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

ADAM JACHIMIEC,  
  
Plaintiff,  
  
v.  
  
REGENT ASSET MANAGEMENT  
SOLUTIONS, N.A., et al.,  
  
Defendants.

Case No. 09CV2170-BTM (NLS)

**ORDER RE MOTION FOR  
SUMMARY JUDGMENT**

Plaintiff moves for summary judgment against Defendant Regent Asset Management Solutions, N.A. ("Regent"). For the reasons that follow, this motion is **GRANTED** in part and **DENIED** in part.

Regent has failed to file an opposition to this motion. Additionally, Regent has not responded to Plaintiff's Request for Admissions that were served on March 16, 2010. (Pl. Ex. D) Pursuant to Fed. R. Civ. P. 36(a)(3), Regent's failure to respond results in the automatic admission of the matters requested. *See Doctors Med. Ctr. of Modesto, Inc. v. Principal Life Ins. Co.*, No. 1:10-cv-00452-LJO-SKO, 2011 U.S. Dist. LEXIS 26885, at \*4-5 (E.D. Cal. Mar. 2, 2011).

**I. BACKGROUND**

Prior to being deployed to Iraq as a member of the United States Marine Corp, Plaintiff withdrew most of his money from a checking account with U.S. Bank. (Compl. ¶ 19) Plaintiff alleges that during his deployment, U.S. Bank mailed a letter to the wrong address that was

1 returned as undeliverable. (Compl. ¶ 20) Plaintiff asserts that he was charged a \$5.00  
2 “returned statement fee,” which caused his account to go into overdraft status. (Compl. ¶  
3 22) U.S. Bank then began to charge “continuous overdraft fees,” which eventually totaled  
4 over \$800. (Compl. ¶ 24)

5 Plaintiff alleges that on June 26, 2009, July 13, 2009, July 31, 2009, and August 7,  
6 2009, Regent, as debt collector for U.S. Bank, contacted Plaintiff’s cellular telephone with  
7 automated messages demanding payment of this alleged debt. See Pl. Ex. E. On or about  
8 August 13, 2009, Plaintiff’s counsel sent Regent a letter advising Regent that Plaintiff wished  
9 Regent to cease further communication with Plaintiff and requesting that all communications  
10 regarding any consumer debt be addressed to counsel. (Pl. Ex. B) Plaintiff alleges that  
11 Regent ignored this letter and provides telephone records that indicate that Regent made  
12 four additional calls to Plaintiff after August 13, 2009. See Pl. Ex. E.

## 14 II. DISCUSSION

### 15 A. TCPA

16 The Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, makes it  
17 unlawful for:

18 any person within the United States, or any person outside the United States if the  
19 recipient is within the United States—

20 (A) to make any call (other than a call made for emergency purposes or made with the  
21 prior express consent of the called party) using any automatic telephone dialing  
22 system or an artificial or prerecorded voice – . . .

23 (iii) to any telephone number assigned to a paging service, cellular telephone service,  
24 specialized mobile radio service, or other radio common carrier service, or any service  
25 for which the called party is charged for the call[.]

26 Debt collectors who make auto-dialed or prerecorded calls to a wireless number are subject  
27 to this prohibition. See *Robinson v. Midland Funding, LLC*, No. 10cv2261 MMA(AJ), U.S.  
28 Dist. LEXIS 40107, at \*13-14 (S.D. Cal. Apr. 13, 2011).

Plaintiff alleges that Regent telephoned him on his cellular telephone eight times using  
an automated dialer and/or an artificial or prerecorded voice, all in violation of the TCPA.  
These allegations are undisputed. Plaintiff is entitled to summary judgment on his claim that  
Regent violated the TCPA.

1 **B. FDCPA**

2 The Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692c, provides:

- 3 (a) Without the prior consent of the consumer given directly to the debt collector or the  
4 express permission of a court of competent jurisdiction, a debt collector may not  
5 communicate with a consumer in connection with the collection of any debt— . . .  
6 (2) if the debt collector knows the consumer is represented by an attorney with  
7 respect to such debt and has knowledge of, or can readily ascertain, such attorney's  
8 name and address[.]

9 Additionally, this act states that subject to certain exceptions not applicable here, “If a  
10 consumer notifies a debt collector in writing. . . that the consumer wishes the debt collector  
11 to cease further communication with the consumer, the debt collector shall not communicate  
12 further with the consumer with respect to such debt.” § 1692c(c).

13 Here, Plaintiff’s counsel informed Regent, in writing, that she represents Plaintiff in  
14 connection with the alleged debt and that all further communications should be directed to  
15 counsel and not to Plaintiff. (Pl. Ex. B) Regent’s subsequent attempts to collect the alleged  
16 debt are in violation of the FDCPA. Plaintiff is entitled to summary judgment on his claim that  
17 Regent violated § 1692c(a)(2) and § 1692c(c) of the FDCPA.

18 **C. RFDCPA**

19 Plaintiff asserts that Regent’s violation of the FDCPA directs the conclusion that it also  
20 violated the Rosenthal Fair Debt Collection Practices Act (“RFDCPA”). The Court disagrees.  
21 Although it is correct that generally, violations of the FDCPA are actionable under the  
22 RFDCPA, *see Sial v. Unifund CCR Partners*, No. 08 CV 0905 JM (CAB), 2008 U.S. Dist.  
23 LEXIS 66666, at \*4-5 (S.D. Cal. Aug. 28, 2008), this Court has rejected the view that the  
24 FDCPA “mirrors” the RFDCPA. *See Selby v. Bank of Am., Inc.*, No. 09cv2079 BTM(JMA),  
25 2010 U.S. Dist. LEXIS 139966, at \*18 (S.D. Cal. Oct. 27, 2010).

26 Despite the broad overlap in the federal and state statutory schemes, the definition  
27 of “consumer debt” is narrower under California law. *See Charles v. Lundgren & Assocs.,*  
28 *P.C.*, 119 F.3d 739, 741-742 (9th Cir. 1997). Unlike the FDCPA, the RFDCPA only applies  
to transactions “in which property, services or money is acquired on credit . . . for personal,  
family, or household purposes.” Cal. Civ. Code § 1788.2(e); *c.f.* § 1788.14; § 1788.17.

1 Here, Plaintiff's alleged debt arose from a "continuous overdraft fee" on Plaintiff's  
2 checking account – and not from a credit transaction as required by the RFDCPA. Because  
3 Plaintiff has failed to allege a consumer credit transaction within the meaning of § 1788.2(e),  
4 Plaintiff's RFDCPA claims fail. See *Abels v. JBC Legal Group, P.C.*, 428 F. Supp. 2d 1023,  
5 1027 (N.D. Cal. 2005).

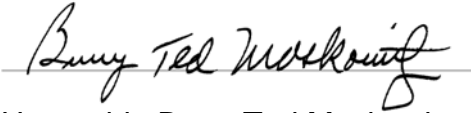
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**III. CONCLUSION**

Summary judgment is **GRANTED** as to Plaintiff's claims under the TCPA and FDCPA.  
Summary judgment is **DENIED** as to Plaintiff's claims under the RFDCPA.

**IT IS SO ORDERED.**

DATED: May 26, 2011

  
Honorable Barry Ted Moskowitz  
United States District Judge