

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



LUCIENNA GELINAS,

Plaintiff,

-vs-

15-CV-116-JTC

RETRIEVAL-MASTERS CREDITORS BUREAU, INC.

Defendant.

APPEARANCES:

LAW OFFICES OF CYRUS CHUBINEH (CYRUS
BAHRAM CHUBINEH, OF COUNSEL), Getzville, New
York, Attorneys for Plaintiff.

GOLDBERG SEGALLA LLP (DANIEL BARRIE MOAR,
OF COUNSEL), Buffalo, New York, Attorneys for
Defendant.

INTRODUCTION

Plaintiff brought this action pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA"). Presently before the court is the defendant's motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure (Item 3). For the reasons that follow, the motion is granted and the complaint is dismissed.

BACKGROUND and FACTS

This action was originally commenced in New York State Supreme Court, Erie County, with the filing of a Summons and Complaint on November 14, 2014. It was removed to this court with the filing of a Notice of Removal on February 9, 2015 (Item 1). In her complaint, plaintiff alleged that on or about January 9, 2013, she incurred a debt to Quest Diagnostics. Thereafter, defendant was hired by Quest Diagnostics to collect the subject

debt. On or about June 30, 2014, defendant sent a letter to plaintiff demanding payment of the subject debt. Through the transparent address window of the mailing envelope, above plaintiff's name and address, the numbers "1017959710" were visible. Again on August 11, 2014 and September 22, 2014, defendant mailed letters to plaintiff in which those same numbers were visible through the address window. Plaintiff alleges that these numbers are an invoice number assigned by Quest Diagnostics to the subject debt. She further alleges that the visibility of these numbers through the address window of defendant's mailing envelopes is a violation of section 1692f(8) of the FDCPA which prohibits the use of language or symbols, other than the return address of a debt collector, on an envelope mailed to a debtor. See Item 1, Exh. A (Complaint), ¶¶ 9-22.

The court has reviewed the mailing envelopes and letters submitted in this case. See Complaint, Exhs. A-C. The letters are folded in such a way as to allow the plaintiff's name and address to be visible through a transparent window on the envelope. Above plaintiff's name, in a smaller font, is a series of 21 letters and numbers, the last 10 of which are "1017959710." The first 11 letters and numbers differ among the three different letters. There is a detachable and returnable portion at the bottom of each letter, which is not visible through the address window, where it is noted that "1017959710" is an "invoice number." *Id.*

DISCUSSION

When considering a motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, the court must accept the factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *Bold Electric, Inc. v. City of New York*,

53 F.3d 465, 469 (2d Cir.1995). In reviewing the complaint in response to a motion to dismiss, the court is “guided by two working principles.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). First, the requirement that the court accept as true the allegations in the complaint “is inapplicable to legal conclusions,’ and ‘[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.’ “ *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (quoting *Iqbal*, 556 U.S. at 678). Second, to survive a motion to dismiss, the plaintiff must plead enough facts “to state a claim for relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Determining whether the complaint states a plausible claim for relief is “a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679.

The purpose of the FDCPA is “to protect consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors.” S.Rep. No. 382, 95th Cong. 1st Sess. 1, 2, *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696; *see also Higgins v. Capitol Credit Servs., Inc.*, 762 F.Supp. 1128, 1135 (D.Del.1991) (Congress intended to avoid imposing unnecessary restrictions on ethical debt collectors). The FDCPA contains many specific provisions expressly prohibiting an extensive list of deceptive practices. In addition, the FDCPA includes several broadly phrased provisions intended to “enable the courts, where appropriate, to proscribe other improper conduct which is not specifically addressed” by the act. S.Rep. No. 382, *supra*, at 1698. In considering whether a specific practice violates the FDCPA, the court must evaluate the practice from the standpoint of the least sophisticated debtor. *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1175 (11th Cir. 1985); *Swanson v. Southern Oregon Credit Serv., Inc.*, 869

F.2d 1222, 1225 (9th Cir. 1988) (*per curiam*); *Woolfolk v. Van Ru Credit Corp.*, 783 F.Supp. 724, 726 (D.Conn. 1990).

Section 1692f of the FDCPA provides that “[a] debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” Specifically, it is a violation of the statute for a debt collector to use “any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer . . . except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.” 15 U.S.C. § 1692f(8). Read in isolation, section 1692f(8) prohibits any markings on an envelope other than the names and addresses of the parties. However, read in the context of the preface of section 1692, prohibiting unfair and unconscionable conduct by debt collectors, “subsection eight only prohibits markings on the outside of envelopes that are unfair or unconscionable, such as markings that would signal that it is a debt collection letter and tend to humiliate, threaten, or manipulate debtors.” *Goswami v. Am. Collections Enterprise, Inc.*, 377 F.3d 488, 493 (5th Cir. 2004). This reading of the statute is in accord with both the legislative intent and agency interpretation of the statute. See *Masuda v. Thomas Richards & Co.*, 759 F.Supp. 1456, 1466 (C.D.Cal. 1991) (“Congress enacted § 1692f(8) simply to prevent debt collectors from ‘using symbols on envelopes indicating that the contents *pertain to debt collection.*’”) (quoting S.Rep. No. 95–382, 95th Cong. 1st Sess. at 2–4, reprinted in 1977 U.S.C.C.A.N. at 1702) (emphasis in original); see also *Goswami*, 377 F.3d at 493 (“A debt collector does not violate this section by using an envelope with words or notations that do not suggest the purpose of the communication.”) (citing FTC Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed.Reg. 50,097, 50,108 (Dec. 13, 1988)).

Most of the reported cases construing section 1692f(8) consider the use of so-called “benign language” on the mailing envelope, such as the terms “immediate reply requested” (*Strand v. Diversified Collections Serv., Inc.*, 380 F.3d 316 (8th Cir. 2004), and “priority letter” (*Goswami v. Am. Collections Enterprise, Inc.*, 377 F.3d 488 (5th Cir. 2004), a blue stripe and the word “TRANSMITTAL” (*Lindbergh v. Transworld Sys., Inc.*, 846 F.Supp. 175 (D. Conn. 1994), the words “REVENUE DEPARTMENT” in the return address (*Johnson v. NCB Collections Servs.*, 799 F.Supp. 1298 (D. Conn. 1992), and the terms “personal and confidential” (*Masuda v. Thomas Richards & Co.*, 759 F.Supp. 1456 (C.D. Cal. 1991). While the Second Circuit has not considered this precise issue, courts which have considered a benign language exception to the statute have generally found that a mechanical interpretation of section 1692f(8) is not necessary to protect consumers and that section 1692f(8) does not bar innocuous markings on an envelope that do nothing to intimate that the contents of the letter relate to the collection of delinquent debts. *Goswami*, 377 F.3d at 494 (collecting cases).

In opposition to the motion, plaintiff relies on a case from the Third Circuit, *Douglass v. Convergent Outsourcing*, 765 F.3d 299 (2014), in which that court held that the disclosure of a consumer’s account number on the face of a debt collector’s envelope was a violation of section 1692f(8). As in the case before this court, a sequence of numbers was visible through the address window of the envelope above the consumer’s name and address. The lower court in *Douglass* adopted a “benign language” exception to the statute, limiting the reach of section 1692f(8) to “language or symbols that either (1) signal the letter’s purpose of debt collection or (2) tend to humiliate, threaten, or manipulate the

recipient of the letter.” *Douglass*, 765 F.3d at 301. In vacating and remanding the case, the Third Circuit declined to decide whether the statute contains a “benign language” exception, concluding that, even if such an exception existed, the disclosure of the account number was not benign. The court rejected the defendant’s argument that the account number was meaningless and concluded that it was “capable of identifying [the plaintiff] as a debtor.” *Douglass*, 765 F.3d at 306. Construing § 1692f(8) in accord with the FDCPA’s broad remedial purposes, the Third Circuit found that the statute “not only proscribes potentially harassing and embarrassing language, but also protects consumers’ identifying information.” *Id.*¹

A recent case from the Northern District of Illinois involves similar facts. In *Gonzalez v. FMS, Inc.*, 2015 WL 4100292 (N.D.Ill. July 6, 2015), plaintiff received a collection letter in which a 15-digit number was visible above the plaintiff’s name through an address window. Embedded within the number was an 8-digit account number assigned to plaintiff’s debt. Plaintiff alleged that the visibility of this number was a violation of section 1692f(8) of the FDCPA. The *Gonzalez* court found *Douglass* distinguishable. Considering section 1692f(8) in context and in light of the purposes of the FDCPA, it was clear to the court that “the provision was only intended to prohibit markings that could be considered unfair or unconscionable, not those that are innocuous or benign.” *Gonzalez*, 2015 WL 4100292, at *5. The court further found that the mere presence of the string of numbers did not violate section 1692f(8) because “an unsophisticated consumer viewing the

¹ Although the Third Circuit did not specifically consider it, the envelope in *Douglass* also contained a “quick response” code that, when scanned by an electronic device such as a smart phone, revealed the amount of the debt and other identifying information about the plaintiff. *Douglass*, 765 F.3d at 300.

envelope could not plausibly divine that the letter inside was associated with a delinquent debt." *Id.*

This court is not bound by the *Douglass* decision and declines to follow it. Having reviewed the envelopes in question, it cannot be said that the visibility of a series of letters and numbers above the recipient's name is capable of identifying that person as a debtor. The series of numbers and letters is indecipherable to anyone, sophisticated or not, and its significance only becomes apparent when the letter is opened and the last ten numbers above the name are compared to the "invoice number" on the bottom of the letter itself. Nothing about the series of letters and numbers above the addressee's name intimates that the contents of the envelope relate to the collection of a delinquent debt, and the visibility of these numbers and letters is neither threatening nor embarrassing. While the presence of a series of letters and numbers may be suggestive of identification or account information, "it is not at all apparent to the casual observer that . . . the correspondence is specifically from a debt collector." *Johnson v. NCB Collection Servs.*, 799 F.Supp. at 1305. Accordingly, I find that these benign markings on the envelope are not barred by the FDCPA and that the plaintiff has failed to state a claim upon which relief can be granted.

CONCLUSION

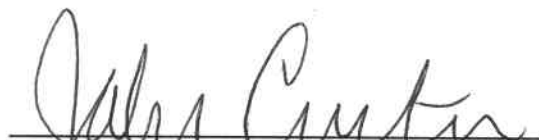
Based on the foregoing analysis, the defendant's motion to dismiss (Item 3) is granted and the complaint is dismissed in its entirety . The Clerk of the Court is directed to close the case.

So ordered.

Dated:

7/22

2015


JOHN T. CURTIN
United States District Judge