

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	SACV 16-00925 AG (JCGx)	Date	December 12, 2016
Title	MARK GALAVIZ v. ACCOUNT MANAGEMENT SERVICES		

Present: The Honorable ANDREW J. GUILFORD

Lisa Bredahl

Not Present

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

**Proceedings: [TENTATIVE] ORDER DENYING MOTION FOR
JUDGMENT ON THE PLEADINGS**

This case concerns a small debt. Mark Galaviz sued Account Management Services, Inc., for alleged violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and related state law. Congress enacted the FDCPA to “eliminate abusive debt collection practices.” 15 U.S.C. § 1692(e). Among other things, the Act prohibits debt collectors from using “false, deceptive, or misleading” tactics, 15 U.S.C. § 1692e, and requires them to “cease collection” of any “disputed” debt, 15 U.S.C. § 1692g(b).

The pleadings are straightforward. Galaviz claims that he received a collection letter, that he “disputed” the debt, and that he requested the agency to “cease collection activity until validation had been provided.” (Compl., Dkt. No. 1, PageID 2.) But the collection agency, despite all that, allegedly “continued collection activity” and “provid[ed] adverse information to a credit reporting agency while the debt was disputed.” (*Id.* at 3.) Account Management Services denies that Galaviz ever requested a “validation” of the debt and raises a few affirmative defenses to recovery under the FDCPA, like “bona fide error” and “bad faith.” (Answer, Dkt. No. 10, PageID 20–21, 23–24.)

Still, Galaviz (the plaintiff here) moves for judgment on the pleadings, and asks the Court to take notice of certain documents, like the collection notice, his responsive letter, and some copies of his credit report. (Req. for Judicial Notice, Dkt. No. 19-1, PageID 94–95.) “After

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the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). Judgment on the pleadings is a “decision on the merits,” so relief is only proper if there are “no issues of material fact” and the moving party is entitled to “judgment as a matter of law.” *Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989). As a result, in the ordinary course, the “plaintiff is not entitled to judgment on the pleadings if the defendant’s answer raises issues of fact or affirmative defenses.” *Pit River Tribe v. Bureau of Land Mgmt.*, 793 F.3d 1147, 1159 (9th Cir. 2015).

Practice pointer: “At this point in time the Rule 12(c) motion is little more than a relic of the common law.” 5C C. Wright & A. Miller, *Federal Practice and Procedure* § 1370, p. 265 (3d ed. 2004). As commentators have noted, “the great majority of Rule 12(c) motions eventually are converted into motions for summary judgment” precisely because “it usually is necessary to introduce supporting affidavits and other written documents to prove that no triable issue of fact actually is in dispute.” *Id.* § 1371, at 274–75; *see also* Fed. R. Civ. P. 12(d) (If “matters outside the pleadings are presented to and not excluded by the court,” then “the motion must be treated as one for summary judgment” and “[a]ll parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.”).

That’s exactly the case here. Consider the following: Galaviz marshals extra-pleading material to support his motion, both parties have already begun conducting discovery, and Account Management Services is in the midst of a motion to compel further discovery. (Mot. to Compel, Dkt. No. 22, PageID 150.) What’s more, Account Management Services has (at least) pointed to some potential factual disputes and raised a few plausible affirmative defenses that may require further development. Did Galaviz’s letter actually “dispute” the validity of his debt under the FDCPA? Was Account Management Service’s collection activity the result of a bona fide “clerical error”? *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 589 (2010). Both parties might wish to present evidence and argument on those and other issues. While its true that the Court may take judicial notice of undisputed facts, *see* Fed. R. Evid. 201(b), it appears that resort to a summary procedure here would “violate[] the policy in favor of ensuring to each litigant a full and fair hearing on the merits of his or her claim or defense.” *See* 5C Wright & Miller § 1368, at 222–23.

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Because resolution of this dispute is better left for another day, the Court DENIES Galaviz's motion for judgment on the pleadings. (Dkt. No. 19.) Rather than exercise its discretion to convert this motion into one for summary judgment, *see* Fed. R. Civ. P. 12(d), the Court permits the parties to file dispositive motions (and supporting evidence) when appropriate. *See* Fed. R. Civ. P. 56; L.R. 56-1.

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