MAGANA v. AMCOL SYSTEMS, INC.

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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

CAMDEN VICINAGE

Nicole MAGANA,

Plaintiff, v. AMCOL SYSTEMS, INC, et al.,

Defendants.

: : : : Civil No. 17-11541 (RBK/AMD) : : OPINION : : : : KUGLER, United States District Judge: This § 1692 et seq., comes before the Court on Amcol Systems, Inc. Motion to Dismiss (Doc. No. 7) the Complaint (Doc. No. 1) of Nicole Magana) pursuant to Federal Rule of Civil Procedure 12(b)(6). Because Plaintiff has failed to state a claim upon which relief can be GRANTED.

I. BACKGROUND This matter arises out of a debt that Plaintiff allegedly incurred on or before December 6, 2016 to Atlanticare Regional Medical Center. (Compl. at ¶ 15.) This debt, totaling $360.23, (Compl., Ex. A.), was subsequently transferred to Defendant, a debt collection firm located in Columbia, South Carolina. (Compl. at ¶¶ 8 and 21.) On December 6, 2016, Defendant notified Plaintiff of her outstanding financial obligation. (Id. at ¶¶ 24-25.) The letter contained Defe name, address, and contact information, as well as the outstanding balance owed by Plaintiff. (Id., Ex. A. Id.) The first paragraph of text stated, in pertinent Case 1:17-cv-11541-RBK-AMD Document 12 Filed 06/06/18 Page 1 of 11 PageID: 112 (Id.) The relevant portions of the second paragraph stated:

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgement or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor. (Id.)

The final paragraph of text contained in the collection notice informs the debtor that they

Id.)

two provisions of the FDCPA by:

(a) Using false, deceptive or misleading representations or means in connection

with the collection of a debt in violation of 15 U.S.C. § 1692(e)(10); and (b) Failing to provide the consumer with a proper notice pursuant to 15 U.S.C.

§ 1692(g)(a)(3). (Compl. at ¶ 37.) Plaintiff argues that the collection letter does not make it explicitly clear that a complaint or dispute over the bill must be done in writing, and that as such, the letter violates sections 1692(g)(a)(3) and 1692(e)(10). (Id. at ¶¶ 41, 44.) Plaintiff brought this action against Defendant as a state-wide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of herself and all other New Jersey consumers who were sent similar debt collection letters from Defendant. (Id. at ¶ 11).

II. STANDARD Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss an action for failure accept all factual allegations as true, construe the complaint in the light most favorable to the

plaintiff, and determine whether, under any reasonable reading of the complaint, the plaintiff may Fowler v. UPMC Shadyside, 578 F.3d 203, 210 (3d Cir. 2009) (quoting Phillips v. Cnty. of Allegheny, 515 F.3d 224, 233 (3d. Cir. 2008)). In other words, a complaint claim to relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570

(2007). It is not for courts to decide at this point whether the non-moving party will succeed on ort of In re Rockefeller Ctr. Prop., Inc., 311 F.3d 198, 215 (3d Cir. 2002). In making this determination, a three-part analysis is needed. Santiago v. Warminster Twp., [e] note of the elements a plaintiff must Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 675 (2009)). Second, the court

assumption Id. (quoting Iqbal Id. (quoting Iqbal, when there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement Id. (quoting Iqbal, 556 U.S. at 679). A complaint cannot survive a motion to dismiss where a court can only infer that a claim is merely possible rather than plausible. Id.

III. DISCUSSION AND ANALYSIS

§ form Plaintiff . . . Compl. at ¶ 47.) Second, § misleading Plaintiff dispute her debt by calling a telephone number.

(Id. at ¶ 48.)

Section 1692(g)

§ 1692(e); see also id. use of FDCPA accomplishes this goal is by requiring that debt collectors convey certain information to

to seek information about and dispute a Jewsevskyj v. Financial Recovery Services, Inc., 704 Fed. App 147 (2017). Specifically, § 1692(g)(a) of the FDCPA requires that a debt collector include in its correspondence with a debtor, along with other information:

(3) a statement that unless the consumer, within thirty days after receipt of the

notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector. 15 U.S.C. § 1692(g)(a)(3). The purpose of § 1692(g)(a)(3) Wilson v. Quadramed Corp., 225 F.3d 350, 353-54 (3d Cir. 2000). In order to

comply with § notice in the debt collection letter the required notice must also be conveyed effectively to the

Id. at 354. In other words, the debt collector must inform the debtor of her right to dispute their debt. Because the Third Circuit has interpreted § that any dispute, t Graziano v. Harrison, 950 F.2d 107, 112 (3d Cir. 1991), debt collectors must inform debtors that they may dispute their claims in writing only. The collection

. . . § 1692(b). Therefore, the notice must effectively convey the writing requirement. A communication contradicts, or does not

Wilson, 225 F.3d at 356. To determine whether notice has been effectively conveyed and whether the writing requirement is clear, or if it has been

sophistica Id. at 354. Brown v. Card Serv. Ctr., 464 F.3d 450, 454 (3d Cir. 2006). Accordingly,

deceive or mislead a reasonable debtor might still deceive or mislead the least sophisticated Id. (quoting Wilson, 225 F.3d at 354). Nevertheless, the FDCPA prevents liability for

reasonableness and presuming a basic level of understanding and willingness to Wilson, 225 F.3d at 354-55 (quotations and citations omitted). For example, even the least

sophisticated debtor is presumed to have read a collection letter in its entirety. Caprio v.

Healthcare Revenue Recovery Grp., LLC, 709 F.3d 142, 149 (3d Cir. 2013); Campuzano-Burgos v. Midland Credit Mgmt., Inc., 550 F.3d 294, 299 (3d Cir. 2008). Plaintiff contends that the language contained in the first paragraph of the collection letter violates § 1692(g)(a)(3) by contradicting or overshadowing the requirement that all disputes be made in writing. Plaintiff disputes the language used in the need help with this bill, or have questions, please contact our office where a representative is on

hand to assist you. Plaintiff contends that this text, coupled with the fact that Defendant listed two phone numbers sophisticated debtor. The least sophisticated debtor could, according to Plaintiff, believe she had to submit disputes in writing, or instead that she could simply call the listed numbers to successfully dispute the claims. Because Defendant did not explicitly state what type -hand representative, Plaintiff asserts it is just as plausible

that the least sophisticated debtor would believe that a dispute regarding a debt could be dealt with over the phone by asking , as it is that such a debtor would know from the language of the letter that disputes must be presented in writing. Thus, Plaintiff contends, the least sophisticated debtor would think herself justified in calling Defendant to successfully dispute a claim. (Pl. Memo. at 9-10.) Therefore, Plaintiff argues, the language of the first paragraph overshadows or contradicts the notice requirement of § 1692(g)(a)(3). of the collection letter overshadows or contradicts the language in the second paragraph to the

extent that the least sophisticated debtor would be confused about her rights. The FDCPA requires that debt collectors inform a debtor of her right to dispute the validity of any debt for at least thirty days. 15 U.S.C. § 1692(g)(a)(3). Additionally, the Third Circuit has held that for a dispute to be

valid it must be made in writing. Graziano, 950 F.2d at 112. The Court finds that in the Third Circuit, debt collectors are required to inform debtors that a proper dispute of the validity of a debt must be done in writing. Thus, the first question this Court must answer is whether the language of the debt collection letter in the case at hand satisfies the requirement that collectors notify the debtor of the writing requirement to dispute a debt. A plain reading of the disputed paragraph of text is enough to show that Defendant effectively conveyed the writing requirement for disputing reference to any other form of communication with the office. The paragraph is not perfectly clear

about what someone needs to do as a matter of logical necessity to dispute a claim, as each sets forth merely a sufficient, rather than a necessary, condition. However, the

overall message is still apparent, and the paragraph successfully conveys the writing requirement, even from the perspective of the least sophisticated debtor.

Such language appears in debt collection letters as a matter of routine. See, e.g., Szczurek v. Professional Management Inc., 627 Fed. App x 57 (2015). Although the Third Circuit did not

explicitly analyze the exact language now contested, the court in Szczurek was faced with a nearly identical debt collection letter. 1

Id. at 59. The Third Circuit took no issue with the now-contested

1 The pertinent portion of the letter stated:

Unless, within 30 days after receipt of this notice, you dispute the validity of the debt or any portion thereof, we will assume the debt to be valid. If, within 30 days after your receipt of this notice, you notify us in writing that the debt or any portion thereof is disputed, we will obtain a verification of the debt, or if the debt is founded upon a judgment, a copy of any such judgment, and we will mail to you a copy of such verification or judgment. If the original creditor is different from the creditor named above, then upon your written request within 30 days after the receipt of this notice we will provide you with the name and address of the original creditor. 627 Fed. App x at 59.

s views regarding the contested language. For these reasons, this Court concludes that the second paragraph of the collection letter effectively conveys the writing requirement for disputing the validity of a debt. collectors effectively convey the writing requirement to dispute a debt, the next question the Court

must face is whether the opening language of the collection letter overshadowed or contradicted the writing requirement. Plaintiff contends that the first paragraph, which invites a debtor to

sophisticated debtor as to whether the writing requirement conveyed in the second paragraph was actually a requirement.

The Court notes that the language of the first paragraph would almost certainly be understood by the least sophisticated debtor as an invitation to call the office. The use of the and simultaneous dialogue with another fact that Defendant listed two phone numbers under its address, as an invitation to call. However,

would be enough to convince the least sophisticated debtor that she could call to dispute a claim.

One must stretch their imagination past the point of discomfort, and past the point of the least invitation to call to dispute, quarrel, or argue over the validity of a claim. The least sophisticated

debtor is still presumed to have read the entire notice, Caprio, 709 F.3d at 149; even if the debtor were to understand the first paragraph as an invitation to call, it would become obvious upon reading the second paragraph that a dispute as to the validity of a debt is not encompassed by

the letter as a whole to conclude that the fi Wilson, 225 F.3d at 354-55. And more to the point,

the sufficient conditions set by the letter are the only conditions provided by the letter; neither this Court nor the least sophisticated debtor is at liberty to read other conditions into the letter.

While the Court finds the language in the first paragraph to be less than a model of clarity or comprehensiveness, it does not find that it overshadows or c recitation of the writing requirement, even from the view of the least sophisticated debtor.

The Court also does not find that the third paragraph, whether taken on its own or in conjunction with the first, could be read to overshadow or contradict the writing requirement contained in the second. The final paragraph informs the debtor that she may qualify for the she the debtor should call the number listed. A court in this District has previously addressed a similar insurance statement contained in a collection notice, concluding that it would not be inconsistent with, or contradict, the writing requirement. See Cruz v. Financial Recoveries, 2016 WL 3545322, at *3 (D.N.J. June 28, 2016) (holding that including a number for debtors to call to enter their insurance information would not contradict the writing requirement of § 1692(g)). The Third Circuit was confronted with a similar insurance-related clause in the Szczurek case. In Szczurek, the letter informed t could submit the information over the phone to the collection agency. Szczurek, 627 Fed. App x

at 59. The Third Circuit apparently found this insurance clause unremarkable, lending support to

the idea that that such language does not impermissibly contradict or overshadow the writing requirement.

etter sufficiently for disputes, and that the language contained in the remainder of the letter neither overshadowed

nor contradicted the writing requirement. Accordingly, Plaintiff has failed to state a claim upon which relief can be granted under § 1692(g)(a)(3),

Section 1692(e) Because Plaintiff cannot prevail on her claim under § 1692(g)(a)(3), Plaintiff likewise cannot succeed under § 1692(e)(10). The FDCPA or deceptive means to collect or attempt to collect any debt or to obtain information concerning a § 1692(e)(10). reasonably Rosenau v.

Unifund Corp., 539 F.3d 218, 222 (3d Cir. 2008) (citing Brown, 464 F.3d at 455 (internal quotation marks and citation omitted)). to Section 1692(g), Cruz v. Financial Recoveries, No. 15- 0753, 2016 WL 3545322, at *4. See also Caprio, 709 F.3d at 155 (that the District Court committed reversible error by granting judgment on the pleadings as to the § 1692(g) claim, we must reach the same conclusion with respect to the claim brought under § Even if the Court were to find that the § 1692(g)(a)(3) was not dispositive for the § 1692(e)(10) analysis, the letter in the case at hand is neither false nor deceptive because the

Rosenau, 539 F.3d at 222. As previously discussed, the language Defendant

utilized, although perhaps less than a model of clarity, could not be read to invite a phone call to dispute a debt. The second paragraph clearly and concisely laid out the requirements for making a dispute, and neither the language of the first paragraph, nor the last paragraph, could be understood as creating a second, alternative meaning upon which a debtor could rely.

In making its § 1692(e)(10) argument, Plaintiff relies on the same language contained in the first paragraph of the collection letter that it relied on in its § 1692(g)(a)(3) argument. Thus, this Court must reach the same conclusion with respect to the claim brought under § 1692(e)(10). Caprio, 709 F.3d at 155. Plaintiff has failed to argue any additional grounds with respect to its § 1692(e)(10) claim, and the disputed language is neither false nor deceptive. As such, the Court finds that Plaintiff has failed to state a claim upon which relief can be granted.

Class Action under Rule 23 Because Plaintiff has failed to state a claim upon which relief can be granted, this Court arguments.

IV. CONCLUSION For the reasons stated above, Plaintiff has failed to state a claim upon which relief can be granted. GRANTED. An appropriate order shall issue.

Dated: 06/06/2018 /s Robert B. Kugler

ROBERT B. KUGLER

United States District Judge