IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MELINDA STALLWORTH,
Individually and on behalf of all others similarly situated,
Plaintiff,

v.

TERRILL OUTSOURCING GROUP, LLC D/B/A SUPERLATIVE RM and BUREAUS INVESTMENT GROUP PORTFOLIO NO 15, LLC
Defendants.

Case No.: 2021-CH-02936

Hon. Eve M. Reilly

Calendar 7

ORDER

This matter, coming before the Court on Defendants' Motions to Dismiss pursuant to 735 ILCS 5/2-619.1, IT IS HEREBY ORDERED:

On June 16, 2021, Plaintiff filed a class action complaint against Defendants for violations of the Fair Debt Collection Practices Act, 15 U.S.C 1692, *et seq.* ("FDCPA" or "Act"). In her complaint, Plaintiff alleges that she incurred a debt which subsequently entered default. Compl. at ¶¶ 18, 20. Defendant Terrill Outsourcing Group, LLC, d/b/a Superlative RM ("TOG") was then retained to collect the debt from Plaintiff on behalf of Defendant Bureaus Investment Group Portfolio No. 15, LLC ("BIG 15"). *Id.* at ¶ 21. On January 8, 2021, Plaintiff received a collection letter from TOG which conveyed information about her debt and which was sent by a third-party letter vendor. *See id.* at ¶¶ 22-23, 25-26, Ex. A. Plaintiff further alleges that, without her consent, Defendants communicated her private information to a third-party letter vendor. *See id.* at ¶¶ 22-28. Plaintiff claims that Defendants actions were in violation of section 1692c(b) of the Act which provides:

> Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or express permission of a court of competent jurisdiction, or as reasonable necessary to effectuate a postjudgment judicial remedy, *a debt collector may not communicate, in connection with the collection of any debt, with any person* other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

15 U.S.C. 1692c(b) (emphasis added).

On August 13, 2021, Defendants removed the case to federal court. Following briefing on Plaintiff's Motion to Remand and Plaintiff's stipulation that she has not suffered any actual damages,[1] this matter was remanded back to state court on June 1, 2022. On August 25, 2022, TOG filed a motion to dismiss pursuant to section 735 ILCS 5/2-619.1, which BIG 15 joined. Defendants argue that Plaintiff lacks standing pursuant to 735 ILCS 5/2-619(a)(9) and failed to state a claim under section 1692c(b) of the Act pursuant to735 ILCS 5/2-615. This Court heard oral argument on February 1, 2023 and took the matter under advisement.

I. Motion to Dismiss pursuant to Section 2-619(a)(9) for Lack of Standing

While this matter was remanded from federal court for lack of Article III standing, Illinois courts are not required to follow federal law on issues of justiciability and standing. *See Duncan v. FedEx Office & Print Servs.*, 2019 App (1st) 180857, ¶ 21; *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 491 (1988). Section 1692k(a)(2)(B) of the FDCPA awards damages in class action cases in an amount equal to the:

> . . . amount for each named plaintiff as could be recovered under subparagraphs (A), *and* (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector . . .

15 U.S.C. 1692k (subsection (b)(2) lists factors for the court to consider when awarding damages pursuant to subsection (a)(2)(B)) (emphasis added). In claims arising under FACTA and BIPA violations, Illinois courts have held that plaintiffs have state court standing where they seek statutory damages for a statutory violation of these acts based upon the wording of the acts and the "intangible harms associated" with violations thereof, even though no actual damages are alleged. *See Duncan*, 2019 App (1st) 180857; *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186. Although Plaintiff has stipulated that she has not suffered any actual damages, this Court finds the reasoning which supports state court standing for statutory damages in FACTA and BIPA cases applicable to the FDCPA violation which Plaintiff alleges here.

Furthermore, lack of standing is an affirmative matter that is the defendant's burden to plead and prove. *Duncan*, 2019 App (1st) 180857, ¶ 21. To that extent, Defendants have not sufficiently pleaded or proven that Plaintiff does not have state court standing for a statutory FDCPA violation and statutory damages thereunder. *Id.* at ¶ 22 ("Standing in Illinois requires

[1] Plaintiff has stipulated that she only seeks statutory damages pursuant to 15 U.S.C 1692k.

that the injury-in-fact . . . 'be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief.'"); *see Greer*, 122 Ill. 2d at 491 ("[T]o the extent that State law of standing varies from Federal law, it tends to vary in the direction of greater liberality . . ."). Defendants' argument for dismissal pursuant to 735 ILCS 5/2-619(a)(9) for lack of standing is denied and this Court declines to limit standing for plaintiffs seeking redress under the FDCPA.

II. Motion to Dismiss pursuant to Section 2-615 for Failure to State a Claim

Defendants further argue that Plaintiff has failed to and cannot state a claim under section 1692c(b) of the Act. The stated purpose of the FDCPA is:

> [T]o eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. 1692(e); *see id.* at § 1692(a) (summarizing abusive practices and their effects); S. Rep. No. 95-382, at 2 (1977) (legislative history discussing abusive debt collection practices). It is clear that, in enacting the FDCPA, Congress did not intend to eliminate debt collection practices, but rather sought to prevent those collection practices which are abusive. To that end, section 1692c(b) prohibits a debt collector from communicating with a third-party in connection with the collection of a debt. *See* 15 U.S.C. 1692c(b) ("a debt collector may not communicate, in connection with the collection of any debt, with any person other than" the consumer, debt collector, creditor, the parties' respective attorneys, and credit reporting agencies).

Defendants raise three distinct arguments in support of their position that Plaintiff has not and cannot factually plead a section 1692c(b) violation: (1) the transmission of data from TOG to the letter vendor was not a "communication," (2) even if the transmission was a "communication," it was not made "in connection with collection of a[] debt," and (3) Plaintiff's interpretation of the FDCPA is not supported by the purpose of the statute, legislative history, or recent authority analyzing the use of letter vendors.

As defined by the FDCPA, a "communication" is the "conveying of information regarding a debt directly or indirectly to any person through any medium." *Id.* at § 1692a(2). Defendants argue that letter vendors are not persons, but rather that they are the mediums used to pass information through to a person, the consumer. *See* Def. TOG's Mem. in Supp. of Mot. to Dismiss at 5-7. Thus, as Defendants argue, transmissions from a debt collector to a letter vendor

are not communications as defined by the Act such that these transmissions would violate section 1692c(b). *Id.* In support of this argument, Defendants raise the point that "modern mailing vendors' systems are largely automated and the data . . . process[ed] likely do[es] not see any human eyes." *Id.* at 6. However, this argument asks the Court to improperly consider additional facts that are not contained in Plaintiff's well-pled complaint. Further, this argument attempts to reframe communications made to a third party as "transmissions," rather than "communications," so long as the communication conveys necessary information that the debt collector ultimately wants the consumer to receive. This argument asks the Court to construe the reasonable inferences which can be made from Plaintiff's well-pled complaint against Plaintiff, rather than in Plaintiff's favor and ignores the plain wording of the statute. This argument is improper under a section 2-615 motion to dismiss. *See Visvardis v. Eric P. Ferleger, P.C.*, 375 Ill. App. 3d 719 (1st Dist. 2007) ("A court must take as true all well-pled allegations of fact contained in the complaint and construe all reasonable inference thereform in favor of the plaintiff. In ruling on a motion to dismiss, the court will construe pleadings liberally."). Additionally, Defendants cite a number of subsections within the Act which allow debt collectors to serve legal process on consumers and use telephones and telegrams to communicate with consumers in an attempt to analogize letter vendors to these "mediums" which information passes through to the consumer. *Id.* at 5-6. However, the cited subsections only permit certain means of communication, they do not expand the scope of who communications may be made to. Plaintiff has sufficiently alleged that Defendants communicated Plaintiff's debt information to another person, the third-party letter vendor. Defendants' arguments fail on a section 2-615 motion to dismiss at the pleading stage and are therefore rejected.

Next, Defendants argue that, even if the transmission from Defendants to the letter vendor was a communication, such communication was not made *in connection with the collection of a debt*. *See* 15 U.S.C. 1692c ("a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer . . ."). The clear wording of the statute does not apply to every communication made to a third party. Most federal circuits have determined that "for a communication to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor." *See McIvor v. Credit Control Servs.*, 773 F.3d 909, 914 (8th Cir. 2014); *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 385 (7th Cir. 2010) (noting that a communication need not make an

explicit demand for payment in order to fall under the scope of the FDCPA); *Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011) ("[A] letter that is not itself a collection attempt, but that aims to make . . . such an attempt more likely to succeed, is one that has the requisite connection."); *Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 266-67 (3rd Cir. 2013). "Whether a communication was sent 'in connection with the collection of any debt' is an objective question of fact," and is not based upon the subjective intentions of the debt collector, or the subjective understanding of the consumer. *See Schlaf v. Safeguard Prop., LLC*, 899 F.3d 459, 467 (7th Cir. 2018); *Ruth v. Triumph P'Ships*, 577 F.3d 790, 798 (7th Cir. 2009); *Ostojich v. Specialized Loan Servicing, LLC*, 2022 U.S. Dist. LEXIS 136054, 15-16. The 7th Circuit has offered a non-exhaustive list of factors to determine whether a communication from a debt collector is made in connection with the collection of any debt. These factors include (a) a demand for payment, (b) the nature of the parties' relationship, and (c) the purpose and context of the communications viewed objectively. *Gburek*, 614 F.3d at 384-86.

Here, the relevant communication which must be considered is the communication from Defendants to the letter vendor. First, Plaintiff does not allege that Defendants made a demand for payment when they conveyed Plaintiff's personal information to the letter vendor, nor would it make sense for Defendants' communication to make a demand for payment to a third party who has no relationship to Plaintiff. Second, the nature of the parties' relationships shows that the purpose of Defendants' communication was not to induce payment. Plaintiff's own allegations state that Defendants' relationship and communication with the letter vendor was one that was "a matter of course." Compl. at ¶ 28. Plaintiff does not allege that she herself had any relationship with the letter vendor such that a communication from Defendants to the letter vendor would have induced Plaintiff or the third party to pay her debt. Lastly, the objective purpose and context of Defendants' communication was not intended to induce payment. As stated above, Plaintiff's allegations describe the communication as "a matter of course" and state that the letter vendor used Defendants' communication to "populate[] the template letter and communicate this information to Plaintiff." *Id.* Plaintiff also alleges that the collection letter was subsequently sent to Plaintiff. *Id.* at ¶¶ 22-23. Objectively, the purpose and context of Defendants' communication to the letter vendor was not to induce payment, rather it was to provide necessary information for the letter vendor to populate a letter on behalf of Defendants. Plaintiff's own allegations are worded in such a way that supports Defendants' argument that

their communication was not intended to induce payment. Even in construing the facts in a light most favorable to Plaintiff, it is clear that Defendants' communication to the letter vendor was not made in connection with the collection of a debt.

Lastly, as the statute is clear the court need not consider any legislative history. However, this Court does find the arguments and authority cited by Defendants to be instructive as the Court agrees that these types of communications do not fall within the purpose or legislative history of the FDCPA. *See* 15 U.S.C. 1692(e) (the purpose of the FDCPA is "to eliminate *abusive* debt collection practices . . ." (emphasis added)); S. Rep. 95-382, 2, 1977 U.S.C.C.A.N. 1695, 1696 (explaining that the FDCPA arose from the need to protect consumers from various collection abuses such as "disclosing a consumer's personal affairs to friends, neighbors, or an employer"); *Quaglia v. NS193*, LLC, 2021 U.S. Dist. LEXIS 254290, 6-7 ("[I]t is difficult to imagine Congress intended for the FDCPA to extend so far as to prevent debt collectors from enlisting the assistance of mailing vendors to perform ministerial duties, such as printing and stuffing the debt collectors' letters, in executing the task entrusted to them by the creditors . . . such a scenario runs afoul of the FDCPA's intended purpose to prevent debt collectors from utilizing truly offensive means to collect a debt."); *see also* 85 Fed. Reg. 76734, 76738 (Nov. 30, 2020), 86 Fed. Reg. 5766, 5845 n.446 (Jan. 19, 2021) (to be codified at 12 C.F.R. § 1006) (Consumer Financial Protection Bureau Rules and Regulations which contemplate the use of letter vendors by debt collectors); *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2210 fn.6 (dicta indicating that American courts typically do not recognize disclosures to printing vendors as actionable). Based upon the purpose and legislative history of the FDCPA, this Court does not believe that the type of communications at issue here are the type of abusive debt collection practices the FDCPA was meant to prevent.

III. Conclusion

The Court finds that the communication alleged by Plaintiff was not made in connection with the collection of any debt as defined by federal courts and in considering the stated purpose of the FDCPA. Defendants' Motion to Dismiss is GRANTED pursuant to 735 ILCS 5/2-615, and Plaintiff's Complaint is dismissed with prejudice.

SO ORDERED:

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Judge Eve M. Reilly

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MAR 15 2023

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