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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PATRICK HAGGERTY,  
  
Plaintiff,  
  
v.  
  
SIRY INCORPORATED, dba SIRY  
AUTO GROUP; REZA SIRY; and JOHN  
SIRY,  
  
Defendants  
  
AND RELATED COUNTERCLAIMS.

Case No.: 3:20-cv-2526-CAB-WVG  
  
**ORDER GRANTING MOTION TO  
DISMISS [Doc. No. 41] AND  
DENYING AS MOOT COUNTER  
MOTION FOR SUMMARY  
JUDGMENT [Doc. No. 48]**

On December 20, 2021, a telephonic hearing was held regarding Defendant’s motion to dismiss the amended complaint [Doc. No. 41] and Plaintiff’s counter motion for summary judgment [Doc. No. 48]. Plaintiff Patrick Haggerty appeared *pro se*. Christopher Holt, Esq., appeared on behalf of Defendant/Counterclaimant Siry, Incorporated dba Siry Auto Group. For the reasons set forth below, the motion to dismiss is **GRANTED** and the counter motion for summary judgment is **DENIED AS MOOT**.

**BACKGROUND**

On July 10, 2020, Plaintiff signed a contract to purchase a 2014 Toyota Avalon from Defendant for \$18,065.26. Under the terms of the contract, Plaintiff was to pay a \$4,000 deposit (of which only \$3,000 was paid) and would take possession of the car

1 while Defendant attempted to assign the contract to a financing company. If the contract  
2 could not be assigned, Defendant had the right to cancel it and Plaintiff would be required  
3 to immediately return the car and would be liable for the costs of recovery if he did not.

4 When no finance company would accept assignment of the contract, Defendant  
5 notified Plaintiff that it was exercising its right to cancel the contract and the car should  
6 be returned. Instead of returning the car, Plaintiff sent a letter that asserted debt-related  
7 legal theories. After several weeks of letter and phone calls, Plaintiff had still not returned  
8 the car or addressed the cancelation of the contract. Defendant hired a towing service to  
9 recover the car.

10 Plaintiff filed a complaint asserting that he had a right to keep the vehicle and  
11 asserting causes of action for fraudulent misrepresentation; theft of public funds; breach  
12 of contract; restraint on commerce and trade; violation of the Fair Debt Collection  
13 Practices Act; violation of the Truth In Lending Act; and negligent misrepresentation.  
14 Defendant filed a motion for judgment on the pleadings. [Doc. No. 27.] In response,  
15 Plaintiff asked for leave to file an amended complaint [Doc. No. 37], which the Court  
16 granted on October 18, 2021 [Doc. No. 39].

17 On October 18, 2021, Plaintiff filed the Amended Complaint. [Doc. No. 40.] On  
18 November 9, 2021, Defendant filed a motion to dismiss the Amended Complaint. [Doc.  
19 No. 41.] On November 18, 2021, Plaintiff filed an opposition to the motion to dismiss.  
20 [Doc. No. 45], which was later withdrawn and replaced by a corrected opposition [Doc.  
21 Nos. 51, 52]. On November 30, 2021, Defendants filed a reply. [Doc. No. 47.] On  
22 December 1, 2021, Plaintiff filed a Counter Motion for Summary Judgment. [Doc. No.  
23 48.]

## 24 LEGAL STANDARD

25 A motion to dismiss for failure to state a claim should be granted if plaintiff fails to  
26 proffer “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp.*  
27 *v. Twombly (Twombly)*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal (Iqbal)*, 556 U.S.  
28 662, 678 (2009); *Cook v. Brewer*, 637 F.3d 1002, 1004 (9th Cir. 2011). “A claim has

1 facial plausibility when the plaintiff pleads factual content that allows the court to draw  
2 the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*,  
3 556 U.S. at 678; *Cook*, 637 F.3d at 1004; *Caviness v. Horizon Cmty. Learning Ctr., Inc.*,  
4 590 F.3d 806, 812 (9th Cir. 2010). Although the plaintiff must provide “more than labels  
5 and conclusions, and a formulaic recitation of the elements of a cause of action will not  
6 do,” *Twombly*, 550 U.S. at 555; *Iqbal*, 556 U.S. at 678; *see also Cholla Ready Mix, Inc. v.*  
7 *Civish*, 382 F.3d 969, 973 (9th Cir. 2004) (“[T]he court is not required to accept legal  
8 conclusions cast in the form of factual allegations if those conclusions cannot reasonably  
9 be drawn from the facts alleged. Nor is the court required to accept as true allegations  
10 that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.”)  
11 (citations and internal quotation marks omitted), “[s]pecific facts are not necessary; the  
12 [complaint] need only give the defendant[s] fair notice of what the ... claim is and the  
13 grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S.Ct. 2197, 2200  
14 (2007) (per curiam) (citations and internal quotation marks omitted); *Twombly*, 550 U.S.  
15 at 555, 127 S.Ct. at 1964.

## 16 17 DISCUSSION

### 18 19 A. Equal Credit Opportunity Act.

20 Plaintiff asserts in his first cause of action that Defendant violated the Equal Credit  
21 Opportunity Act (“ECOA”)(15 U.S.C. §1691 et seq.) by discriminating against him (15  
22 U.S.C. §1691 subd. (a)) and by failing to send notice of an adverse action (15 U.S.C.  
23 §1691(d)). There are no fact allegations to support the conclusory allegations that  
24 Defendant discriminated against Plaintiff on the basis of race or religion. Moreover,  
25 Defendant is not a “creditor” for purposes of the ECOA provision. *See Treadway v.*  
26 *Gateway Chevrolet Oldsmobile, Inc.*, 362 F.3d 971, 979 (7<sup>th</sup> Cir. 2004). Accordingly, the  
27 motion to dismiss the first cause of action is **GRANTED WITHOUT LEAVE TO**  
28 **AMEND.**

1 B. Truth In Lending Act.

2 Plaintiff’s second cause of action asserts a violation of the Truth in Lending Act  
3 (“TILA”), 15 U.S.C. §1601. However, Plaintiff’s conclusory allegations are either  
4 contradicted by the actual terms of the Sales Contract<sup>1</sup> or are not relevant to the Truth In  
5 Lending Act. Accordingly, the motion to dismiss the second cause of action is  
6 **GRANTED WITHOUT LEAVE TO AMEND.**

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8 C. Federal Fair Debt Collection Practices Act.

9 Plaintiff’s third cause of action asserts violations of the Fair Debt Collection Practices  
10 Act (“FDCPA”), 15 U.S.C. §1692 et seq. However, Defendant is not a “debt collector”  
11 as defined by the FDCPA, because Defendant is alleged by Plaintiff to have been  
12 collecting its own debt. *See* 15 U.S.C. §1692(4); *Henson v. Santander Consumer USA*  
13 *Inc.*, 137 S.Ct. 1718, 1721-22 (2017). Accordingly, the motion to dismiss the third cause  
14 of action is **GRANTED WITHOUT LEAVE TO AMEND.**

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16 D. Federal Trade Commission Regulations.

17 Plaintiff’s fourth cause of action alleges Defendant violated a number of FTC  
18 regulations found at Title 16, Chapter I, Subchapter D of the Code of Federal  
19 Regulations. However, each alleged violation is contradicted by the terms of the Sales  
20 Contract. *Sprewell*, 266 F.3d at 988. Accordingly, the motion to dismiss the fourth cause  
21 of action is **GRANTED WITHOUT LEAVE TO AMEND.**

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27 <sup>1</sup> *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)(Documents whose contents  
28 are alleged in a complaint and whose authenticity is not questioned by either party may be considered by  
a court ruling on a Rule 12(b)(6) motion to dismiss).

1 E. State law claims.

2 Having dismissed Plaintiff's federal claims, the Court's "decision of whether to  
3 exercise supplemental jurisdiction over the remaining state law claims 'is purely  
4 discretionary.'" *Couture v. Wells Fargo Bank, N.A.*, No. 11-CV-1096-IEG (CAB), 2011  
5 WL 3489955, at \*4 (S.D. Cal. Aug. 9, 2011) (*quoting Carlsbad Tech., Inc. v. HIF Bio, Inc.*,  
6 556 U.S. 635, 639 (2009)); *see also Holt v. First Franklin Fin. Corp.*, No. C 10-5929 SBA,  
7 2011 WL 4595195, \*4 (N.D. Cal. Sept. 30, 2011) ("When the federal claims that served as  
8 the basis for jurisdiction are eliminated, either through dismissal by the court or by a  
9 plaintiff amending his or her complaint, federal courts may decline to assert supplemental  
10 jurisdiction over the remaining state law causes of action.") (citing 28 U.S.C. § 1367(c)(3)).

11 Here, because the Court is dismissing all the federal claims in the earlier stages of  
12 the litigation, it is more appropriate to decline supplemental jurisdiction over the state law  
13 claims. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988) (holding that  
14 "when the federal-law claims have dropped out of the lawsuit in its early stages and only  
15 state-law claims remain, the federal court should decline the exercise of jurisdiction by  
16 dismissing the case without prejudice"); *see also Sanford v. MemberWorks, Inc.*, 625 F.3d  
17 550, 561 (9th Cir. 2010) ("A district court 'may decline to exercise supplemental  
18 jurisdiction' if it 'has dismissed all claims over which it has original jurisdiction.'")  
19 (*quoting* 28 U.S.C. § 1367(c)(3)). Plaintiff remains free to pursue any appropriate state  
20 law claims for relief in state court, as does Defendant/Counterclaimant.

21  
22 **CONCLUSION**

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24 For the reasons set forth above, it is hereby **ORDERED:**

- 25 1. Defendant's motion to dismiss the federal claims (first through fourth causes of  
26 action) is **GRANTED WITHOUT LEAVE TO AMEND;**

- 1 2. Because the Court declines supplemental jurisdiction over any remaining state
- 2 law claims, those claims are **DISMISSED WITHOUT PREJUDICE** to
- 3 Plaintiff's ability to pursue them in state court;
- 4 3. The Counter motion for summary judgment is **DENIED AS MOOT**;
- 5 4. Defendant/Counterclaimant's Counter Claim is also **DISMISSED WITHOUT**
- 6 **PREJUDICE** to being pursued in state court;
- 7 5. The Clerk of Court shall **CLOSE** the case.

8 **IT IS SO ORDERED.**

9 Dated: December 20, 2021



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11 Hon. Cathy Ann Bencivengo  
12 United States District Judge  
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