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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

RICARDO GODINEZ, et al.,

Plaintiff,

v.

**LAW OFFICES OF CLARK GAREN
and THE BEST SERVICE CO., INC.,**

Defendants.

Case No.: SACV 16-00828-CJC(DFMx)

**ORDER GRANTING PLAINTIFF'S
MOTION TO DISMISS
DEFENDANT'S COUNTERCLAIMS**

I. INTRODUCTION AND BACKGROUND

Plaintiff Ricardo Godinez brought this action against Defendants Law Offices of Clark Garen and The Best Service Co., Inc. (“Best Service”) (together, “Defendants”) for violations of the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.

1 § 1692 et seq., and California’s Rosenthal Fair Debt Collection Practices Act
2 (“RFDCPA”), Cal. Civ. Code § 1788.17. (Dkt. 1, Compl.) Defendants filed an Answer,
3 in which Best Services asserted three counterclaims against Godinez based on purported
4 debt of Godinez’s that had been assigned to Best Service. (Dkt. 16.) The counterclaims
5 are all brought under state law: (1) an open book account, (2) an account stated, and (3)
6 quantum meruit and unjust enrichment. (Dkt. 16, Answer ¶¶ 99-107.) Best Services
7 seeks to recover the amount of Godinez’s underlying debt, \$3,568.80, plus interest. (*Id.*
8 ¶ 107 and prayer for relief.) Before the Court is Godinez’s motion to dismiss Best
9 Service’s counterclaims, (Dkt. 23), for lack of subject matter jurisdiction pursuant to
10 Federal Rules of Civil Procedure 12(b)(1), and for failure to state a claim. *See* Fed. R.
11 Civ. P. 12(b)(6). For the following reasons, Godinez’s motion is GRANTED.¹

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13 **II. ANALYSIS**

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15 A defendant (or counter defendant) may move to dismiss an action for lack of
16 subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Godinez
17 argues that the Court lacks subject matter jurisdiction over Best Service’s counterclaim
18 because it is a permissive counterclaim that lacks an independent jurisdictional basis.
19 Defendants concede that the counterclaims are permissive, (Dkt. 26, Def.’s Opp’n Br. at
20 2), but argue that the Court may—and should—exercise supplemental jurisdiction over
21 them.

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28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for August 1, 2016 at 1:30 p.m. is hereby vacated and off calendar.

1 A. Counterclaims

2
3 Federal Rule of Civil Procedure 13 defines two types of counterclaims:
4 compulsory and permissive. A compulsory counterclaim is one that “arises out of the
5 transaction or occurrence that is the subject matter of the opposing party’s claim,” while a
6 permissive counterclaim is “any claim that is not compulsory.” Fed. R. Civ. P. 13. A
7 counterclaim arises out of the same transaction or occurrence as another claim if it meets
8 the Ninth Circuit’s “logical relationship” test. “A logical relationship exists when the
9 counterclaim arises from the same aggregate set of operative facts as the initial claim, in
10 that the same operative facts serve as the basis of both claims or the aggregate core of
11 facts upon which the claim rests activates additional legal rights otherwise dormant in the
12 defendant.” *In re Lazar*, 237 F.3d 967, 979 (9th Cir. 2001).

13
14 Godinez claims that Defendants violated the FDCPA and the RFDCPA by
15 engaging in unlawful debt collection practices, and Best Service’s counterclaims allege
16 that that Plaintiff violated the terms of an agreement assigned to Best Service. These
17 claims clearly have *something* in common; they both ultimately relate to Plaintiff’s
18 alleged debt. But they do not “arise[] from the same aggregate set of operative facts”
19 such that Best Service’s counterclaim is compulsory. *See Lazar*, 237 F.3d at 967. A
20 number of district courts in the Ninth Circuit have found that actions to collect on debts
21 are not compulsory counterclaims in FDCPA actions. *See, e.g., Marlin v. Chase*
22 *Cardmember Servs.*, No. 1:09cv0192 AWI DLB, 2009 WL 1405196, at * 3 (E.D. Cal.
23 May 19, 2009) (“[M]ost, if not all of the district courts within the Ninth Circuit . . . have
24 determined that [a counterclaim to collect on a debt in an FDCPA action] is permissive”
25 (collecting cases).); *Martin v. Law Offices of John F. Edwards*, 262 F.R.D. 534, 537
26 (S.D. Cal. 2009) (noting that “the majority of courts in the Ninth Circuit” have found that
27 collection counterclaims in FDCPA actions are permissive (collecting cases)); *Sparrow v.*
28 *Mazda Am. Credit*, 385 F. Supp. 2d 1063, 1069 (E.D. Cal. 2005) (holding that a

1 counterclaim to collect on a debt in an FDCPA action was not compulsory because
2 “[w]hether a plaintiff in an unfair debt collection practices action actually has outstanding
3 debt is irrelevant to the merits of that claim”). Best Service’s counterclaims are
4 permissive as opposed to compulsory.
5

6 **B. Discretion to Exercise Supplemental Jurisdiction over Permissive** 7 **Counterclaims** 8

9 “[A] majority of the cases within the Ninth Circuit have . . . determined that [a
10 district court] has supplemental jurisdiction over the permissive counterclaim for the
11 underlying debt” in an FDCPA action. *Marlin*, 2009 WL 1405196, at *4; *see, e.g., id.*;
12 *Sparrow*, 385 F. Supp. 2d at 1070; *Koumarian v. Chase Bank USA, N.A.*, No. C-08-4033
13 MMC, 2008 WL 5120053, at *3 (N.D. Cal. Dec. 3, 2008). This Court agrees with that
14 conclusion.
15

16 But even when a district court has supplemental jurisdiction over a claim, it may,
17 in its discretion, “decline to exercise supplemental jurisdiction” if “(1) the claim raises a
18 novel or complex issue of State law, (2) the claim substantially predominates over the
19 claim or claims over which the district court has original jurisdiction, (3) the district court
20 has dismissed all claims over which it has original jurisdiction, or (4) in exceptional
21 circumstances, there are other compelling reasons for declining jurisdiction.” 28 U.S.C.
22 § 1367(c). A number of district courts in the Ninth Circuit have declined to exercise
23 supplemental jurisdiction over collection claims in FDCPA actions. For example, the
24 district court in *Sparrow* refrained from exercising supplemental jurisdiction in large part
25 because it worried about a potential “chilling effect” if plaintiffs in FDCPA cases were
26 inevitably hit with actions to collect underlying debts. *Sparrow*, 385 F. Supp. 2d at 1071;
27 *see also Marlin*, 2009 WL 1405196, at *4-5 (finding *Sparrow* “persuasive” and declining
28 to exercise supplemental jurisdiction on similar grounds). A minority of courts have

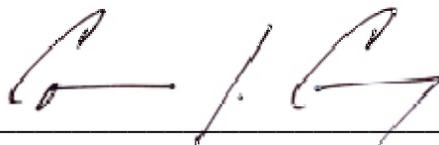
1 exercised supplemental jurisdiction in similar cases, downplaying the potential chilling
2 effect and highlighting gains in judicial economy and efficiency from adjudicating related
3 claims in a single proceeding. *See, e.g., Koumarian*, 2008 WL 5120053, at *4 (noting
4 that exercising supplemental jurisdiction would serve “judicial economy and efficiency”
5 and worrying that plaintiffs may try to use the chilling effect argument to “bestow on
6 [themselves] a legal right to avoid collection” (citing *Channell v. Citicorp Nat. Servs.,*
7 *Inc.*, 89 F.3d 379, 386 (7th Cir. 1996)).

8
9 This Court concludes that the efficiency gains of combining the underlying debt
10 collection action with the FDCPA and RFDCPA claims would be minimal, and are
11 outweighed by the danger of creating a chilling effect on plaintiffs seeking to assert their
12 FDCPA claims in federal court, should courts routinely allow such permissive
13 counterclaims to proceed. Accordingly, dismissal of the counterclaims is appropriate
14 here. Because the Court declines to assert supplemental jurisdiction over the
15 counterclaims, there is no need to consider Godinez’s alternative argument, that the
16 counterclaims fail to state a claim and therefore must be dismissed under Rule 12(b)(6).

17
18 **III. CONCLUSION**

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20 For the foregoing reasons, Godinez’s motion to dismiss is GRANTED.

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23 DATED: July 28, 2016



24
25 CORMAC J. CARNEY

26 UNITED STATES DISTRICT JUDGE