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

JOSEPH E. GERBER,  
an individual,

Plaintiff,

No. 07-cv-0785 FCD JFM PS

vs.

CITIGROUP, INC., etc., et al.,

Defendants.

ORDER

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Plaintiff, proceeding pro se, filed the above-entitled action. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 72-302(c)(21).

On January 29, 2009, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within ten days. Plaintiff and defendants have filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 29, 2009, are adopted in full;

1 and

2 2. The March 31, 2008 motion to dismiss (#107) is granted in part and denied in  
3 part, as follows:

4 a. Because defendants are not protected under the Noerr-Pennington  
5 doctrine or California's litigation privilege, defendants' motion to dismiss or strike claims two,  
6 seven, and seventeen on these grounds is denied.

7 b. Defendants' motion to dismiss Rosenthal claims brought against  
8 defendants Zide, Schwachman and Lee, who are individual attorneys, is granted.

9 c. Defendants' request for Rule 11 sanctions is denied.

10 d. Claims fifteen and sixteen are dismissed without prejudice to plaintiff's  
11 claim for actual damages for emotional distress under the FDCPA.

12 e. Defendants' motion to dismiss claim seventeen is granted.

13 f. Defendants' motion to dismiss based on violation of the statute of  
14 limitations should is denied without prejudice.

15 g. Defendants' motion pursuant to California Code of Civil Procedure  
16 Section 425.16—the anti-SLAPP Statute—is denied.

17 h. Defendants' motion to dismiss based on plaintiff's failure to obtain a  
18 pre-filing court order required by California Civil Code § 1714.10 to allege conspiracy is denied.

19 3. Defendants' March 31, 2008 motion to dismiss for failure to state a claim  
20 (#109) is denied.

21 4. Plaintiff's May 1, 2008 motion to strike matters in the answer and affirmative  
22 defenses (#115) is denied.

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5. Plaintiff's May 1, 2008 motion to dismiss Citibank's counter claim (#115) is denied.

DATED: July 13, 2009.



FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE