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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARY YAZO, an individual on behalf of herself and all others similarly situated,)	Case No. CV 08-03512 DDP (AGRx)
)	
)	ORDER GRANTING MOTION TO DISMISS
Plaintiff,)	[Motion to Dismiss filed on
)	September 3, 2008; Request for
v.)	Evidentiary Hearing filed October
)	21, 2008]
LAW ENFORCEMENT SYSTEMS, INC., a New York corporation,)	
)	
Defendants.)	
)	

This matter comes before the Court on Defendant Law Enforcement Systems, Inc.'s motion to dismiss Plaintiff Mary Yazo's Complaint. Law Enforcement Systems ("LES") moves to dismiss Yazo's Fair Debt Collection Practices Act and state unlawful business practices claims. After reviewing the materials submitted by the parties and hearing oral argument, the Court grants the motion to dismiss with leave to amend.

I. BACKGROUND

Plaintiff Mary Yazo ("Yazo") filed this action behalf of herself and all others similarly situated on May 29, 2008. The Complaint alleges that Yazo, a resident of Riverside, California,

1 incurred debt on the 91 Express Lanes for failure to pay toll road
2 fees. Compl. ¶¶ 6, 11. The 91 Express Lanes, operated by Orange
3 County Transit Authority, are a four-lane ten-mile road in the
4 median of California's Riverside Freeway (State Route 91). Id. ¶
5 11. Yazo's debt was originally the property of the 91 Express
6 Lanes, but was transferred to LES for collection. Id. ¶ 12.

7 Yazo received a letter demanding payment for the outstanding
8 debt. Id. ¶ 13. Yazo alleges that the letter was deficient in that
9 it (1) failed to afford Yazo the requisite validation of debt, id.
10 ¶ 15, and (2) failed to inform Yazo that LES was attempting to
11 collect a debt and that information would be used for that purpose,
12 id. ¶ 16. Additionally, Yazo alleges that, in a response to a
13 letter from counsel, 91 Express Lanes provided no information
14 regarding the amount of the debt owed and instead instructed
15 Plaintiff's counsel to contact LES. Id. ¶ 18. Yazo alleges that, by
16 including in its correspondence its full name, "Law Enforcement
17 Systems, Inc.," LES "falsely and deceptively invoke[d] affiliation
18 with federal or state law enforcement agencies." Id. ¶ 23. The use
19 of the name, Yazo alleges, "implicitly threatens arrest or criminal
20 prosecution for failure to pay the debt." Id.

21 Yazo alleges that the letter, and LES's subsequent contact
22 with Yazo, violated the Fair Debt Collection Practices Act
23 ("FDCPA"), 15 U.S.C. § 1692, et seq. Compl. ¶¶ 21-27. Yazo also
24 claims that LES committed unlawful business practices in violation
25 of California Business and Professions Code § 17200 et seq.

26 LES brings this motion to dismiss pursuant to Federal Rule of
27 Civil Procedure 12(b)(6), failure to state a claim. In its Motion
28 to Dismiss, LES argues that the FDCPA does not apply to fines

1 imposed by state law or those imposed as a result of automotive
2 infractions, but rather only to consensual consumer transactions.
3 Because LES was attempting to collect a fine imposed by the
4 California Vehicle Code, the FDCPA does not apply to LES's attempts
5 to collect those fines. Additionally, LES argues, there could be no
6 consensual transaction in this case.

7 **II. DISCUSSION**

8 A. Legal Standard

9 Federal Rule of Civil Procedure Rule 12(b)(6) allows a
10 plaintiff's complaint to be dismissed for "failure to state a claim
11 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Under
12 Rule 12(b)(6), a complaint may be dismissed for failure to state a
13 claim if, after accepting the complaint's material allegations and
14 facts, it appears beyond doubt that the plaintiff can prove no set
15 of facts in support of the claim which would entitle the plaintiff
16 to relief. See Branch v. Tunnell, 14 F.3d 449, 455 (9th Cir. 1994).

17 B. "Debt" Under the FDCPA

18 Yazo's complaint alleges violations of 15 U.S.C. §§ 1692e-
19 1692g. Compl. ¶¶ 23-26. Each of these sections depends on the
20 meaning of the term "debt." Here, the central issue whether the
21 obligation LES seeks to collect is a "debt" for the purposes of the
22 FDCPA.

23 Not all obligations to pay are considered "debts" under the
24 FDCPA. Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C., 111
25 F.3d 1322, 1324 (7th Cir. 1997); see Charles v. Lundgren & Assocs.,
26 P.C., 119 F.3d 739, 740-42 (9th Cir. 1997) (adopting the reasoning
27 and approach of the Seventh Circuit in Bass). The FDCPA defines
28 "debt" as:

1 any obligation or alleged obligation of a consumer to pay
2 money arising out of a transaction in which the money,
3 property, insurance, or services which are the subject of the
4 transaction are primarily for personal, family, or household
5 purposes, whether or not such obligation has been reduced to
6 judgment.

7 15 U.S.C. § 1692a(5). The parties' dispute in this motion focuses
8 solely on whether the unpaid funds at issue arise out of a
9 "transaction" within the definition of "debt." § 1692a(5).

10 Congress did not define the term "transaction" in the context
11 of the FDCPA, but courts have read the term broadly such that it is
12 not limited to, for example, an extension of credit. See Bass, 111
13 F.3d at 1325-26. Rather, the touchstone seems to be that "debt" is
14 incurred when a consumer engages in a "consensual transaction":
15 "the FDCPA limits its reach to those obligations to pay arising
16 from consensual transactions, where parties negotiate or contract
17 for consumer-related goods or services." Id. at 1326; see also
18 Hawthorne v. Mac Adjustment, Inc., 140 F.3d 1367, 1371 (11th Cir.
19 1998)("[A]t a minimum, a 'transaction' under the FDCPA must involve
20 some kind of business dealing or other consensual obligation.");
21 Betts v. Equifax Credit Info. Servs., 245 F. Supp. 2d 1130, 1133
22 (W.D. Wash. 2003); Hansen, 280 F. Supp. 2d 1196, 1202 (W.D. Wash.
23 2003).

24 In the same vein, where the transaction is not a consensual
25 one, the resulting obligation is not "debt" within the meaning of
26 the FDCPA. The theft of goods or services, for example, does not
27 qualify as a consensual transaction. Bass, 111 F.3d at 1326.

28 "Although a thief undoubtedly has an obligation to pay for the

1 goods and services he steals," it is an obligation outside of the
2 scope of the FDCPA. Id. Similarly, an obligation arising from the
3 violation of a law or the commission of a tort is not the result of
4 a consensual transaction. In Betts, for example, the plaintiff's
5 car had been towed and impounded when it was illegally parked, and
6 the plaintiff owed the fee for that impoundment. 245 F. Supp. 2d at
7 1133. The court rejected the plaintiff's contention that the fee
8 for the impoundment was a "debt" within the meaning of the FDCPA
9 because the event giving rise to the obligation to pay -- the
10 impoundment -- was not a consensual consumer transaction, but
11 rather a consequence imposed by a Washington state statute. Id.;
12 see also Shorts v. Palmer, 155 F.R.D. 172 (S.D. Ohio 1994);
13 Hawthorne, 140 F.3d at 1367 (damage awards resulting from tort
14 liability are not "debts" under the FDCPA); Corriveau v. Restore
15 Fin. Servs., 2007 WL 1114221 (D. Or. 2007).

16 In this case, the parties agree that Yazo's obligation
17 constitutes two parts: the toll charges themselves and the fines
18 imposed for her failure to pay a toll. See Opp. at 5; Reply at 3.
19 The latter obligation - the fines - were incurred as a penalty
20 authorized by California Vehicle Code § 40250. Because these are
21 fines imposed as a result of a statutory violation, they were not
22 incurred through a consensual transaction and fall outside the
23 scope of the FDCPA's definition of "debt." See Betts, 245 F. Supp.
24 2d at 1133.

25 The parties disagree, however, on the nature of the toll
26 charges. Yazo argues that the toll charges are distinct from the
27 fines, and were the result of a consensual transaction. LES
28 contends that the toll charges are also outside the scope of the

1 FDCPA. First, LES argues that the "collection" of the underlying
2 toll charge is imposed by statute, not by contract. LES points to
3 California Vehicle Code § 23301, which provides that "[e]very
4 vehicle which enters into or upon any vehicular crossing
5 immediately becomes liable for such tolls and other charges as may
6 from time to time be prescribed by the California Transportation
7 Commission." Second, LES argues that, in light of the sections of
8 the California Vehicle Code providing when a toll is due, failing
9 to pay a toll constitutes stealing.

10 As a general matter, a toll charge, the charge for the use of
11 the toll road, is a charge for services. A driver incurs the toll
12 charge upon making his choice to utilize the toll road. But a
13 consensual transaction does not exist in all instances where a
14 driver uses a toll road. Rather, when a driver fails to pay the
15 toll charge, the use of the toll road is akin to theft.

16 California law makes clear that toll road use is only
17 consensual in certain situations. First, pursuant to California
18 Vehicle Code § 23302(b), certain toll roads - those without toll
19 booths- are open only to those customers who "already have a
20 transponder or other toll payment device associated with a valid
21 Automatic Vehicle Identification account." Cal. Veh. Code
22 § 23302(b). To the extent a driver does not have an account on a
23 toll road that requires one as a condition for use, yet uses the
24 toll road anyway, that use cannot be considered consensual. Second,
25 for all toll roads, California law allows only those persons who
26 can pay tolls at the instant they are liable for them to use the
27 toll roads. See Cal. Veh. Code §§ 23301, 23302(a). Thus, to the
28 extent a driver does not have intent or does not have means to pay

1 for use of the toll road, yet uses the toll road anyway, that use
2 constitutes theft, and is not a consensual transaction that gives
3 rise to "debt" under the FDCPA. Cf. Bass, 111 F.3d at 1326
4 (discussing Zimmerman v. HBO Affiliate Group, 834 F.2d 1163 (3d
5 Cir. 1987)); Shorts, 155 F.R.D. at 175-76.

6 The Complaint alleges that Yazo's obligation to pay toll
7 charges arose from a failure to pay toll road fees on the 91
8 Expressway. See Compl. ¶ 11. Because the 91 Express Lanes is a toll
9 road, see Compl. ¶ 11, in light of §§ 23301 & 23302, a transaction
10 in which a driver fails to pay fees on the 91 Express Lanes is not
11 consensual. As noted above, "[a]lthough a thief undoubtedly has an
12 obligation to pay for the goods and services he steals," it is an
13 obligation outside of the scope of the FDCPA. See Bass, 111 F.3d at
14 1326. Yazo has not pled facts showing a consensual contractual or
15 business dealing for the use of the toll road services. Rather,
16 taking Yazo's allegation that she failed to pay toll charges as
17 true, the Court cannot conclude that the obligation to pay arose
18 out of a consensual consumer transaction, and therefore finds that
19 it is outside the scope of "debt" as contemplated by the FDCPA. The
20 Court therefore dismisses the plaintiff's FDCPA cause of action
21 with leave to amend.

22 C. Plaintiff's Unlawful Business Practices Claim

23 In addition to the FDCPA claim, Yazo's Complaint also alleges
24 a cause of action for unlawful business practices in violation of
25 state law, California Business and Professions Code § 17200. LES
26 argues that Yazo's unlawful business practices claim rests solely
27 on her FDCPA claim; to the extent Yazo's FDCPA claim fails, LES
28 argues, so must her § 17200 claim.

1 Under § 17200, unfair competition includes "any unlawful,
2 unfair or fraudulent business act or practice and unfair,
3 deceptive, untrue or misleading advertising," as well as false or
4 misleading statements. Cal. Bus. & Prof. Code § 17200. A plaintiff
5 alleging unlawful business practices under the unfair competition
6 statutes "'must state with reasonable particularity the facts
7 supporting the statutory elements of the violation.'" Silicon
8 Knights, Inc. v. Crystal Dynamics, Inc., 983 F. Supp. 1303, 1316
9 (N.D. Cal. 1997) (quoting Khoury v. Maly's of Cal., 14 Cal. App.
10 4th 612, 612 (1993)).

11 Yazo's unlawful business practices claim relies on the FDCPA
12 claim. Yazo alleges that "by and through the conduct described [in
13 the Complaint], Defendant LES engaged in unfair, fraudulent and
14 unlawful practices." Compl. ¶ 33; see also id. ¶ 33 ("By and
15 through the unfair, fraudulent and unlawful business practices
16 described herein, Defendant LES has failed to comply with the
17 FDCPA[.]"). Paragraph 28 of the Complaint incorporates by reference
18 ¶¶ 1-27. Id. ¶ 28. Because the Court has dismissed Yazo's FDCPA
19 claim, that claim cannot form the basis of a valid unlawful
20 business practices claim. Aquino v. Credit Control Servs., 4 F.
21 Supp. 2d 927, 930 (N.D. Cal. 1998) ("The Court has already rejected
22 plaintiff's primary FDCPA claim and it cannot serve as the basis of
23 a claim under section 17200.").

24 Yazo argues that "[p]aragraphs 1 through 27 of the complaint
25 set forth, with particularity, the specific 'unlawful' conduct
26 which gives rise to the section 17200 violation." Opp. at 15. On
27 the Court's reading of those paragraphs, the allegedly unlawful
28 conduct is the conduct that allegedly violates the FDCPA. Indeed,

1 Yazo's brief emphasizes her reliance on the FDCPA claims. Opp. at
2 16:9-27. Yazo does not identify specific paragraphs or allegations
3 that support a § 17200 claim separate from the potential FDCPA
4 violation. The only portion of a paragraph the Court can identify
5 on its own is the portion of ¶ 23 that claims LES's name "falsely
6 and deceptively invokes affiliation with federal or state law
7 enforcement agencies." Yazo does not explain how this allegation
8 supports an unlawful business practices claim apart from the
9 alleged violation of § 1692e of the FDCPA.

10 Accordingly, because the state law unfair business practices
11 claim relies solely on the deficient FDCPA claim, the Court grants
12 the motion to dismiss.


13 **III. Conclusion**

14 For the foregoing reasons, the Court grants the motion to
15 dismiss with leave to amend.

16 After the hearing, LES filed a request for an evidentiary
17 hearing, or in alternative, conversion of its motion to dismiss the
18 complaint to a motion for summary judgment. In light of the Court's
19 ruling on the motion to dismiss, the Court vacates that Request as
20 moot.

21 IT IS SO ORDERED.

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24 Dated: November 7, 2008



DEAN D. PREGERSON
United States District Judge

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