UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-61506-CIV-COHN/SELTZER

KENDRA JONES,

Plaintiff,

v.

BC SERVICES, INC.,

Defendant.
_________________________________/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE is before the Court upon Defendant BC Services, Inc.'s ("BC") Motion [DE 12] to Dismiss the Amended Complaint [DE 10] ("Motion"). The Court has carefully considered the Motion, Plaintiff's Response in Opposition[1] [DE 15], and Defendant's Reply [DE 16], and is otherwise fully advised in the premises. For the reasons stated below, the Motion is hereby granted.

BACKGROUND

Plaintiff Kendra Jones, a Florida resident, incurred a $1,487.71 charge from the Children's Hospital Colorado ("Hospital"). [DE 1-3.] Upon nonpayment of that charge, the Hospital referred the debt to Defendant BC, a Colorado debt collection agency, which then sent Plaintiff a collection notice ("Notice") dated July 15, 2017. [Id.] That

[1] On September 27, 2017, this Court extended Plaintiff's deadline to submit opposition papers from September 28, 2017 to October 6, 2017. [DE 14.] Yet Plaintiff, without excuse, did not file her response until October 12, 2017. [DE 15.] While the missed deadline could "be deemed sufficient cause for granting the motion by default," S.D. Fla. Local Rule 7.1(c), the Court has nonetheless considered Plaintiff's submission and resolves the Motion on the merits.

Notice included the following statement: "FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE WWW.COAG.GOV/CAR." [Id.] Both Parties agree that Colorado state law requires Colorado debt collectors to feature this language in all of their collection notices. [DE 12 at 4; DE 15 at 8.] Plaintiff contends, however, that the placement of this Colorado-specific language on the Notice, just below separate boilerplate required by the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., was sufficiently deceptive as to constitute a violation of §§ 1692(e) and (f) of the FDCPA. [DE 10 ¶¶ 24-28.] Plaintiff brought suit seeking to vindicate her rights under that statute. [DE 10.] Defendant moves to dismiss for failure to state a claim. [DE 12.]

STANDARD OF REVIEW

To adequately state a claim, Fed. R. Civ. P. 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556).

The Court need not accept allegations as true if they are "threadbare recitals of a cause of action's elements, supported by mere conclusory statements." Iqbal, 556 U.S. at 678. "Mere labels and conclusions or a formulaic recitation of the elements of a cause of action will not do, and a plaintiff cannot rely on naked assertions devoid of

further factual enhancement." Franklin v. Curry, 738 F.3d 1246, 1251 (11th Cir. 2013). "[I]f allegations are indeed more conclusory than factual, then the court does not have to assume their truth." Chaparro v. Carnival Corp., 693 F.3d 1333, 1337 (11th Cir. 2012).

DISCUSSION

Section 1692(e) of the FDCPA prohibits the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692(e). Section 1692(f) proscribes the use of "unfair or unconscionable means to collect or attempt to collect any debt." Id. § 1692(f). Whether a debt collector's conduct violates these provisions is assessed according to the "least-sophisticated consumer" standard. Crawford v. LVNV Funding, LLC, 758 F.3d 1254, 1258 (11th Cir. 2014). This standard looks "not [to] whether the particular plaintiff-consumer was deceived or misled; instead, the question is whether the 'least sophisticated consumer' would have been deceived." Id. Such mythical consumer

> can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with care. However, the test has an objective component in that while protecting naïve consumers, the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness.

LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1194 (11th Cir. 2010). In other words, the controlling test is an objective one, calibrated to the lowest common denominator.

Plaintiff alleges that, in issuing the Notice, Defendant "utilize[ed] false, deceptive, unfair or unconscionable representations and/or means in an attempt to collect [a debt]." [DE 10 ¶ 25.] More specifically, Plaintiff maintains that the Notice "wrongfully misleads the least sophisticated consumer into believing he or she was not protected and/or was not entitled to certain rights and/or protections at law, when, in reality, the consumer

was so protected," and vice versa. [Id. (emphasis in original).] Plaintiff's apparent logic is that (1) the proximity of the Notice's Colorado-mandated language to its federally mandated language creates a misleading impression that the federal language is required by Colorado law, rather than federal law; (2) that the least sophisticated Florida consumer would not expect to be governed by Colorado law, and, therefore; (3) that such consumer would not realize that the federal language delineates rights applicable to her.

Defendant counters that Plaintiff's tortured reading of the Notice is precisely the sort of "bizarre or idiosyncratic interpretation" of a collection notice which cannot yield FDCPA liability, even taking into account the concededly plaintiff-friendly standard. [DE 12 at 6-7.] Defendant relies upon a case called White v. Goodman, 200 F.3d 1016 (7th Cir. 2000). In White, the United States Court of Appeals for the Seventh Circuit rejected an argument—very similar to Plaintiff's—that a collection notice containing a boilerplate list of rights held by Colorado debtors violated the FDCPA because the recipient of the notice theoretically could infer that nonresidents of Colorado do not enjoy similar rights. Id. at 1020. In explaining its decision, the White Court bluntly proclaimed that "[a]ny document can be misread. The [FDCPA] is not violated by a dunning letter that is susceptible of an ingenious misreading, for then every dunning letter would violate it. The Act protects the unsophisticated debtor, but not the irrational one." Id.

This Court finds the Seventh Circuit's reasoning to be highly persuasive. Moreover, a different judge in this District recently dismissed a claim under the FDCPA based upon alleged deception resulting from the inclusion of state-specific language in

a collection notice.[2] See Ana Vasquez Pimentel v. Nationwide Credit, Inc., No. 17-CV-20226-KMW, 2017 WL 5633310, at *4 (S.D. Fla. Nov. 13, 2017). Observing that "the majority of courts that have addressed the inclusion of state specific notices on collection letters have found that such notices do not violate the FDCPA," Judge Williams concluded that such language would not mislead the least sophisticated consumer. Id.

In short, both common sense and the clear weight of authority instruct that Plaintiff's claim should be dismissed forthwith. The inclusion in a collection notice of legally mandated, anodyne boilerplate does not violate the FDCPA.

CONCLUSION

Accordingly, it is thereupon **ORDERED AND ADJUDGED** as follows:

1. Defendant's Motion to Dismiss [DE 12] is **GRANTED**.
2. Plaintiff's Amended Complaint [DE 10] is **DISMISSED with prejudice.**[3]
3. The Clerk of Court is instructed to **CLOSE** this case and **DENY as moot** any pending motions.

[2] Plaintiff's counsel in Pimentel, Mr. Jibrael Hindi, also represents Plaintiff Jones in this case. In fact, Ms. Jones appears to be one of his more prolific clients. The present dispute is one of six FDCPA complaints that she has filed in this District within the past year. [See Case Nos. 16-CV-62058; 16-CV-62059; 16-CV-62060; 17-CV-60838; 17-CV-61435.]

[3] Plaintiff has already amended her Complaint once and therefore may no longer amend as of right. See Fed. R. Civ. P. 15(a)(1). Since the Court concludes that this action is meritless and that any further amendment would prove futile, it will not grant Plaintiff leave to submit a second amended complaint. See Fed. R. Civ. P. 15(a)(2).

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 12th day of December, 2017.

JAMES I. COHN
United States District Judge

Copies provided to:
All Counsel of Record via CM/ECF