

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	LA CV 14-8330 JCG	Date	August 10, 2015
Title	<i>Fanny Lucia Lombana v. Green Tree Servicing, LLC</i>		

Present: The Honorable Jay C. Gandhi, United States Magistrate Judge

Kristee Hopkins

None Appearing

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

None Appearing

None Appearing

Proceedings: (IN CHAMBERS) ORDER DENYING DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S SECOND AMENDED COMPLAINT

By order dated June 29, 2015 (“Order”), the Court (1) granted in part and denied in part Green Tree Servicing, LLC (“Defendant”)’s motion to dismiss Fanny Lucia Lombana (“Plaintiff”)’s first amended complaint, and (2) granted Plaintiff leave to file a second amended complaint (“SAC”). [See Dkt. No. 28.]

On the same day, the Court ordered that Plaintiff’s proposed amended pleading be re-docketed as the SAC. (Order at 7); [see Dkt. No. 32].

On July 13, 2015, Defendant filed a motion to dismiss the SAC pursuant to Federal Rule of Civil Procedure 12(b)(6) (“Motion”). [Dkt. No. 29.]

The Motion raises a number of challenges to Plaintiff’s SAC, all of which appeared – mostly verbatim – in Defendant’s prior motion to dismiss. [Compare Dkt. No. 19 with Dkt. No. 30.] For the reasons discussed below, the Motion is DENIED.

First, Defendant contends that Plaintiff “fails to properly allege that Green Tree is a debt collector,” “makes no allegation as to whether the loan was in default at the time it was acquired,” and “fails to allege facts establishing that Green Tree engaged in any [proscribed] conduct . . .” (Mot. at 5.) Plaintiff’s SAC withstands these challenges, for reasons set forth in the Order. (See Order at 4-6.)

Second, Defendant claims that Plaintiff’s debt was never extinguished, and emphasizes that a creditor’s “correspond[ence] with a debtor is not, by itself, a basis for relief under the FDCPA.” (Mot. at 4, 6.) As Defendant notes, these arguments helped win dismissal of Plaintiff’s original complaint. [See Dkt. No. 17 at 3-4.] Fatally, however, Defendant fails to address Plaintiff’s claim (since added) that Defendant impermissibly threatened to garnish Plaintiff’s wages. (See SAC at 3; Order at 5-6.)

Third, Defendant parenthetically notes that “Green Tree’s phone logs show that it has not called Plaintiff since 2011.” (Mot. at 2.) However, Plaintiff alleges, to the contrary, that Defendant called

