

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOANNE ANGEL,

Plaintiff,

v.

AMERICAN RECOVERY SERVICES
INC.,

Defendant.

CASE NO. C12-0666-JCC

ORDER

This matter comes before the Court on Defendant’s Motion to Dismiss (Dkt. No. 7). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and grants the motion for the reasons explained herein.

I. BACKGROUND

On June 16, 2010, Defendant American Recovery Service Incorporated (“ARSI”) sent Plaintiff Joanne Angel written correspondence in which it offered to settle debt Ms. Angel owed to a third party. (Dkt. No. 1 at 2.) The offer called for a \$500 payment on or before June 25, 2010 and monthly payments of \$300 thereafter, due on the 25th of each month for 24 months. (Dkt. No. 1 at 3.) Ms. Angel accepted the offer and made the initial \$500 payment. *Id.* She also made the monthly payments through December 2011. *Id.* On December 29, 2011, ARSI called Ms. Angel’s attorney and left a voicemail stating that the December 2011 payment had not yet been received and that the account might be sent to the legal department “for further action.” (Dkt.

1 No. 1 at 3-4.) ARSI stipulates for the purposes of this motion that it had, in fact, received the
2 payment on December 23, 2011. (Dkt. No. 7 at 2 n1.)

3 Plaintiff's Complaint alleges that ARSI violated the Fair Debt Collection Practices Act
4 ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, by "falsely representing the character, amount, or legal
5 status" of her debt. (Dkt. No. 1 at 4.) ARSI moves to dismiss Plaintiff's claims under Federal
6 Rule of Civil Procedure 12(b)(6). (Dkt. No. 7.)

7 **II. DISCUSSION**

8 To survive a motion to dismiss for failure to state a claim, "a complaint must contain
9 sufficient factual matter, accepted as true, 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 672 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
10 570 (2007)). Although Rule 12(b)(6) does not require courts to assess the probability that a
11 plaintiff will eventually prevail, the allegations made in the complaint must cross "the line
12 between possibility and plausibility of entitlement to relief." *Id.* Courts must accept well-pled
13 facts as true, but conclusory allegations of law and unwarranted inferences will not defeat an
14 otherwise proper Rule 12(b)(6) motion. *Vasquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249 (9th
15 Cir. 2007).

17 ARSI contends that any relief for Plaintiff on the facts alleged is foreclosed by the Ninth
18 Circuit's decision in *Guerrero v. RJM Acquisitions*, 499 F.3d 926 (9th Cir. 2007). In *Guerrero*,
19 RJM, a debt collector, sent letters to the plaintiff regarding an outstanding debt, and the plaintiff
20 referred the matter to his attorney, who communicated with RJM on the plaintiff's behalf. RJM
21 ceased communication with the plaintiff and sent a letter to the attorney stating, *inter alia*, that it
22 was not a debt collection agency and was not subject to the FDCPA. *Id.* at 929. The plaintiff
23 sued RJM, alleging that the letters to himself and his attorney violated the FDCPA. The district
24 court granted the plaintiff's summary judgment motion, but the Ninth Circuit reversed, holding
25 that "communications directed solely to a debtor's attorney are not actionable under the Act." *Id.*
26 at 934. The court reasoned that Congress intended to treat lawyers and their debtor clients

1 differently under the FDCPA, and that “it appears that Congress viewed attorneys as
2 intermediaries able to bear the brunt of overreaching debt collection practices from which
3 debtors and their loved ones should be protected.” *Id.* at 935. Thus, in the Ninth Circuit, if an
4 alleged misrepresentation is made to the plaintiff’s attorney with no contact to the debtor, the
5 FDCPA has not been violated. *Id.* at 937.

6 The Court agrees with ARSI that *Guerrero* governs here. The only communication that
7 Ms. Angel alleges constituted a violation of the FDCPA was a communication to her attorney.
8 (Dkt. No. 1 at 3-4.) The Complaint contains no allegation that ARSI threatened or attempted to
9 contact Ms. Angel directly. In light of *Guerrero*, her claim is not actionable.

10 Plaintiff’s attempts to distinguish *Guerrero* are unavailing. She first argues that *Guerrero*
11 involved a misrepresentation of the law, which an attorney would be well-positioned to address,
12 as opposed to a misrepresentation of fact, which allegedly occurred here. (Dkt. No. 9 at 7.) The
13 Ninth Circuit in *Guerrero*, however, drew no distinction between statements of fact and
14 statements of law, nor did its reasoning suggest that it would be receptive to such a distinction.
15 Rather, the court noted that concerns about abusive or dishonest tactics by debt collectors
16 “quickly evaporate” when a debtor is represented by counsel who fields all communications
17 relevant to the debt collection. 499 F.3d at 939. Plaintiff also contends that the communication
18 here, unlike that in *Guerrero*, was actually directed at her, in that ARSI threatened to send the
19 matter to its legal department for further action. (Dkt. No. 9 at 8.) But Plaintiff does not allege
20 that any legal action by ARSI ultimately ensued or that she was served with a complaint or other
21 process directly. *Cf. Avery v. Gordon*, 2008 WL 4793686, No. 08-139-HU (D. Or. Oct. 27, 2008)
22 (distinguishing *Guerrero* on grounds that a counterclaim filed for debt is a demand for money
23 made directly to the debtor, regardless of the involvement of an attorney).

24 Finally, Plaintiff argues that she has alleged sufficient facts to state a claim under 15
25 U.S.C. § 1692(f), a “backstop” provision of the FDCPA that prohibits “unfair and
26 unconscionable” conduct not otherwise prohibited in the Act. (Dkt. No. 9 at 12.) Plaintiff seems

1 to suggest that § 1692(f) should be exempt from the holding in *Guerrero*, but she provides no
2 basis for that argument. Indeed, the Ninth Circuit did not limit its holding to specific provisions
3 of the FDCPA. It simply held that “communications directed solely to a debtor’s attorney are not
4 actionable under the Act.” 499 F.3d at 934.

5 **III. CONCLUSION**

6 Plaintiff has not alleged facts showing a plausible entitlement to relief, nor has she shown
7 that the defects in her claims could be cured through amendment. For these reasons, Defendant’s
8 motion to dismiss (Dkt. No. 7) is GRANTED, and Plaintiff’s claims are DISMISSED with
9 prejudice.

10 DATED this 22nd day of August 2012.

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15 John C. Coughenour
16 UNITED STATES DISTRICT JUDGE
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