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

TONY NGUYEN,

Plaintiff,

vs.

LVNV FUNDING, LLC, et al.,

Defendants.

CASE NO. 15cv758-LAB (RBB)

**ORDER GRANTING SUMMARY
JUDGMENT**

When Tony Nguyen failed to pay about \$35,000 in credit card debt, LVNV Funding hired a collection firm to recover the debt. The Firm filed two collection actions in California state court alleging Nguyen’s debts became due within the four year statute of limitations. Nguyen consulted counsel who advised him not to respond. The clerk entered default judgments. Nguyen moved to set them aside. After a hearing, the state trial court upheld the judgments. The state appellate court held oral argument and affirmed. Nguyen never raised the statute of limitations issue in the state proceedings. [See Dkts. 74, 83.]

As things stand, LVNV holds a final judgment from a California court ordering Nguyen to pay LVNV about \$35,000. Nguyen has now filed an action under the Fair Debt Collection Practices Act in this Court. He doesn’t deny that he owes the money. Instead, he theorizes that Defendants violated the FDCPA by allegedly filing the state court collection actions beyond the statute of limitations. Defendants have moved for summary judgment alleging that Nguyen is collaterally estopped from raising the statute of limitations issue in this action.

1 Federal courts must defer “to the preclusion law of the State in which judgment was
2 rendered.” *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985); 28
3 U.S.C. § 1738. Under California law, the collateral estoppel doctrine bars courts from
4 reconsidering issues that were “actually litigated and determined in the first action.” *Murray*
5 *v. Alaska Airlines, Inc.*, 50 Cal. 4th 860, 867 (2010).

6 The sticking point here is that the California courts entered a default judgment against
7 Nguyen. Given the strong preference for resolving disputes on the merits, it seems incorrect
8 to say the statute of limitations issue was actually litigated and determined. But in California,
9 the rule is clear: “Even a judgment of default in a civil proceeding is *res judicata* as to *all*
10 issues aptly pleaded in the complaint and defendant is estopped from denying in a
11 subsequent action *any* allegations contained in the former complaint.” *Murray*, 50 Cal. 4th
12 at 871 (quotations omitted; emphasis added). Since LVNV pleaded that the collection
13 actions were timely, and default judgment was entered and affirmed, *Murray* compels the
14 conclusion that Nguyen is estopped from denying the timeliness of the state actions in this
15 case. [Dkts. 73-2 at 59, 62.]¹

16 Nguyen’s primary counterargument is that there’s an exception to the broad rule
17 articulated in *Murray*: default judgments don’t affect defenses pleaded in the complaint. He
18 maintains that since the statute of limitations is an affirmative defense, collateral estoppel
19 doesn’t bar him from raising that issue as the basis for this action. For support, he relies on
20 *Four Star Electric v. F & H Construction*:

21 It is well settled that allegations of a complaint which anticipate or negate new
22 matter are superfluous. The only allegations essential to a complaint are those
23 required in stating the cause of action, and allegations inserted for the purpose
24 of intercepting and cutting off a defense are superfluous and immaterial. The
25 matter alleged may be material in the case, but immaterial in the complaint, and
a plaintiff cannot by pleading such matter at the outset call upon the defendant
to answer it.

26 ¹ See also *In re Younie*, 211 B.R. 367, 375 (B.A.P. 9th Cir. 1997), *aff’d*, 163 F.3d 609 (9th
27 Cir. 1998) (“In California, a default judgment satisfies the ‘actually litigated’ requirement for
28 the application of collateral estoppel.”); *Fields v. Retailers Credit*, 465 F. App’x 710 (9th Cir.
2012) (debt dispute decided by default judgment precluded by collateral estoppel).

1 *Four Star Elec., Inc. v. F & H Constr.*, 7 Cal. App. 4th 1375, 1382 (1992). The Court doesn't
2 find *Four Star* controlling for two reasons.

3 First, Nguyen hasn't offered any analysis on how to square *Four Star* with the
4 categorical language in *Murray* that says any and all issues pleaded are considered res
5 judicata when a default judgment is entered. Second, assuming *Four Star* does carve-out
6 an exception, it doesn't apply in this case. That's because Defendants filled out check-the-
7 box complaints approved by the Judicial Council of California that *required* Defendants to
8 affirm that their collection actions were filed within the last four years. See Cal. Civ. Proc.
9 Code § 425.12 and § 1911. That context matters. The Court can't say Defendants added
10 surplusage or immaterial allegations as a sneaky way to avoid the *Four Star* exception.
11 Rather, Defendants checked a box on a court-approved form complaint certifying essentially
12 two allegations: Nguyen owed them money, and it became due within the last four years.
13 [Dkts. 74-1 at 7, 74-9 at 7; attached as Appendix A.]

14 While the Court understands Nguyen's argument—the California courts only decided
15 that he owed money to LVNV, not whether the actions were filed on time—that distinction
16 doesn't hold up. Under *Murray*, when the California courts denied Nguyen's request to set
17 the default aside, they necessarily found Nguyen owed LVNV \$35,000. They also implicitly
18 found that LVNV's decision to file the state court collection actions was timely and lawful.
19 For this Court to now repudiate the state courts' findings is exactly the type of second
20 guessing the collateral estoppel doctrine is designed to prevent. "A party cannot by
21 negligence or design withhold issues and litigate them in consecutive actions. Hence the
22 rule is that the prior judgment is res judicata on matters which were raised or could have
23 been raised, on matters litigated or litigable." *Mitchell v. Jones*, 172 Cal. App. 2d 580, 585
24 (1959) (but noting, as in *Four Star*, an exception for any unnecessary defense).

25 The California Supreme Court has explained that courts should consider two
26 overarching concerns when invoking collateral estoppel. "Ultimately, the inquiry that must
27 be made is whether the traditional requirements and policy reasons for applying the
28 collateral estoppel doctrine have been satisfied by the particular circumstances of [the]

1 case.” *Murray*, 50 Cal. 4th at 868. And “it is the *opportunity to litigate* that is important in
2 these cases, not whether the litigant availed himself or herself of the opportunity.” *Murray*,
3 50 Cal. 4th at 869. Finding that Nguyen is collaterally estopped here comports with both
4 concerns. By refusing to allow him to litigate the statute of limitations issue, the Court is
5 “conserving judicial resources and promoting judicial economy by minimizing repetitive
6 litigation, preventing inconsistent judgments which undermine the integrity of the judicial
7 system, and avoiding the harassment of parties through repeated litigation.” *Id.* at 879.
8 Nguyen had three opportunities to raise his statute of limitations concern with the California
9 courts. He chose not to. The Fair Debt Collection Practices Act doesn’t function to provide
10 litigants with a second chance to try out new arguments in federal court after failing to raise
11 them in state court.

12 * * *

13 Since there’s no dispute as to any material fact and the Defendants are entitled to
14 judgment as a matter of law, their motion for summary judgment is **GRANTED** [Dkts. 71,
15 73]; plaintiff’s motion is **DENIED**. [Dkt. 76.] Fed. R. Civ. P. 56. Because Nguyen’s Rosenthal
16 Act claim mimics the Fair Debt Collection Practices Act, the Court grants Defendants’
17 summary judgment on both claims. *See Gates v. MCT Grp., Inc.*, 678 F. App’x 539, 541 (9th
18 Cir. 2017).²

19 **IT IS SO ORDERED.**

20 Dated: 2-5-18



21 **HONORABLE LARRY ALAN BURNS**
22 United States District Judge

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26 ² The Court stayed this action pending the Ninth Circuit’s ruling in *Ordinario v. LVNV*
27 *Funding, LLC*, 2016 WL 852843, at *2 (S.D. Cal. Mar. 4, 2016). The Ninth affirmed, but
28 didn’t address whether an FDCPA action premised on an untimely state action is unavailable
when the plaintiff waives the statute of limitations defense in state court. Since the collateral
estoppel argument here turns on a similar ground — Nguyen had an opportunity to raise the
defense but didn’t — the Court doesn’t address the waiver issue.

Appendix A

SHORT TITLE: LVNV FUNDING LLC v. TONY NGUYEN	CASE NUMBER:
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FIRST CAUSE OF ACTION - Common Counts
 (number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name):

LVNV FUNDING LLC

alleges that defendant (name):

TONY NGUYEN

became indebted to plaintiff other (name): Citibank (South Dakota) N.A. OR A PREDECESSOR IN INTEREST

a. within the last four years

(1) on an open book account for money due.

(2) because an account was stated in writing by and between plaintiff and defendant in which it was agreed that defendant was indebted to plaintiff.

b. within the last two years four years

(1) for money had and received by defendant for the use and benefit of plaintiff.

(2) for work, labor, services and materials rendered at the special instance and request of defendant and for which defendant promised to pay plaintiff
 the sum of \$ \$18,382.67
 the reasonable value.

(3) for goods, wares, and merchandise sold and delivered to defendant and for which defendant promised to pay plaintiff
 the sum of \$ \$18,382.67
 the reasonable value.

(4) for money lent by plaintiff to defendant at defendant's request.

(5) for money paid, laid out, and expended to or for defendant at defendant's special instance and request.

(6) other (specify):

CC-2. \$ \$18,382.67, which is the reasonable value, is due and unpaid despite plaintiff's demand, plus prejudgment interest according to proof at the rate of 0.0000 percent per year from (date): May 20, 2011

CC-3. Plaintiff is entitled to attorney fees by an agreement or a statute

of \$

according to proof.

CC.4. Other:

PLAINTIFF PURCHASED THE ACCOUNT FROM THE ORIGINAL CREDITOR OR ITS SUCCESSOR(S) IN INTEREST. PLAINTIFF IS THE CURRENT OWNER OF THE ACCOUNT.

SHORT TITLE: LVNV FUNDING LLC v. TONY NGUYEN	CASE NUMBER:
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FIRST **CAUSE OF ACTION - Common Counts**
 (number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

CC-1. Plaintiff (name):
 LVNV FUNDING LLC
 alleges that defendant (name):
 TONY NGUYEN
 became indebted to plaintiff other (name): Citibank (South Dakota) N.A. OR A PREDECESSOR
 IN INTEREST
 a. within the last four years
 (1) on an open book account for money due.
 (2) because an account was stated in writing by and between plaintiff and defendant in which it
 was agreed that defendant was indebted to plaintiff.
 b. within the last two years four years
 (1) for money had and received by defendant for the use and benefit of plaintiff.
 (2) for work, labor, services and materials rendered at the special instance and request of defendant and
 for which defendant promised to pay plaintiff
 the sum of \$ \$15,202.65
 the reasonable value.
 (3) for goods, wares, and merchandise sold and delivered to defendant and for which defendant
 promised to pay plaintiff
 the sum of \$ \$15,202.65
 the reasonable value.
 (4) for money lent by plaintiff to defendant at defendant's request.
 (5) for money paid, laid out, and expended to or for defendant at defendant's special instance and
 request.
 (6) other (specify):

CC-2. \$ \$15,202.65 , which is the reasonable value, is due and unpaid despite plaintiff's demand,
 plus prejudgment interest according to proof at the rate of 0.0000 percent per year
 from (date): May 20, 2011

CC-3. Plaintiff is entitled to attorney fees by an agreement or a statute
 of \$
 according to proof.

CC-4. Other:
 PLAINTIFF PURCHASED THE ACCOUNT FROM THE ORIGINAL CREDITOR OR ITS SUCCESSOR(S) IN
 INTEREST. PLAINTIFF IS THE CURRENT OWNER OF THE ACCOUNT.