NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1109

MARGARET VELEZ-AGUILAR,
On Behalf of herself and all others similarly situated,
Appellant

v.

SEQUIUM ASSET SOLUTIONS LLC INC;
CACH LLC

On Appeal from the United States District Court
For the District of New Jersey
(D.C. No. 2-21-cv-14046)
District Judge: Honorable William J. Martini

Submitted Under Third Circuit L.A.R. 34.1(a)
January 9, 2023

Before: JORDAN, PHIPPS and ROTH, *Circuit Judges*

(Filed: February 7, 2023)

OPINION*

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* This disposition is not an opinion of the full court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

JORDAN, *Circuit Judge*.

Margaret Velez-Aguilar appeals the District Court's dismissal of her putative class action for failure to state a claim based on alleged violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq*. ("FDCPA"). For the following reasons, we will affirm.

I. BACKGROUND[1]

In 2009, a judgment in the amount of $4,052.78 was entered against Velez-Aguilar in the Superior Court of New Jersey. Relevant to this appeal, that money judgment included $93.05 in attorneys' fees awarded pursuant to N.J. Stat. Ann. § 22A:2-42 (2009). Velez-Aguilar originally incurred her debt from use of a credit card issued by Maryland National Bank, N.A., and the debt was later purchased by Appellee CACH, LLC[2] ("CACH").

A few months after that judgment was entered, and on motion of CACH, the Superior Court of New Jersey issued a writ of execution for CACH to collect on the

[1] As this appeal comes to us on review of the District Court's grant of the Appellees' motion to dismiss, the facts laid out here originate from (a) the well-pleaded factual allegations in the operative complaint; (b) exhibits attached to the complaint; (c) matters of public record; (d) undisputedly authentic documents upon which the claims are based; or (e) matters of which a court may take judicial notice. *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010); *see also* 5B Charles Alan Wright et al., Federal Practice and Procedure, § 1357 (3d ed. 2022).

[2] Velez-Aguilar does not appear to dispute that the debt came from a credit card, but her amended complaint did not mention the source of the debt. It instead characterized it as an "obligation [arising] out of a transaction, in which money, property, insurance or services, which [were] the subject of the transaction, [were] for personal, family or household purposes[,]" not for business use. (App. at 77 ¶¶ 22, 25.)

judgment for the new amount of $4,518.78, inclusive of additional court fees. A few years later, in May 2011, the Superior Court issued a second writ of execution, this time for $4,687.79, again including additional court fees. In 2015, the same court issued a third and final writ of execution for $4,733.99, inclusive of some final court fees.[3] Several years later, Velez-Aguilar received a one-page debt collection letter dated March 24, 2021 (the "collection letter"), sent by Appellee Sequium Asset Solutions, LLC ("Sequium") on behalf of Appellee CACH, describing CACH as "the Current Creditor-Debt Purchaser."[4] (App. at 104.) More specifically, the collection letter indicated a total amount due of $4,424.60 and listed Maryland National Bank, N.A. as the "Original Creditor" and CACH as the "Current Creditor."[5] (App. at 104.) The collection letter further contained a "Settlement Offer," indicating that "Our Client [CACH] will Forgive 35% of Your Balance." (App. at 104). In the body of the letter, Sequium stated that "[w]e are willing to settle your account for 65% of the balance due as stated above." (App. at 104). The letter went on to explain that if Velez-Aguilar could not "take advantage of this opportunity at this time," Sequium could offer a payment plan. (App.

[3] These writs of execution, as relied upon by the parties and the District Court, are reviewable at the motion to dismiss stage either as undisputed, authentic documents upon which Velez-Aguilar's claims are based, *see Mayer*, 605 F.3d at 230, or by taking judicial notice of them under Federal Rule of Evidence 201 since they are not subject to reasonable dispute as New Jersey state court records.

[4] The parties do not explain the six-year gap between the last writ of execution and the collection letter.

[5] The parties also do not explain the discrepancy between the third (and final) writ amount of $4,733.99 and the amount due of $4,424.60 stated in the collection letter.

104). Velez-Aguilar does not deny owing the debt. Instead of paying, however, she filed this class action suit under the FDCPA.

In October 2021, Velez-Aguilar filed the operative amended class action complaint, which the Appellees moved to dismiss with prejudice. The District Court granted the motion to dismiss for failure to state a claim and dismissed the action but did not indicate whether it was with or without prejudice. This timely appealed followed.

II. DISCUSSION[6]

Velez-Aguilar makes four arguments on appeal, all of which are unavailing.

A. Whether the Appellees engaged in deceptive, abusive, and unfair debt collection practices in its collection letter

First, Velez-Aguilar argues that the Appellees provided her with false, inaccurate, and misleading information about the character and the amount of the debt due on the face of their collection letter, in violation of sections 1692e and 1692g of the FDCPA, as codified. Section 1692e provides in pertinent part:

> 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:

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[6] The District Court had jurisdiction pursuant to 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. We exercise plenary review over the dismissal of a complaint under Federal Rule of Civil Procedure 12(b)(6). *Baptiste v. Bethlehem Landfill Co.*, 965 F.3d 214, 219 (2020). When conducting our review, we "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Phillips v. County of Allegheny*, 515 F.3d 224, 233 (3d Cir. 2008) (internal quotation marks omitted). All "well-pleaded allegations" must be accepted as true and construed "in the light most favorable to the plaintiffs[.]" *McTernan v. City of York*, 577 F.3d 521, 526 (3d Cir. 2009). However, "we are not compelled to accept unsupported conclusions and unwarranted inferences, or a legal conclusion couched as a factual allegation." *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (cleaned up).

> …
> (2) The false representation of--
> (A) the character, amount, or legal status of any debt; or
> …
> (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. Section 1692g states in relevant 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-
> (1) the amount of the debt; ....

Id. § 1692g(a)(1).

"A debt collection letter is deceptive [under the FDCPA] where it can be reasonably read to have two or more different meanings, one of which is inaccurate." *Rosenau v. Unifund Corp.*, 539 F.3d 218, 222 (3d Cir. 2008) (internal quotation marks omitted). Velez-Aguilar's primary contention on appeal is that the collection letter conflictingly references the "judgment that was awarded on 07/15/2009" – which was originally in the amount of $4,052.78 – and the "Total Due" of $4,424.60 on the face of the letter; thus, she claims it is reasonably subject to more than one meaning, one of which is inaccurate, and that she did not know which amount to pay. (Opening Br. at 22-23; App. at 104.) She further argues that the Appellees were deceptive when they failed to indicate how the "Total Due" was "calculated or defined." (Opening Br. at 13.)

While the collection letter referenced the previous 2009 judgment, it did not list a conflicting amount owed in the letter. The letter contained only one numerical figure reflecting the "Total Due," which was not reasonably subject to more than one meaning.

(App. at 104.) Furthermore, the collection letter would not confuse or mislead even the "least sophisticated debtor" as to what amount was required to satisfy the debt. *Rosenau*, 539 F.3d at 221 ("[L]ender-debtor communications potentially giving rise to claims under the FDCPA … should be analyzed from the perspective of the least sophisticated debtor.") (internal quotation marks omitted); *cf. Grubb v. Green Tree Servicing, LLC*, 2017 WL 3191521, *10-13 (D.N.J. July 26, 2017) (finding that two debt collection letters concerning a mortgage were confusing and violated 15 U.S.C. §§ 1692e and 1692g because each letter listed a different amount owed). With the 35% discount offered to settle the debt, Velez-Aguilar would have been able to pay off the debt for less than the original balance owed on the Maryland National Bank credit card. (App. at 104.) That scenario hardly demonstrates deceptive, much less unfair or abusive, debt collection practices.

Next, nothing in the statutory text requires a debt collector to itemize the debt being collected, and Velez-Aguilar has pointed to no cases suggesting otherwise. While we have not explicitly considered whether an affirmative duty exists for debt collectors to itemize debts under the FDCPA, several of our sister circuits have held that no such duty exists.[7] Indeed, the statute requires only that the debt collector's notice to the consumer

[7] *See Kolbasyuk v. Capital Mgmt. Servs., LP*, 918 F.3d 236, 240 (2d Cir. 2019) (concluding the "amount of the debt" means "the total, present quantity of money that the consumer is obligated to pay" and nothing in the FDCPA requires a debt collector to inform a consumer "of the constituent components of that debt"); *Powell v. Palisades Acquisition XVI, LLC*, 782 F.3d 119, 126 (4th Cir. 2014) ("where a demand letter misstates interest as principal but accurately states the total amount owed, such a technical error is not material" and, thus, does not violate the FDCPA); *Hahn v. Triumph Partnerships LLC*, 557 F.3d 755, 757 (7th Cir. 2009) ("[A] debt collector need not break

contain, *inter alia*, "the amount of the debt," the "character, amount, or legal status" of which is not falsely represented. 15 U.S.C. §§ 1692g(a)(1), 1692e(2)(A). The word "amount" indicates a total number, quantity, aggregate, or sum. *See Amount*, WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1976)[8] (defining "amount" as "1a: the total number or quantity … aggregate … 1b: the sum of individuals … 1c: the quantity at hand or under consideration … 3 *accounting*: a principal sum and the interest on it"). The word "debt," as defined in the FDCPA, indicates an obligation to pay money. *See* 15 U.S.C. § 1692a(5) (defining "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction"). The "amount of the debt," then, indicates the total, aggregate, sum, or quantity of money that the consumer is obligated to pay, including an amount that may include both the principal and interest thereon – which is what the Appellees provided to Velez-Aguilar in the collection letter.

We therefore agree with the District Court that, as a matter of law, Velez-Aguilar failed to state a claim upon which relief can be granted as to the alleged violations of sections 1692e and 1692g by supposedly referencing two debt amounts in the collection letter and not itemizing the debt.

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out principal and interest; it is enough to tell the debtor the bottom line.").

[8] The Fair Debt Collections Practices Act passed in 1977. Pub. L. No. 95-109, 91 Stat. 874 (1977) (codified as amended at 15 U.S.C. § 1692 *et seq*.). Hence, we use a contemporaneous dictionary to analyze the text of the statute.

B. Whether the Appellees violated the FDCPA in failing to explicitly indicate the character of the debt in the collection letter

Velez-Aguilar claims that the Appellees did not notify her about whether interest was accruing on the debt. The Appellees' response is simple: they said nothing about interest accruing on the debt because it was not, and Velez-Aguilar has not adequately pleaded to the contrary. Their point is well taken. *See Hopkins v. Collecto, Inc.*, 994 F.3d 117, 121-22 (3d Cir. 2021) (holding that a collection letter did not violate the FDCPA by itemizing $0.00 in interest and fees on a static debt).

Velez-Aguilar argues for the first time on appeal that the New Jersey Superior Court writs, which included a line item for "interest," was evidence that the debt was subject to increase. (App. at 49, 62, 68.) But "[a]bsent exceptional circumstances, this Court will not consider issues raised for the first time on appeal." *Del. Nation v. Pennsylvania*, 446 F.3d 410, 416 (3d Cir. 2006). Therefore, this issue is forfeited. In any event, even if the New Jersey Superior Court did charge some type of court-originated interest, costs, or both, on the succeeding writs of execution, no evidence or allegation exists that the charges originated from the Appellees or have continued to accrue after the Appellees wrote to Velez-Aguilar. There is no basis for inferring that the debt continued to be subject to increase from interest or other costs, not least because Sequium's offer to settle for "65% of the balance due" effectively rendered the debt static. (App. at 104.) And the Appellees were not required to mention the absence of accruing interest or fees on a debt. *Hopkins*, 994 F.3d at 121-22. Therefore, Velez-Aguilar does not state a

plausible claim that the Appellees were deceptive in their collection letter by not informing her of the static character of the debt.

C. Whether the inclusion of statutory attorneys' fees in the original 2009 judgment amount was misleading or deceptive

Velez-Aguilar insists that, because the statutory attorneys' fees assessed pursuant to N.J. Stat. Ann. § 22A:2-42 (West 2009) were owed to CACH's attorney, and not to CACH itself, the Appellees violated the FDCPA by including that amount in the collection letter amount. N.J. Stat. Ann. § 22A:2-42 states:

> There shall be taxed by the clerk of the Superior Court, Law Division, Special Civil Part in the costs against the judgment debtor, a fee to the attorney of the prevailing party, of five per centum (5%) of the first five hundred dollars ($500.00) of the judgment, and two per centum (2%) of any excess thereof.

N.J. Stat. Ann. § 22A:2-42 (West 2009).

As just noted, however, the FDCPA does not impose an affirmative duty on a creditor to itemize the debt. Here, by New Jersey statute, the attorneys' fees of the prevailing party were taxed by the clerk of the court and included in the costs of judgment as against the debtor. That the statute contemplates the fees will ultimately go to the attorney of the prevailing party does not mean the debtor must make the payment directly to the attorney. Indeed, fees recoverable under N.J.S.A. § 22A:2-42 are, in effect, a "reimbursement or indemnification of the creditor for estimated legal expenses in effecting collection[;]" they are "nominal and essentially automatic charges, which allow any successful judgment creditor … to recapture at least a small portion of the attorney expenses that it incurred in procuring that final judgment." *Chase Bank USA, N.A. v. Staffenberg*, 419 N.J. Super. 386, 405, 407 (N.J. Super. 2011) (cleaned up). Thus,

the Appellees were not deceptive when they listed a total amount owed in the collection letter that, by statute, included "taxed" attorneys' fees from a prior state judgment. Moreover, Velez-Aguilar has not challenged, appealed, or sought to vacate the 2009 state judgment.

"Although the 'least sophisticated debtor' standard is a low standard, it prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness …." *Rosenau*, 539 F.3d at 221 (cleaned up). The least sophisticated debtor would not be deceived or confused that part of the total amount owed for their debt might consist of properly included legal fees potentially payable to attorneys on the back end. The collection letter clearly and simply instructs the debtor to issue payment directly to the debt collector, not any additional parties. There was in that no violation of the FDCPA.

D. Whether the Appellees' reference to the current creditor as CACH, LLC was false or misleading

Velez-Aguilar argues that "there is a clear question as to who owns the debt at issue in this case" because the current creditor listed in the collection letter does not match the name of the creditor who commenced the earlier state collection action. (Opening Br. at 32.). Therefore, she argues, because the District Court dismissed her FDCPA claims without prejudice she should be allowed to file a second amended complaint. Not so.

Here, the collection letter indicated CACH, LLC as the current creditor even though it was not the party that commenced the state collection action back in 2009.[9] But, according to state court filings, CACH, LLC and CACH of New Jersey, LLC were affiliated companies. CACH, LLC originally owned the Velez-Aguilar debt and transferred the interest to CACH of New Jersey, LLC in 2009 for purposes of initiating a collection action in New Jersey. We need not delve into the particulars of CACH's business decisions from 2009 to today to know that the referencing of CACH, LLC in this collection letter would not confuse or mislead the least sophisticated debtor. But even if there were confusion, it would be de minimis and ultimately immaterial. *See Jensen v. Pressler & Pressler*, 791 F.3d 413, 421 (3d Cir. 2015) ("[A] false statement is only actionable under the FDCPA if it has the potential to affect the decision-making process of the least sophisticated debtor; in other words, it must be *material* when viewed through the least sophisticated debtor's eyes.") (emphasis in original); *see also Carter v. United States*, 530 U.S. 255, 266 (2000) (materiality is a requirement for any federal claim based on a false or misleading statement); *Neder v. United States,* 527 U.S. 1, 119 S.Ct. 1827, 1840 (1999) ("[W]e must *presume* that Congress intended to incorporate materiality unless the statute otherwise dictates") (cleaned up) (emphasis in original).

For example, even though the letter indicated CACH, LLC as the current creditor, payment was to be made to Sequium on behalf of CACH, LLC. Velez-Aguilar makes no

[9] CACH of New Jersey, LLC, not CACH, LLC is the named entity in the New Jersey Superior Court collection action filings from 2009. (*See* App. at 31.)

cognizable argument that the potential lack of clarity regarding which of the affiliate CACH entities owned the debt was an abusive or unfair debt collection practice, since she would just be issuing payment to Sequium as the debt collector. She points to *Hopkins v. Advanced Call Ctr. Techs., LLC*, 2021 WL 1291736, *6 (D.N.J. Apr. 7, 2021) where the court held that the plaintiff stated a claim under § 1692e of the FDCPA because the least sophisticated debtor could have reasonably inferred multiple owners of the debt on the face of the relevant collection letter. Specifically, the court concluded that the *Hopkins* collection letter failed to clearly explain the relationship between the creditor and the debt collector. *Id.* The facts here are different. The Appellees' collection letter clearly delineates CACH, LLC as the creditor and Sequium as "a collection agency" – in the first sentence of the letter. (App. at 104.) Consequently, Velez-Aguilar's final claim of an alleged FDCPA violation, like her others, fails as a matter of law.

III. CONCLUSION

For the foregoing reasons, we will affirm.