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8 Monica Wasson

9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON

11 MYRON HARGREAVES,  
12 CORTNEY HALVORSEN, BONNIE  
13 FREEMAN, and all others similarly  
14 situated,

15 Plaintiffs,

16 vs.

17 ASSOCIATED CREDIT SERVICES,  
18 INC., a Washington Corporation, and  
19 PAUL J. WASSON AND JANE DOE  
20 WASSON, individually and the  
21 marital community,

22 Defendants.

No. 2:16-CV-00103-TOR

DEFENDANTS PAUL WASSON  
AND MONICA WASSON'S MOTION  
AND MEMORANDUM FOR  
SUMMARY JUDGMENT

Hearing Date: 1/10/2018 @ 9:00 am  
With Oral Argument

1           **1. Relief Requested.**

2           Wasson Defendants request the Court grant summary judgment on the remaining  
3 issue in this case: whether or not ACS's use of the Washington Courts Notice of  
4 Garnishment and Your Rights form was a bona fide error that should relieve all  
5 Defendants of liability in the event the trier of fact determines the form violates the  
6 FDCPA. Wasson Defendants request the Court dismiss all remaining claims in this  
7 matter against all Defendants.  
8  
9

10           **2. Procedural Background.**

11           On October 20, 2017, the Court granted Defendants' Motion to Dismiss for Failure  
12 to State a Claim or Alternatively Motion for Partial Summary Judgment. (ECF No. 90) In  
13 doing so, Plaintiffs' FDCPA claims regarding the adequacy of Defendants' "reason to  
14 believe" were dismissed along with all WCAA and WCPA claims. (ECF No. 90) The  
15 remaining FDCPA violation alleged by Plaintiffs is that Defendants sent "false" and  
16 "misleading" information to Mr. Hargreaves, Ms. Halvorsen, and Ms. Freeman  
17 concerning Plaintiffs' exemption rights. (ECF No. 14, ¶¶4.30 (Hargreaves), 5.12  
18 (Halvorsen), 6.20 (Freeman), 7.17).

21           **3. Undisputed Material Facts.**

22           ACS and Mr. Wasson endeavor to comply with all state and federal consumer  
23 protection laws in good faith and have never intentionally violated any consumer  
24

1 protection law. (LR 56.1, ¶¶1.7-1.10) In order for ACS to ensure they are in compliance  
2 with state and federal consumer protection laws, ACS takes the following specific steps:

- 3
- 4 a. Maintains specific policies and procedures aimed to ensure compliance  
5 with consumer protection laws;
- 6 b. Maintains a policy to strive to maintain the rights of all consumers;
- 7
- 8 c. Maintains a policy to enhance the knowledge of its collection  
9 professionals;
- 10 d. Has a compliance department, including ACS staff, dedicated to  
11 continually monitoring and researching federal and state regulations and  
12 court decisions affecting the credit and collection industry;
- 13
- 14 e. Retains membership in the American Collectors Association  
15 International (ACA), including review of ACA compliance alerts and  
16 utilization of “Searchpoints” and “Fastfax” as needed;
- 17
- 18 f. Retains membership in the Washington Collectors Association (WCA)  
19 and reviews WCA quarterly newsletters regarding industry news and  
20 updates;
- 21
- 22 g. Makes every effort to implement changes to ACS’s collection procedures  
23 for the benefit of both the consumer and ACS;
- 24

- 1 h. Disseminates pertinent information to employees through monthly  
2 meetings (also held weekly or daily as needed) in order to update staff  
3 regarding any news and updates that impact ACS's collection policies,  
4 including procedures that may be updated from time to time; and  
5  
6 i. Updates forms used by ACS as necessary to conform to the Washington  
7 Courts website forms and collection laws, including signing up for  
8 automatic updates via e-mail from the Washington Courts website to  
9 ensure timely updates to ACS forms.  
10

11 (LR 56.1, ¶2.9)

12 ACS is the "judgment creditor" against each named Plaintiff and that ACS, not  
13 Mr. Wasson, had a duty to mail or cause to be mailed to the judgment debtors, by  
14 certified mail, a Notice of Garnishment and Your Rights form as prescribed in RCW  
15 6.27.140. (LR 56.1, ¶4.1; RCW 6.27.130) Until this lawsuit was initiated, Defendants  
16 believed it ACS was doing just that. (LR 56.1, ¶2.5)  
17  
18

19 The Notice of Garnishment and Your Rights form prescribed in RCW 6.27.140  
20 under, "Other Exemptions," states as follows:

21 If the garnishee holds other property of yours, some or all  
22 of it may be exempt under RCW 6.15.010, a Washington statute  
23 that exempts **certain property of your choice (including**  
24 **money in a bank account up to \$200 for debts owed to state**  
**agencies, or up to \$500.00 for all other debts)** and certain

1 other property such as household furnishings, tools of trade, and  
2 a motor vehicle (all limited by differing dollar values). RCW  
3 6.27.140.<sup>1</sup>

4 The Washington Courts Notice of Garnishment and Your Rights form (WPF  
5 GARN 01.0450 (06/2012)- RCW 6.27.140) (“Washington Courts form”) that was held  
6 out to the public to be compliant with RCW 6.27.140 stated as follows under “Other  
7 Exemptions”:

8 If the garnishee holds other property of yours, some or all  
9 of it may be exempt under RCW 6.15.010, a Washington statute  
10 that exempts **up to five hundred dollars (\$500) of property of  
11 your choice (including up to two hundred dollars (\$200) in  
12 cash or in a bank account)** and certain other property such as  
13 household furnishings, tools of trade, and a motor vehicle (all  
14 limited by differing dollar values). (Dec. of M. Winston, Ex. A)

15 The Washington Courts form that was updated in June 2012 was in fact the same  
16 language sent to Mr. Hargreaves, Mr. Halvorsen, and Ms. Freeman by ACS. (LR  
17 56.1, ¶2.1; Dec. of M. Winston, Ex. A) The bolded language above, less than half of one  
18 sentence of the entire form, is Plaintiffs’ sole basis for claiming Defendants sent “false”  
19 and “misleading” information to each Plaintiff regarding their exemption rights. (See

20  
21 <sup>1</sup> Note that WPF GARN 01.0450 was updated in July 2017 in order to comport to the  
22 current language in RCW 6.27.140, not due to any 2017 change in the law. (Dec. of M.  
23 Winston, Ex. B)

1 ECF No. 14, ¶¶4.30 (Hargreaves), 5.12 (Halvorsen), 6.20 (Freeman), 7.17). The language  
2 at issue summarizes the exemptions offered under RCW 6.15.010, which have been  
3 unchanged since 2012. The Washington Courts form at issue indicates on its face that it  
4 was updated in June 2012. (Dec. of M. Winston, Ex. A)

5  
6 When there was a change to the garnishment statutes in 2012, ACS checked the  
7 Washington Courts website and updated the garnishment notice in ACS's system  
8 according to the Washington Courts form (held out by the Washington Courts website to  
9 be the form prescribed in RCW 6.27.140) in order to ensure debtors were being properly  
10 informed of their exemption rights. (LR 56.1, ¶2.2) ACS's Exemption Claim form and  
11 Notice of Garnishment and Your Rights form were combined into one 4-page document  
12 and, years later, sent by ACS to each Plaintiff. (LR 56.1, ¶2.8) Rather than independently  
13 drafting a new form every time there is a change in garnishment laws, it is Mr. Wasson's  
14 practice to consult the Washington Court's website use the language from the form(s)  
15 published on the website. (LR 56.1, ¶¶4.2, 4.11) Mr. Wasson likely advised ACS to do  
16 the same in the case of the 2012 Notice of Garnishment and Your Rights update. (LR  
17 56.1, ¶¶2.2, 2.9, 4.2)

18  
19 ACS, with the assistance of Mr. Wasson's office, sent the Exemption Claim form  
20 Notice of Garnishment and Your Rights form out to each of the three named Plaintiffs via  
21 certified mail believing that the form was a recitation of RCW 6.27.140. (LR 56.1, ¶4.5)

1 Mr. Hargreaves and Ms. Freeman did not receive any form about garnishment rights from  
2 ACS because they failed to sign for their certified mail. (LR 56.1, ¶3.9) Ms. Halvorsen  
3 received the Notice of Garnishment and Your Rights via certified mail, but still claimed a  
4 \$500 cash exemption (clearly understanding that her cash exemption right was not  
5 limited to \$200). (LR 56.1, ¶3.9)

7 Other than the short explanation the exemptions in RCW 6.15.010 bolded above,  
8 the rest of the Notice of Garnishment and Your Rights forms sent to each Plaintiff was  
9 exactly the same as RCW 6.27.140. (LR 56.1, ¶2.8; see Dec. of M. Winston, Exs. A, B)  
10 ACS's form's citation to RCW 6.15.010 where debtors could seek further information  
11 and/or clarification on what exemptions may apply to them was correct. (LR 56.1, ¶2.8)  
12 The exemption information under "Bank Accounts" was also correct. At end of the notice  
13 in all capital letters the forms read, "THE LAW ALSO PROVIDES OTHER  
14 EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO  
15 ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY  
16 TO AVOID LOSS OF RIGHTS BY DELAY." (LR 56.1, ¶2.8)

17  
18  
19  
20 Since learning of the discrepancy between RCW 6.27.140 and WPF GARN  
21 01.0450, ACS updated the notice sent out to debtors to conform exactly to RCW 6.27.140  
22 in the summer of 2016. (LR 56.1, ¶2.9) ACS also contacted the Administrative Office of  
23 the Courts to inform them of the discrepancy and seek clarification as to whether such  
24

1 discrepancy was intentional or otherwise remedy the issue. (LR 56.1, ¶2.10) The  
2 Washington Pattern Forms Committee is the central authority for standardized court  
3 forms in the State of Washington that was established in 1978 by order of the  
4 Washington State Supreme Court in order to implement the adoption of forms, consider  
5 requests for the redrafting of adopted forms, and oversee all necessary redrafting.<sup>2</sup>  
6 Defendants relied on a form approved and adopted by the Washington Pattern Forms  
7 Committee in good faith and sent such form out to the three named Plaintiffs thinking  
8 that they were sending a form that had the exact same language as RCW 6.27.140 and in  
9 compliance with RCW 6.27.130. (LR 56.1, ¶2.5)  
10  
11

12 **4. Legal Argument.**

13 **a. Summary judgment regarding Defendants' bona fide error defense**  
14 **should be granted.**

15 Summary judgment is appropriate when the moving party establishes that there are  
16 no genuine issues of material fact for trial. Fed. R. Civ. P. 56(a). Evidence that may be  
17 relied on at the summary judgment stage includes, "depositions, documents,  
18 electronically stored information, affidavits or declarations, stipulations...admissions,  
19  
20  
21

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22 <sup>2</sup>[https://www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee\\_id=1](https://www.courts.wa.gov/committee/index.cfm?fa=committee.home&committee_id=1)



1 interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A). Summary  
2 judgment is appropriate here because there are no disputed material facts surrounding the  
3 content of the exemption notices sent to Plaintiffs, the fact that such content came from  
4 the Washington Courts website, or that Defendants sent such notices in good faith  
5 reliance on the Washington Courts website’s accuracy. The facts material to Defendants’  
6 bona fide error defense, including procedures in place to avoid FDCPA violations, cannot  
7 be disputed by Plaintiffs and the Court should determine as a matter of law whether the  
8 bona fide error defense relieves Defendants of liability.  
9  
10

11 **b. Defendants did not believe the Washington Courts form was “false,”**  
12 **“misleading,” or otherwise in violation of the FDCPA.**

13 The purpose of the FDCPA is not to impose unnecessary restrictions on ethical  
14 debt collectors. See Bingham v. Collection Bureau, Inc., 505 F. Supp. 864, 870 (D.N.D.  
15 1981). A debt collector generally violates the FDCPA if they use a “false, deceptive, or  
16 misleading representation or means in connection with the collection of any debt.” 15  
17 U.S.C. §1692e. Considering the totality of the Notice of Garnishment and Your Rights  
18 sent to each Plaintiff in this case, it is disputed as to whether the notice was in fact “false”  
19 and/or “misleading” as alleged by Plaintiffs, resulting in a FDCPA violation. (ECF  
20 No. 14, ¶7.17) In fact, the notice did not mislead any of the three named Plaintiffs about  
21 their exemption rights; Ms. Halvorsen claimed the maximum (\$500.00) cash exemption  
22  
23  
24

1 and Mr. Hargreaves and Ms. Freeman failed to sign for their certified mail to even  
2 receive the notice. (LR 56.1. ¶3.9) For purposes of this motion, Wasson Defendants ask  
3 the Court to presume that the sending of the form is in fact a FDCPA violation, even  
4 though this is disputed by Defendants. Even if the sending of the Washington Courts  
5 form was a FDCPA violation, it was a bona fide error and Defendants are **not** liable for  
6 such violation.  
7

8  
9 **c. Defendants are relieved of liability for any FDCPA violation**  
10 **resulting from the sending of the Washington Courts exemption**  
11 **notice to Plaintiffs because, even if it was a FDCPA violation, it was a**  
12 **clear bona fide error.**

13 A debt collector may not be held liable in any action brought under the FDCPA if  
14 the debt collector shows by a preponderance of evidence that the violation: 1) was not  
15 intentional; 2) resulted from a bona fide error; and 3) notwithstanding the maintenance of  
16 procedures reasonably adapted to avoid any such error. 15 U.S.C. § 1692k(c). The debt  
17 collector has the burden of proof. Reichert v. Nat'l Credit Sys., Inc., 531 F.3d 1002, 1006  
18 (9th Cir. 2008). The intent prong of the bona fide error defense is a subjective test, while  
19 the bona fide and procedures prongs are objective tests. Johnson v. Riddle, 443 F.3d 723,  
20 729 (10th Cir. 2006). The bona fide error defense does not apply when a debt collector  
21 mistakenly interprets the legal requirements of the FDCPA. Gray v. Suttell & Associates,

1 123 F. Supp. 3d 1283, 1288 (E.D. Wash. 2015) (citing Jerman v. Carlisle, McNellie, Rini,  
2 Kramer & Ulrich LPA, 559 U.S. 573, 580 n. 4 (2010)).

3  
4 In Kort, summary judgment was granted and affirmed relieving a collection agency  
5 of liability based on the affirmative defense of bona fide error when the collection agency  
6 relied on a Department of Education (“DOE”) form garnishment notice and sent the DOE  
7 form out to debtors. Kort v. Diversified Collection Servs., Inc., 394 F.3d 530, 535 (7th  
8 Cir. 2005) (reasoning that even if the notice violated the FDCPA by containing  
9 misleading information about the HEA unemployment exemption, the violation was  
10 excusable given the collection agency’s reliance on the DOE form).

11  
12 **i. Defendants had no intention to violate the FDCPA when**  
13 **sending the Washington Courts form language to Plaintiffs.**

14 A FDCPA violation under §1692e must be knowing or intentional or else it would  
15 render the bona fide error defense in §1692k(c) superfluous. Clark v. Capital Credit &  
16 Collection Servs., Inc., 460 F.3d 1162, 1176 (9th Cir. 2006); see also 15 U.S.C. §§1692e;  
17 1692k. A debt collector must show that the violation was unintentional, not that the  
18 underlying act itself was unintentional. Johnson v. Riddle, 443 F.3d 723, 728 (10th Cir.  
19 2006) In other words, a violation is unintentional for purposes of the FDCPA's bona fide  
20 error defense if the debt collector can establish the lack of specific intent to violate the  
21 Act. Id. This is a subjective test. Id. In Kort, the Seventh Circuit found that the collection  
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1 agency satisfactorily showed that the notice wasn't intended to be false or unfair because  
2 it adhered to the DOE form. Kort v. Diversified Collection Servs., Inc., 394 F.3d 530,  
3 537 (7th Cir. 2005) (reasoning that using the DOE form showed that the debt collector  
4 intended to provide accurate information taken from the relevant regulatory agency).  
5

6 Here, even if Defendants violated the FDCPA by sending the Washington Courts  
7 form, they swear under penalty of perjury that they did not intend for such notice to  
8 violate the FDCPA. Similar to the Kort case, Defendants lack of intention to violate the  
9 FDCPA is further evidenced by their use of the exact language in the Washington Courts  
10 form. Id. at 537. Defendants lacked specific intent to violate the FDCPA or misinform  
11 debtors regarding their exemption rights.  
12

13 **ii. Defendants' act of sending the Washington Courts form to**  
14 **Plaintiffs was bona fide.**

15 A bona fide error, if made, is an error made in good faith; a genuine mistake, as  
16 opposed to a contrived mistake. Gray v. Suttell & Associates, 123 F. Supp. 3d 1283, 1294  
17 (E.D. Wash. 2015)(citing Kort v. Diversified Collection Servs., Inc., 394 F.3d 530, 538  
18 (7th Cir. 2005)); see also Black's Law Dictionary (10th ed. 2014) (defining "bona fide" as  
19 "1. Made in good faith; without fraud or deceit. 2. Sincere; genuine.")  
20  
21

22 ACS explains that they updated their form after the June 2012 changes to  
23 RCW 6.27.140 by referencing the Washington Courts website and directly pulling the  
24

1 language from the Washington Courts form to create ACS's new Notice of Garnishment  
2 and Your Rights form that was sent to Plaintiffs. Dave Solberg and Paul Wasson have  
3 declared under penalty of perjury that such act was done in good faith and  
4 unintentionally. (LR 56.1, ¶¶1.7-1.10, 4.10) Eric Solberg's declaration verifies that he  
5 believed the updates made to ACS's Notice of Garnishment and Your Rights form were  
6 consistent with the newly amended statute in 2012. Plaintiffs have disclosed no evidence  
7 to show that ACS's usage of the Washington Courts form was in any way a contrived  
8 mistake or that it was made in an effort to mislead, fraudulently deceive debtors about  
9 their exemption rights. ACS simply followed Paul's advice to utilize the Washington  
10 Courts form language rather than attempting to craft a new form from scratch.

11  
12  
13 **iii. Defendants had reasonable procedures in place to avoid the**  
14 **error.**

15 The FDCPA does not require debt collectors to take every conceivable precaution  
16 to avoid errors; rather, it only requires reasonable procedures. See Hyman v. Tate, 362  
17 F.3d 965, 968 (7th Cir.2004) ("Although [the debt collector] could have done more ...,  
18 §1692k(c) only requires collectors to adopt reasonable procedures."). "[T]he broad  
19 statutory requirement of procedures reasonably designed to avoid "any" bona fide error  
20 indicates that the relevant procedures are ones that help to avoid errors like clerical or  
21 factual mistakes. Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S.

1 573, 587 (2010). For example, adoption of a form produced by federal agency charged  
2 with regulating the statute in question is an “entirely reasonable procedure to avoid  
3 misinterpreting and misapplying a federal statute....” Kort v. Diversified Collection  
4 Servs., Inc., 394 F.3d 530, 538 (7th Cir. 2005).

6 Here, Defendants have extensively outlined the procedures in place to avoid  
7 FDCPA violations and ensure the accuracy of their forms, including maintenance of  
8 certain policies and procedures, consulting the Washington Courts website, and  
9 membership in the ACA and WCA. (See §3 hereinabove; LR 56.1. ¶¶3.1-3.9; 4.1-4.12)  
10 Mr. Wasson was not “judgment creditor” responsible for sending the form according to  
11 RCW 6.27.130, but he assisted ACS in implementing and maintaining the reasonable  
12 procedures they put in place in order to avoid FDCPA violations. While ACS prepared  
13 the 4-page Exemption Claim form and Notice of Garnishment and Your Rights form, Mr.  
14 Wasson’s legal assistant helped ACS facilitate mailing it to each Plaintiff. Like the Kort  
15 case, here Defendants adopted a form from a source they felt was reliable and used the  
16 form believing that use of the form was compliant with the FDCPA. Kort v. Diversified  
17 Collection Servs., Inc., 394 F.3d 530 (7th Cir. 2005). The exercise of Defendants using  
18 the Washington Courts website to ensure they were using updated forms after the law  
19 changed in 2012 was, in and of itself, a reasonable procedure Defendants had in place to  
20 avoid FDCPA violations.  
21  
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1                    **iv. Neither ACS nor Mr. Wasson mistakenly interpreted the legal**  
2                    **requirements of the FDCPA.**

3                    This case is not one in which a debt collector mistakenly interpreted the legal  
4 requirements of the FDCPA. Like Kort, here Defendants did not exercise legal judgment  
5 regarding any interpretation of the FDCPA or Washington garnishment laws. See Kort v.  
6 Diversified Collection Servs., Inc., 394 F.3d 530, 537 (7th Cir. 2005) Instead, the wrong  
7 language was simply copied and pasted into ACS's form Notice of Garnishment and  
8 Your Rights. If anything, it was the Washington Pattern Forms Committee who  
9 mistakenly interpreted the law. Defendants' mistake is akin to a clerical error, not a  
10 mistake of law.  
11

12                    **d. Plaintiffs' claims for damages should be dismissed.**

13                    Plaintiffs request actual and compensatory damages pursuant to RCW 19.86 et  
14 seq., 15 U.S.C. 1692 et seq. (ECF No. 24, ¶10.7) Plaintiffs also request statutory damages  
15 in the amount of one thousand dollars \$1,000 or one percent (1%) of Defendants' net  
16 worth, pursuant to 15 U.S.C. 1692 et seq. (ECF No. 24, ¶10.9) In the event that the Court  
17 dismisses the remaining claims against Defendants, Wasson Defendants request  
18 Plaintiffs' claims for damages be likewise dismissed.  
19  
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1           **WHEREFORE**, Defendants request the Court grant summary judgment for  
2 Defendants and dismiss Plaintiffs' remaining claims accordingly.

3           DATED this 1<sup>st</sup> day of November, 2017.

4  
5   s/Molly M. Moffett, WSBA No. 50416  
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1 I hereby certify that on the 1<sup>st</sup> day of November, 2017, I electronically filed the  
2 foregoing with the Clerk of the Court using the CM/ECF System which will send  
3 notification of such filing to the following:  
4

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