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

SABRINA MUHAMMAD, an individual,

Plaintiff,

v.

REESE LAW GROUP, APC; and FORD
MOTOR AND CREDIT COMPANY,

Defendants.

Case No.: 16cv2513-MMA (BGS)

**ORDER GRANTING DEFENDANT
FORD MOTOR CREDIT
COMPANY'S MOTION TO DISMISS**

[Doc. No. 15]

19 Plaintiff Sabrina Muhammad ("Plaintiff") brings two causes of action against
20 Defendant Reese Law Group ("Reese") and Defendant Ford Motor Credit Company,
21 LLC¹ ("Ford," collectively "Defendants"). Plaintiff alleges Defendants violated the Fair
22 Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"), and California's
23 Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.*
24 ("Rosenthal Act"). *See* Complaint. On January 23, 2017, the Court granted Reese's anti-

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¹ Ford Motor Credit Company, LLC was erroneously sued as Ford Motor and Credit Company.
See Doc. No. 10 at 2.

1 SLAPP motion, dismissing Plaintiff's Rosenthal Act claims against Reese with prejudice.
2 Doc. No. 31. Ford now moves to dismiss Plaintiff's Complaint for failure to state a claim
3 pursuant to Federal Rule of Civil Procedure 12(b)(6). Doc. No. 15. Plaintiff filed an
4 opposition to Ford's motion, to which Ford replied. *See* Doc. Nos. 30, 34. The Court
5 found the matter suitable for determination on the papers and without oral argument
6 pursuant to Civil Local Rule 7.1.d.1. Doc. No. 36. For the reasons set forth below, the
7 Court **GRANTS** Ford's motion to dismiss.

8 **BACKGROUND**²

9 Plaintiff Sabrina Muhammad is an individual residing in Orange County,
10 California. Reese is a law firm headquartered in San Diego, California, which conducts
11 business in the state of California. Ford is headquartered in Dearborn, Michigan, and
12 employs the services of Reese to collect alleged debts on its behalf.

13 On June 16, 1997, Plaintiff leased a Ford Explorer from the Theodore Robins Ford
14 car dealership. The car dealership assigned the motor vehicle lease to Ford Credit.
15 Plaintiff defaulted on the debt. In June 2000, Ford's collection counsel, Reese, "filed suit
16 against Plaintiff for the balance owed on the motor vehicle lease." Doc. No. 15-1 at 3.
17 On or about March 30, 2001, Ford secured a money judgment against Plaintiff in the
18 Orange County Superior Court in the amount of \$11,674.04. Defendants did not attempt
19 to collect any money for approximately two years. On or about July 28, 2003,
20 Defendants obtained a Writ of Execution directing the Orange County Sheriff's Office to
21 collect \$14,346.64 from Plaintiff.

22 On or about September 30, 2003, the Orange County Sheriff's Office commenced
23 garnishing Plaintiff's wages pursuant to an Earnings Withholding Order. On or about
24 July 17, 2009, Defendants applied for a renewal of the money judgment entered against
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26 ² Because this case comes before the Court on a motion to dismiss, the Court must accept as true
27 all material allegations in the complaint and must also construe the complaint, and all reasonable
28 inferences drawn therefrom, in the light most favorable to Plaintiff. *Thompson v. Davis*, 295 F.3d 890,
895 (9th Cir. 2002). All facts are taken from the Complaint (Doc. No. 1) unless otherwise noted.

1 Plaintiff. In its application, Defendants alleged Plaintiff owed \$12,462.20. Defendants
2 filed a “Memorandum of Costs After Judgment, Acknowledgment of Credit, and
3 Declaration of Accrued Interest” with the Orange County Superior Court attesting to
4 Plaintiff owing \$768.16 in accrued interest. Complaint ¶ 27.

5 On or about November 8, 2010, Plaintiff took a leave of absence from her
6 employment with the Internal Revenue Service due to a medical condition. Plaintiff
7 remained on non-pay status for approximately one year. On or about November 24,
8 2010, Defendants ceased garnishing Plaintiff’s wages in Orange County. At this time,
9 Plaintiff allegedly owed \$3,284.00 on the money judgment.

10 On or about June 3, 2011, the Orange County Sheriff’s Office returned an
11 “Execution Return – Earnings Withholding Order” to Reese, and the Orange County
12 Superior Court, deeming the money judgment against Plaintiff to be “partially satisfied.”
13 Complaint ¶ 31. This document certified that the Sheriff’s Office collected a total of
14 \$13,015.24 from Plaintiff. Of that amount, \$11,126.24 was allocated to the money
15 judgment, and \$1,889.00 was paid to the Sheriff’s Office for fees and expenses incurred.

16 On or about November 9, 2011, Reese filed a “Memorandum of Costs After
17 Judgment, Acknowledgement of Credit, and Declaration of Accrued Interest” with the
18 Orange County Superior Court attesting to Plaintiff owing \$1,070.48 of accrued interest,
19 despite the fact that the money judgment had been deemed “partially satisfied.”
20 Complaint ¶ 32. On or about June 22, 2012, Reese obtained a Writ of Execution
21 directing the Orange County Sheriff to collect \$13,007.82 from Plaintiff.

22 On or about November 30, 2015, more than five years after Defendants ceased
23 garnishing Plaintiff’s wages, Reese filed an additional “Memorandum of Costs After
24 Judgment, Acknowledgement of Credit, and Declaration of Accrued Interest” in the
25 Orange County Superior Court, claiming Plaintiff owes \$5,887.64 of accrued interest.

26 On or about December 2, 2015, Reese obtained a Writ of Execution in San Diego
27 County, directing the San Diego County Sheriff to collect a total of \$17,024.98 from
28 Plaintiff. Plaintiff has never resided or worked in San Diego County. The original

1 contract between Plaintiff and Ford was executed in Orange County. On or about
2 January 6, 2016, the San Diego County Sheriff's Office issued an Earnings Withholding
3 Order to Plaintiff's employer, stating Plaintiff owed \$17,986.09 pursuant to the money
4 judgment originally obtained against Plaintiff on or about March 30, 2001. On or about
5 January 27, 2016, Plaintiff drove from Orange County to San Diego to file a "Claim for
6 Exemption," contesting the amount Defendants sought to garnish from her wages. In
7 February 2016, the San Diego County Sheriff's Office began garnishing Plaintiff's
8 wages.

9 Plaintiff asserts that despite having no ties to San Diego County, Defendants
10 "continue to garnish Plaintiff's wages pursuant to the Earnings Withholding Order filed
11 with the San Diego County Sheriff's Office on or about January 6, 2016." Complaint ¶
12 45. Plaintiff alleges she has taken time off of work to travel to San Diego County to
13 "prevent Defendants from continuing to illegally garnish her wages." Complaint ¶ 46.
14 As a result, Plaintiff asserts she "has suffered emotional distress with manifestations
15 including, but not limited to, loss of appetite, inability to sleep, marital discord, anxiety,
16 and paranoia." Complaint ¶ 47. On October 7, 2016, Plaintiff filed the instant action
17 against Defendants alleging violations of the FDCPA and Rosenthal Act.

18 LEGAL STANDARDS

19 **A. Request for Judicial Notice**

20 Generally, a court must take judicial notice if a party requests it and supplies the
21 court with the requisite information. Fed. R. Evid. 201(d). "A judicially noticed fact
22 must be one not subject to reasonable dispute in that it is either (1) generally known
23 within the territorial jurisdiction of the trial court or (2) capable of accurate and ready
24 determination by resort to sources whose accuracy cannot reasonably be questioned."
25 Fed. R. Evid. 201(b); *see Mack v. South Bay Beer Distributors*, 798 F.2d 1279, 1282 (9th
26 Cir. 1986) (citing *Sears, Roebuck & Co. v. Metropolitan Engravers, Ltd.*, 245 F.2d 67, 70
27 (9th Cir. 1956)). While a court may take judicial notice of matters of public record, it
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1 may not take judicial notice of a fact that is subject to reasonable dispute. Fed. R. Evid.
2 201(b); *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

3 **B. 12(b)(6)**

4 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *Navarro*
5 *v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short and plain
6 statement of the claim showing that the pleader is entitled to relief. . . .” Fed. R. Civ. P.
7 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to relief that is
8 plausible on its face.” Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,
9 570 (2007). The plausibility standard thus demands more than a formulaic recitation of
10 the elements of a cause of action, or naked assertions devoid of further factual
11 enhancement. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, the complaint “must
12 contain allegations of underlying facts sufficient to give fair notice and to enable the
13 opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir.
14 2011).

15 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth
16 of all factual allegations and must construe them in the light most favorable to the
17 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996).
18 The court need not take legal conclusions as true merely because they are cast in the form
19 of factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).
20 Similarly, “conclusory allegations of law and unwarranted inferences are not sufficient to
21 defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

22 In determining the propriety of a Rule 12(b)(6) dismissal, courts generally may not
23 look beyond the complaint for additional facts. *United States v. Ritchie*, 342 F.3d 903,
24 908 (9th Cir. 2003). “A court may, however, consider certain materials—documents
25 attached to the complaint, documents incorporated by reference in the complaint, or
26 matters of judicial notice—without converting the motion to dismiss into a motion for
27 summary judgment.” *Id.*; see also *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir.
28 2001). “However, [courts] are not required to accept as true conclusory allegations

1 which are contradicted by documents referred to in the complaint.” *Steckman v. Hart*
2 *Brewing, Inc.*, 143 F.3d 1293, 1295–96 (9th Cir. 1998). Where dismissal is appropriate, a
3 court should grant leave to amend unless the plaintiff could not possibly cure the defects
4 in the pleading. *Knappenberger v. City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009).

5 DISCUSSION

6 **A. Ford’s Request for Judicial Notice**

7 As an initial matter, Ford requests the Court take judicial notice of two documents
8 in connection with its motion to dismiss. *See* Doc. Nos. 16-1, 35-1. The first document
9 is a copy of the executed Motor Vehicle Lease Agreement entered into between Plaintiff
10 and Ford on June 19, 1997. Doc. No. 16-1. The second document is a copy of this
11 Court’s Order granting Defendant Reese Law Group’s anti-SLAPP motion. Doc. No. 35-
12 1. Plaintiff did not file an opposition to Defendant’s request for judicial notice.

13 The Court finds the authenticity of the parties’ Motor Vehicle Lease Agreement is
14 not subject to reasonable dispute, and **GRANTS** Ford’s request for judicial notice of this
15 document. Additionally, the Court **DENIES AS MOOT** Ford’s request for judicial
16 notice of this Court’s Order granting Reese’s anti-SLAPP motion, as the Court need not
17 take judicial notice of previous Orders issued by the Court in this action.

18 **B. Ford’s Motion to Dismiss**

19 While Plaintiff refers to Reese and Ford as “Defendants” without specifying the
20 individual acts of each party in her Complaint, Plaintiff also alleges that Ford “employed
21 the services of REESE LAW GROUP to collect an alleged debt from Plaintiff.”
22 Complaint ¶ 13. Plaintiff’s Complaint clarifies that the terms “‘Defendant’ and
23 ‘Defendants’ refer to all defendants, named and unnamed, as Plaintiff alleges each to be
24 jointly and severally liable for the conduct alleged herein.” Complaint ¶ 14. In her
25 opposition, Plaintiff states, “Defendant Ford Motor Credit hired Reese Law Group to
26 collect the debt, making Defendant Ford Motor Credit responsible for all the actions of
27 their attorneys.” Doc. No. 30 at 1. Moreover, Plaintiff asserts Ford is “vicarious[ly]
28 liable for [Reese’s] actions.” *Id.* at 3. As such, the Court construes Plaintiff’s Complaint,

1 together with her opposition to Ford’s motion to dismiss, as alleging that Ford is liable
2 under the FDCPA and Rosenthal Act based on a theory of vicarious liability.

3 **1. FDCPA**

4 “Congress enacted the FDCPA in 1968 in response to ‘abundant evidence of the
5 use of abusive, deceptive, and unfair debt collection practices by many debt collectors
6 [which] contribute to the number of personal bankruptcies, to marital instability, to the
7 loss of jobs, and to invasions of individual privacy.’” *Evon v. Law Offices of Sidney*
8 *Mickell*, 688 F.3d 1015, 1024 (9th Cir. 2012) (citing 15 U.S.C. § 1692(a)).

9 Plaintiff alleges various violations of the FDCPA. Specifically, Plaintiff claims
10 Defendants engaged “in conduct the natural consequence of which is to harass[,] oppress,
11 or abuse Plaintiff” in violation of Section 1692d; used “false, deceptive, or misleading
12 representations or means in connection with collection of an alleged debt from Plaintiff”
13 in violation of Section 1692e; used “false representations and deceptive practices” in
14 collecting the alleged debt in violation of Section 1692e(10); used “unfair or
15 unconscionable means against Plaintiff in connection with an attempt to collect a debt” in
16 violation of Section 1692f; and brought a legal action against Plaintiff in an improper
17 venue in violation of Section 1692i(a)(2). Complaint ¶ 52(a)-(e).

18 Ford contends that Plaintiff fails to state a claim under the FDCPA because as a
19 threshold issue, Ford is not a “debt collector” as defined by the statute. *See* Doc. No. 15-
20 1 at 4. In opposition, Plaintiff does not address Ford’s argument that it is not a debt
21 collector. Instead, Plaintiff claims Ford is vicariously liable for employing Reese to
22 collect a debt on its behalf. *See* Doc. No. 30 at 2-3.

23 “To be held liable for violation of the FDCPA, a defendant must—as a threshold
24 requirement—fall within the Act’s definition of ‘debt collector.’” *Izenberg v. ETS Servs.,*
25 *LLC*, 589 F. Supp. 2d 1193, 1198 (C.D. Cal. 2008). The FDCPA defines the term “debt
26 collector” as “any person who uses any instrumentality of interstate commerce or the
27 mails in any business the principal purpose of which is the collection of any debts, or
28 who regularly collects or attempts to collect, directly or indirectly, debts owed or due or

1 asserted to be owed or *due another*.” 15 U.S.C § 1692a(6) (emphasis added). The Ninth
2 Circuit has held that debt collectors can be vicariously liable under the FDCPA for the
3 conduct of their attorneys in collecting debts on their behalf. *See Fox v. Citicorp*, 15 F.3d
4 1507, 1516 (9th Cir. 1994). “General principles of agency form the basis of vicarious
5 liability under the FDCPA.” *Breidenbach v. Experian*, 2013 WL 1010565, at *3 (S.D.
6 Cal. Mar. 13, 2013). In order to be liable for the actions of another, “the ‘principal’ must
7 exercise control over the conduct or activities of the ‘agent.’” *Clark v. Capital Credit &*
8 *Collection Servs., Inc.*, 460 F.3d 1162, 1173 (9th Cir. 2006). However, various circuit
9 courts have held that “because the FDCPA only imposes liability on debt collectors,
10 vicarious liability may only be imposed if *both the principal and the agent* are debt
11 collector[s] as defined by the FDCPA.” *Breidenbach*, 2013 WL 1010565, at *3
12 (emphasis added); *see Police v. Nat’l Funding, L.P.*, 225 F.3d 379, 404 (3d Cir. 2000)
13 (concluding that a company may be held vicariously liable for acts of its agent because
14 the company and agent were debt collectors); *Wadlington v. Credit Acceptance Corp.*, 76
15 F.3d 103, 108 (6th Cir. 1996) (declining to impose vicarious liability on non-debt
16 collectors); *Fox*, 15 F.3d at 1513 (imposing vicarious liability on company for acts of its
17 attorney where company was also a debt collector); *Oei v. N. Star Capital Acquisitions,*
18 *LLC*, 486 F. Supp. 2d 1089, 1097 (C.D. Cal. 2006) (stating “[v]icarious liability under the
19 [FDCPA] has similarly been restricted to principals who themselves are statutory ‘debt
20 collectors.’”); *but see Huy Thanh Vo v. Nelson & Kennard*, 931 F. Supp. 2d 1080, 1090
21 (E.D. Cal. 2013) (rejecting *Oei* and *Police* and holding that non-debt collector creditors
22 can be vicariously liable for their attorneys’ actions under the FDCPA).

23 Here, the Court is persuaded by the weight of authority restricting FDCPA liability
24 to entities that fit the statutory definition of “debt collector” as set forth in § 1692a(6).
25 Plaintiff does not allege that Ford is itself a debt collector as defined by the statute.
26 Rather, Plaintiff concedes that she is alleged to “formally owe a debt to Ford Motor
27 Credit Company.” Complaint ¶ 19. Further, Plaintiff claims “Ford Motor Credit
28 Company secured a money judgment against Plaintiff.” Complaint ¶ 20. Thus, Plaintiff

1 acknowledges Ford took action to collect its own debt—not the debt “of another” as
2 required by 15 U.S.C. § 1692a(6). As such, Plaintiff fails to state a FDCPA claim against
3 Ford on a theory of vicarious liability. Accordingly, because Plaintiff cannot allege that
4 Ford is a “debt collector” as defined under the FDCPA, the Court **GRANTS** Ford’s
5 motion to dismiss Plaintiff’s FDCPA claims against Ford **with prejudice**.³

6 **2. Rosenthal Act**

7 Plaintiff further alleges Defendants violated Sections 1788.15(a) and 1788.15(b) of
8 the Rosenthal Act. Complaint ¶¶ 64(a)-(b). Section 1788.15(a) provides in full, “[n]o
9 debt collector shall collect or attempt to collect a consumer debt by means of judicial
10 proceedings when the debt collector knows that service of process, where essential to
11 jurisdiction over the debtor or his property, has not been legally effected.” Cal. Civ.
12 Code § 1788.15(a). Section 1788.15(b) provides:

13 No debt collector shall collect or attempt to collect a consumer debt, *other*
14 *than one reduced to judgment*, by means of judicial proceedings in a county
15 other than the county in which the debtor has incurred the consumer debt or
16 the county in which the debtor resides at the time such proceedings are
instituted, or resided at the time the debt was incurred.

17 Cal. Civ. Code § 1788.15(b) (emphasis added).

18 In its motion to dismiss, filed December 13, 2016, Ford asserts Plaintiff cannot
19 state a claim under the Rosenthal Act because (a) a vehicle lease is not a “consumer
20 credit transaction” as defined under the Rosenthal Act; and (b) the Rosenthal Act does
21 not impute the “litigation activity” of Ford’s attorneys to Ford Motor Credit Company.
22 *See* Doc. No. 15-1 at 6-8. Plaintiff filed her opposition to the motion to dismiss on
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25 ³ As such, the Court similarly **DISMISSES** Plaintiff’s claims under Section 1788.17 of the
26 Rosenthal Act, which incorporates various provisions of the FDCPA, against Ford **with prejudice**.
27 “The Rosenthal Act requires compliance with the FDCPA and a debt collector that violates the FDCPA
28 also violates the Rosenthal Act.” *Gold*, 82 F. Supp. 3d at 1078; *see also* Cal. Civ. Code § 1788.17.
Because Plaintiff cannot allege that Ford is liable under the FDCPA, Plaintiff similarly cannot allege
Ford is liable under Section 1788.17. Thus, the Court proceeds by analyzing Plaintiff’s additional
theories of liability under the Rosenthal Act.

1 January 22, 2017. Doc. No. 30. The following day, the Court issued its Order granting
2 Reese’s anti-SLAPP motion. Doc. No. 31. Ford filed its reply brief on January 30, 2017,
3 arguing that because the Court dismissed Plaintiff’s Rosenthal Act claims against Reese
4 with prejudice, Ford cannot be held vicariously liable for claims that no longer exist.⁴
5 *See* Doc. No. 34 at 3.

6 Here, the Court agrees that because Plaintiff does not allege any basis of liability
7 against Ford that is separate and apart from that of Reese, Plaintiff’s Rosenthal Act
8 claims against Ford fail for the same reason they fail against Reese. *See* Doc. No. 31 at 9
9 (“Plaintiff does not allege any facts to support [her 1788.15(a)] allegation. Such a
10 conclusory statement, without more, is insufficient to establish a reasonable probability
11 of prevailing on her Section 1788.15(a) claim.”); Doc. No. 31 at 9 (“Because Ford
12 secured a money judgment, Section 1788.15(b) does not apply to the case at bar. Thus,
13 Plaintiff fails to establish a probability of prevailing on her claim under section
14 1788.15(b).”). Accordingly, the Court **GRANTS** Ford’s motion to dismiss Plaintiff’s
15 remaining Rosenthal Act claims against Ford **with prejudice**.⁵

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24 ⁴ While a party ordinarily may not submit new evidence in a reply brief, the Court’s Order
25 granting Reese’s anti-SLAPP motion cannot be considered “new evidence.” The Court’s Order, issued
26 after Ford filed the instant motion, altered the landscape of this litigation. Accordingly, the Court must
27 address Ford’s liability, if any, in light of the Order dismissing Plaintiff’s Rosenthal Act claims against
28 Reese with prejudice.

⁵ Because the Court grants Ford’s motion to dismiss on this ground, the Court need not consider
Ford’s additional arguments in support of its motion to dismiss.

1 CONCLUSION

2 For the reasons set forth above, the Court **GRANTS** Ford’s motion to dismiss
3 Plaintiff’s Complaint and **DISMISSES** Plaintiff’s FDCPA and Rosenthal Act claims
4 against Ford **with prejudice**.⁶ The Clerk of Court is instructed to terminate Ford from
5 this action.

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7 **IT IS SO ORDERED.**

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9 Dated: April 27, 2017

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11 HON. MICHAEL M. ANELLO
12 United States District Judge
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27 ⁶ Dismissal is with prejudice because any amendment to cure the deficiencies addressed herein
28 would be futile. *See AE v. County of Tulare*, 666 F.3d 631, 636 (9th Cir. 2012) (noting that “a district court abuses its discretion by denying leave to amend unless amendment would be futile or the plaintiff has failed to cure the complaint’s deficiencies despite repeated opportunities.”).