

1 derogatory mark on his credit report. (Id.) Plaintiff alleges that he has exhausted all
2 administrative remedies, including written disputes with the creditors and credit reporting
3 agencies, and that Plaintiff has never paid the named Defendant late. (Id.) Plaintiff alleges
4 that he has made prior attempts to request that Defendant remove the derogatory remark, but
5 that all attempts have been ignored by Capital One. (Id.)

6 Capital One seeks dismissal of Plaintiff’s complaint for failure to state a claim pursuant
7 to Fed. R. Civ. Pro. 12(b)(6). (Doc. No. 4.) Capital One argues that the complaint states only
8 legal conclusions and fails to offer any facts supporting Plaintiff’s allegations of Capital One’s
9 wrongdoing. (Id.)

10 Discussion

11 A motion to dismiss a complaint under Federal Rule of Civil Procedure 12(b)(6) tests
12 the legal sufficiency of the claims asserted in the complaint. Navarro v. Black, 250 F.3d 729,
13 731 (9th Cir. 2001). A complaint generally must satisfy only the minimal notice pleading
14 requirements of Federal Rule of Civil Procedure 8(a)(2) to evade dismissal under a Rule
15 12(b)(6) motion. Porter v. Jones, 319 F.3d 483, 494 (9th Cir. 2003). Rule 8(a)(2) requires that
16 a pleading stating a claim for relief contain “a short and plain statement of the claim showing
17 that the pleader is entitled to relief.” The function of this pleading requirement is to “give the
18 defendant fair notice of what the . . . claim is and the grounds upon which it rests.” Conley v.
19 Gibson, 355 U.S. 41, 47 (1957). “While a complaint attacked by a Rule 12(b)(6) motion to
20 dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the
21 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a
22 formulaic recitation of the elements of a cause of action will not do.” Bell Atlantic Corp. v.
23 Twombly, 550 U.S. 544, 127 S.Ct. 1955, 1964–65 (2007). A complaint does not “suffice if
24 it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” Ashcroft v. Iqbal, 129
25 S.Ct. 1937, 1949 (2009) (quoting id. at 556). “Factual allegations must be enough to raise a
26 right to relief above the speculative level.” Twombly, 127 S.Ct. at 1965 (citing 5 C. Wright
27 & A. Miller, Federal Practice and Procedure § 1216, pp. 235–36 (3d ed. 2004)). “All
28 allegations of material fact are taken as true and construed in the light most favorable to

1 plaintiff. However, conclusory allegations of law and unwarranted inferences are insufficient
2 to defeat a motion to dismiss for failure to state a claim.” Epstein v. Wash. Energy Co., 83
3 F.3d 1136, 1140 (9th Cir.1996); see also Twombly, 127 S.Ct. at 1964–65.

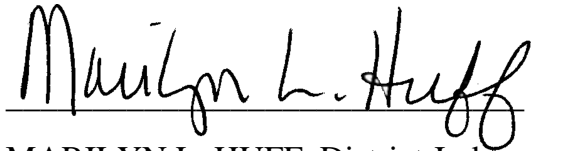
4 The Court concludes that Plaintiff’s complaint fails to provide the grounds for his
5 entitlement to relief under either the Rosenthal Act or the Fair Credit Reporting Act. Plaintiff
6 pleads in a conclusory fashion that there is a “derogatory mark” on his credit report and that
7 he has exhausted all administrative remedies, without providing factual enhancement to make
8 Plaintiff’s right to relief rise above a speculative level. Plaintiff has alleged no facts to support
9 his conclusory allegations that Capital One breached its duties under the Rosenthal Act and
10 Fair Credit Reporting Act. Accordingly, the Court grants Capital One’s motion to dismiss the
11 complaint with leave to amend.

12 **Conclusion**

13 For the reasons set forth above, the Court GRANTS WITH LEAVE TO AMEND
14 Defendant Capital One’s motion to dismiss the complaint. Plaintiff may file an amended
15 complaint within 30 days of the date of this order.

16 **IT IS SO ORDERED.**

17 DATED: August 14, 2009

18 
19 MARILYN L. HUFF, District Judge
20 UNITED STATES DISTRICT COURT

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