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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RUSSELL PATTON, <p style="text-align: center;">Plaintiff(s),</p> <p style="text-align: center;">v.</p> FINANCIAL BUSINESS AND CONSUMER SOLUTIONS, INC, <p style="text-align: center;">Defendant(s).</p>		Case No. 2:16-CV-2738 JCM (CWH) <p style="text-align: center;">ORDER</p>
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Presently before the court is defendant Financial Business and Consumer Solutions, Inc.’s motion to dismiss. (ECF No. 22). Plaintiff Russell Patton filed a response (ECF No. 26), to which defendant replied (ECF No. 27).

I. Facts

The instant action arises from alleged violations of the Federal Debt Collection Practices Act (“FDCPA”).

Plaintiff allegedly opened a Capital One credit card account and accumulated about \$500.00 dollars in debt. (ECF No. 20 at 5). Subsequently, Midland Funding LLC/Midland Credit Management, Inc. (“Midland”) retained defendant to collect plaintiff’s debt. (ECF No. 20 at 5–6). On February 5, 2016, defendant sent plaintiff a collection letter attempting to collect the debt. (ECF No. 20 at 5).

Plaintiff alleges that the alleged debt does not belong to him, he did not incur the charges underlying the debt, and he did not sign a contract creating the alleged debt. (ECF No. 20 at 7).

1 On November 20, 2016, plaintiff filed the underlying complaint (ECF No. 1), which he
2 later amended with leave of court on May 4, 2017 (ECF No. 20). In the amended complaint,
3 plaintiff alleges one cause of action pursuant to the FDCPA. (ECF No. 20).

4 In the instant motion, defendant moves to dismiss the complaint pursuant to Federal Rule
5 of Civil Procedure 12(b)(6). (ECF No. 22).

6 **II. Legal Standard**

7 A court may dismiss a complaint for “failure to state a claim upon which relief can be
8 granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “[a] short and plain
9 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell*
10 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed
11 factual allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
12 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

13 “Factual allegations must be enough to rise above the speculative level.” *Twombly*, 550
14 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual
15 matter to “state a claim to relief that is plausible on its face.” *Iqbal*, 556 U.S. at 678 (citation
16 omitted).

17 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply
18 when considering motions to dismiss. First, the court must accept as true all well-pled factual
19 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
20 *Id.* at 678–79. Mere recitals of the elements of a cause of action, supported only by conclusory
21 statements, do not suffice. *Id.* at 678.

22 Second, the court must consider whether the factual allegations in the complaint allege a
23 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s complaint
24 alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the
25 alleged misconduct. *Id.* at 678.

26 Where the complaint does not permit the court to infer more than the mere possibility of
27 misconduct, the complaint has “alleged—but not shown—that the pleader is entitled to relief.” *Id.*

28

1 (internal quotation marks omitted). When the allegations in a complaint have not crossed the line
2 from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

3 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d 1202,
4 1216 (9th Cir. 2011). The *Starr* court stated, in relevant part:

5 First, to be entitled to the presumption of truth, allegations in a complaint or
6 counterclaim may not simply recite the elements of a cause of action, but must
7 contain sufficient allegations of underlying facts to give fair notice and to enable
8 the opposing party to defend itself effectively. Second, the factual allegations that
are taken as true must plausibly suggest an entitlement to relief, such that it is not
unfair to require the opposing party to be subjected to the expense of discovery and
continued litigation.

9 Id.

10 **III. Discussion**

11 In the instant motion, defendant argues that dismissal is proper because plaintiff's
12 arguments that he is not the responsible party and that the credit card account was not opened until
13 2015 are unsupported and unsupportable. (ECF No. 22).

14 The court disagrees. Defendant's motion fails to set forth an adequate basis upon which to
15 warrant dismissal. Defendant incorrectly assumes that plaintiff's FDCPA claim is defeated upon
16 a showing that plaintiff is the responsible party and that the credit card account was opened prior
17 to 2015.

18 The FDCPA provides protection from abusive debt collection practices. 15 U.S.C. § 1692
19 et seq. "The FDCPA bars the use of any false, deceptive, or misleading representation in
20 connection with the collection of any debt." *Cruz v. Int'l Collection Corp.*, 673 F.3d 991, 997 (9th
21 Cir. 2012) (citing 15 U.S.C. § 1692e). The FDCPA further prohibits "[t]he collection of any
22 amount . . . unless such amount is expressly authorized by the agreement creating the debt or
23 permitted by law." *McCullough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 950 (9th
24 Cir. 2011) (quoting 15 U.S.C. § 1692f(1)).

25 In the amended complaint, plaintiff alleges that defendant violated various provisions of
26 the FDCPA because defendant had no legal right to collect, was not expressly authorized by
27 agreement to collect, and attempted to collect interests and fees not expressly authorized. (ECF
28 No. 20). Plaintiff alleges that the alleged debt does not belong to him, he did not incur the charges

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underlying the debt, and he did not sign a contract creating the alleged debt. (ECF No. 20 at 7).
Taken as true, plaintiff has sufficiently stated a claim under the FDCPA.

Accordingly, the court will deny defendant's motion to dismiss (ECF No. 22).

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Financial Business and Consumer Solutions, Inc.'s motion to dismiss (ECF No. 22) be, and the same hereby is, DENIED.

DATED July 20, 2017.


UNITED STATES DISTRICT JUDGE