

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 25, 2016

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WENDY FLEMING, on behalf of
herself and all others similarly
situated,,

Plaintiff,

v.

GREYSTAR MANAGEMENT
SERVICES, L.P., a Delaware
corporation, WILLIAM SIMMONS,
and EMMETT HIGGINS,

Defendants.

No. 2:15-CV-00174-SMJ

**ORDER ON PARTIES' MOTIONS
FOR SUMMARY JUDGMENT**

On August 23, 2016, the Court held a hearing on Defendants' Motion for Summary Judgment, ECF No. 22, and Plaintiff Wendy Fleming's Motion for Summary Judgment, ECF No. 43. This Order memorializes and supplements the Court's oral ruling.

I. INTRODUCTION

Plaintiff Wendy Fleming lived at an apartment complex managed by Greystar Management Company in Spokane, Washington from April 2014 until January 2015. When Fleming moved out, Greystar charged Fleming a number of fees, which Fleming disputed. This case arises from Greystar's attempt to collect those fees.

1 Fleming filed this suit on behalf of herself and similarly situated individuals,
2 alleging that Greystar and two of its employees violated provisions of the Fair Debt
3 Collection Practices Act (FDCPA). The court has not yet considered whether to
4 certify a class in this case.

5 Both parties have moved for summary judgment on whether Greystar was a
6 “debt collector” subject to the FDCPA. It is undisputed that Greystar is a
7 first-party creditor with respect to tenants of the properties it manages, and would,
8 if it were collecting a debt in its own name, be excluded from the FDCPA’s
9 definition of a “debt collector.” But the term “debt collector” also includes “any
10 creditor who, in the process of collecting his own debts, uses any name other than
11 his own which would indicate that a third person is collecting or attempting to
12 collect such debts.” 15 U.S.C. § 1692a(6). Because many of Greystar’s
13 communications with Fleming concerning her alleged debt were made by a
14 representative of a Greystar division called “Advantage Solutions Receivables”
15 who represented himself as an intermediary between Fleming and the property
16 manager, the Court concludes that Greystar falls within the FDCPA’s definition of
17 a debt collector for the purpose of this case. Accordingly, the Court denies
18 Defendants Motion for Summary Judgment and grants in-part Plaintiff’s Motion
19 for Summary Judgment.

1 Fleming also moves for summary judgment on whether Greystar's actions
2 violated several provisions of the FDCPA. Because merits questions should not be
3 decided prior to class certification, the Court strikes these portions of Fleming's
4 motion.

5 II. JURISDICTION

6 This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331
7 and 15 U.S.C. § 1692k.

8 III. BACKGROUND

9 A. Facts

10 Wendy Fleming is a medical assistant who lives and works in the Spokane
11 area. ECF No. 33 at 2. On March 22, 2014, she signed a lease to rent an apartment
12 at the Prairie Hills II apartment complex in Spokane, Washington. ECF No. 24-1 at
13 6. The lease required Fleming to follow specific move-out procedures when she
14 decided to leave, including notice, cleaning, and a move-out inspection. *Id.* at 11.
15 Paragraph 39, concerning cleaning, provided that “[i]f you don’t clean adequately,
16 you’ll be liable for reasonable cleaning charges.” *Id.* Paragraph 41 of the lease
17 provided that Fleming would be liable for, among other things, “repairs or
18 damages caused by negligence, carelessness, accident, or abuse.” *Id.* The lease
19 does not provide for an independent painting charge. *See id.* at 6–38.

20 At the time Fleming signed her lease, Prairie Hills II was managed and

1 operated by Riverstone Residential West, LLC, a subsidiary of the Riverstone
2 Residential Group. ECF No. 25 at 2. In June 2014, Greystar and Riverstone
3 merged and Greystar acquired Riverstone's property management servicing rights,
4 including its rights at the Prairie Hills apartments. *Id.* Fleming states that she was
5 unaware Greystar was the management company for Prairie Hills until after her
6 tenancy ended. ECF No. 33 at 2–3.

7 On December 13, 2014, Fleming gave notice to Prairie Hills that she
8 intended to move out of her apartment by January 31, 2015. ECF No. 24-2 at 38.
9 She moved out before the end of January. ECF No. 33 at 2.

10 On February 11, 2015, Greystar sent Fleming a letter on Greystar letterhead
11 informing her that she owed a balance of \$430.00 and that payment was due in full
12 within 14 days. ECF No. 24-3 at 40. The letter was signed "Sincerely, Greystar,
13 ardept@greystar.com." *Id.* at 40. The letter included an attached statement showing
14 that the balance included a standard cleaning fee of \$130.00, a standard carpet
15 cleaning fee of \$50.00, a "Full Paint" for \$160," and repair of a dent in the vinyl of
16 the bathroom sink for \$90.00. *Id.* at 41.

17 On February 19, 2015, Will Simmons, from Advantage Solutions
18 Receivables sent an email to Fleming regarding the balance she owed. ECF No.
19 24-4 at 47. The first line of Simmons's email signature listed "Will Simmons |
20 Specialist, Advantage Solutions Receivables," and the second line listed "Greystar

1 | PO Box 2706.” *Id.* Simmons’ email address was listed as
2 “wsimmons@greystar.com.” *Id.*

3 According to Greystar’s Director of Litigation Management and Dispute
4 Resolution, “Advantage Solutions Receivables is a division within Greystar’s
5 Advantage Solutions Receivables Team that provides various property
6 management services in addition to first-party collections.” ECF No. 25 at 3.
7 Greystar markets Advantage Solutions Receivables as “offer[ing] proven processes
8 to maximize the recovery of post-tenancy delinquencies.” ECF No. 25-3 at 42.
9 Greystar explains that “[u]nlike third-party collection agencies, Greystar
10 Receivables’ status as a first-party collector allows [it] to request files within 72
11 hours of move-out and thoroughly audit files to ensure maximum compliance with
12 the lease agreements and initiate collection services within days.” *Id.* at 42.

13 Simmons’s email informed Fleming that the vinyl charge was for a dent in
14 the bathroom floor, not the sink, and that he had requested a revision to her invoice
15 because she was overcharged for that repair. ECF No. 24-4 at 47. The email also
16 stated that Simmons was waiting for paint and carpet invoices and would provide
17 those as soon as he received them. *Id.* Simmons explained that the cleaning and
18 painting were standard charges that Greystar includes for all units at move out. *Id.*
19 Simmons noted that he had forwarded Fleming’s disputes to Greystar. *Id.* at 50.

20 Fleming responded to Simmons email on the same day, continuing to object

1 to the charges. *Id.* at 47. She explained:

2 I had the carpets clean per the move out instruction sheet and will not
3 pay to have painting done either as there is no reason. As you can
4 clearly see from the pic sent there are no marks on the walls nothing. .
5 . . . I lived there for 10 mos alone no pets no kids no smoking nothing.
6 . . . The mark on the floors was there when I moved in and this is
7 craziness.

8 *Id.* Fleming sent Simmons a number of pictures of the apartment, showing that it
9 was cleaned and that the walls were not marked. *Id.* at 48–59.

10 On February 20, 2015, Simmons forwarded Fleming’s communications to
11 Prairie Hills’ Community Manger, Alysa Sturdivant. *Id.* at 62. He asked
12 Sturdivant, “[i]s there anything that says clearly that painting and carpet cleaning
13 are standard even if the unit is in good condition?” *Id.* Sturdivant responded:

14 Pages 6 of 7 in the actual lease documentation paragraph # 39 states

15 You mush [sic] thoroughly clean . . . etc, etc. You must follow
16 move-out cleaning instructions, etc. If you do not clean adequately,
17 bla blah.

18 (In lieu of liability for cleaning charges, we may charge you a
19 non-refundable cleaning fee described in paragraph 10 or in an
20 addendum.)

Now the tricky thing is, nothing described in paragraph 10 or the
addendum but that is because SHE received a move in special. Instead
of charging her a \$400 non-refundable fee, . . . she moved in with a
\$99 admin fee. . . .

I’ve reached out to our attorneys about this and they recommend that
we credit her for any cleaning she can provide receipts for. I totally
agree, if she can provide receipts for everything I think we should

1 credit her. Painting was done, regardless of if she thought the apt.
2 needed it or not. The painting charges WILL come back higher than
the \$160 we charge as standard.

3 *Id.* at 61. On February 23, 2015, Simmons forwarded Sturdivant's email to
4 Fleming. *Id.* at 60.

5 Fleming responded that "[t]his email proves they are trying to recoup a fee
6 that they didn't get from me on the move in special." *Id.* at 60. She also noted that
7 "there was no mention of standard charges at the end of the lease and I will say
8 again on multiple occasions I told them I was cleaning the apartment and carpets.
9 There was no mention on these occasion [sic] that they would be charging me a fee
10 anyway." *Id.* She also expressed concern about the higher painting fee: "they want
11 to say it's actually a higher fee to paint again for what??? . . . Alyssa's
12 unprofessional responses in this email makes me wonder if this is a retaliatory
13 action by the staff." *Id.* at 61. Fleming emailed invoices for cleaning to Simmons
14 on March 2, 2015. *Id.* at 71.

15 Simmons and Fleming again exchanged emails on March 5, 2015, after
16 Simmons sent Fleming an invoice for apartment cleaning. *Id.* at 6–64. Fleming
17 argued that she did not owe money for cleaning because the lease did not include
18 standard cleaning charges and she cleaned the apartment. *Id.* at 63–64. She also
19 complained about receiving multiple bills with different totals and expressed
20 concern about what she viewed as deceptive practices. *Id.* Simmons stated that the

1 invoice was typical, the apartment cleaning was standard, and that he was “pretty
2 sure the properties know how the laws work and would not knowingly try to get
3 over on someone.” *Id.* at 64.

4 On March 24, 2015, Fleming inquired whether Simmons had any new
5 information about her apartment fees. *Id.* at 69. Simmons responded, “I apologize
6 for the delay. I’ve been waiting for a response from the property. I can credit you
7 the carpet charge of \$50 and the cleaning charge of \$130.” *Id.* at 69. Fleming then
8 sent another email stating: “I still disagree with any other charges (with exception
9 of the vinyl repairs) as they were never listed in my lease. I will be seeking legal
10 assistance with this.” *Id.* at 68. On March 25, 2015, Simmons replied, “[y]ou can
11 disagree if you want. Charges will stand. I will mark this as a refusal to pay and
12 move on. I’ve done all I can do for you with this.” *Id.* at 68.

13 On March 25, 2015, Greystar sent a letter directly to Fleming stating that
14 she owed \$244.87. ECF No. 33-4 at 16. The following day, Simmons emailed a
15 revised statement to Fleming. ECF No. 24-4 at 70. He explained that “[t]he Prairie
16 Hills II is charging you full price for paint now due to all the disputes you have.
17 You can either contact me to get this resolved or refuse. . . . The property is not
18 going to budge anymore on this. I’ve done all I can do for you.” *Id.* The attached
19 statement showed a \$473.00 charge for painting and an \$81.53 charge for vinyl
20 damage, for a total of \$554.53. ECF No. 33-6 at 20.

1 Fleming sent the following response to Simmons's email and the attached
2 bill: "What??? They can't change their charges they sent the bill already??? I don't
3 understand how this is legal or right? The bill is now more??? Please explain?" *Id.*
4 On the same day, March 26, 2015, Fleming received another letter from Greystar,
5 this time indicating she owed a balance of \$562.37, due within 14 days. ECF No.
6 24-3 at 42. Fleming sent Simmons a final email on April 9, 2015, expressing
7 confusion about what she allegedly owed and the role of Simmons, Advantage
8 Solutions Receivables, and Greystar in the collection:

9 Hi William;

10 So I received a letter that states they now want me to pay \$244 with
11 an invoice for \$575 for moveout fee on my old unit . . . This is so
12 confusing here . . . I don't know whats [sic] going on here??? Are you
13 accessing [sic] the fees??? Or is it Alyssa. What is your role here and
14 who is suppose [sic] to get this. Prairie Hills, Greystar or Advance
Solutions. I don't understand. I know you said they tell you the
charges . . . Who is they??? Please clarify your role and who your
company is and what amount thats [sic] being charged to me thanks.

15 Wendy Fleming

16 ECF No. 33-8 at 24.

17 **B. Procedural History**

18 Plaintiff filed the complaint in this action on July 10, 2015. ECF No. 1.
19 Greystar answered on August 14, 2015. ECF No. 3. Defendants Higgins and
20 Simmons answered on April 25, 2016. ECF Nos. 14, 15. All defendants moved for
summary judgment on May 12, 2016. ECF No. 22. Plaintiff filed a cross-motion for

1 summary judgment on July 1, 2016. ECF No. 43. The court heard oral argument on
2 this matter on August 23, 2016, in Spokane, Washington.

3 IV. SUMMARY JUDGMENT STANDARD

4 Summary judgment is appropriate if the “movant shows that there is no
5 genuine dispute as to any material fact and the movant is entitled to judgment as a
6 matter of law.” Fed. R. Civ. P. 56(a). Once a party has moved for summary
7 judgment, the opposing party must point to specific facts establishing that there is
8 a genuine dispute for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). If
9 the nonmoving party fails to make such a showing for any of the elements essential
10 to its case for which it bears the burden of proof, the trial court should grant the
11 summary judgment motion. *Id.* at 322. “When the moving party has carried its
12 burden under Rule [56(a)], its opponent must do more than simply show that there
13 is some metaphysical doubt as to the material facts. . . . [T]he nonmoving party must
14 come forward with ‘specific facts showing that there is a genuine issue for trial.’”
15 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)
16 (internal citation omitted). When considering a motion for summary judgment, the
17 Court does not weigh the evidence or assess credibility; instead, “the evidence of
18 the non-movant is to be believed, and all justifiable inferences are to be drawn in
19 his favor.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

20

V. DISCUSSION

A. Greystar is a debt collector under the FDCPA for the purposes of this case.

The FDCPA is intended to “eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e). The act defines a “debt collector” as:

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 by 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.

15 U.S.C. § 1692a(6).

Greystar argues that it is not a debt collector under the FDCPA because (1) it obtained the right to collect Fleming’s debt before it was in default; (2) its debt collection efforts were incidental to its overall duties as the property manager for Prairie Hills; and (3) it did not use a false name in its debt collection activities. ECF No. 22 at 1. Plaintiff does not dispute that Greystar is a first-party creditor that would, if it were collecting debts in its own name, fall within the exclusions provided in clause (F) of 15 U.S.C. § 1692a(6).¹ ECF No. 32 at 2, 7. Accordingly,

¹ This is correct. A person is not a debt collector when they attempt to collect “any debt owed or due or asserted to be owed or due to another to the extent such activity . . . concerns a debt which was not in default at the time it was obtained by such person.” 15 U.S.C. § 1692(a)(6)(F)(iii). Generally, a property manager is exempt

1 the only disputed question on Defendants' motion for summary judgment is
2 whether Greystar is a "debt collector" under the FDCPA because it used a false
3 name in its debt collection activities.

4 For the purpose of 15 U.S.C. § 1692a(6)'s false name exception, "[a]
5 creditor uses a name other than its own when it uses a name that implies that a
6 third party is involved in collecting its debts, pretends to be someone else, or uses a
7 pseudonym or alias." *Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 235 (2d
8 Cir. 1998) (internal quotation marks omitted). To determine whether a creditor
9 falls within this exception, courts must consider whether the "least sophisticated
10 consumer would have the false impression that a third party was collecting the
11 debt." *Id.* at 235; *see Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061–62
12 (9th Cir. 2011). "The standard is designed to protect consumers of below average
13 sophistication or intelligence, or those who are uniformed or naive, particularly
14 when those individuals are targeted by debt collectors." *Gonzales*, 660 F.3d at
15 1062.

16 _____
17 from the FDCPA because it obtains the right to collect rent before the debt was
18 overdue. *See De Dios v. Int'l Reality & Invs.*, 641 F.3d 1071, 1076 (9th Cir. 2011)
19 (citing 15 U.S.C. § 1692(a)(6)(F)(iii)). Greystar is also not a debt collector because
20 its debt collection is incidental to a bona fide fiduciary obligation. *Harris v. Liberty
Cmty. Mgmt., Inc.*, 702 F.3d 1298, 1301 (11th Cir. 2012); *Reynolds v. Gables
Residential Servs., Inc.*, 428 F. Supp. 2d 1260, 1264 (M.D. Fla. 2006).

1 Greystar argues that the false name exception does not apply because every
2 communication it made to Fleming was clearly and unmistakably from Greystar.
3 ECF Nos. 22 at 14, 37 at 4. But the relationship between Advantage Solutions
4 Receivables is not as obvious as Greystar suggests, and it is certainly not the case
5 that “it belies credulity for Plaintiff to assert that she could have been left with the
6 ‘false impression that a third party was collecting the debt.’” ECF No. 22 at 16.

7 Simmons’ email address included “Greystar” on the second line and the
8 actual collection-notice letters that Fleming received were clearly from Greystar.
9 But it is obvious that Simmons very intentionally presented himself as an
10 intermediary between Fleming and her former property manager. ECF No. 24-4 at
11 48–61. And Fleming, who is no less sophisticated than the least-sophisticated
12 consumer, appears to have been legitimately confused about Simmons’ and
13 Advantage Solutions Receivable’s role. In her April 19, 2015 email she directly
14 asked: “What is your role here and who is suppose [sic] to get this. . . . Please
15 clarify your role and who your company is and charged to me.” ECF No. 33-8 at
16 24. Fleming confirmed in her declaration that she was confused by the multiple
17 communications from Advantage Solutions Receivables and Greystar, and that
18 “[a]t the time, [she] did not understand that Advantage Solutions Receivables was
19 a department or division within Greystar. [She] thought it was a separate entity
20 attempting to collect the disputed debt.” ECF No. 33 at 4.

1 Greystar argues that there is no indication Fleming was confused prior to her
2 April 9 email. ECF No. 37 at 8. But neither is there any indication that she
3 understood Simmons's and Advantage Solutions Receivables' role. There was
4 ample reason for her to be confused. Over and over, Simmons represented himself
5 as an intermediary. He forwarded Fleming's disputes to the property manager, and
6 forwarded responses to Fleming, ECF No. 24-4 at 50, 60, 64, and he repeatedly
7 suggested that "the property" was making determinations about the amount she
8 owed. ECF Nos. 24-4 at 64, 33-6 at 20.

9 Greystar points to several cases where, it argues, courts have found the false
10 name exception does not apply in similar situations. ECF No. 22 at 19. But in each
11 of these cases, the names of the debt collection or debt services division included
12 the name of the creditor or was a variant of that name. *Porter v. Wachovia Dealer*
13 *Servs., Inc.*, 2007 WL 2693370, at *4 (D. Or. Sept. 12, 2007) (WFS Financial and
14 Wachovia Dealer Services); *Williams v. Citibank N.A.*, 565 F. Supp. 2d 523, 531
15 (S.D.N.Y. 2008) ("Citicorp Credit Services and CitiCard"); *Drew v. Rivera*, 2012
16 WL 4088943, at *5 (N.D. Fla. Aug. 6, 2012) (Citibusiness and Citibank). By
17 contrast, in this case there is no similarity between "Advantage Solutions
18 Receivables" and "Greystar."

19 Greystar also attempts to distinguish this case from *Maguire*, ECF No. 22 at
20 17–18, which held that the false name exception applied where Citicorp sent a

1 letter from its in-house debt collection unit, “Debtor Assistance.” *Maguire*, 147
2 F.3d at 234. The letter was written on Debtor Assistance letterhead and did not
3 expressly mention Citicorp. *Id.*

4 While it is true that this case differs from *Maguire* in that Greystar was
5 mentioned in Simmons’s communications with Fleming, *Maguire* does not hold
6 that a creditor’s use of a false name violates the FDCPA only if the creditor fails to
7 include any reference to its actual name. *See id.* at 235–36. Instead, the *Maguire*
8 court stated that “[a]lthough a creditor need not use its full business name or its
9 name of incorporation to avoid FDCPA coverage, it should use the name under
10 which it usually transacts business, or a commonly-used acronym, or any name
11 that it has used from the inception of the credit relation.” *Id.* (internal quotation
12 marks omitted). Advantage Solutions Receivables does not fall within any of those
13 categories: the name has no similarity to or connection with Greystar, and Greystar
14 apparently never used the name in any previous communication with Fleming.

15 The question here is not whether Greystar’s name could be found
16 somewhere in Simmons’ communications with Flemming, it is whether the least
17 sophisticated consumer could have had the false impression that a third party was
18 attempting to collect the debt Fleming owed to Greystar. Based on the form and
19 content of Simmons’ communications with Fleming, the Court concludes that such
20 a consumer could have had that impression.

1 **B. The Court will consider Plaintiff’s motion with respect only to the**
2 **question whether Greystar is subject to the FDCPA.**

3 Under Rule 23(c)(2) a plaintiff may not intervene in a class action “after an
4 adjudication favoring the class ha[s] taken place. . . . [b]ecause the plaintiff would
5 not otherwise be bound by an adjudication in favor of the defendant.” *Schwarzchild*
6 *v. Tse*, 69 F.3d 293, 295 (9th Cir. 1995) (internal quotation marks omitted). This is
7 known as the one-way-intervention rule. *Id.* To avoid the prejudicial effect of this
8 rule, courts generally refrain from granting summary judgment on the merits of a
9 class action claim before the class has been properly certified, *see id.*, and some
10 circuits have held that “Rule 23 requires class certification prior to determination on
11 the merits.” *Peritz v. Liberty Loan Corp.*, 523 F.2d 349, 353 (7th Cir. 1975).

12 The primary issue here is not a merits question. Both parties have asked that
13 this court decide the same threshold question—whether Greystar was acting as a
14 debt collector and therefore subject to the FDCPA. This is a question of law, *see*
15 *Gonzales*, 660 F.3d at 1061 (noting that objective, least-sophisticated-debtor
16 analysis under FDCPA is a question of law), and it is one that will be much more
17 efficiently decided prior to class certification. Accordingly, for the same reasons the
18 court denied Greystar’s motion, the court Grant’s Plaintiff’s motion for summary
19 judgment on the issue whether Greystar is subject to the FDCPA.

20 The Court strikes the remainder of Plaintiff’s motion, concerning whether
Greystar violated 15 U.S.C. §§ 1692e (10), (11) or 1692g, because a judgment in

1 favor of Fleming on those claims may preclude intervention by other plaintiffs. *See*
2 *Schwarzchild*, 69 F.3d at 295.

3 **VI. CONCLUSION**

4 For the reasons discussed, the Court concludes that (1) Greystar falls within
5 the FDCPA's "debt collector" definition for the purpose of this case and (2) the
6 remaining issues raised in Plaintiff's motion for summary judgment will not be
7 decided prior to class certification.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 **1.** Defendants' Motion for Summary Judgment, **ECF No. 22**, is
10 **DENIED.**

11 **2.** Plaintiff's Motion for Summary Judgment, **ECF No. 43**, is
12 **GRANTED IN-PART** with respect only to whether Greystar is
13 subject to the FDCPA.

14 **3.** The remainder of Plaintiff's Motion for Summary Judgment, **ECF No.**
15 **43**, is **STRICKEN.**

16 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
17 provide copies to all counsel.

18 **DATED** this 25th day of August 2016.

19 
20 **SALVADOR MENDOZA, JR.**
United States District Judge