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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KAREN QUINLAN nee BETZLER and
BOB BETZLER,

No. 2:11-cv-00986-MCE-EFB

Plaintiffs,

MEMORANDUM & ORDER

v.

CITIMORTGAGE, INC. et al.,

Defendants.

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Plaintiffs Karen and Bob Betzler ("Plaintiffs") seek redress from Defendants Citimortgage, Inc., GC Services Limited Partnership ("GC Services"), Allied International Credit Corp., and Nationwide Credit Recovery (collectively, "Defendants") regarding a debt collection originating from a mortgage loan in Plaintiff Karen Betzler's name. Specifically, Plaintiffs allege that, in connection with the loan, Defendants violated various state laws and the Fair Debt Collection Practices Act ("FDCPA").

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1 Defendant GC Services filed a Motion to Dismiss Plaintiffs'
2 Complaint pursuant to Federal Rule of Civil Procedure¹
3 Rule 12(b)(6) (ECF No. 5). Plaintiff filed a timely opposition to
4 Defendant's motion, and a hearing on the matter was conducted
5 before this Court on June 9, 2011. For the reasons stated below,
6 Defendant GC Services' Motion to Dismiss is granted.

7
8 **BACKGROUND²**
9

10 Plaintiffs are husband and wife. As stated above, Plaintiff
11 Karen Betzler executed a home mortgage loan for approximately
12 \$7,000 in March 1999. The language of the mortgage, originally
13 financed by the California Rural Home Mortgage Finance Authority
14 (not a party to the instant suit), specifically stated that any
15 balance left on the loan after ten years was to be "forgiven free
16 and clear." At some point the loan was transferred to Defendant
17 Citimortgage, Inc. After 2009, Defendants began demanding payment
18 from Plaintiffs, even though the loan was fully discharged and no
19 monies were due. Plaintiffs specifically allege that Defendant GC
20 Services contacted Defendants in January 2010 and "continued to
21 contact" them to demand payment on the loan.

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27 ¹ All further references to "Rule" or "Rules" are to the Federal
Rules of Civil Procedure unless otherwise noted.

28 ² The factual assertions in this section are based on the
allegations in Plaintiffs' Complaint unless otherwise specified.

1 Further, "Rule 8(a)(2)...requires a 'showing,' rather than a
2 blanket assertion, of entitlement to relief. Without some factual
3 allegation in the complaint, it is hard to see how a claimant could
4 satisfy the requirements of providing...grounds on which the claim
5 rests." Twombly, 550 U.S. at 555 n.3 (internal citations omitted).
6 A pleading must then contain "only enough facts to state a claim to
7 relief that is plausible on its face." Id. at 570. If the
8 "plaintiffs...have not nudged their claims across the line from
9 conceivable to plausible, their complaint must be dismissed." Id.

10 Once the court grants a motion to dismiss, they must then
11 decide whether to grant a plaintiff leave to amend. Rule 15(a)
12 authorizes the court to freely grant leave to amend when there is
13 no "undue delay, bad faith, or dilatory motive on the part of the
14 movant." Foman v. Davis, 371 U.S. 178, 182 (1962). In fact, leave
15 to amend is generally only denied when it is clear that the
16 deficiencies of the complaint cannot possibly be cured by an
17 amended version. See DeSoto v. Yellow Freight Sys., Inc., 957 F.2d
18 655, 658 (9th Cir. 1992); Balistieri v. Pacifica Police Dept.,
19 901 F. 2d 696, 699 (9th Cir. 1990) ("A complaint should not be
20 dismissed under Rule 12(b)(6) unless it appears beyond doubt that
21 the plaintiff can prove no set of facts in support of his claim
22 which would entitle him to relief.") (internal citations omitted).

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1 An action to enforce liability requires that a plaintiff bring suit
2 within "one year from the date on which the violation occurs." Id.
3 § 1692k(d).

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5 **A. Plaintiff Bob Beltzer's Standing.**

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7 Section 1692c of the FDCPA particularly requires that a debt
8 collector not "communicate with a consumer in connection with the
9 collection of any debt" in a myriad of forbidden circumstances,
10 including phoning a debtor/consumer's place of business or phoning
11 during an "unusual time or place." Id. § 1692c(a). For purposes
12 of section 1692c only, the term "consumer" includes the
13 debtor/consumer's spouse, parent, or other authorized party. Id.
14 § 1692c(d).

15 Defendant GC Services contends that Plaintiff Bob Beltzer
16 lacks standing because he was not a borrower on the loan, nor had
17 he assumed any obligation of the note. However, the Court concurs
18 with Plaintiffs' analysis of section 1692c, and interprets the
19 statute as incorporating a debt collector's liability on a
20 debtor/consumer's spouse.

21 Since the FDCPA clearly enumerates that civil liability may
22 attach to any collector who fails to comply with any provision of
23 the statute, it stands to follow that Plaintiff Bob Beltzer has a
24 right of action against Defendants for violation of the FDCPA as it
25 directly applies to him. Therefore, Plaintiff has standing as to
26 claims regarding the violation of section 1692c only.

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1 The Court declines to extend his standing further, since the
2 statute's applicability otherwise only applies to Plaintiff Karen
3 Beltzer since she alone was obligated to pay the mortgage loan.

4
5 **B. Statute of Limitations**

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7 However, even if both Plaintiffs have sufficient standing to
8 sue Defendants, there is no indication from the Complaint that
9 Defendant GC Services contacted or otherwise violated the FDCPA
10 within the allotted statutory period. Plaintiffs filed their
11 complaint on April 13, 2011.³ Therefore, to allege a proper
12 violation of the FDCPA, and by extension demonstrate proper
13 standing for the case to commence in federal court, Plaintiffs must
14 demonstrate on the face of the Complaint that Defendant GC Services
15 contacted Plaintiffs or otherwise engaged in conduct prohibited by
16 the statute on or before April 13, 2010. The Court cannot elicit
17 any specific facts from the Complaint to determine the above, and
18 as such the Complaint fails to meet the pleading standards under
19 Rule 8 and Twombly. See supra.

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28 ³ The case was filed under original federal jurisdiction based upon violations of the FDCPA.

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3 **CONCLUSION**

4 For the reasons stated above, Defendant GC Services' Motion to
5 Dismiss (ECF No. 5) is granted with leave to amend. Plaintiffs may
6 file an amended complaint not later than twenty (20) days after the
7 date this Memorandum and Order is filed electronically. If no
8 amended complaint is filed within said twenty (20)-day period,
9 without further notice, Plaintiffs' claims against GC Services will
10 be dismissed without leave to amend.

11 IT IS SO ORDERED.

12 Date: June 20, 2011

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16 MORRISON C. ENGLAND, JR.
17 UNITED STATES DISTRICT JUDGE
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