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

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RICHARD B. TONINI

CASE NO. 12cv637 WQH (WMC)

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Plaintiff,

ORDER

13

vs.

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MANDARICH LAW GROUP, LLP;  
CACH, LLC,

15

Defendants.

HAYES: Judge:

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The matter before the Court is the Motion to Dismiss filed by Defendant Mandarich Law Group, LLP. (ECF No. 7).

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**I. Background**

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On March 14, 2012, Plaintiff initiated this action by filing the Complaint against Defendant Mandarich Law Group, LLP (“Mandarich Law Group”) for improperly obtaining Plaintiff’s credit report on two occasions on behalf of Cach, LLC (“Cach”). On May 7, 2012, Defendant Cach filed an Answer.

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On May 14, 2012, Defendant Mandarich Law Group filed a Motion to Dismiss. On May 17, 2012, Cach filed a notice of joinder to the Motion to Dismiss.<sup>1</sup>

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<sup>1</sup> Cach seeks to join in the Motion to Dismiss filed by Mandarich Law Group. Cach contends that it is permitted to file a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). Cach contends that the standard for a motion to dismiss and motion for judgment on the pleadings “are virtually interchangeable.” (ECF No. 10 at 3). Plaintiff has not opposed the joinder of Cach in the Motion to Dismiss. The Court permits Cach to join in the Motion to Dismiss filed by Mandarich Law Group.

1 On May 29, 2012, Plaintiff filed an Opposition.

2 On June 1, 2012, Mandarich Law Group filed a request for judicial notice. On June 11,  
3 2012, Mandarich Law Group filed a Reply.<sup>2</sup> On June 11, 2012, Cach filed a notice of joinder  
4 to the Reply.

5 **II. Allegations of the Complaint**

6 “Plaintiff pulled his consumer credit report from the three major credit reporting  
7 agencies and found entries that he was unfamiliar with in the reports.” (ECF No. 1 at ¶ 7).  
8 “Plaintiff determined that his consumer credit report had been pulled on various occasions  
9 by various entities he did not recognize and without his consent.” *Id.* at ¶ 8.

10 Plaintiff asserts a claim for violation of the Fair Credit Reporting Act (“FCRA”), 15  
11 U.S.C. § 1681 against Mandarich Law Group and Cach. “On July 5, 2011 and on September  
12 16, 2011, Defendant [Mandarich Law Group] on behalf of [Cach] obtained the TransUnion  
13 consumer credit report for the Plaintiff with no permissible purpose in violation of FCRA, 15  
14 U.S.C. §1681b.” *Id.* at ¶ 19. “Plaintiff has never had any business dealings or any accounts  
15 with, made application for credit from, made application for employment with, applied for  
16 insurance from, or received a bona fide offer of credit from the Defendants ....” *Id.* at ¶17. “At  
17 no time did Plaintiff give his consent for [Mandarich Law Group and Cach] to acquire his  
18 consumer credit report from any credit reporting agency.” *Id.* at ¶ 18. Plaintiff alleges that  
19 “[t]he action of [Mandarich Law Group and Cach] ... was a willful violation of FCRA, 15  
20 U.S.C. § 1681b and an egregious violation of Plaintiffs right to privacy.” *Id.* at ¶ 20.

21 Plaintiff also asserts a claim for violation of the Rosenthal Fair Debt Collection  
22 Practices Act (“RFDCPA”) pursuant to California Civil Code section 1788 et seq. against  
23 Mandarich Law Group and Cach. Plaintiff alleges the same facts to support the RFDCPA  
24 claim as he alleged to support the FCRA claim.

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27 <sup>2</sup> On June 18, 2012, Plaintiff filed an objection to the reply. Plaintiff seeks an order  
28 striking the reply from the docket the on the grounds that Plaintiff was not provided a copy of  
the reply until July 13, 2012. (ECF No. 21). The proof of service states that Plaintiff was  
served with the reply on July 11, 2012 through placement of the Reply in the U.S. Postal  
Service mail. Service was adequate pursuant to the local rules. *See* CivLR 7.1(e)(3).

1 **III. Request for Judicial Notice**

2 Defendants have submitted a request for judicial notice of the summons and complaint  
3 filed on October 10, 2011 in the Superior Court of California for the County of San Diego  
4 titled *Cach, LLC v. Richard B. Tonini*, case number 37-2011-58728-CL-CL-NC and the  
5 summons and complaint filed on April 3, 2012 in the Superior Court of California for the  
6 County of San Diego titled *Cach, LLC v. Richard B. Tonini*, case number  
7 37-2012-52492-CL-CL-NC.

8 The October 10, 2011 complaint was filed by Mandarich Law Group on behalf of Cach.  
9 Cach asserts that it is the assignee of a credit card account between MBNA America, N.A. and  
10 Richard Tonini. The complaint asserts two claims against Tonini including breach of contract  
11 and account stated regarding an alleged credit card account balance of \$24,076.71. The April  
12 3, 2012 complaint was filed by Mandarich Law Group on behalf off Cach. Cach asserts that  
13 it is the assignee of a credit card account between Bank of America, N.A. and Richard Tonini.  
14 The complaint asserts two claims against Tonini including breach of contract and account  
15 stated regarding an alleged credit card account balance of \$8,166.12.

16 Federal Rule of Evidence 201 provides that “a judicially noticed fact must be one not  
17 subject to reasonable dispute in that it is ... capable of accurate and ready determination by  
18 resort to sources whose accuracy cannot reasonably be questioned.” Fed R. Evid. 210(b).  
19 Courts may take judicial notice of their own records, and may also take judicial notice of other  
20 courts’ proceedings if they “directly relate to matters before the court.” *Hayes v. Woodford*,  
21 444 F. Supp. 2d 1127, 1136-37 (S.D. Cal. 2006); *see also United States ex rel. Robinson*  
22 *Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

23 The request for judicial notice of the summons and complaint filed in *Cach, LLC v.*  
24 *Richard B. Tonini*, case number 37-2011-58728-CL-CL-NC and *Cach, LLC v. Richard B.*  
25 *Tonini*, case number 37-2012-52492-CL-CL-NC is GRANTED.

26 **IV. Contentions of the Parties**

27 Defendants contend that Mandarich Law Group is a debt collector who was retained by  
28 Cach to collect Plaintiff’s delinquent credit card debts. Defendants contend that the allegations

1 of the Complaint that Defendants did not have a permissible purpose to obtain Plaintiff's credit  
2 report are vague and conclusory. Defendants contend the FCRA provides a debt collector may  
3 obtain a credit report in the course of collecting a debt. Defendants contend that "Plaintiff is  
4 well aware of the purpose for which Defendant pulled his credit report" because "Plaintiff and  
5 Defendants are in the midst of state court actions involving these debts." (ECF No. 7 at 7).

6 Plaintiff contends that he has satisfied the requirements of notice pleading. Plaintiff  
7 contends that there is "no evidence of any 'account' [on which he owes a debt because t]here  
8 is nothing on the record of any signed contract or original agreement before the court." (ECF  
9 No. 12 at 4). Plaintiff contends that he is "vigorously defending himself in both lawsuits ...."  
10 *Id.* Plaintiff contends that a credit card account is not the type of account for which a debt  
11 collector may pull a credit report in the course of collecting a debt. *Id.* (citing the definition  
12 of "account" in the Electronic Fund Transfers Act, 15 U.S.C. § 1693a and the definition of  
13 "open end credit plan" in the Truth in Lending Act, 15 U.S.C. § 1602).

#### 14 **V. Applicable Standard Law**

15 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to state a claim  
16 upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil Procedure  
17 8(a) provides: "A pleading that states a claim for relief must contain ... a short and plain  
18 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).  
19 Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal  
20 theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police*  
21 *Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

22 To sufficiently state a claim to relief and survive a Rule 12(b)(6) motion, a complaint  
23 "does not need detailed factual allegations" but the "[f]actual allegations must be enough to  
24 raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
25 555 (2007). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'  
26 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
27 of action will not do." *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to  
28 dismiss, a court must accept as true all "well-pleaded factual allegations." *Ashcroft v. Iqbal*,

1 556 U.S. 662, 679 (2009). However, a court is not “required to accept as true allegations that  
2 are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell*  
3 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see, e.g., Doe I v. Wal-Mart*  
4 *Stores, Inc.*, 572 F.3d 677, 683 (9th Cir. 2009) (“Plaintiffs’ general statement that Wal-Mart  
5 exercised control over their day-to-day employment is a conclusion, not a factual allegation  
6 stated with any specificity. We need not accept Plaintiffs’ unwarranted conclusion in  
7 reviewing a motion to dismiss.”). “In sum, for a complaint to survive a motion to dismiss, the  
8 non-conclusory factual content, and reasonable inferences from that content, must be plausibly  
9 suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962,  
10 969 (9th Cir. 2009) (quotations omitted).

## 11 **VI. Federal Law Claims**

12 The FCRA imposes civil liability against “[a]ny person who obtains a consumer report  
13 from a consumer reporting agency under false pretenses or knowingly without a permissible  
14 purpose ....” 15 U.S.C. §§ 1681n(b); *see also Rush v. Macy's New York, Inc.*, 775 F.2d 1554,  
15 1557 (11th Cir.1985) (“[C]ivil liability for improper use and dissemination of credit  
16 information may be imposed only on a consumer reporting agency or user of reported  
17 information who willfully or negligently violates the FCRA.”). A consumer report is “any  
18 information by a consumer reporting agency bearing on a consumer’s credit worthiness ....”  
19 15 U.S.C. § 1681a(d)(1). The FCRA lists several permissible purposes for obtaining a  
20 consumer report including that a consumer reporting agency may provide a consumer report  
21 to “a person which it has reason to believe ... intends to use the information in connection with  
22 a credit transaction involving the consumer on whom the information is to be furnished and  
23 involving the extension of credit to, or review or collection of an account of, the consumer ....”  
24 15 U.S.C. § 1681b.

25 “A collection agency is permitted to obtain a consumer report if the agency is doing so  
26 for the purposes of collecting a debt.” *Pyle v. First Nat. Collection Bureau*, Case No.  
27 1:12cv288–AWI–SKO, 2012 WL 1413970 at \*3 (E.D. Cal. Apr. 23, 2012) (concluding that  
28 plaintiff’s allegations were vague and conclusory on the grounds that the allegations that

1 plaintiff “never at anytime had any business dealing or accounts with the Defendant” fails to  
2 establish that Defendant’s activities were impermissible.). “Where a permissible purpose for  
3 obtaining the credit information is demonstrated, then, as a matter of law, the information  
4 cannot have been obtained under false pretenses.” *Perretta v. Capital Acquisitions &*  
5 *Management Co.*, Case No. C-02-05561 RMW, 2003 WL 21383757 at \*5 (N.D. Cal. May 5,  
6 2003) (granting a motion to dismiss a claim under FCRA because “defendant obtained  
7 plaintiff’s consumer report ... in connection with an effort to collect a debt.”) (citations  
8 omitted).

9 In this case, Plaintiff makes vague and conclusory allegations that Defendants  
10 Mandarich Law Group and Cach “obtained the TransUnion consumer credit report for the  
11 Plaintiff with no permissible purpose .... [because] Plaintiff has never had any business  
12 dealings or any accounts with, made application for credit from, made application for  
13 employment with, applied for insurance from, or received a bona fide offer of credit from the  
14 Defendants.” (ECF No. 1 at ¶¶ 17, 19); *see also Pyle*, 2012 WL 1413970 at 3. The Court finds  
15 that Plaintiff has failed to allege sufficient facts to state a claim for violation of the FCRA  
16 against Defendants Mandarich Law Group and Cach. The Court concludes that Plaintiff has  
17 failed to set forth sufficient facts to show that Defendants’ actions were not permissible under  
18 the FCRA.

## 19 **VII. State Law Claims**

20 The Complaint alleges that federal question jurisdiction exists pursuant to 28 U.S.C. §  
21 1331. (ECF No. 1 ¶ 1). The Complaint asserts a claim pursuant to the FCRA, 15 U.S.C. §  
22 1681, and the RFDCPA, California Civil Code section 1788 et seq.

23 The federal supplemental jurisdiction statute provides: “[I]n any civil action of which  
24 the district courts have original jurisdiction, the district courts shall have supplemental  
25 jurisdiction over all other claims that are so related to claims in the action within such original  
26 jurisdiction that they form part of the same case or controversy under Article III of the United  
27 States Constitution.” 28 U.S.C. § 1367(a). A district court may decline to exercise  
28 supplemental jurisdiction over a state law claim if:


- 1 (1) the claim raises a novel or complex issue of State law,
- 2 (2) the claim substantially predominates over the claim or claims over which the
- 3 district court has original jurisdiction,
- 4 (3) the district court has dismissed all claims over which it has original
- 5 jurisdiction, or
- 6 (4) in exceptional circumstances, there are other compelling reasons for
- 7 declining jurisdiction.

8 28 U.S.C. §1367(c). In this case, the Court has dismissed the federal claim against Defendants.  
9 The Court declines to exercise supplemental jurisdiction over the state law claims against  
10 Defendants pursuant to 28 U.S.C. §1367(c). *See Ove v. Gwinn*, 264 F.3d 817, 826 (9th Cir.  
11 2001) (“A court may decline to exercise supplemental jurisdiction over related state-law claims  
12 once it has dismissed all claims over which it has original jurisdiction.”). Accordingly, the  
13 Motion to Dismiss the remaining state law claim is GRANTED.

14 **VIII. Conclusion**

15 IT IS HEREBY ORDERED the Motion to Dismiss filed by Defendants Mandarich Law  
16 Group, LLP and Cach, LLC (ECF Nos. 7, 10) is GRANTED. The Complaint is DISMISSED.  
17 No later than thirty days from the date of this Order, Plaintiff may file a motion for leave to  
18 file a first amended complaint along with a proposed first amended complaint. If Plaintiff does  
19 not file a motion for leave to file an amended complaint, the Court will close the case.

20 DATED: July 9, 2012

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22 **WILLIAM Q. HAYES**  
23 United States District Judge  
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