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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAMELA PFITZER also known as No. 2:09-cv-02634-MCE-GGH
PAMELA EBERT,

Plaintiff,

v.

MEMORANDUM AND ORDER

BENEFICIAL CALIFORNIA, INC. ;
and Does 1-10 inclusive,

Defendants.

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Plaintiff Pamela Pfitzer ("Plaintiff") seeks monetary relief from Defendant Beneficial California, Inc. ("Defendant") for violations of the federal Truth in Lending Act, 15 U.S.C. §§ 1601 et seq., and the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq.

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1 Presently before the Court is Beneficial's Motion to dismiss
2 Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure
3 12 (b) (6),¹ on grounds that Plaintiff fails to state a claim upon
4 which relief may be granted.² For the reasons set forth below,
5 Defendant's Motion is GRANTED.

6
7 **BACKGROUND**³
8

9 This action is based on Defendant's alleged acts regarding a
10 consumer credit transaction with Plaintiff. According to
11 Plaintiff's Opposition, on or about August 21, 2006, Defendant
12 Beneficial mailed to Plaintiff a "pre-screened credit line offer
13 of \$8,000.00 with an initial check of \$7,000.00". Plaintiff
14 entered into a contract with Defendant and by 2008, the balance
15 due on the credit line including fees and interest was \$9,551.53.

16 Plaintiff alleges that Defendant failed to provide required
17 disclosures to Plaintiff prior to the consummation of the
18 transaction, in violation of the Truth in Lending Act ("TILA"),
19 15 U.S.C. § 1638(b) and 12 C.F.R. § 226.17(b). Plaintiff further
20 alleges that Defendant failed to provide such disclosures in a
21 language and/or verbiage that Plaintiff would in fact understand.

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24 ¹ Unless otherwise stated, all further references to a Rule
25 are to the Federal Rules of Civil Procedure.

26 ² Because oral argument would not be of material assistance,
27 the Court ordered this matter submitted on the briefs. E.D. Cal.
Local Rule 230(h).

28 ³ The factual assertions in this section are based on the
allegations in Plaintiffs' Complaint unless otherwise specified.

1 Plaintiff claims that Defendant failed to advise Plaintiff that
2 in the event of a default, Defendant would record a judgment on
3 any property owned by Plaintiff, and further alleges that
4 Defendant failed to properly identify the property subject to a
5 security interest as required under TILA, 15 U.S.C. § 1638(a)(9)
6 and 12 C.F.R. § 226.18(m). Finally, Plaintiff alleges that
7 Defendant violated the Fair Debt Collection Practices Act by
8 attempting to collect the debt by calling Plaintiff on her
9 personal cell phone, as many as 8 to 12 times per day, even
10 though it was known that Plaintiff was represented by counsel.

11 Plaintiff filed the present action on August 7, 2009, in the
12 Superior Court of California for the County of Placer, alleging
13 violations of the Truth in Lending Act and Fair Debt Collection
14 Practices Act. On September 18, 2009, Defendant Beneficial
15 removed the action to this Court pursuant to 28 U.S.C. § 1441(b)
16 on the basis of federal question jurisdiction under 28 U.S.C.
17 § 1331. Defendant Beneficial now moves to dismiss all claims
18 pursuant to Rule 12(b)(6) for failure to state a claim.

19
20 **STANDARD**
21

22 On a motion to dismiss for failure to state a claim under
23 Rule 12(b)(6), all allegations of material fact must be accepted
24 as true and construed in the light most favorable to the
25 nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336,
26 337-38 (9th Cir. 1996).

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1 Rule 8(a)(2) requires only "a short and plain statement of the
2 claim showing that the pleader is entitled to relief," in order
3 to "give the defendant fair notice of what the...claim is and the
4 grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47,
5 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). While a complaint attacked
6 by a Rule 12(b)(6) motion to dismiss does not need detailed
7 factual allegations, a plaintiff's obligation to provide the
8 "grounds" of his "entitlement to relief" requires more than
9 labels and conclusions, and a formulaic recitation of the
10 elements of a cause of action will not do. Bell Atl. Corp. v.
11 Twombly, 550 U.S. 544, 545, 127 S. Ct. 1955, 167 L. Ed. 2d 929
12 (2007) (internal citations and quotations omitted). Factual
13 allegations must be enough to raise a right to relief above the
14 speculative level. Id. at 555 (citing 5 C. Wright & A. Miller,
15 Federal Practice and Procedure § 1216, pp. 235-236 (3d ed. 2004)
16 ("The pleading must contain something more...than...a statement
17 of facts that merely creates a suspicion [of] a legally
18 cognizable right of action").

19 If the court grants a motion to dismiss a complaint, it must
20 then decide whether to grant leave to amend. The court should
21 "freely give[]" leave to amend when there is no "undue delay, bad
22 faith[,] dilatory motive on the part of the movant,...undue
23 prejudice to the opposing party by virtue of...the amendment,
24 [or] futility of the amendment...." Fed. R. Civ. P. 15(a); Foman
25 v. Davis, 371 U.S. 178, 182 (1962). Generally, leave to amend is
26 only denied when it is clear that the deficiencies of the
27 complaint cannot be cured by amendment. DeSoto v. Yellow Freight
28 Sys., Inc., 957 F.2d 655, 658 (9th Cir. 1992).

1 **B. Fair Debt Collection Practices Act ("FDCPA")**

2
3 Plaintiff's second claim alleges violations of FDCPA. The
4 FDCPA prohibits "debt collector[s]" from making false or
5 misleading representations and from engaging in various abusive
6 and unfair practices. 15 U.S.C. § 1692. Thus, to be held liable
7 for violation of the FDCPA, a defendant must, as a threshold
8 requirement, fall within the Act's definition of "debt
9 collector." See Heintz v. Jenkins, 514 U.S. 291, 294 (1995).

10 As explained above, Plaintiff has failed to allege any facts
11 describing the contract she supposedly entered, the type of
12 credit she acquired, or any information about the Defendant as
13 creditor. As such, the court cannot determine whether Defendant
14 was a "debt collector" within the meaning of the FDCPA. Although
15 the court is bound to accept all allegations of material fact as
16 true, here Plaintiff has failed to plead the requisite material
17 facts needed to establish a cognizable legal claim under the
18 FDCPA.

19 Accordingly, Defendant's Motion to dismiss Plaintiff's FDCPA
20 claim is granted with leave to amend.

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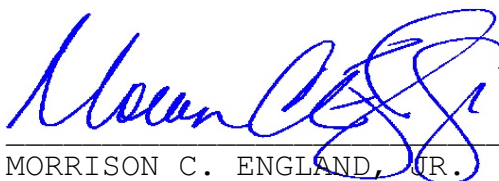
1 **CONCLUSION**

2
3 Based on the foregoing, Defendant's Motion to Dismiss
4 (Docket No. 8) is GRANTED with leave to amend.

5 Plaintiffs may file an amended complaint not later than
6 twenty (20) days after the date this Memorandum and Order is
7 filed electronically. If no amended complaint is filed within
8 said twenty (20)-day period, without further notice, Plaintiffs'
9 claims will be dismissed without leave to amend.

10 IT IS SO ORDERED.

11 Dated: December 23, 2009

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MORRISON C. ENGLAND, JR.
UNITED STATES DISTRICT JUDGE