

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10

11 VINCENT MANIKAN,  
12 Plaintiff,  
13 v.  
14 PACIFIC RIDGE NEIGHBORHOOD  
15 HOMEOWNERS ASSOCIATION; N.N.  
16 JAESCHKE, INC.; et al.,  
17 Defendants.

Case No.: 3:17-cv-00467-BEN-JLB

**ORDER DENYING MOTION TO  
DISMISS**

18 Before the Court is the motion to dismiss Plaintiff’s First Amended Complaint  
19 filed by Defendants Pacific Ridge Neighborhood Homeowners Association and N.N.  
20 Jaeschke, Inc. (Docket No. 26.) The motion is fully briefed. For the reasons that follow,  
21 the Moving Defendants’ motion is **DENIED**.

22 **BACKGROUND<sup>1</sup>**

23 Plaintiff Vincent Manikan is the owner of real property in San Diego, California.  
24 Defendant Pacific Ridge Homeowners Association (“Pacific Ridge”) is a homeowner’s  
25

26  
27 <sup>1</sup> The following overview of the facts are drawn from Plaintiff’s First Amended  
28 Complaint, which the Court assumes true in analyzing Defendant’s motion to dismiss.  
*Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Court is not making factual findings.

1 association; Plaintiff's real property is located within Pacific Ridge's area. Defendant  
2 N.N. Jaeschke ("Jaeschke") is a property management company Pacific Ridge engages to  
3 manage its properties, including collection of homeowner's dues.

4 On July 20, 2012, Plaintiff filed a Chapter 13 bankruptcy case in the U.S.  
5 Bankruptcy Court for the Southern District of California.<sup>2</sup> Plaintiff scheduled a claim  
6 held by Pacific Ridge for \$3,047.04 in alleged arrears. According to Plaintiff's Initial  
7 Chapter 13 Plan ("Chapter 13 Plan"), the entire amount of Pacific Ridge's claim would  
8 be paid, and Plaintiff would thereafter remain current on his homeowner's dues.

9 On September 4, 2012, the Bankruptcy Court issued an order confirming Plaintiff's  
10 Chapter 13 Plan. On June 20, 2013, Jaeschke, as a collection agent for Pacific Ridge,  
11 filed a Proof of Claim in the Bankruptcy Court, which represented the true amount of  
12 arrears Plaintiff owed to Pacific Ridge at the time Plaintiff filed his bankruptcy case was  
13 \$2,978.24. Subsequently, on March 17, 2014, Jaeschke (on behalf of Pacific Ridge)  
14 advised Plaintiff's Chapter 13 Trustee in writing that Plaintiff's arrears had been fully  
15 paid, and requested the Trustee not forward any additional payments.

16 In response to Jaeschke's correspondence, Plaintiff's Chapter 13 Trustee filed a  
17 "Notice of Intent to Reconsider and Re-Allow Proof of Claim," which certified that the  
18 true pre-bankruptcy petition amount owed by Plaintiff to Jaeschke (on behalf of Pacific  
19 Ridge) was \$2,277.10. On November 24, 2015, the Plaintiff's Chapter 13 Trustee filed a  
20 "Notice of Final Cure Payment and Completion of Payments Under the Plan." This  
21 Notice advised Jaeschke that Plaintiff's Chapter 13 Trustee had paid it the full amount of  
22 Pacific Ridge's claim against Plaintiff in the amount of \$2,277.10.

23 Post-bankruptcy, Plaintiff has made all payments owed to Pacific Ridge.  
24 However, sometime before September 6, 2016, Pacific Ridge incorrectly determined  
25 Plaintiff owed \$2,597.04 in Homeowner's Dues, and referred Plaintiff's account to  
26

---

27  
28 <sup>2</sup> *In re Vincent G. Manikan*, Case No. 12-10069-LT13.

1 Jaeschke and Defendant Peters & Freedman, LLP (“P&F”)<sup>3</sup> for collection, including  
2 initiation of a nonjudicial foreclosure on Plaintiff’s real property based on the erroneously  
3 alleged arrears for \$2,597.04. On behalf of Pacific Ridge and Jaeschke, and with their  
4 knowledge and consent, P&F retained Defendant Advanced Attorney Services, Inc.  
5 (“AAS”), a registered process server that engages in attorney support services, including  
6 debt collection.

7 On September 2, 2016, AAS employee Dakotah Douglas (“Douglas”) entered  
8 Plaintiff’s backyard by pushing open and breaking Plaintiff’s closed gate, ultimately  
9 causing an estimated \$1,218 in damage to the gate and its surrounding posts and  
10 windows. Douglas proceeded around the side of Plaintiff’s backyard and began  
11 forcefully banging on Plaintiff’s kitchen window, which scared Plaintiff’s cousin, who  
12 phoned 911 and called for Plaintiff, who was upstairs at the time.

13 Plaintiff rushed downstairs and saw Douglas banging on the kitchen window.  
14 Plaintiff was unable to understand what Douglas was saying through the glass, and  
15 became fearful that Douglas was attempting a break-in and would physically harm  
16 Plaintiff and his family. Douglas then moved from outside the kitchen window and  
17 further around Plaintiff’s backyard before banging loudly on a bedroom window, which  
18 woke up and frightened Plaintiff’s mother who had been resting in the room.

19 Around this time, the police started to arrive, which prompted Douglas to run to  
20 the front yard. When the police arrived at Plaintiff’s property, Plaintiff opened his door  
21 and heard Douglas explain to the police that he had been hired to serve Plaintiff with a  
22 Notice of Default on behalf of Pacific Ridge. Douglas then provided Plaintiff with a  
23 copy of the Notice of Default from Pacific Ridge. The Notice of Default had a stamped  
24 recordation date of April 9, 2012, citing a balance owed as of April 9, 2012, and stated  
25 that it was from P&F at the direction of Pacific Ridge and Jaeschke.

---

26  
27  
28 <sup>3</sup> According to Plaintiff’s FAC, P&F is a partnership engaged in the practice of  
law, including debt collection.

1 On September 6, 2016, Plaintiff called P&F to explain that he had previously  
2 repaid all pre-bankruptcy arrears to Pacific Ridge. P&F’s representative, “Marcella,”  
3 explained that “according to her records, the balance provided to [P&F] by [Jaeschke] on  
4 behalf of [Pacific Ridge]” was accurate and that Plaintiff was in arrears in the amount of  
5 \$2,597.04.

6 On February 2, 2017, Plaintiff filed his initial complaint in the San Diego Superior  
7 Court alleging violations of the Federal Fair Debt Collection Practices Act and  
8 California’s Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”).<sup>4</sup> (Docket  
9 No. 1-2.) On March 7, 2017, Plaintiff’s action was removed to this Court. (Docket No.  
10 1.) On July 21, 2017, the Court granted Plaintiff’s motion to amend his complaint to add  
11 a new defendant (AAS) and assert a new claim for trespass. (Docket No. 21.) On July  
12 24, 2017, Plaintiff filed the operative First Amended Complaint (“FAC”). (Docket No.  
13 22.) Pacific Ridge and Jaeschke (“Moving Defendants”) now seek dismissal of the  
14 claims asserted against them in the FAC pursuant to Federal Rule of Civil Procedure  
15 12(b)(6).

## 16 LEGAL STANDARD

17 Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint  
18 if, taking all factual allegations as true, the complaint fails to state a plausible claim for  
19 relief on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v.*  
20 *Twombly*, 550 U.S. 544, 556-57 (2007). Dismissal is appropriate if the complaint fails to  
21 state enough facts to raise a reasonable expectation that discovery will reveal evidence of  
22 the matter complained of, or if the complaint lacks a cognizable legal theory under which  
23 relief may be granted. *Twombly*, 550 U.S. at 556.

24 “A claim is facially plausible ‘when the plaintiff pleads factual content that allows  
25 the court to draw the reasonable inference that the defendant is liable for the misconduct  
26

---

27  
28 <sup>4</sup> Case No. 37-2017-00004154-CU-NP-CTL.

1 alleged.” *Zixiang Li v. Kerry*, 710 F.3d 995, 999 (9th Cir. 2013) (quoting *Iqbal*, 556  
2 U.S. at 678). While the Court must draw all reasonable inferences in the non-movant’s  
3 favor, it need not “necessarily assume the truth of legal conclusions merely because they  
4 are cast in the form of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328  
5 F.3d 1136, 1139 (9th Cir. 2003) (internal quotations omitted). Nevertheless, “[t]he  
6 plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a  
7 sheer possibility that a defendant has acted unlawfully.” *Mashiri v. Epsten Grinnell &*  
8 *Howell*, 845 F.3d 984, 988 (9th Cir. 2017) (quoting *Iqbal*, 556 U.S. at 678).

### 9 DISCUSSION

10 Plaintiff’s FAC asserts one state law claim against each of the Moving Defendants  
11 for violation of the Rosenthal Act. The Moving Defendants’ motion argues that Plaintiff  
12 has failed to state a claim against either of them on two primary grounds:<sup>5</sup> (1) neither  
13 Pacific Ridge nor Jaeschke are “debt collectors” as defined by the Rosenthal Act; and  
14 (2) even if they were debt collectors, the alleged wrongful conduct is not covered by the  
15 Rosenthal Act. As will be explained in further detail below, the Court finds the  
16 allegations in Plaintiff’s FAC sufficient to withstand the motion to dismiss.

17 The Rosenthal Act is intended “to prohibit debt collectors from engaging in unfair  
18 or deceptive acts or practices in the collection of consumer debts and to require debtors to  
19 act fairly in entering into and honoring such debts[.]” Cal Civ. Code § 1788.1. To state a  
20 claim for violation of the Rosenthal Act, a plaintiff must plausibly allege: (1) he is a  
21 debtor; (2) the debt at issue is a “consumer debt”; (3) the defendant is a “debt collector”;  
22 and (4) “that the defendant violated one of the liability provisions of the [Rosenthal

23 ///

---

24  
25  
26 <sup>5</sup> The Court’s analysis of the Moving Defendants’ primary arguments does not  
27 mean the Court has not considered all of the Moving Defendants’ grounds for dismissal.  
28 The Court has reviewed and considered all of the arguments contained therein, even  
though it may not expressly discuss each argument.

1 Act].”<sup>6</sup> *Ansari v. Elec. Document Processing Inc.*, Case No. 5:12-CV-01245-LHK, 2013  
2 WL 4647621, at \*4 (N.D. Cal. Aug. 29, 2013)).

3 Under the Rosenthal Act, a “debt collector” is:

4 any person who, in the ordinary course of business, regularly,  
5 on behalf of himself or herself or others, engages in debt  
6 collection. The term includes any person who composes and  
7 sells, or offers to compose and sell, forms, letters, and other  
8 collection media used or intended to be used for debt collection,  
9 but does not include an attorney or counselor at law.

9 Cal. Civ. Code § 1788.2(c). “The term ‘debt collection’ means any act or practice in  
10 connection with the collection of consumer debts.” *Id.* § 1788.2(b).

11 The Moving Defendants’ complain that Plaintiff “merely alleges legal conclusions  
12 cast in the form of factual allegations.” (Mot. at p. 6.) However, their argument is based  
13 on their own legal conclusion that “[n]either Pacific Ridge nor [Jaeschke] engage in debt  
14 collection regularly, or in the ordinary course of their business.” (*Id.*) (*see also id.* at p. 1)  
15 (“Pacific Ridge and N.N. Jaeschke are first party creditors; they are *not* debt collectors.  
16 Pacific Ridge is a homeowners’ association; N.N. Jaeschke is the general manager for the  
17 homeowners’ association.”) (emphasis in original.) The Moving Defendants offer no  
18 authority to support their implied argument that their self-identification as a homeowners’  
19 association and property management company, *ipso facto*, shields them from liability  
20 under the Rosenthal Act. Moreover, the Ninth Circuit has recognized that the Rosenthal  
21 Act “does not exempt homeowners’ associations attempting to collect overdue  
22 assessment fees pursuant to California Civil Code § 5660.” *Mashiri*, 845 F.3d at 989 n.5  
23 (citing *Ho v. ReconTrust Co., NA*, 840 F.3d 618, 623 n.8 (9th Cir. 2016), *amended and*  
24 *superseded on other grounds by Vien-Phuong Thi Ho v. ReconTrust Co., NA*, 858 F.3d  
25 568 (9th Cir. 2017)).

---

26  
27  
28 <sup>6</sup> The Moving Defendants do not dispute that the first two elements have been  
sufficiently pled.

1 Here, the FAC alleges Pacific Ridge regularly attempts to collect monthly  
2 association dues, fines levied by the association, and other “consumer debts” allegedly  
3 owed to it through the use of the mails and telephone. (FAC ¶ 13.) As to Jaeschke, the  
4 FAC alleges Jaeschke regularly attempts to collect delinquent “consumer debts” allegedly  
5 owed to Pacific Ridge through the use of the mails and telephone. (*Id.* ¶ 15.) Jaeschke is  
6 further alleged to have acted on Pacific Ridge’s behalf in Plaintiff’s bankruptcy case to  
7 collect amounts owed by Pacific Ridge. (*Id.* ¶¶ 24-31.) Accepting these factual  
8 allegations as true, the Court finds Plaintiff has met his pleading burden to plausibly  
9 allege that Moving Defendants are “debt collectors” as defined by the Rosenthal Act.<sup>7, 8</sup>

10 Next, the Moving Defendants challenge the sufficiency of the FAC’s pleading  
11 regarding the alleged conduct attributable to them. First, they argue the FAC only alleges  
12 specific acts by P&F and AAS and does not allege that either Moving Defendant took  
13 any specific actions in violation of the Rosenthal Act. However, as Plaintiff accurately  
14 identifies, the FAC specifically alleges “Pacific Ridge incorrectly determined Plaintiff  
15 was in default of \$2,597.04 on his Homeowner’s Dues, and referred Plaintiff’s account to  
16  
17

---

18 <sup>7</sup> It may be that, after a reasonable opportunity to conduct discovery, the Moving  
19 Defendants are able to prove with evidence that they are not “debt collectors” under the  
20 Rosenthal Act. However, this is a question of fact that is inappropriate for determination  
21 in a Rule 12(b)(6) motion to dismiss.

22 <sup>8</sup> Because the Court concludes Plaintiff plausibly alleges the Moving Defendants’  
23 are “debt collectors,” the Court rejects their argument that they “cannot be vicariously  
24 liable” for P&F’s and/or AAS’s conduct on because they “do not qualify as ‘debt  
25 collectors.’” (Mot. at p. 10.) As they correctly acknowledge, a client may be held  
26 vicariously liable for the debt collector attorney’s misconduct “where the client itself was  
27 a debt collector within the meaning of the statute.” (*Id.*) (citing *Fox v. Citicorp Credit  
28 Servs.*, 15 F.3d 1507, 1516 (9th Cir. 1994)). *See also Huy Thanh Vo v. Nelson &  
Kennard*, 931 F. Supp. 2d 1080, 1090 (E.D. Cal. 2013) (“By acting as the creditor’s  
agent, and in effect, allowing the creditor to say, ‘I didn’t do it; my attorney did it,’ the  
attorney allows the creditor to collect under ‘a name other than his own which would  
indicate that a third person is collecting or attempting to collect such debts.’”).

1 its agents, [Jaeschke], and P&F, for collection thereon, including nonjudicial  
2 foreclosure.” (FAC ¶ 34.) The FAC also alleges P&F was Pacific Ridge’s and/or  
3 Jaeschke’s agent or sub/agent, who, in turn, “retained and instructed [AAS] to personally  
4 serve Plaintiff with a Notice of Default as part of an action to pursue nonjudicial  
5 foreclosure of Plaintiff’s residence due to the alleged arrears of \$2,597.04, which were  
6 not actually owed.” (*Id.* ¶ 37.) P&F’s and AAS’s actions were allegedly taken “with [the  
7 Moving Defendants’] knowledge and consent. (*Id.*) The Court finds these allegations  
8 sufficient to attribute specific conduct to the Moving Defendants.

9       Additionally, the Moving Defendants’ assertion that Plaintiff failed to state a claim  
10 because the debt allegedly sought to be collected was authorized by law is without merit.  
11 The FAC clearly alleges the consumer debt underlying his claim against the Moving  
12 Defendants was *not* authorized by law because he specifically asserts he was current on  
13 all of his payments and did not owe any arrears to Pacific Ridge at the time the alleged  
14 wrongful conduct occurred. (*See* FAC ¶¶ 32-37.) To the extent the Moving Defendants  
15 attempt to argue that the Notice of Default Douglas served on Plaintiff was for the same  
16 debt that was the subject of the claim they held in Plaintiff’s bankruptcy case, the FAC  
17 clearly alleges that this claim had already been paid, and the Moving Defendants were or  
18 should have been aware of the satisfaction of that claim. (*Id.* ¶¶ 24-37.)

19       Similarly, the Court is not persuaded by Moving Defendants’ argument that the  
20 alleged conduct is not actionable under the Rosenthal Act because the Notice of Default  
21 served on Plaintiff was “in pursuit of conducting an authorized, non-judicial foreclosure  
22 pursuant to a deed of trust” from Plaintiff’s bankruptcy case. (Mot. at pp. 8-9.) This  
23 argument again misconstrues the factual allegations of Plaintiff’s FAC, which asserts the  
24 Moving Defendants violated the Rosenthal Act in their attempts to collect an alleged debt  
25 that was incorrectly attributed to Plaintiff. (*See* FAC ¶¶ 32-37).

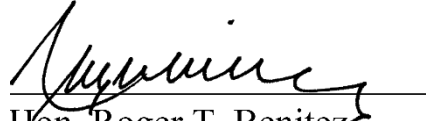
26       In sum, the Court finds the FAC plausibly alleges “more than a sheer possibility”  
27 that the Moving Defendants have acted unlawfully, and therefore denies their motion to  
28 dismiss. *Mashiri*, 845 F.3d at 988.



1 **CONCLUSION**

2 For all of the foregoing reasons, Pacific Ridge and Jaeschke’s motion to dismiss  
3 Plaintiff’s First Amended Complaint is **DENIED**.

4  
5 Dated: March 29, 2018

6   
7 Hon. Roger T. Benitez  
8 United States District Judge  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28