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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 15-35691

RICK GREER,
Plaintiff-Appellant,

v.

GREEN TREE SERVICING LLC; et al.,
Defendants-Appellees.

Filed: December 26, 2017

Appeal from the United States District Court
for the Western District of Washington
(D.C. No. 3:14-cv-05594-RJB)

MEMORANDUM*

Submitted December 18, 2017**

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: WALLACE, SILVERMAN, and BYBEE, Circuit Judges.

Rick Greer appeals pro se from the district court's summary judgment in his action alleging Fair Debt Collection Practices Act ("FDCPA") and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Glenn v. Washington County*, 673 F.3d 864, 870 (9th Cir. 2011). We may affirm on any basis supported by the record. *Afewerki v. Anaya Law Grp.*, 868 F.3d 771, 778 (9th Cir. 2017). We affirm.

Summary judgment on Greer's 15 U.S.C. §§ 1692e and 1692g claims against defendant Green Tree Servicing LLC based on communications received by Greer before July 25, 2013 was proper because Greer failed to file his suit within one year of Green Tree's alleged violations. *See* 15 U.S.C. § 1692k(d) (a claim under FDCPA must be brought "within one year from the date on which the violation occurs").

Summary judgment on Greer's §§ 1692e and 1692g claims against Green Tree based on communications received by Greer after July 25, 2013, and against defendants Northwest Trustee Services, Inc. and RCO Legal, P.S., was proper because the communications were not attempts to collect a debt as defined by the FDCPA. *See Ho v. ReconTrust Co.*, 858 F.3d 568, 572 (9th Cir. 2017) ("[A]ctions taken to facilitate a non-judicial foreclosure . . . are not attempts to collect 'debt' as that term is defined by the FDCPA."); *Dowers v. Nationstar Mortg., LLC*, 852 F.3d 964, 970 (9th Cir. 2017) (explaining that "while the FDCPA regulates security interest enforcement activity, it does so *only* through Section 1692f(6)," and that "[a]s for the remaining FDCPA provisions, 'debt collection' refers only to the collection of a money debt").

The district court properly granted summary judgment on Greer's claims under § 1692f because Greer failed to raise a genuine dispute of material facts as to whether defendants' conduct was unfair or unconscionable. *See* 15 U.S.C. § 1692f(6); *Ho*, 858 F.3d at 573 (§ 1692f(6) only protects a consumer against abusive practices of a security enforcer); *Dowers*, 852 F.3d at 971 (discussing protections for borrowers set forth in § 1692f(6)).

The motion of Northwest's counsel, RCO Legal, to withdraw (Docket Entry No. 34) is granted. The Clerk shall serve this order on Northwest Trustee Services, Inc. at the address provided in counsel's motion to withdraw: General Counsel, 13555 S.E. 36th St., Ste. 300, Bellevue, WA 98006.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASE NO. 3:14-CV-05594-RJB

RICK GREER,
Plaintiff,

v.

GREEN TREE SERVICING, LLC; NORTHWEST TRUSTEE SERVICES, INC.; and RCO LEGAL, P.S.,
Defendants.

Filed: July 6, 2015

ORDER ON DEFENDANTS NORTHWEST TRUSTEE SERVICES, INC. AND RCO LEGAL, P.S.'S MOTION FOR SUMMARY JUDGMENT

ROBERT J. BRYAN, United States District Judge.

This matter comes before the Court on a motion for summary judgment ("the Motion") filed by defendants Northwest Trustee Services, Inc. ("Northwest Trustee") and RCO Legal, P.S. ("RCO Legal"). Dkt. 24-26. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein. Dkt. 30, 31, 34.

FACTUAL BACKGROUND

In exchange for a $214,000 property loan from Sierra Pacific Mortgage Company, Inc., Plaintiff signed a promissory note on September 12, 2006. Dkt. 25-1. The loan was secured by a deed of trust. Dkt. 25-2. Plaintiff made payments from November 1, 2006 until October 1, 2009 to GMAC Mortgage, LLC ("GMAC"), holder of the promissory note and beneficiary under the deed of trust. Dkt. 1, at ¶¶ 11, 12; Dkt. 25-4. Following Plaintiff's delinquency, GMAC referred its non-judicial foreclosure on the promissory note to Northwest Trustee, appointing Northwest Trustee as its successor trustee on August 3, 2011. Dkt. 25-4. On behalf of GMAC, Northwest Trustee issued Plaintiff a Notice of Trustee's Sale on November 5, 2012. Dkt. 25-5.

GMAC transferred its loan servicing to defendant, Green Tree Servicing, LLC ("Green Tree") effective February 1, 2013. Dkt. 25-6. Green Tree first issued a Notice of Default to Plaintiff on August 26, 2013. On behalf of Green Tree, Northwest Trustee notified Plaintiff on October 21, 2013 of an Amended Notice of Trustee's Sale. Dkt. 25-7. Northwest Trustee also issued a Notice of Default on Green Tree's behalf on November 8, 2013, as well as another Amended Notice of Trustee's Sale on January 29, 2014, with a sale date of June 6, 2014. Dkt. 25-8; Dkt. 25-9. After Plaintiff requested a meeting with his loan beneficiary, Northwest Trustee cancelled the pending sale and employed RCO Legal to facilitate a meeting with Plaintiff for May 12, 2014. Dkt. 25-10; Dkt. 26-2. Plaintiff did not appear for the meeting, claiming that Green Tree had allegedly not complied with statutory obligations precedent to such a meeting. Dkt. 26-3 ("[Green

Tree is not] compliant [sic] with the DTA . . . Based on the above I will not be attending[.]"); Dkt. 1, at ¶¶ 55-68.

PROCEDURAL HISTORY

Plaintiff filed his Complaint against Green Tree, Northwest Trustee, and RCO Legal on July 25, 2014. Dkt. 1. Against Northwest Trustee, Plaintiff alleges violations of the Fair Debt Collection Practices Act ("FDCPA") (Count II), the Washington Collection Agencies Act ("CAA") (Count V, VI, VIII, IX, X, XI), and the Washington Deeds of Trust Act ("DTA") (Count XIII). Against RCO Legal, Plaintiff alleges violations of the FDCPA (Count III) and the DTA (XIV). The Court has federal question jurisdiction over Plaintiff's FDCPA claims and supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1331, § 1367(a).

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some metaphysical doubt.").

See also Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, T.W. *Elect. Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson*, *supra*). Conclusory, non specific statements in affidavits are not sufficient, and "missing facts" will not be "presumed." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

DISCUSSION

A. Fair Debt Collection Practices Act ("FDCPA") claim (Count II, III)

The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors . . . and to promote consistent state action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). To state a

claim under the FDCPA, Plaintiffs must allege facts sufficient to show that (1) the defendant was collecting a debt as a debt collector, and (2) its debt collection actions violated a federal statute. *Jerman v. Carlisle*, 559 U.S. 573 (2010); 15 U.S.C. § 1692 et seq. The FDCPA's definition of "debt collector" consists of a general definition followed by a number of exceptions. 15 U.S.C. § 1692a(6). The general definition states as follows:

> The term "debt collection" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects . . . debts owed . . . or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. *Id.*

Although not addressed by the Ninth Circuit, other trial courts have found that nonjudicial foreclosure actions do not constitute "debt collection" under the FDCPA, unless alleged as a violation of 15 U.S.C. § 1692f. *Jara v. Aurora Loan Servs., LLC*, No. C 11-00419 LB, 2011 WL 6217308, at *4 (N.D. Cal. Dec. 14, 2011); *Garfinkle v. JPMorgan Chase Bank*, No. C 11-01636 CW, 2011 WL 3157157, *3 (N.D. Cal. 2011); *Hulse v. Ocwen Fed. Bank, FSB*, 195 F. Supp. 2d 1188 (D. Or. 2002); *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 316 (Div. I, 2013); *Dietz v. Quality Loan Serv. Corp. of Washington*, No. C13-5948 RJB, 2014 WL 5343774, at *2 (W.D. Wash. 2014) ("The Notice of Default and Notice of Sale(s) are statutorily required notices . . . not "debt collection" activities separate

from the non-judicial process"). This Court joins in the logic of these other courts, because "foreclosing on a trust deed is distinct from the collection of the obligation to pay money," and "[t]he FDCPA is intended to curtail objectionable acts occurring in the process of collecting funds from a debtor." *Hulse*, 195 F. Supp. 2d at 1204.

1. Northwest Trustee

As applied to Northwest Trustee, all of Northwest Trustee's actions as alleged were part of non-judicial foreclosure proceedings initiated against Plaintiff. Plaintiff alleges that Northwest Trustee issued an Amended Notice of Trustee's Sale on October 21, 2013, a Notice of Default on November 8, 2013, an Amended Notice of Sale on January 29, 2014, and a Notice of Default on July 2, 2014, all of which are part of non-judicial foreclosure proceedings allowable under Washington law. Dkt. 1, at ¶¶ 31, 36, 40, 41, 48, 66. *See* RCW 61.12.110; RCW 61.24.031; RCW 61.24.40. Therefore, all violations alleged under the FDCPA against Northwest Trustee, other than those under 15 U.S.C. § 1692f, should be dismissed on that basis. *See* Dkt. 1, at 13.

Plaintiff's alleged violation of the FDCPA under 15 U.S.C. § 1692f also fails for failure to make a sufficient showing. Plaintiff alleges that Northwest Trustee violated 15 U.S.C. § 1692f by "using unfair and unconscionable means to collect or attempt to collect a debt. The whole of Northwest Trustee's correspondence to Plaintiff in their attempts to collect an alleged debt are unfair and unconscionable." This allegation is conclusory. Plaintiff does not state why the correspondence is unfair and unconscionable, but rather parrots general language from the statute. In fact, the statute itself is far more specific than Plaintiff,

providing eight non-exhaustive examples of unfair conduct. Plaintiff does not identify which subsection applies, nor does Plaintiff offer an alternative. Furthermore, Plaintiff alleges that is the "whole of Northwest Trustee's correspondence" that is unfair and unconscionable, but in review of the record, Northwest Trustee's correspondence appears transparent, direct, and unambiguous. The violation of the FDCPA alleged under 15 U.S.C. § 1692f is insufficient. Plaintiff's FDCPA claim against Northwest Trustee (Count II) should be dimissed.

2. RCO Legal

Plaintiff's allegations of the FDCPA, other than those under 15 U.S.C. § 1692f, fail as against RCO Legal for the same reason as Northwest Trustee: RCO Legal acted on behalf of Green Tree to pursue non-judicial foreclosure. From the record provided, it appears that Green Tree employed RCO Legal to setup a telephone meeting with Plaintiff to discuss options available to prevent foreclosure. Dkt. 26-2. This is not actionable misconduct under FDCPA.

Plaintiff's allegation under 15 U.S.C. § 1692f against RCO Legal is identical to that alleged against Northwest Trustee. Dkt. 1, ¶¶ 86, 90. For the same reason as Northwest Trustee, *see infra*, this allegation fails. Plaintiff's FDCPA claim against RCO Legal (Count III) should be dismissed.

B. State law claims (Counts V, VI, VIII, IX, X, XI, XIII, XIV)

In addition to alleging a FDCPA claim, over which the Court has original jurisdiction, *see* 28 U.S.C. § 1331, Plaintiff alleges state law claims against Northwest Trustee for violations of the Collection Agencies Act (Count V, VI, VIII, IX, X, XI) and the Deed of Trust Act (Count XIII).

Plaintiff also alleges that RCO Legal violated the Deed of Trust Act (Count XIV).

The Court may exercise supplemental jurisdiction over these state law claims. *See* 28 U.S.C. § 1367(a). However, where, as here, the Court has dismissed all claims over which it has original jurisdiction, *see supra*, the Court may decline to exercise supplemental jurisdiction and may dismiss the state claims without prejudice. 28 U.S.C. § 1367(c)(3).

In this case, the Court will exercise its discretion to decline supplemental jurisdiction over Plaintiff's state law claims against Northwest Trustee and RCO Legal. They should be dismissed without prejudice.

* * *

Therefore, it is hereby

ORDERED that:

(1) Northwest Trustee and RCO Legal's Motion for Summary Judgment (Dkt. 24) is **GRANTED** as to Plaintiff's FDCPA claims against Northwest Trustee (Count II) and RCO Legal (Count III);

(2) Plaintiff's FDCPA claims against Northwest Trustee (Count II) and RCO Legal (Count III) are **DISMISSED**;

(3) Plaintiff's state law claims against Northwest Trustee (Counts V, VI, VIII, IX, X, XI, XIII) and RCO Legal (XIV) are **DISMISSED WITHOUT PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 6th day of July, 2015.

/s/ Robert J. Bryan

ROBERT J. BRYAN
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CASE NO. 3:14-CV-05594-RJB

RICK GREER,
Plaintiff,

v.

GREEN TREE SERVICING, LLC; NORTHWEST TRUSTEE SERVICES, INC.; and RCO LEGAL, P.S.,
Defendants.

Filed: July 6, 2015

ORDER ON DEFENDANT GREEN TREE SERVICING LLC'S MOTION FOR SUMMARY JUDGMENT

ROBERT J. BRYAN, United States District Judge.

This matter comes before the Court on a motion for summary judgment ("the Motion") filed by defendant, Green Tree Servicing, LLC. Dkt. 21-23. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein. Dkt. 28, 29, 32, 33.

FACTUAL BACKGROUND

In exchange for a $214,000 property loan from Sierra

Pacific Mortgage Company, Inc., Plaintiff signed a promissory note on September 12, 2006. Dkt. 23, at 4-7. The loan was secured by a Deed of Trust. *Id.*, at 8. Plaintiff made payments from November 1, 2006 until October 1, 2009 to GMAC Mortgage, LLC ("GMAC"), who serviced the loan. Dkt. 1, at ¶¶ 11, 12. After GMAC entered bankruptcy, it transferred Plaintiff's account to defendant, Green Tree Servicing, LLC ("Green Tree"), notifying Plaintiff that, effective February 1, 2013, "the servicing of [Plaintiff's] mortgage loan . . . is being assigned, sold, or transferred" and that the change "does not affect any term or condition of the mortgage instruments, other than terms directly related to the servicing of your loan." Dkt. 29-2, at 1. In Green Tree's first correspondence to Plaintiff, Green Tree notified Plaintiff of the transfer from GMAC and informed Plaintiff of the balance owed on the loan. Dkt. 23, at 9. The letter also informed Plaintiff that he could request verification of the debt and confirmation of the original creditor. *Id.* Plaintiff requested verification of the debt by letter on July 8, 2013, stating that he was "refus[ing] to pay [because Green Tree] had not yet proven this alleged debt to be one which [Plaintiff was] obligated to pay." *Id.*, at 28-30. Green Tree responded to Plaintiff's letter on July 16, 2013, directing Plaintiff to contact Green Tree's bankruptcy department. Dkt. 29-6.

On August 26, 2013, Green Tree sent Plaintiff a document entitled, "Notice of Default and Right to Cure Default" ("the Notice of Default"). Dkt. 23, at 31, 32. Green Tree also sent Plaintiff a document entitled, "Notice of Pre-foreclosure Options" on August 27, 2013, in which Green Tree outlined Plaintiff's rights to avoid foreclosure on the loan default, including the option to request a

meeting within 30 days. *Id.*, at 36-42.

Plaintiff wrote a letter to Green Tree on September 16, 2013, requesting an in-person meeting with the loan beneficiary. Dkt. 29-9. The letter included specific demands to Green Tree and made an in-person meeting contingent on Green Tree's response to "what [Plaintiff] seek[s] clarification on." *Id.* ("before this meeting can be scheduled I'll need clarity to Green Tree's actions to date as outlined above"). Green Tree responded on October 25, 2013. Dkt. 23, at 33-35.

Green Tree mailed Plaintiff a Notice of Avoidance of Foreclosure on September 10, 2013, and a second Notice of Default on November 8, 2013. *Id.*, at 43, 44, 46-49. Plaintiff disputed his "non-compliance" with the Notice of Default by letter on December 26, 2013, again making demands, including that Green Tree provide him with evidence of its compliance with statutory requirements for notices of default. Dkt. 29-11. Following the issuance of the Notice of Trustee's Sale on January 29, 2014 by Northwest Trustee, LLC ("Northwest Trustee") at the request of Green Tree, Plaintiff articulated his objections by letter on February 20, 2014. Dkt. 29-12. *See* Dkt. 25-14.

In a letter dated April 25, 2014, RSO Legal, P.S. ("RSO Legal") on behalf of Green Tree requested a May 12, 2014 meeting with Plaintiff. Dkt. 26-2; Dkt. 26-3; Dkt. 1, at ¶55. *See* Dkt. 22, at 19. Green Tree had made multiple attempts to schedule the meeting by telephone. Dkt. 29-13. Plaintiff did not appear for the meeting on the basis that Green Tree had allegedly not complied with statutory obligations precedent to such a meeting. Dkt. 26-3 ("[Green Tree is not] compliant [sic] with the WDTA . . . Based on the above I will not be attending[.]"); Dkt. 1, at

¶¶55-68.

PROCEDURAL HISTORY

Plaintiff filed his Complaint against Green Tree, Northwest Trustee, and RCO Legal on July 25, 2014. Dkt. 1. Against Green Tree, Plaintiff alleges violations of the Fair Debt Collection Practices Act ("FDCPA") (Count I), the Washington Collection Agencies Act ("CAA") (Count IV, VII), the Washington Deeds of Trust Act ("DTA") (Count XII), and the Washington Consumer Protection Act ("CPA") (Count XV). The Court has federal question jurisdiction over Plaintiff's FDCPA claim and supplemental jurisdiction over Plaintiff's state law claims. 28 U.S.C. § 1331, § 1367(a).

SUMMARY JUDGMENT STANDARD

Summary judgment is proper only if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim in the case on which the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1985). There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the non moving party. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must present specific, significant probative evidence, not simply "some metaphysical doubt."). *See also* Fed.R.Civ.P. 56(e). Conversely, a genuine dispute over a

material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477 .S. 242, 253 (1986); *T.W. Elec. Service Inc. v. Pacific Electrical Contractors Association*, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477 U.S. at 254, T.W. *Elect. Service Inc.*, 809 F.2d at 630. The court must resolve any factual issues of controversy in favor of the nonmoving party only when the facts specifically attested by that party contradict facts specifically attested by the moving party. The nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elect. Service Inc.*, 809 F.2d at 630 (relying on *Anderson*, *supra*). Conclusory, non specific statements in affidavits are not sufficient, and "missing facts" will not be "presumed." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888-89 (1990).

DISCUSSION

A. Plaintiff's Motion to Strike

Prior to addressing the substance of Green Tree's motion, Plaintiff requests that the Court strike the declaration of Michael Harris for its tardiness, and in the alternative, to not consider Exhibit 8 to Mr. Harris' declaration. Dkt. 28, at 4, 5. *See* Dkt. 23. Green has submitted Mr. Harris' declaration more than 30 days prior to trial,

so the Court will consider it, particularly because Plaintiff relies on several of the exhibits in Mr. Harris' declaration, both in Plaintiff's Complaint and responsive briefing. Fed. R. Civ. P. 30(e)(3)(B). The relevance of Exhibit 8, a certification of compliance with RCW 61.24.031, is not clear to the Court, because it is signed by a loan servicer, "Ocwen Loan Servicing, LLC for Deutsche Bank Trust Company Americas," that is not otherwise mentioned in the pleadings. *C.f.* Dkt. 23, at 45 and Dkt. 1. This entity may have serviced Plaintiff's loan on behalf of Green Tree, but if so, the Court cannot make this inference on the record provided. The Court need not consider Exhibit 8 but will consider the rest of Mr. Harris' declaration.

Plaintiff also asks the Court to strike the declaration of William Fig, or in the alternative, to not consider Exhibit 3. Dkt. 28, at 4, 5. *See* Dkt. 22, at 19. Plaintiff does not articulate a basis for excluding exclude Mr. Fig's declaration in its entirety, *see* Dkt. 28, at 5, but argues that Exhibit 3, a certification of compliance with RCW 61.24.031, is a "sham" and that it contains inaccurate information, due to the circumstances surrounding a meeting scheduled on May 12, 2014 by Green Tree. *Id.* The certification in Exhibit 3 clearly lists Green Tree as Loan Servicer to Borrower, Rick Greer, with a requested meeting date of May 12, 2014, and thus appears to be highly relevant to Plaintiff's WDTA claim. Dkt. 22, at 19; Dkt. 1, ¶¶ 55-65. *See* Count XII, Dkt. 1, at 22, 23. The Court will consider Mr. Fig's declaration.

Finally, Plaintiff asks the Court not to take judicial notice of other bankruptcy and district court cases involving Plaintiff because they are irrelevant. Dkt. 28, at 4. Although it would be permissible for the Court to

consider Plaintiff's other federal district court and bankruptcy cases, which are public records, the Court will address Plaintiff's case on its own merits.

B. Fair Debt Collection Practices Act ("FDCPA") claim (Count I)

The purpose of the FDCPA is to "eliminate abusive debt collection practices by debt collectors . . . and to promote consistent state action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). To state a claim under the FDCPA, Plaintiffs must allege facts sufficient to show that (1) the defendant was collecting a debt as a debt collector, and (2) its debt collection actions violated a federal statute. *Jerman v. Carlisle*, 559 U.S. 573 (2010); 15 U.S.C. § 1692 et seq. The FDCPA's definition of "debt collector" consists of a general definition followed by a number of exceptions. 15 U.S.C. § 1692a(6). Of relevance here, the FDCPA excludes "any person collecting or attempting to collect any debt owed . . . [that] concerns a debt *which was not in default at the time it was obtained* by such person." 15 U.S.C. § 1692a(6)(F)(iii) (emphasis added).

The FDCPA does not define "in default," but courts interpreting the statute have taken a case-by-base approach to consider underlying contracts and applicable state law. *De Dios v. Int'l Realty & Inves.*, 641 F.3d 1071, 1074 (9th Cir. 2011). Under Washington law, a notice of default may not be issued by trustees, beneficiaries, or their agents until certain due diligence requirements, including written and telephonic communications, are satisfied. RCW 61.24.031(1)(a). Once these requirements have been satisfied, a notice of default may be issued after thirty days, or if the borrower responds, after ninety

days. *Id.*

Although this Court can find no Washington case precisely addressing the question of when a person becomes "in default," it stands to reason that a person is not in default until a notice of default is issued, because statutory protections for borrowers would otherwise be ineffective. *See generally*, RCW 61.24.031. On the record provided then, Plaintiff became in default when Green Tree issued its Notice of Default on August 26, 2013. *See* Dkt. 23, at 31 ("You are now in default . . . You have the right to correct this default within thirty (30) days from the date of this Notice."). The serving of Plaintiff's loan was transferred to Green Tree from GMAC effective on February 1, 2013. Dkt. 23, at 26; Dkt. 29-2, at 1. Therefore, because Plaintiff was not in default at the time that GMAC transferred Plaintiff's loan to Green Tree, Green Tree is not a debt collector. *See* 15 U.S.C. § 1692a(6)(F)(iii). The fact that Green Tree is a loan servicer to Plaintiff's loan, not a debt collector, is also supported by the facts; for instance, in GMAC's letter to Plaintiff, GMAC explains the reason for the transfer, GMAC's own bankruptcy. Dkt. 29-2, at 1 ("Because your current servicer . . . is the subject of a bankruptcy proceeding . . ."). Plaintiff's FDCPA claim should be dismissed, because Green Tree is not a debt collector, and the FDCPA does not apply.

C. State law claims (Counts IV, VII, XII, XV)

In addition to alleging a FDCPA claim, over which the Court has original jurisdiction, *see* 28 U.S.C. § 1331, Plaintiff also alleges several state law claims: violations of the Collection Agencies Act (Count IV, VII), the Deeds of Trust Act (Count XII), and the Consumer Protection Act (Count XV). The Court may exercise supplemental jurisdiction over these claims. *See* 28 U.S.C. § 1367(a).

However, where, as here, the Court has dismissed all claims over which it has original jurisdiction, *see supra*, the Court may decline to exercise supplemental jurisdiction and may dismiss the state claims without prejudice. 28 U.S.C. § 1367(c)(3).

In this case, the Court will exercise its discretion to decline supplemental jurisdiction over Plaintiff's state law claims against Green Tree. They should be dismissed without prejudice.

* * *

Therefore, it is hereby

ORDERED that:

(1) Green Tree's Motion for Summary Judgment (Dkt. 21) is **GRANTED** as to Plaintiff's FDCPA claim against Green Tree (Count I);

(2) Plaintiff's FDCPA claim against Green Tree (Count I) is **DISMISSED**;

(3) Plaintiff's state law claims against Green Tree (Count IV, VII, XII, XV) are **DISMISSED WITHOUT PREJUDICE**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 6th day of July, 2015.

/s/ Robert J. Bryan

ROBERT J. BRYAN
United States District Judge

APPENDIX D

1. 15 U.S.C. 1692 provides:

Congressional findings and declaration of purpose

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

2. 15 U.S.C. 1692a provides in pertinent part:

Definitions

As used in this subchapter--

* * * * *

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

* * * * *

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the

collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. * * *

* * * * *

3. 15 U.S.C. 1692f provides in pertinent part:

Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * * * *

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

* * * * *

4. 15 U.S.C. 1692i(a) provides in pertinent part:

Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall--

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located * * * .

* * * * *

5. 15 U.S.C. 1692n provides:

Relation to State laws

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that

those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

6. 15 U.S.C. 1692o provides:

Exemption for State regulation

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.