UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MARIO B. QUINONES and MARIO I. QUINONES,

Plaintiffs,

vs.

CHASE BANK USA, N.A.; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 09cv2748-LAB (RBB)

ORDER ON DEFENDANT'S MOTION TO DISMISS

Chase has moved to dismiss the Plaintiffs' Fair Debt Collection Practice Act claim — just one of their seven claims — on the straightforward ground that Chase isn't a "debt collector" under the Act.

The Act defines a debt collector as "any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). Chase seizes on the words "owed or due another" and argues that because it was attempting to collect its *own* debt, it isn't a debt collector as defined in the statute.

Plaintiffs' complaint alleges that "Chase has been repeatedly contacting Mario B. Quinones and demanding that he pay an alleged debt regarding Chase account number

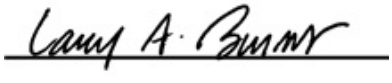
4266841147246183." (Compl. ¶ 8.) It alleges "Chase has also engaged in improper debt collection against the Quinones regarding an alleged Chase account known as 4266841153865520." (Compl. ¶ 10.) The only plausible reading of these allegations is that Chase was trying to collect an alleged debt owed to *Chase*. Chase is right that it's therefore not a debt collector under the Act. *See Doran v. Aus*, 308 Fed.Appx. 49, 51 (9th Cir. 2009) ("KHHA was not a debt collector under the FDCPA, because it was collecting its own debt."); *Gowing v. Royal Bank of Canada*, 100 F.3d 962 (9th Cir. 1996) ("Because Royal Bank was collecting a debt on its own behalf, it was not a debt collector for the purposes of the FDCPA.").

Plaintiffs' complaint *alleges* that Chase is a debt collector (¶ 5), but a complaint can't survive a motion to dismiss just by tendering "naked assertion[s] devoid of further factual enhancement." *Ashcroft v. Iqbal*, — U.S. —, 129 S.Ct. 1937, 1949 (2009) (internal citations and quotations omitted). Likewise, it isn't enough for Plaintiffs to argue, as they do, that whether Chase is a debt collector is a question of fact that can't be resolved on a motion to dismiss. They must still provide factual allegations in their complaint that "raise [their] right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The Plaintiffs plead no facts, however, to establish that Chase wasn't attempting to collect its own debt when it contacted them. Moreover, the Court doesn't believe they can plead such facts; therefore amendment of their complaint would prove futile.

Chase's motion to dismiss the Plaintiffs FDCPA claim is **GRANTED**, and the claim is **DISMISSED WITH PREJUDICE.**

IT IS SO ORDERED.

DATED: June 24, 2010



HONORABLE LARRY ALAN BURNS
United States District Judge