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FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Mar 06, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

CHRISTINA LAGROU, on behalf of  
herself and others similarly situated,  
  
Plaintiff,  
  
v.  
  
MONTEREY FINANCIAL SERVICES,  
LLC, D/B/A/ MONTEREY  
COLLECTIONS,  
  
Defendant.

No. 2:18-cv-0313-SAB

**ORDER DENYING  
DEFENDANT’S MOTION TO  
DISMISS**

Before the Court is Defendant’s 12(b)(6) Motion to Dismiss, ECF No. 14.  
The motion was heard without oral argument.

Defendant contends that Plaintiff’s Amended Complaint should be  
dismissed under Rule 12(b)(1) for want of subject matter jurisdiction and under  
Rule 12(b)(6) for failure to state a claim. The withdrawal of the bankruptcy  
reference cured any disputes regarding subject matter jurisdiction, and this Court  
is satisfied that it has jurisdiction to hear the case under both 28 U.S.C. § 1331 and  
28 U.S.C. § 1332. For the reasons stated below, dismissal under Rule 12(b)(6) is  
also improper.

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**ORDER DENYING DEFENDANT’S MOTION TO DISMISS 3 1**

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**STANDARD**

Rule 12(b)(6) permits dismissal for failure to state a claim upon which relief can be granted. Under ordinary liberal pleading standards, a plaintiff need only plead sufficient facts which, if taken as true, allow the Court to draw reasonable inferences that a plausible ground for relief exists. *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Rule 12(b)(6) dismissal is “appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” *Mendondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008).

To sufficiently state a claim for relief and survive a Rule 12(b)(6) motion, a complaint does not need detailed factual allegations but it must provide more than a “formulaic recitation of the elements of a cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The factual allegations must be enough to raise a right to relief above the speculative level. *Id.* When considering a motion to dismiss, a court must accept as true all “well-pleaded factual allegations.” *Iqbal*, 556 U.S. at 678.

**AMENDED COMPLAINT**

In considering the 12(b)(6) motion to dismiss, the Court takes the following facts solely from the Amended Complaint.

Defendant sent Plaintiff a collection attempt on April 29, 2016, seeking to collect \$2,709.36. Plaintiff sent a dispute letter that informed Defendant that she disputed the debt, requested validation, and requested not to be contact by phone regarding the debt. In response to the dispute letter, Defendant sent a follow-up letter.

Defendant’s follow-up letter reads in its entirety:

In response to the letter we received and pursuant to the debt validation requirements set forth in the Fair Debt Collection Practices Act, all calls from my office regarding the defaulted account with HDL, Inc. will cease. However, this defaulted account will report

1 accordingly, as a disputed collection account on your credit report.  
2 Call our office today to set up the necessary arrangements to satisfy  
3 your obligation to the contract.  
4 ECF No. 1 at 631.

5 This letter has three components: first, notice that all calls will cease, per  
6 Plaintiff's request; second, the reporting statement; and third, the contact  
7 statement.

8 Plaintiff argues that this letter violated two provisions of the Fair Debt  
9 Collection Practices Act, 15 U.S.C. § 1692 et al (FDCPA). First, she argues that  
10 the reporting statement constituted a false, deceptive, or misleading statement in  
11 violation of 17 U.S.C. § 1692e(5). Second, she argues that the letter in its entirety  
12 constituted an attempt to collect a disputed debt without providing verification, in  
13 violation of 15 U.S.C. §1692g(b).

#### 14 ANALYSIS

15 Defendant seeks to dismiss Plaintiff's claims for relief on the grounds that  
16 she has not adequately pled either claim. The Court disagrees. Plaintiff has  
17 sufficiently alleged facts that, if taken as true, state a plausible ground for relief.

18 The FDCPA prohibits a collector from making any false, deceptive, or  
19 misleading statements, including making a threat to take any action that cannot  
20 legally be taken or that is not intended to be taken. 15 U.S.C. § 1692e(5). Plaintiff  
21 alleges that the reporting statement ("However, this defaulted account will report  
22 accordingly, as a disputed collection account on your credit report") conveys a  
23 definite intent to report the debt to credit agencies, but that Defendant never  
24 actually intended to do so. Defendant does not allege in its motion to dismiss or  
25 reply that it intended to report the debt. Rather, it disputes that this statement was  
26 anything more than a disclosure that if it reported the debt, the report would reflect  
27 that the debt is disputed.

28 The Ninth Circuit applies the "least sophisticated debtor" standard, under  
which a communication violates the FDCPA if "the least sophisticated debtor

1 would ‘likely’ be misled.” *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934  
2 (9th Cir. 2007). Defendant’s assertion that Plaintiff’s interpretation is “bizarre,  
3 idiosyncratic, or peculiar” is unfounded. Much of Defendant’s argument is based  
4 upon the first sentence in the letter, which informed Plaintiff that it would cease all  
5 calls. Defendant attempts to extend this to an assurance that all collection  
6 attempts would cease, and thus that Plaintiff should have understood that  
7 Defendant would not report the debt. See ECF No. 15, at 6.

8         The plain language of the follow-up letter demonstrates that Plaintiff’s  
9 interpretation is reasonable. The appositional “However” indicates a tension  
10 between the first and second sentence. The first sentence indicates that a limited  
11 type of collection efforts (phone calls) would cease, while the second states that  
12 Defendant “will” report the debt, using the definitive “will”, an “auxiliary verb  
13 commonly having the mandatory sense of ‘shall’ or must,”. . . “a word of  
14 certainty, while the word ‘may’ is one of speculation and uncertainty.” *BLACK’S*  
15 *LAW DICTIONARY*, 1598 (6th ed. 1990). Not only is Plaintiff’s interpretation a  
16 reasonable one, Defendant’s is not. Thus, Plaintiff has adequately pled sufficient  
17 facts to support her first claim.

18         Plaintiff’s second claim is also adequately pled. Plaintiff alleges that the  
19 follow-up letter constituted an attempt to collect a disputed debt without providing  
20 verification, in violation of 15 U.S.C. § 1692g(b). Defendant disputes that the  
21 follow-up was an attempt to collect a disputed debt, and that it was instead a  
22 confirmation that it received Plaintiff’s letter, and which further provided Plaintiff  
23 with some information on FDCPA protections. Much of this claim hinges upon the  
24 contact statement.

25         Defendant argues that this statement was an invitation to contact and not a  
26 collection attempt, citing *Ferrulli v. BCA Fin. Servs., Inc.*, No. 17-cv-13177  
27 (KSH) (CLW), 2018 WL 4693968, at \*3 (D.N.J. Sept. 28, 2018). However, this  
28 case is distinguishable from *Ferrulli* and the cases cited therein.

1           The disputed language in Ferrulli was, “If you have any questions regarding  
2 this debt you may speak to an account representative by calling our office.” Id.  
3 Ferrulli cites a number of other examples of invitations to contact which have  
4 been found not to be collection attempts: *Borozan v. Financial Recovery Services,*  
5 *Inc.*, No. 17-11542, 2018 WL 3085217 (D.N.J. June 22, 2018) (“Please feel free to  
6 call us at the toll-free number listed below or use our online consumer help desk”);  
7 *Reizner v. Nat’l Recoveries, Inc.*, No. 17-2572, 2018 WL 2045992 (D.N.J. May 2,  
8 2018) (“You may write to us at the address listed below or telephone us at the  
9 number provided below”); *Caprio v. Healthcare Revenue Recovery Grp., LLC*,  
10 709 F.3d 142, 148 (3d Cir. 2013) (“If we can answer any questions, or if you feel  
11 you do not owe this amount, please call us toll free at 800-984-9115 or write us at  
12 the above address”).

13           The disputed language in this case is: “Call our office today to set up the  
14 necessary arrangements to satisfy your obligation to the contract.” This is distinct  
15 from the permissive language found in the invitations above. It is in the imperative  
16 tense and lacks any of the “if”, “may”, “please” language found in the cases  
17 referenced above. When coupled with the reporting statement, it presents a clear  
18 message: Defendant will report the debt and Plaintiff is instructed to contact  
19 Defendant to arrange for paying the debt.

20           Neither party provides a Ninth Circuit case defining what constitutes a  
21 collection attempt, but the Eleventh Circuit, citing Second and Fourth Circuit  
22 cases, has provided a straightforward definition: a communication is a collection  
23 attempt under the FDCPA if it “conveys information about a debt and its aim is at  
24 least in part to induce the debtor to pay.” *Caceres v. McCalla Raymer, LLC*, 755  
25 F.3d 1299, 1302 (11th Cir. 2014) citing *Romea v. Heiberger & Assocs.*, 163 F.3d  
26 111 (2d Cir. 1998) and *Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th  
27 Cir. 2010). Under that standard it is clear that the follow-up letter was an attempt  
28 to collect the debt, despite Plaintiff’s message disputing the debt and requesting

1 validation. Because Defendant had not provided verification prior to sending the  
2 follow-up letter, Plaintiff has adequately pled a plausible claim under 15 U.S.C.  
3 § 1692g(b).

4 Because Plaintiff has sufficiently alleged facts that, if taken as true, state a  
5 plausible ground for relief, Defendant's Motion to Dismiss, ECF No. 15, must be  
6 **DENIED.**

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Defendant's Motion to Dismiss, ECF No. 14, is **DENIED.**

9 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
10 file this Order and provide copies to counsel.

11 **DATED** this 6th day of March 2019.



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A handwritten signature in blue ink that reads "Stanley A. Bastian". The signature is written in a cursive style and is positioned to the right of the seal.

19 Stanley A. Bastian  
20 United States District Judge  
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