UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

NICASIO SANDOVAL,
 	
                    Plaintiff,
 	
     v.
 	
KAISER FOUNDATION HEALTH
PLAN, INC.,
 	
                    Defendant.
	No. 1:14-CV-1466-GEB-BAM
	
	**ORDER GRANTING IN PART AND
	DENYING IN PART DEFENDANT'S
	MOTION TO DISMISS THE FIRST
	AMENDED COMPLAINT; AND DENYING
	MOTION FOR MORE DEFINITE
	STATEMENT**

Defendant moves under Federal Rule of Civil Procedure ("Rule") 12(b)(6) for dismissal of Plaintiff's First Amended Complaint ("FAC") or in the alternative, under Rule 12(e) for a more definite statement.

Plaintiff's FAC is comprised of claims alleged under the Telephone Consumer Protection Act ("TCPA") and California's Rosenthal Fair Debt Collection Practices Act ("Rosenthal Act"). The FAC contains the following allegations. "In or around April of 201[4,] Defendant began . . . contacting [him]... regarding an alleged outstanding debt." (FAC ¶ 9, ECF No. 18.) He was contacted "on at least . . . April 11, 2014, May 5, 2014, May 22, 2014, May 25, 2014, and June 8, 2014" without his prior express

1

consent; the calls were made using an "automatic dialing system,"
were not made for an emergency purpose, and "Plaintiff incur[red]
a charge for [the] . . . calls." (FAC ¶¶ 11, 12-15.)

Defendant seeks dismissal of Plaintiff's TCPA claim in
the FAC, arguing it contains "bare legal conclusions," making "it
virtually impossible. . . to investigate" the claim. (Def.'s Mem.
ISO Mot. Dismiss FAC ("Mot.") 2:28-3:1, 2:19; 3:7, ECF No. 15-1.)

The TCPA prescribes it is "unlawful [inter alia] for
any person. . . to make any call (other than a call made for
emergency purposes or made with the prior express consent of the
called party) using any automatic telephone dialing system . . .
to any telephone number assigned to . . . any service for which
the called party is charged for the call." 47 U.S.C. §
227(b)(1)(A)(iii).

Defendant has not shown Plaintiff's TCPA claim is
implausible under the applicable dismissal standard. Nor has
Defendant shown Plaintiff should be required to give a more
definite statement of this claim. Therefore, this portion of the
motion is denied.

Defendant seeks dismissal of Plaintiff's Rosenthal Act
claims, arguing Plaintiff's allegations do not provide enough
information about the content of the alleged calls to plausibly
state a Rosenthal Act claim. (Mot. 4:17-18; 4:4-5.) Plaintiff's
Rosenthal Act claims alleges Defendant violated two separate
statutes, one of which is a federal statute that the Rosenthal
Act incorporates as a violation of California law: 15 U.S.C. §
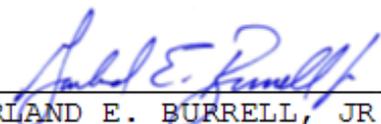1692(d) and Cal. Civ. Code § 1788.11(e). (FAC ¶ 27).

15 U.S.C. § 1692(d) prohibits a debt collector from,

inter alia, "engag[ing] in any conduct the natural consequence of which is to harass, oppress, or abuse any person." Since "[t]here are no facts alleged as to the content of the calls," Plaintiff fails to allege a plausible claim under this statute. <u>Lopez v. Prof'l Collection Consultants</u>, No. CV-11-3214 PDG (PLAx), 2011 WL 4964886, at *2 (C.D. Cal. Oct. 19, 2011.) Therefore, this claim is dismissed.

Further, section 1788.11(e) states in relevant part: "No debt collector shall . . . attempt to collect a consumer debt by . . . communicating . . . with the debtor with such frequency as to . . . to constitute an harassment . . . under the circumstances." Plaintiff's allegations are insufficient to state a plausible claim under this statute. Therefore, this claim is dismissed.

For the stated reasons, Defendant's motion to dismiss Plaintiff's FAC is GRANTED IN PART and DENIED IN PART, and its motion for a more definite statement is DENIED. Plaintiff is granted ten (10) days from the date on which this order is filed to file a Second Amended Complaint addressing the deficiencies in any claim dismissed.

Dated: February 6, 2015

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GARLAND E. BURRELL, JR.
Senior United States District Judge

3