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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

YANG PAO VANG,)	1:11-CV-1126 AWI SKO
)	
Plaintiff,)	
)	ORDER ON DEFENDANT’S
v.)	MOTION TO DISMISS
)	
EQUABLE ASCENT FINANCIAL, LLC)	
)	
Defendant.)	(Doc. No. 7)

Pro per Plaintiff Yang Pao Vang (“Vang”) filed suit against Defendant Equable Ascent Financial, LLC (“Equable”) for violation of the 15 U.S.C. § 1692g(b) of the Fair Debt Collection Practices Act (“FDCPA”). Equable removed the case from the Fresno County Small Claims Court on the basis of federal question jurisdiction. Equable now moves to dismiss the Complaint under Rule 12(b)(6). For the reasons that follow, the motion to dismiss will be granted.

COMPLAINT’S ALLEGATIONS

The Complaint in this case is a form complaint provided by the Small Claims Court. The Complaint identifies Vang and Equable as the parties. The Complaint seeks \$1,000 based on the “consumer protection afforded by the FDCPA.” The only other helpful information in the complaint is under the section, “Why does the Defendant owe the Plaintiff money?” Under this section, the Complaint reads: “Equable . . . have not validated the debt which they claim I owed and still continue to report to the credit bureaus. Violation of the FDCPA Section 809(b), [15 USC 1692g].”

LEGAL FRAMEWORK

1
2 Under Federal Rule of Civil Procedure 12(b)(6), a claim may be dismissed because of the
3 plaintiff's "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A
4 dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the
5 absence of sufficient facts alleged under a cognizable legal theory. Johnson v. Riverside
6 Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008); Navarro v. Block, 250 F.3d 729, 732 (9th
7 Cir. 2001). In reviewing a complaint under Rule 12(b)(6), all allegations of material fact are
8 taken as true and construed in the light most favorable to the non-moving party. Marceau v.
9 Blackfeet Hous. Auth., 540 F.3d 916, 919 (9th Cir. 2008); Vignolo v. Miller, 120 F.3d 1075,
10 1077 (9th Cir. 1999). However, the Court is not required "to accept as true allegations that are
11 merely conclusory, unwarranted deductions of fact, or unreasonable inferences." In re Gilead
12 Scis. Sec. Litig., 536 F.3d 1049, 1056-57 (9th Cir. 2008); Sprewell v. Golden State Warriors, 266
13 F.3d 979, 988 (9th Cir. 2001). Legal conclusions are not accepted as true, and "[t]hreadbare
14 recitals of elements of a cause of action, supported by mere conclusory statements, do not
15 suffice." Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949-50 (2009); see also Warren v. Fox Family
16 Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003). To "avoid a Rule 12(b)(6) dismissal, "a
17 complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is
18 plausible on its face." Iqbal, 129 S.Ct. at 1949; see Bell Atl. Corp. v. Twombly, 550 U.S. 544,
19 555, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that
20 allows the court draw the reasonable inference that the defendant is liable for the misconduct
21 alleged." Iqbal, 129 S.Ct. at 1949. That is, "for a complaint to survive a motion to dismiss, the
22 non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly
23 suggestive of a claim entitling the plaintiff to relief." Moss v. United States Secret Serv., 572
24 F.3d 962, 969 (9th Cir. 2009). If a Rule 12(b)(6) motion is granted, leave to amend should be
25 granted, "even if no request to amend the pleading was made, unless it determines that the
26 pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d
27 1122, 1127 (9th Cir. 2000) (en banc). In other words, leave to amend need not be granted where
28 amendment would be futile. Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002).

DEFENDANT’S MOTION

Equable argues that the Complaint does not state a claim because: (1) the Complaint does not allege that Equable is a “debt collector,” or that Vang is a “consumer,” or that Equable is attempting to collect a “debt” as those terms are defined by the FDCPA; and (2) § 1692g(b) only applies when a debt collector receives a written notice from the consumer that disputes the debt, but there is no allegation that a written notice was submitted.

Vang filed no opposition or response of any kind.

Legal Standard

In pertinent part, 15 U.S.C. § 1692g reads:

If the *consumer* notifies the *debt collector* in writing within the thirty-day period described in subsection (a)¹ that the *debt*, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

15 U.S.C. § 1692g(b) (emphasis added); Mahon v. Credit Bureau, Inc., 171 F.3d 1197, 1202 n.4 (9th Cir. 1999). Accordingly, this section “requires a *debt collector*, who receives from a *consumer* written notice disputing a *debt*, to cease collection of the debt directly from the consumer until it has obtained either verification of the debt or a copy of a judgment and provided it to the consumer.” Guerrero v. RJM Acquisitions LLC, 499 F.3d 926, 934 (9th Cir. 2007) (emphasis added); Mahon, 171 F.3d at 1202. However, “[i]f no written demand is made, the collector may assume the debt to be valid.” Mahon, 171 F.3d at 1202; cf. In re Sanchez, 173 F.Supp.2d 1029, 1034 n.1 (N.D. Cal. 2001).

Under the FDCPA, the “term ‘consumer’ means any natural person obligated or allegedly obligated to pay any debt.” 15 U.S.C. § 1692a(3). “The term ‘debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for

¹The 30 day period of subsection (a) is 30 days from the date that a consumer receives written notice of the amount of the debt and the name of the creditor from the debt collector, following a debt collector’s initial communications with the consumer. See 15 U.S.C. § 1692g(a).

1 personal, family, or household purposes” 15 U.S.C. § 1692a(5). Accordingly, the FDCPA
 2 applies to consumer debts, but not to business loans. Slenk v. Transworld Sys., Inc., 236 F.3d
 3 1072, 1074 (9th Cir. 2001). The FDCPA’s definition of the term ‘debt collector’ includes a
 4 person “who regularly collects or attempts to collect, directly or indirectly, debts owed [to] . . .
 5 another.” 15 U.S.C. § 1692a(6);² Heintz v. Jenkins, 514 U.S. 291, 293 (1995).

6 Discussion

7 Dismissal of the Complaint is appropriate. As Equable correctly argues, the Complaint
 8 does not contain basic allegations required by the FDCPA. The Complaint does not allege that
 9 Vang is a “consumer,” as defined by the FDCPA. See 15 U.S.C. § 1692a(3); Robinson v.
 10 Managed Accounts Receivable Corp., 654 F.Supp.2d 1051, 1057 (C.D. Cal. 2009). The
 11 Complaint does not allege that Equable is a “debt collector,” as defined by the FDCPA. See 15
 12 U.S.C. §§ 1692a(6), 1692g; Guerrero, 499 F.3d at 934; Robinson, 654 F.Supp.2d at 1057. The
 13 Complaint does not allege that a “debt,” as defined by the FDCPA, is involved. See 15 U.S.C.
 14 §§ 1692a(5), 1692g; Guerrero, 499 F.3d at 934; Narog v. Certegy Check Servs., 759 F. Supp. 2d

15
 16 ²The full definition of the term “debt collector” under 15 U.S.C. § 1692a(6) is:

17 The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any
 18 business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect,
 19 directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion
 20 provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of
 21 collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or
 22 attempting to collect such debts. For the purpose of section 808(6) [15 USCS § 1692f(6)], such term also includes
 23 any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of
 24 which is the enforcement of security interests. The term does not include--
 25 (A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;
 26 (B) any person while acting as a debt collector for another person, both of whom are related by common ownership
 27 or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so
 28 related or affiliated and if the principal business of such person is not the collection of debts;
 (C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any
 debt is in the performance of his official duties;
 (D) any person while serving or attempting to serve legal process on any other person in connection with the judicial
 enforcement of any debt;
 (E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling
 and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing
 such amounts to creditors; and
 (F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the
 extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii)
 concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was
 obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit
 transaction involving the creditor.

1 1189, 1193 (N.D. Cal. 2011).

2 Further, Vang is attempting to allege a violation of § 1692g(b)'s verification requirement.
3 However, there is no allegation that Vang submitted a written notice that disputed the debt within
4 30 days of receiving notice of the debt from Equable. See 15 U.S.C. § 1692g(b). Without the
5 written notice from Vang, § 1692g(b)'s protections do not apply. See id.; Mahon, 171 F.3d at
6 1202; Sanchez, 173 F.Supp.2d at 1034 n.1. The Complaint does not plead a viable claim.

7
8 **CONCLUSION**

9 Dismissal of the Complaint is appropriate. The Complaint does not contain factual
10 allegations that show that timely written notice under § 1692g(b) was sent by Vang. Further, the
11 Complaint does not contain allegations that meet the FDCPA's definition of "consumer," "debt
12 collector," or "debt." The failure to include these factual allegations is fatal to the Complaint.
13 See Iqbal, 129 S.Ct. at 1949-50. Vang's failure to meet the federal pleading standards is
14 understandable, since this case was filed in the Fresno County Small Claims Court. Although no
15 opposition was filed, it is not clear that amendment would be futile. The Court therefore will
16 grant Vang leave to file an amended complaint that corrects the deficiencies identified above.

17
18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. Defendant's motion to dismiss is GRANTED and the Complaint is DISMISSED;
20 2. Plaintiff may file an amended complaint within twenty (20) days of service of this order;
21 and
22 3. Since Plaintiff failed to respond in any way to the motion to dismiss (which is a violation
23 of Local Rule 230(c)), Plaintiff is forewarned that the failure to file a timely amended
24 complaint will result in the withdrawal of leave to amend and the closing of this case
25 without further notice.

26 IT IS SO ORDERED.

27 Dated: August 30, 2011

28 
CHIEF UNITED STATES DISTRICT JUDGE