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

SANDRA BATISTE,)	
)	
Plaintiff,)	2:08-cv-00378-GEB-EFB
)	
v.)	<u>ORDER</u> *
)	
AMERICAN GENERAL FINANCE,)	
)	
)	
Defendant.)	
_____)	

Defendant American General Finance ("AGF") moves for summary judgment on all of Plaintiff's claims. Plaintiff alleges a federal claim under the Fair Debt Collection Practices Act ("FDCPA") which confers federal question jurisdiction, and alleges numerous state claims over which supplemental jurisdiction is exercised under 28 U.S.C. § 1367. For the reasons stated below, Defendant's motion will be granted on the federal claim and the court declines to continue exercising supplemental jurisdiction over Plaintiff's state claims.

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* This matter was determined to be suitable for decision without oral argument. E.D. Cal. R. 78-230(h).

1 the principal purpose of which is the collection of any debts," or
2 alternatively, a person "who regularly collects or attempts to
3 collect, directly or indirectly, debts owed or due or asserted to be
4 owed or due another." 15 U.S.C. § 1692a(6). The term "debt
5 collectors" specifically "does not include any officer or employee of
6 a creditor while, in the name of the creditor, collecting debts for
7 such creditor." Id. § 1692a(6) (A) (emphasis added). A creditor is
8 "any person who offers or extends credit creating a debt or to whom a
9 debt is owed" Id. § 1692a(4). One exception exists for
10 creditors, however, who may be held liable as "debt collectors" if
11 "in the process of collecting [their] own debts, [they] us[e] any name
12 other than [their] own which would indicate that a third person is
13 collecting or attempting to collect such debts." Id. § 1692a(6).

14 Defendant provides a Declaration from Lisa Wagner (a
15 district manager for Defendant) in support of its position that it is
16 not a debt collector, in which Wagner avers that "at all times AGF has
17 been, and is, the lender, secured party, and owner of the [loan
18 between Plaintiff and Defendant]." (Def's Mot. 5: 15-17; Def's
19 Statement of Undisputed Facts ("SUF") ¶ 6; Wagner Decl. ¶ 8.)
20 Defendant argues "AGF's principal business is not debt collection" and
21 supports this position with a portion of Wagner's declaration, in
22 which she declares: "during the course of my 32 years of my
23 employment, AGF has been a major issuer of consumer loans in the
24 United States . . . AGF's principal business is not debt collection,
25 although when it becomes necessary, AGF does attempt to collect its
26 overdue debts." (Def's SUF ¶ 14; Wagner Decl. ¶ 5.)

27 Plaintiff does not dispute Defendant's position that it "has
28

1 been, and is, the lender, secured party, owner and creditor" of the
2 loan between Plaintiff and Defendant. (Pl.'s SUF ¶ 6.) Plaintiff
3 counters, however, that "AGF in its regular course of business, sends
4 employees out on field calls to visit client's houses and collect
5 debts owed," and therefore falls under the definition of "debt
6 collector" as prescribed in the FDCPA, even if Defendant is also a
7 "creditor." (Pl.'s SDF ¶ 20.) Plaintiff relies on Wagner's following
8 deposition testimony as support for this position:

9 Q Okay, that was probably a bad question. Beside the phone
10 number - besides the phone calls, besides the additional
11 letter that are being sent out, are there any other means in
12 which the -- American General takes to try to bring the
13 account current?

14 A Yes, there are.

15 Q Okay. And what are those?

16 A Actual visits to the home.

17 Q Okay. And is there a standard policy as to the frequency
18 of those visits?

19 A No, there's not.

20 Q Is there any guidance as to how those, the frequency of
21 those visits would be determined?

22 A No.

23 Q Who makes the decision generally on if and when a visit to
24 the home should take place?

25 A The branch manager.

26 Q. It's up to him or her, the branch manager, to send
27 someone out or not?

28 A In most cases.

Q. Okay. And the visits to the home, I know you guys
probably do a lot of auto loans, are those visits handled
in-house, meaning is an employee from American General sent
out there, or is that sent to a third party?

A. An employee from American General does the field call to
the home.

[. . .]

Q. Okay. And the purpose of the field call is what?

A. To make contact with the customer to work out payment
solutions.

Q In person?

A Yes.

(Wagner Depo. on March 26, 2008 27:17 - 29:3.) This
deposition testimony, however, fails to support Plaintiff's position
that Defendant is a "debt collector," because by definition, "debt

1 collectors" collect the debt of others, not their own debts.

2 Under the FDCPA, the only instance in which a creditor
3 may be liable as a "debt collector" is when a creditor uses names
4 other than its own, such as third-party names, to collect its own
5 debts. 15 U.S.C. § 1692a(6). Plaintiff concedes that "because no
6 evidence has surfaced that would support Plaintiff's original belief
7 that Defendant AGF was representing itself as Defendant NIS, [a
8 Defendant no longer party to this suit,] Plaintiff cannot, in good
9 faith, put forth a legal argument any longer that AGF was falsely
10 purporting to be a third party debt collector, that is, NIS, and
11 withdraws any such argument." (Pl.'s Opp'n at 12: 19-23.)

12 Since Plaintiff has not controverted Defendant's showing
13 that it not exposed to liability under the FDCPA, Defendant's summary
14 judgment motion on this claim is granted.

15 When the basis for federal question jurisdiction no longer
16 exists, the Court has discretion to decide whether supplemental
17 jurisdiction should continue being exercised over pending state
18 claims. Under 28 U.S.C. § 1367(c)(3), the district court "may
19 decline to exercise supplemental jurisdiction over a claim" if the
20 "court has dismissed all claims over which it has original
21 jurisdiction" The exercise of this dismissal discretion is
22 based on considerations of judicial "economy, convenience, fairness,
23 and comity." Harrell v. 20th Century Ins. Co., 934 F.2d 203, 205 (9th
24 Cir. 1991). The Court finds that litigation of Plaintiff's state law
25 claims is not adverse to the interest of judicial economy since those
26 claims have not yet been analyzed in this case. Further the comity
27 factor weighs decisively in favor of dismissal since "[n]eedless
28 decisions of state law should be avoided as a matter of comity."

1 Hoeck v. City of Portland, 57 F.3d 781, 785 (9th Cir. 1995) (internal
2 citation omitted); Les Shockley Racing v. National Hod Rod Ass'n, 884
3 F.2d 504, 509 (9th Cir. 1989) (stating when federal claims are
4 eliminated before trial, district courts should ordinarily decline to
5 exercise supplemental jurisdiction). Therefore, Plaintiff's state law
6 claims are dismissed without prejudice.

7 Dated: August 20, 2009

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11 GARLAND E. BURRELL, JR.
12 United States District Judge
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