UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARGARET L. DIBB, individually and on behalf of others similarly situated,

Plaintiff,

v.

ALLIANCEONE RECEIVABLES MANAGEMENT, INC.,

Defendant.

CASE NO. 14-5835 RJB

ORDER ON MOTION TO DISMISS

This matter comes before the Court on Defendant AllianceOne Receivables Management, Inc.'s ("AllianceOne") Motion to Dismiss. Dkt. 9. The Court has considered the pleadings filed in support of and in opposition to the motion and the file herein.

Plaintiffs filed this putative class action on October 10, 2014, seeking relief under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et.seq*. ("FDCPA") and the Washington State Consumer Protection Act, RCW 19.86, *et seq*. ("CPA") in connection with Defendant's attempts at collecting a debt arising from a returned check written to a state agency for license plates and tabs. Dkt. 1.

Defendant moves to dismiss Plaintiffs' claims, arguing that 1) the debts at issue are not consumer debts under the FDCPA and 2) they do not plead a claim under the CPA. Dkt. 9. For the reasons stated below, Defendant's motion to dismiss Plaintiffs' claims (Dkt. 9) should be denied because Plaintiffs' debts are covered under the FDCPA and Plaintiffs sufficiently plead plausible CPA claims.

I. FACTS

Plaintiffs' Complaint alleges that in May of 2012, the representative Plaintiff, Ms. Dibb, moved to Vashon Island, Washington. Dkt. 1, at 2. She purchased license plates and tabs for her vehicle from the Washington State Department of Licensing ("DOL") using a personal check in the amount of $90.25. *Id.*, at 3.

Around July 10, 2013, Ms. Dibb returned to DOL to renew her tabs, and was informed that her check from the previous year had been returned for insufficient funds. *Id.* She was further informed that the debt had been sent to a collection agency, the Defendant here, and that she would need to contact the Defendant and pay the amount of the check plus interest before she could renew her tabs. *Id.*

Ms. Dibb contacted Defendant, paid it the $98.77 (which included the dishonored check and interest), and was permitted to renew her tabs. *Id.* Defendant informed Ms. Dibb that she owed "considerable more money for legal fees and costs." *Id.*

On October 24, 2014, Ms. Dibb was served with a Complaint filed against her by Defendant on May 29, 2013 in King County District Court in Issaquah Washington, case number 133-15386. *Id.* She timely responded and denied that she owed the debt. *Id.*

In the King County District Court case, Defendant filed a motion for summary judgment, maintained that it was owed $710.93, and asserted that it sent Ms. Dibb a "Notice of Dishonor of

Check" ("NOD"), dated September 25, 2012." *Id.*, at 3-4. Ms. Dibb asserts that she did not receive the NOD until the Defendant filed its motion for summary judgment in state court. *Id.* The NOD read:

> You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty days after the date this letter is postmarked.

Id. The NOD's envelope had a clear "glassine window" address block in the lower left hand corner. *Id.* Ms. Dibb's account number with Defendant was visible. *Id.*

Ms. Dibb makes claims on behalf of herself and others similarly situated under the FDCPA based on the NOD's statements regarding criminal prosecution and the NOD's envelope's design which permitted her account number to be visible. *Id.* Ms. Dibb alleges that the FDCPA violations constitute per se violations of the CPA, and so asserts that claim on behalf of herself and the class as well. *Id.* No motion for certification of the class has been filed.

II. DISCUSSION

A. STANDARD FOR MOTION TO DISMISS

Fed. R. Civ. P. 12(b) motions to dismiss may be based on either the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v. Pacifica Police Department*, 901 F.2d 696, 699 (9th Cir. 1990). Material allegations are taken as admitted and the complaint is construed in the plaintiff's favor. *Keniston v. Roberts*, 717 F.2d 1295 (9th Cir. 1983). "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007)(internal citations omitted). "Factual allegations must be enough to raise a right to relief

above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id*. at 1965. Plaintiffs must allege "enough facts to state a claim to relief that is plausible on its face." *Id*. at 1974.

B. DEBT COVERED UNDER FDCPA?

The FDCPA is "a broad remedial statute designed to 'eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.'" *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060 (9th Cir. 2011)(*quoting* 15 U.S.C. § 1692(e)).

The FDCPA defines "debt" as, "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 personal, family, or household purposes . . . ." 15 U.S.C.A. § 1692a (5). The Act "does not define 'transaction,' but the consensus judicial interpretation is reflected in the Seventh Circuit's ruling that the statute is limited in its reach 'to those obligations to pay arising from consensual transactions, where parties negotiate or contract for consumer-related goods or services.'" *Turner v. Cook*, 362 F.3d 1219, 1227 (9th Cir. 2004) (*quoting Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1326 (7th Cir.1997). So, for example, courts have ruled that child support is not a "debt" under the FDCPA because it was not incurred in exchange for consumer goods or services (*Mabe v. G.C. Servs. Ltd. P'ship*, 32 F.3d 86, 88 (4th Cir.1994). Likewise, the obligation to pay for shoplifted goods is not a "debt" under the Act because the parties did not have a contractual arrangement of any kind (*Shorts v. Palmer*, 155 F.R.D 172, 175-76 (S.D Ohio 1994). In attempting to determine which "debts" are covered by the FDCPA, the Ninth Circuit adopted the following reasoning:

> By the plain terms of the statute, not all obligations to pay are considered "debts" subject to the FDCPA. Rather, the FDCPA may be triggered only when an obligation to pay arises out of a specified "transaction." Although the statute does not define the term "transaction," we do not find it ambiguous. A fundamental canon of statutory construction directs us to interpret words according to their ordinary meaning. The ordinary meaning of "transaction" necessarily implies some type of business dealing between parties. In other words, when we speak of "transactions," we refer to consensual or contractual arrangements, not damage obligations thrust upon one as a result of no more than her own negligence. While we do not hold that every consensual or business dealing constitutes a "transaction" triggering application of the FDCPA ... at a minimum, a "transaction" under the FDCPA must involve some kind of business dealing or other consensual obligation.

Turner v. Cook, 362 F.3d 1219, 1227-28 (9th Cir. 2004) (*quoting Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998)(holding that an obligation arising from a tort was not a "debt" under the Act)).

Defendant's motion to dismiss Plaintiffs' FDCPA claims (Dkt. 9) should be denied. Defendant maintains that Plaintiffs' FDCPA claims should be dismissed because it was not collecting a "debt" under the Act since the underlying "transaction" (that of registering a vehicle) was required by state statute, RCW 46.16A.030. Dkt. 9. Defendant argues that "failing to register a vehicle with the Department subjects the owner to fines and penalties," like not paying taxes. Dkt. 11, at 4. Defendant extends RCW 46.16A.030(2) too far. RCW 46.16A.030 makes it "unlawful for a person to operate any vehicle on a **public highway** of this state without having in full force and effect a current and proper vehicle registration and displaying license plates on the vehicle." RCW 46.16A.030(2) (*emphasis added*). Plaintiffs properly point out that they do not have to register their vehicles – they only must do so if they intend to drive their vehicles on public roads. Dkt. 10. Accordingly, they enter a consensual transaction and so any resulting debt (here due to the returned check) is covered under the FDCPA. That is, in exchange for the

use of public roads, Plaintiffs agree to register their vehicles with the state. The underlying debt, then, is voluntarily undertaken.

Although the parties do not point to any authority precisely on point, nor can this Court find any, the Plaintiffs' position appears to be more consistent with the overall remedial scheme of the statute. Accordingly, Defendant's motion to dismiss the FDCPA claims should be denied.

C. CPA VIOLATION

Under Washington law, a violation of the FDCPA is a per se violation of the CPA. *Panag v. Farmers Ins. Co. of Washington*, 166 Wash. 2d 27, 53 (2009).

Defendant's Motion to Dismiss Plaintiffs' CPA claims (Dkt. 9) should be denied. Plaintiffs state that they base their CPA claims on their claims for violation of the FDCPA. Dkt. 10. Plaintiffs also note that, to the extent that Defendant argues that it acted properly by repeating language found in RCW 62A.3-540, a court in this district has held that the FDCPA and RCW 62A.3-540 contradict one another and so the FDCPA preempted RCW 62A.3-540. Dkt. 10 (*citing Lensch v. Armada Corp.*, 795 F.Supp.2d 1180 (W.D. Wash. 2011). Defendant argues that the *Lensch* Court's holding was limited to the facts in that case. Dkt. 11. At this stage in the proceedings, this Court need not address that issue. Plaintiffs have sufficiently plead claims under the FDCPA, and to the extent that they base their CPA claims on the FDCPA violations, the motion to dismiss should be denied.

III. ORDER

Therefore, it is hereby **ORDERED** that Defendant AllianceOne Receivables Management, Inc.'s Motion to Dismiss (Dkt. 9) is **DENIED**.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 16th day of December, 2014.

ROBERT J. BRYAN
United States District Judge