

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

WILLIAM J. RUOTOLO,)
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 Plaintiff,)
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 v.) C.A. No. 14-097 S
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 AFNI, INC.; EOS CCA,)
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 Defendants.)

ORDER

WILLIAM E. SMITH, Chief Judge.

Plaintiff filed an action in Rhode Island state court against Defendants and other entities, alleging violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, as well as Rhode Island statutory and common-law claims. After Defendant EOS CCA removed the case to this Court, United States Magistrate Judge Lincoln D. Almond determined that Plaintiff's Complaint failed to meet the federal pleading standard because the "Complaint [did] not provide fair notice to Defendants of what the particular claim is against them and the factual grounds upon which it rests." (Report and Recommendation ("R&R") 3, ECF No. 16.) Judge Almond identified three main deficiencies in Plaintiff's Complaint: (1) it failed to indicate how each Defendant became aware of the fact that Plaintiff contested the debt or what type of debt was contested;

(2) it provided no factual detail to support the claimed FDCPA violations; and (3) it failed "to provide any detail as to the content, timing or source of [the alleged fraudulent] representations." (Id.) Notwithstanding these shortcomings, Judge Almond granted Plaintiff a thirty-day window in which to amend his Complaint. This Court adopted the R&R. (ECF No. 18.)

Plaintiff timely filed an Amended Complaint. (Am. Compl., ECF No. 19.) Although the Amended Complaint attempts to address some of the concerns expressed by Judge Almond, its substance remains virtually identical to that of the initial Complaint. Unsurprisingly, Defendants each moved, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the Amended Complaint for failure to state a claim upon which relief may be granted. (ECF Nos. 20, 22.) In opposition, Plaintiff asserts that "[d]ismissal under [Rule] 12(b)[(6)] is appropriate only if it appears '. . . beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief,'" and he maintains that his Amended Complaint easily passes muster under this standard. (Pl.'s Opp'n 4, ECF No. 21-1 (quoting Conley v. Gibson, 335 U.S. 41, 45-46 (1957).)

Plaintiff's reliance on Conley is surprising.¹ The United States Supreme Court "officially put to rest the well-known 'no set of facts' language" from Conley. Ocasio-Hernández v. Fortuño-Burset, 640 F.3d 1, 9 (1st Cir. 2011); see Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007) ("[A]fter puzzling the profession for 50 years, [Conley's] famous observation has earned its retirement. The phrase is best forgotten as an incomplete, negative gloss on an accepted pleading standard[.]").

Under Twombly and Ashcroft v. Iqbal, 556 U.S. 662 (2009), "plausibility" is the watchword; "an adequate complaint must provide fair notice to the defendants and state a facially plausible legal claim." Ocasio-Hernández, 640 F.3d at 12. In determining whether the allegations of a complaint state a plausible claim to relief, the court disregards "legal conclusion[s] couched as . . . fact[]" and "[t]hreadbare recitals of the elements of a cause of action." Id. (quoting Iqbal, 556 U.S. at 678); see also Twombly, 550 U.S. at 555 ("[A] formulaic recitation of the elements of a cause of action will not do.").

Plaintiff's Amended Complaint fails to comply with the federal pleading standard because it neither provides fair

¹ Although Plaintiff is representing himself, he is a licensed attorney. (Report and Recommendation ("R&R") 3 n.3, ECF No. 16.)

notice to Defendants nor states a facially plausible legal claim. "In order to prevail on an FDCPA claim, a plaintiff must prove that (1) he was the object of collection activity arising from consumer debt, (2) the defendant is a debt collector within the meaning of the statute, and (3) the defendant engaged in a prohibited act or omission under the FDCPA." Krasnor v. Spaulding Law Office, 675 F. Supp. 2d 208, 211 (D. Mass. 2009). The Amended Complaint is simply too lacking in factual detail to show a plausible entitlement to relief under the FDCPA.

For example, although Plaintiff's Amended Complaint alleges that Defendants "failed to cease collection [activity] after . . . Plaintiff had provided notices that the debt was contested" (Am. Compl. ¶¶ 15, 23, ECF No. 19), the Amended Complaint critically fails to allege whether the notice Plaintiff provided was in writing and whether he provided it to Defendants or some other entity. See 15 U.S.C. § 1692c(c) (requiring the debt collector to cease communication with the consumer-debtor "[i]f [the] consumer notifies [the] debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer" (emphasis added)).

Additionally, the Amended Complaint, like the initial Complaint, provides virtually no factual detail to support the allegations. For instance, although Plaintiff repeatedly

alleges that Defendants "failed to cease collection" activity (Am. Compl. ¶¶ 7, 15, 23, ECF No. 19), the Amended Complaint does not attempt to describe Defendants' actions. Additionally, while Plaintiff repeatedly alleges that the debt in question is a "consumer debt" (id. at ¶¶ 5, 12, 20), he does not describe, except for a passing reference to Verizon, the debt in any detail. Thus, Plaintiff has provided only conclusory allegations that his debt falls within the FDCPA. This is insufficient under the federal pleading standard. Finally, Plaintiff's fraud allegations (see id. at ¶¶ 8, 14, 22, 46, 56, 66, 75) are textbook examples of impermissible conclusory allegations. In sum, "the factual allegations in the [Amended Complaint] are too meager, vague, or conclusory to remove the possibility of relief from the realm of mere conjecture," and, consequently, "the complaint is open to dismissal." Rodríguez-Reyes v. Molina-Rodríguez, 711 F.3d 49, 53 (1st Cir. 2013) (quoting SEC v. Tambone, 597 F.3d 436, 442 (1st Cir. 2010) (en banc)).

Notwithstanding these clear deficiencies, this Court is hesitant to dismiss Plaintiff's complaint because he clearly has been operating under a mistaken view of the federal pleading standard. Therefore, Plaintiff will be given a final chance to amend his complaint within thirty (30) days from the date of this order to state a plausible entitlement to relief under his

chosen legal theories. If Plaintiff fails to do so, the Amended Complaint will be dismissed. Plaintiff should not expect another opportunity to amend to cure pleading deficiencies. Defendants' motions are DENIED WITHOUT PREJUDICE.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "WESMITH".

William E. Smith
Chief Judge
Date: March 31, 2015