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ESTRELLA VALENDO,

Plaintiff,

v.

STUART-LIPPMAN AND
ASSOCIATES, INC., an Arizona
Corporation; DOES 1-99,
inclusive,

Defendants.

No. 2:16-cv-00221-JAM-CKD

**ORDER DENYING DEFENDANT'S MOTION
TO DISMISS**

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After removing this case from state court based on federal question jurisdiction, Defendant Stuart-Lippman and Associates ("Defendant") now argues that Plaintiff Estrella Valendo ("Plaintiff") has failed to state a federal claim and that the Court lacks jurisdiction over the remaining state law claims. Motion to Dismiss (MTD) (Doc. #10) at 2. Plaintiff opposes Defendant's motion to dismiss (Doc. #12). For the reasons stated below, the Court denies Defendant's motion to dismiss.¹

¹ This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for May 17, 2016.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 The Court takes the facts alleged by Plaintiff as true for
3 purposes of this motion. Plaintiff is a seventy-one year old
4 woman who lives in Rio Vista, California. First Amended
5 Complaint ("FAC") (Doc. #8) ¶ 1. Plaintiff rented a house in Rio
6 Vista from Nick and Susan Calvan ("the Calvans.") Id. ¶¶ 6, 30.
7 The rental agreement stated: "Except as provided by law, or as
8 authorized by the prior written consent of Landlord, Tenant will
9 not make any repairs or alterations to the premises."
10 Residential Lease, Clause 12, attached to FAC as Exh. E. While
11 renting the Calvan's house, Plaintiff made "substantial
12 improvements" to the property. Id. ¶ 25. The Calvans submitted
13 a claim to their insurance company, Farmers Insurance/Fire
14 Exchange ("Farmers"), alleging that the "improvements" Plaintiff
15 made to the Calvan's property amounted to ameliorative waste.
16 Id. ¶¶ 26, 30. The Calvans subrogated their rights and interests
17 to Farmers. Id. ¶ 26. Farmers "retained the services of
18 Defendant, a third party debt collector, to collect the debt in
19 issue." Id.

20 On December 2, 2015, Defendant sent Plaintiff a letter
21 seeking to recover a nearly \$8,000.00 debt from Plaintiff. Id.
22 ¶ 21. Defendant also attempted to call Plaintiff directly on
23 January 13, 2016 even though Defendant knew Plaintiff was
24 represented by counsel. Id. ¶ 27.

25 Plaintiff sued Defendant in February 2016, alleging three
26 causes of action: (1) violation of the Rosenthal Fair Debt
27 Collection Practices Act, (2) violation of the federal Fair Debt
28 Collection Practices Act, (3) unfair trade and deceptive

1 practices in violation of California Business and Professions
2 Code § 17200. Id. at 6-12.

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4 II. OPINION

5 Plaintiff brings one federal claim (her second cause of
6 action): violation of the Fair Debt Collection Practices Act
7 ("FDCPA"), codified at Title 15 U.S.C. § 1692. Id. at 8.
8 Plaintiff's first and third causes of action are California state
9 law claims. See id. at 6, 11. Defendant substantively attacks
10 only Plaintiff's FDCPA claim, arguing that Plaintiff fails to
11 state a claim under the FDCPA. MTD at 2. Defendant further
12 argues that if the Court dismisses Plaintiff's FDCPA claim, the
13 Court should dismiss the remaining two claims for lack of
14 independent jurisdiction. Id. at 4.

15 A. Plaintiff's FDCPA Claim

16 The FDCPA is a federal law which was enacted to "protect
17 consumers against debt collection abuses." 15 U.S.C. § 1692(e).
18 "Not all obligations to pay are considered debts under the
19 FDCPA." Turner v. Cook, 362 F.3d 1219, 1226-27 (9th Cir. 2004).
20 Thus, a "threshold issue in a suit brought under the [FDCPA] is
21 whether or not the dispute involves a 'debt' within the meaning
22 of the statute." Id. A "debt" under the FDCPA is "any
23 obligation or alleged obligation of a consumer to pay money
24 arising out of a transaction in which the money, property,
25 insurance, or services which are the subject of the transaction
26 are primarily for personal, family, or household purposes." 15
27 U.S.C. § 1692a(5). The FDCPA "does not define 'transaction,'
28 but the consensus judicial interpretation is . . . that the

1 statute is limited in its reach 'to those obligations to pay
2 arising from consensual transactions, where parties negotiate or
3 contract for consumer-related goods or services.'" Turner, 362
4 F.3d at 1227 (quoting Bass v. Stolper, Koritzinsky, Brewster &
5 Neider, S.C., 111 F.3d 1322, 1326 (7th Cir.1997)).

6 Defendant argues that Plaintiff's obligation to pay
7 Defendant is not covered by the FDCPA for two reasons. First,
8 Defendant argues that Plaintiff's debt is not a "consumer debt"
9 because it arises from Plaintiff's tort of waste, rather than
10 from a first party contractual claim. MTD at 2. Second,
11 Defendant argues that "Defendant is not a 'debt collector' under
12 the FDCPA because the subrogation claim was not in default when
13 the Defendant obtained it." Id. at 12.

14 1. Whether the Debt At Issue Is A "Consumer Debt"

15 California Code of Civil Procedure § 372 allows "any person
16 aggrieved by the waste" to bring a civil cause of action against
17 a tenant who commits waste on real property. Cal. Civ. Proc.
18 Code. § 372. This statute makes committing waste a tort. "[A]
19 tort judgment [is] not a debt within the meaning of the FDCPA."
20 Van Zandt v. Stanaland, 520 Fed. App'x 493, 493 (9th Cir. 2013).

21 Defendant argues that Plaintiff's debt is not a debt
22 covered by the FDCPA because the debt "arose out of the tortious
23 act of the Plaintiff which caused damage to [the Calvans']
24 property." MTD at 4. Plaintiff argues that her debt arises out
25 of a contractual agreement and not a tort judgment, and that
26 therefore her debt is not excluded from FDCPA coverage. Opp. at
27 6.

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1 Plaintiff's reasoning is correct. While the Calvans could
2 have sued Plaintiff under section 372 to recover the cost of
3 Plaintiff's ameliorative waste, they also could have sued
4 Plaintiff for breach of the Residential Lease, which states that
5 Plaintiff could not make changes to the property without the
6 Calvans' consent. Plaintiff's debt does not sound solely in
7 tort, as Defendant argues. Thus, Defendant's argument that
8 Plaintiff's FDCPA claim must be dismissed because it arises only
9 under tort law is without merit.

10 2. Whether Defendant Is A "Debt Collector"

11 The FDCPA states that the term "debt collector" does not
12 include "any person collecting or attempting to collect any debt
13 owed or due . . . to the extent such activity . . . concerns a
14 debt which was not in default at the time it was obtained by such
15 person." 15 U.S.C. § 1692a(6)(F).

16 Defendant argues that Plaintiff's claim is not in default,
17 and therefore Defendant cannot be considered a "debt collector"
18 under the FDCPA. MTD at 13. Plaintiff responds that a letter
19 sent from Defendant to Plaintiff in December 2015 "unequivocally
20 establishes that Defendant is a debt collector . . . and that the
21 debt was in default." Opp. at 9. The letter Plaintiff refers to
22 states that "[t]his is an attempt to collect a claim . . . [t]his
23 communication is from a professional debt collector." Exh. C to
24 FAC. Defendant does not address the Plaintiff's argument that
25 the letter explicitly indicates that Defendant is a debt
26 collector. Accepting the contents of the letter (which is
27 attached to the FAC) as true, Defendant is a debt collector to
28 which the FDCPA applies. Because Plaintiff has sufficiently

1 alleged that her debt is a "consumer debt" and that Defendant is
2 a "debt collector," Defendant's motion to dismiss Plaintiff's
3 FDCPA claim is denied.

4 B. Plaintiff's First and Third Causes of Action

5 Defendant's only argument that the first and third causes
6 of action should be dismissed is that they are state law claims
7 that the Court does not have jurisdiction over once the FDCPA
8 claim is dismissed. MTD at 2. Since Defendant's motion to
9 dismiss the FDCPA claim is denied, the Court also declines to
10 dismiss Plaintiff's first and third causes of action.

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12 III. ORDER

13 For the reasons set forth above, the Court DENIES
14 Defendant's Motion to Dismiss. Defendant shall file its Answer to
15 the Complaint within twenty days of the date of this Order.

16 IT IS SO ORDERED.

17 Dated: June 8, 2016

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JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE