APPENDIX

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AKLILU YOHANNES,
Plaintiff-Appellant,

v.

OLYMPIC COLLECTION INC (OCI); et al.,
Defendants-Appellees,

No. 22-36059
D.C. No. 2:17-cv-00509-RSL
MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Argued and Submitted January 25, 2024
Pasadena, California

Before: GOULD and RAWLINSON, Circuit Judges, and ADELMAN,** District Judge.

Partial Concurrence and Partial Dissent by Judge ADELMAN.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation.

Aklilu Yohannes appeals pro se from the district court's order granting summary judgment in favor of Olympic Collection Inc., et al. (Olympic Collection) on his claim brought under 42 U.S.C. § 1983. We have jurisdiction pursuant to 28 U.S.C. § 1291. "We review de novo a district court's decision to grant summary judgment." *Urbina v. Nat'l Bus. Factors Inc.,* 979 F.3d 758, 762 (9th Cir. 2020). "Summary judgment is appropriate when there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law ...." *Id.* (citation and internal quotation marks omitted). "[V]iew[ing] the evidence in the light most favorable to" Yohannes, id., we affirm in part, reverse in part, and remand.

In the previous appeal, we vacated the district court's judgment, and remanded for further evaluation of Yohannes's due process claims. See *Yohannes v. Olympic Collection Inc.*, No. 19-35888, 2022 WL 911782, at *2 (9th Cir. Mar. 29, 2022). On remand, the district court again granted summary judgment in favor of Olympic Collection on the basis that Yohannes only alleged "misuse or abuse of the statute."

Olympic Collection initially filed a complaint against Yohannes in Washington state court. Although Yohannes disputes that he was served, default judgment was entered against him. Olympic Collection subsequently served a writ of garnishment on Yohannes's earnings. Olympic Collection alleged that it mailed the writ of garnishment to Yohannes, but the notice was returned as "undeliverable."

1. Yohannes does not allege only "misuse or abuse of the statute" but a violation of his constitutional rights. See *Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 932–33 (1982).

Under Washington State law, "[w]rits of garnishment may be issued in district court . . . by the attorney of record for the judgment creditor." Revised Code of Washington § 6.27.020(2). However, Olympic Collection's declaration of service is devoid of a stamp evidencing that the declaration was filed in state court. Neither does the record contain proof that Olympic Collection mailed or served the writ of garnishment on Yohannes, as required by § 6.27.130(1). Olympic Collection did not produce the notice marked "undeliverable," or any other proof of attempted service. Nor has it demonstrated that the requisite affidavit declaring that service was attempted was filed with the state court. See § 6.27.130(3). The parties represented that the case files have been destroyed by the state court, apparently in violation of Washington's retention schedule.[1]

Yohannes has raised a genuine dispute of fact regarding whether these events go beyond mere "misuse or abuse of the statute," and are attributable to the unconstitutional "procedural scheme created by the statute." *Lugar,* 457 U.S. at 941–42.

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[1] In civil cases in which the judgment has not been paid or performed, Washington State district courts are required to retain records for 10 years after the date of judgment. See WASHINGTON SECRETARY OF STATE, District and Municipal Courts Records Retention Schedule at *5–6 (Oct. 2023), https://www2.sos.wa.gov/archives/recordsmanagement/managing-county- records.aspx.

Consequently, the district court erred in granting summary judgment in favor of Olympic Collection. See *Urbina,* 979 F.3d at 765.

2. Olympic Collection is appropriately characterized as a state actor because "[t]he nominally private character of [Olympic Collection] is overborne by the pervasive entwinement of [the state court]." *Brentwood Acad. v. Tennessee Secondary Sch. Athletics Ass'n,* 531 U.S. 288, 298 (2001). Under the Washington statute, "[t]he writ [of garnishment] is issuable on the affidavit of the creditor or his attorney . . . without participation by a judge." *North Georgia Finishing, Inc. v. Di-Chem, Inc.,* 419 U.S. 601, 607 (1975). Thus, "the State has created a system whereby state officials will attach property on the *ex parte* application of one party to a private dispute." *Lugar, 457 U.S. at 942*; see also Brentwood Acad., 531 U.S. at 300–02 (observing that the delegation of exclusive public authority may constitute state action). "If the creditor-plaintiff violates the debtor-defendant's due process rights by seizing his property in accordance with statutory procedures, there is little or no reason to deny to the latter a cause of action under the federal statute, § 1983, designed to provide judicial redress for just such constitutional violations." *Lugar,* 457 U.S. at 934.

3. We agree with the district court's ruling that Yohannes's facial due process challenge fails under *Mathews v. Eldridge*, 424 U.S. 319 (1976).

4. The district court complied with our mandate by limiting its decision to Yohannes's due process claims. See *Yohannes*, 2022 WL 911782 at *2 ("vacat[ing] and remand[ing] to the district court . . .

to evaluate Yohannes's due process claims") (emphasis added).

5. Finally, assuming arguendo that this issue was raised in a timely fashion, the district court acted within its discretion when denying Yohannes's second request to amend his complaint. See Cafasso U.S. ex rel. v. Gen. Dyn. C4 Sys., Inc., 637 F.3d 1047, 1058 (9th Cir. 2011).

Respectfully, our colleague in partial dissent mischaracterizes the majority's analysis. As explained in the majority disposition, Yohannes raised a claim under § 1983 that Olympic Collection failed to provide the notice required under the Due Process Clause of the United States Constitution. Olympic Collection sought to establish compliance with this constitutional obligation by representing that it had complied with the Washington statute, but it did not comply with the statute, as recognized by the district court. Rather than asserting that Olympic Collection's actions violated state law, Yohannes asserted that its actions violated the Constitution's due process clause by garnishing his wages without providing him the constitutionally required notice.

Our esteemed colleague selectively quotes some language from Lugar, but ignores that portion of Lugar that recognizes the "applicability of due process standards to . . . state-created attachment procedures . . . when the state has created a system whereby state officials will attach property on the ex parte application of one party to a private dispute." 457 U.S. at 942.

We also reiterate that there was state action in this case. See North Georgia Finishing, 419 U.S. at 607–08 (applying due process protections when the state statute permitted issuance of a writ of garnishment at the request of a private party "without participation by a judge"); see also Brentwood Acad., 531 U.S. at 300–02 (observing that the delegation of exclusive public authority may constitute state action).

Because we conclude that the district court erred in granting summary judgment in favor of Olympic Collection on Yohannes's due process claims, we reverse and remand for trial of these claims. We affirm the district court's rulings on all other issues raised by Yohannes.

AFFIRMED in part, REVERSED in part, and REMANDED. Costs awarded to Plaintiff.

ADELMAN, District Judge, concurring in part and dissenting in part:

I concur in the parts of the memorandum in which the majority concludes that the district court correctly rejected Yohannes's facial due-process claim, correctly limited its decision to the due-process claims, and acted within its

discretion when denying Yohannes's second request to amend his complaint. However, I dissent from the majority's conclusion that Yohannes may pursue an as-applied due-process claim against Olympic Collection under 42 U.S.C. § 1983.

Yohannes's as-applied due-process claim alleges that the debt collectors who used the State of Washington's garnishment statute to garnish his earnings violated the procedural requirements of the statute and, for that reason, deprived him of property without due process of law. However, Olympic Collection is a private party and thus is not generally subject to liability under § 1983. To be actionable under § 1983, "the conduct allegedly causing the deprivation of a federal right" must "be fairly attributable to the State." Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 937 (1982). The Supreme Court has applied a two-part test to the question of fair attribution. "First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the state or by a person for whom the State is responsible." Id. "Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor." Id. A person may be a state actor if "he is a state official," if "he has acted together with or has obtained

significant aid from state officials," or "his conduct is otherwise chargeable to the State." *Id.*

In the present case, the first part of the fair-attribution test is met insofar as Yohannes brings a facial challenge to the garnishment statute. Under Lugar, "the procedural scheme created by the statute obviously is the product of state action." Id. at 941. However, as the majority correctly concludes, the district court was right to reject Yohannes's facial challenge to the procedural scheme created by the statute on the merits. Thus, even if Olympic Collection were a state actor for purposes of this facial challenge, Yohannes would be entitled to no relief under § 1983.

The claim that the majority sends back to the district court is Yohannes's claim that Olympic Collection violated the garnishment statute by failing to properly serve him with notice of the garnishment and file proof of service with the court, as the statute requires. See Revised Code of Washington § 6.27.130(1) & (3). But under Lugar, this claim is not actionable under § 1983 because it challenges only private action.

In *Lugar*, the Supreme Court addressed a due-process challenge to a Virginia statute creating an ex parte pre-judgment attachment procedure. 457 U.S. at 924. The Court construed the complaint as alleging two due-process claims: one challenging the statute itself, and one alleging that the private actors "invoked the statute without the grounds to do so." Id. at 940–41. This second claim alleged that the private actors engaged in acts that were "unlawful under state law." Id. at 940. The Court held that the second

claim did not state a cause of action under § 1983 because it challenged only private action. Id. The Court reasoned that if the private conduct "could not be ascribed to any governmental decision" and if the defendants "were acting contrary to the relevant policy articulated by the State," then the defendants' conduct "could in no way be attributed to a state rule or a state decision." Id.

In the present case, Yohannes's as-applied challenge alleges that Olympic Collection violated the Washington garnishment statute by failing to serve him with notice and file proof of service of such notice with the court, as the statute requires. In other words, he alleges that Olympic Collection's actions were "unlawful under state law." Lugar, 457 U.S. at 940. This claim does not challenge the adequacy of the procedures created by the garnishment statute for giving notice. Indeed, the majority has concluded that the district court correctly granted summary judgment on Yohannes's separate facial due-process claim alleging that the notice provisions in the statute are constitutionally defective. If, as Yohannes alleges in the as-applied claim, Olympic Collection failed to comply with the state-mandated procedures for garnishing his wages, then its conduct "could in no way be attributed to a state rule or a state decision." Id. at 940. Instead, Olympic Collection would have "act[ed] contrary to the relevant policy articulated by the State." Id. Thus, under Lugar, Yohannes's as-applied due-process claim does not present a cause of action that is actionable under § 1983, and the district court correctly granted summary judgment to Olympic Collection on that claim.

Because, in my view, Olympic Collection's alleged failure to properly serve Yohannes with notice of the garnishment and file proof of service with the court were not acts that could be "ascribed to any governmental decision," Lugar, 457 U.S. at 940, I need not address the second part of the fair-attribution test, i.e., whether Olympic Collection is appropriately characterized as a state actor.

In sum, because I conclude that Yohannes's as-applied due-process claim challenges only private action, I respectfully dissent from the majority's partial reversal of the district court. The district court should not be required to have a trial over whether Olympic Collection failed to properly serve notice of the garnishment as required by state law, because even if it did, Yohannes would not be entitled to damages under § 1983. Accordingly, I would affirm the judgment of the district court in full.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AKLILU YOHANNES,
Plaintiff,

v.

OLYMPIC COLLECTION INC, et al.,

Defendants.

Case No. C17-509-RSL

ORDER
GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT AND
DENYING PLAINTIFF'S
MOTION FOR DECLARATORY RELIEF

This matter comes before the Court on defendants' "Motion for Summary Judgment" (Dkt. # 150), plaintiff's "Motion for Declaratory Relief" (Dkt. # 162), and plaintiff's "Motion for Leave to File a Contemporaneous Dispositive Motion" (Dkt. # 166). Having considered the motions and the record contained herein, the Court finds as follows:

I. BACKGROUND

A. Factual History

The Court has previously made detailed findings of fact pertaining to plaintiff's claims. See Dkt. # 141. Those facts are incorporated herein by reference. The following recitation of facts from the Ninth Circuit highlights those most relevant to the instant motions:

> Plaintiff Aklilu Yohannes received dental treatment from Baker Dental Implants and Periodontics ("Baker Dental") in late 2002. On February 14, 2006, Appellees Olympic Collection, Inc ("OCI") received an Assignment of Claims that assigned Appellant's Baker Dental bill for $389.03 to OCI.
>
> On March 1, 2006, Mr. Norman Martin, as counsel for OCI, filed OCI's complaint against [plaintiff] in the Snohomish County District Court in Washington State ("Snohomish action"). In the Snohomish action, OCI sought to collect on the Baker Dental debt that had a principal amount of $389.03, plus interest to the date of filing in the amount of $122.53, plus interest, from the date of the judgment, fees and costs, totaling $799.56.
>
> On March 27, 2006, OCI employed a process server, Isaac Delys, to serve Appellant. Delys completed a declaration of service on

March 27, 2006, indicating that he served the Appellant OCI's complaint on March 26, 2006, at 11905 Highway 99, Everett, in Snohomish County after arranging a meeting with Appellant via telephone.

On May 1, 2006, the court sitting in the Snohomish action entered a default judgment against [plaintiff]. After the entry of default, OCI began its attempts to collect on the judgment. OCI had difficulty finding [plaintiff]'s address and employer, so the collection efforts were paused.

Ten years later, OCI discovered that [plaintiff] worked for the United States Department of Transportation. After reviewing [plaintiff]'s file, OCI noticed that the default judgment, for the Baker Dental bill, was due to expire on May 1, 2016. [Defendants] then renewed their attempts to collect on the garnishment against Yohannes. OCI's attorney signed the Writ of Garnishment for Continuing Lien on Earnings directed to the United States Department of Interior ("DOI"), which has responsibility for payroll services for several federal agencies, including the DOT.

The DOI filed an Answer to the Writ of Garnishment in April 2016. Afterwards, DOI sent Yohannes a letter informing him of the garnishment order entered against him and began garnishing his wages. Prior to receipt of the letter from the DOI, Yohannes alleges that he had no knowledge of the existence of any judgment against him. [Plaintiff]'s checks were garnished in May 2016 by $623.71 and $623.72, respectively. Because the judgment had expired at the beginning of May 2016, OCI

> returned the money, cleared the debt from [plaintiff]'s credit report, and released the Writ of Garnishment. [Plaintiff] deposited OCI's returned check into his account on June 27, 2016.
>
> Several months later, [plaintiff] filed the underlying action in the United States District Court for the Western District of Washington. After proceedings before the district court, [plaintiff]'s claims were dismissed on OCI's motion for summary judgment.

Yohannes v. Olympic Collection, Inc., No. 19-35888, 2022 WL 911782, at *1 (9th Cir. 2022).

B. Procedural History

Plaintiff's initial complaint alleged claims against defendants for (1) false or misleading representations under 15 U.S.C. § 1692e; (2) impersonation of an attorney under 15 U.S.C. § 1692e(3); (3) impermissible communications with a third party under 15 U.S.C. § 1692c(b); (4) unauthorized practice of law under RCW § 19.16.250(5) and 15 U.S.C. § 1692e(9); (5) unauthorized collection under 15 U.S.C. § 1692f(1); (6) false representations under 15 U.S.C. § 1692e(2)(A); (7) violations of Washington's Consumer Protection Act; (8) violations of due process under § 1983; (9) abuse of process; (10) defamation; and (11) fraud. Dkt. # 141. On October 11, 2019, this Court dismissed all eleven of plaintiff's claims on summary judgment. Id. Yohannes filed a notice of appeal on October 22, 2019, challenging this Court's summary judgment ruling. Dkt. # 143. On appeal, the Ninth Circuit addressed only plaintiff's due process claim, specifically that "RCW § 6.27 allowed execution of the Writ of Garnishment and the seizure of his wages in the

absence of any service on him and the absence of the required state court filings." Yohannes, 2022 WL 911782, at *2. The court noted that:

> RCW § 6.27.130(1) requires a judgment creditor to mail a judgment debtor copies of the writ of garnishment, the judgment creditor's affidavit submitted in application of the writ, and the notice and claim form prescribed in RCW § 6.27.140. Importantly, RCW § 6.27.130(3) requires that when service is made, by mail or personally, by an individual other than a sheriff, the judgment creditor must file an affidavit with the state court showing that the judgment creditor fulfilled its service duties under 6.27.130(1).

Id. Despite this requirement, the Ninth Circuit found that the evidence before it suggested that Yohannes never received the required notice, and OCI never filed the required affidavit. Id. The court was concerned that "in this case, if RCW § 6.27 permitted a writ of garnishment to issue without a process by which service to the debtor is confirmed by the state court before execution of the writ of garnishment, then such a procedure would violate due process as applied." Id. Accordingly, the Ninth Circuit "vacate[d] and remand[ed] to [this Court] for further proceedings to evaluate Yohannes's due process claims in a manner consistent with this decision." Id.

II. STANDARD OF REVIEW

A. Summary Judgment

A party is entitled to summary judgment if the "movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Under Rule 56, the party seeking summary dismissal

of the case "bears the initial responsibility of informing the district court of the basis for its motion," Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986), and "citing to particular parts of materials in the record" that establish the absence of a genuine issue of material fact, Fed. R. Civ. P. 56(c). Once the moving party satisfies its burden, it is entitled to summary judgment if the non-moving party fails to designate "specific facts showing that there is a genuine issue for trial." Celotex, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). The Court must "view the evidence in the light most favorable to the nonmovant and draw all reasonable inferences in the nonmovant's favor." City of Pomona v. SQM N. Am. Corp., 750 F.3d 1036, 1049 (9th Cir. 2014). Although the Court must reserve genuine issues regarding credibility, the weight of the evidence, and legitimate inferences for the trier of fact, the "mere existence of a scintilla of evidence in support of the non-moving party's position will be insufficient" to avoid judgment. Id. (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 252 (1986)). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." Id. (quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)).

B. Declaratory Judgment

Plaintiff styles his motion as a "motion for declaratory relief" under "28 U.S.C. § 2201 [the Declaratory Judgment Act] and Federal Rule of Civil Procedure (FCRP) 57." Dkt. # 162 at 1.[2] Rule 57 of the Federal Rules of Civil Procedure provides, in relevant

[2] The Court notes that the relief requested by plaintiff in his motion includes not only declaratory judgment, but also injunctive relief. Dkt. # 162 at 1.

part: "[The Federal Rules of Civil Procedure] govern the procedure for obtaining a declaratory judgment under 28 U.S.C. § 2201." Fed. R. Civ. P. 57. Accordingly:

> [A] party may not make a motion for declaratory relief, but rather, the party must bring an action for a declaratory judgment. Insofar as plaintiffs seek a motion for a declaratory judgment, plaintiffs' motion is denied because such a motion is inconsistent with the Federal Rules. The only way plaintiffs' motion can be construed as being consistent with the Federal Rules is to construe it as a motion for summary judgment on an action for a declaratory judgment.

Kam-Ko Bio-Pharm Trading Co. Ltd-Australasia v. Mayne Pharma (USA) Inc., 560 F.3d 935, 243 (9th Cir. 2009) (quoting Int'l Bhd. of Teamsters v. E. Conference of Teamsters, 160 F.R.D. 452, 456 (S.D.N.Y. 1995)). Thus, the Court construes plaintiff's motion as a motion for summary judgment.

III. DISCUSSION

A. Plaintiff's Motion for Leave to File a Contemporaneous Dispositive Motion

As the Ninth Circuit's memorandum disposition and instructions on remand limit the Court's focus to plaintiff's due process claims, the Court declines to revisit its ruling on plaintiff's other claims and adopts the reasoning and decisions of its previous summary judgment order on the non-due process issues (Dkt. # 141). Accordingly, the Court need not consider plaintiff's supplemental motion for summary judgment on the non-due process claims, which he has requested to file through a leave to file a contemporaneous dispositive motion (Dkt. # 166).

Plaintiff's motion for leave to file a contemporaneous dispositive motion (Dkt. # 166) is DENIED.

B. Scope of Plaintiff's Constitutional Claims

Defendants argue that plaintiff's constitutional claims are limited to RCW § 6.27.020, as that is the only specific provision of RCW § 6.27 plaintiff mentioned in his complaint. Dkt. # 164 at 7-8. Defendants contend that allowing plaintiff to challenge other provisions would "deprive the Attorney General of the opportunity to defend any other statutory provisions Yohannes may now want to add." Id. The Court declines to limit the scope of the constitutional due process inquiry to RCW § 6.27.020 for several reasons. First, while plaintiff's amended complaint primarily focuses on RCW § 6.27.020, it also discusses other sections of RCW § 6.27 – including specific allegations relating to the sufficiency of notice under RCW § 6.27. See, e.g., Dkt. # 32 at 43. Second, the Ninth Circuit clearly considered statutory provisions beyond RCW § 6.27.020 on appeal, and specifically instructed this Court to consider plaintiff's "due process" claims (including the claim regarding RCW § 6.27.030) on remand. Yohannes, 2022 WL 911782, at *2. Additionally, while the Court acknowledges that plaintiff's notice to the Washington Attorney General under Federal Rule of Civil Procedure 5.1 was limited to RCW § 6.27.020, see Dkt. # 35, the Court finds that the Washington Attorney General will not be prejudiced by the lack of notice of plaintiff's additional constitutional challenges because the Court concludes that plaintiff's challenges fail on the merits.

C. Due Process Claims

Plaintiff brings a § 1983 action challenging RCW § 6.27. Dkt. # 162 at 5. He alleges that the state

law violates the Fourteenth Amendment – specifically the due process clause – both facially and as applied to him. Plaintiff raises four distinct due process arguments: (1) "the procedure of RCW § 6.27 is unconstitutional as applied" to him because it permitted the garnishment to take effect "before the state court confirmed that notice of garnishment action was served on him," Dkt. # 162 at 10; (2) "[t]he notice provision in RCW 6.27.130[] is constitutionally defective because it fails to satisfy Mullane's 'reasonably calculated' standard," id. at 12; (3) "RCW 6.27 should be held facially unconstitutional because it does not afford judgment debtors with the opportunity for notice and hearing before they are deprived of their properties," id. at 15; and (4) "[t]he authority vested [i]n attorneys of judgment creditors in RCW 6.27.020(2) is facially unconstitutional," id. at 22.

1. Section 1983 Framework

As an initial matter, the Court clarifies the § 1983 framework applicable in this case, where defendant is a private party that has invoked the state's garnishment procedures.

42 U.S.C. § 1983 provides an individual the right to sue state government employees and others acting "under color of state law" for civil rights violations. To state a claim for relief under § 1983, a plaintiff must establish that he was "deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law." Am. Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 49-50 (1999). The Supreme Court has clarified that "these two elements denote two separate areas of inquiry." Flagg Bros. v. Brooks, 436 U.S. 149, 155-56 (1978). As to the first

element, because "most rights secured by the Constitution are protected only against infringement by governments," this requirement compels an inquiry into the presence of state action. Id. As to the second element, like the "state-action requirement of the Fourteenth Amendment, the under-color-of-state-law element of § 1983 excludes from its reach merely private conduct, no matter how discriminatory or wrongful." Sullivan, 526 U.S. at 50 (internal citations omitted).

As the Ninth Circuit noted, "[t]he Supreme Court has held that a debtor may bring a cause of action against a private creditor if the creditor violates the debtor's due process rights by utilizing an unconstitutional state statute." Yohannes, 2022 WL 911782, at *2 (citing Lugar v. Edmondson Oil Co., Inc., 457 U.S. 922, 934 (1982)). Yohannes argues that the rule stated in *Lugar* applies here. Id.

In Lugar, the Supreme Court outlined the relevant inquiry as asking two distinct questions, first, "whether the claimed deprivation has resulted from the exercise of a right or privilege having its source in state authority" and second, "whether, under the facts of this case, respondents, who are private parties, may be appropriately characterized as 'state actors.'" Lugar, 457 U.S. at 939. The Court was clear that where the alleged actions taken by the defendant were contrary to or unlawful under state law, the "conduct of which petitioner complained could not be ascribed to any governmental decision." Id. at 940. Thus, where, for example, defendants "invoked the statute without the grounds to do so," such behavior "could in no way be attributed to a state rule or a state decision." Id. Accordingly, such claims do "not state a cause of action under § 1983 but challenge[] only private action." Id.

On the other hand, "while private misuse of a state statute does not describe conduct that can be attributed to the State, the procedural scheme created by the statute obviously is the product of state action." Id. at 941. Such claims may properly be heard in a § 1983 action as long as the "second element of the state-action requirement" is met as well. Id

Thus, to state a valid cause of action under § 1983, plaintiff must first (1) establish that the alleged conduct could be attributed to a "state rule or state decision" and (2) that defendants may be appropriately characterized as "state actors." Sullivan, 526 U.S. at 50 n.9 (noting that § 1983 plaintiffs must show "both action taken pursuant to state law and significant state involvement").

2. As Applied Challenge

Plaintiff's first argument is that "the procedure of RCW § 6.27 is unconstitutional as applied him" because it permitted the garnishment to take effect "before the state court confirmed that notice of garnishment action was served on him." Id. at 10.

Plaintiff argues that due process requires that a debtor receive notice of the garnishment. Id. at 9. However, the Washington statute requires such notice. Under RCW § 6.27.130(1):

When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an individual, the notice and claim form prescribed in RCW 6.27.140. In the alternative, on or before the day

of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

The affidavit referenced in this subsection must lay out certain facts, including (1) that the plaintiff has an unsatisfied judgment in the court from which the writ is sought; (2) the amount alleged to be due under that judgment; (3) the plaintiff's belief that the garnishee is indebted to the plaintiff; and (4) whether the garnishee is the employer of the judgment debtor. RCW § 6.27.060. Thus, the statute requires that the judgment debtor receive notice of the writ of garnishment, either by mail or personal service. Furthermore, the statute requires that:

> If service is made by any person other than a sheriff, such person shall file an affidavit [showing the time, place, and manner of service and that the copy of the writ was accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service] and showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file an affidavit including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable.

RCW § 6.27.130(3). Thus, not only does the statute require notice to the judgment debtor, it also requires confirmation of that notice to be filed with the court.

The notice problem plaintiff identifies is not

with the procedures prescribed by the state statute, but defendants' failure to comply with them. On April 12, 2016, attempting to comply with RCW § 6.27.130, OCI mailed the writ of garnishment to plaintiff at the address it had "on file for him at the time." Dkt. # 151 at 2. That mailing was returned as undeliverable. Id. Pursuant to RCW § 6.27.130(3), defendant was required to "file an affidavit" showing that service had been attempted, as well as the mailing itself (because it was returned to the sender as undeliverable) with the state court. Defendant claims that this affidavit was mailed to the Snohomish County District Court in Everett on the same day.[3] Id. However, there is no record of the affidavit confirming service of the writ of garnishment in the state court's docket, and the state court has since destroyed the relevant files for the case.[4] Id.

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[3] Defendants' claim rests on the declaration of Susan Cable, a manager of the legal department at OCI, and the "account notes" regarding plaintiff. Dkt. # 151. Specifically, the "account notes" state that on April 12, 2016, defendant "mailed garn to gd." Dkt. # 151-2. Ms. Cable contends that this notation "means the affidavit of mailing was mailed to the court, the employer and Mr. Yohannes." Dkt. # 151 at 2. However, as plaintiff points out, defendant Farooq Ansari stated in his deposition that "GD" stands for "garnishee defendant." See Dkt. # 112-5 at 97. Because "at the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter," Liberty Lobby, 477 U.S. at 249, the court does not make a finding on this issue.

[4] The Court notes that even if defendants were able to establish that they filed the affidavit, they still would not be in complete compliance with the statute, which further requires the defendant to attach "the return receipt or the mailing should it be returned to the sender as undeliverable." RCW § 6.27.130(3). Here, defendants do not claim that they attached the undelivered mail to the affidavit (nor could they plausibly make this claim, as they allege the affidavit was sent to the state court on April

However, whether or not defendants successfully complied with the state statute need not be resolved to rule on this motion.[5] The Supreme Court in Lugar clearly stated that plaintiffs do not "present a valid cause of action under § 1983" where they allege "only misuse or abuse of the statute." Lugar, 457 U.S. at 942. Here, plaintiff's argument is not that the statute does not provide for constitutionally sufficient notice, but that defendants' failure to comply with the black letter of the statute resulted in a lack of sufficient notice. Accordingly, this behavior "could in no way be attributed to a state rule or a state decision," and fails to state a "valid cause of action under § 1983." Id. at 940, 942; see also Seattle Fishing Servs. LLC v. Bergen Indus. & Fishing Co., 242 F. App'x 436 (9th Cir. 2007) (explaining that a claim under § 1983 has not been stated where the plaintiff "describes conduct—private misuse of a state statute—that is not attributable to the state"); Flagg Bros., 436 U.S. at 176-77 (1978) (Stevens, J., dissenting) ("If there should be a deviation from the state statute—such as a failure to give the notice required by the state law—the defect could be

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12, 2016, eight days before the letter to plaintiff was returned as undeliverable). Dkt. # 151 at 2.

[5] The Court acknowledges that plaintiff also claims defendants failed to comply with the requirement that the notice be sent to the "last known post office address of the judgment debtor," Dkt. # 157 at 8 (quoting RCW § 6.27.130), and that, because the mailed notice was returned as undeliverable, they failed to comply with the "statutory notice requirement" that the notice be "actually delivered," Id. at 9 (quoting Cornhuskers Cas. Ins. Co. v. Kachman, 165 Wn. 2d 404 (2008)). Because these claims are similarly directed at defendants' failure to comply with the statute, rather than challenging the procedures put in place by the statute, they similarly need not be resolved to rule on the motion.

remedied by a state court and there would be no occasion for § 1983 relief.").

3. Facial Challenges

Plaintiff also raises three facial challenges against RCW § 6.27. Specifically, plaintiff claims that (1) "[t]he notice provision in RCW 6.27.130[] is constitutionally defective because fails to satisfy Mullane's 'reasonably calculated' standard," Dkt. # 162 at 12; (2) "RCW 6.27 . . . does not afford judgment debtors with the opportunity for notice and hearing before they are deprived of their properties," id. at 15; and (3) "[t]he authority vested [i]n attorneys of judgment creditors in RCW 6.27.020(2) is facially unconstitutional," id. at 22.

As discussed above, "the procedural scheme created by the statute obviously is the product of state action" and "properly may be addressed in a § 1983 action, if the second element of the state-action requirement is met as well." Lugar, 457 U.S. at 941. Thus, plaintiff's challenges to the procedures articulated in RCW § 6.27 may be validly brought in a § 1983 action so long as defendants may appropriately be characterized as "state actors."

Plaintiff argues that "judgment creditors, their officials and attorneys who invoke the Washington garnishment statute for deprivation of debtors' wages and other properties are state actors." Dkt. # 162 at 22. However, the only cases he cites to support this proposition are Lugar and a Third Circuit case, Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250 (3d Cir. 1994).[6] Id.

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[6] Not only is this out of circuit case not binding on the Court, but the case dealt with a Pennsylvania law permitting defendants to execute on a judgment by confession without pre-deprivation notice or hearing. Jordan, 20 F.3d at 1253.

In Lugar, the Court stated that a "private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment." Lugar, 457 U.S. at 941. Specifically, the Court found that this kind of "joint participation" existed under the facts of Lugar:

> In 1977, petitioner, a lessee-operator of a truckstop in Virginia, was indebted to his supplier, Edmondson Oil Co., Inc. Edmondson sued on the debt in Virginia state court. Ancillary to that action and pursuant to state law, Edmondson sought prejudgment attachment of certain of petitioner's property. Va. Code § 8.01–533 (1977). The prejudgment attachment procedure required only that Edmondson allege, in an *ex parte* petition, a belief that petitioner was disposing of or might dispose of his property in order to defeat his creditors. Acting upon that petition, a Clerk of the state court issued a writ of attachment, which was then executed by the County Sheriff.

Id. at 924. In other words, the Court found that "joint participation" exists where "the State has created a system whereby state officials will attach property on the ex parte application of one party to a private dispute." Id. at 942.

The facts of this case are distinct from those at issue in Lugar. First, there was no prejudgment attachment in this case. Defendants had secured a default judgment against plaintiff before the writ of garnishment was issued. Dkt. # 150 at 4. Second, "state officials," such as sheriffs, did not attach the

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Furthermore, in Jordan the Sheriff of Philadelphia executed the garnishment. Id.

property here. Indeed, one of plaintiff's chief complaints is that the statute permitted OCI's attorney to execute the writ of garnishment himself. Dkt. # 162 at 4 (stating that defendant Martin "signed the writ of garnishment, and served it without any involvement from the state court"). Thus, the Court concludes defendants did not use state procedures "with the overt, significant assistance of state officials" required to find state action. Tulsa Pro. Collection Servs., Inc. v. Pope, 485 U.S. 478, 486 (1988); see also Gaskell v. Weir, 10 F.3d 626, 628 (9th Cir. 1993) (deeming complaint patently frivolous where allegations of state action involved a court clerk performing the ministerial act of accepting and filing settlement documents); Flagg Bros., 436 U.S. at 157 (explaining that where the only named defendants were private parties, the "total absence of overt official involvement plainly distinguishes this case from earlier decisions imposing procedural restrictions on creditors' remedies").

4. Merits of Facial Claims

While the Court is not convinced that plaintiff meets the second state action requirement, it notes that even if plaintiff could pass the initial hurdle of stating a valid § 1983 claim, his facial challenges to the statute fail on the merits. The Court considers each of plaintiff's arguments in turn.

i. Adequate Notice

Plaintiff argues that "[t]he notice provision in RCW 6.27.130[] is constitutionally defective because [it] fails to satisfy *Mullane*'s 'reasonably calculated' standard in that it does not require the creditor to take additional reasonable steps to provide notice when mailed notice is returned undelivered." Dkt. # 162 at 12. Specifically, plaintiff takes issue with the

fact that under the Washington statute, a judgment creditor is not required "'to take any further action' when the notice sent by certified mailing is later returned to the creditor 'due to an "insufficient address."'" Id. at 11 (citing Coleman v. Daniel N. Gordon, P.C., No. C10-428-TOR, 2012 WL 2374822, at *5 (E.D. Wash. June 22, 2012) (quoting Mandelas v. Gordon, 785 F. Supp. 2d 951, 958–59 (W.D. Wash. 2011))). He argues that under Supreme Court precedent, "'when mailed notice . . . is returned unclaimed,' due process demands that the party charged with carrying out the notice must "take additional reasonable steps . . . to provide notice to the property owner before [taking his property], if it is practicable to do so." Id. at 12 (quoting Jones v. Flowers, 547 U.S. 220, 225 (2006)).

As an initial matter, the parties disagree over which standard should be used to analyze the due process claim – the "reasonably calculated" standard of Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306 (1950), or the balancing test of Mathews v. Eldridge, 424 U.S. 319 (1976). Dkt. # 162 at 10-12; Dkt. # 164 at 14.[7] The Court agrees with plaintiff that "Mathews governs the question of whether and when due process requirements, including notice, is required, but Mullane governs [an] adequacy of notice claim." Grimm v. City of Portland, 971 F.3d 1060, 1067 (9th Cir. 2020); see also Dusenbery v. United

[7] Defendants also argue that the Mullane-Jones test applies to *government* entities rather than private parties. Dkt. # 164 at 14. While it is true that the defendants in both Jones and Grimm were governmental entities, there is no explicit limitation of the standard to government entities. Indeed, in Mullane, the party employing the notice procedure at issue was the Central Hanover Bank and Trust Company. See Mullane, 339 U.S. at 309-10.

States, 534 U.S. 161, 167-68 (2002). However, before a Court can reach the Mullane analysis, it must first be established that "due process requires individualized notice" in the proceedings at issue. Grimm, 971 F.3d at 1063. Post-judgment garnishment proceedings are unique in that debtors are presumed to already have notice of the underlying judgment against him, thus it has not been clearly established that pre-garnishment notice is required by due process.[8] See Endicott–Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285, 288 (1924)[9] ("[T]he established rules of our system of jurisprudence do not require that a defendant who has been granted an opportunity to be heard and has had his day in court, should, after a judgment has been rendered against him, have a further notice and hearing before supplemental proceedings are taken to reach his property in satisfaction of judgment.").

Accordingly, "circuit courts reviewing the constitutional sufficiency of notification and hearing procedures in post judgment garnishment

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[8] The cases cited by plaintiff to support the conclusion that notice is clearly required all discuss the necessity of notice with regard to the available federal and state exemptions that might be available to the judgment debtor – an issue not raised by plaintiff. See Dkt. # 162 at 10 (citing Finberg v. Sullivan, 634 F.2d 50 (3d Cir. 1980); Reigh v. Schleigh, 784 F.2d 1191 (4th Cir. 1986); McCahey v. L.P. Investors, 774 F.2d 543 (2d Cir. 1985); Betts v. Tom, 413 F. Supp. 1369 (D. Haw. 1977)).

[9] As discussed further in this Order, while the enduring vitality of Endicott has been debated, the case has never been overruled and is still frequently cited by circuit courts analyzing the due process requirements for post-judgment garnishment procedures. The Court also notes that "the Supreme Court has twice declined to reconsider Endicott." Katz v. Ke Nam Kim, 379 F. Supp. 65, 69 n.2 (D. Haw. 1977) (citing Hanner v. De Marcus, 390 U.S. 736 (1967); Danila v. Dobrea, 391 U.S. 949 (1968)).

proceedings have universally employed the balancing test summarized in Mathews v. Eldridge." Aacen v. San Juan Cnty. Sheriff's Dep't, 944 F.2d 691, 695 (10th Cir. 1991). Under the Mathews test, the Court must weigh (1) the private property interest, (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards," and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Mathews, 424 U.S. at 335.

Here, plaintiff is not merely arguing that judgment debtors should receive notice "reasonably calculated, under all the circumstances" to apprise them of the impending garnishment, but that where mailed notice is returned as undeliverable, judgment creditors must "take additional steps," such as attempting to call the judgment debtor to get his correct address. Dkt. # 162 at 12. The Court is not convinced that such additional procedural safeguards are required by due process. As discussed above, when a writ of garnishment is issued under RCW § 6.27.030, the party sending the notice must file an affidavit with the state court, confirming that notice has been given. RCW § 6.27.030(3). If the notice was accomplished by certified mail (rather than through personal service), the affidavit must be accompanied by the certified mail "return receipt or the mailing should it be returned to the sender as undeliverable." Id. The statute further states that "no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return or affidavit of service or mailing required by subsection (3)." Id. at (2). The statute also provides that if notice

is not accomplished in accordance with the statute, or if there is any irregularity in the notice, "the court . . . may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure." Id. Thus, under the statute, where there is reason to believe that a garnishment debtor did not receive notice of the writ of garnishment, the Court may halt the disbursement order or judgment, or even set aside the garnishment and award the judgment debtor damages.[10] In light of these existing safeguards, and both the creditor and state's interest in efficient, prompt collection of judgments, the Court concludes that the statute's failure to require "something more" of creditors when mailed notice is returned as undeliverable does not violate due process.

ii. Pre-Deprivation Hearing

Plaintiff argues that due process requires debtors to be given "notice and an opportunity for a hearing" before they are deprived of their property through garnishment. Dkt. # 162 at 12. He argues that postponing a hearing until post-deprivation is only permitted in unique instances where "prompt action" is required, and that wage garnishment of the kind at issue in this case does not qualify as such an exception. Id. at 13. While plaintiff correctly states the general rule, he fails to address the immense body of caselaw addressing due process requirements for post-judgment remedies, beginning with Endicott–

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[10] The Court recognizes that the letter of the law may not have been strictly followed in plaintiff's individual case, but notes that under the facial challenge plaintiff brings, he must show that "the law or policy at issue is unconstitutional in all its applications." Bucklew v. Precythe, 587 U.S. __, 139 S. Ct. 1112, 117 (2019).

Johnson Corp. v. Encyclopedia Press, Inc., 266 U.S. 285 (1924).[11] There, the Supreme Court held that a judgment debtor is not constitutionally entitled to notice and a hearing prior to wage garnishment because the existence of the underlying judgment was sufficient notice of what would follow. Id. at 288. In Griffin v. Griffin, 327 U.S. 220, 228 (1946), which involved the collection of past-due alimony payments arising out of a divorce decree, the Supreme Court held that a judgment directing issuance of execution for collection of the unpaid alimony violated due process because it had been obtained ex parte and had cut off defenses available to the husband. Substantial debate has arisen over the extent to which Griffin undercuts the holding in Endicott. See, e.g., Morrell v. Mock, 270 F.3d 1090, 1096–97 (7th Cir. 2001); Augustine v. McDonald, 770 F.2d 1442, 1446 n.3 (9th Cir.1985); McCahey v. L.P. Investors, 774 F.2d 543, 547–48 (2d Cir.1985). As discussed above, in light of this debate, courts that have reviewed the

[11] Plaintiff also spends considerable time discussing a recent Eleventh Circuit decision, Resnick v. KrunchCash, LLC., 34 F.4th 1028 (11th Cir. 2022). The Court notes that as an out of circuit case, the decision is not binding on this Court. Furthermore, plaintiff misrepresents the conclusions of the Eleventh Circuit. In Resnick, the court was reviewing a district court's dismissal of plaintiff's claims under Rule 12(b)(1). Id. at 1034. The district court had found it did not have subject matter jurisdiction over plaintiff's § 1983 claims because they were "wholly insubstantial and frivolous." Id. The Eleventh Circuit was thus reviewing plaintiff's complaint under this highly generous standard and found that although the case law identifying due process violations in garnishment procedures all dealt with pre-judgment writs of garnishment, "Plaintiffs' deprivation argument [was not] so 'clearly foreclosed' under the caselaw as to defeat the district court's subject matter jurisdiction." Id. at 1035-36. The case does not identify violations of due process in post-judgment writs of garnishment.

constitutional sufficiency of post–judgment procedures and remedies by employing the balancing test summarized in Mathews. Duranceau v. Wallace, 743 F.2d 709, 711 (9th Cir. 1984); Aacen, 944 F.2d at 695; McCahey, 774 F.2d at 548–49; Dionne v. Bouley, 757 F.2d 1344, 1355 (1st Cir. 1985); Finberg v. Sullivan, 634 F.2d 50, 58 (3d Cir. 1980); Brown v. Liberty Loan Corp. of Duval, 539 F.2d 1355, 1365 (5th Cir. 1976).

Here, the judgment debtor clearly has a strong interest in his wages. See Sniadach, 395 U.S. at 340-41. However, under the Washington garnishment statute, a writ of garnishment can only be executed where the creditor "has a judgment wholly or partially unsatisfied judgment in the court from which the garnishment is sought." RCW § 6.27.020(1). Thus, the property interest at issue is the amount the debtor owes the creditor pursuant to a final judgment. While the judgment debtor has a legitimate interest in protecting exempt property or other wrongfully garnished property, he has a fairly weak property interest in properly garnished wages pursuant to a final judgment.

Furthermore, creditors clearly have a strong interest in the recovery of their debt. See Tift v. Snohomish Cty., 764 F. Supp. 2d 1247, 1254 (W.D. Wash. 2011) ("The creditor has a strong interest in prompt and inexpensive satisfaction and collection of the judgment since delay may result in the debtor's disposition of the property or diminution of its value. . . . The debtor has a legitimate interest in protecting exempt property from seizure.") (internal citation omitted). The state likewise has an interest in (1) "providing inexpensive and rapid methods of collecting judgments, as part of its more general interest in ensuring compliance with its laws" and (2)

"the efficient use of judicial resources, so they are not wasted in proceedings of little value." McCahey, 774 F.3d at 549.

Finally, unlike in pre-judgment deprivation settings, there is no independent fact finding required to issue the writ of garnishment – the garnishment is based on an unsatisfied judgment in the same court. Thus, the risk of erroneous deprivation is minimal. Furthermore, there are numerous safeguards built into the statute. See RCW § 6.27.100, .130, .150, .180, .210, .230. The Court is not persuaded that plaintiff's additional procedures are necessary.[12]

In light of the analysis above and the lack of any Ninth Circuit precedent directly on point, the Court joins other circuits in rejecting claims similar to plaintiff's. See, e.g., Dionne, 757 F.2d at 1352 ("[I]t is perfectly consistent with Mathews not to require notice or hearing before a post-judgment attachment);

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[12] Defendant also calls on the Court to compare RCW § 6.27 with RCW § 26.18, the Washington Child Support Statute. He notes that debtors under this statute receive a fifteen-day notice before the commencement of an action seeking mandatory wage assignment. RCW § 26.18.070. However, unlike the garnishment statute, which provides an opportunity for the garnishment debtor to controvert the garnishee's answer, under RCW § 26.18.150 "in a hearing to quash, modify, or terminate the wage assignment order or income withholding order, the court may grant relief only upon a showing that the wage assignment order or income withholding order causes extreme hardship or substantial injustice." Furthermore, the hearing plaintiff notes in RCW § 26.18.050 is not "a pre-deprivation hearing" at which the debtor "may present his argument against the requested mandatory wage assignment," Dkt. # 162 at 15, but is actually a "show cause" hearing to provide the obligor with a forum in which to "show cause why the relief requested" – a contempt order – "should not be granted." RCW § 26.18.050(1). Accordingly, a close reading of RCW § 26.18 does not compel a conclusion that RCW § 6.27 violates due process.

McCahey, 774 F.2d at 549-50 ("[The plaintiff] argues that additional procedural protections must be accorded debtors before seizure: specifically notice and a hearing. We disagree... A fortiori, it can hardly be required where the creditor's claim has been finally confirmed by a court, and where the risk that the debtor will conceal assets is stronger than in the pre-judgement context."); Brown, 539 F.2d at 1363 ("[D]ue process of law does not require notice and an opportunity for a hearing on entitlement to the exemption before wages are garnished in accordance with Florida law.").

iii. Jurisdiction of State Court

Plaintiff also contends that "the lack of pre-deprivation notice has caused state courts to exceed their constitutional and statutory authority when debtors' properties were seized based on judgments that are later determined to be void." Dkt. # 162 at 14. Specifically, he contends that in this case the state court exceeded its authority by (1) allowing garnishment when the underlying judgment had expired; and (2) allowing garnishment when the underlying judgment was invalid because service of process was insufficient. Id.

As to his first claim, the Court initially notes that while presented as a facial challenge, plaintiff's claim is better viewed as an as-applied challenge. Specifically, plaintiff notes that "the Defendants in this action caused the state court to exceed its authority when they allowed the garnishment of Yohannes' wages to continue after they discovered that the underlying default judgment had already expired." Id. Assuming the truth of plaintiff's allegations, his underlying claim is not that the procedural structure imposed by the Washington

legislature is in some way constitutionally deficient, but that defendants abused the law. As discussed above, any claim that defendants violated state procedures does not validly state a cause of action under § 1983. Furthermore, plaintiff offers no explanation for why the procedural safeguards in the existing statute are insufficient to guard against this potential problem. The Washington statute allows for garnishment debtors to "controvert" the answer of the garnishee. RCW § 6.27.220. If the answer is controverted, "the matter may be noted by any party for hearing before a commissioner or presiding judge for a determination whether an issue is presented that requires a trial." Id. § 6.27.230. Plaintiff fails to explain why the expiration of the underlying judgment could not have been successfully raised in a controversion to the garnishee's answer.

As to his second claim, it is true that in Washington, a garnishment proceeding is "essentially an ancillary action to the principal suit between a creditor and a debtor." Watkins v. Peterson Enterprises, Inc., 137 Wn. 2d 632, 638 (1999). "The proceeding is also ancillary in that the court's subject matter jurisdiction is based on the validity of the principal action against the debtor." Id. at 639 (citing Bour v. Johnson, 80 Wn. App. 643 (1996)). Thus, where the court lacked jurisdiction over the principal suit, it would also lose jurisdiction over the garnishment proceeding. The cases cited by plaintiff, Allstate Ins. Co. v. Khani, 75 Wn. App. 317 (1994) and Peralta v. Heights Med. Ctr. Inc., 484 U.S. 80 (1988), both dealt with plaintiffs who sought to set aside default judgments entered against them on the basis of insufficient service prior to the entry of judgment against them. The Court does not disagree with plaintiff's uncontroversial conclusion that due process

does not permit a "judgment that had substantial adverse consequences" for an individual to be entered against them "without proper notice." Peralta, 485 U.S. at 900. However, plaintiff again fails to demonstrate why this basic tenet of constitutional law requires a post-judgment hearing in advance of garnishment. Garnishment debtors who believe the underlying judgment against them is invalid can seek to vacate the underlying judgment. See Khani, 75 Wn. App 317. Furthermore, as noted above, garnishment debtors could raise this argument when controverting the garnishee's answer.

The Court is not persuaded that plaintiff's additional procedures are necessary to comport with due process.

iv. Neutral Adjudicator

Finally, plaintiff also argues that "[t]he authority vested [i]n attorneys of judgment creditors in RCW 6.27.020(2) is facially unconstitutional." Dkt. # 162 at 22. RCW § 6.27.020(2) states, "Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney." Plaintiff argues that this practice is unconstitutional because with a "direct, personal, substantial pecuniary interest" in the outcome of the controversy, without oversight from a neutral adjudicator or pre-deprivation process. Dkt. # 162 at 16.

Plaintiff argues that all three factors of the Mathews test weigh in favor of the judgment debtor. As to the first factor, he states "the immediate loss of one's wages can lead to eviction, forgoing necessary

medical treatments, inability to acquire basic life necessities, and even the forced accrual of additional debt." Dkt. # 162 at 19. As to the second factor, he argues "Washington's garnishment statute does not provide any process, let alone sufficient process, to safeguard an alleged debtor's substantial interest in his wages from erroneous deprivation through garnishment." Id. As to the third factor, he acknowledges that the government can claim "administrative efficiency" as an interest but argues that any claim is insufficient where the due process afforded is "zero." Id. Plaintiff further contends that the interest of defendants should be "de minimis" because they had "no existing interest" in the property they sought to garnish. Id. at 20. Plaintiff reaches this conclusion by reasoning that any interest defendants had was extinguished when the underlying judgment expired. Id. at 21.

Plaintiff raised this argument in his initial motion for summary judgment, and this Court, after conducting a Mathews analysis, ruled against him. Dkt. # 141 at 23-24. The Court remains unpersuaded by plaintiff's arguments. As an initial matter, the due process afforded to garnishment debtors is not, as plaintiff claims, "zero." Post-judgment garnishment debtors have already received the due process protections required to reach a final judgment, they have received notice of the writ of garnishment, and they have an opportunity to "controvert" the answer of the garnishee and seek a hearing. Furthermore, while plaintiff claims the judgment debtors have "no existing interest" in collecting their unsatisfied judgment, he bases this claim on the fact that in *his* case, the underlying judgment expired during the execution of the writ of garnishment. Because plaintiff brings this claim as a facial challenge to the statute,

he must show that it is unconstitutional in *any* application. Bucklew, 139 S. Ct. at 117. In its previous Order, the Court found that RCW § 6.27.020 complied with due process:

> RCW 6.27.020 passes [the Mathews] test. Debtors have an interest in protecting their property from being erroneously garnished. However, creditors also have an interest in the recovery of their debt. See Tift v. Snohomish Cty., 764 F. Supp. 2d 1247, 1254 (W.D. Wash. 2011) ("The creditor has a strong interest in prompt and inexpensive satisfaction and collection of the judgment since delay may result in the debtor's disposition of the property or diminution of its value. ... The debtor has a legitimate interest in protecting exempt property from seizure.") (internal citation omitted). There are adequate safeguards built into the statute. See RCW 6.27.100, 6.27.130, 6.27.150, 6.27.180, 6.27.210, 6.27.230. The government too has an interest in enforcing the judgments of its own courts. See Brown v. Liberty Loan Corp. of Duval, 539 F.2d 1355, 1363 (5th Cir. 1976). The Court is not persuaded that plaintiff's substitute procedures are necessary.

Dkt. # 141 at 24. The Court re-adopts this reasoning and conclusion here.

IV. CONCLUSION

For all the foregoing reasons, defendants' motion for summary judgment (Dkt. # 150) is GRANTED. Plaintiff's motion for declaratory judgment (Dkt. # 162) is DENIED. Plaintiff's motion for leave to file a contemporaneous dispositive motion (Dkt. # 166) is also DENIED.

The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendants.

DATED this 21st day of December, 2022.
Robert S. Lasnik
United States District Judge

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AKLILU YOHANNES,
Plaintiff-Appellant,
v.
OLYMPIC COLLECTION INC (OCI); et al.,
Defendants-Appellees,
v.
PHYSICIANS AND DENTISTS CREDIT BUREAU,

No. 19-35888
D.C. No. 2:17-cv-00509-RSL
MEMORANDUM*
Appeal from the United States District Court for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Argued and Submitted February 15, 2022
San Francisco, California
Before: GOULD and RAWLINSON, Circuit Judges, and ADELMAN,** District Judge.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.
** The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation.

Appellant Aklilu Yohannes received dental treatment from Baker Dental Implants and Periodontics ("Baker Dental") in late 2002. On February 14, 2006, Appellees Olympic Collection, Inc ("OCI") received an Assignment of Claims that assigned Appellant's Baker Dental bill for $389.03 to OCI.

On March 1, 2006, Mr. Norman Martin, as counsel for OCI, filed OCI's complaint against Appellant in the Snohomish County District Court in Washington State ("Snohomish action"). In the Snohomish action, OCI sought to collect on the Baker Dental debt that had a principal amount of $389.03, plus interest to the date of filing in the amount of $122.53, plus interest, from the date of the judgment, fees and costs, totaling $799.56.

On March 27, 2006, OCI employed a process server, Isaac Delys, to serve Appellant. Delys completed a declaration of service on March 27, 2006, indicating that he served the Appellant OCI's complaint on March 26, 2006, at 11905 Highway 99, Everett, in Snohomish County after arranging a meeting with Appellant via telephone.

On May 1, 2006, the court sitting in the Snohomish action entered a default judgment against Appellant. After the entry of default, OCI began its attempts to collect on the judgment. OCI had difficulty finding Appellant's address and employer, so the collection efforts were paused.

Ten years later, OCI discovered that Appellant worked for the United States Department of Transportation. After reviewing Appellant's file, OCI noticed that the default judgment, for the Baker Dental bill, was due to expire on May 1, 2016. Appellees then renewed their attempts to collect on the garnishment against Yohannes. OCI's attorney

signed the Writ of Garnishment for Continuing Lien on Earnings directed to the United States Department of Interior ("DOI"), which has responsibility for payroll services for several federal agencies, including the DOT.

The DOI filed an Answer to the Writ of Garnishment in April 2016. Afterwards, DOI sent Yohannes a letter informing him of the garnishment order entered against him and began garnishing his wages. Prior to receipt of the letter from the DOI, Yohannes alleges that he had no knowledge of the existence of any judgment against him. Appellant's checks were garnished in May 2016 by $623.71 and $623.72, respectively. Because the judgment had expired at the beginning of May 2016, OCI returned the money, cleared the debt from Appellant's credit report, and released the Writ of Garnishment. Appellant deposited OCI's returned check into his account on June 27, 2016.

Several months later, Appellant filed the underlying action in the United States District Court for the Western District of Washington. After proceedings before the district court, Appellant's claims were dismissed on OCI's motion for summary judgment.

Appellant Yohannes challenges the district court's dismissal of his claims on due process grounds, arguing that Washington's garnishment law is unconstitutional, giving attorneys the ability to take someone's wages without notice or a hearing.

We review a district court's grant of summary judgment *de novo*. *See Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir. 2011).

The Supreme Court has held that a debtor may bring a cause of action against a private creditor if the creditor violates the debtor's due process rights by

utilizing an unconstitutional state statute. *See Lugar v. Edmondson Oil Co., Inc.*, 457 U.S. 922, 934 (1982). Yohannes argues that the rule stated in *Lugar* applies here. He contends that, in his case, RCW § 6.27 allowed execution of the Writ of Garnishment and the seizure of his wages in the absence of any service on him and the absence of the required state court filings.

RCW § 6.27.130(1) requires a judgment creditor to mail a judgment debtor copies of the writ of garnishment, the judgment creditor's affidavit submitted in application of the writ, and the notice and claim form prescribed in RCW § 6.27.140. Importantly, RCW § 6.27.130(3) requires that when service is made, by mail or personally, by an individual other than a sheriff, the judgment creditor must file an affidavit with the state court showing that the judgment creditor fulfilled its service duties under 6.27.130(1).

Appellant Yohannes alleges that he was not served and never had notice of the Writ of Garnishment proceedings against him before having his wages garnished. OCI contends that it served Yohannes with the Writ of Garnishment as required by RCW § 6.27.130(1). However, OCI does not present any evidence or citation to the record showing that it filed an affidavit with the state court as required by RCW § 6.27.130(3). Nonetheless, in the apparent absence of the state court filing that was expressly required by subsection 3 of RCW § 6.27.130, OCI garnished Appellant's wages.

In light of Yohannes's allegations that he was not served and the lack of any record evidence indicating service and the required filing with the district court, we are concerned that, in this case, if RCW § 6.27 permitted a writ of garnishment to issue without a process by which service to the debtor is

confirmed by the state court before execution of the writ of garnishment, then such a procedure would violate due process as applied. We vacate and remand to the district court for further proceedings to evaluate Yohannes's due process claims in a manner consistent with this decision.

VACATED AND REMANDED.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AKLILU YOHANNES,
Plaintiff,
v.
OLYMPIC COLLECTION INC. et al.,
Defendants.

Case No. 2:17-CV-509-RSL
ORDER ON MOTIONS FOR
SUMMARY JUDGMENT
AND DECLARATORY
JUDGMENT

This matter comes before the Court on the motions for summary judgment filed by defendants Olympic Collection Inc. ("OCI"), see Dkt. #104, Norman L. Martin, see Dkt. #105, Susan Cable, see Dkt. #106, and Farooq Ansari, see Dkt. #107; plaintiff Aklilu Yohannes' "Motion for Partial Summary Judgment", see Dkt. #112, and "Motion for Declaratory Judgment", see Dkt. #115; defendants' "Motion for Protective Order, Relief from a Deadline, and Attorney Fees Pursuant to 28 U.S.C. § 1927", see Dkt. #117; and plaintiff's responsive "Cross Motion for Protective Order." Dkt. #122. As the latter two concern plaintiff's motions for partial summary judgment and declaratory judgment, the Court deals with all seven motions in a single order.

BACKGROUND

A. Treatment at Baker Dental

Plaintiff received dental treatment from Baker Dental Implants and Periodontics ("Baker Dental") in late 2002. Dkt. #121-2 (Yohannes Decl. II) at ¶ 1. David A. Baker, DDS, MSD owned Baker Dental. Plaintiff does not have any records showing that he made payments to Baker Dental. Dkt. #108-1 (Yohannes Dep.) at 49:13–18. He did not contact his insurance company to determine how much they had paid. Id. at 50:2–23. In December 2005, Baker Dental was sold to Dr. Jung Song. Id. at 7. The responsibility to collect any remaining debts was transferred to Dr. Song, who "was entitled to a fee or percentage for any of these collections." Id. at 10.

Defendants produced an Assignment of Claims for Collection dated February 14, 2006, that assigned Baker Dental's claim for $389.03 against plaintiff to OCI. Ex. 1, Dkt. #110-1. The "Assigned Date" is

January 3, 2006. Id.; see Ex.4, Dkt. #112-4 (Martin Dep.) at 18:15–17. This was received by OCI on February 21, 2006. Ex. 4, Dkt. #110-1 at 12; see Dkt. #112-5 (Ansari Dep.) at 76:7–13. Plaintiff disputes the authenticity of this document, arguing that the name and contact information for the Financial Coordinator is not included, and that Baker Dental was no longer in business in Edmonds, Washington on February 14, 2006, and therefore could not have assigned any of its claims. Dkt. #32 (Am. Compl.) at ¶¶ 63–64. Plaintiff was not present when the document was created and does not know how it came into the possession of OCI. Yohannes Dep. at 51:1–13. Baker Dental stated in response to plaintiff's Request for Production No. 2 on March 29, 2019 that no contractual agreements with OCI were available. Dkt. #112-2 at 8. Dr. Song also stated that he was "unaware of any documents or records responsive" to plaintiff's request for contractual agreements with OCI. Ex. 3, Dkt. #112-3 at 2.[13]

B. Snohomish County Lawsuit filed by OCI

In early 2006, OCI obtained Baker Dental's Patient Information form for plaintiff, which listed his

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[13] Plaintiff did not turn over to defendants the documents he received from Dr. Baker and Dr. Song, who he subpoenaed. Yohannes Dep. at 57:11–21, 58:17–21. He referred to them in his motion for partial summary judgment. See Dkt. #112. Defendants argued in their response that plaintiff should not be permitted to support his motion with evidence that was concealed until after the discovery cutoff. Dkt. #129 at 10. The Court declines to strike the evidence outright. It shows only that Dr. Baker and Dr. Song are not in possession of any responsive documents—not that these documents do not exist. The remainder of Dr. Baker and Dr. Song's responses are irrelevant or reiterate undisputed facts. See generally Ex. 2, Dkt. #112-2; Ex. 3, Dkt. #112-3.

address as 13619 Mukilteo Speedway D5-2, Lynnwood, Washington, and his employer as CTS. Ex. 1, Dkt. #112-1 at 2; see Ex. 2, Dkt. #110-1. Around January 5, 2006, OCI sought location information for plaintiff and obtained the same address of 13619 Mukilteo Speedway D5-2, Lynnwood, Washington. Ex. 1, Dkt. #112-1 at 3; see Ex. 4, Dkt. #110-1; see Dkt. #110 (Ansari Decl.) at ¶ 4. On January 6, 2006, OCI sent a letter to plaintiff demanding payment for a debt owed to Baker Dental with a principal amount of $389.03. Id. at 5. Plaintiff responded on January 25, 2006, disputing the debt. Id. at 6–7; see Dkt. #32-3 at 3. He also telephoned OCI and disputed the debt and the interest in OCI's demand letter. Id. at 8. On January 31, 2006, plaintiff requested that OCI verify the debt. Ex. 4, Dkt. #110-1 at 12. OCI sent the verification to plaintiff the next day. Id. In February 2006, OCI changed plaintiff's address in their system to 4920 94th Street, SW, Mukilteo, Washington. Id. On March 1, 2006, OCI filed a complaint against plaintiff in the Snohomish County District Court, seeking payment of the principal amount of $389.03, interest to the date of filing in the amount of $122.53 plus accumulated interest to the date of judgment, the filing fee in the amount of $53, reasonable or statutory attorney's fees in the amount of $200, and an estimated service fee in the amount of $35, for a total amount of at least $799.56. Dkt. #32-2 at 4; see Ex. 1, Dkt. #109-1. The lawsuit was filed by Martin. Dkt. #109 (Martin Decl.) at ¶ 2.

A Declaration of Service was filed on March 27, 2006, by Registered Process Server Isaac Delys. Dkt. #32-2 at 5. This Declaration states that Delys served plaintiff with the summons and complaint on March 26, 2006 at 11905 Highway 99, Everett, in Snohomish County. Id. Plaintiff claims that he was not served,

and that the Declaration is defective. Am. Compl. at ¶¶ 61, 76. He testified that the description of himself in the Declaration was inaccurate because he is "outside the height and weight range that [the process server] specified." Yohannes Dep. at 72:6–7; see Ex. 8, Dkt. #112-8 (Yohannes Decl.) at ¶¶ 10–11. He stated that everything else was accurate. Id. at 72:23–73:10. A document from Precise Courier describing the service states that the process server could not get into plaintiff's apartment complex, so he called plaintiff and made an appointment to meet him at a Wendy's located at 11905 Highway 99, Everett, Washington. Dkt. #108-2; see Yohannes Dep. at 75:4–76:20. Plaintiff confirmed that the phone number was his. Id. at 68:15–16.

C. Default Judgment against Plaintiff

Plaintiff did not answer the complaint, and in April 2006, OCI filed a motion for default judgment. Martin Decl. at ¶ 4; see Ex. 3, Dkt. #109-1. Martin reviewed the ledger to check the prejudgment interest calculations and the accuracy of the principal amount. Martin Decl. at ¶ 4. The motion states that plaintiff resides at 11905 Highway 99, Everett, Washington. Ex. 3, Dkt. #109-1. That was the address for the Wendy's where plaintiff was served and is not his residential address. This was an error. Ansari Dep. at 62:15–63:13. On May 1, 2006, the Snohomish County District Court entered default judgment ("the Judgment") against plaintiff. Martin Decl. at ¶ 5. The Judgment has not been vacated. Id.; see Yohannes Dep. at 79:13–80:1. It expired on May 1, 2016. Martin Decl. at ¶ 9. OCI served a Writ of Garnishment on the Boeing Company in June 2006. Ex. 1, Dkt. #112-1 at 26. Between 2004 and 2011, plaintiff was employed with CTS and assigned contract work with Boeing.

Yohannes Decl. at ¶ 12. Between 2011 and 2013, he was employed with CTS and assigned contract work with Gulfstream Aerospace in Savannah, Georgia. Id. at ¶ 13. In August 2006, following a telephone inquiry by OCI, the Boeing payroll department informed OCI that "it was possible that [plaintiff] was a contract employee." Id. at 37. Boeing also indicated that it did not have a record of employment for plaintiff. Id. at 38. OCI informed Boeing that it was required to file an Answer to the Writ of Garnishment. Id. at 38–39.

On September 27, 2006, OCI received a fax message with Boeing's First and Only Answer to the Writ of Garnishment, stating again that it had no record of employment for plaintiff. Id. at 44–45; see Dkt. #50 at 33. OCI tried to obtain location information for plaintiff from Boeing. Id. at 46. In March 2014, OCI tried to obtain location information for plaintiff from CTS. Id. at 47–48. CTS informed Boeing that plaintiff's last date of employment with CTS was May 2013. Id. at 48.

On September 27, 2015, OCI determined that plaintiff worked for the United States Department of Transportation. Id. In the same month, on September 17, 2015, one of OCI's employees noted in plaintiff's Debtor History Report that the Judgment was due to expire on May 1, 2016. Ex. 4, Dkt. #110-1 at 19. In November 2015, OCI caused a Writ of Garnishment to be served on Boeing. Ex. 1, Dkt. #112-1 at 49; see Dkt. #50 at 36–38. On February 15, 2016, Martin signed a Writ of Garnishment for Continuing Lien on Earnings directed to the United States Department of Interior ("DOI"), which handles payroll services for several federal agencies, including the Federal Aviation Administration within the U.S. Department of Transportation. Dkt #112 at 55–57; see Dkt. #112 at 6; see Martin Decl. at ¶ 9; see Dkt. #32-2 at 7–9. "The

year was improperly stated as 2015 because of a typographical error." Martin Decl. at ¶ 9. At the time of his signature, "there was time to have obtained garnishment funds well before the expiration of the judgment, assuming the writ was filed and served properly." Id. Plaintiff concedes that the judgment had not expired as of the date that the Writ of Garnishment was issued, i.e., February 15, 2015. Yohannes Dep. at 81:16–82:23.

The DOI filed a First Answer to Writ of Garnishment for Continuing Lien on Earnings in April 2016. Dkt. #32-2 at 10–12. Plaintiff was issued two checks by his employer in May. Yohannes Dep. at 95:23–96:12. The first check, in the amount of $623.71, was garnished. OCI received it on May 20, 2016 and deposited it. Id. at 94:1–7, 96:2–5, 98:3–15; see Ex. 1, Dkt. #112-1 at 73–74. OCI received the second check around June 10, 2016, in the amount of $673.72. Id. at 82. This was not deposited. Id. It was returned directly to the DOI. Id.

D. Failure to Renew Judgment

The garnishment was still in progress when the Writ expired on May 1, 2016. Martin Decl. at ¶ 9. OCI has a Legal Department Training Manual ("the Manual") that lists the steps for renewing a judgment. Ex. 8, Dkt. #110-1; see Ansari Decl. at ¶ 8. In 2009, OCI hired Kayla Brown. Ansari Decl. at ¶ 8. On September 17, 2015, plaintiff's file was transferred from Ansari to Brown. Id. at ¶ 9. During the fall and winter of 2015, Brown was "having health issues and personal problems." Id. at ¶ 10. According to Ansari, her "inattention to [plaintiff's] file resulted in her failure to take the necessary steps to renew the judgment." Id. Ansari states that OCI had no

intention not to renew the judgment. Id. Plaintiff testified that he became aware of the Judgment at the end of April in 2016. Yohannes Dep. at 79:6–16. He did not take any steps to have it set aside. Id. at 79:17–20.

On May 5, 2016, Ansari sent an email to Brown stating that it was too late to renew the Judgment and that he was not sure if they would "get everything" on the first garnishment. Ex. 4, Dkt. #110-1 at 21; see Ansari Dep. at 163:15–22. Brown responded on the same day, stating that she would "have to ask [Martin] – garn[ishment] was filed OK so there should be a way to extend it, as garn[ishment] is still running." Id. at 164:23–165:2; see Ex. 4, Dkt. #110-1 at 21; see Ex. 1, Dkt. #112-1 at 62; see Ex. 4, Dkt. #110-1 at 21. On the same day, OCI received a call from plaintiff requesting information about the Judgment. Ex. 1, Dkt. #112-1 at 63–64. Cable spoke with plaintiff. Ansari Decl. at ¶ 11. OCI did not inform plaintiff that the Judgment had expired. Ex. 1, Dkt. #112-1 at 64. On May 12, 2016, Brown sent an email to Cable that stated, "Could you maybe, possibly ask [Martin] if we can extend the [Judgment] after it has expired? Garn[ishment] was filed 04/06/2016 [and] [Judgment] filed 05/01/2006 (Garn[ishment] is running, may need to release)." Ex. 4, Dkt. #110-1 at 21–22; see Ansari Dep. at 165:3–16.

Cable testified that on May 16, 2016, she wrote, "Per Lee[14] [Martin], we have to release the judgment because the judgment expired prior to completions, and so we are not entitled to enter the JOA as no judgment is in force." Ex. 6, Dkt. #112-6 (Cable Dep.) at 15:14–18; see Martin Dep. at 46:8–21; see Ansari

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[14] OCI's employees refer to Martin as "Lee." Martin Dep. at 45:20–23.

Dep. at 166:3–9. An email on May 16, 2016 states that OCI should have caught the error before the garnishment went out and that it is "normally good about tracking when a judgment would need to be renewed". Ex. 4, Dkt. #110-1 at 22. At some point, Cable called the Snohomish County District Court. Cable Dep. at 16:8–11. On May 20, 2016, she wrote that she "called Lee [Martin], told him what the court said. Since there is no case law and the court has one view, [] Lee said we are fine." Id. at 16:22–25. Accordingly, Cable put in, "Since garn[ishment] release was not sent, we do not have to file the release. Let the garn[ishment] run." Id. at 17:1–3.

E. Release of Writ of Garnishment

A note in plaintiff's Debtor History on May 24, 2016, states that the garnishment must be released and refunded and that it "could result in a lawsuit against [OCI] quite easily." Ex. 4, Dkt. #110-1 at 24. Martin authorized OCI to use his signature stamp on Writ of Release documents so that they could be prepared and filed or delivered immediately. Ansari Decl. at ¶ 12. The Writ of Release for plaintiff's account was prepared on May 24, 2016. Martin Decl. at ¶¶ 9–10; see Ex. 4, Dkt. #109-1. Martin stated that the Writ of Release "is the only pleading on which certain persons at [OCI] are authorized to use [his] signature stamp." Id. at ¶ 11; see Cable Dep. At 10:25–11:5. The Writ of Release is dated May 24, 2016, and stamped May 26, 2016. Yohannes Dep. at 93:7–25.

The amount of $623.71 was refunded to him in the same month. Id. at 96:6–97:3, 98:16–17. On May 24, 2016, Ansari sent a letter to plaintiff enclosing the Writ of Release and a check for the $623.72 received on the garnishment on May 20, 2016. Ex. 6, Dkt. #110-

1. The letter also states that the Release was sent to plaintiff's employer. Id. Plaintiff deposited OCI's check on June 27, 2016. Id. at 99:8–100:3. Plaintiff testified that OCI did not actually obtain any money from him. Id. at 15:8–11. Ansari sent another letter on June 20, 2016, enclosing the Writ of Release, a deletion request to plaintiff's credit bureau, and a copy of the letter dated May 24, 2016. Ex. 7, Dkt. #110-1. It states that OCI has not kept any funds on the matter and is not attempting to collect on it. Id.

F. Cable's Communications with DOI

Prior to the execution of the Writ of Release, Cable states that she received calls from Steve Burpee, an employee at the DOI, on May 18, 10216. Dkt. #111 (Cable Decl.) at ¶ 4. Burpee was "communicating about the garnishment of [plaintiff], and his objection thereto." Id. Plaintiff alleges that Cable represented herself as an attorney to the DOI. Yohannes Dep. At 25:8–10. He did not personally hear this alleged misrepresentation. Id. at 25:11–26:1, 29:7–12. He refers instead to an email sent to him by Steve Burpee on May 18, 2016, which states, "After conversations with Susan Cable ... legal manager, [OCI], it has been determined that the garnishment is legal and will continue to be enforced." Dkt. #49-1 at 2.

G. Procedural History

Plaintiff filed his initial complaint on March 31, 2017. Dkt. #1. He filed an Amended Complaint on December 29, 2017. Dkt. #32. He brings eleven causes of action. Count 1 asserts that defendants made false or misleading representations. Am. Compl. at ¶¶ 125–127; see 15 U.S.C. § 1692e(10). Count 2 asserts that defendants impermissibly impersonated an attorney.

Am. Compl. at ¶¶ 128–133; see 15 U.S.C. § 1692e(3). Count 3 asserts that OCI, Ansari and Cable impermissibly communicated with third parties in connection with the collection of plaintiff's debt. Am. Compl. at ¶¶ 134–137; see 15 U.S.C. § 1692c(b). Count 4 asserts that defendants engaged in the unauthorized practice of law. Am. Compl. at ¶¶ 138–143; see 15 U.S.C. § 1692e(9). Count 5 asserts that defendants collected and attempted to collect unauthorized amounts from plaintiff. Am. Compl. at ¶¶ 144–146; see 15 U.S.C. § 1692f(1); see RCW 19.16.250(21). Count 6 asserts that defendants falsely represented the character, amount or legal status of plaintiff's debt. Am. Compl. at ¶¶ 147–149; see 15 U.S.C. § 1692e(2)(A).

Count 7 asserts that defendants violated the Washington Consumer Protection Act ("CPA"). Am. Compl. at ¶¶ 150–156; see RCW 19.86. Count 8 asserts a § 1983 constitutional claim against all defendants in their obtaining of the Judgment against plaintiff in the Snohomish County District Court. Am. Compl. at ¶¶ 157–172; see 42 U.S.C. § 1983. Count 9 asserts an abuse of process claim against all defendants. Am. Compl. at ¶¶ 173–178. Count 10 asserts a common law defamation claim against all defendants. Id. at ¶¶ 179–180. Count 11 asserts a common law fraud claim against all defendants. Id. at ¶¶ 181–188. Finally, plaintiff challenges the constitutionality of RCW 6.27, Washington's garnishment statute. Id. at ¶¶ 99–122. Specifically, his challenge is levied at RCW 6.27.020, which permits a writ of garnishment to be issued by either clerks or attorneys of record for the judgment creditor. Id. at ¶¶ 99–100.

All dispositive motions were required to be filed by July 9, 2019 and noted for no later than the fourth

Friday thereafter. Dkt. #73; see LCR 7(d)(3). Each of the four defendants filed their own motion for summary judgment[15] on all claims, on July 1, 2019. Dkts. #104–107. Plaintiff filed a motion for partial summary judgment on Counts 1–7 and 9 one day after the deadline on July 10. 2019. Dkt. #112. Plaintiff did not move for an extension of the deadline. Id. Plaintiff then filed a motion for declaratory judgment[16] on July

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[15] Plaintiff argues both in his "Consolidated Response to Defendants['] Motions for Summary Judgment", see Dkt. #121 at 7, and in his "Cross Motion for Protective Order", see Dkt. #122 at 6–7, that this was a violation of LCR 7(e)(3). That Rule states, "Absent leave of the court, a party must not file contemporaneous dispositive motions, each one directed toward a discrete issue or claim." LCR 7(e)(3). "This rule serves to prevent a single party from filing contemporaneous motions in an effort to circumvent the page length requirements governing dispositive motions." BWP Media USA Inc. v. Rich Kids Clothing Co., LLC, No. C13-1975-MAT, 2015 WL 347197, at *7 (W.D. Wash. Jan. 23, 2015), aff'd sub nom. BWP Media USA Inc. v. Urbanity, LLC, 696 F. App'x 795 (9th Cir. 2017)). That is not the case here. Each defendant filed an individual motion for summary judgment. Dkts. #104–107. Plaintiff's "Cross Motion for Protective Order", see Dkt. #122, is accordingly DENIED.

[16] Defendants filed a "Motion for Protective Order, Relief from a Deadline, and Attorney Fees Pursuant to 28 U.S.C. § 1927" on July 18, 2019. Dkt. #117. Defendants argued that plaintiff's motions had been filed past the Court's deadline and were a violation of LCR 7(e)(3). Id. at 1. Initially, plaintiff filed his motion for partial summary judgment on July 10, 2019, and a second motion for partial summary judgment (docketed as "Second" and "Third" motions for partial summary judgment due to a prior motion filed by plaintiff on February 26, 2018, see Dkts. #41, #63) on July 15, 2019. Defense counsel contacted plaintiff and advised him that he was in violation of LCR 7(e)(3). Dkt. #118 (Rosenberg Decl.) at ¶ 4. Plaintiff responded that he would change the title of his second motion to "Motion for Declaratory Judgment" and asserted that the "real party in interest" was the State of Washington. Id. at ¶ 5; see Ex. 1, Dkt. #118-1 at 3–5.

15, 2019, requesting the Court to declare the power delegated to attorneys of judgment creditors under Washington's garnishment statute unconstitutional. Dkt. #115.

DISCUSSION

A. Legal Standard

A party is entitled to summary judgment if it "shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "The proper question ... is whether, viewing the facts in the non-moving party's favor, summary judgment for the

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Following additional communications, plaintiff withdrew his second motion on July 14, 2019, see Dkt. #114, and filed a new "Motion for Declaratory Judgment" the next day, on July 15, 2019. Dkt. #115. In their motion for a protective order, defendants moved to strike both the motion for partial summary judgment and the motion for declaratory judgment and requested attorney's fees. Dkt. #117 at 5; see 28 U.S.C. § 1927. The motions are untimely, and plaintiff has not made a showing of excusable neglect. See Fed. R. Civ. P. 6(b). Rather, he argues that he is not in violation of the Court's scheduling order because his motion for declaratory judgment is noted for the third Friday after filing, while his motion for summary judgment is noted for the fourth. Dkt #122 at 4. He also argues that his motion for declaratory judgment challenges the constitutionality of RCW 6.27, and is therefore not directed against defendants. Id. at 4–5. The Court disagrees. However, in the interest of resolving the case on its merits, the Court will consider plaintiff's motions and the arguments made therein in this order. Finally, "[t]he award of § 1927 sanctions is "committed to the sound discretion of the district court." Marshall v. Washington State Bar Ass'n, No. CV-11-5319 SC, 2012 WL 2979021, at *2 (W.D. Wash. July 20, 2012) (citation omitted). The Court declines to impose sanctions. Defendants' motion for a protective order is accordingly DENIED. The Court does, however, appreciate the timeliness of defendants' responses under the circumstances. See Dkt. #129, #130.

moving party is appropriate." Zetwick v. Cty. of Yolo, 850 F.3d 436, 441 (9th Cir. 2017) (citing Arizona ex rel. Horne v. Geo Grp., Inc., 816 F.3d 1189, 1207 (9th Cir. 2016)). "[W]here evidence is genuinely disputed on a particular issue—such as by conflicting testimony—that 'issue is inappropriate for resolution on summary judgment.'" Id. (quoting Direct Techs., LLC v. Elec. Arts, Inc., 836 F.3d 1059, 1067 (9th Cir. 2016)).

"The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact." Kirchoff v. Wipro, Inc., 894 F. Supp. 2d 1346, 1348 (W.D. Wash. 2012) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986)). "In support of its motion for summary judgment, the moving party need not negate the opponent's claim ...; rather, the moving party will be entitled to judgment if the evidence is not sufficient for a jury to return a verdict in favor of the opponent ..." Id. (internal citations omitted). "When the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, summary judgment is warranted." Id. at 1348–49 (citing Beard v. Banks, 548 U.S. 521, 529 (2006)). Evidence submitted must satisfy the requirements of Federal Rule of Civil Procedure 56. Block v. City of Los Angeles, 253 F.3d 410, 418–19 (9th Cir. 2001) (citing Celotex, 477 U.S. at 324). This means that any affidavits must be made on personal knowledge, set forth facts that would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Id. (citing Fed. R. Civ. P. 56(e)).

B. Count 1: False or Misleading Representations

"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. This includes the "use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." Id. at § 1692e(10). This subsection "has been referred to as a 'catchall' provision, and can be violated in any number of novel ways." Gonzales v. Arrow Fin. Servs., LLC, 660 F.3d 1055, 1062 (9th Cir. 2011) (citing Rosenau v. Unifund Corp., 539 F.3d 218, 224 (3d Cir. 2008)). In determining whether it has been violated, "a court must use 'an objective analysis that takes into account whether the least sophisticated debtor would likely be misled by a communication.'" Smyth v. Merchants Credit Corp., No. 2:12-CV-00130-MJP, 2012 WL 2343031, at *2 (W.D. Wash. June 19, 2012) (quoting Donohue v. Quick Collect, Inc., 592 F.3d 1027, 1030 (9th Cir. 2010)). Plaintiff testified that, as against Martin, this pertains to the use of a stamp instead of his signature, as well as his failure to "check[] that there [was] enough evidence to support the claims when he file[d]" the lawsuit. Yohannes Dep. at 139:13–140:3. As against Cable, the claim pertains to her alleged communications with the DOI. He refers to Burpee's email, which states that the DOI determined the garnishment was legal after conversations with Cable, the "legal manager" of OCI. Id. at 144:8–16, 149:25–150:2; see Dkt. #49-1 at 2. Plaintiff did not hear Cable say so. Id. at 144:18–20. He also argues that Cable "succeeded in influencing the DOI to reverse the decision it made to stop the enforcement of the garnishment." Dkt. #112 at 20. As against Ansari, plaintiff testified that he never had any communications with Ansari himself, but that Ansari "falsely told the Consumer Financial Credit Bureau

that the judgment expired in June, whereas it actually expired in May." Yohannes Dep. at 151:2–9. Plaintiff also claims that OCI did not make any statements to plaintiff, but that it and its employees "concealed the judgment until it was about to expire". Id. at 145:13–146:2. Specifically, plaintiff disputes the service of process on March 26, 2006, id. at 154:17–156:7, and he claims that the Judgment was mailed to the wrong address. Id. at 146:12–147:1.

"In Washington, a 'facially correct return of service is presumed valid and, after judgment is entered, the burden is on the person attacking the service to show by clear and convincing evidence that the service was irregular.'" Mandelas v. Gordon, 785 F. Supp. 2d 951, 956 (W.D. Wash. 2011) (quoting Woodruff v. Spence, 88 Wn. App. 565 (1997)). The Declaration of Service filed by Delys is facially correct. Dkt. #32-2 at 5. Plaintiff claims only that the estimates of his height and weight in the Declaration of Service are incorrect. He acknowledges that everything else was accurate. Yohannes Dep. at 72:6–73:10. He also confirmed that the phone number listed was his. Id. at 68:15–16. Any change in address by OCI is therefore irrelevant. See Dkt. #32-3 at 8. There is no evidence that defendants concealed the lawsuit in the Snohomish County District Court or the Judgment. Even though the motion for default judgment erroneously listed the Wendy's address as plaintiff's residential address, see Ex. 4, Dkt. #109-1, plaintiff concedes that the Judgment was on file with the Snohomish County District Court at the time, and that he could have obtained it. Yohannes Dep. at 146:3–11. Plaintiff has not shown that this error was material or that he was misled by it. Donohue, 592 F.3d at 1033. Plaintiff also argues that OCI sent the Writs of Garnishment to an incorrect address, and

that they were returned with an "insufficient address stamp" from the post office. Ansari Dep. at 176:4–178:23. Ansari admitted that this was an error despite the procedures that OCI had in place. Id. at 178:11–180:22. But this does not give rise to a sustainable § 1692e(10) claim. See Donohue, 592 F.3d at 1033; see 15 U.S.C. § 1692k(c) ("A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows 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."); see Section D, *infra*.

Plaintiff admits that he has no personal knowledge of any representations made by Cable to the DOI. Yohannes Dep. at 25:11–26:1, 28:19–29:13. "[H]earsay evidence is inadmissible and may not be considered by this court on review of a summary judgment." Blair Foods, Inc. v. Ranchers Cotton Oil, 610 F.2d 665, 667 (9th Cir. 1980) (citation omitted). Cable stated that she did not at any time represent to anyone at the DOI that she was an attorney or do anything to suggest that she was acting in the capacity of an attorney. Cable Decl. at ¶ 4. Plaintiff, too, admits that a "legal manager" is distinct from a "lawyer." Yohannes Dep. at 151:18–21. Even if she had done so, this would not constitute a material representation. "[F]alse but non-material representations are not likely to mislead the least sophisticated consumer and therefore are not actionable under §§ 1692e or 1692f." Donohue, 592 F.3d at 1033. There is no evidence that it misled plaintiff, or even the DOI. Yohannes Dep. at 159:16–24, 169:18–25.

Nor did Cable use a "false representation or deceptive means" to attempt to collect plaintiff's debt.

15 U.S.C. § 1692e(10). Regardless, even if the Court assumes that Cable was aware that the Judgment could not be renewed, all that Burpee stated in his email—leaving aside the hearsay issues—was that the DOI determined the garnishment was legal after a conversation with Cable. Dkt. #49-1 at 2. Plaintiff has produced no evidence of Cable making any misrepresentations regarding the Judgment, its validity, or its expiry date, whether from her deposition or the notes in plaintiff's Debtor History. Ex. 4, Dkt. #110-1 at 22. See Erez v. Steur, No. C12-2109RSM, 2014 WL 6069847, at *4 (W.D. Wash. Nov. 13, 2014) ("Plaintiff has not provided this Court with any persuasive legal analysis demonstrating that Defendants violated § 1692e(10)"); Hylkema v. Associated Credit Serv. Inc., No. C11-0211-MAT, 2012 WL 13681, at *9 (W.D. Wash. Jan. 4, 2012). Nor has plaintiff shown how he was misled by any purported misrepresentations made to the DOI. McLain v. Gordon, No. C09-5362BHS, 2010 WL 3340528, at *7 (W.D. Wash. Aug. 24, 2010). Without any evidence from plaintiff, the Court cannot speculate as to what Cable may or may not have said and what effect it had.[17] Regarding Cable's "managerial responsibility for OCI", Am. Compl. at ¶ 126, the Ninth Circuit has held that, "because the FDCPA imposes personal, not derivative, liability, serving as a shareholder, officer, or director of a debt collecting corporation is not, in itself, sufficient to hold an individual liable as a 'debt collector.'" Moritz v. Daniel N. Gordon, P.C., 895 F.

[17] Furthermore, according to the Debtor History, Martin only confirmed on May 24, 2016 that the garnishment needed to be released; i.e., after Cable's communications with the DOI. Id. at 24. Prior to that, Martin informed Cable on May 20, 2016 that OCI did not need to file a release. Cable Dep. At 16:22–25. See 15 U.S.C. § 1692k(c); see Section D, *infra*.

Supp. 2d 1097, 1109 (W.D. Wash. 2012) (citation omitted).

Any communication made by Ansari to the Consumer Financial Credit Bureau regarding the date that the Judgment expired occurred in 2017, after the present lawsuit had commenced. Yohannes Dep. at 151:2–13; Ansari Dep. at 172:10–173:8. It was not, therefore, a "means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. § 1692e(10). Nor was it material. Donohue, 592 F.3d at 1033. Like Cable, Ansari is not liable in his capacity as President of OCI. Moritz, 895 F. Supp. 2d at 1109.

Any purported failure by Martin to verify plaintiff's debt prior to filing the lawsuit or Writs of Garnishment does not have any bearing on plaintiff's claim that Martin "use[d] ... any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." 15 U.S.C. at § 1692e(10). Plaintiff states in his complaint that Martin allowed others to forge his signature and testified that Martin's signatures on different court documents looked different to him, but he admitted that he did not actually see who signed the documents. Yohannes Dep. at 38:18–21. Plaintiff is not a handwriting expert. Id. at 39:4–5. Martin testified that he does not allow anyone to physically sign court documents on his behalf. Martin Dep. at 36:23–37:2. A signature "includes any memorandum, mark, or sign made with intent to authenticate any instrument or writing, or the subscription of any person thereto." RCW 9A.04.110. The use of a signature stamp on Writs of Release does not give rise to a § 1692e(10) claim against Martin, who stated that he personally signed all other pleadings filed in the lawsuit. Martin Decl. at ¶ 11. He authorized OCI to

use the stamp as an "accommodation to a debtor or to the bankruptcy attorney." Martin Dep. at 37:6–38:19; see id. at 38:20–4; see Ansari Dep. at 122:15–124:25. Plaintiff testified that he did not personally suffer any harm due to the use of a stamp rather than a signature. Id. at 47:17–24. He was not misled.

An assignee for collection purposes has standing to bring suit where the assignment transfers absolute title in the claim. Sprint Commc'ns Co., L.P. v. APCC Servs., Inc., 554 U.S. 269, 273 (2008). It is not clear whether plaintiff's argument regarding the invalidity of the assignment of the debt from Baker Dental to OCI is incorporated in Count 1. See Dkt. #112 at 8–10; see Dkt. #121 at 7–9.[18] In an abundance of caution, however, see Nogali v. Transcon Fin., Inc., No. EDCV1400206VAPDTBX, 2015 WL 12656934, at *12 (C.D. Cal. Aug. 12, 2015), the Court concludes that plaintiff has introduced no evidence to show that the assignment was fraudulent. Defendants have produced the assignment. Ex. 1, Dkt. #110-1. OCI verified the debt in response to plaintiff's request on February 1, 2006. Ex. 4, Dkt. #110-1 at 12. Dr. Baker and Dr. Song are unable to produce any contractual agreements that they had with OCI, but that does not mean that the assignment was never executed. These events took place in 2006, more than a decade ago. Ex. 2, Dkt. #112-2 at 2; Ex. 3, Dkt. #112-3 at 2. Similarly, plaintiff's observation that his balance of $389.03 was sent for collection on August 15, 2003, does not negate the assignment of the claim to OCI almost three years later. Ex. 2, Dkt. #112-2 at 11; see Martin Dep. at 21:16–22:15, 24:12–20. Nor does the failure to identify the Financial Coordinator. Dkt. #112 at 9. Plaintiff

[18] Plaintiff's arguments refer only to 15 U.S.C. § 1692e(5) and (2)(A). Id.

also claims that Baker Dental was sold to Dr. Song in December 2005, was administratively dissolved on July 3, 2006, and was reinstated at an address in Mount Vernon, Washington on August 30, 2006. Yohannes Decl. at ¶ 8. Plaintiff provides no evidence for Baker Dental's dissolution or reinstatement, and regardless, the assignment is dated February 14, 2006. Ex. 1, Dkt. #110-1. OCI's records show receipt of it on February 21, 2006. Ex. 4, Dkt. #110-1 at 12; see also Martin Dep. at 26:17–27:4.

Finally, plaintiff argues that he was charged excessive interest by OCI. Dkt. #112 at 13-14. The Court finds that the interest calculations were correct, and that defendants' conduct did not constitute a "false representation or deceptive means" of collecting the debt under 15 U.S.C. § 1692e(10). The complaint filed in the Snohomish County District Court requests interest in the amount of $122.53. Ex. 1, Dkt. #109-1. It states that statutory interest has accrued at 12% per annum from January 5, 2006. Id. Defendants admitted that the interest on the debt from January 5, 2006 to the date of the filing of the complaint did not equal $122.53. Ex. 1, Dkt. #112-1 at 15. However, according to Martin, the interest accrued from the date the debt was incurred, in 2002 and 2003. Martin Decl. at ¶ 12; see Martin Dep. at 17:4–18:3. Martin testified that prejudgment interest began to run from when plaintiff received services from Baker Dental. Id. at 18:18–8; 32:25–4. This does not give rise to a § 1692e(10) claim. See Donohue, 592 F.3d at 1033 ("The Complaint did not contain a false, deceptive, or misleading representation for purposes of liability under §§ 1692e or 1692f just because $32.89, labeled as 12% interest on principal, was actually comprised of finance charges of $24.07 and post-assignment interest of $8.82, but not labeled as such.").

As the remaining defendants are not liable, OCI is not vicariously liable for any of their actions, either. See Etherage v. West, No. C11-5091BHS, 2011 WL 1930644, at *3 (W.D. Wash. May 19, 2011) ("Our case law makes clear that, once an employee's underlying tort is established, the employer will be held vicariously liable if the employee was acting within the scope of his employment.") (quoting Robel v. Roundup Corp., 148 Wn. 2d 35, 52–52 (2002)).[19]

C. Count 2: Impersonation of an Attorney

While Count 2 is directed in plaintiff's complaint against all defendants, see Am. Compl. at ¶¶ 129–132, plaintiff testified that it pertains only to Cable's alleged representation of herself as an

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[19] Plaintiff did not refer to § 1692g(b) in his complaint, but he argues in his motion for partial summary judgment that defendants impermissibly attempted to collect on the debt after plaintiff disputed it. Dkt. #112 at 10–11. That sub-section provides: "If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector." 15 U.S.C. § 1692g(b) (emphasis added). "At the minimum, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed." Clark v. Capital Credit & Collection Servs., Inc., 460 F.3d 1162, 1173–74 (9th Cir. 2006). Plaintiff requested that OCI verify the debt on January 31, 2006. Ex. 4, Dkt. #110-1 at 12. The record shows that OCI sent the verification to plaintiff the next day. Id. The fact that OCI does not currently possess contact information for Dr. Baker does not mean that it was unable to verify the debt in 2006. See Dkt. #112 at 11–12.

attorney to the DOI and the use by OCI employees of Martin's signature stamp. Yohannes Dep. at 159:1–7. Regardless, the Court reiterates that Ansari is not liable for any purported misconduct under § 1692e(3), if he was even aware of it. Moritz, 895 F. Supp. 2d at 1109; see Ansari Decl. at ¶ 16; see Am. Compl. at ¶ 131.

As previously discussed, plaintiff has not introduced any evidence to show that Cable represented to the DOI that she was an attorney. He has no personal knowledge of the matter, Yohannes Dep. at 159:8–15, and even Burpee's email only refers to Cable as a "legal manager." Id. at 159:16–24. Regarding Martin, plaintiff has produced no evidence to show any conduct amounting to a "false representation or implication that any individual is an attorney or that any communication is from an attorney." 15 U.S.C. § 1692e(3). Even if the Court assumes, as plaintiff urges, that the unauthorized use of a signature stamp may give rise to liability, Martin testified that he signed all pleadings except the Writ of Release himself and authorized an employee to use the stamp on plaintiff's Writ of Release. Martin Decl. at ¶¶ 9, 11. The Writ of Release form was approved and drafted by Martin. Id. at ¶ 10.

D. Count 3: Communications with Third Parties

Count 3 asserts that defendants impermissibly communicated with third parties. 15 U.S.C. § 1692c(b) states:

> Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a

> post[]judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

Defendants argue, and plaintiff concedes, that Cable's communications with the DOI were for the purpose of enforcing the Judgment. Yohannes Dep. at 174:23–175:1, 207:15–19, 208:6–16; see Dkt. #106 at 9–10. That is protected under the statute. 15 U.S.C. § 1692c(b).[20] All of defendants' contacts with Boeing were also, at the time, "reasonably necessary to effectuate a post judgment judicial remedy." Id.

However, to the extent that Cable's attempt to enforce the Judgment was the result of an error regarding the expiration of the Judgment, her communications with the DOI are protected by the bona fide error defense. "The bona fide error defense is an affirmative defense, for which the debt collector has the burden of proof." Reichert v. Nat'l Credit Sys., Inc., 531 F.3d 1002, 1006 (9th Cir. 2008) (citing Fox v. Citicorp Credit Servs., Inc., 15 F.3d 1507, 1514 (9th Cir. 1994)). "[T]o qualify for the bona fide error defense, the defendant must prove that (1) it violated the FDCPA unintentionally; (2) the violation resulted from a bona fide error; and (3) it maintained procedures reasonably adapted to avoid the violation." McCollough v. Johnson, Rodenburg & Lauinger, LLC,

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[20] There is no evidence of Ansari or Martin communicating with the DOI. Nor does plaintiff allege that they did so. Am. Compl. at ¶ 136. Ansari is not liable as the President of OCI, and plaintiff's claim that Martin allowed Cable to do "his job" is unfounded and irrelevant. Moritz, 895 F. Supp. 2d at 1109; see Yohannes Dep. at 175:2–10, 205:8–11, 205:13:14, 206:3–9.

637 F.3d 939, 948 (9th Cir. 2011). There is a two-step inquiry: (1) whether the debt collector actually employed or implemented procedures to avoid errors, and (2) whether the procedures were reasonable adapted to avoid the specific error at issue. Reichert, 531 F.3d at 1006 (citing Johnson v. Riddle, 443 F.3d 723, 729 (10th Cir. 2006)).

Plaintiff could not identify any reason why OCI would have intentionally not renewed the Judgment. Yohannes Dep. at 80:20–24. He admitted that he does not have any support for his contention that OCI purposely allowed the Judgment to lapse. Id. at 201:22–202:11. All defendants stated that they did not have any ulterior motive in pursuing garnishment proceedings against plaintiff and held no personal animosity toward him. Ansari Decl. at ¶ 14; Cable Decl. at ¶ 2; Martin Decl. at ¶ 2. The entries in plaintiff's Debtor History indicate that defendants attempted to rectify the error soon after learning of it. Ex. 4, Dkt. #110-1 at 21–22. The error was unintentional. Lemarr v. Credit Int'l Corp., No. C16-33RAJ, 2016 WL 3067719, at *5 (W.D. Wash. May 31, 2016).

Defendants have explained the procedures and the "manner in which they were adapted to avoid the error." Reichert, 531 F.3d at 1007. OCI uses Outlook and a calendaring system to track activities for its files, as well as a program called Debtmaster Professional to "manage and record events for each specific file." Ansari Decl. at ¶ 5. "Dates that judgments expire are put on the [O]utlook calendaring system for the person handling the file along with a reminder date 90 to 100 days before the judgment expiration date." Id. If the judgment is scheduled to expire, Ansari "note[s] that information on the Debtmaster Debtor History Report file. This informs

the case handler that they need to take steps to renew the judgment if the debt is not paid in full prior to the judgment expiring." Id. at ¶ 6. OCI's Legal Department Training Manual lists the steps for renewing a judgment. Id. at ¶ 8; see Ex. 8, Dkt. #110-1. These procedures have been in place since prior to 2009. Id. at ¶ 10. Ansari stated that they have worked since he took over ownership of the business in 2005, and that OCI has not "had any other instance where [it] failed to renew a judgment." Id. Defendants have shown that they employed procedures reasonably adapted to avoid the specific error of collecting on a judgment after it had expired. Erez, 2014 WL 6069847 at *4.

E. Count 4: Unauthorized Practice of Law

Count 4 alleges that all defendants engaged in the unauthorized practice of law. Am. Compl. at ¶¶ 138–143; see RCW 19.16.250(5). Plaintiff also argues that defendants violated the FDCPA, which prohibits "[t]he use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval." 15 U.S.C. § 1692e(9); see Am. Compl. at ¶ 143. He claims that defendants impermissibly drafted legal documents and presented the Writ of Garnishment and Notice to Federal Government as official court documents even though they were not signed by Martin.

The Court has already found that plaintiff has failed to produce evidence to show that Cable misrepresented herself as an attorney in her communications with the DOI. See Dkt. #112 at 20–

21. Plaintiff testified that Ansari selected which legal forms to use for specific purposes and had documents drafted, completed and stamped by OCI employees. Yohannes Dep. At 189:24–190:3, 191:17–192:13. "The practice of law includes ... the preparation of legal instruments and contracts by which legal rights are secured. ... More particularly ... where one determines for the parties the kinds of legal documents they should execute to effect their purpose, such is the practice of law." Hecomovich v. Nielsen, 10 Wn. App. 563, 571 (1974) (citations omitted). However, Martin, an attorney, authorized the use of his signature stamp on the Writ of Release. Ansari Decl. at ¶ 11. The Writ of Release form was approved and drafted by Martin for use in situations like this one. Martin Decl. at ¶ 10. The Writ of Release is also the only pleading on which OCI employees are authorized to use his signature stamp. Id. at ¶ 11.

Plaintiff provides no evidence that the Writs were falsely represented as official court documents where they were not recorded in the state court docket and the required fees were not paid. See Dkt. #112 at 16. He questioned defendants extensively on the court file stamps on each document and the payment of fees, but he fails to create a triable issue of fact regarding any false representation. Fed. R. Civ. P. 56(a); see Martin Dep. at 7:12–9:8; see Ansari Dep. At 31:13–33:11, 50:23–52:3, 86:18–88:11, 90:17–91:8, 135:11–141:4, 153:5–18. To the extent that there were errors, they were not material, and plaintiff has not shown that he was misled by them. Donohue, 592 F.3d at 1033; see Dorner v. Commercial Trade Bureau of Cal., No. CIVF080083AWISMS, 2008 WL 1704137, at *4 (E.D. Cal. Apr. 10, 2008) ("In reference to misleading implication of government involvement, the few cases which address this provision generally limit findings

of violations of § 1692e(9) to situations where the debt collector overtly impersonates a governmental agency, or where the debt collector attempts to hide its identity by using a false alias."). (citation and internal quotation marks omitted). Nor does he substantiate his claim that the Manual guides employees in the unauthorized practice of law, leaving aside the late stage at which he raises this claim. See Ex. 8, Dkt. #110-1.

F. Counts 5 and 6: Unauthorized Collection and False Representation

Count 5 alleges that defendants violated 15 U.S.C. § 1692f(1), which prohibits the collection of any amount unless the amount is "expressly authorized by the agreement creating the debt or permitted by law." Am. Compl. at ¶¶ 144–146; see also RCW 19.16.250(21). Count 6 alleges that defendants falsely represented the character, amount or legal status of the debt, specifically in communications with the DOI after the Judgment had expired. Am. Compl. at ¶¶ 147–149; see 15 U.S.C. § 1692e(2)(A). To the extent these allegations have any merit, the conduct complained of is protected by the bona fide error defense. See Section D, *supra*; see Campion v. Credit Bureau Servs., Inc., 206 F.R.D. 663, 674 (E.D. Wash. 2001) (concluding that the bona fide error defense applies to claims under the Washington Collection Agency Act).

G. Count 7: Violation of Washington's Consumer Protection Act

"To establish a CPA violation, the plaintiff must prove five elements: (1) an unfair or deceptive act or practice that (2) occurs in trade or commerce, (3) impacts the public interest, (4) and causes injury

to the plaintiff in her business or property, and (5) the injury is causally linked to the unfair or deceptive act." Michael v. Mosquera-Lacy, 165 Wn. 2d 595, 602 (2009) (citation omitted). Plaintiff argues that defendants' "collection attempts" are unfair acts or practices. Am. Compl. at ¶ 152. To the extent plaintiff bases this claim on any unauthorized practice of law, see Yohannes Dep. at 209:12–20, see Dkt. #112 at 20–24, the Court has already concluded that plaintiff has failed to introduce evidence to that effect. As previously discussed, the calculation of the interest amount does not give rise to a CPA claim, either. Id. at 209:21–25. Nor does plaintiff introduce evidence to show that he suffered any injury due to this alleged misconduct. Id. at 47:17–24, 105:21–106:1, 107:3–22. The Court therefore need not reach defendants' argument regarding Martin's litigation privilege, but notes that plaintiff did not refute it, see Dkt. #112, Dkt. #121.

H. Count 8: Constitutional § 1983 Claim

"To state a claim under 42 U.S.C. [§] 1983, a plaintiff must allege that (1) the defendant was acting under color of state law at the time the acts complained of were committed, and that (2) the defendant deprived plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States." Briley v. State of Cal., 564 F.2d 849, 853 (9th Cir. 1977).

Defendants did not act under color of state law. As previously discussed, they did not file false affidavits or otherwise deceive the Snohomish County District Court and cause the issuance of a fraudulent default judgment. Am. Compl. at ¶¶ 162–163. Contrary to plaintiff's arguments, see Yohannes Dep. at 211:12–213:25, "[o]nly where the private party

makes use of state collection procedures with the 'overt, significant assistance' of state officials may state action be found." Seattle Fishing Servs., LLC v. Bergen Indus. & Fishing Corp., No. C04-2405RSM, 2005 WL 1427697, at *3 (W.D. Wash. June 15, 2005), aff'd sub nom. Seattle Fishing Servs. LLC v. Bergen Indus. & Fishing Co., 242 F. App'x 436 (9th Cir. 2007) (quoting Tulsa Professional Collection Services v. Pope, 485 U.S. 478, 486 (1988)). "The action of the court clerk in accepting and filing the writs of garnishment is not [this] type of significant, overt assistance." Id.

I. Counts 9, 10 and 11: Abuse of Process, Defamation and Fraud

"To prove the tort of abuse of process, a plaintiff must show both (1) the existence of an ulterior purpose to accomplish an object not within the proper scope of the process, and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings." Vargas Ramirez v. United States, 93 F. Supp. 3d 1207, 1232 (W.D. Wash. 2015) (citation and internal quotation marks omitted). Plaintiff has not shown any ulterior motive on the part of defendants or any intent by them to allow the Judgment to expire. Ansari Decl. at ¶ 14; Cable Decl. at ¶ 2; Martin Decl. at ¶ 2; see Yohannes Dep. at 80:20–24, 201:22–202:11.

Plaintiff's defamation claim pertains to Cable's communications with the DOI. Id. at 228:23–232:2. As previously discussed, plaintiff admits that he has no personal knowledge of any representations made by Cable to the DOI. Id. at 25:11–26:1, 28:19–29:13; see Blair Foods, 610 F.2d at 667. The Court also notes that "[a]llegedly libelous statements, spoken or written by a party or counsel in the course of a judicial proceeding, are absolutely privileged if they are

pertinent or material to the redress or relief sought, whether or not the statements are legally sufficient to obtain that relief." McNeal v. Allen, 95 Wn. 2d 265, 267 (1980); see Am. Compl. At ¶ 180. Furthermore, Ansari sent plaintiff a letter on June 20, 2016, enclosing the Writ of Release and a deletion request to plaintiff's credit bureau. Ex. 7, Dkt. #110-1; see Yohannes Dep. at 231:10–24.

"The nine elements of fraud are: (1) representation of existing fact, (2) materiality of the representation, (3) falsity, (4) the speaker's knowledge of its falsity, (5) the intent of the speaker that representation be acted upon by the plaintiff, (6) plaintiff's ignorance of its falsity, (7) plaintiff's reliance on the truth of the representation, (8) plaintiff's right to rely on the representation, and (9) resulting damages." Brummett v. Washington's Lottery, 171 Wn. App. 664, 675 (2012). In Count 11, plaintiff alleges that defendants concealed material facts from him regarding the Judgment and Writ of Garnishment. Am. Compl. at ¶¶ 182–185. The Court reiterates that plaintiff has not shown that defendants committed any false and material representations, let alone that they did so knowingly. The Court also notes that, to the extent plaintiff's claim pertains to statements made in the course of the judicial proceedings, these statements are privileged. McNeal, 95 Wn. 2d at 267.

J. Constitutionality of Washington's Garnishment Statute

The Court has already found that defendants were not acting under color of state law. See Dkt. #115 at 5–13; Dkt. #130 at 4–6. In his motion for declaratory judgment, plaintiff also challenges the constitutionality of RCW 6.27.020, which states:

> (1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor
> (2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.

Plaintiff argues that this provision is unconstitutional because it gives judgment creditors the power to seize property without any notice or hearing, fails to provide equal protection under the law, denies "a class of citizens a fair, impartial, and neutral hearing before they are deprived of their property", and empowers debt collectors to indulge in abusive debt collection practices. Dkt. #115 at 13. In determining the constitutionality of this provision, the Court considers: "[1] the private interest that will be affected by the official action; [2] the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and [3] the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Mathews v. Eldridge, 424 U.S. 319, 335 (1976).

RCW 6.27.020 passes this test. Debtors have an interest in protecting their property from being erroneously garnished. However, creditors also have an interest in the recovery of their debt. See Tift v.

Snohomish Cty., 764 F. Supp. 2d 1247, 1254 (W.D. Wash. 2011) ("The creditor has a strong interest in prompt and inexpensive satisfaction and collection of the judgment since delay may result in the debtor's disposition of the property or diminution of its value. ... The debtor has a legitimate interest in protecting exempt property from seizure.") (internal citation omitted). There are adequate safeguards built into the statute. See RCW 6.27.100, 6.27.130, 6.27.150, 6.27.180, 6.27.210, 6.27.230. The government, too, has an interest in enforcing the judgments of its own courts. See Brown v. Liberty Loan Corp. of Duval, 539 F.2d 1355, 1363 (5th Cir. 1976). The Court is not persuaded that plaintiff's substitute procedures are necessary. Plaintiff is not entitled to an injunction preventing attorneys from issuing writs of garnishment, either. See Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv., 886 F.3d 803, 817 (9th Cir. 2018).

CONCLUSION

For all the foregoing reasons, defendants' motions for summary judgment, see Dkts. #104–107, are GRANTED. Plaintiff's motions for partial summary judgment, see Dkt. #112, and declaratory judgment, see Dkt. #115, are DENIED. Defendants' motion for protective order, see Dkt. #117, and plaintiff's cross-motion for protective order, see Dkt. #122, are DENIED. The Clerk of Court is directed to enter judgment against plaintiff and in favor of defendants.

DATED this 11th day of October, 2019.

A Robert S. Lasnik
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AKLILU YOHANNES,
Plaintiff,
v.
OLYMPIC COLLECTION INC. et al.,
Defendants.

Case No. 2:17-CV-509-RSL
ORDER DENYING MOTION
FOR LEAVE TO FILE
AMENDED COMPLAINT

This matter comes before the Court on plaintiff Aklilu Yohannes's "Motion for Leave to File an Amended Complaint." Dkt. #77. For the following reasons, plaintiff's motion is denied.[21]

INTRODUCTION

In 2006, defendant Olympic Collection Inc. ("OCI") obtained a default judgment against Yohannes in the Snohomish County District Court in a debt collection case. Dkt. #32 at ¶ 11; Ex. 1, Dkt. #32-2 at 6. After the balance remained uncollected for a decade, OCI filed a writ of garnishment and successfully garnished plaintiff's wages. Ex. 1, Dkt. #32-2 at 7–9; intent to file a lawsuit. Dkt. #32 at ¶ 42. OCI then refunded the garnished money to plaintiff. Id. Plaintiff maintains that he was harmed by defendants' attempts to collect the alleged debt and brings this action asserting several claims against OCI, Ansari, Susan Cable, and Norman L. Martin. See Dkt. #32. Plaintiff alleges, *inter alia*, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, Washington's Collection Agency Act, RCW 19.16 *et seq.*, and Washington's Consumer Protection Act ("CPA"), RCW 19.86 *et seq.* Id.

Plaintiff filed his initial complaint on March 31, 2017. Dkt. #1. On May 24, 2017, the Court ordered parties to be joined by June 21, 2017 and discovery to be completed by September 10, 2017. Dkt. #9. On

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[21] In his Reply, plaintiff also moves to strike portions of defendants' response, see Dkt. #80, and the declarations of Farooq Ansari, see Dkt. #81, and Marc Rosenberg, see Dkt. #82. Dkt. #84 at 1–5. The Court may strike any "redundant, immaterial, impertinent or scandalous matter" from a pleading. Fed. R. Civ. P. 12(f). Plaintiff does not offer a plausible basis to strike the requested materials. The Court takes plaintiff's objections into consideration, but declines to strike any portion of defendants' response or declarations outright.

December 7, 2017, plaintiff was granted leave to amend his complaint to include violations of the CPA, to properly raise a constitutional challenge to RCW 6.27, and to cure any other deficiencies. Dkt. #31. Plaintiff filed his amended complaint on December 29, 2017. Dkt. #32. On February 5, 2018, the parties stipulated to an extension of time for defendants to respond to the amended complaint until February 9, 2018. Dkt. #37. In the stipulation, the parties stated that they "[would] be proposing new case schedule dates." Id. The Court accordingly issued an order granting the extension on February 6, 2018. Dkt. #38. On August 19, 2018, plaintiff filed a motion for entry of a revised scheduling order. Dkt. #62. The Court granted plaintiff's motion in part and extended discovery to May 10, 2019. Dkt. #71. The parties then stipulated to another extension and the Court entered an "Amended Order Setting Trial Date and Related Dates." Dkt. #73. This order set the trial for October 7, 2019, and set deadlines of March 6, 2019 for the addition of new parties, April 10, 2019 for the amendment of pleadings, and June 9, 2019 for the completion of discovery. Id. On April 9, 2019, plaintiff filed this motion for leave to file a second amended complaint. Dkt. #77.

Plaintiff's proposed second amended complaint adds four new defendants and asserts additional claims against new and original defendants. Id. The additional defendants include defendants' attorney Michael O'Meara, OCI Director Muneera Merchant, and former OCI employees Lonnie Ledbetter and Kayla Brown. Id. at 4–6; Dkt. #80 at 3. The proposed claims include two new violations of the Racketeer Influence and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*, and one new violation of the Washington Criminal Profiteering Act, RCW 9A.82 *et*

seq. Dkt. #77 at 6. Plaintiff's proposed Count 12 alleges violations of RICO predicated on mail fraud and extortion. Ex. 1, Dkt. #77-7 at ¶¶ 235–79. Proposed Count 13 alleges RICO violations based on the collection of an unlawful debt and a racketeering enterprise. Id. at ¶¶ 280–86. Proposed Count 14 alleges that the original debt assignment and the writs of garnishment were forgeries in violation of the Washington Criminal Profiteering Act. Id. at ¶¶ 287–95.

DISCUSSION

A. Legal Standard

"The district court is given broad discretion in supervising the pretrial phase of litigation." Zivkovic v. S. California Edison Co., 302 F.3d 1080, 1087 (9th Cir. 2002) (quoting Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 607 (9th Cir. 1992)). Other than an amendment as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). However, a case scheduling order may be modified "only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). "A party seeking to amend a pleading after the date specified in the scheduling order must first show good cause for amendment under Rule 16, and then demonstrate that the amendment is proper under Rule 15." Paz v. City of Aberdeen, No. C13-5104 RJB, 2013 WL 6163016, at *2 (W.D. Wash. Nov. 25, 2013); see Rain Gutter Pros, LLC v. MGP Mfg., LLC, No. C14-0458 RSM, 2015 WL 6030678, at *1 (W.D. Wash. Oct. 15, 2015).

Under Rule 16, "good cause" means that "the scheduling deadlines cannot be met despite the

party's diligence." Paz, 2013 WL 6163016 at *2 (citing Johnson, 975 F.2d at 609). "If the party seeking the modification was not diligent, the inquiry should end." Id. (citing Millenkamp v. Davisco Foods Intern., Inc., 448 Fed. Appx. 720, 721 (9th Cir. 2011)).

Rule 15 "sets forth a very liberal amendment policy." Rain Gutter Pros, LLC, 2015 WL 6030678 at *1 (citing Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001)). "Five factors are used to assess the propriety of a motion for leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4) futility of amendment, and (5) whether the party has previously amended its pleading." LifeLast, Inc. v. Charter Oak Fire Ins. Co., No. C14-1031JLR, 2015 WL 12910683, at *2 (W.D. Wash. July 6, 2015) (citing Allen v. City of Beverly Hills, 911 F.2d 367, 373 (9th Cir. 1990)). Delay, by itself, is not sufficient to justify denial of leave to amend. Paz, 2013 WL 6163016 at *3 (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 186 (9th Cir. 1986)). However, the remaining factors "could each, independently, support a denial of leave to amend a pleading." Id. (citing Lockheed Martin Corp. v. Network Solutions, Inc., 194 F.3d 980, 986 (9th Cir. 1999)). "Of these factors, prejudice to the opposing party is the most important factor." Id. (citing Jackson v. Bank of Hawaii, 902 F.2d 1385, 1387 (9th Cir. 1990)).

"Relevant to evaluating the delay issue is whether the moving party knew or should have known the facts and theories raised by the amendment." Id. at *4 (citing Jackson, 902 F.2d at 1388). "A party that contends it learned 'new' facts to support a claim should not assert a claim that it could have pleaded in previous pleadings." Id. (citing Chodos v. West Publishing Co., 292 F.3d 992, 1003 (9th Cir. 2002).

Bad faith exists where "the plaintiff merely is seeking to prolong the litigation by adding new but baseless legal theories." Griggs v. Pace Am. Grp., Inc., 170 F.3d 877, 881 (9th Cir. 1999) (citing Steckman v. Hart Brewing, Inc., 143 F.3d 1293, 1296 (9th Cir. 1998)). "Prejudice may effectively be established by demonstrating that a motion to amend was made after the cutoff date for such motions, or when discovery had closed or was about to close." Paz, 2013 WL 6163016 at *4 (citing Zivkovic, 302 F.3d at 1087). "Leave to amend need not be given if a complaint, as amended, is subject to dismissal." Moore v. Kayport Package Exp., Inc., 885 F.2d 531, 538 (9th Cir. 1989) (citing Pan–Islamic Trade Corp. v. Exxon Corp., 632 F.2d 539, 546 (5th Cir. 1980), cert. denied, 454 U.S. 927 (1981)).

B. Joinder of Parties

Plaintiff requests to add four new defendants more than a month after the Court's deadline for joining additional parties has passed. See Dkt. #73; Dkt. #77. Plaintiff does not acknowledge that deadline and moves only to amend his complaint. Dkt. #77. The deadline for joining additional parties is set early in the case to ensure that "all interested parties have a full and fair opportunity to participate in discovery." Muse Apartments, LLC v. Travelers Cas., No. C12-2021-RSL, 2014 WL 11997862, at *1 (W.D. Wash. Nov. 12, 2014). When a party moves to amend its complaint after the relevant deadline has passed, but does not request that the Court modify its scheduling order, the Court need not construe the motion as a motion to amend the scheduling order. Johnson, 975 F.2d at 608–09 (The "court may deny as untimely a motion filed after the scheduling order cut-off date where no request to modify the order has been made.") (citing U.S. Dominator, Inc. v. Factory Ship Robert E.

Resoff, 768 F.2d 1099, 1104 (9th Cir. 1985)). The deadline for joining new parties in this case was March 6, 2019. Dkt. #73. Plaintiff's motion is therefore untimely.

Even if the Court construes this motion as a motion to amend the scheduling order, the Court does not find good cause to do so. Plaintiff claims that his "investigation" into the case has led to "significant factual developments" that justify the addition of the proposed new defendants. Dkt. #77 at 3. However, plaintiff has had more than two years to conduct discovery and join additional parties, and he could have done so in his first amended complaint in December 2017.[22] See Dkt. #32. The facts giving rise to plaintiff's request to join these defendants have been available to plaintiff since the onset of the litigation. The documents on which plaintiff relies in his motion have been in his possession since at least the time he filed his first amended complaint. See Dkt. #32; see Paz, 2013 WL 6163016 at *3. The joinder deadline was already extended from the original June 21, 2017 deadline. Dkt. #9. Plaintiff has received several continuances to conduct discovery and has not

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[22] Plaintiff states only that evidence discovered since his filing of a motion for disqualification on April 5, 2018 shows that "the Release of Writ of Garnishment bearing Martin's stamped signature was sent to the US Department of Interior from the O'Meara law office ... The Second Amended Complaint alleges the O'Meara law office represented the forged Release of Writ of Garnishment to the DOI as true a [sic] written instrument in violation of RCW 9A.60.020." Dkt. #77 at 4. However, the Writ of Garnishment was already in plaintiff's possession, see Dkt. #32-2, and he does not explain how or why he only recently uncovered this information, if indeed that is the case. See Paz, 2013 WL 6163016 at *4. Nor does he give any plausible explanation for why his claims against Merchant, Ledbetter and Brown could not have been brought earlier. Dkt. #77 at 5; Dkt. #84 at 6.

demonstrated diligence in adhering to the Court's scheduling orders. See Dkt. #7; Dkt. #71; Dkt. #73; see Johnson, 975 F.2d at 609.[23]

C. Proposed Claims

The remaining proposed claims are properly treated as a motion to amend and are analyzed under Rule 15. Allen, 911 F.2d at 373. There is no evidence of bad faith and plaintiff filed his motion to amend one day before the deadline. LifeLast, Inc., 2015 WL 12910683 at *2. However, plaintiff has already been granted leave to amend once and offers no plausible explanation as to why these proposed claims could not have been included in his first amended complaint. See Dkt. #77; Dkt. #84; see Lockheed Martin Corp. v. Network Sols., Inc., 194 F.3d 980, 986 (9th Cir. 1999). Discovery has already been delayed by nearly two years, see Dkt. #9; Dkt. #73, and further delay would result from the addition of these claims. Bowers v. Kletke, No. C08-1768-RSM, 2010 WL 11527183, at *4 (W.D. Wash. July 21, 2010) (denying leave to amend based on undue delay where a "need to reopen discovery and therefore delay the proceedings support[ed] a finding of prejudice"). Prejudice to the opposing party is the "touchstone of the inquiry under rule 15(a)." Eminence Capital, LLC, 316 F.3d at 1052 (citations omitted).[24]

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[23] The Court need not reach the analysis under Rule 15. However, the Court notes that there would be significant prejudice to these new defendants in being added to the action at this late stage, see Dkt. #73, that plaintiff is attempting to add parties more than a month after the deadline to do so has passed, and that plaintiff has already previously amended his complaint. LifeLast, Inc., 2015 WL 12910683 at *2.

[24] In defendants' opposition to this motion, they request attorney's fees under 28 U.S.C. § 1927 for the need to respond to plaintiff's "vexatious" motion. Dkt. #80 at 11–12. Attorney's fees under section 1927 are appropriate only when a party has acted

CONCLUSION

For all the foregoing reasons, plaintiff's motion for leave to file a second amended complaint is DENIED.

DATED this 18th day of June, 2019.

Robert S. Lasnik
United States District Judge

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in bad faith. Irving v. Nat'l R.R. Passenger Corp., No. C13-5713-BHS, 2015 WL 144327, at *2 (W.D. Wash. Jan. 12, 2015) (citing Soules v. Kauaians for Nukolii Campaign Comm., 849 F.2d 1176, 1185 (9th Cir. 1988)). The Court notes plaintiff's pro se status and finds no evidence that plaintiff acted in bad faith. Defendants' request for attorney fees is denied.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AKLILU YOHANNES,
Plaintiff-Appellant,
v.
OLYMPIC COLLECTION INC (OCI); FAROOQ ANSARI; SUSAN CABLE; NORMAN L. MARTIN,
Defendants-Appellees,
v.
PHYSICIANS AND DENTISTS CREDIT BUREAU,

No. 22-36059
D.C. No. 2:17-cv-00509-RSL
Western District of Washington, Seattle

ORDER

Before: GOULD and RAWLINSON, Circuit Judges, and ADELMAN,* District Judge.

* The Honorable Lynn S. Adelman, United States District Judge for the Eastern District of Wisconsin, sitting by designation

Judges Gould and Rawlinson voted to deny, and Judge Adelman voted to grant, Appellant's Petition for Panel Rehearing.

Judges Gould and Rawlinson voted to deny, and Judge Adelman recommended denying, Appellant's Petition for Rehearing En Banc.

Judges Gould and Rawlinson voted to deny, and Judge Adelman recommended denying, Appellees' Petition for Rehearing En Banc.

The full court has been advised of Appellant's Petition for Rehearing En Banc and of Appellees' Petition for Rehearing En Banc, and no judge of the court has requested a vote.

Appellant's Petition for Panel Rehearing or Rehearing En Banc, filed August 26, 2024, is DENIED.

Appellees' Petition for Rehearing En Banc, filed August 27, 2024, is DENIED.

APPENDIX B

Chapter 6.27 RCW GARNISHMENT

Sections

6.27.120 Effect of service of writ.

6.27.130 Mailing of writ and judgment or affidavit to judgment debtor—Mailing of notice and claim form if judgment debtor is an individual—Service—Return.

6.27.140 Form of returns under RCW 6.27.130.

6.27.150 Exemption of earnings—Amount.

6.27.160 Claiming exemptions—Form—Hearing—Attorney's fees—Costs—Release of funds or property.

6.27.170 Garnished employee not to be discharged—Exception.

6.27.180 Bond to discharge writ.

6.27.190 Answer of garnishee—Contents—Forms.

6.27.200 Default judgment—Reduction upon motion of garnishee—Attorney's fees.

6.27.210 Answer of garnishee may be controverted by plaintiff or defendant.

6.27.220 Controversion—Procedure.

6.27.230 Controversion—Costs and attorney's fees.

6.27.240 Discharge of garnishee.

6.27.250 Judgment against garnishee—Procedure if debt not mature.

6.27.260 Execution on judgment against garnishee.

RCW 6.27.005 Legislative intent.

The legislature recognizes that a garnishee has no responsibility for the situation leading to the garnishment of a debtor's wages, funds, or other property, but that the garnishment process is necessary for the enforcement of obligations debtors otherwise fail to honor, and that garnishment procedures benefit the state and the business community as creditors. The state should take whatever measures that are reasonably necessary to reduce or offset the administrative burden on the garnishee consistent with the goal of effectively enforcing the debtor's unpaid obligations.

[2000 c 72 s 1; 1998 c 227 s 1; 1997 c 296 s 1.]

RCW 6.27.010 Definitions.

(1) As used in this chapter, the term "earnings" means compensation paid or payable to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a governmental or nongovernmental pension or retirement program.

(2) As used in this chapter, the term "disposable earnings" means that part of earnings remaining after the deduction from those earnings of any amounts required by law to be withheld.

[2012 c 159 s 1; 2003 c 222 s 16; 1987 c 442 s 1001.]

RCW 6.27.020 Grounds for issuance of writ—Time of issuance of prejudgment writs.

(1) The clerks of the superior courts and district courts of this state may issue writs of garnishment returnable to their respective courts for the benefit of a judgment creditor who has a judgment wholly or partially unsatisfied in the court from which the garnishment is sought.

(2) Writs of garnishment may be issued in district court with like effect by the attorney of record for the judgment creditor, and the form of writ shall be substantially the same as when issued by the court except that it shall be subscribed only by the signature of such attorney.

(3) Except as otherwise provided in RCW 6.27.040 and 6.27.330, the superior courts and district courts of this state may issue prejudgment writs of garnishment to a plaintiff at the time of commencement of an action or at any time afterward, subject to the requirements of chapter 6.26 RCW.

[2003 c 222 s 1; 1987 c 442 s 1002; 1969 ex.s. c 264 s 1. Formerly RCW 7.33.010.]

NOTES:

Rules of court: Cf. CR 64.

RCW 6.27.030 Application of chapter to district courts.

All the provisions of this chapter shall apply to proceedings before district courts of this state.

[1987 c 442 s 1003; 1969 ex.s. c 264 s 2. Formerly RCW 7.33.020.]

RCW 6.27.060 Application for writ—Affidavit—Fee.

The judgment creditor as the plaintiff or someone in the judgment creditor's behalf shall apply for a writ of garnishment by affidavit, stating the following facts: (1) The plaintiff has a judgment wholly or partially unsatisfied in the court from which the writ is sought; (2) the amount alleged to be due under that judgment; (3) the plaintiff has reason to believe, and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment by any state or federal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by any state or federal law; and (4) whether or not the garnishee is the employer of the judgment debtor.

The judgment creditor shall pay to the clerk of the superior court the fee provided by RCW 36.18.016(6), or to the clerk of the district court the fee provided by RCW 3.62.060.

[2018 c 22 s 4; 2003 c 222 s 17; 1988 c 231 s 22. Prior: 1987 c 442 s 1006; 1987 c 202 s 133; 1981 c 193 s 3;

1977 ex.s. c 55 s 1; 1969 ex.s. c 264 s 4. Formerly RCW 7.33.040.]

NOTES:

Explanatory statement—2018 c 22: See note following RCW 1.20.051.

Severability—1988 c 231: See note following RCW 6.01.050.

Intent—1987 c 202: See note following RCW 2.04.190.

RCW 6.27.070 Issuance of writ—Form—Dating—Attestation.

(1) When application for a writ of garnishment is made by a judgment creditor and the requirements of RCW 6.27.060 have been complied with, the clerk shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor in the form prescribed in RCW 6.27.100, directed to the garnishee, commanding the garnishee to answer said writ on forms served with the writ and complying with RCW 6.27.190 within twenty days after the service of the writ upon the garnishee. The clerk shall likewise docket the case when a writ of garnishment issued by the attorney of record of a judgment creditor is filed. Whether a writ is issued by the clerk or an attorney, the clerk shall bear no responsibility for errors contained in the writ.

(2) The writ of garnishment shall be dated and attested as in the form prescribed in RCW 6.27.100. The name and office address of the plaintiff's attorney shall be indorsed thereon or, in case the plaintiff has no attorney, the name and address of the plaintiff shall be indorsed thereon. The address of the clerk's office shall appear at the bottom of the writ.

[2003 c 222 s 3; 1987 c 442 s 1007; 1970 ex.s. c 61 s 1. Prior: 1969 ex.s. c 264 s 5. Formerly RCW 7.33.050.]

RCW 6.27.105 Form of writ for continuing lien on earnings.

(1) A writ that is issued for a continuing lien on earnings shall be substantially in the following form, but:

(a) If the writ is issued under an order or judgment for private student loan debt, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or order for private student loan debt";

(b) If the writ is issued under an order or judgment for consumer debt, the following statement shall appear conspicuously in the caption: "This garnishment is based on a judgment or order for consumer debt"; and

(c) If the writ is issued by an attorney, the writ shall be revised as indicated in subsection (2) of this section:

"IN THE . . . . . COURT

OF THE STATE OF WASHINGTON IN AND FOR
THE COUNTY OF . . . . . .

. . . .,

Plaintiff,

No. . . . .

vs.

. . . .,

WRIT OF

Defendant

GARNISHMENT FOR

CONTINUING LIEN ON

. . . .,

EARNINGS

Garnishee

THE STATE OF WASHINGTON TO:. . . .

Garnishee

AND TO:. . . .

Defendant

The above-named plaintiff has applied for a writ of garnishment against you, claiming that the above-named defendant is indebted to plaintiff and that the amount to be held to satisfy that indebtedness is $ . . . . ., consisting of:

Balance on Judgment or Amount of Claim

$ . . . .

Interest under Judgment from . . . . to . . . .

$ . . . .

Per Day Rate of Estimated Interest

$ . . . . per day

Taxable Costs and Attorneys' Fees

$ . . . .

Estimated Garnishment Costs:

Filing and Ex Parte Fees

$ . . . .

Service and Affidavit Fees

$ . . . .

Postage and Costs of Certified Mail

$ . . . .

Answer Fee or Fees

$ . . . .

Garnishment Attorney Fee

$ . . . .

Other

$ . . . .

THIS IS A WRIT FOR A CONTINUING LIEN. THE GARNISHEE SHALL HOLD the nonexempt portion of the defendant's earnings due at the time of service of this writ and shall also hold the defendant's nonexempt earnings that accrue through the last payroll period ending on or before SIXTY days after the date of service of this writ. HOWEVER, IF THE GARNISHEE IS PRESENTLY HOLDING THE NONEXEMPT PORTION OF THE DEFENDANT'S EARNINGS UNDER A PREVIOUSLY SERVED WRIT FOR A CONTINUING LIEN, THE GARNISHEE SHALL HOLD UNDER THIS WRIT only the defendant's nonexempt earnings that accrue

from the date the previously served writ or writs terminate and through the last payroll period ending on or before sixty days after the date of termination of the previous writ or writs. IN EITHER CASE, THE GARNISHEE SHALL STOP WITHHOLDING WHEN THE SUM WITHHELD EQUALS THE AMOUNT STATED IN THIS WRIT OF GARNISHMENT.

YOU ARE HEREBY COMMANDED, unless otherwise directed by the court, by the attorney of record for the plaintiff, or by this writ, not to pay any debt, whether earnings subject to this garnishment or any other debt, owed to the defendant at the time this writ was served and not to deliver, sell, or transfer, or recognize any sale or transfer of, any personal property or effects of the defendant in your possession or control at the time when this writ was served. Any such payment, delivery, sale, or transfer is void to the extent necessary to satisfy the plaintiff's claim and costs for this writ with interest.

YOU ARE FURTHER COMMANDED to answer this writ according to the instructions in this writ and in the answer forms and, within twenty days after the service of the writ upon you, to mail or deliver the original of such answer to the court, one copy to the plaintiff or the plaintiff's attorney, and one copy to the defendant, at the addresses listed at the bottom of this writ.

If, at the time this writ was served, you owed the defendant any earnings (that is, wages, salary, commission, bonus, tips, or other compensation for personal services or any periodic payments pursuant to a nongovernmental pension or retirement

program), the defendant is entitled to receive amounts that are exempt from garnishment under federal and state law. You must pay the exempt amounts to the defendant on the day you would customarily pay the compensation or other periodic payment. As more fully explained in the answer, the basic exempt amount is the greater of seventy-five percent of disposable earnings or a minimum amount determined by reference to the employee's pay period, to be calculated as provided in the answer. However, if this writ carries a statement in the heading of "This garnishment is based on a judgment or order for private student loan debt," the basic exempt amount is the greater of eighty-five percent of disposable earnings or fifty times the minimum hourly wage of the highest minimum wage law in the state at the time the earnings are payable; and if this writ carries a statement in the heading of "This garnishment is based on a judgment or order for consumer debt," the basic exempt amount is the greater of eighty percent of disposable earnings or thirty-five times the state minimum hourly wage.

YOU MAY DEDUCT A PROCESSING FEE FROM THE REMAINDER OF THE EMPLOYEE'S EARNINGS AFTER WITHHOLDING UNDER THIS WRIT. THE PROCESSING FEE MAY NOT EXCEED TWENTY DOLLARS FOR THE FIRST ANSWER AND TEN DOLLARS AT THE TIME YOU SUBMIT THE SECOND ANSWER.

If you owe the defendant a debt payable in money in excess of the amount set forth in the first paragraph of this writ, hold only the amount set forth in the first

paragraph and any processing fee if one is charged and release all additional funds or property to defendant.

IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED, A JUDGMENT MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING INTEREST, ATTORNEY FEES, AND COSTS WHETHER OR NOT YOU OWE ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THIS WRIT, ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR EFFECTS IN YOUR POSSESSION OR CONTROL.

JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR COSTS AND FEES INCURRED BY THE PLAINTIFF.

Witness, the Honorable . . . . . ., Judge of the above-entitled Court, and the seal thereof, this . . . . day of . . . . . ., ... (year)

[Seal]

. . . .

. . . .

Attorney for Plaintiff (or Plaintiff, if no attorney)

Clerk of the Court

. . . .

. . . .

Address

By

. . . .

. . . .

Name of Defendant

Address"

. . . .

Address of Defendant

(2) If an attorney issues the writ of garnishment, the final paragraph of the writ, containing the date, and the subscripted attorney and clerk provisions, shall be replaced with text in substantially the following form:

"This writ is issued by the undersigned attorney of record for plaintiff under the authority of chapter 6.27 of the Revised Code of Washington, and must be complied with in the same manner as a writ issued by the clerk of the court.

Dated this . . . . . .day of . . . . . ., ... (year)

. . . .

Attorney for Plaintiff

. . . .

. . . .

Address

Address of the Clerk of the Court"

. . . .

Name of Defendant

. . . .

Address of Defendant

[2021 c 35 s 1; 2019 c 371 s 5; 2018 c 199 s 205; 2012 c 159 s 4.]

NOTES:

Findings—Intent—Short title—2018 c 199: See notes following RCW 67.08.100.

RCW 6.27.130 Mailing of writ and judgment or affidavit to judgment debtor—Mailing of notice and claim form if judgment debtor is an individual—Service—Return.

(1) When a writ is issued under a judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known post office address of the judgment debtor, (a) a copy of the writ and a copy of the judgment creditor's affidavit submitted in application for the writ, and (b) if the judgment debtor is an

individual, the notice and claim form prescribed in RCW 6.27.140. In the alternative, on or before the day of the service of the writ on the garnishee or within two days thereafter, the stated documents shall be served on the judgment debtor in the same manner as is required for personal service of summons upon a party to an action.

(2) The requirements of this section shall not be jurisdictional, but (a) no disbursement order or judgment against the garnishee defendant shall be entered unless there is on file the return or affidavit of service or mailing required by subsection (3) of this section, and (b) if the copies of the writ and judgment or affidavit, and the notice and claim form if the defendant is an individual, are not mailed or served as herein provided, or if any irregularity appears with respect to the mailing or service, the court, in its discretion, on motion of the judgment debtor promptly made and supported by affidavit showing that the judgment debtor has suffered substantial injury from the plaintiff's failure to mail or otherwise to serve such copies, may set aside the garnishment and award to the judgment debtor an amount equal to the damages suffered because of such failure.

(3) If the service on the judgment debtor is made by a sheriff, the sheriff shall file with the clerk of the court that issued the writ a signed return showing the time, place, and manner of service and that the copy of the writ was accompanied by a copy of a judgment or affidavit, and by a notice and claim form if required by this section, and shall note thereon fees for making such service. If service is made by any person other

than a sheriff, such person shall file an affidavit including the same information and showing qualifications to make such service. If service on the judgment debtor is made by mail, the person making the mailing shall file an affidavit including the same information as required for return on service and, in addition, showing the address of the mailing and attaching the return receipt or the mailing should it be returned to the sender as undeliverable.

[2003 c 222 s 5; 1988 c 231 s 27; 1987 c 442 s 1013; 1969 ex.s. c 264 s 32. Formerly RCW 7.33.320.]

NOTES:

Severability—1988 c 231: See note following RCW 6.01.050.

RCW 6.27.370 Notice to federal government as garnishee defendant—Deposit, payment, and endorsement of funds received by the clerk—Fees as recoverable cost.

(1) Whenever the federal government is named as a garnishee defendant, the attorney for the plaintiff, or the clerk of the court shall, upon submitting a notice in the appropriate form by the plaintiff, issue a notice which directs the garnishee defendant to disburse any nonexempt earnings to the court in accordance with the garnishee defendant's normal pay and disbursement cycle.

(2) Funds received by the clerk from a garnishee defendant may be deposited into the registry of the court or, in the case of negotiable instruments, may be retained in the court file. Upon presentation of an order directing the clerk to disburse the funds received, the clerk shall pay or endorse the funds over to the party entitled to receive the funds. Except for good cause shown, the funds shall not be paid or endorsed to the plaintiff prior to the expiration of any minimum statutory period allowed to the defendant for filing an exemption claim.

(3) The plaintiff shall, in the same manner permitted for service of the writ of garnishment, provide to the garnishee defendant a copy of the notice issued under subsection (1) of this section, and shall supply to the garnished party a copy of the notice.

(4) Any answer or processing fees charged by the garnishee defendant to the plaintiff under federal law shall be a recoverable cost under RCW 6.27.090.

(5) The notice to the federal government garnishee shall be in substantially the following form:

IN THE . . . . . COURT

OF THE STATE OF WASHINGTON

IN AND FOR . . . . . COUNTY

. . . .,

NO . . . . . .

Plaintiff,

NOTICE TO FEDERAL

vs.

GOVERNMENT GARNISHEE

DEFENDANT

. . . .,

Defendant,

. . . .,

Garnishee Defendant.

TO: THE GOVERNMENT OF THE UNITED STATES AND ANY DEPARTMENT, AGENCY, OR DIVISION THEREOF

You have been named as the garnishee defendant in the above-entitled cause. A Writ of Garnishment accompanies this Notice. The Writ of Garnishment directs you to hold the nonexempt earnings of the named defendant, but does not instruct you to disburse the funds you hold.

BY THIS NOTICE THE COURT DIRECTS YOU TO WITHHOLD ALL NONEXEMPT EARNINGS AND DISBURSE THEM IN ACCORDANCE WITH YOUR NORMAL PAY AND DISBURSEMENT CYCLE, TO THE FOLLOWING:

. . . . . County . . . . . Court Clerk

Cause No . . . . . .

. . . .

(Address)

PLEASE REFERENCE THE DEFENDANT EMPLOYEE'S NAME AND THE ABOVE CAUSE NUMBER ON ALL DISBURSEMENTS.

The enclosed Writ also directs you to respond to the Writ within twenty (20) days, but you are allowed thirty (30) days to respond under federal law.

DATED this . . . . day of . . . . . ., 20 . . .

. . . .

Clerk of the Court

(6) If the writ of garnishment is issued by the attorney of record for the judgment creditor, the following paragraph shall replace the clerk's signature and date:

This notice is issued by the undersigned attorney of record for plaintiff under the authority of RCW 6.27.370, and must be complied with in the same manner as a notice issued by the court.

Dated this .....day of....., 20.....

....

Attorney for Plaintiff

[2012 c 159 s 16; 1997 c 296 s 9.]

HOUSE BILL REPORT HB 1816

As Passed House:

March 11, 2003

Title: An act relating to garnishments.

Brief Description: Allowing attorney issued garnishments and simplifying garnishment answer forms.

Sponsors: By Representatives Lantz and Carrell.

Brief History: Committee Activity:

Judiciary: 2/27/03, 2/28/03 [DP].

Floor Activity:

Passed House: 3/11/03, 92-0.

Brief Summary of Bill

- Allows attorneys for creditors to issue writs of garnishment following a district court judgment against a debtor.
- Allows attorneys in district court and superior court to release a garnishment without a court order.
- Changes the format of the worksheet used by a garnishee to answer a writ of garnishment.
- Allows a garnishee to make a motion to reduce a default judgment only on the first writ of garnishment.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members: Representatives Lantz, Chair; Moeller, Vice Chair; Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; Campbell, Flannigan, Kirby, Lovick and Newhouse.

Staff: Aaron Anderson (786-7119), Edie Adams (786-7180).

Background:

There are several ways a creditor may satisfy a judgment against a debtor. The garnishment process is a remedy that allows a creditor to obtain a debtor's funds or property that are in the possession of a third person (garnishee). Garnishment is used to force a debtor's employer to pay the creditor directly out of the debtor's paycheck.

Garnishment may also be used to reach other assets of the debtor, such as a bank account.

Following a judgment or court order, the creditor files an application with the court clerk, who is then required to issue a writ of garnishment to the creditor. The creditor serves the writ on the third party garnishee. In superior court, the creditor also sends a copy of the writ and a copy of the judgment to the debtor. In district court, the creditor sends a copy of the writ and a copy of the creditor's application for the writ to the

debtor. Service may be in person or by certified mail. Service on a government entity is by the same manner as service of a summons for a civil action, meaning that certified mail is not acceptable.

The writ of garnishment directs the garnishee to answer whether it holds funds or property owed to the debtor. The proper form for the answer details the amount owed by the garnishee to the debtor, and includes a worksheet for figuring the appropriate amounts exempted from garnishment. The creditor provides copies of this form when serving the writ of garnishment.

If the garnishee fails to answer the writ within 20 days after service, the court may enter judgment by default against the garnishee for the full amount of the judgment against the debtor, along with interests and costs, whether or not the garnishee owes anything to the debtor. The garnishee may make a motion to have this default judgment reduced to the amount owed to the debtor actually in possession of the garnishee, as long as the motion is made within seven days of the service of the writ of execution or garnishment.

Summary of Bill:

The attorney of record for a creditor may issue a writ of garnishment following a judgment or court order from a district court. This writ follows the same form as that used when the court issues such writ, and the clerk of the court dockets the case in the same manner as when the court issues the writ. The form of an attorney-issued writ incorporates changes to accommodate the signature of the attorney and to note that the writ requires the same compliance as a court-issued writ.

The service provisions are modified so that government entities may be served by certified mail. The provisions for service in superior court are modified to require mailing of a copy of the creditor's application for garnishment, rather than a copy of the judgment, to the debtor.

The form for the garnishee's answer is altered, creating a worksheet with calculation instructions. The formulas used are not changed. The garnishee's ability to make a motion for reduction of a default judgment within seven days of the writ of execution or garnishment is limited to the first such writ.

Attorneys for creditors are authorized to release exempted funds from garnishment, and a form is provided for such a release. Attorneys for creditors may also dismiss a garnishment. Payments to a creditor may be made either to the creditor or the creditor's attorney.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The big issue in this bill is the issuance of a writ of garnishment by an attorney. The court clerk's role in the writ of garnishment is a rubber stamp. This change frees up time for the court clerk, and speeds up the process. Courts will still docket the case, and all the existing safeguards would remain in place. Oregon has made this change, and it works well there. The change is limited to district court, which is

where the delays are occurring. Allowing reduction of a default judgment only after the first writ against a garnishee forces garnishees to respond promptly to a writ of garnishment. Employers don't understand the current form for answering a writ of garnishment, and the current system is especially confusing for small businesses. The new form is easier to understand. The Office of Financial Management pointed out some issues with the bill. County clerks don't have an opinion on attorney issuance of writs as long as it is limited to district court. Clerk involvement in superior court is a last-ditch check and balance to protect the debtor.

Testimony Against: None.

Testified: Representative Lantz, prime sponsor; Kevin Underwood and Patty Encinas, Washington State Collectors Association; and Debbie Wilke, Washington State Association of County Clerks.

SENATE BILL REPORT SB 5592

As Reported By Senate Committee On:
Judiciary, February 28, 2003

Title: An act relating to garnishments.

Brief Description: Allowing attorney issued garnishments and simplifying garnishment answer forms.

Sponsors: Senators Mulliken, Eide, Johnson, Haugen, Sheahan and McCaslin.

Brief History:

Committee Activity: Judiciary: 2/26/03, 2/28/03 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5592 be substituted therefor, and the substitute bill do pass.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

Staff: Lidia Mori (786-7755)

Background: The clerks of the superior courts and district courts issue writs of garnishment for the benefit of a judgment creditor who has an unsatisfied judgment in the court where the garnishment is sought. The judgment creditor or plaintiff applies for the writ by affidavit and pays a fee to the court clerk.

In district court, the plaintiff gives the defendant copies of the application for the writ, the writ, and the exemption documents. In superior court, a copy of the underlying judgment is given to the defendant, instead of the application for the writ.

A defendant may claim exemptions from garnishment and, if the plaintiff elects not to object to the exemptions, he or she must obtain a court order directing the garnishee to release the portion of the debt or property covered by the exemption claim.

A garnishee that has allowed a default judgment to be taken against it for failure to answer a writ can move to reduce the judgment amount within seven days of the time it is garnished.

Proponents of this bill believe allowing attorneys to issue writs of garnishment would reduce delays in the garnishment process and give court clerks more time to attend to other duties.

Summary of Substitute Bill: Writs of garnishment may be issued by the attorney of record for the judgment creditor. The effect of the writ is the same as one issued by a clerk of district court. In district court, the plaintiff must supply the defendant with a copy of the affidavit submitted in application for the writ, a copy of the writ, and the exemption documents.

If a defendant claims exemptions from a garnishment, the attorney for the plaintiff may authorize the release of claimed exempt funds or property instead of having to obtain a court order. The form of the answer to the writ of garnishment is a simple, worksheet format.

A garnishee that has allowed a default judgment to be taken against it for failure to answer a writ can move to reduce the judgment amount within seven days of the first time it is garnished.

Substitute Bill Compared to Original Bill: In district court, writs of garnishment may be issued by the attorney of record for the judgment creditor. The answer form for garnishees is amended to show that "disposable earnings" includes periodic payments pursuant to a nongovernmental pension or retirement program.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Garnishment is a post judgment remedy. This bill removes the requirement that an attorney go to court to get the writ of garnishment. It also simplifies the answer form for employers. This bill will help overburdened courts.

Testimony Against: Superior courts should be removed from this bill; delays are only occurring in district courts. Superior courts are courts of permanent record and they deal with judgments of substantial weight. Clerks provide a check and balance and give extra protection to creditors and debtors.

Testified: Kevin Underwood, WA Collector's Assn. (pro); Dave Quigley (pro); Debbie Wilke, WA Assn. of County Officials (con to original bill).