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JS-6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NICOLE YATOOMA, individually and on behalf of all others similarly situated,

Plaintiff,

v.

OP PROPERTY MANAGEMENT LP; APARTMENT INVESTMENT AND MANAGEMENT COMPANY D/B/A/ PALAZZO AT PARK LA BREA; AIMCO PARK LA BREA HOLDINGS, LLC; LA PARK LA BREA A, LLC; and DOES 1–20, inclusive, and each of them,

Defendants.

Case No. 2:17-cv-02645 ODW (SSx)

ORDER GRANTING MOTION TO DISMISS [8]

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I. INTRODUCTION

Before the Court is Defendants OP Property Management LP, Apartment Investment and Management Company d/b/a Palazzo at Park La Brea ("Aimco"), Aimco Park La Brea Holdings, LLC, and LA Park La Brea A, LLC's ("LA Park") (collectively, "Defendants") Federal Rule of Civil Procedure 12(b)(6) motion to dismiss in this debt collection case. For the reasons discussed below, the Court **GRANTS** Defendants' motion.

II. FACTUAL BACKGROUND

Plaintiff and her husband lease an apartment in the Palazzo at Park La Brea. (First Amended Complaint ("FAC") ¶ 26, ECF No 1-12.) LA Park owns the Palazzo and Aimco manages the property. (FAC ¶¶ 7–8.)

On or about October 3, 2015, Aimco's agent sent an email to Plaintiff and a number of other residents on behalf of LA Park reminding them to pay their rent, which was due on October 1, and thanking them if they had already paid. (FAC ¶ 14.) The email did not conceal the recipients' names. (FAC ¶ 16.)

On September 29, 2016, Plaintiff filed a class action complaint in the Superior Court of California for the County of Los Angeles on behalf of herself and all those who received Aimco's email. (ECF No. 1-1.) On March 9, 2017, Plaintiff filed a first amended class action complaint alleging violations of the federal Fair Debt Collection Practices Act ("FDCPA") and California's Rosenthal Act. (FAC ¶¶ 37–47.)

On April 13, 2017, Defendants filed the instant motion to dismiss. (ECF No. 8.) The motion is now fully briefed and ready for decision.[1] (ECF Nos. 24–25.)

III. LEGAL STANDARD

A court may dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for lack of a cognizable legal theory or insufficient facts pleaded to support an otherwise cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d

[1] Having carefully considered the papers filed in support of and in opposition to the instant motion, the Court deems the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

696, 699 (9th Cir. 1988). To survive a motion to dismiss, a complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement of the claim. *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003). The factual "allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). That is, the complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

The determination of whether a complaint satisfies the plausibility standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. A court is generally limited to the pleadings and must construe all "factual allegations set forth in the complaint . . . as true and . . . in the light most favorable" to the plaintiff. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (internal quotation marks omitted). But a court need not blindly accept conclusory allegations, unwarranted deductions of fact, and unreasonable inferences. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Generally, a court should freely give leave to amend a complaint that has been dismissed, even if not requested by the party. *See* Fed. R. Civ. P. 15(a); *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). However, a court may deny leave to amend when it "determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).

IV. DISCUSSION

This case turns on whether Defendants are "debt collectors" under the FDCPA, and whether the parties engaged in a "consumer credit transaction" as defined by the Rosenthal Act.

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A. Dismissal of Certain Defendants

In her opposition, Plaintiff indicates that OP Property Management LP and Aimco Park La Brea Holdings, LLC were not involved with the alleged acts and "may be appropriately dismissed." (Opp'n 3, ECF No. 24.) As such, the Court **DISMISSES** this matter as to those two Defendants with prejudice.

B. Plaintiff's FDCPA Claim Fails Because Defendants Are Not "Debt Collectors"

The FDCPA was created to protect consumers from unfair and deceptive debt collection practices. *See* 15 U.S.C. § 1692. There are three threshold requirements to allege an FDCPA claim: "(1) the plaintiff must be a 'consumer'; (2) the defendant must be a 'debt collector'; and (3) the defendant must have committed some act or omission in violation of the FDCPA." *Robinson v. Managed Accounts Receivables Corp.*, 654 F. Supp. 2d 1051, 1057 (C.D. Cal. 2009) (citation omitted).

The definition of "debt collector" is quite narrow, it includes only persons or entities who (1) "use[] any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts;" or (2) "regularly collect[] or attempt[] to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Furthermore, the term "debt collector" does not include "any person collecting or attempting to collect any debt owed . . . to the extent such activity . . . concerns a debt which was originated by such person." 15 U.S.C. § 1692a(6).

Neither LA Park nor Aimco falls within the FDCPA's narrow definition of "debt collector." The primary function of these two companies is property management—not debt collection. The fact that property owners/managers collect rent from tenants, and in some instances past due rent, as part of their broader duties does not make them "debt collectors." *See Reynolds v. Gables Residential Servs., Inc.*, 428 F. Supp. 2d 1260, 1264 (M.D. Fla. 2006) (holding that community managers and property owners are not "debt collectors" under the FDCPA); *see also Whitfield v. Sandoval*, No. 1:06–cv–01047–AWI–SMS, 2007 WL 4239862, at *1 (E.D. Cal. Nov.

29, 2007) (concluding that landlords are not in the "primary business" of collecting debts).

Further, neither LA Park nor Aimco can be a "debt collector" because, as the property owner and property manager, respectively, they originated the lease from which the alleged debt arises. 15 U.S.C. § 1692a(6)(F)(ii); *De Dios v. Int'l Realty & Investments*, 641 F.3d 1071, 1074 (9th Cir. 2011) (recognizing that originators of debt are not "debt collectors"). Because being a "debt collector" is an essential element of any FDCPA claim, and LA Park and Aimco are not "debt collectors" within the meaning of the statute, the Court **DISMISSES** Plaintiff's FDCPA claim without leave to amend.

C. Plaintiff's Rosenthal Act Claim Fails Because the Parties Did Not Engage in a "Consumer Credit Transaction"

The Rosenthal Act is California's analog to the FDCPA. *See Riggs v. Prober & Raphael*, 681 F.3d 1097, 1099 (9th Cir. 2012). This act concerns "consumer debt," which is defined as "money, property or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction." Cal. Civ. Code § 1788.2(f). A "consumer credit transaction" is "a transaction between a natural person and another person in which property, services or money is *acquired on credit* by that natural person from such other person primarily for personal, family, or household purposes." *Id*. § 1788.2(e) (emphasis added).

Payment of monthly rent is not a consumer credit transaction within the statutory definition of the term. *See Phillips v. Archstone Simi Valley LLC*, CV 15–5559–DMG (PLAx), 2016 WL 7444550, at *3 (C.D. Cal. Dec. 15, 2016) (reasoning that typical rental transactions do not involve the extension of credit and holding that, as a result, the plaintiff's Rosenthal Act claim based on those transactions must fail); *Leasure v. Willmark Communities, Inc.*, No. 11-CV-00443 BEN DHB, 2013 WL 6097944, at *4 (S.D. Cal. Mar. 14, 2013) (holding that rent payments are not "consumer credit transactions" under the Rosenthal Act); *see also Ortiz v. Lyon Mgmt.*

Grp., Inc., 157 Cal. App. 4th 604, 618–19 (2007) (observing that "[r]enting an apartment is not truly a credit transaction" because "[c]redit is '[t]he time that a seller gives the buyer to make the payment that is due' or '[t]he availability of funds either from a financial institution or under a letter of credit.' A landlord neither sells property on time nor makes funds available to tenants" (citation omitted)); *Sanai v. U.D. Registry, Inc.*, No. B170618, 2005 WL 361327, at *16 (Cal. App. 2d Feb. 16, 2005) (holding that a month-to-month tenancy was not a "consumer credit transaction").

Plaintiff argues that a "consumer credit transaction" was retroactively created by her failure to pay rent or by Defendants' extension of a few-day grace period in which to pay the amount owed. (Opp'n 14.) The Court disagrees. "[A] credit transaction is not retroactively created by virtue of the consumer's . . . later failure to pay." *Phillips*, 2016 WL 7444550, at *5. Plaintiff should not be able to unilaterally manufacture a "consumer credit transaction," where, as here, the underlying contract mutually agreed to by the parties does not involve any extension of credit.

The Court also frowns upon Plaintiff's attempt to portray the grace period as a "consumer credit transaction." (Opp'n 14.) "Transaction" commonly refers to "[a] business deal; an act involving buying and selling" or an "exchange." *Craft v. Campbell Soup Co.*, 161 F.3d 1199, 1201 (9th Cir. 1998); TRANSACTION, Black's Law Dictionary (10th ed. 2014). Defendant voluntarily and unilaterally allowed Plaintiff a few extra days to pay her rent without receiving, or expecting to receive, anything in return. This generous act simply cannot be construed as a "consumer credit transaction."

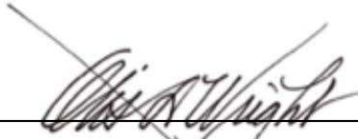
As explained above, the parties at no time engaged in a "consumer credit transaction" as required by the Rosenthal Act. Therefore, the Court **DISMISSES** Plaintiff's Rosenthal Act claim without leave to amend.

V. CONCLUSION

In light of the foregoing, the Court **GRANTS** Defendants' motion to dismiss. (ECF No. 8.) As amendment will not cure the defects in Plaintiff's first amended complaint, the dismissal is *without leave to amend*. The Clerk of Court shall close the case.

IT IS SO ORDERED.

July 20, 2017



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE