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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PATRICK AMES,

Plaintiff,

v.

T-MOBILE USA, INC.,

Defendant.

Case No.: 3:17-cv-01666-L-AGS

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT’S MOTION [Doc. 11] TO DISMISS

Pending before this Court is Defendant T-Mobile USA, Inc.’s (“T-Mobile”) motion to dismiss Plaintiff Patrick Ames’ (“Plaintiff”) First Amended Complaint. The Court decides the matter on the papers submitted and without oral argument. See Civ. L. R. 7.1(d)(1). For the reasons stated below, the Court **GRANTS IN PART** and **DENIES IN PART** T-Mobile’s motion to dismiss.

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1 **I. BACKGROUND**

2 This case arises out of T-Mobile’s alleged practice of soliciting personal
3 information from potential customers and using it to open unauthorized cell phone
4 service accounts. The alleged purpose of this practice is to generate revenue by billing
5 the unauthorized accounts.

6 Plaintiff claims to have fallen victim to this scheme in August of 2016. At that
7 time, Plaintiff entered one of T-Mobile’s stores to obtain a price quote for T-Mobile’s
8 telephone services. A T-Mobile sales representative told Plaintiff it was necessary to fill
9 out a credit report application in order to receive a price quote. The sales representative
10 also told Plaintiff that T-Mobile would not charge him any payments or fees for the
11 application and that T-Mobile would use the information only to produce the price quote.
12 In reliance on this representation, Plaintiff provided his social security number, address,
13 and telephone number.

14 After receiving T-Mobile’s price quote, Plaintiff elected not to purchase T-
15 Mobile’s services. Plaintiff therefore did not sign any agreement to purchase goods or
16 services. Instead he left the store with no plans to purchase anything from T-Mobile.
17 Nevertheless, Plaintiff subsequently received letters from T-Mobile and a third-party debt
18 collector attempting to collect payment for T-Mobile’s telephone services. The letter
19 from the third-party debt collector stated Plaintiff had an outstanding debt of \$46.66 due
20 to T-Mobile.

21 Accordingly, Plaintiff filed a putative class action complaint with the Superior
22 Court of California, County of San Diego, alleging (1) violation of the Rosenthal Fair
23 Debt Collection Practices Act (“RFDCPA”), Cal. Civ. Code § 1788; (2) violation of the
24 Consumer Legal Remedies Act (“CLRA”), Cal. Civ. Code § 1770; (3) violation of Cal.
25 Bus. Code § 17200, (“UCL”); (4) common law fraud; and (5) invasion of privacy. T-
26 Mobile subsequently removed and moved to dismiss. Instead of opposing T-Mobile’s
27 first motion to dismiss, Plaintiff filed a First Amended Complaint. (FAC [Doc. 9].) T-
28 Mobile now moves to dismiss Plaintiff’s First Amended Complaint. (MTD [Doc. 11.]

1 Plaintiff opposes T-Mobile’s motion to dismiss as to all claims except his invasion of
2 privacy claim. (Opp’n [Doc. 12.]
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4 **II. LEGAL STANDARD**

5 The court must dismiss a cause of action for failure to state a claim upon which
6 relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6)
7 tests the complaint’s sufficiency. *See N. Star Int’l v. Ariz. Corp. Comm’n.*, 720 F.2d 578,
8 581 (9th Cir. 1983). The court must assume the truth of all factual allegations and
9 “construe them in the light most favorable to [the nonmoving party].” *Gompper v. VISX,*
10 *Inc.*, 298 F.3d 893, 895 (9th Cir. 2002); *see also Walleri v. Fed. Home Loan Bank of*
11 *Seattle*, 83 F.2d 1575, 1580 (9th Cir. 1996).

12 As the Supreme Court explained, “[w]hile a complaint attacked by a Rule 12(b)(6)
13 motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to
14 provide the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and
15 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
16 *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007) (internal citations and
17 quotation marks omitted). Instead, the allegations in the complaint “must be enough to
18 raise a right to relief above the speculative level.” *Id.* at 1965.¹ A complaint may be
19 dismissed as a matter of law either for lack of a cognizable legal theory or for insufficient
20 facts under a cognizable theory. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530,
21 534 (9th Cir. 1984).

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27 ¹ Some of Plaintiffs’ claims are subject to the enhanced pleading requirements of Fed. R. Civ. P. 9(b).
28 However, the Court need not undertake a Rule 9(b) analysis here because T-Mobile’s motion to dismiss
does not present any arguments specifically demonstrating how Plaintiff’s allegations fail to satisfy the
particularity requirements of Rule 9(b).

1 **III. RFDCPA CLAIM**

2 T-Mobile argues that Plaintiff’s RFDCPA claim fails because Plaintiff does not
3 allege a consumer debt. The existence of a consumer debt is a necessary element of
4 Plaintiff’s RFDCPA claim. Cal. Civ. Code § 1788.17. Consumer debt, for purposes of
5 the RFDCPA, means debt stemming from a “consumer credit transaction.” Cal. Civ.
6 Code § 1788.2(f). The RFDCPA defines a consumer credit transaction as “a transaction
7 between a natural person and another person in which property, services or money is
8 acquired on credit by that natural person from such other person primarily for personal,
9 family, or household purposes.” Cal. Civ. Code § 1788.2(e).

10 T-Mobile contends that no consumer credit transaction occurred because Plaintiff
11 never acquired property, services, or money on credit from T-Mobile. In response,
12 Plaintiff cites to *Ayer v. Frontier Commc’ns Corp.*, 2017 WL 3049572 (C.D. Cal. 2017)
13 for the proposition that the acquisition of telephone services on credit qualifies as a
14 consumer credit transaction. *Id.* at *5. While this is an accurate statement of the law, it is
15 unhelpful to Plaintiff because he does not allege that he actually acquired telephone
16 services on credit from T-Mobile. Nor does Plaintiff allege that he acquired any other
17 variety of product, service, or money on credit from T-Mobile. Because Plaintiff thus
18 fails to allege a consumer credit transaction, the Court **GRANTS** T-Mobile’s motion to
19 dismiss as to the RFDCPA claim. Given that Plaintiff has already amended his complaint
20 once and he explicitly alleges that he did not purchase any goods or services from T-
21 Mobile, it is clear that Plaintiff cannot cure this defect through further amendment. This
22 dismissal is therefore with prejudice.

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24 **IV. CLRA CLAIM**

25 To state a CLRA claim, a plaintiff must allege that a defendant caused him harm
26 by employing a statutorily enumerated “deceptive act or practice” in connection with a
27 consumer *transaction* for the sale or lease of goods or services. Cal. Civ. Code § 1770.
28 The CLRA defines a “transaction” as “an agreement between a consumer and another

1 person, whether or not the agreement is a contract enforceable by action, and includes the
2 making of, and the performance pursuant to, that agreement. Cal. Civ. Code § 1761.

3 Here, Plaintiff argues in his opposition that “[T-Mobile] forced Plaintiff into a
4 transaction and agreement without his permission...” (Opp’n 10:28–11:1.) This
5 argument is unpersuasive. The premise that Plaintiff did not grant T-Mobile permission
6 to charge him for telephone services is logically inconsistent with the idea that Plaintiff
7 and T-Mobile agreed to exchange telephone services for money. Furthermore, Plaintiff
8 alleges that he “did not purchase any services from [T-Mobile], did not sign an agreement
9 to purchase goods or services.” (FAC ¶ 15.) Plaintiff also alleges that he left the store
10 “with no plans to purchase anything from [T-Mobile].” (Id.)

11 By thus alleging that he never entered into an agreement with T-Mobile, Plaintiff
12 has negated the transaction element of his CLRA claim.² The Court therefore **GRANTS**
13 T-Mobile’s motion with respect to the CLRA claim. It seems unlikely that Plaintiff can
14 cure these defects without contradicting the allegations in his First Amended Complaint.
15 However, given the liberal amendment policy enshrined in Federal Rule of Civil
16 Procedure 15(a)(2), the Court will allow leave to amend.

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18 **V. UCL CLAIM**

19 T-Mobile argues that Plaintiff lacks standing to bring his UCL claim. Standing
20 under the UCL requires “(1) a loss or deprivation of money or property sufficient to
21 qualify as injury in fact, i.e., economic injury, and (2) [a] show[ing] that the economic
22 injury was the result of, i.e., caused by, the unfair business practice.” *Kwikset Corp. v.*
23 *Superior Court*, 51 Cal. 4th 310, 321–23 (2011) (citing Cal. Bus. & Prof. Code § 17204).

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26 ² The Court notes that the alleged agreement between Plaintiff and T-Mobile pursuant to which T-
27 Mobile would run his credit and give him a price quote cannot sustain a CLRA claim. This agreement
28 did not result in the sale or lease of services, nor does Plaintiff allege it was intended to result in any sale
or lease. Cal. Civ. Code § 1770(a). Rather, the purpose of the price quote was to gather information to
enable Plaintiff to choose whether or not he wanted to enter into a contract for T-Mobile’s telephone
services.

1 An enforceable obligation amounting to an imminent threat of injury to a legally
2 protected interest qualifies as economic damage. *Hale v. Sharp Healthcare*, 183 Cal.
3 App. 4th 1373, 1383–84 (2010).

4 In *Hale*, Plaintiff Hale made a \$500 payment towards an outstanding medical bill
5 of \$14,447.65. *Hale*, 183 Cal. App. 4th at 1378. The California Court of Appeal held
6 that the enforceable debt for the remaining balance independently qualified as economic
7 injury. *Id.* at 1383-84. Like the plaintiff in *Hale*, Plaintiff here is subject to an imminent
8 threat of injury from the allegedly enforceable \$46.66 debt. T-Mobile cites no authority
9 and presents no argument to the effect that the Court of Appeal in *Hale* erred in holding
10 that enforceable debt is independently sufficient to qualify as economic injury.
11 Accordingly, the Court finds Plaintiff has sufficiently alleged economic injury and
12 therefore **DENIES** T-Mobile’s motion to dismiss as to the UCL claim.

13 14 **VI. COMMON LAW FRAUD CLAIM**

15 The elements of a fraud claim are a misrepresentation; knowledge of falsity; intent
16 to defraud; justifiable reliance; and resulting damage. *Lazar v. Superior Court*, 12 Cal.
17 4th 631, 638 (1996). T-Mobile argues Plaintiff’s fraud claim fails because he does not
18 adequately allege a misrepresentation or intent to defraud.³ A misrepresentation can be a
19 false representation, concealment, or nondisclosure. *Id.* T-Mobile argues Plaintiff fails to
20 allege a misrepresentation because (1) he does not claim a credit report application was
21 unnecessary to obtain a price quote on T-Mobile’s services; (2) he fails to allege the
22 representation of not being charged for a credit report application was false; and (3) his
23 claim that he would not be charged for anything was implausible because telephone
24 companies “do not provide free phones.”

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27 ³ T-Mobile also argues that Plaintiff’s fraud claim fails because he suffered only emotional distress
28 damages. (MTD 7:1–13.) This argument fails for the reasons articulated in Section V above. To wit,
Plaintiff has adequately alleged economic injury.

1 T-Mobile's arguments are problematic in that they ignore some of Plaintiff's
2 central allegations. Plaintiff clearly alleges that T-Mobile represented to him that filling
3 out the credit check application, without more, would not cause Plaintiff to incur any
4 charges. (FAC ¶ 13.) Plaintiff alleges this representation was false because, after he
5 filled out the application, T-Mobile used the information he provided to charge him for
6 its services, despite the fact that he never agreed to such charges. (Id. ¶ 16.) This
7 allegation is sufficient to state a misrepresentation.

8 The dispositive issue on Plaintiff's fraud claim therefore becomes the intent
9 element. Intent to defraud means an intent to induce reliance on the misrepresentation.
10 *Lazar*, 12 Cal. 4th at 638. Intent may be alleged generally. Fed. R. Civ. P. 9(b). Here,
11 Plaintiff alleges that, in an effort to induce Plaintiff to provide his personal information,
12 T-Mobile misrepresented that it would not charge Plaintiff. (FAC ¶ 14.) T-Mobile then
13 allegedly used Plaintiff's personal information to open an unauthorized account in his
14 name and bill him for services he did not purchase. Viewing these allegations in a light
15 most favorable to Plaintiff, the Court finds that they suffice to nudge the intent element
16 into the realm of plausibility. Accordingly, the Court **DENIES** T-Mobile's motion to
17 dismiss as to the fraud claim.

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1 **VII. CONCLUSION AND ORDER**

2 For the foregoing reasons, the Court **GRANTS IN PART** and **DENIES IN PART**
3 T-Mobile's motion to dismiss as follows:

- 4 • Plaintiff's RFDCPA claim is dismissed with prejudice.
- 5 • Plaintiff's CLRA claim is dismissed without prejudice.
- 6 • In light of Plaintiff's non-opposition, Plaintiff's invasion of privacy claim is
7 dismissed without prejudice.
- 8 • All other claims may proceed.
- 9 • If Plaintiff chooses to file a second amended complaint, he must do so within
10 twenty one days of the entry of this order.

11 **IT IS SO ORDERED.**

12 Dated: July 13, 2018

13 
14 Hon. M. James Lorenz
15 United States District Judge