

1 **Civil No. 13-1280 (GAG)**

2 need only ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it
3 rests.’” Id. (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

4 Under Rule 12(b)(6), a defendant may move to dismiss an action against him for failure to
5 state a claim upon which relief can be granted. See FED. R. CIV. P. 12(b)(6). To survive a Rule
6 12(b)(6) motion, a complaint must contain sufficient factual matter “to state a claim to relief that is
7 plausible on its face.” Twombly, 550 U.S. at 570. The court must decide whether the complaint
8 alleges enough facts to “raise a right to relief above the speculative level.” Id. at 555. In so doing,
9 the court accepts as true all well-pleaded facts and draws all reasonable inferences in the plaintiff’s
10 favor. Parker v. Hurley, 514 F.3d 87, 90 (1st Cir. 2008). However, “the tenet that a court must
11 accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.”
12 Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of
13 action, supported by mere conclusory statements, do not suffice.” Id. (citing Twombly, 550 U.S. at
14 555). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility
15 of misconduct, the complaint has alleged-but it has not ‘show[n]’ -‘that the pleader is entitled to
16 relief.’” Iqbal, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)).

17 A plaintiff need not allege sufficient facts to meet the evidentiary *prima facie* standard. See
18 generally Rodriguez-Reyes v. Molina-Rodriguez, 711 F.3d 49 (D.P.R. 2013). *Prima facie* elements
19 “are part of the background against which a plausibility determination should be made.” Id. at 54
20 (external citations omitted). “[T]he elements of a *prima facie* case may be used as a prism to shed
21 light upon the plausibility of the claim.” Id. (emphasis added).

22 **II. Factual Background**

23 Plaintiff alleges that he “was the victim of identity theft, when certain individuals used his
24 social security number to purchase automobiles and other articles.” (Docket No. 1-3.) He further
25 alleges that those individuals were prosecuted and that Defendant was aware they were prosecuted,
26 but “defendant . . . harassed the plaintiff in an attempt to collect \$69,718.00 by various means and
27 threats, recently on August 7, 2012.” (Id.) As a result, Plaintiff alleges that he has suffered
28

1 **Civil No. 13-1280 (GAG)**

2 “damages and emotional anguish, in addition to damaging his credit and reputation.” (Id.) Lastly,
3 Plaintiff claims that “this case not only involves harassment of a debtor, claimable under 15 USC,
4 but also, there was never a contractual relationship between the parties. This violates the Fair Debt
5 Collection Practices Act of 1970.” (Id.)

6 **III. Discussion**

7 “It is not enough merely to mention a possible argument in the most skeletal way, leaving the
8 court to do counsel’s work . . . and put flesh on its bones.” United States v. Zannino, 895 F.2d 1,
9 17 (1st Cir. 1990). “Judges are not expected to be mindreaders. Consequently, a litigant has an
10 ‘obligation to spell out its arguments squarely and distinctly,’ or forever hold its peace.” Id. The
11 complaint in this case is devoid of any specific facts and unsuccessfully attempts to recite the
12 elements of a FDCPA claim.

13 Under the FDCPA, debt collectors are subject to strict liability for their violations.
14 Harrington v. CACV of Colorado, LLC, 508 F. Supp. 2d 128, 132 (1st Cir. 2007). Plaintiff “need
15 only show a violation of one of the FDCPA’s provisions in order to make out a prima facie case.”
16 Id. However, having cited only “15 USC” and mentioning the FDCPA by name in his complaint,
17 Plaintiff fails to reference any specific provision of the FDCPA that plausibly entitles him to relief.

18 While Plaintiff does state that he has been harassed by Defendant, presumably implicating
19 § 1692(d), he does not state any specific factual allegations whatsoever, let alone any that plausibly
20 support liability. For there to be harassment under the FDCPA, a plaintiff must sufficiently allege
21 that a debt collector “engage[d] in any conduct the natural consequence of which is to harass,
22 oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692(d).
23 Plaintiff’s only reference to Defendant’s conduct is that “the defendant has harassed the plaintiff in
24 an attempt to collect \$69,718.00 by various means and threats, recently on August 7, 2012.” (Docket
25 No. 1-3.) However, this is conclusory and in no way fact-specific. Furthermore, alleging that the
26 harassment was carried out by “various means and threats” is only a threadbare recital of the

1 **Civil No. 13-1280 (GAG)**

2 elements. That is the entirety of Plaintiff’s complaint, and it does not satisfy Rule 8. See Twombly,
3 550 U.S. at 570; see also FED. R. CIV. P. 8.

4 Plaintiff also requests punitive damages in the amount of \$500,000 and cites as relevant
5 authority “43 USC, the matter of Shillingford v. Holmes, 512 F. Supp. 656.” (Docket No. 1-3 at 2)
6 (errors in the original). However, the court finds no correlation between the allegations made in the
7 complaint and Title 43 of the U.S. Code (“Public Lands”). The case cited by Plaintiff also bears no
8 relevance as it relates to a civil rights violation under 42 U.S.C. § 1983. See generally Shillingford
9 v. Holmes, 512 F. Supp. 656 (E.D. La. 1981). Why Plaintiff saw fit to cite such authority is anyone’s
10 guess.

11 **IV. Conclusion**

12 For the reasons set forth above, the court **GRANTS** the motion to dismiss at Docket No.
13 12.

14 **SO ORDERED**

15 In San Juan, Puerto Rico this 31st day of July, 2013.

16 *S/Gustavo A. Gelpí*
17 GUSTAVO A. GELPÍ
18 United States District Judge
19
20
21
22
23
24
25
26
27