day); *Brooks v. USAA Federal Savings Bank*, 2019 WL 7188576, at *9 (C.D. Cal. 2019) (Defendant made 126 debt-collection calls over two months, sometimes making several calls on the same day); *Jara v. GC Servs. Ltd. P'ship*, 2018 WL 2276635, at *6 (C.D. Cal. 2018) (denying summary judgment where debt collector called Plaintiff 87 times in a nine-day period). In fact, district courts have granted summary judgment for debt collectors who called far more times. *See*, *e.g.*, *McMillion v. Rash & Curtis Assocs.*, 2018 WL 692105, at *9 (N.D. Cal. 2018) (collecting cases involving between 86 calls and 179 calls); *Jiminez*, 2010 WL 5829206, at *2, *5 (69 calls over a 115-day period).

Plaintiff's best argument is that she communicated that she did not want to be called again regarding the debt at the end of the April 6 call. After the collection agent told Plaintiff to "hang on" because he was going to transfer her to a manager, Plaintiff stated, "I don't want to talk to you anymore" before hanging up. Defendant's Ex. G. There is no audible response from the collection agent to this statement on the recording. In notes of the call entered into Defendant's file, the call was described as follows: "spoke to dtr at 4620 dtr said does not owe act said we are trying to scam her and hung up." Defendant's Ex. B.

On this record, the Court finds that no rational jury could determine that Defendant met her burden to show that she effectively communicated that she did not wish to be contacted again regarding her debt during the April 6 call. A jury would have to speculate to find otherwise. As explained above, there is no indication from the call itself or Defendant's file that the collections agent even heard Plaintiff's statement. The statement came just as the collection agent said, "Hold on, I'm gonna get you over to a manager." Defendant's Ex. G. This happened during a contentious portion of the call after Plaintiff had accused the agent of doing something improper for a third time. *Id.* Plaintiff points to no evidence in the record regarding Defendant's policies or phone systems that would give a jury a single

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fact from which to infer that Defendant remained on the line to hear Plaintiff's last sentence. In the absence of evidence that he remained on the line, it would be speculative under the circumstances for a jury to conclude that the collection agent remained on the line after saying he was transferring the call. *See Katz v. Capital One*, 2010 WL 1039850, at *2-*3 (E.D. Va. 2010) (holding that a request to stop calling is ineffective if not actually received by the debt collector even if the plaintiff reasonably believed that the debt collector would receive the request). !

Even if the collection agent did hear Plaintiff's statement, that would not be sufficient to raise a genuine issue on whether Defendant's subsequent calls were made with the intent to harass, abuse, or annoy Plaintiff. For one thing, the statement itself is ambiguous. Plaintiff said, "I don't want to talk to you anymore." Defendant's Ex. G. It is unclear whether that meant Plaintiff would prefer to speak to a different agent, that Plaintiff wanted to end this call but was receptive to further communications from Defendant, or that Plaintiff was requesting that Defendant never contact her again. Given that the first two interpretations are reasonable, five additional calls – which were never answered, were not themselves in an egregious volume or frequency, and were made after additional documentation was mailed to Plaintiff – are not probative of Defendant's intent to harass, abuse, or annoy Plaintiff.

Not only does Plaintiff herself offer no evidence creating a genuine dispute as to Defendant's intent; she offers no evidence to rebut Defendant's highly probative evidence that it lacked the requisite intent. When Plaintiff's husband (a co-debtor) communicated that he did not wish to be called anymore, the collection agent said, "no problem." Defendant's Ex. H. Plaintiff's husband's file reflects the following note from that call: "dtr said does not owe stop calling and hung up." Defendant's Ex. C. Defendant's files reflect that no further calls were placed to Plaintiff's husband's number. *Id.* Without any evidence to rebut this inference, Defendant's cessation of calls to Plaintiff's husband upon a clear request to stop would make it unreasonable for a jury to infer that Defendant intended to harass, abuse, or annoy Plaintiff after hearing and understanding that she did not wish to be called again.

Even if there is a genuine dispute as to whether Plaintiff effectively communicated a request not to be contacted, the Court would still find summary judgment appropriate in favor of Defendant. Many cases suggest that calls after a debtor's request to stop calling preclude summary judgment. *See, e.g.*, *Fenton*, 2019 WL 2635595, at *8; *Arteaga v. Asset Acceptance, LLC*, 733 F. Supp. 2d 1218, 1227-28 (E.D. Cal. 2010) ("[A] debt collector may harass a debtor by continuing to call the debtor after the debtor has requested that the debt collector cease and desist communication."). However, a *per se* rule – that summary judgment on a § 1692d(5) claim is inappropriate whenever a debtor orally requests that calls cease – is inconsistent with the language and structure of the FDCPA.[7]

For one thing, courts have recognized that claims under § 1692d(5) call for a "fact-intensive inquiry" that takes into account all of the circumstances surrounding a pattern of collection calls. *See Kuntz*, 838 F.3d at 926. The question is whether the pattern of calls reflects an intent to annoy, abuse, or harass. The plain language of the statute forecloses strict liability whenever a handful of phone calls are placed after an oral request to stop calling. Here, five additional unanswered phone calls over three weeks, after additional documentation was sent, does not create a genuine issue as to the requisite intent regardless of whether an oral request to stop calling was effectively made. *Compare Saltzman*, 2009 WL 3190359, at *1, * (granting summary judgment for Defendant despite Plaintiff's allegation that she repeatedly requested that Defendant stop calling where there were no fewer than twenty unsuccessful calls and two successful calls over a one-month period) *with Muzyka v. Rash Curtis & Assocs.*, 2019 WL 2869114, at *5-*6 (denying summary judgment where Plaintiff testified she repeatedly told Defendant to stop calling and Defendant called more than a hundred times over approximately three years, sometimes multiple times a day).

More fundamentally, a separate provision directly addresses the procedures for requesting that communications cease. Under § 1692c(c), "[i]f a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate with the consumer with respect to such debt [subject to certain exceptions]." Section 1692c's writing requirement and exceptions would become superfluous if debt collectors are liable whenever they orally request communications cease regardless of the purpose of the communication. *See United Transp. Union v. BNSF Ry. Co.*, 710 F.3d 915, 928 (9th Cir. 2013) ("Under accepted canons of statutory interpretation,

[7] While the Ninth Circuit has reversed summary judgment under § 1692d in a case where a debt collector called a debtor at work twice after twice being told not to call her at work, there was evidence in the record in that case that the collections agent used a threatening and intimidating manner and made threats of garnishment and demands for overnight payments. *See Fox v. Citicorp Credit Servs.*, 15 F.3d 1507, 1516 (9th Cir. 1994). Here, by contrast, the recording reflects that the collection agent's tone was calm, and he made no demands or threats. *See* Defendant's Ex. G.

we must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." (quoting *Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991))).

Therefore, even if the request was effectively communicated, the Court would still conclude that Defendant's five additional calls are insufficient to demonstrate that Defendant repeatedly dialed Plaintiff's phone with the intent to annoy, abuse, or harass Plaintiff.

Plaintiff has failed to sustain her burden in this case to demonstrate a genuine dispute of material fact that Defendant's debt collection calls intended harassment, annoyance, or abuse. In short, there is no pattern of repeated calls on the same day, or calls every day or even every other day, or calls immediately after Plaintiff hung up or declined to answer. During Defendant's one, five-minute conversation with Plaintiff, Defendant simply relayed information from a bill prepared by Plaintiff's former landlord, and did not make demands or say anything threatening, intimidating, or harassing. No reasonable juror under the circumstances could infer from this record that Defendant's calls were made with the intent to harass, abuse, or annoy. The record here only supports one reasonable inference – that Defendant engaged in "a legitimate, albeit persistent, effort to reach [Plaintiff]." *Saltzman*, 2009 WL 3190359, at *7. Such efforts are not *per se* unlawful, as "Congress did not intend the FDCPA to completely bar any debt collection calls." *Krapf*, 2010 WL 2025323, at *3 (citation omitted). Accordingly, the Court will grant Defendant summary judgment on Plaintiff's § 1692d(5) claim.

ii. § 1692c(a)(1)

Under 15 U.S.C. § 1692c(a)(1), "[w]ithout the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location."

Defendant argues – and Plaintiff does not dispute – that no call was placed at a time that is presumptively inconvenient. *See* Dkt. 21, at 8-9; Dkt. 25, at 11-13. Instead, Plaintiff argues that Defendant was put on notice by Plaintiff saying, "I don't want to talk to you anymore." Dkt. 25, at 12.

As explained above, however, there is no genuine dispute that Plaintiff did not effectively communicate that she never wished to be contacted again by Defendant. Therefore, even if continued phone calls after a single oral request to cease communication were sufficient to raise a claim under § 1692c(a)(1), Plaintiff's claim would fail.

Moreover, assuming Defendant did hear Plaintiff say, "I don't want to talk to you anymore," that statement would be insufficiently specific to put Defendant on notice of a time or place that would be inconvenient for future calls. *See McEndree v. Rash Curtis & Assocs.*, 2012 WL 1640465, at *6 (granting summary judgment for Defendant on § 1692c(a)(1) claim where Plaintiff told Defendant "to quit calling me" but failed to specify what times or places would be inconvenient).

Accordingly, because the calls were not presumptively inconvenient and Defendant was not put on notice that the time and place of the calls after the April 6 conversation were inconvenient, Defendant is entitled to summary judgment on the § 1692c(a)(1) claim.

iii. Rosenthal Act Claim

The parties agree that Plaintiff's Rosenthal Act claim turns on the FDCPA claims. Dkt. 21, at 12; Dkt. 25, at 19. "A claim for violation of Rosenthal Act section 1788.17 simply requires showing that a defendant violated any of several provisions of the FDCPA." *Crockett v. Rash Curtis & Assocs.*, 929 F. Supp. 2d 1030, 1033 (N.D. Cal. 2013). Because Plaintiff fails to raise a triable issue as to the FDCPA claims, summary judgment is also warranted on the Rosenthal Act claim.

V. Conclusion

For the foregoing reasons, Defendant's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

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