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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 STEPHEN E. WEIGAND,

10 Plaintiff,

11 v.

12 MATTHEW CHEUNG, an individual; and

13 PATENAUDE & FELIX, A

14 PROFESSIONAL CORPORATION, a

15 California corporation,

16 Defendants.

No. 2:14-cv-00278-SAB

ORDER DENYING

**DEFENDANTS' MOTION TO
DISMISS**

17 Before the Court is Defendants' Motion to Dismiss, ECF No. 13. The
18 motion was heard without oral argument.

19 On August 21, 2014, Plaintiff filed his Complaint, alleging violations for
20 the Fair Debt Collection Practices Act. Defendants now move to dismiss the
21 action.

22 **A. Motion Standard**

23 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for "failure to
24 state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). Federal
25 Rule of Civil Procedure 8(a) provides: "A pleading that states a claim for relief
26 must contain ... a short and plain statement of the claim showing that the pleader is
27 entitled to relief." Fed.R.Civ.P. 8(a)(2). "Dismissal under Rule 12(b)(6) is
28 appropriate only where the complaint lacks a cognizable legal theory or sufficient

ORDER DENYING DEFENDANTS' MOTION TO DISMISS ~ 1

1 facts to support a cognizable legal theory.” Mendiondo v. Centinela Hosp. Med.
2 Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008).

3 To sufficiently state a claim for relief and survive a Rule 12(b) (6) motion, a
4 complaint does not need detailed factual allegations, but it must provide more than
5 a “formulaic recitation of the elements of a cause of action.. Bell Atl. Corp. v.
6 Twombly, 550 U.S. 544, 555 (2007). The factual allegations must be enough to
7 raise a right to relief above the speculative level. Id. When considering a motion to
8 dismiss, a court must accept as true all “well-pleaded factual allegations.” Ashcroft
9 v. Iqbal, 556 U.S. 662, 678 (2009). “In sum, for a complaint to survive a motion to
10 dismiss, the non-conclusory factual content, and reasonable inferences from that
11 content, must be plausibly suggestive of a claim entitling the plaintiff to relief.”
12 Moss v. U.S. Secret Serv., 572 F.3d 962, 969 (9th Cir.2009) (quotations omitted).

13 **B. Plaintiff’s Allegations**

14 The following facts are taken from Plaintiff’s complaint:

15 In January, 2008, Plaintiff and his wife purchased a car and obtained a loan
16 from Toyota Motor Credit (TMC) Corporation. In April, 2011, Plaintiff and his
17 wife divorced. The dissolution decree required the wife to pay for the car loan.
18 The wife eventually defaulted on the car loan; however, Plaintiff had no
19 knowledge of the default.

20 On August 2, 2013, Plaintiff was served by Defendants with an unfiled
21 Summons and Spokane County Superior Court Complaint. The purpose of the
22 Complaint was to collect on the TMC loan.

23 On August 6, 2013, Plaintiff responded to the Summons and Complaint by
24 mailing and faxing his response to Defendants and denying liability.

25 On October 17, 2013, Defendants filed the TMC case against Plaintiff and
26 his wife in Spokane County Superior Court and moved the court for default
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1 judgment against them on the same day.¹ The motion was granted on October 29,
2 2013.

3 On December 26, 2013, Defendants sent correspondence to the wife,
4 confirming that a settlement of the account for the sum of \$5,500, as well as a
5 payment arrangement, was agreed to between Defendants and the wife. This
6 correspondence did not indicate that judgment had been obtained against Plaintiff.

7 On January 27, 2014, Defendants sent correspondence to Plaintiff,
8 informing him for the first time that a judgment was entered against him. The
9 letter stated that the Judgment Balance Due was \$6,118.82. The letter also did not
10 indicate that Defendants entered into a settlement with the wife for less than the
11 judgment balance.

12 Plaintiff responded to Defendants on February 1, 2014, disputing the
13 amount and validity of the default judgment. Defendants refused to vacate the
14 default judgment, or provide any additional correspondence regarding the
15 settlement. Plaintiff obtained counsel in March, 2014, and his counsel attempted to
16 call Defendant Cheung in an effort to resolve the default judgment; however, Mr.
17 Cheung refused to return any telephone calls.

18 On April 16, 2014, Plaintiff moved to vacate the default judgment entered
19 against him. The Spokane County Superior Court granted the motion on April 25,
20 2014. Although he moved to dismiss the lawsuit on May 6, 2014, Defendants
21 voluntarily dismissed the lawsuit before the motion was heard.

22 In his Complaint, Plaintiff asserts three claims based on the Fair Debt
23 Collections Practices Act:

24 _____

25 ¹ In the motion for default dated October 17, 2013, Defendants specifically
26 indicated to the Spokane Superior Court that Plaintiff had not responded to the
27 Summons and Complaint. This representation was not true, because a response
28 was made by Plaintiff on August 6, 2013.

1 (1) by entering a default judgment after Plaintiff had appeared and
2 without any notice or opportunity to be heard;

3 (2) by refusing to voluntarily vacate the default judgment after it was
4 entered and especially after Plaintiff reiterated his appearance in the
5 proceedings through correspondence with Defendants;

6 (3) by claiming an amount due from Plaintiff in excess of the amount for
7 which TMC agreed to settle the account.

8 Plaintiff is seeking actual damages and statutory damages, costs and
9 reasonable attorneys' fees. Plaintiff alleges that Defendants caused derogatory
10 information to be placed on his credit report.

11 **C. Request for Judicial Notice**

12 Defendants request the Court to take judicial notice of the Spokane Superior
13 Court's docket sheet, the October 2013 default judgment, and the January 27,
14 2014 letter.

15 "As a general rule, a district court may not consider any material beyond the
16 pleadings in ruling on a Rule 12(b)(6) motion." *Lee v. City of Los Angeles*, 250
17 F.3d 668, 688 (9th Cir. 2001). On the other hand, a court may consider matters
18 properly subject to judicial notice. *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th
19 Cir. 2007). A matter may be judicially noticed if it is either "generally known
20 within the territorial jurisdiction of the trial court" or "capable of accurate and
21 ready determination by resource to sources whose accuracy cannot reasonably be
22 questioned." Fed. R. Civ. P. 201(b). Courts are permitted to take judicial notice of
23 court filings and other matters of public record because they are readily verifiable.
24 *Reyn's Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006).

25 The Court grants Defendants' request and will take judicial notice of the
26 requested documents.

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1 **D. Fair Debt Collection Practices Act**

2 Plaintiff's claims are based on alleged violations for the Fair Debt
3 Collection Practices Act. Generally, the FDCPA prohibits debt collectors from (1)
4 engaging in harassing, oppressive, or abusive conduct; (2) using false, deceptive,
5 or misleading representations or means; and (3) using unfair or unconscionable
6 means. 15 U.S.C. §§ 1692d; 1692e; 1692f. The purpose of the FDCPA is:

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8 to eliminate abusive debt collection practices by debt collectors, to
9 insure that those debt collectors who refrain from using abusive debt
10 collection practices are not competitively disadvantaged, and to
11 promote consistent State action to protect consumers against debt
12 collection abuses.

13 § 1692e.

14 A violation of the FDCPA is measured by the objective standard of "least
15 sophisticated debtor." *Wade v. Regional Credit Ass'n*, 87 F.3d 1098, 1100 (9th
16 Cir. 1996). The FDCPA is a strict liability statute. *Donohue v. Quick Collect, Inc.*,
17 592 F.3d 1027, 1030 (9th Cir.2010). Moreover, the FDCPA is a remedial statute
18 and thus, must be construed liberally in favor of the debtor. *Id.*

19 **E. Analysis**

20 The Court has reviewed Plaintiff's Complaint and finds that it survives
21 Defendants' Motion to Dismiss. The factual allegations contained in the complaint
22 permit reasonable inferences that plausibly suggest claims entitling relief under
23 the FDCPA.

24 The Court adopts the reasoning of Judge Lasnik of the Western District of
25 Washington in holding that all litigation activities, including formal pleadings, are
26 subject to the FDCPA, except to the limited extent that Congress exempted formal
27 pleadings from the particular requirements of § 1692e(11). As Judge Lasnik
28 explained:

a proper reading of Heintz necessitates that some litigation activities
are subject to the FDCPA. In Heintz, the Supreme Court held that

1 “lawyer[s] who ‘regularly,’ through litigation, tr[y] to collect
2 consumer debts” are included in the FDCPA's definition of “debt
3 collector.” Heintz, 514 U.S. at 292 (emphasis in original). That
4 decision would be meaningless if there were no litigation-based way
5 for those same “debt collectors” to violate the FDCPA. Furthermore,
6 Heintz's reasoning indicates explicitly that the Court intended the
7 FDCPA to apply not only to litigators but also to litigation activities.
8 See, e.g., id. at 295 (rebutting the argument that “many of the
9 [FDCPA's] requirements, if applied directly to litigating activities,
10 [would] create harmfully anomalous results”).

11 Medialdea v. Law Office of Evan L. Loeffler PLLC, No. CV09-55RSL, 2009 WL
12 1767185, at *4 (W.D. Wash. June 19, 2009).

13 Plaintiff's Complaint alleges facts sufficient to establish that Defendants are
14 debt collectors under the FDCPA. As such, they are not entitled to protection
15 under the Noerr-Pennington doctrine or Washington litigation's privilege.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Defendants' Motion to Dismiss, ECF No. 13, is **DENIED.**

18 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
19 file this Order and provide copies to counsel.

20 **DATED** this 4th day of February, 2015.

A handwritten signature in blue ink that reads "Stanley A. Bastian".

Stanley A. Bastian
United States District Judge