

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ZHIXUN SAMUEL SUN,)	Case No.: 10-CV-01055-LHK
)	
Plaintiff,)	ORDER GRANTING MOTION TO
v.)	DISMISS
)	
RICKENBACKER COLLECTION dba)	
RICKENBACKER GROUP,)	
)	
Defendant.)	
)	

Defendant Rickenbacker Collection, dba Rickenbacker Group (“Rickenbacker”), moves to dismiss Plaintiff’s Fair Debt Collection Practices Act (“FDCPA”) claim with prejudice. Pursuant to Civil Local Rule 7-1(b), the Court finds that this motion is appropriate for determination without oral argument and vacates the motion hearing. Having considered the submissions of the parties and the relevant law, the Court GRANTS Defendant’s motion to dismiss Plaintiff’s FDCPA claim with prejudice. The Court will hold a Case Management Conference, as scheduled, on February 24, 2011, at 1:30 p.m.

I. Background

This action arises out of the reporting by Defendant Rickenbacker of a debt allegedly owed by Plaintiff Zhixun Samuel Sun. On April 29, 2009, Plaintiff applied for a primary home loan at Wells Fargo Bank. First Amended Complaint (“FAC”) at 2. In the process of applying for this loan, Plaintiff learned that his credit report indicated that he owed a debt of \$8,810. *Id.* Plaintiff

1 alleges that Defendant placed the debt on Plaintiff’s credit report without any initial
2 communication or written notice to Plaintiff, and that Defendant never verified the debt or
3 provided Plaintiff with the address of the original creditor. *Id.* When Plaintiff disputed the debt,
4 Defendant allegedly responded with a letter purporting to verify the debt and suggested that it was
5 in Plaintiff’s interest to pay the account immediately. *Id.* At some point later, Defendant allegedly
6 increased the debt reported to \$8,861.21. *Id.* at 3.

7 Eventually Plaintiff hired two lawyers to help him dispute the debt and restore his credit
8 score. *Id.* On December 3, 2009, Defendant sent a notification of closure of the collection account
9 to Plaintiff, and on December 10, 2009, Defendant notified Plaintiff that it was initiating removal
10 of the debt from his credit report. *Id.* Plaintiff alleges, however, that Defendant failed to promptly
11 expunge the negative credit reporting, and as a result Plaintiff’s credit score remained
12 approximately 54 points lower than it should have been. *Id.* at 4. Plaintiff claims that because of
13 the low credit score, he qualified only for a Federal Housing Adminstrating home loan or a Bank
14 of America home loan with a higher interest rate than he would otherwise have been charged. *Id.*
15 Plaintiff alleges that Defendant’s conduct in attempting to collect the purported debt violated the
16 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act, 15
17 U.S.C. § 1681 *et seq.*

18 **II. Legal Standard**

19 A motion to dismiss for failure to state a claim under Rule 12(b)(6) tests the legal
20 sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering
21 whether the complaint is sufficient to state a claim, the court must accept as true all of the factual
22 allegations contained in the complaint. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009). However,
23 the court need not accept as true “allegations that contradict matters properly subject to judicial
24 notice or by exhibit” or “allegations that are merely conclusory, unwarranted deductions of fact, or
25 unreasonable inferences.” *St. Clare v. Gilead Scis., Inc. (In re Gilead Scis. Sec. Litig.)*, 536 F.3d
26 1049, 1055 (9th Cir. 2008). While a complaint need not allege detailed factual allegations, it “must
27 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
28 face.’” *Iqbal*, 129 S.Ct. at 1949 (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570

1 (2007)). A claim is facially plausible when it “allows the court to draw the reasonable inference
2 that the defendant is liable for the misconduct alleged.” *Iqbal*, 129 S.Ct. at 1949. If a court grants
3 a motion to dismiss, leave to amend should be granted unless the pleading could not possibly be
4 cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

5 **III. Discussion**

6 Defendant moves to dismiss Plaintiff’s FDCPA claim on grounds that Plaintiff’s debt arises
7 from a business transaction and therefore falls outside the scope of the FDCPA. Based on the
8 exhibits attached to Plaintiff’s FAC,¹ it appears that the purported debt arose out of an agreement
9 between Plaintiff and Shawn Lee (also known as Xiangqun Li). FAC Ex. 2-4. In 2006, when the
10 alleged debt was incurred, Plaintiff worked as an ultrasound technician for Reassuring Ultrasound
11 Imaging, Inc., in Los Angeles. *Id.* In May 2007, Plaintiff left to work at a hospital in northern
12 California and asked Lee to fill in for him. *Id.* According to Plaintiff, he offered to pay Lee \$25
13 per hour to perform ultrasound diagnostic studies. FAC Ex. 2. Plaintiff claims that Lee performed
14 48 hours of work and that he paid him \$1,330, approximately \$130 more than he agreed to pay.
15 FAC Ex. 4. Lee contends that Plaintiff owes him \$7,710. FAC Ex. 3.

16 Based on these facts, the Court agrees that the debt at issue in this case falls outside the
17 scope of the FDCPA. The FDCPA was enacted to protect consumers from unlawful debt
18 collection practices. “Because not all obligations to pay are considered debts under the FDCPA, a
19 threshold issue in a suit brought under the Act is whether or not the dispute involves a ‘debt’ within
20 the meaning of the statute.” *Turner v. Cook*, 362 F.3d 1219, 1226-27 (9th Cir. 2004). The FDCPA
21 defines “debt” as “any obligation or alleged obligation of a consumer to pay money arising out of a
22 transaction in which the money, property, insurance, or services which are the subject of the
23 transaction are *primarily for personal, family, or household purposes.*” 15 U.S.C. § 1692a(5)
24 (emphasis added). Based on this language, the Ninth Circuit has held that the FDCPA applies only
25 to consumer debts and not to business-related debts. *Bloom v. I.C. System, Inc.*, 972 F.2d 1067,

26
27 ¹ Although a court generally may not consider extrinsic evidence on a motion to dismiss, the court
28 may consider materials submitted by the plaintiff as part of the complaint. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Accordingly, the Court may properly consider the exhibits attached to Plaintiff’s FAC in ruling on the motion to dismiss.

1 1068 (9th Cir. 1992); *see also Simmonds and Narita LLP v. Schreiber*, 566 F. Supp. 2d 1015, 1017
2 (N.D. Cal. 2008).

3 In determining whether a particular debt is covered by the FDCPA, the court must
4 “examine the transaction as a whole, paying particular attention to the purpose for which the credit
5 was extended in order to determine whether [the] transaction was primarily consumer or
6 commercial in nature.” *Bloom*, 972 F.2d at 1068 (quotation marks and citation omitted). The fact
7 that a loan is made or payment promised in an informal manner or for personal reasons does not
8 make the debt a consumer debt under the FDCPA. *See id.*; *Slenk v. Transworld Systems, Inc.*, 236
9 F.3d 1072, 1075 (9th Cir. 2001). The Ninth Circuit’s decision in *Bloom* is instructive. In that case,
10 Bloom borrowed money from his friend Parker, apparently without telling Parker how he intended
11 to use the borrowed money, and used the loan to invest in a software company. 972 F.2d at 1068.
12 Although the loan was informal in nature and Parker made the loan for personal reasons, the Ninth
13 Circuit held that the purpose of the loan was business-related and thus did not constitute a “debt”
14 for purposes of the FDCPA. *Id.*

15 Here, Plaintiff promised to pay Lee to work for him temporarily at Reassuring Ultrasound
16 Imaging, Inc. FAC Ex. 4 at 2. In the dispute letter Plaintiff sent to Defendant, Plaintiff represented
17 that “I asked Mr. Li to take care of my business at Los Angeles temporarily, I would pay him
18 \$25.00 per hour for the medical ultrasound diagnostic study in my customer’s facilities and using
19 my ultrasound machine and my vehicle.” FAC Ex. 2 at 1. Plaintiff also told Lee that if he wished
20 to buy all of his equipment and take over his business, Lee could then collect service fees directly
21 from Plaintiff’s customers. *Id.* Based on these facts, it is clear that the payment dispute between
22 Plaintiff and Lee centered on a purely business-related transaction. There is no indication that the
23 debt Plaintiff purportedly owed Lee was used “primarily” – or at all – for “personal, family, or
24 household purposes.” 15 U.S.C. § 1692a(5). Under *Bloom*, moreover, the fact that Plaintiff’s
25 agreement with Lee was oral and relatively informal, FAC Ex. 4 at 2, does not transform Plaintiff’s
26 business agreement into a personal transaction. *Bloom*, 972 F.2d at 1068.

27 For these reasons, the Court agrees with Defendant that the debt at issue in this case is not a
28 consumer debt for purposes of the FDCPA. Accordingly, Plaintiff cannot state a claim for

1 violations of the notice, validation, and unfair practices provisions of the Act, 15 U.S.C. §§1692e,
2 1692f, 1692g, and Plaintiff's FDCPA claim must be dismissed. In addition, because "allegation of
3 other facts consistent with the challenged pleading could not possibly cure the deficiency," the
4 Court finds that granting leave to amend would be futile. *Telesaurus VPC, LLC v. Power*, 623 F.3d
5 998, 1003 (9th Cir. 2010). Plaintiff's FDCPA claim is therefore dismissed with prejudice.

6 **IV. Conclusion**

7 For the foregoing reasons, the Court GRANTS Defendant's motion to dismiss Plaintiff's
8 FDCPA claim with prejudice. As Defendant's motion does not address Plaintiff's Fair Credit
9 Reporting Act claim, however, that claim survives. The Court will therefore hold a Case
10 Management Conference, as previously scheduled, on February 24, 2011, at 1:30 p.m.

11 **IT IS SO ORDERED.**

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13 Dated: February 18, 2011

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16 LUCY H. KOH
17 United States District Judge
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