

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

YAHAIRA RIVERA,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
FRANKLIN COLLECTION	:	
SERVICES, INC.,	:	No. 17-631
Defendant.	:	

MEMORANDUM

Schiller, J.

July 19, 2017

Yahaira Rivera sued Franklin Collection Services, Inc. (“Franklin”), alleging that Franklin violated the Fair Debt Collection Practices Act (“FDCPA”) when it sent her a debt collection letter containing a settlement offer and advising her to consult an attorney. Franklin has filed a motion to dismiss, which the Court now grants for the following reasons.

I. BACKGROUND

On or around March 29, 2016, Franklin, a debt collector, sent a letter to Rivera in an attempt to collect on a debt. (Compl. ¶¶ 5, 9.) The letter, which Plaintiff attached to her Complaint, reads in part:

SETTLEMENT OPPORTUNITY

MR./MS. RIVERA,

This account has been placed with our office for collection. You have an outstanding balance of \$1950.37 owed to AT&T. In an effort to help you resolve this matter we agree to offer you a settlement of \$1365.26. To accept this offer please send payment of \$1365.26. If you are not paying this account, call (888) 315-0912 for other available options, or contact your attorney regarding our potential remedies, and your defenses.

I intend to report this account on your credit history after (30) thirty days of you receiving this notice.

(*Id.* Ex. A [hereinafter “Collection Letter”].)

Rivera alleges that this language was “threatening and coercive and was made with the intent of scaring Plaintiff into making payment.” (*Id.* ¶ 12.) She further claims that “[t]his abusive language caused Plaintiff to become extremely upset and disheartened due to the extremely difficult financial struggle she is currently enduring.” (*Id.* ¶ 13.)

On February 10, 2017, Rivera filed her Complaint against Franklin, alleging that Franklin violated numerous provisions of the FDCPA.

II. STANDARD OF REVIEW

In reviewing a motion to dismiss for failure to state a claim, a district court must accept as true all well-pleaded allegations and draw all reasonable inferences in favor of the non-moving party. *See Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs.*, 237 F.3d 270, 272 (3d Cir. 2001). A court need not, however, credit “bald assertions” or “legal conclusions” when deciding a motion to dismiss. *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

“Factual allegations [in a complaint] must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). To survive a motion to dismiss, a complaint must include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. Although the federal rules impose no probability requirement at the pleading stage, a plaintiff must present “enough facts to raise a reasonable expectation that discovery will reveal evidence of the necessary element[s]” of a cause of action. *Phillips v. Cty. of Allegheny*,

515 F.3d 224, 234 (3d Cir. 2008). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. Simply reciting the elements will not suffice. *Id.* (holding that pleading labels and conclusions without further factual enhancement will not survive motion to dismiss); *see also Phillips*, 515 F.3d at 231.

The Third Circuit Court of Appeals has directed district courts to conduct a two-part analysis when faced with a motion to dismiss for failure to state a claim. First, the legal elements and factual allegations of the claim should be separated, with the well-pleaded facts accepted as true but the legal conclusions disregarded. *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210–11 (3d Cir. 2009). Second, the court must make a commonsense determination of whether the facts alleged in the complaint are sufficient to show a plausible claim for relief. *Id.* at 211. If the court can only infer the mere possibility of misconduct, the complaint must be dismissed because it has alleged—but has failed to show—that the pleader is entitled to relief. *Id.*

When deciding a motion to dismiss, “courts generally consider only the allegations contained in the complaint, exhibits attached to the complaint and matters of public record.” *Pension Benefit Guar. Corp. v. White Consol. Indus., Inc.*, 998 F.2d 1192, 1196 (3d Cir. 1993). Additionally, “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Id.*

III. DISCUSSION

Courts construe the FDCPA broadly. *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 453 (3d Cir. 2006). To state an FDCPA claim, a plaintiff must demonstrate that “(1) she is a consumer,

(2) the defendant is a debt collector, (3) the defendant’s challenged practice involves an attempt to collect a ‘debt’ as the Act defines it, and (4) the defendant has violated a provision of the FDCPA in attempting to collect the debt.” *Douglass v. Convergent Outsourcing*, 765 F.3d 299, 303 (3d Cir. 2014). The first three elements are not disputed here. Therefore, the Court will turn to the fourth element and assess whether Franklin violated a provision of the FDCPA when it sent its letter to Rivera.

When analyzing a communication from a lender to a debtor, courts apply the least sophisticated debtor standard. *Brown*, 464 F.3d at 454. The standard “requires more than simply examining whether particular language would deceive or mislead a reasonable debtor because a communication that would not deceive or mislead a reasonable debtor might still deceive or mislead the least sophisticated debtor.” *Id.* However, while this standard will protect a naïve debtor, this standard bars “liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care.” *Id.*

Applying the least sophisticated debtor standard, Rivera has failed to state an FDCPA claim because she has failed to allege facts of false, deceptive, or misleading language in the Franklin’s communication to her, or other facts evincing a violation of the FDCPA.

A. Sections 1692e(5) and 1692e(10)

The FDCPA states that a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. A debt collector may not make a “threat to take any action that cannot legally be taken or that is not intended to be taken.” § 1692e(5). The law also prohibits the “use of any false representation or

deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” § 1692e(10).

Rivera claims that Franklin’s letter containing settlement language and advising her to contact an attorney violated Sections 1692e(5) and 1692e(10) of the FDCPA. Rivera contends that the language suggesting that she contact an attorney is threatening, misleading, and deceptive to the least sophisticated consumer “who would be led to believe that she had to pay immediately in order to avoid pending legal action.” (Pl.’s Mem. of Law in Opp’n to Def.’s Mot. To Dismiss [Pl.’s Mem.] at 5.) The Court disagrees.

1. Threat of litigation

Applying the least sophisticated debtor standard, the Court concludes that Plaintiff has failed to state a claim under both Sections 1692e(5) and 1692e(10).

Rivera claims that the language in Franklin’s letter violates the FDCPA because it constitutes an implicit threat of litigation. (Pl.’s Mem. at 6.) To support her position, Rivera relies on *Huling v. Franklin Collection Serv., Inc.*, Civ. A. No. 16-0370, 2016 WL 4803196 (N.D. Ga. Sept. 13, 2016). In *Huling*, the plaintiff alleged violations of the FDCPA by Franklin in attempting to collect a debt. Franklin sent the plaintiff a letter that stated, “**IF YOU ARE NOT PAYING THIS ACCOUNT IN FULL, CONTACT YOUR ATTORNEY REGARDING OUR POTENTIAL REMEDIES, AND YOUR DEFENSES, OR CALL (888) 215-8961.**” *Id.* at *1. The letter also stated that the collection matter “**WILL BE PURSUED TO A CONCLUSION!**” *Id.* The court denied Franklin’s motion to dismiss. *Id.* at *5. It concluded that the language regarding pursuit of the collection matter to a conclusion could be interpreted as a threat to litigate when viewed from the standpoint of the least sophisticated

debtor. *Id.* at *3–4. The court noted that “[h]ad the [collection] letter simply advised the debtor to contact his or her own lawyer or call the debt collector, there may not be an issue here.” *Id.* at *4.

Huling is distinguishable from this case. Importantly, the letter sent to Rivera does not include the very language upon which the *Huling* court based its decision. This case is more like *Clark v. Franklin Collection Serv., Inc.*, Civ. A. No. 14-8067, 2015 WL 3486767 (D.N.J. June 2, 2015), upon which Defendant relies.

In *Clark*, the court considered a collection letter that read:

IF YOU ARE NOT PAYING THIS AT & T ACCOUNT IN FULL, PLEASE CONTACT YOUR ATTORNEY REGARDING OUR POTENTIAL REMEDIES AND YOUR DEFENSES, OR CALL (888) 215-8961.

Id. at *1. The court granted the defendant’s motion to dismiss because “[t]here is nothing in the tone or content of the letter that is abusive or harassing.” *Id.* at *2. The letter merely provided the plaintiff with his options without coercing or misleading the least sophisticated debtor into thinking that he was required to either pay or suffer dire consequences. *Id.* The letter neither was deceptive nor made false representations. *Id.* at *3. Finally, the court concluded that the letter did not make an express or implied threat of litigation. *Id.*; see also *Covington v. Franklin Collection Servs., Inc.*, Civ. A. No. 16-2262, 2016 WL 4159731, at *1–3 (D. Kan. Aug. 5, 2016) (considering a letter with language similar to that in *Clark* and deciding that the language did not suggest to an unsophisticated debtor that the letter threatened litigation). “[M]erely informing the debtor that there is an outstanding debt and that the debtor should explore his options with the debt collector or a lawyer” did not violate the FDCPA. *Clark*, 2015 WL 3486767, at *3.

The letter here is more like the letter in *Clark* than the letter in *Huling* because the letter sent by Franklin to Rivera contains no threat to take any action that cannot legally be taken, nor does it contain false representations or deceptive means to attempt to collect a debt. Moreover,

the problematic language in *Huling* about pursuing the matter to a conclusion is absent here. Therefore, Rivera has not stated a claim under Sections 1692e(5) or 1692e(10) of the FDCPA because she has failed to demonstrate that the letter’s language advising her to contact Franklin or an attorney is false, deceptive, or misleading.

2. *Settlement language*

Rivera also claims that the language about a settlement opportunity violates the FDCPA. The Court disagrees.

A communication between a debt collector and a debtor may include a settlement offer. *Johns v. Northland, Grp., Inc.*, 76 F. Supp. 3d 590, 600 (E.D. Pa. 2014). Simply using the terms “settlement” or “settlement offer” in collection letters does not violate the FDCPA. *See, e.g., Sullivan v. Allied Interstate, LLC*, Civ. A. No. 16-203, 2016 WL 7187507, at *7–8 (W.D. Pa. Oct. 18, 2016); *Forbes v. Capital Mgmt. Servs., L.P.*, Civ. A. No. 15-5088, 2016 WL 2617892, at *1 n.1 (E.D. Pa. Feb. 1, 2016); *Kryluk v. Northland Grp., Inc.*, Civ. A. No. 14-3198, 2014 WL 6676728, at *5 (E.D. Pa. Nov. 25, 2014). Indeed, using the term “settlement offer” in collection letters aimed at “resolving debts” is permissible. *Kryluk*, 2014 WL 6676728, at *5.

Here, the relevant portion of Franklin’s letter refers to a “*SETTLEMENT OPPORTUNITY*” and states, “In an effort to help you resolve this matter we agree to offer you a settlement of \$1365.26. To accept this offer please send payment of \$1365.26.” (Collection Letter.) The use of the phrase “settlement opportunity” by itself does not imply imminent litigation in violation of the FDCPA; the letter merely lays out the terms of the settlement offer. Therefore, the letter does not run afoul of the FDCPA.

B. Sections 1692f and 1692g

Under the FDCPA, “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f. This provision of the FDCPA is the “catch-all provision” and allows courts to address any misconduct not otherwise identified in the FDCPA. *Montgomery v. Midland Credit Mgmt., Inc.*, Civ. A. No. 12-1244, 2014 WL 3563198, at *7 (E.D. Pa. June 19, 2014). To state a claim under Section 1692f, however, the plaintiff must include factual allegations identifying misconduct separate from that which provides the basis for the plaintiff’s other FDCPA claims. *Hoover v. Midland Credit Mgmt., Inc.*, Civ. A. No. 10-6856, 2012 WL 1080117, at *8 (E.D. Pa. Mar. 30, 2012); *see also Stegall v. SN Servicing Corp.*, Civ. A. No. 16-2122, 2017 WL 971042, at *8 (E.D. Pa. Mar. 13, 2017); *Zarichny v. Complete Payment Recovery Servs., Inc.*, 80 F. Supp. 3d 610, 622 (E.D. Pa. 2015).

Rivera has failed to state a Section 1692f claim because she neglected to identify any misconduct by Franklin other than that which is being used to support her other FDCPA claims. Rivera’s general assertions about “Defendant’s deceptive, misleading and unfair debt collection practices” fail to identify any behavior by Franklin that could serve as the basis of a violation of Section 1692f. (Compl. ¶ 14.) Franklin’s motion to dismiss is therefore granted with respect to the Section 1692f claim.

The FDCPA also includes provisions that direct information that a debt collector must provide to a debtor, including the amount of the debt, the name of the creditor, and the status of the debt. 15 U.S.C. § 1692g. Rivera, however, does not outline the basis for the Section 1692g claim. Accordingly, that claim is also dismissed.

IV. CONCLUSION

Plaintiff's Complaint fails to state an FDCPA claim. However, the Court notes that Plaintiff's response to Defendant's motion to dismiss points out that Franklin does not own the debt and thus cannot collect on the debt. (Pl.'s Mem. at 5–6.) There are no factual allegations in Plaintiff's Complaint to support this assertion. Nonetheless, the Court will afford Plaintiff an opportunity to amend her Complaint—provided she can do so in good faith—to state a plausible claim. An Order consistent with this Memorandum will be docketed separately.