UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 18-14060-CIV-MARRA

FERNANDO CONDE, on behalf of himself and all other similarly situated,

Plaintiff,

vs.

WEBCOLLEX, LLC, a Virginia limited liability company, d/b/a CKS FINANCIAL,

Defendant.
_____/

ORDER GRANTING MOTION TO DISMISS

This cause is before the Court upon Defendant's Motion to Dismiss (DE 21). The Motion is fully briefed and ripe for review. The Court has carefully considered the Motion and is otherwise fully advised in the premises.

I. Background

Plaintiff Fernando Conde ("Plaintiff") brings this First Amended Complaint (FAC, DE 17) against Defendant Webcollex, LLC ("Defendant") for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 ("FDCPA"); specifically, sections 1692g(a)(4) (count one) and 1692e(10) (count two). The FAC alleges that the letter omits that Plaintiff can dispute any portion of the debt. (FAC ¶ 16.)

According to the FAC, Defendant is a debt collector that is licensed in Florida as a consumer collection agency. (FAC ¶¶ 7-8.) On or about October 6, 2017, Defendant sent Plaintiff a demand letter that sought to collect an alleged debt. (FAC ¶ 11; Letter, Ex. 1, DE 17-1.) The demand letter stated in part:

> Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

(FAC ¶ 13.)

Defendant moves to dismiss the FAC, claiming that the letter "clearly and unambiguously" informed Plaintiff that he may dispute "any portion of the debt." Plaintiff responds that the least sophisticated consumer could be misled to believe that they could only dispute the entire portion of the debt.

II. Legal Standard

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Supreme Court has held that "[w]hile a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level." Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (internal citations omitted).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its facee." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quotations and citations omitted). "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." Id. Thus, "only a complaint that states a plausible claim for relief survives a motion to dismiss." Id. at 1950. When considering a motion to dismiss, the Court must accept all of the plaintiff's allegations as true in determining whether a plaintiff has stated a claim for which relief could be granted. Hishon v. King & Spalding, 467 U.S. 69, 73 (1984).

III. Discussion

In order to prevail on a FDCPA claim, a plaintiff must prove that: (1) the plaintiff has been the object of collection activity arising from a consumer debt; (2) the defendant is a debt collector as defined by the FDCPA and (3) the defendant has engaged in an act or omission prohibited by the FDCPA. Rajbhandari v. U.S. Bank, 305 F.R.D. 689, 692 (S.D. Fla. 2015); Terrell v. DIRECTV, LLC, No. 12–81244–CIV, 2013 WL 3810619, at *3 (S.D. Fla. July 22, 2013); Sanz v. Fernandez, 633 F. Supp. 2d 1356, 1359 (S.D. Fla. 2009); Fuller v. Becker & Poliakoff, P.A., 192 F. Supp. 2d 1361, 1366 (M.D. Fla. 2002). Defendant only challenges the third element. (Mot. at 4.)

Section 1692g(a) of the FDCPA provides in part:

> (a) Notice of debt; contents.
>
> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--
>
> . . .
>
> (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector

15 U.S.C. 1692g(a).

Section 1692e(10) provides:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> . . .
>
> (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

15 U.S.C. 1692e(10).

The FAC alleges that the letter sent to Plaintiff violated sections 1692g(a)(4) and 1692e(10) because the letter omits that the consumer may dispute "any portion" of the debt in the second line of the paragraph at issue. To determine whether the letter violates the FDCPA, the Court employs the "least sophisticated consumer" standard. Jeter v. Credit Bureau Inc., 760 F.2d 1168, 1175-77 (11th Cir. 1985). "The least sophisticated consumer can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care." LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1194 (11th Cir. 2010). "The test has an objective component in that while protecting naive consumers, the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness." Id. (internal quotation marks and brackets omitted). "[T]here is no requirement in the FDCPA that a debt collector quote the statute's language verbatim." Mello v. Walled Lake Credit Bureau, LLC, No. 13-14226-CIV, 2013 WL 12077491, at *4 (S.D. Fla. Oct. 17, 2013).

The Court finds, as a matter of law, that the letter is not confusing to the least sophisticated consumer and that the letter complied with the FDCPA by informing Plaintiff that he could dispute all or a portion of the debt. The first sentence of the letter states, "Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this

debt or any portion thereof, this office will assume this debt is valid." (Letter, DE 17-1.) This first sentence clearly conveys that the recipient could dispute a portion of the debt. Nonetheless, Plaintiff claims that the second sentence of the letter - "If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification" - would lead the least sophisticated consumer to believe he must dispute the entire debt. The second sentence, however, does not contain the word "entire." Furthermore, reading the letter as a whole clearly communicates that the recipient has the right to challenge "any portion" of the debt. See Hernandez v. Mercantile Adjustment Bureau, LLC, No. CIV.A. 13-843 JLL, 2013 WL 6178594, at *2 (D.N.J. Nov. 22, 2013) ("[a] least sophisticated debtor would understand that notification mentioned in the second sentence refers to the notification mentioned in the first sentence"); Parker v. CMRE Fin. Servs., Inc., No. 07CV1302 JM , 2007 WL 3276322, at *3 (S.D. Cal. Nov. 5, 2007) (same); see also In re Martinez, 271 B.R. 696, 701 (S.D. Fla. 2001) ("the [c]ourt must evaluate the notice as a whole and the context in which it was received, assuming that [the plaintiff] read with care all of the communication"). Any other interpretation is unreasonable.[1] See Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 310

[1] Plaintiff cites to multiple cases for the proposition that "the omission of the right to dispute 'any portion of the debt' is sufficient to state a claim under the FDCPA." (Resp. at 7.) Those cases, with the exception of one, address letters where there is no mention about the right to dispute a portion of the debt. In contrast, the letter in this case refers to "the validity of this debt or any portion thereof" in the first sentence of the letter. (Letter, DE 17-1.) Only in Chan v. North Am. Collectors, Inc., No. C 06-0016 JL, 2006 WL 778642 (N.D. Cal. Mar. 24, 2006), is there a letter identical to the instant case; i.e., where reference to "any portion" of a debt is mentioned in the first sentence but not the second sentence of the letter. Id. at * 5. Chan found a violation of section 1692g(a)(4). In doing so, Chan relied upon Baker v. G. C. Servs. Corp., 677 F.2d 775, 778 (9th Cir. 1982). Baker, however, concerned a letter that contained no mention of any portion of a debt whereas the letter in Chan did contain that language. Id. at 778. For this

(2d Cir. 2003) ("courts have consistently applied the least-sophisticated-consumer standard in a manner that protects debt collectors against liability for unreasonable misinterpretations of collection notices.").

For the foregoing reasons, the claims are dismissed.[2] Given that the alleged violation was based on the language of the letter, the Court finds that any amendment would be futile. Moreover, Plaintiff did not ask for leave to amend. Wagner v. Daewoo Heavy Industries Am. Corp., 314 F.3d 541, 542 (11th Cir. 2002) ("[a] district court is not required to grant a plaintiff leave to amend his complaint *sua sponte* when the plaintiff, who is represented by counsel, never. . . requested leave to amend before the district court.").

IV. Conclusion

Accordingly, it is hereby **ORDERED AND ADJUDGED** that Defendant's Motion to Dismiss (DE 21) is **GRANTED**. This case is dismissed with prejudice. The Court will separately enter Judgment for Defendant.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County, Florida, this 13th day of June, 2018.

KENNETH A. MARRA
United States District Judge

reason, the Court does not find the reasoning of Chan persuasive.

[2] Because the section 1692e(10) claim is derivative of the section 1692g(a)(4) claim, the section 1692e(10) claim fails as well.