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

HAROLD HOLMES, an individual, on his
own behalf and on behalf of all others
similarly situated,

Plaintiff,

v.

COLLECTION BUREAU OF AMERICA,
LTD., a California corporation, and BAY
AREA CREDIT SERVICE, LLC, a
California limited liability company, and
DOES 1–100, inclusive,

Defendants.

No. C 09-2540 WHA

**ORDER DENYING MOTION
FOR PRELIMINARY
INJUNCTION AND VACATING
HEARING**

INTRODUCTION

In this proposed class action regarding debt collection, plaintiff moves for a preliminary injunction. For the reasons stated below, the motion is **DENIED**.

STATEMENT

Plaintiff Harold Holmes is an individual who disputes several AT&T bills for telephone service. These include bills for account numbers 8585054602509 (“Account No 509”), 85856513468 (“Account No. 468”) and 79653230 (“Account No. 230”). Defendants Collection Bureau of America (“CBA”) and Bay Area Credit Service, LLC (“BAC”) are collections agencies. It is undisputed that defendant CBA was assigned to collect on Account Nos. 468 and 509 and defendant BAC was assigned by AT&T to collect on Account No. 230.

1 Plaintiff contends in a sworn declaration that he disputed the debts in question in
2 correspondence sent to defendants, appended as exhibits. Plaintiff contends that after he
3 disputed these debts, defendants reported the debts as undisputed to the three credit reporting
4 agencies in violation of the Fair Debt Collection Practices Act, 15 U.S.C. 1692–1692p, the
5 Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code §§ 1788–1788.33, the California
6 Consumer Credit Reporting Agencies Act, Cal. Civ. Code §§ 1785.1–1785.36, and the
7 California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200. Plaintiff bases this
8 contention on his sworn declaration that copies of his credit reports from the credit reporting
9 agencies Experian and TransUnion indicated that defendants reported these debts as undisputed
10 after the dates when plaintiff declares he had disputed them in writing to defendants (*ibid.*).

11 Plaintiff specifically declares that he disputed Account No. 230 to BAC on November
12 25, 2008 (Holmes Decl. 2). Defendant BAC admits under oath that on January 19, 2009, it
13 received plaintiff’s November letter that Account No. 230 was disputed (Grossman Decl. 3–4).
14 It declares that through a clerical error it coded the letter only to acknowledge that plaintiff was
15 represented by an attorney, not that the debt was disputed (*ibid.*). It also contends under oath
16 that it ceased reporting plaintiff’s debt on June 28, 2009, and that the account has been recalled
17 by AT&T (*id.* at 4).

18 Plaintiff declares that he sent a dispute letter to CBA on June 9, 2008. Defendant CBA
19 contends under oath that it did not receive this letter and was never informed that Account No.
20 468 was disputed until after it had been cancelled in November 2008 (Malmstrom Decl. 3–4).
21 It further declares that after Account No. 468 was cancelled, it immediately so informed the
22 three major credit reporting agencies Experian, Equifax and TransUnion (*ibid.*). CBA also
23 contends under oath that it first received notice from plaintiff that his other account, Account
24 No. 509, was disputed on February 3, 2009, and that the same day CBA noted the dispute in its
25 computer system and uploaded notice of the dispute to the three credit reporting agencies and to
26 AT&T’s database (*id.* at 4).

27 Plaintiff’s complaint was filed on June 8, 2009, on behalf of a purported class of all
28 persons whom defendants have reported to a credit reporting agency as owing a particular debt

1 without reporting that the debt was disputed when defendants' records reflected that it was
2 disputed. The complaint seeks injunctive remedies as well as compensatory, statutory and
3 punitive damages.

4 On July 8, plaintiff filed the present motion for a preliminary injunction (1) to enjoin
5 defendants from reporting as undisputed any purported debt which has been disputed in writing
6 by the person who purportedly owes the debt, (2) to enjoin defendants from selling, assigning or
7 transferring any disputed debt without disclosing to the person receiving or attempting to
8 purchase the debt that it has been disputed, or causing the debt not to be reported at all, and (3)
9 to require defendants to report as disputed within 60 days any debt which was previously
10 reported as undisputed to a credit reporting agency but which has been disputed in writing by
11 the person who purportedly owes the debt. This is essentially the same injunctive relief that
12 plaintiff seeks in his complaint.

13 On October 29, plaintiff moved for the first time for class certification and noticed a
14 hearing on that motion for December 3. That motion has not yet been ruled upon.

15 ANALYSIS

16 "A preliminary injunction is a drastic and extraordinary remedy that is not to be
17 routinely granted." *Nat'l Steel Car, Ltd. v. Canadian P. Ry., Ltd.*, 357 F.3d 1319, 1324 (Fed.
18 Cir. 2004) (internal quotation omitted). "A plaintiff seeking a preliminary injunction must
19 establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in
20 the absence of preliminary relief, that the balance of equities tips in his favor, and that an
21 injunction is in the public interest." *Winter v. NRDC, Inc.*, 129 S. Ct. 365, 374 (2008). For the
22 reasons stated below, this order holds that plaintiff has not established likelihood of irreparable
23 harm either as to himself or on behalf of his purported class.

24 1. LIKELIHOOD OF IRREPARABLE HARM.

25 The Supreme Court in *Winter* clarified that even if a likelihood of success on the merits
26 is established, a mere "possibility" of irreparable injury will not suffice. Plaintiff can only
27 receive preliminary injunctive relief if he shows that irreparable injury is "likely" if the relief
28 does not issue. *Id.* at 374–76. Past exposure to illegal conduct does not in itself show a present

1 case or controversy regarding injunctive relief if unaccompanied by any continuing, present
2 adverse effects.

3 The offending conduct here has already ceased. Plaintiff submits no evidence that
4 defendants ever falsely reported a disputed debt as undisputed as to anyone other than himself,
5 so there is no basis to find that irreparable harm is warranted as to a purported class. Nor does
6 the evidence support a likelihood of irreparable injury as to his individual claims. The evidence
7 is uncontested that defendants have stopped reporting plaintiff's disputed accounts as
8 undisputed (Grossman Decl. 4; Malmstrom Decl. 4). Plaintiff's complaint and motion focus
9 exclusively on past harm he allegedly incurred.

10 Plaintiff argues that injunctive relief is warranted because defendants might renew their
11 alleged conduct of reporting his disputed debts as undisputed, or might sell his debts to others
12 without disclosing their disputed status. Defendants are not the owners of plaintiff's disputed
13 accounts, however, and therefore cannot sell or assign them to anyone else (*ibid.*).

14 The procedural history of this motion also suggests that plaintiff does not require a
15 preliminary injunction to avoid irreparable harm. Plaintiff originally noticed the motion for
16 hearing on August 13, 2009. On July 28, the parties filed a stipulation to continue that hearing
17 until October 8, 2009. The Court reset the hearing date to October 15, 2009. On October 13,
18 the Court with some reluctance granted another stipulation from the parties to continue the
19 hearing date until November 12, 2009. On November 4, plaintiff moved to continue the hearing
20 for a third time until December 3, 2009. If plaintiff felt that injunctive relief were truly
21 necessary to avoid irreparable harm, he would have acted with alacrity. For all these reasons,
22 this order finds that plaintiff is unlikely to suffer irreparable harm in this action in the absence
23 of injunctive relief. *Winter*, 129 S. Ct. at 367.

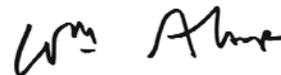
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CONCLUSION

For the foregoing reasons, plaintiff's motion for a preliminary injunction is **DENIED**.
The hearing scheduled for November 12, 2009, is hereby **VACATED**.

IT IS SO ORDERED.

Dated: November 9, 2009.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE