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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT RENTERIA,

vs.

NATIONWIDE CREDIT, INC.,

Plaintiff,

Defendant.

CASE NO. 09cv1195 BTM(JMA)
**ORDER DENYING MOTION TO
DISMISS**

Defendant Nationwide Credit, Inc., has filed a motion to dismiss Plaintiff's Complaint for failure to state a claim. For the reasons discussed below, Defendant's motion to dismiss is **DENIED**.

I. FACTUAL BACKGROUND

On June 2, 2009, Plaintiff commenced this action. In his Complaint, Plaintiff alleges that (1) Defendant constantly and continuously places collection calls to Plaintiff seeking and demanding payment for an alleged debt (Compl. ¶ 12); (2) Defendant calls from 877-377-6493 and "blocked" phone numbers and hangs up without leaving a voicemail message (Compl. ¶ 14); (3) Defendant calls Plaintiff and does not provide meaningful disclosure of the caller's identity (Compl. ¶ 15); (4) Defendant calls Plaintiff and fails to state that the call is from a debt collector (Compl. ¶ 16); (5) Defendant called Plaintiff and threatened to garnish Plaintiff's wages but has not done so (Compl. ¶ 17); (6) Defendant called Plaintiff and

1 threatened to take Plaintiff's home even though such action would not be lawful (Compl. ¶¶
2 18, 20.e); and (7) Defendant did not send Plaintiff a debt validation letter as required by 15
3 U.S.C. § 1692g(a). (Compl. ¶¶ 19, 20k.)

4 In Count One, Plaintiff alleges that Defendant violated the Fair Debt Collection
5 Practices Act ("FDCPA"), specifically, 15 U.S.C. §§ 1692d, 1692d(5), 1692d(6), 1692e(4),
6 1692e(5), 1692e(10), 1692e(11), and 1692g(a)(1)-(5). In Count Two, Plaintiff alleges that
7 Defendant violated the Rosenthal Fair Debt Collection practices Act ("RFDCPA"), specifically,
8 Cal. Civ. Code §§ 1788.10(e), 1788.11(b), 1788.11(d), 1788.11(e), and 1788.17.

9 10 **II. STANDARD**

11 Under Fed. R. Civ. P. 8(a)(2), the plaintiff is required only to set forth a "short and plain
12 statement" of the claim showing that plaintiff is entitled to relief and giving the defendant fair
13 notice of what the claim is and the grounds upon which it rests. Conley v. Gibson, 355 U.S.
14 41, 47 (1957). A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) should
15 be granted only where a plaintiff's complaint lacks a "cognizable legal theory" or sufficient
16 facts to support a cognizable legal theory. Balistreri v. Pacifica Police Dept., 901 F.2d 696,
17 699 (9th Cir. 1988). When reviewing a motion to dismiss, the allegations of material fact in
18 plaintiff's complaint are taken as true and construed in the light most favorable to the plaintiff.
19 See Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Although
20 detailed factual allegations are not required, factual allegations "must be enough to raise a
21 right to relief above the speculative level." Bell Atlantic v. Twombly, 550 U.S. 544, 555
22 (2007). "A plaintiff's obligation to prove the 'grounds' of his 'entitle[ment] to relief' requires
23 more than labels and conclusions, and a formulaic recitation of the elements of a cause of
24 action will not do." Id.

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1 **III. DISCUSSION**

2 Defendant argues that Plaintiff has not pled sufficient facts to support his claims under
3 the FDCPA and the RFDCPA. The Court disagrees.

4 Relying on Townsend v. Chase Bank USA N.A., 2009 WL 426393 (N.D. Cal. Feb. 15,
5 2009), Defendant argues that a plaintiff alleging violations of the FDCPA or the RFDCPA
6 must identify the persons making the communications at issue, the dates of those
7 communications, and the contents of each alleged communication. However, the Court does
8 not agree with Townsend to the extent that it holds that claims under the FDCPA or the
9 RFDCPA are subject to a heightened pleading standard akin to the Rule 9(b) pleading
10 standard for fraud.

11 The allegations of Plaintiff’s Complaint are similar to those in O’Donovan v. Cashcall,
12 Inc., 2009 WL 1833990 (N.D. Cal. June 24, 2009), where the court held that the allegations
13 in the complaint satisfied the low pleading threshold established by Rule 8(a). The complaint
14 in O’Donovan alleged that plaintiffs were called “multiple times each day,” the callers
15 aggressively demanded payments, the callers made misrepresentations and yelled and
16 made threats, and the callers contacted third parties, including family members, in an attempt
17 to collect plaintiffs’ debts. Id. at * 6. The district court explained that although the allegations
18 were rather skeletal, plaintiffs were not required to plead all details of their claim. Id. The
19 court held that the allegations gave defendants fair notice of the grounds for the claim against
20 them, and were sufficient to state a claim for relief under the RFDCPA. Id.

21 Here, as in O’Donovan, Plaintiff specifies the conduct of Defendant that violated the
22 FDCPA and RFDCPA – i.e., constantly and continuously calling, calling from blocked
23 numbers and failing to state that the call is from a debt collector, threatening to garnish
24 Plaintiff’s wages, threatening to take Plaintiff’s home, and failing to send a debt validation
25 letter – even though he does not detail the contents of each communication, the dates of the
26 communications, the number of calls, or the identity (if known) of the caller. The Court holds
27 that Plaintiff has pled sufficient facts to support his claims under the FDCPA and RFDCPA.
28 Defendant can learn more details about the communications at issue through discovery.

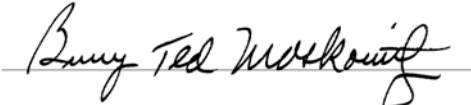
1 Defendant complains that due to Plaintiff's failure to state a time frame during which
2 the alleged violations took place, Defendant cannot ascertain whether Plaintiff's claims are
3 barred by the statute of limitations. Again, Defendant's recourse is to conduct discovery on
4 the matter and bring a motion for summary judgment if it turns out that Plaintiff's claims are
5 time-barred. See Avco Corp. v. Precision Air Parts, Inc., 676 F.2d 494, 495 (11th Cir. 1982)
6 (explaining that when a complaint does not show on its face that the limitations period has
7 run, the statute of limitations defense may be raised by motion for summary judgment); Cf.
8 Osorio v. Tran, 2008 WL 4963064, * 2 (N.D. Cal. Nov. 19, 2008) ("[I]n this circuit and district,
9 defendants cannot use Rule 12(e) motions to force plaintiffs to allege specific dates, even
10 to determine the applicability of a possible statute of limitations defense.")

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IV. CONCLUSION

For the reasons discussed above, Defendant's motion to dismiss is **DENIED**.
Defendant shall file an answer to the Complaint within 20 days of the entry of this Order.
IT IS SO ORDERED.

DATED: August 27, 2009


Honorable Barry Ted Moskowitz
United States District Judge