

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LIGIA MELENDEZ,

Plaintiff,

v.

CACH, LLC, et al.,

Defendants.

No. C 11-5456 CW

ORDER GRANTING  
MOTIONS TO DISMISS  
FDCPA CLAIM AND  
REMANDING ACTION  
TO THE SUPERIOR  
COURT FOR THE  
COUNTY OF SAN  
FRANCISCO

United States District Court  
For the Northern District of California

Defendant CACH, LLC removed this action alleging violations of federal and state statutes governing fair debt collection practices and other claims under state law. Plaintiff Ligia Melendez brings this action asserting claims under the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692 et seq., and under state law against the following defendants: CACH; Collect America Ltd, a.k.a. Square Two Financial (SquareTwo); Law Offices of Alan M. Laskin (Laskin Law Offices) the Laskin Law Offices; Defendants Alan M. Laskin, Jason A. Ewing, Natasha Langenfeld (the Attorney Defendants); Lorraine Kunkle; and Mark Tran, a.k.a. Hoang Thanh Tran. Before the Court are the following motions: the motion of Laskin Law Offices to Dismiss Count One of the Second Amended Complaint (2AC) alleging a claim under the FDCPA (Docket No. 83); the motion of the Attorney Defendants Laskin, Ewing and Langenfeld to dismiss the FDCPA Claim (Docket No. 107); the Anti-SLAPP motion of the Attorney Defendants to strike the state law claims (Docket No. 108); the Anti-SLAPP motion of the Laskin Law Offices to strike the state law claims (Docket No. 114); CACH's

1 motion to dismiss the 2AC for failure to state a claim (Docket No.  
2 81); SquareTwo's motion to dismiss the 2AC for failure to state a  
3 claim (Docket No. 127); Kunkle's motion to dismiss the 2AC for  
4 lack of personal jurisdiction (Docket No. 116) and Plaintiff's  
5 counter-motion for leave to conduct jurisdictional discovery  
6 (Docket No. 150); and Tran's motion to dismiss for lack of  
7 personal jurisdiction (Docket No. 117) and Plaintiff's counter-  
8 motion for leave to conduct jurisdictional discovery (Docket No.  
9 152). The Court vacated the hearing on the motions and took the  
10 motions under submission. Having considered the relevant legal  
11 authority and the papers filed by the parties, the Court GRANTS  
12 the motions to dismiss the sole federal claim under the FDCPA and  
13 remands the action to the Superior Court for the County of San  
14 Francisco.

15 BACKGROUND

16 The 2AC makes the following factual allegations which are  
17 taken as true on the motions to dismiss.

18 A. Collection Action Against Plaintiff

19 On February 14, 2008, CACH filed a complaint against  
20 Plaintiff entitled CACH v. Ligia Melendez, in the Superior Court  
21 of California for the County of San Francisco, Case No. CGC-08-  
22 472197. 2AC ¶ 29 and Ex. A. Defendants Laskin, Ewing, Langenfeld  
23 and Laskin Law Offices appeared as counsel of record for CACH in  
24 that collection action against Plaintiff. 2AC, Ex. A. In its  
25 complaint against Plaintiff, CACH alleged that Plaintiff was  
26 indebted to it by and through an account number that Defendants  
27 claimed Plaintiff had opened at the Providian National Bank on or  
28 about October 8, 2002:

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Plaintiff: CACH, LLC

Alleges that on or about: 10/08/02

A written agreement was made between: PROVIDIAN BANK AND LIGIA MELENDEZ.

The essential terms of the agreement are as follows: THE DEFENDANT(S) LIGIA MELENDEZ AND DOES 1 TO 10, AND EACH OF THEM, ENTERED INTO A CONTRACT, ACCOUNT NUMBER 4559905000497229, GENERATING A BALANCE OF \$8,006.73, WITH ACCRUING INTEREST OF 30.31% PER ANNUM FROM 04/28/06.

2AC ¶ 31 and Ex. A ¶ BC-1. Plaintiff alleges that this representation by CACH was "a false, inaccurate and misleading representation in connection with the collection of a debt which Plaintiff relied upon to her detriment." 2AC ¶ 32. Plaintiff alleges that in 2002, she did not enter into an agreement with the Providian National Bank for the account number 4559905000497229 and that on the date of 10/08/02 the account number 4559905000497229 did not exist at the Providian Bank. 2AC ¶ 32.

B. Kunkle Affidavit

CACH's complaint against Plaintiff attached and incorporated by reference an Affidavit Form purportedly signed by "Martha Kunkle, Designated Agent" (the Kunkle Affidavit) which stated:

I, being duly sworn, hereby state and attest that I am the designated agent of Providian National Bank ("Providian"), a National Banking Association, one of the sellers in that certain Purchase and Sale Agreement by and among Providian National Bank, Providian Bank and CACH, LLC ("Purchaser"), dated as of 5/24/2006 (the ["Agreement"]).

The account billing statement of LIGIA MELENDEZ, Account #4559905000497229, the cardholder, to the best of my knowledge, reflects a true and correct accounting of the cardholder's credit card account; that as of 5/24/2006, the sum of **\$8,006.73** was due to Providian or any of its affiliates, and that no part of this sum has been paid or satisfied.

1           In accordance with the Agreement, Providian sold,  
2 assigned and conveyed to Purchaser all right, title and  
interest in and to the Account and its unpaid balance.

3 Executed on April 4, 2007, at Arlington, Texas.

4 /s/ Martha Kunkle/LD Martha Kunkle, Designated Agent

5 Sworn to before me this 4th day of April, 2007.

6 /s/ Hoang Thanh Tran Notary Public

7 2AC ¶ 34 and Ex. B.

8           Plaintiff alleges that the representations made in the Kunkle  
9 Affidavit were false, deceptive and misleading on the following  
10 grounds:

11           a. On the date of 05/25/2006 and April 4, 2007 the  
12 Providian National Bank did not exist, as in October  
of 2005 the Providian National Bank had ceased to be  
13 a viable entity. As such, the Providian National  
Bank could not have sold assigned and conveyed to  
14 CACH all right, title and interest in any account on  
that date;

15           b. On the date of 05/25/2006 there could not have  
16 been any form of a Purchase and Sale Agreement by  
and among Providian National Bank, and CACH, LLC, as  
17 the Providian National Bank was not an entity in  
existence at that time and as such CACH could not  
18 have entered into any such agreement with Providian  
on that date and as such had no standing to bring  
19 said action against consumer;

20           c. On the date of April 4, 2007 "Martha Kunkle," or  
21 anyone else, could not have been duly sworn to state  
and attest that she was the designated agent of the  
22 Providian National Bank, a National Banking  
Association, as on that date there was no Providian  
23 National Bank and as such there could not have been  
a designated agents of an entity that was not in  
existence;

24           d. On the date of 5/24/2006 there could not have  
25 been any amount due to the Providian National Bank  
as it did not exist on that date;

26           e. The Affidavit contains the pseudonym /s/ Martha  
27 Kunkle/LD, which was false and the signature a  
forgery;

1 f. Defendant Tran then placed his notary seal upon  
2 the Affidavit knowing that the person who had signed  
3 the Affidavit was not "Martha Kunkle" but another  
individual who had forged that name upon the  
Affidavit.

4 2AC ¶ 35.

5 Plaintiff further alleges that Defendants had knowledge that  
6 the Kunkle Affidavit had been exposed as a falsified document in  
7 other litigation, namely in a class action filed in the United  
8 States District Court for the District Of Montana, Great Falls  
9 Division, Jeanie Cole v. Portfolio Recovery Associates, LLC et al,  
10 Case No. CV-08-036-GF-RKS. 2AC ¶ 64. In that action, plaintiff  
11 Cole exposed similar "Martha Kunkle Affidavits" as false and  
12 deceptive in 2007, and thereafter brought a class action lawsuit  
13 regarding the use of robo-signed "Martha Kunkle Affidavits" against  
14 consumers throughout the United States. 2AC ¶ 64. Plaintiff  
15 alleges that CACH was bound to a settlement agreement entered in  
16 Cole. 2AC ¶ 65 and Ex. W (excerpt of Settlement Agreement between  
17 plaintiffs and defendants CACV and CACH, filed in Cole v.  
18 Portfolio Recovery Associates, No. CV 08-036 (D. Mont. Nov. 13,  
19 2009)). The pleadings and papers filed in the Cole litigation  
20 demonstrate that CACV of Colorado, LLC was added as a defendant in  
21 that lawsuit in the Second Amended Complaint filed March 9, 2009,  
22 and that a settlement agreement entered by Thomas Good as the  
23 authorized agent of CACV and CACH was filed in that action on  
24 November 13, 2009. See 2AC, Ex. W ("On March 9, 2009, Plaintiffs  
25 filed a Second Amended Complaint in [Cole]; CACV was added as a  
26 defendant therein."). See also CACH RJN Exs. 13 and 14 (Cole  
27 Complaint filed May 21, 2008 and Second Amended Complaint filed  
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1 March 9, 2009) and Ex. 15 (Cole Settlement Agreement).<sup>1</sup> Plaintiff  
2 further alleges that, despite the knowledge that consumers in  
3 California were affected by the Martha Kunkle Affidavits, CACH  
4 continued to prosecute its collection action against Plaintiff in  
5 reliance on the Kunkle Affidavit. 2AC ¶ 65.

6 C. Proceedings in CACH Action

7 On or about March 02, 2008, Defendants purported to serve the  
8 summons and complaint in the CACH action on a "Ligia Melendez"  
9 whom they claimed to have found at 10:00 p.m. in San Francisco,  
10 California. 2AC ¶ 43 and Ex. D. Plaintiff asserts that the  
11 "Ligia Melendez" that Defendants purportedly served was not she.  
12 2AC ¶ 43. Plaintiff filed a motion to quash service of summons in  
13 the CACH action, which CACH opposed. 2AC ¶¶ 56-58. On May 22,  
14 2008, the Superior Court denied Plaintiff's motion to quash on the  
15 ground that she had not offered sufficient evidence to rebut the  
16 presumption raised by the declaration of the registered process  
17 server that he personally served her. 2AC ¶ 60. Plaintiff later  
18 filed a Motion to Set Aside the Default Judgment which the  
19 Superior Court granted on July 10, 2008. 2AC ¶¶ 43, 60.

20 Plaintiff filed her answer to the CACH complaint on August  
21 11, 2008. 2AC ¶ 61 n.1 and Ex. N. Plaintiff alleges that she  
22 sought production of documents related to the Providian account

23 \_\_\_\_\_  
24 <sup>1</sup> The Court takes judicial notice pursuant to Federal Rule  
25 of Evidence 201(b)(2) of the pleadings and CACH settlement  
26 agreement filed in the Cole litigation as matters that are alleged  
27 in the 2AC and that can be accurately and readily determined from  
28 sources whose accuracy cannot reasonably be questioned. Because  
the Court declines to take judicial notice of other exhibits  
offered by Defendants, Plaintiff's objections to those exhibits  
are overruled as moot.

1 that had been allegedly purchased by CACH, such as credit card  
2 statements and the contract of assignment between Providian  
3 National Bank and CACH, and that CACH did not produce those  
4 documents. 2AC ¶ 61. Plaintiff alleges that CACH did in fact  
5 have specific credit card statements which it refused to produce  
6 to her during the litigation, despite her repeated and continuous  
7 demands for them, which specifically set forth that in the year  
8 2002 Plaintiff had not entered into a contract with the Providian  
9 National Bank for account number 4559905000497229. 2AC ¶ 62.

10 An arbitration was held in the CACH action on February 9,  
11 2009. The arbitrator filed an award in favor of CACH against  
12 Plaintiff, 2AC ¶ 71, and on March 5, 2009, Plaintiff requested a  
13 trial de novo. 2AC ¶ 73.

14 In preparation for trial, Plaintiff retained trial counsel  
15 and served motions in limine to exclude evidence that CACH failed  
16 to provide in the course of litigation. 2AC ¶¶ 74-75. On October  
17 26, 2009, the parties appeared before a Superior Court Judge Pro  
18 Tem to attempt to resolve the matter before proceeding to trial.  
19 2AC ¶ 77. CACH identified two witnesses to testify against  
20 Plaintiff, of whom Plaintiff had no notice. 2AC ¶ 77. Plaintiff  
21 contends that after she stated her intentions to proceed to trial,  
22 these witnesses "disappeared from the courthouse and were never  
23 seen again." 2AC ¶ 78. CACH then sought leave of court to  
24 dismiss the action against Plaintiff without prejudice so that it  
25 could refile the matter at a later date. 2AC ¶ 79. The state  
26 court denied CACH's requests for dismissal without prejudice and  
27 admonished CACH that the matter could only be dismissed with  
28

1 prejudice. 2AC ¶ 79. The presiding judge ordered the parties to  
2 return the next day for trial. 2AC ¶ 80.

3 On October 27, 2009, the parties appeared before the  
4 presiding judge and CACH renewed its motion to dismiss its lawsuit  
5 without prejudice, which the presiding judge denied. 2AC ¶ 81.  
6 CACH renewed its motion to dismiss without prejudice before the  
7 trial judge who also denied the motion to dismiss and took  
8 Plaintiff's motions in limine under submission. 2AC ¶¶ 84, 85.  
9 While the court was in recess, CACH filed a dismissal without  
10 prejudice in the clerk of the court's office and informed the  
11 trial judge that the court no longer had jurisdiction over the  
12 matter. 2AC ¶ 86.

13 Plaintiff alleges that, after the CACH action was dismissed,  
14 "Defendants began communicating to Plaintiff that they would re-  
15 file and re-prosecute the matter against her if she did not pay  
16 them their demand." 2AC ¶ 87. On November 5, 2009, nine days  
17 after CACH dismissed its complaint against Plaintiff, CACH filed a  
18 motion for sanctions against Plaintiff and her counsel, noticed  
19 for hearing on November 19, 2009. 2AC ¶ 88. The superior court  
20 took the matter off calendar after Plaintiff filed an opposition  
21 to the motion for sanctions. 2AC ¶ 88.

22 D. Procedural History of the Instant Action

23 Plaintiff filed her original complaint naming Defendants, as  
24 well as Washington Mutual and Providian National Bank, in San  
25 Francisco Superior Court on October 25, 2010. On February 10,  
26 2011, the complaint was removed to federal court by defendant  
27 Federal Deposit Insurance Corporation (FDIC), as receiver for  
28 Washington Mutual Bank. See Melendez v. CACH, LLC et al., Case



1 No. 11-00615 SC (N.D. Cal.), Docket No. 1. Plaintiff filed an  
2 amended complaint on February 18, 2011, as corrected on February  
3 19, 2011, against CACH; SquareTwo; Laskin Law Offices; Attorney  
4 Defendants Laskin, Ewing and Natasha Lagenfeld [sic]; Tran;  
5 Kunkle; Washington Mutual, a.k.a. FDIC; J.P. Morgan Chase & Co.,  
6 a.k.a. Chase Bank USA, N.A., J.P. Morgan Chase Bank, N.A.; and  
7 Providian National Bank. Id., Docket No. 8. Summonses were  
8 issued but Plaintiff did not file any certificates of service in  
9 that action. See id., Docket No. 9.

10 Pursuant to stipulation entered by Plaintiff and the FDIC,  
11 the district court dismissed the claim against the FDIC and  
12 remanded the case to San Francisco Superior Court on March 14,  
13 2011. Case No. 11-00615 SC, Docket Nos. 17, 18.

14 On June 21, 2011, Plaintiff filed an amended complaint,  
15 styled "First Amended Complaint," in San Francisco Superior Court,  
16 naming as defendants CACH, Laskin Law Offices, Kunkle and Tran.  
17 This complaint was removed to federal court by CACH on November 9,  
18 2011, based on the Court's original jurisdiction over Plaintiff's  
19 claims under the FDCPA and the Racketeer Influenced Corrupt  
20 Organization Act (RICO), 18 U.S.C. §§ 1961-68.<sup>2</sup> Notice of Removal  
21 ¶ 5 ("Plaintiff's claims for (1) Violation of the Racketeer  
22 Influenced Corrupt Organization Act ('RICO'), 18 U.S.C. § 1961-  
23 1968 and (2) Violation of the Fair Debt Collection Practices Act  
24 ('FDCPA') [15] U.S.C. § 1692 et seq., are founded on a 'claim or  
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26 <sup>2</sup> In the 2AC, filed May 16, 2012, Plaintiff withdrew her  
27 cause of action for a RICO violation. The only federal cause of  
28 action alleged in the operative complaint is brought under the  
FDCPA.

1 right arising under the Constitution, treaties or laws of the  
2 United States.'"). Plaintiff filed a motion to remand which she  
3 later withdrew by stipulation. Docket No. 32. After the Court  
4 held an initial case management on February 23, 2012, summonses  
5 were issued as to Defendants Kunkle and Tran. Docket No. 31.  
6 Plaintiff subsequently filed a motion for leave to amend the  
7 complaint on April 16, 2012. The Court granted leave to amend,  
8 and the 2AC was deemed filed on May 16, 2012. Docket Nos. 76 and  
9 78.

10 The operative complaint alleges the following claims against  
11 Defendants: (1) violation of the FDCPA against all Defendants  
12 except Kunkle and Tran; (2) violation of the Robbins-Rosenthal  
13 Fair Debt Collection Practices Act (Rosenthal Act), Cal. Civ. Code  
14 § 1788 et seq., against all Defendants except Laskin, Ewing,  
15 Langenfeld, Kunkle and Tran; (3) malicious prosecution; (4) abuse  
16 of process; (5) intentional infliction of emotional distress;  
17 (6) negligent infliction of emotional distress; (7) concealment;  
18 (8) fraud; (9) fraud and deceit based on negligent  
19 misrepresentation; (10) intrusion upon seclusion; (11) negligence;  
20 (12) negligent training and supervision; (13) breach of official  
21 duty by a notary public against Tran; and (14) conspiracy.

22 Laskin Law Offices and the Attorney Defendants Laskin, Ewing  
23 and Langenfeld move to dismiss the 2AC for failure to state a  
24 claim, Docket Nos. 83 and 107, and move to strike certain claims  
25 pursuant to the anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16,  
26 Docket Nos. 114 and 108. Defendants CACH and SquareTwo move to  
27 dismiss the 2AC for failure to state a claim. Docket Nos. 81 and  
28 127. Defendants Kunkle and Tran move to dismiss for lack of

1 personal jurisdiction. Docket Nos. 116 and 117. Plaintiff  
2 opposes Defendants' motions and seeks leave to conduct  
3 jurisdictional discovery as to Defendants Kunkle and Tran. Docket  
4 Nos. 150 and 152. The matters are submitted on the papers.

5 DISCUSSION

6 I. Motions to Dismiss the FDCPA Claim

7 Defendants Laskin Law Offices, Laskin, Ewing and Langenfeld  
8 move to dismiss the FDCPA claim as barred by the statute of  
9 limitations. Defendants CACH and SquareTwo also move to dismiss  
10 the FDCPA claim as time-barred. For the reasons set forth below,  
11 the motions to dismiss the FDCPA claim are granted. Because no  
12 federal claims remain in this action, the Court declines to  
13 exercise supplemental jurisdiction over the remaining claims  
14 arising under state law and remands the case to the Superior Court  
15 for the County of San Francisco.

16 A. Legal Standard

17 A complaint must contain a "short and plain statement of the  
18 claim showing that the pleader is entitled to relief." Fed. R.  
19 Civ. P. 8(a). Dismissal under Rule 12(b)(6) for failure to state  
20 a claim is appropriate only when the complaint does not give the  
21 defendant fair notice of a legally cognizable claim and the  
22 grounds on which it rests. Bell Atl. Corp. v. Twombly, 550 U.S.  
23 544, 555 (2007). In considering whether the complaint is  
24 sufficient to state a claim, the court will take all material  
25 allegations as true and construe them in the light most favorable  
26 to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898  
27 (9th Cir. 1986). However, this principle is inapplicable to legal  
28 conclusions; "threadbare recitals of the elements of a cause of

1 action, supported by mere conclusory statements," are not taken as  
2 true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing  
3 Twombly, 550 U.S. at 555).

4 When granting a motion to dismiss, the court is generally  
5 required to grant the plaintiff leave to amend, even if no request  
6 to amend the pleading was made, unless amendment would be futile.  
7 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911  
8 F.2d 242, 246-47 (9th Cir. 1990). In determining whether  
9 amendment would be futile, the court examines whether the  
10 complaint could be amended to cure the defect requiring dismissal  
11 "without contradicting any of the allegations of [the] original  
12 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th  
13 Cir. 1990). Leave to amend should be liberally granted, but an  
14 amended complaint cannot allege facts inconsistent with the  
15 challenged pleading. Id. at 296-97.

16 B. FDCPA Claim

17 The Attorney Defendants, Laskin Law Offices, CACH and  
18 SquareTwo contend that the FDCPA claim is barred by the one-year  
19 statute of limitations pursuant to 15 U.S.C. § 1692k(d). Under  
20 Ninth Circuit authority, when the alleged violation of the FDCPA  
21 is the filing of a lawsuit, the statute of limitations begins to  
22 run on the filing of the complaint in state court. Naas v.  
23 Stolman, 130 F.3d 892, 893 (9th Cir. 1997) ("Filing a complaint is  
24 the debt collector's last opportunity to comply with the Act, and  
25 the filing date is easily ascertainable.")

26 The gravamen of Plaintiff's FDCPA claim is to challenge the  
27 filing and prosecution of the CACH v. Melendez action in state  
28 court. Plaintiff alleges that this collection action was a form

1 lawsuit used by Defendants CACH and Laskin Law Offices to collect  
2 consumer debts. 2AC ¶ 30. As such, Plaintiff alleges there was  
3 no meaningful professional involvement by an attorney in reviewing  
4 the "Ligia Melendez" file and drafting and filing that complaint.  
5 2AC ¶ 30. Plaintiff alleges that the bringing of a form lawsuit  
6 without meaningful involvement by an attorney violates 15 U.S.C.  
7 § 1692e(2)(A). Id. Because the CACH v. Melendez action was filed  
8 on February 14, 2008, 2AC ¶ 29, Plaintiff's FDCPA claim, alleged  
9 in her original complaint filed October 25, 2010, is untimely.

10 Plaintiff argues that the continuing violation doctrine tolls  
11 the statute of limitations, citing Joseph v. J.J. Mac Intyre  
12 Companies, LLC, 281 F. Supp. 2d 1156, 1160 (N.D. Cal. 2003).  
13 There, the court applied the continuing violation doctrine because  
14 the plaintiff alleged a pattern of repeated harassing phone calls  
15 in violation of the FDCPA and Rosenthal Act. The Joseph court  
16 limited its holding, applying the continuing violation doctrine to  
17 debt collection claims under "appropriate circumstances" such as  
18 the pattern of repeated calls alleged there, and did not discuss  
19 Naas. 281 F. Supp. 2d at 1161. Plaintiff's FDCPA claim, by  
20 contrast, alleges that the filing of the CACH v. Melendez lawsuit,  
21 a discrete act, constituted the FDCPA violation. With respect to  
22 CACH's motion for sanctions, filed on November 5, 2009, the motion  
23 was filed in the CACH v. Melendez action and was not a separate  
24 lawsuit or collection effort so as to trigger a new limitations  
25 period. See 2AC ¶ 88. As such, the FDCPA claim is time-barred  
26 under Naas.

27 Plaintiff also argues that the discovery rule and equitable  
28 tolling for fraudulent concealment should be applied to her

1 untimely FDCPA claim here, but cites no authority applying that  
2 tolling doctrine to the FDCPA where the claim is based on the  
3 filing of a collection action. Pl.'s Opp. to Laskin Law Offices  
4 Mot. Dismiss at 9-11 (citing Norman-Bloodsaw v. Lawrence Berkeley  
5 Lab., 135 F.3d 1260, 1268 (9th Cir. 1998) (reversing entry of  
6 summary judgment on statute of limitations grounds where the  
7 district court erred in holding as a matter of law that the  
8 plaintiffs knew or had reason to know of the nature of medical  
9 tests for syphilis, sickle cell trait, and pregnancy, as a result  
10 of their submission to preemployment medical examinations)).

11 Plaintiff further contends that the class action tolling  
12 doctrine should apply to her FDCPA claim because the filing of the  
13 Cole class action "must necessarily have given reasonable notice  
14 to the Defendants" about Plaintiff's potential claims challenging  
15 the Kunkle Affidavit. Pl.'s Opp. to Laskin Law Office Mot.  
16 Dismiss at 9-12. See Tosti v. City of Los Angeles, 754 F.2d 1485,  
17 1488 (9th Cir. 1985) (commencement of a class action tolls the  
18 applicable statute of limitations for all members of the class  
19 until class certification is denied). Plaintiff does not contend  
20 that either the Laskin Law Offices or any of the Attorney  
21 Defendants were parties to the Cole litigation. Nor does  
22 Plaintiff allege that SquareTwo was a party to the Cole class  
23 action. Plaintiff alleges that CACH is bound by the settlement  
24 agreement entered in Cole as a party to that action. 2AC ¶ 65.  
25 However, CACH demonstrates that it did not become a party to the  
26 Cole class action until March 9, 2009, after the limitations  
27 period on Plaintiff's FDCPA claim had already expired on February  
28 14, 2009. CACH Mot. at 5 and RJN Exs. 13-15. (Docket No. 81.)

1 Plaintiff does not contend otherwise. Thus, Plaintiff fails to  
2 demonstrate that the class action tolling doctrine would toll her  
3 individual FDCPA claim.

4 The motions of Laskin Law Offices, the Attorney Defendants,  
5 CACH and SquareTwo to dismiss the FDCPA claim as time-barred are  
6 therefore granted. Because amendment of the time-barred claim  
7 would be futile, the FDCPA claim is dismissed without leave to  
8 amend.

9 C. Remand

10 Having dismissed the FDCPA claim, which is the only federal  
11 claim alleged in the 2AC, the Court declines to exercise  
12 supplemental jurisdiction over the remaining state law claims and  
13 remands the action to the Superior Court for the County of San  
14 Francisco.

15 Defendant CACH removed this action pursuant to the Court's  
16 federal question jurisdiction. See Notice of Removal ¶ 5.  
17 Because Plaintiff's only claim under federal law is dismissed, no  
18 federal claim remains in her suit and, as a result, the exercise  
19 of supplemental jurisdiction over her remaining state law claims  
20 is no longer necessary. 28 U.S.C. § 1367(c)(3).

21 This action was removed in its early stages, and no factors  
22 weigh in favor of the Court exercising supplemental jurisdiction  
23 over Plaintiff's state law claims. See Acri v. Varian Associates,  
24 Inc., 114 F.3d 999, 1000 (9th Cir. 1997) (en banc). Thus, the  
25 Court declines to do so and sua sponte remands Plaintiff's action  
26 to San Francisco County Superior Court. Harrell v. 20th Century  
27 Ins. Co., 934 F.2d 203, 205 (9th Cir. 1991) (stating that, after  
28 dismissal of all federal claims in an action, "it is generally

1 preferable for a district court to remand remaining pendent claims  
2 to state court") (citing Carnegie-Mellon Univ. v. Cohill, 484 U.S.  
3 343, 350 n.7 (1988)).

4 CONCLUSION

5 For the reasons set forth above, the Court grants the motions  
6 of the Laskin Law Offices, the Attorney Defendants Laskin, Ewing  
7 and Langenfeld, CACH and SquareTwo to dismiss the FDCPA claim as  
8 time-barred. Count I of the 2AC alleging a claim under the FDCPA  
9 is therefore dismissed and the action is remanded to the Superior  
10 Court for the County of San Francisco. The Court denies as moot  
11 the anti-SLAPP motions of the Attorney Defendants and the Laskin  
12 Law Offices; the remaining grounds of CACH and SquareTwo's motions  
13 to dismiss; and the motions of Kunkle and Tran to dismiss for lack  
14 of personal jurisdiction.

15 The Clerk is directed to transfer the file to the Superior  
16 Court and terminate the action on this Court's docket.

17  
18 IT IS SO ORDERED.

19  
20 Dated: 10/15/2012

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23 CLAUDIA WILKEN  
24 United States District Judge  
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