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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALFRED BANKS,)	Civil No. 10cv1886 AJB (CAB)
)	
Plaintiff,)	ORDER GRANTING MOTIONS TO
)	DISMISS SECOND AMENDED
v.)	COMPLAINT; GRANTING MOTION
)	TO COMPEL ARBITRATION;
ACS EDUCATION CORP., et al.,)	GRATING EX PARTE APPLICATION;
)	AND DENYING MOTION FOR
Defendants.)	DEFAULT
)	
)	[Doc. Nos. 96, 98, 102, 103, 115, 119, 121,
)	194, 201, 203, 204, 227, 234, 240 and 256]

Presently before the Court are twelve motions to dismiss Plaintiffs’ Second Amended Complaint (“SAC”),¹ filed by the following Defendants:

1. Experian Information Solutions, Inc. (“Experian”) (Doc. No. 96);
2. Trans Union LLC (“Trans Union”) (Doc. Nos. 98 and 201);
3. National University (Doc. 102);
4. Coast Professional Inc., Shelley Johnston (“Coast” and “Johnston” respectively) (Doc. No. 103);

¹ Since the SAC did not materially alter the claims from the First Amended Complaint, but merely added new Defendants or Defendants previously dismissed by the Court for want of prosecution, the Court construed the following motions to dismiss, [Doc. Nos. 96, 98, 102, 103, 115, 119] and the motion for judgment on the pleadings, [Doc. No. 121], as motions on the SAC in an effort to avoid the needless refileing of the these motions.

- 1 5. Catherine Barnhill (“Barnhill”) (Doc. No. 115);
- 2 6. ACS College Loan Corp., ACS Education (“ACS”); and ACS Employees “Lotoya” and
- 3 “Justin” (Doc. No. 119);
- 4 7. California Student Aid Commission (Doc. No. 203);
- 5 8. Educational Credit Management Corporation (“ECMC”) (Doc. No. 204);
- 6 9. Equifax Information Services LLC (“Equifax”) (Doc. Nos. 121 and 234);²
- 7 10. JPMorgan Chase & Co. (“JPMorgan”) (Doc. No. 240).

8 Also before the Court is the motion to compel arbitration by Defendants First Bank of Delaware,
9 Tribute and Jefferson Capital Systems, LLC (Doc. No. 227). For the reasons set forth below, the Court
10 **GRANTS** the Defendants’ motions to dismiss the SAC and the motion to compel arbitration

11 **Procedural Background**

12 On September 10, 2010, Plaintiff sought and received leave to file a complaint against several
13 defendants including Experian.³ (Doc. No. 2.) Plaintiff’s original complaint alleged constitutional
14 violations under 42 U.S.C. § 1983 and racketeering or debt collection activity in violation of 18 U.S.C. §
15 1962 of the federal Racketeer Influenced and Corrupt Organizations Act (“RICO”). Defendants filed
16 motions to dismiss Plaintiff’s complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil
17 Procedure. (Doc. Nos. 5, 6, 11.) While those motions were pending, Plaintiff filed a motion for leave to
18 file an amended complaint and the Court granted Plaintiff’s motion. (Doc. No. 84.) Plaintiff filed his
19 First Amended Complaint (“FAC”) on February 15, 2011. (Doc. No. 88.)

20 Plaintiff’s FAC alleges violations of the Fair Credit Reporting Act as well as a RICO claim.
21 [Doc. No. 88.] On March 2, 2011, the Court ordered Plaintiff to effectuate proper service on any

24 ² Doc. No. 121 was filed as a motion for judgment on the pleadings, however, a motion for
25 judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is subject to the same
standard of review as a motion to dismiss under Rule 12(b)(6).

26 ³ Plaintiff Alfred Banks was a frequent plaintiff in this district. On January 28, 1997, the Court
27 entered an order outlining the history of Plaintiff’s litigation in this district and “enjoin[ing] Plaintiff
28 from filing future lawsuits under 42 U.S.C. § 1983 before any judge of the court without first seeking
leave from the chief judge.” *Banks v. Bank of Commerce*, S.D. Cal. Misc. Case No. 95-0077, Order
Modifying Pre-Filing Order After Vacatur and Remand By the Ninth Circuit Court of Appeals (Keep,
C.J.). (See Doc. No. 2.)

1 defendant not previously served within 60 days.⁴ [Doc. No. 100.] On May 24, 2011, the Court issued an
2 Order to Show Cause to the Plaintiff to appear on June 7, 2011, before Judge Battaglia and show cause
3 why the Court should not dismiss his case against any Defendant not properly served in accordance with
4 Rule 4 of the Federal Rules of Civil Procedure and the Court's March 2, 2011 Order. At the hearing, the
5 Plaintiff failed to demonstrate that he had effectuated proper service with regard to several Defendants,⁵
6 and the Court dismissed those Defendants without prejudice for want of prosecution. [Doc. No. 167].

7 On July 13, 2011, the Court issued an Order, [Doc. No. 178], in which the Court informed
8 Plaintiff that his service of the FAC on many of the Defendants previously identified by the Court was
9 insufficient as a matter of law. The Court reminded the Plaintiff that he had already been warned twice
10 by the Court regarding his failure to properly serve Defendants, and the Court gave Plaintiff thirty (30)
11 days, or until August 12, 2011, to file and properly serve a SAC. The Court warned that any further
12 failure to comply with Rule 4 and effectuate proper service on any of the previously dismissed
13 Defendants would result in the Plaintiff's claims against these Defendants being DISMISSED WITH
14 PREJUDICE, without further motion by Defendants.

15 On July 19, 2011, with the Court's leave, the Plaintiff filed a SAC, [Doc. No. 179], against
16 twenty Defendants.⁶ The SAC did not alter the claims from the FAC,⁷ but merely added new
17 Defendants, as well as Defendants previously dismissed by the Court for want of prosecution. Prior to
18 the filing of the SAC, certain Defendants had filed motions to dismiss the FAC, [Doc. Nos. 96, 98, 102,

19
20 ⁴ Specifically, the Defendants were JP Morgan, Kathleen Barnhill, "Charlotte," State Student Aid
Commission ("SSC").

21 ⁵ The FAC was dismissed without prejudice, for want of prosecution, as to defendants Charlette,
22 ACS Education Employee Latoya, ACS Education Employee Justin, State Student Aid Commission,
23 Experian Employee Danna, Equifax Employee Ariana, Equifax Employee Larin, Procollect, Inc., First
24 Bank of Delaware, Tribute and Continental Finance. Equifax, Experian Employee Danna, First Bank of
Delaware, JP Mogan, Procollect Inc, State Student Aid Comm., Tribute Continental Finance, ACS
Education and Charlette terminated from case.

25 ⁶ The twenty defendants names in the SAC are as follows: ACS Education Corp, Coast
26 Professional Inc., Shelley Johnston, State Student Aid Comm., JP Morgan, Experian Inc., Equifax LLC.,
27 Trans Union LLC., California Student Aid Commission, National University Inc., Katherine Barnhill,
Educational Credit Mgmt., ACS College Loan Corp., Procollect Inc., Union Workers CS Inc., First
Bank of Delaware, Jefferson Capital Systet, LLC., Tribute LLC., Continental Finance, 1st Bank of
Delaware.

28 ⁷ It appears that the only change made by the Plaintiff was to crossed out "First" and write
"Second."

1 103, 115, 119, 121] and because the motions were pending when Plaintiff filed his SAC and there was
2 no material change made to the claims from the FAC, the Court construed these motions as being
3 directed to the SAC. Additional Defendants filed motions to dismiss the SAC. [Doc. Nos. 201, 203,
4 204, 234 and 240.] Defendants Jefferson Capital Systet, First Bank of Delaware, and Tribute filed a
5 motion to compel arbitration. [Doc. No. 227.]

6 **Factual Background**

7 Plaintiff contends that, between August 2004 and September 2010, all Defendants knowingly
8 and willfully conspired with each other to violate the Fair Debt Collection Practices Act (“FDCPA”) and
9 the Fair Credit Reporting Act (“FCRA”) by acting in concert to perform several acts pertaining to
10 Plaintiffs credit information. The Plaintiff alleges that the conspiracy to violate these acts also
11 constituted violations of the RICO Act. (SAC, pp. 5-6.) Plaintiff alleges that Defendants made negative
12 credit reports regarding debts owed by Plaintiff. (SAC, p. 5.) Plaintiff contends that these debts were
13 disputed and that certain Defendants were therefore in violation of the FDCPA for reporting them to
14 credit agencies. (SAC, pp. 6-34.) The Plaintiff also contends that the Defendants who are named as
15 credit reporting agencies breached their obligations under the FCRA to investigate Plaintiffs complaints
16 about inaccuracies in the credit reports they created and published. The Plaintiff alleges that the
17 Defendant Credit Reporting Agencies also failed to correct errors and to record the fact that the debts
18 were disputed. (SAC, pp. 6-34.) The Plaintiff also sets out the alleged history of his attempts to get the
19 information deleted from his credit reports. (SAC, pp. 7-34.)

20 The Plaintiff asserts his credit has been damaged, which has resulted in the denial of
21 unemployment benefits. He also attributes the death of his sister and brother in Africa to the negative
22 credit reports. The Plaintiff contends that due to the negative credit information, he was not able to get a
23 loan that would enable him to travel to Africa to help his family and pay hospital bills. (SAC, pp. 13, 14,
24 & 33.) The SAC alleges that negative credit reports caused the Plaintiff to slip into depression and to
25 lose self-confidence and self-esteem. (SAC, pp. 12-13, 34.) The Plaintiff states that he needed help to
26 pay rent in order to avoid becoming homeless. (SAC, p. 13.) The Plaintiff also claims he has lost profits
27 in his business as a result of Defendants' actions. (SAC, p. 20.)
28

SAC Claims

1
2 Plaintiff's first claim alleges Defendants "conspired and agreed among themselves to violate"
3 several statutes. (SAC at p. 5.) The SAC alleges several Defendants negatively reported credit balances
4 of varying amounts, and continued to provide negative reports "after all money had been paid in full."
5 (*Id.* at pp. 5-7.) The SAC alleges these defendants "[p]resented an inaccurate negative report" to
6 Experian as well as consumer reporting agencies Experian, Trans Union and Equifax. (*Id.*) On June 14,
7 2010, the SAC alleges, Plaintiff wrote to Experian, Trans Union and Equifax requesting a
8 reinvestigation of at least one negative report item. (*Id.* at p. 7.) Plaintiff alleges defendants "have a
9 policy, custom [a]nd practice" of violating the federal Fair Credit Reporting Act and "Continue
10 Negative Reporting intentional to cost damage to Plaintiff's record" (sic). (*Id.* at p. 6.)

11 Plaintiff's second claim appears to arise from disputes with defendant Coast Professional and
12 possibly defendant National University regarding a consolidation/refinance of student loans. (*Id.* at pp.
13 7-11.) Rather, Plaintiff's second claim appears to allege violations by Coast Professional such as
14 "fail[ing] to keep their promise [that] All the Negatives credit reports related to the Student Loan will be
15 deleted and plaintiff will be able to get new loan to continue his Education" (sic). (*Id.* at p. 10.)

16 The paragraphs styled as Plaintiff's third claim for relief set forth miscellaneous facts regarding
17 matters including Plaintiff's family, the dispute with Coast Professional that forms the basis of
18 Plaintiff's second claim, and charges for insufficient funds and late payments imposed by an unnamed
19 bank.

20 Plaintiff's fourth claim appears to arise from disputes with individual consumer lenders
21 regarding account balances, late payment fees, over limit fees, finance charges and other fees. (*Id.* at pp.
22 14-15.) This claim also references a negative report by Continental Finance, *see* SAC at p.16.

23 Plaintiff's fifth claim alleges he disputed negative items with Experian, Trans Union and Equifax
24 because Plaintiff's creditors "agree[d] to delete all negative report[s] if payment is made in full." (FAC
25 at p. 16.) Plaintiff wrote letters to Experian, Trans Union and Equifax stating, "I never sign[ed] four
26 Student Loan check[s]," and requesting copies of unspecified cancelled checks. (*Id.* at pp. 16-17.)

27 Plaintiff's sixth claim alleges Defendants engaged in a "pattern of racketeering activity." (*Id.* at
28 p. 19.) Referencing the allegations in his first through fifth claims, Plaintiff alleges Defendants' conduct

1 “was done on the basis of the fact that Plaintiff is Black and is representing himself.” (*Id.*) Plaintiff
2 alleges Defendants engaged in a “continuing conspiracy” in violation of RICO, 18 U.S.C. §§
3 1962(a)-(d). (*Id.*) Subsequent pages of the SAC are styled as a “RICO Case Statement” pursuant to a
4 general order which, at least at the present time, does not exist within this district. (*Id.* at pp. 20-33.)
5 This portion of the SAC appears to reallege the same matter pled in the first through fifth claims, this
6 time with citations to 18 U.S.C. § 1961(6), which defines “unlawful debt” for purposes of RICO. (*E.g.*,
7 *Id.* at p. 23.)

8 The Plaintiff seeks \$12 million in general damages, \$50,000 in special damages, and \$2 million
9 in punitive damages. He also seeks to have the damages trebled. The Plaintiff requests an injunction
10 requiring all negative credit information to be deleted from his credit reports. He asks for an order
11 compelling Experian, Trans Union, and Equifax to update his credit score to 800. (SAC, p. 35.)

12 Legal Standards

13 ***I. Federal Rule of Civil Procedure 12(b)(6)***

14 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the pleadings, and allows a
15 court to dismiss a complaint upon a finding that the plaintiff has failed to state a claim upon which relief
16 may be granted. *See Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The court may dismiss a
17 complaint as a matter of law for: (1) "lack of cognizable legal theory," or (2) "insufficient facts under a
18 cognizable legal claim." *SmileCare Dental Grp. v. Delta Dental Plan of Cal.*, 88 F.3d 780, 783 (9th Cir.
19 1996) (citation omitted). However, a complaint survives a motion to dismiss if it contains "enough facts
20 to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570
21 (2007).

22 Notwithstanding this deference, the reviewing court need not accept "legal conclusions" as true.
23 *Ashcroft v. Iqbal*, -- U.S. --, 129 S. Ct. 1937, 1949–50, 173 L.Ed.2d 868 (2009). It is also improper for
24 the court to assume "the [plaintiff] can prove facts that [he or she] has not alleged." *Associated Gen.*
25 *Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). On the other
26 hand, "[w]hen there are well-pleaded factual allegations, a court should assume their veracity and then
27 determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 129 S.Ct. at 1929. The
28 court only reviews the contents of the complaint, accepting all factual allegations as true, and drawing

1 all reasonable inferences in favor of the nonmoving party. *al-Kidd v. Ashcroft*, 580 F.3d 949, 956 (9th
2 Cir. 2009) (citations omitted).

3 ***II. Federal Rule of Civil Procedure 12(c)***

4 A motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) is subject
5 to the same standard of review as a motion to dismiss under Rule 12(b)(6); “[t]here is no material
6 difference in the applicable legal standards” and they are “functionally identical.” *Beckway v. DeShong*,
7 717 F. Supp. 2d 908, 913 (N.D. Ca. 2010) (quoting *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188,
8 1192 (9th Cir. 1989)). To survive a motion to dismiss, “a complaint must contain sufficient factual
9 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, ---
10 U.S. ---, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570
11 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to
12 draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . Where a
13 complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line
14 between possibility and plausibility of entitlement to relief.” *Iqbal*, 129 S. Ct. at 1949 (citations and
15 internal quotation marks omitted).

16 **Discussion**

17 Although the SAC, [Doc. No. 179], is divided into six claims for relief, the Plaintiff appears to
18 rest his requests for relief on the following statutory schemes: (1) the Racketeer Influenced and Corrupt
19 Practices Act (“RICO”) (18 U.S.C. § 1962 et seq.); (2) the Fair Credit Reporting Act (“FCRA”) (15
20 U.S.C. § 1681 et seq.); (3) California’s Consumer Credit Reporting Agencies Act (“CCRAA”); (4) the
21 Fair Debt Collection Practices Act (“FDCPA”) (15 U.S.C. § 1692 et seq.); and (5) other federal statutory
22 claims. (SAC, pp. 2-4.) The Defendants have moved to dismiss Plaintiff’s SAC on the grounds that the
23 SAC fails to state a claim upon which relief can be granted. Each of these causes of action is addressed
24 in turn below. As a preliminary matter, however, the Court will first address the issue of proper service
25 of the SAC.

26 ***I. Service of Process Pursuant to Rule 4***

27 As the Court explained to the Plaintiff at the hearing on the Order to Show Cause on June 7,
28 2011, this Court cannot exercise jurisdiction over a defendant without proper service of process pursuant

1 to Rule 4 of the Federal Rules of Civil Procedure. The Court previously dismissed Defendants Charlette,
2 ACS Education Employee Latoya, ACS Education Employee Justin, State Student Aid Commission, JP
3 Morgan, Experian Employee Danna, Equifax Employee Ariana, Equifax Employee Larin, Procollect,
4 Inc., First Bank of Delaware, Tribute and Continental Finance for failure to properly serve these
5 Defendants with the initial Complaint or the FAC. *See* Order of July 13, 2011, Doc. No. 178, at 3. The
6 Court gave Plaintiff until August 12, 2011, to file and serve his SAC. The Court warned Plaintiff that
7 any further failure to comply with Rule 4 and effectuate proper service on any of the Defendants
8 previously dismissed on these grounds, would result in the Plaintiff's claims against these Defendants
9 being DISMISSED WITH PREJUDICE without further motion by Defendants.

10 The SAC has deleted some of these previously dismissed Defendants from the caption, but still
11 refers to them in the body of the SAC.⁸ With regard to these Defendants Charlette, ACS Education
12 Employee Latoya, ACS Education Employee Justin, Experian Employee Danna, Equifax Employee
13 Ariana, and Equifax Employee Larin, the Court's review of the record reveals no evidence that these
14 Defendants have ever been properly served with any of the complaints since this case was first filed on
15 September 10, 2010. Based upon the foregoing and the Court's prior warnings, Defendants Charlette,
16 ACS Education Employee Latoya, ACS Education Employee Justin, Experian Employee Danna,
17 Equifax Employee Ariana, and Equifax Employee Larin are hereby DISMISSED WITH PREJUDICE.

18 Of the remaining Defendants not previously served and twice dismissed for lack of proper
19 service, the Plaintiff has not provided any evidence that an attempt was made to serve Defendant State
20 Student Aid Commission. Based upon the foregoing and the Court's prior warnings, Defendant State
21 Student Aid Commission is hereby DISMISSED WITH PREJUDICE.

22 Defendant JP Morgan has filed a motion to quash service and dismiss the complaint, [Doc. No.
23 240], challenging Plaintiff's service of process on two grounds, the first attacking the form of the proof
24 of service and the second challenging the manner in which service was attempted. Fed. R. Civ. P.
25 12(b)(4) and 12(b)(5). Defendant JP Morgan contends that the Plaintiff improperly attempted to serve
26 Ashley Rader, an employee of one of JPMorgan's subsidiaries, JPMorgan Chase Bank, N.A., on August

27
28 ⁸ The Defendants that were deleted from the caption, but that still appear in the body of the SAC are: Charlette, ACS Education Employee Latoya, ACS Education Employee Justin, Experian Employee Danna, Equifax Employee Ariana, and Equifax Employee Larin.

1 26, 2011, two weeks after this Court's deadline. Further, JPMorgan Chase Bank, N.A. and Ms. Rader
2 are not registered agents of JPMorgan, the defendant and holding company. Nor have they been
3 authorized to accept service of process in this litigation for JPMorgan or any JPMorgan affiliated entity.
4 Based upon the foregoing and the Court's prior warnings, JP Morgan's motion to quash service is
5 hereby GRANTED and JP Morgan is hereby DISMISSED WITH PREJUDICE.

6 ***II. Plaintiff's RICO Claims***

7 The Plaintiff alleges a conspiratorial pattern of racketeering activity by Defendants, as defined in
8 18 U.S.C. §§ 1962(a) through (d). The Plaintiff contends that Defendants violated these provisions by
9 supplying the credit-reporting-agency Defendants with information about Plaintiffs debts. The
10 credit-reporting-agency Defendants allegedly violated the provisions by failing to correct inaccuracies in
11 credit reports. (SAC, pp. 3-34.) Section 1962 sets forth four categories of "prohibited activities" under
12 RICO:

- 13 • Section 1962(a) prohibits a person who has received income "from a pattern of
14 racketeering activity or through collection of an unlawful debt in which such person has
15 participated as a principal" from using or investing such income to acquire, establish or
16 operate an enterprise affecting interstate or foreign commerce.
- 17 • Section 1962(b) provides it is "unlawful for any person through a pattern of racketeering
18 activity or through collection of an unlawful debt" to acquire or maintain interest or
19 control of an enterprise affecting interstate or foreign commerce.
- 20 • Section 1962(c) prohibits a person associated with any enterprise affecting interstate or
21 foreign commerce from conducting such enterprise's affairs "through a pattern of
22 racketeering activity or collection of unlawful debt."
- 23 • Section 1962(d) provides, "It shall be unlawful for any person to conspire to violate any of the
24 provisions of subsection (a), (b), or (c)" of Section 1962.

25 Section 1964 provides a civil cause of action for "[a]ny person injured in his business or property
26 by reason of a violation of section 1962." 18 U.S.C. § 1964(c). As the statutory language makes clear,
27 to state a claim under any of Section 1962's four subsections, a plaintiff must allege "a pattern of
28 racketeering activity" or "collection of an unlawful debt," as well as a RICO "enterprise." *See Sedima,*

1 *S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985); *Odom v. Microsoft Corp.*, 486 F.3d 541, 547 (9th
2 Cir. 2007).

3 The Plaintiff’s SAC fails because it does no more than parrot the legal conclusions “racketeering
4 activity,” “unlawful debt” and “enterprise,” which the Court cannot accept as true on a motion to
5 dismiss. *Iqbal*, 129 S.Ct. at 1499. First, Plaintiff fails to adequately allege Defendants engaged in any
6 “racketeering activity” within the meaning of RICO. 18 U.S.C. § 1961(1), which lists the predicate acts
7 that qualify as “racketeering activity” (e.g., murder, kidnapping, witness tampering, mail fraud). The
8 SAC does not allege Defendants committed any such acts, let alone a “pattern” of them. 18 U.S.C. §
9 1962(c). The Plaintiff attempts to predicate his RICO claim on an alleged “continuing conspiracy to
10 violate the consumer credit accuracy and fairness of credit reporting Act,” but such violations do not
11 constitute “racketeering activity” as defined by Congress. 18 U.S.C. § 1961(1). The Court finds that the
12 Plaintiff has alleged no facts to support the label “racketeering activity,” the Court concludes that the
13 SAC falls well short of the pleading standards imposed by the Federal Rules. *See Twombly*, 550 U.S. at
14 555.

15 Furthermore, Plaintiff’s SAC fails to adequately allege Defendants engaged in the “collection of
16 unlawful debt.” *See* 18 U.S.C. § 1961(a)-(d). For purposes of RICO, an “unlawful debt” is one incurred
17 in connection with illegal gambling activity or unenforceable because of federal or state usury laws. 18
18 U.S.C. § 1961(6). The SAC uses the phrase “unlawful debt(s)” no fewer than seventeen times, and
19 makes nearly as many references to 18 U.S.C. § 1961(6), which defines the term “unlawful debt” for
20 purposes of the RICO statutes. (*See id.* at pp. 21-30.) Plaintiff’s SAC, however, alleges no facts
21 supporting the conclusory assertion that Defendants “report[ed] negative of unlawful debt on plaintiff’s
22 record as that term is defined by Title 18, United Stat[e]s Code Section 1961(6)” (sic). (FAC at p. 23.)

23 Finally, while Plaintiff’s SAC uses the word “enterprise” several times, it alleges no facts and
24 therefore fails to “raise a right to relief above the speculative level.” *See* SAC at pp. 21; *Twombly*, 550
25 U.S. at 555. The Court finds the bare assertions and conclusory statements of Plaintiff’s SAC to be
26 exactly the type of threadbare recital of the elements of a cause of action, that does not suffice to state a
27 cognizable claim. *Iqbal*, 129 S. Ct. at 1499. Based upon the foregoing, the Defendants’ motion to
28

1 dismiss the Plaintiff's RICO claims set forth in the SAC pursuant to Federal Rule of Civil Procedure
2 12(b)(6) is GRANTED WITH LEAVE TO AMEND.

3
4 **III. Plaintiff's FCRA Claims Against Credit Reporting
Agencies Experian, Equifax and Trans Union**

5 Plaintiff's FCRA claims against the Credit Reporting Agencies, Experian, Equifax and Trans
6 Union rests on a legal theory the Ninth Circuit recently confirmed is invalid as a matter of law. The
7 FCRA requires consumer reporting agencies like Experian to "conduct a reasonable reinvestigation" of
8 information disputed by a consumer. 15 U.S.C. § 1681(i)(a)(1)(A) provides:

9 Subject to subsection (f) of this section, if the completeness or accuracy of any
10 item of information contained in a consumer's file at a consumer reporting agency
11 is disputed by the consumer and the consumer notifies the agency directly, or
12 indirectly through a reseller, of such dispute, the agency shall, free of charge,
13 conduct a reasonable reinvestigation to determine whether the disputed
14 information is inaccurate and record the current status of the disputed
information,
or delete the item from the file in accordance with paragraph (5), before the end
of
the 30-day period beginning on the date on which the agency receives the notice
of the dispute from the consumer or reseller.

15 A recent Ninth Circuit decision applying both the federal FCRA and California's Consumer
16 Credit Reporting Agencies Act ("CCRAA") illustrates the critical distinction between (i) plaintiffs who
17 claim their credit information was inaccurately reported and (ii) plaintiffs who simply dispute the legal
18 validity of their underlying debts. *Carvalho v. Equifax Info. Svcs.*, 629 F.3d 876, 891-92 (9th Cir. 2010).
19 The Ninth Circuit emphasized "credit reporting agencies are not tribunals." *Id.* at 891. Consumer
20 reporting agencies "simply collect and report information furnished by others" and, "[b]ecause CRAs
21 are ill equipped to adjudicate contract disputes, courts have been loath to allow consumers to mount
22 collateral attacks on the legal validity of their debts in the guise of FCRA reinvestigation claims." *Id.*
23 (citing *Saunders v. Branch Banking & Trust Co. of Va.*, 526 F.3d 142, 150 (4th Cir. 2008)). The Ninth
24 Circuit concluded:

25 A CRA is not required as part of its reinvestigation duties to provide a legal
26 opinion on the merits. Indeed, determining whether the consumer has a valid
27 defense [to a reported debt] is a question for a court to resolve in a suit against the
28 creditor, not a job imposed upon consumer reporting agencies by the FCRA.

1 Based upon the foregoing, the Court finds that the Plaintiff has failed to allege a cognizable
2 FCRA claim against the Defendant Credit Reporting Agencies Experian, Equifax and Trans Union.
3 Adjudicating the dispute(s) between Plaintiff and any of his creditors “is a question for a court to resolve
4 in a suit against the creditor, not a job imposed upon consumer reporting agencies by the FCRA.”
5 *Carvalho*, 629 F.3d at 892. As the First Circuit stated in a decision quoted approvingly in *Carvalho*, a
6 dispute over the validity of an underlying debt “is not a factual inaccuracy that could have been
7 uncovered by a reasonable reinvestigation, but rather a legal issue that a credit agency is neither
8 qualified nor obligated to resolve under the FCRA.” *DeAndrade*, 523 F.3d at 68. Based on the
9 foregoing, the Defendants’ motion to dismiss is GRANTED WITH LEAVE TO AMEND.

10 ***IV. Plaintiff’s FDCPA Claims***

11 Plaintiffs’ cause of action for violation of the FDCPA against Defendants fails because
12 Defendants are not considered debt collectors or engaged in debt collecting under the FDCPA. An entity
13 is not deemed a debt collector under the FDCPA if the debt it seeks to collect was not in default at the
14 time it obtained an interest. *Bailey v. Sec. Nat’l Servicing Corps.*, 154 F.3d 384, 387 (7th Cir. 1998). The
15 Plaintiff has failed to demonstrate or sufficiently allege any of the Defendants are debt collectors as
16 defined by FDCPA and therefore cannot state a claim. Based upon the foregoing, the Court GRANTS
17 Defendants motions to dismiss as to this claim WITH LEAVE TO AMEND.

18 ***V. Plaintiff’s Potential Claim Under the CCRAA***

19 Portions of the SAC, when construed liberally, indicate Plaintiff seeks to plead a claim under
20 California’s Consumer Credit Reporting Agencies Act (“CCRAA”). (*See* SAC at pp. 2, 20 (“violations
21 of Consumer Credit Accuracy and fairness of credit Reporting Act”).) Defendants argue, and the Court
22 agrees, that this claim should be dismissed for the same reason Plaintiff’s federal FCRA claim fails.
23 Like the federal FCRA, the CCRAA provides a reinvestigation provision. It states in relevant part:

24 If the completeness or accuracy of any item of information contained in his or her
25 file is disputed by a consumer, and the dispute is conveyed directly to the
26 consumer credit reporting agency by the consumer or user on behalf of the
27 consumer, the consumer credit reporting agency shall within a reasonable period
28 of time and without charge, reinvestigate and record the current status of the
disputed information before the end of the 30-business-day period beginning on
the date the agency receives notice of the dispute from the consumer or user,
unless the consumer credit reporting agency has reasonable grounds to believe
and determines that the dispute by the consumer is frivolous or irrelevant,
including by reason of a failure of the consumer to provide sufficient information,

1 as requested by the consumer credit reporting agency, to investigate the dispute.
2 Cal. Civ. Code § 1785.16. “After completing a reinvestigation, the CRA must provide the consumer
3 with written notice of any results, including ‘a notice that, if requested by the consumer, a description of
4 the procedure used to determine the accuracy and completeness of the information shall be provided.’”
5 *Carvalho*, 629 F.3d at 889 (quoting Cal. Civ. Code § 1785.16(d).)

6 In *Carvalho*, the Ninth Circuit held a CCRAA claim fails as a matter of law unless the plaintiff
7 establishes the disputed items were reported inaccurately. *Id.* at 890. For the same reasons discussed
8 above, the Ninth Circuit held a plaintiff who merely disputes the legal validity of his or her debts lacks a
9 cognizable CCRAA claim. Such a plaintiff “cannot make a prima facie case of inaccurate reporting”
10 against a consumer reporting agency. *Id.* at 890, 892-93. As such, the Court finds that the Plaintiff’s
11 SAC fails to state a cognizable claim under the CCRAA and therefore GRANTS Defendants motion to
12 dismiss these claims WITH LEAVE TO AMEND.

13 ***VI. Plaintiff’s Other Federal Statutory Claims***

14 The Plaintiff’s SAC cites several federal statutes directed at criminal or other violent activity,
15 such as 18 U.S.C. § 1951 (“Interference with commerce by threats of violence”), 18 U.S.C. § 1958
16 (“Use of interstate commerce facilities in the commission of murder-for-hire”) and 18 U.S.C. § 1959
17 (“Violent crimes in aid of racketeering activity”). To the extent the Plaintiff is attempting to allege
18 claims under any of these statutes in the SAC, the Court finds that the Plaintiff has failed to provide any
19 factual support for these claims that would “permit the court to infer more than the mere possibility of
20 misconduct,” and the Plaintiff has failed to demonstrate that he has standing to bring a cause of action
21 under these statutes, making dismissal proper under Rule 12(b)(6). Based on the foregoing, the
22 Defendants’ motion to dismiss is GRANTED WITH LEAVE TO AMEND.

23 ***VII. Defendants’ Motion to Compel Arbitration***

24 Defendants⁹ filed a motion, [Doc. No. 227], arguing that the claims made by Mr. Banks are
25 subject to binding arbitration. As set forth in the Defendants’ motion, and confirmed by Plaintiff in his
26 Opposition although absent any evidence, Plaintiff applied for the Tribute Card over the Internet. The

27
28 ⁹ Defendants who filed the motion to compel arbitration, [Doc. No. 227], are First Bank of Delaware (“FBOD”), Jefferson Capital Systems, LLC (“Jefferson”) and Tribute (which is not an actual entity but rather a trade name used by FBOD in connection with the credit card product).

1 Plaintiff concedes that he was issued the card. Opp., Doc. No. 241, at 7. While Plaintiff argues in his
2 opposition that he did not agree to arbitration, there is no credible or admissible evidence submitted by
3 Mr. Banks on that issue. Defendants have established via the Declaration of Claressa Duberry that the
4 Credit Card Agreement was sent to Plaintiff in connection with the delivery of his Tribute credit card
5 and that the Credit Card Agreement included an Arbitration Provision.

6 The Plaintiff argues that Mr. Banks' argument that his claims are not subject to the Arbitration
7 Provision is unavailing. A court must compel parties to arbitrate claims, including statutory claims,
8 which fall within the arbitration agreement. *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 90
9 (2000)(the Supreme Court has "recognized that federal statutory claims can be appropriately resolved
10 through arbitration and [has] enforced agreements to arbitrate that involve such claims"). In this case,
11 the Arbitration Provision provides that "Any claim, dispute or controversy (whether in contract, tort, or
12 otherwise) at any time arising from or relating to your Account, any transferred balances or this
13 Agreement (collectively, "Claims") upon the election of you or us, will be resolved by binding
14 arbitration pursuant to this Arbitration Provision." All of the Plaintiff's claims, no matter how
15 characterized, are therefore subject to arbitration.¹⁰

16 The Court finds the Plaintiff's waiver arguments unavailing because the Plaintiff has not
17 demonstrated (1) knowledge of an existing right to compel arbitration; (2) acts inconsistent with that
18 existing right; and (3) prejudice to the party opposing arbitration resulting from such inconsistent acts.
19 *Fisher v. A.G. Becker Paribas, Inc.*, 791 F.2d 691, 694 (9th Cir. 1986). The Plaintiff has failed to
20 demonstrate how making collection calls or selling a credit card account, acts which have been alleged
21 by Plaintiff, are inconsistent with the right to demand or compel arbitration. Furthermore, there has been
22 no showing by Plaintiff that he has been or will be prejudiced by the fact that moving Defendants did
23
24

25
26 ¹⁰ Even though Jefferson is not a signatory to the Arbitration Provision between Plaintiff and
27 FBOD, Jefferson is entitled to seek arbitration of Plaintiff's claims. It is well-settled that non-signatories
28 to an agreement may be bound under ordinary contract and agency principles. *Letizia v. Prudential*
Bache Securities, Inc., 802 F.2d 1185, 1187 (9th Cir. 1986) (citing *Alyeska Pipeline Serv. Co. v.*
International Bhd. of Teamsters, 557 F.2d 1263, 1267 (9th Cir. 1977) (local union bound by arbitration
clause in its collective bargaining agreement even though it did not represent the particular employees
involved in picketing activities at the time the agreement was signed)).

1 not seek arbitration prior to August 31, 2011. Based upon the foregoing, the Court hereby GRANTS the
2 Defendants motion and ORDERS the claims set forth in the SAC against these moving Defendants be
3 submitted to arbitration.


4 **Conclusion**

5 For the reasons set forth above, the Court finds that the SAC lacks specificity. The Court finds
6 the SAC to be vague, conclusory and devoid of any merit or substance with regard to many of these
7 Defendants. As such, the Court hereby GRANTS the Defendants motions to dismiss, [Doc. Nos. 96, 98,
8 102, 103, 115, 119, 121, 201, 203, 204, 234, 240] and GRANTS the Defendants motion to compel
9 arbitration, [Doc. No. 227]. The Plaintiff's Plaintiff's ex parte application, [Doc. No. 194], is
10 GRANTED as set forth above, and the Plaintiff's motion, [Doc. No. 256], for default judgment as to
11 Defendant Procollect is DENIED. Plaintiff's ex parte application filed on August 9, 2011, for additional
12 time to serve Defendant Jefferson Capital and "other Defendants" is DENIED AS MOOT. Defendants
13 Charlette, ACS Education Employee Latoya, ACS Education Employee Justin, Experian Employee
14 Danna, Equifax Employee Ariana, Equifax Employee Larin, State Student Aid Commission, and JP
15 Morgan are DISMISSED WITH PREJUDICE.

16 While the Court has granted the Defendants' motions to dismiss without prejudice and with
17 leave to amend, the Plaintiff is warned that failure to sufficiently state his claims and provide the
18 necessary factual support will result in this Court dismissing his claims with prejudice. The Plaintiff
19 must file his Third Amended Complaint ("TAC") on or before April 27, 2012, and it must remove those
20 Defendants that have been dismissed with prejudice. The Plaintiff must timely serve all Defendants
21 with the TAC in compliance with Rule 4. The Plaintiff is warned that failure to do so will result in this
22 Court dismissing any unserved or untimely served Defendants with prejudice.

23 IT IS SO ORDERED.

24
25 DATED: March 26, 2012

26 
27 _____
28 Hon. Anthony J. Battaglia
U.S. District Judge