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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CAMERON ALLEN,
Plaintiff,
v.
CREDIT COLLECTION
SERVICES, INC.,
Defendant.

No. 2:18-cv-00929-MCE-KJN

MEMORANDUM AND ORDER

Through the present action, Plaintiff Cameron Allen (“Plaintiff”) seeks damages from Defendant Credit Collection Services, Inc. (“CCS” or “Defendant”), a collection agency, under the Fair Debt Collection Practices Act, 15 U.S.C.S. §§ 1692 et seq., (“FDCPA”) and its California counterpart, the Rosenthal Act, Cal. Civ. Code §§ 1788 et seq, (“Rosenthal Act”).¹ ECF No. 1. According to Plaintiff, the telephone calls he received from CCS rose to the level of conduct intended to “harass, oppress, or abuse” him in connection with the collection of his debt. Compl., ECF No. 1 at 4-5. Presently before the Court is Defendant’s Motion for Summary Judgment pursuant to Federal Rule

¹ While Plaintiff’s Complaint, filed April 16, 2018, also included a cause of action claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), Plaintiff failed to offer any opposition to Defendant’s summary judgment request as to that claim and therefore appears to have abandoned any relief under that statute. See Def’s Reply, ECF No. 13 at 6:21-7:5. Consequently, Plaintiff’s TCPA claim will not be further analyzed in this Memorandum and Order.

1 of Civil Procedure 56. ECF No. 9. For the reasons stated below, Defendant's motion is
2 GRANTED.²

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4 **BACKGROUND³**

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6 Plaintiff entered into a contract with Comcast, a telecommunications company, for
7 the provision of cable services. When Plaintiff purportedly failed to pay the amounts due
8 under that contract, Comcast turned Plaintiff's unpaid cable bill over to CCS for collection
9 on October 24, 2016. Stmt. Undisputed Facts ("SUF"), ECF No. 13-1 ¶ 1. Between
10 November 4, 2016 and January 3, 2017, a period of about two months, CCS' call logs
11 show that it placed eight calls to Plaintiff's cellular telephone number, which he had
12 previously provided to Comcast. Ex. C, ECF No. 11-4 at 4. The calls were placed about
13 a week apart and CCS records show that its representatives only spoke to Plaintiff twice
14 during this period. Id. Specifically, on November 10, there was a brief exchange before
15 the call was disconnected. SUF ¶ 3. This was followed up later that day with a call from
16 Plaintiff disputing that he owed anything on his account and stating that he would follow
17 up with Comcast. Id. ¶ 4. CCS made recordings of both calls, which were offered as
18 evidence in support of its motion. See Decl. of Jeffrey Stoddard, ECF No. 9-4, Exs. D,
19 E.

20 In neither call did Plaintiff tell CCS to stop calling him. SUF ¶¶ 3-4. Between
21 January 10, 2017 and May 19, 2018, CCS placed seven more calls to Plaintiff, all of
22 which went unanswered. Ex. C at 5. The calls were made on average at a rate of about
23 once a month. Id. All calls to Plaintiff were documented by CCS in detailed account
24 notes which memorialized the date and time each call was placed, as well as the
25 substance of any actual conversation with Plaintiff. Stoddard Decl., Ex. B.

26 _____
27 ² Because oral argument would not have been of material assistance, the Court ordered this
matter submitted on the briefs. See E.D. Cal. Local R. 230(g).

28 ³ The following recitation of facts is taken, sometimes verbatim, from Defendant's Statement of
Undisputed Facts.

1 In attempting to establish the existence or non-existence of a genuine factual
2 dispute, the party must support its assertion by “citing to particular parts of materials in
3 the record, including depositions, documents, electronically stored information,
4 affidavits[,] or declarations . . . or other materials; or showing that the materials cited do
5 not establish the absence or presence of a genuine dispute, or that an adverse party
6 cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). The
7 opposing party must demonstrate that the fact in contention is material, i.e., a fact that
8 might affect the outcome of the suit under the governing law. Anderson v. Liberty Lobby,
9 Inc., 477 U.S. 242, 248, 251-52 (1986); Owens v. Local No. 169, Assoc. of W. Pulp and
10 Paper Workers, 971 F.2d 347, 355 (9th Cir. 1987). The opposing party must also
11 demonstrate that the dispute about a material fact “is ‘genuine,’ that is, if the evidence is
12 such that a reasonable jury could return a verdict for the nonmoving party.” Anderson,
13 477 U.S. at 248. In other words, the judge needs to answer the preliminary question
14 before the evidence is left to the jury of “not whether there is literally no evidence, but
15 whether there is any upon which a jury could properly proceed to find a verdict for the
16 party producing it, upon whom the onus of proof is imposed.” Anderson, 477 U.S. at 251
17 (quoting Improvement Co. v. Munson, 81 U.S. 442, 448 (1871)) (emphasis in original).
18 As the Supreme Court explained, “[w]hen the moving party has carried its burden under
19 Rule [56(a)], its opponent must do more than simply show that there is some
20 metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at 586. Therefore,
21 “[w]here the record taken as a whole could not lead a rational trier of fact to find for the
22 nonmoving party, there is no ‘genuine issue for trial.’” Id. at 587.

23 In resolving a summary judgment motion, the evidence of the opposing party is to
24 be believed, and all reasonable inferences that may be drawn from the facts placed
25 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at
26 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s
27 obligation to produce a factual predicate from which the inference may be drawn.

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1 Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244-45 (E.D. Cal. 1985), aff'd,
2 810 F.2d 898 (9th Cir. 1987).

3 4 ANALYSIS

5 6 A. FDCPA Claims

7 The FDCPA prohibits debt collectors from engaging in “any conduct the natural
8 consequence of which is to harass, oppress, or abuse any person in connection with the
9 collection of any debt.” 15 U.S.C. § 1692d. Plaintiff’s Complaint cites generally to that
10 statute at ¶ 28, and more specifically goes on to allege a violation of subdivision (5),
11 which prohibits “[c]ausing a telephone to ring or engaging any [person in telephone
12 conversation repeatedly or continuously with intent to annoy, abuse, or harass any
13 person at the called number.” Compl. ¶ 39. According to Plaintiff, CCS violated these
14 provisions “when it placed repetitive and harassing calls to Plaintiff’s cellular telephone...
15 even though Plaintiff informed Defendant they were calling an incorrect phone number
16 and to stop calling him.” Id., ¶ 30. Defendant contends that the evidence it has
17 submitted entitles it to summary judgment as to Plaintiff’s FDCPA claims, and maintains
18 that in light of that evidence, Plaintiff’s uncorroborated deposition testimony, without
19 more, fails to raise any triable issue of material fact.

20 Plaintiff maintains that, despite CCS’ call logs and telephone recordings of the two
21 actual conversations its representatives had with Plaintiff concerning the underlying
22 debt, CCS is not entitled to summary judgment because it violated the FDCPA by
23 repeatedly calling his cellular telephone number after he verbally requested the calls to
24 stop. The Court disagrees.

25 It should initially be noted that Plaintiff makes no claim that he notified CCS in
26 writing to cease any further communications. Had such written request been made,
27 there is no question that additional calls would have triggered FDCPA liability under
28 15 U.S.C. § 1692c(c), which prohibits further communication “[i]f a consumer notifies

1 [the] debt collector in writing . . . that the consumer wishes the debt collector to cease
2 further communication with the consumer.” Consequently, the viability of Plaintiff’s
3 FDCPA claims necessarily rests upon whether Plaintiff has shown that verbal request
4 was made and that the collection calls continued unabated. The Ninth Circuit has
5 recognized under the appropriate circumstances even an oral demand to stop calling
6 can trigger liability under the FDCPA for harassing, abusive, and/or oppressive activities
7 by a debt collector thereafter. Fox v. Citicorp Credit Services, 15 F.3d 1507, 1517 (9th
8 Cir. 1994).

9 Plaintiff has nonetheless failed to adequately rebut the evidence submitted by
10 CCS that no verbal request was made. As set forth above, Plaintiff offers only his vague
11 and unsubstantiated deposition testimony to counter the solid evidence of calls made
12 offered by CCS, and this is insufficient. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d
13 1054 (9th Cir. 2002) (holding that a plaintiff’s uncorroborated testimony is insufficient to
14 overcome a motion for summary judgment). Plaintiff’s self-serving testimony is not
15 enough to create a triable issue of material fact. Plaintiff cannot say who at CCS he
16 spoke with or on how many occasions such conversations occurred. He offers no notes
17 of any conversations he purports to have had and cannot even say when the
18 conversations took place any more definitely that that they occurred over a period of
19 some three months. Moreover, Plaintiff’s screenshot of a mobile application of blocked
20 calls also does not demonstrate that he told CCS to stop calling him, since no link
21 between any of the purportedly blocked calls and CCS has been established. Def.’s
22 Mot. for Summ. J. (“MSJ”), ECF No. 9-2 at 5:18-19. What the evidence does show is
23 that out of the fifteen calls placed, CCS’ only two calls were answered have no record of
24 Plaintiff asking that the calls cease, only that Plaintiff planned to dispute the charges with
25 Comcast. SUF ¶ 4.

26 Additionally, fifteen calls in the span of seven months does not evidence any
27 intent by CCS to annoy, harass, or abuse Plaintiff. See, e.g., Muzyka v. Rash Curtis &
28 Assocs., No. 2:18-CV-01097 WBS, 2019 WL 2869114 at *6 (E.D. Cal. July 3, 2019)

1 (determining if there is actionable harassment or annoyance turns not only on the
2 volume of calls made, but also on the context and pattern of the calls). Additionally, in
3 the case at bar there is no evidence that CCS called Plaintiff multiple times in a single
4 day, called Plaintiff at odd hours, or called Plaintiff immediately after he had just hung up
5 following an earlier call. While those circumstances can trigger FDCPA liability, they are
6 simply not present here.

7 Indeed, this court's decision in Arteaga v. Asset Acceptance, LLC,
8 733 F. Supp. 2d 1218, 1229 (E.D. Cal. 2010) is more analogous here. In Arteaga, the
9 collector called eighteen times in approximately five months. Id. at 1235. As here, there
10 was no evidence that calls were made immediately after the Plaintiff hung up, no
11 evidence that multiple calls were made in a single day, and no evidence that calls were
12 made at odd times or to Plaintiff's employer family or friends. Id. at 1229. On those
13 facts the Arteaga court granted summary judgment in the defendant's favor. Id. at
14 1233.⁴

15 While Plaintiff asserts that the determination of whether conduct in collecting a
16 debt amounts to harassment should typically be a question of fact left to a jury (see Pl.'s
17 Opp'n to MSJ, at 8:24-9:1-2), under the circumstances of the present matter that
18 argument is unavailing. It bears noting that several courts have found insufficient
19 evidence that a debt collector placed calls with the intent to harass or annoy for
20 purposes of FDCPA liability, even where the volume of calls placed were far greater than
21 that alleged here. See, e.g., Jiminez v. Accounts Receivable Mgmt., No. 09-CV-09070-
22 GW(AJWx), 2010 WL 5829206, at *6 (C.D. Cal. June 24, 2010) (summary judgment
23 granted on § 1692d claim where the defendant placed 69 calls over a 115-day period
24 and placed more than 2 calls in one day). Tucker v. The CBE Group Inc.,
25 710 F. Supp. 2d 1301, 1305-1306 (M.D. Fla. 2010) (57 calls placed to the plaintiff,

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27 ⁴ The Court recognizes that, unlike the present case, in Arteaga there was not even a claim that
28 the plaintiff had asked the debt collector there to stop calling. Given the fact, however, that the only
evidence of that contention here is Plaintiff's own self-serving testimony as enumerated above, that
difference is not dispositive.

1 including 7 calls in one day, did not constitute actionable harassment). Def.'s Reply to
2 Opp'n, ECF No. 13 at 3:3-9. Accordingly, and for all the reasons set forth above, Plaintiff
3 has failed to rebut Defendant's showing that it lacked any intent to harass, abuse, or
4 annoy for purposes of incurring FDCPA liability. Therefore, summary judgment in favor
5 of CCS on Plaintiff's FDCPA claims is proper.

6 **B. Plaintiff's Claim Under The Rosenthal Act**

7 Under the Rosenthal Act, "every debt collector collecting or attempting to collect a
8 consumer debt shall comply with the provisions of Sections 1692b to 1692j..." Cal. Civ.
9 Code § 1788.17. By expressly incorporating the standard under the federal FDCPA in
10 defining liability for the same conduct under state law, the scope of both statutory
11 schemes appears coextensive and the same analysis in assessing liability under the
12 FDCPA also applies to the Rosenthal Act. See Joseph v. J.J. MacIntyre Cos., LLC,
13 238 F. Supp. 2d 1158, 1168 (N.D. Cal. 2002). In addition, Plaintiff's complaint shows
14 that he bases his Rosenthal Act claim on the same premise as his FDCPA claim;
15 namely, that CCS engaged in excessive calling even after he verbally communicated for
16 it to stop. Since the Court finds that Plaintiff has failed to provide enough evidence to
17 support the FDCPA claim, Plaintiff also fails to fulfill the elements of a Rosenthal Act
18 claim and Defendant's request for summary adjudication as to that claim is also
19 appropriate.

20
21 **CONCLUSION**


22
23 For the foregoing reasons, Defendant's Motion for Summary Judgment (ECF
24 No. 9) is GRANTED. Defendant is accordingly entitled to judgment as a matter of law
25 with respect to Plaintiff's claims under the FDCPA and the Rosenthal Act. Because
26 Plaintiff did not contest the propriety of summary adjudication as to his remaining claim
27 under the TCPA, Defendant is also entitled to judgment as to that claim.

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1 The matter having now been concluded in its entirety, the Clerk of Court is directed to
2 enter judgment in Defendant's favor and close this file.

3 IT IS SO ORDERED.

4 Dated: February 18, 2020

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6 MORRISON C. ENGLAND, JR.
7 UNITED STATES DISTRICT JUDGE
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