UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOSEPH SPINA,

Plaintiff,

v. **Case No. 8:15-cv-2155-T-TBM**

QUALITY ASSET RECOVERY, LLC,

Defendant.
_____/

O R D E R

This Cause is before the Court on Defendant's *ore tenus* motion for judgment as a matter of law made during the jury trial of this cause.[1] As explained below, the motion is **GRANTED**.

I.

By its motion, Defendant argues that the claim brought pursuant to 15 U.S.C. § 1692e(8) fails as a matter of law because a debt collector such as Defendant is not obligated to re-report a debt as disputed when it learns of the dispute only after it has reported the same to the credit reporting agencies ("CRAs"). Defendant maintains the evidence showed that after it did not receive a response to the March 2014 dunning letter, which it believes was sent to Plaintiff by its vendor,[2] it reported the debt at issue to the CRAs in May 2014. Because Plaintiff did not dispute the debt until October 2014, Defendant maintains it had no duty thereafter to re-report

[1]The Court deferred ruling on this motion at the close of all evidence.

[2]The evidence at trial was disputed as to whether Plaintiff received the dunning letter or related telephone calls.

the debt as disputed and thus there was no violation of § 1692e(8). In support of its position, Defendant relies in large part on the Eighth Circuit's decision in *Wilhelm v. Credico, Inc*, 519 F.3d 416 (8th Cir. 2008), as well as opinions within the Second Circuit, which hold that § 1692e(8) does not create an affirmative obligation to report that a debtor has disputed his debt after it has already been reported to the CRAs. Defendant contends its witnesses maintained that the company "credit reported" the debt one time and, while it did not report it disputed after learning of the dispute, it was not required to do so. Further, Defendant contends that it made no communications related to collection after they it notice of the dispute.

In response, Plaintiff argues that Defendant's own records reflect the debt was re-reported in May 2015. *See* (Plf's Exh. 6).[3] Moreover, Plaintiff notes Defendant's own witness testified that the status of the debt as active was reported to the CRAs each month after October 2014 without noting that the debt was disputed.[4]

II.

Rule 50 governs motions for judgment as a matter of law and motions for judgment notwithstanding the verdict. Fed. R. Civ. P. 50(a), (b). In this case, Defendant's motion was made at the close of the Plaintiff's case in chief and again at the conclusion of the evidence

[3]The exhibit is a copy of an Experian credit report dated May 23, 2015. Without any supporting testimony, Plaintiff claims the report establishes that Defendant re-reported the disputed debt in May 2015 without disclosing that the debt was disputed. However, the witness who addressed the matter, Defendant's Director of Operations, Mr. Loftis, testified that the debt was reported to the CRAs in May 2014 and but was not reported again.

[4]Plaintiff again relies on Mr. Loftis's testimony. By his account, Defendant's monthly batch reports to CRAs reflect whether a collection account, such as this one, was still active, but such is not a re-report of the debt.

portion of the trial pursuant to Rule 50(a). *See* Fed. R. Civ. P. 50(a)(2) (stating that a motion for judgment as a matter of law may be made at any time before the case is submitted to the jury). The Court reserved ruling on the motion.[5] Fed. R. Civ. P. 50(a)(2). Rule 50(a) states that:

> (1) If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may:
>
> (A) resolve the issue against the party; and
>
> (B) grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue.

Fed. R. Civ. P. 50(a)(1)(A), (B). In considering a motion for judgment as a matter of law, the court is not allowed to "make credibility determinations or weigh the evidence. . . . . Instead, [the court] consider[s] all the evidence, and the inferences drawn therefrom, in the light most favorable to the nonmoving party." *Lamonica v. Safe Hurricane Shutters, Inc.*, 711 F.3d 1299, 1312 (11th Cir. 2013) (citations and internal quotation marks omitted).

As noted, Defendant contends Plaintiff failed to meet his burden in proving that it violated § 1692e(8) of the Fair Debt Collections Practices Act ("FDCPA") and judgment as a matter of law as to that claim is therefore warranted. The FDCPA prohibits a debt collector from, among other things, using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. This includes "[c]ommunicating

---

[5]"[A] Rule 50(b) motion is unnecessary where the district court reserves ruling on a party's Rule 50(a) motion until after the jury returns its verdict. *Sherrod v. Palm Beach Cty. Sch. Dist.*, 424 F. Supp. 2d 1341, 1343 (S.D. Fla. 2006) (citing *Miller v. Kenworth of Dothan, Inc.*, 277 F.3d 1269, 1275 n. 4 (11th Cir. 2002)).

. . . to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed." *Id.* § 1692e(8).

III.

Upon thorough consideration of the record evidence, Defendant's motion for judgment as a matter of law on Plaintiff's § 1692e(8) claim is **GRANTED**. While the Eleventh Circuit has not weighed in on the issue, persuasive authority uniformly holds that when a debt collector such as QAR learns of a dispute after reporting the debt to a credit bureau, the dispute need not also be reported. *See Wilhelm*, 519 F.3d at 417-18 (relying on the FTC Commentary for the proposition that when a debt collector knows that a debt is disputed and reports it to a credit bureau, it must reported it as disputed, but it does not have to report the dispute where it learns of the dispute after reporting the debt to the credit bureau);[6] *Llewellyn v. Allstate Home Loans, Inc.*, 711 F.3d 1173, 1189 (10th Cir. 2013) (agreeing with *Wilhelm* that a debt collector does not have an affirmative duty to notify the credit bureau that a consumer disputes the debt unless the debt collector knows of the dispute and elects to report it); *Gordon v. Syndicated Office Sys., LLC*, No. 16c4440, 2017 WL 1134489, at *3 (N.D. Ill. Mar. 27, 2017) (finding "no reason to depart from *Wilhelm* and the myriad other cases that have held that a debt collector has no 'continuing duty . . . to advise consumer reporting agencies that a debt has been disputed, even

[6]The FTC Commentary interprets § 1692e(8) as not explicitly requiring a debt collector to update information about the disputed status of a debt about which it has not reported, or about which it has already reported prior to a consumer's dispute. *FTC Staff Commentary*, 53 Fed. Reg. 50097-02, 50106 (Dec. 13, 1988). As noted by the Eighth Circuit, § 1692e(8) "is rooted in the basic fraud law principle that, if a debt collector *elects* to communicate 'credit information' about a consumer, it must not omit a piece of information that is always material, namely, that the consumer has disputed a particular debt." *Wilhelm*, 519 F.3d at 418.

when the dispute occurs after the debt collector reports the debt'") (quotation omitted); *Rogers v. Overton, Russell, Doerr & Donovan, LLP*, Case No. 1:16-cv-00784, 2017 WL 570811, at *3 (N.D. N.Y. Feb. 13, 2017) (finding debt collector does not have an affirmative obligation under § 1692e(8) to report that a debtor has disputed the debt after it had already been reported to the credit reporting agencies); *see also Vernot v. Pinnacle Credit Servs., LLC*, No. 16-CV-3163(JFB)(SIL), 2017 WL 384327, at *1 n.2 (E.D. N.Y. Jan. 26, 2017) (observing that § 1692e(8) "does not impose an affirmative duty on debt collectors to update the status of each debt it has reported").

Here, Plaintiff claims a violation of this subsection on the basis that QAR did not report the debt as disputed after it learned of the dispute in October 2014. The undisputed evidence establishes that QAR reported the debt to the CRAs in May 2014. Plaintiff disputed the debt in October 2014. Thus, pursuant to the FTC Commentary and persuasive authority, QAR did not have an affirmative duty to report the debt as disputed in these circumstances, and its failure to do so does not amount to a false reporting of the debt in violation of §1692e(8). While QAR continued to report the debt as active after October 2014, the batch reporting of such did not communicate credit information and these reports were not rendered false in contemplation of § 1692e(8) by reason of the omission that the debt was disputed. Plaintiff's claim that QAR re-reported the debt in May 2015 and was required to report it as disputed at that time is

unsupported by competent evidence.[7] Accordingly, notwithstanding the jury's verdict, judgment as a matter of law is entered as to the claim brought under 15 U.S.C.§ 1692e(8).[8]

Done and Ordered at Tampa, Florida, this 26th day of May 2017.

THOMAS B. McCOUN III
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of record

[7]The undisputed evidence reflects that after the debt was reported to the CRAs in 2014, QAR may or would have reported the account as active in batch reports given to the CRAs on a regular basis but without reporting the dispute. Neither the FTC Commentary nor persuasive authority suggest QAR was obligated to report the dispute in these circumstances, and I find that the evidence Plaintiff relies on to show the debt was re-reported in May 2015 is wholly insufficient to support the jury verdict for a § 1692e(8) violation.

[8]QAR did not raise a specific legal challenge to Plaintiff's claim under § 1692e(2)(A).