



1 IT IS HEREBY ORDERED that Defendant Bush’s motion to dismiss is GRANTED.

2 IT IS FURTHER ORDERED that, based on Plaintiffs’ failure to respond to this court’s order  
3 to show cause and on the file herein, the action is also dismissed as to Defendant Evans.

4 “Because not all obligations to pay are considered debts under the FDCPA, a threshold issue  
5 in a suit brought under the Act is whether or not the dispute involves a ‘debt’ within the meaning of  
6 the statute.” *See Turner v. Cook*, 362 F.3d 1219, 1226-27 (9<sup>th</sup> Cir. 2004) citing *Slenk v. Transworld*  
7 *Sys., Inc.*, 236 F.3d 1072, 1075 (9<sup>th</sup> Cir. 2001) (actions of the debt collector were irrelevant to  
8 determination of “true nature of the debt”). The FDCPA defines “debt” as “any obligation or alleged  
9 obligation of a consumer to pay money arising out of a transaction in which the money, property,  
10 insurance, or services which are the subject of the transaction are primarily for personal, family, or  
11 household purposes . . . .” 15 U.S.C. § 1692a(5); *see also Bloom v. I.C. Sys. Inc.*, 972 F.2d 1067,  
12 1068-69 (9<sup>th</sup> Cir. 1992) (FDCPA applies to debts incurred for personal rather than commercial  
13 reasons). The FDCPA defines “debt collector” in pertinent part as:

14 “[a]ny person who uses any instrumentality of interstate commerce or the mails in any  
15 business the principal purpose of which is the collection of any debts, or who  
16 regularly collects or attempts to collect, directly or indirectly, debts owed or due or  
asserted to be owed or due another.” *See* 15 U.S.C. § 1692a(6).

17 With one exception not relevant here,<sup>2</sup> the FDCPA only governs the conduct of “debt  
18 collectors” and civil liability under the FDCPA attaches only to “debt collectors” who fail to comply  
19 with the FDCPA. *See* 15 U.S.C. §§ 1692b – 1692i & 1692k(a). Based on the FDCPA’s definition  
20 of “debt,” it is clear that the term “debt collector” does not include any individual or entity seeking to  
21 collect *commercial* debts owed to another.

22 In the present case it is undisputed that the debt at issue is a commercial debt. The court has  
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24 <sup>2</sup> Under 15 U.S.C. § 1692j, prohibits designing, compiling, and furnishing any form  
25 knowing that the form will be used to create the false belief in a consumer that a person other than the  
26 creditor is participating in the collection of a debt the consumer allegedly owes the creditor, when in fact  
27 such person is not so participating. The purpose of Section 1692j is to prevent the practice known as  
28 “flat-rating.” *See Rumpler v. Phillips & Cohen Associates, Ltd.*, 219 F.Supp.2d 251, 260 (E.D.N.Y. 2002); and *Franceschi v. Mautner-Glick Corp.*, 22 F.Supp.2d 250, 256 (S.D.N.Y. 1998). A “flat-rater”  
sells to creditors “dunning letters” bearing the letterhead of the flat-rater’s collection agency and  
demanding that the debtor immediately pay. *See Franceschi*, 22 F.Supp.2d at 256 (quoting S.Rep. No.  
95-382 (1977)). “Any person” who engages in such flat-rating in connection with a “debt” can be found  
liable to the same extent as a “debt collector” under 15 U.S.C. § 1692k for violating the FDCPA.

1 taken judicial notice of the Judgment Pursuant to Stipulation which is the debt Defendants were  
2 seeking to collect when they took the actions complained of in the complaint (*see* Complaint, ¶¶ 9-  
3 14). The court has also taken judicial notice of the fact that said judgment was entered in connection  
4 with a *commercial* unlawful detainer action. Finally, Plaintiffs have not disputed the commercial  
5 nature of the debt Defendants were seeking to collect.

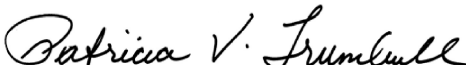
6 The fact that Defendants were seeking to collect from the wrong individuals does not change  
7 the analysis. Nothing in the FDCPA applies to Defendants or their activities because they were  
8 seeking to collect a commercial debt. The cases cited by Plaintiffs appear to involve attempts to  
9 collect consumer debts from the wrong individuals. Plaintiffs cite no case where someone seeking to  
10 collect a commercial debt from the wrong person was held liable under the FDCPA.

11 Thus, because the debt at issue was commercial rather than personal, the FDCPA does not  
12 apply and dismissal is warranted. *See Turner*, 362 F.3d at 1226-28 & 1231 (affirming dismissal  
13 where judgment debt arose out of debtor's business interference tort, not out of any consumer  
14 transaction, and thus was not a 'debt' as that term is used in the FDCPA).

15 IT IS FURTHER ORDERED that Defendant Bush's request for costs is GRANTED. *See*  
16 FED.R.CIV.PROC. 54(d)(1). Defendant Bush shall file a bill of costs no later than September 26,  
17 2008.

18 IT IS FURTHER ORDERED that Defendant Bush's request for an award of attorneys fees is  
19 DENIED because he is not represented by counsel in this matter, he is not a "debt collector" within  
20 the meaning of the FDCPA, and even if he were, he has not shown that this action was brought in  
21 bad faith and for the purpose of harassing Defendants. *See* 15 U.S.C. § 1692k(a)(3); *see also*  
22 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926 940-41 (9<sup>th</sup> Cir. 2006) ("a *debt collector* may  
23 recover attorneys' fees and costs upon a district court's finding that the consumer brought the action  
24 in bad faith and for purposes of harassment" (emphasis added)).

25 Dated: 9/12/08

26   
27 PATRICIA V. TRUMBULL  
28 United States Magistrate Judge

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*Counsel automatically notified of this filing via the court's Electronic Case Filing system.*

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