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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

Case No. 5:08-CV-02996 JF

**OPPOSITION TO SAN FRANCISCO
POLICE CREDIT UNION'S MOTION TO
DISMISS OR FOR A MORE DEFINITE
STATEMENT**

Defendants.

and RELATED CROSS-COMPLAINT.

I. SUBJECT MATTER JURISDICTION.

Cross-complainants have listed in their caption the basis for their cross-complaint. Cross-

Opposition to SFPCU's Motion to Dismiss

complainants' Cross-complaint against SFPCU is for, at a minimum, (1) Impeding Commerce (18 U.S.C.); and (2) breach of contract and fraud committed by creditor (U.C.C. Article 3-603, 604, and 15 U.S.C. 1692g and 1692c(c) - Fair Debt Collection Practices violations).

Additionally, Cross-complainants have complied with the notice pleading requirements in the Federal Rules. "Each allegation must be simple, concise, and direct. No technical form is required." FRCP 8(d)(1). The Federal Rules require that all allegations be "short and plain." *Swierkiewicz v. Sorema N. A.* (2002) 534 US 506, 513 ("Rule 8(a)'s simplified pleading standard applies to all civil actions, with limited exceptions"). A pleading setting forth a claim for relief must contain: (1) a "short and plain statement" of the grounds for jurisdiction; (2) a "short and plain" statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought. (FRCP 8(a)). Plaintiff need not prove evidentiary facts or set forth a complete and convincing picture of the alleged wrongdoing: "(A) complaint is not required to allege all, or any, of the facts entailed by the claim." *Bennett v. Schmidt* (7th Cir. 1998) 153 F3d 516, 518 (emphasis in original; internal quotes omitted). Here, Cross-complainants have satisfied these requirements.

The allegations against SFPCU relating to its unfair debt practices, for example, arise out of the same nucleus of operative facts. As such, having one hearing on the underlying complaint and the cross-complaint should be expected.

II. SFPCU'S CONDUCT THAT RAISES THE FEDERAL QUESTIONS IS NOT PRIVILEGED, AND THUS THE SFPCU'S 12(B)(6) ARGUMENT FAILS.

As explained above, Cross-complainants have alleged (1) Impeding Commerce (18 U.S.C.); and (2) breach of contract and fraud committed by creditor (U.C.C. Article 3-603, 604, and 15 U.S.C. 1692g and 1692c(c) - Fair Debt Collection Practices violations) against SFPCU. The conduct that gives rise to these causes of actions against SFPCU is not privileged. As such,

1 SFPCU's claim that it should be dismissed because their actions are privileged is not relevant to
2 the claims against them. As such, their 12(b)(6) argument for dismissal fails.

3 **III. THIS COURT IS THE PROPER COURT FOR CROSS-COMPLAINANT'S**
4 **CLAIMS AGAINST SFPCU.**

5 As explained above, there are federal questions raised against SFPCU in Cross-
6 complainant's complaint. As such, this court is the proper court for Cross-complainant's claims
7 against SFPCU.

8 **IV. CONCLUSION.**

9 As such, there are federal questions raised in the Cross-complaint against SFPCU. As
10 such, Cross-complainants respectfully request the Court deny SFPCU's motion to dismiss
11 counterclaim/cross-complaint.

12 In the alternative, Cross-complainants pray leave of court to file an amended Cross-
13 complaint containing a more definite statement.

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15 Dated: October ____, 2008

By: 

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