IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JENNIFER MCCURDY, on behalf of herself and others similarly situated,

Plaintiff,

vs.

PROFESSIONAL CREDIT SERVICE,

Defendant.

No. 6:15-cv-1498-AA

O R D E R

AIKEN, Chief Judge:

Plaintiff Jennifer McCurdy filed this action against defendant Professional Credit Service, alleging a collection letter defendant sent her violated the Fair Debt Collection Practices Act ("FDCPA"),

15 U.S.C. §§ 1692 et seq. After a consumer receives an initial communication or written notice about a debt, the FDCPA provides the consumer thirty days to notify the collector of any dispute. Id. § 1692g(a)(3)-(5). A consumer may dispute a debt orally, as "[t]he plain language of [the FDCPA] indicates that disputes need not be made in writing." Camacho v. Bridgeport Fin. Inc., 430 F.3d 1078, 1082 (9th Cir. 2005).

The letter defendant sent plaintiff contained the following explanation of her statutory right to dispute the debt:

> 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 or any portion thereof, 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.

Compl. ¶ 18 & Ex. A. The letter's final sentence (hereafter, "additional language") stated:

> If you dispute any account referenced in this letter, please send all information regarding the dispute to P.O. Box 70127, Springfield, OR 97475.

Id.

Plaintiff alleged this additional language strongly implied a consumer was required to submit written documentation in order to dispute the validity of a debt. Accordingly, she contended the

letter violated (1) 15 U.S.C. § 1692g(b), which prohibits any collection activities during the thirty day window that "overshadow or [are] inconsistent with the disclosure of the consumer's right to dispute the debt"; and (2) 15 U.S.C. § 1692e(10), which forbids "false, deceptive, or misleading" representations made in an attempt to collect a debt.

Defendant moved to dismiss the complaint for failure to state a claim. In an Opinion and Order signed October 30, 2015 ("October 30 Order"), this court denied that motion, holding the additional language violated both § 1692g(b) and § 1692e(10).[1] McCurdy v. Prof. Credit Serv., No. 6:15-CV-01498-AA, 2015 WL 6744269 at *3-*4 (D. Or. Oct. 30, 2015). Defendant then filed the instant motion, asking the court to certify the October 30 Order for interlocutory appeal.

The final judgment rule gives the federal courts of appeal jurisdiction over "appeals from all final decisions of the district courts of the United States." 28 U.S.C. § 1291. Congress created

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[1] The Ninth Circuit uses the "least sophisticated consumer" standard when analyzing purported violations of § 1692e and § 1692g(b). Guerrero v. RJM Acquisitions LLC, 499 F.3d 926, 934 (9th Cir. 2007). This is an objective standard applied as a matter of law. Terran v. Kaplan, 109 F.3d 1428, 1432 (9th Cir. 1997); Anderson v. Credit Collection Serv., Inc., 322 F. Supp. 2d 1094, 1097 (S.D. Cal. 2004) ("In the 9th Circuit, the court — and not the jury — determined whether a particular collection letter violates the FDCPA."). Because this case is exclusively about the contents of a single letter, there are no relevant disputed facts. Accordingly, in determining whether plaintiff's allegations survived defendant's motion to dismiss, the court necessarily reached the merits of plaintiff's claims.

a narrow exception to this rule: a district judge may certify for appeal an order that "involves a controlling question of law as to which there is substantial ground for difference of opinion" if "an immediate appeal from the order may materially advance the ultimate termination of the litigation[.]" Id. § 1292(b). The requirements of § 1292(b) are jurisdictional, so a district court may not certify an order for interlocutory appeal if they are not met. Couch v. Telescope, Inc., 611 F.3d 629, 633 (9th Cir. 2010). Congress did not intend district courts to certify interlocutory appeals "merely to provide review of difficult rulings in hard cases." U.S. Rubber Co. v. Wright, 359 F.2d 784, 785 (9th Cir. 1966). Rather, certification pursuant to § 1292(b) is reserved for "the most extraordinary situations." Penk v. Or. State Bd. of Higher Educ., 99 F.R.D. 508, 509 (D. Or. 1982).

Here, certification under § 1292(b) is inappropriate because the "substantial ground for difference of opinion" standard is not met.

> To determine if a "substantial ground for difference of opinion" exists under § 1292(b), courts must examine to what extent the controlling law is unclear. Courts traditionally will find that a substantial ground for difference of opinion exists where "the circuits are in dispute on the question and the court of appeals of the circuit has not spoken on the point, if complicated questions arise under foreign law, or if novel and difficult questions of first impression are presented."

Couch, 611 F.3d at 631 (quoting 3 Federal Procedure, Lawyers Edition § 3:212 (2010)). The law is well-settled: the Ninth

Circuit holds a debt collector violates § 1692g(b) if the collection activity at issue "encourage[s] the least sophisticated debtor to waive his statutory right to challenge the validity of the debt." Terran, 109 F.3d at 1434. Similarly, a debt collector's representation violates § 1692e(10) if it would likely deceive or mislead the least sophisticated consumer into giving up her rights under the FDCPA. Wade v. Regional Credit Ass'n, 87 F.3d 1098, 1100 (9th Cir. 1996).

The Ninth Circuit has not yet published a precedential opinion in a case involving additional language suggesting, but not expressly stating, the consumer must submit written documentation to dispute a debt. Other district courts, however, have addressed similar fact patterns — and found violations of the FDCPA. For example, in Whitten v. ARS, Nat'l Servs., Inc., No. 00 C 6080, 2002 WL 1050320, at *2 (N.D. Ill. May 23, 2002), the District Court for the Northern District of Illinois found the defendant violated the FDCPA by sending a letter that did not expressly require the consumer to submit documentation to dispute a debt, but included a list of examples of "[s]uitable dispute documentation." The court rejected defendant's argument this reference to documentation was not contradictory or confusing "because it d[id] not demand that documentation be submitted but merely suggest[ed] what kind of documentation might be helpful." Id. at *4. Other courts addressing substantially identical "suitable documentation" letters

also have found violations of the FDCPA. Sambor v. Omnia Credit Servs., Inc., 183 F. Supp. 2d 1234, 1240 (D. Haw. 2002); Castro v. ARS Nat'l Servs., Inc., No. 99 CIV.4596(HB), 2000 WL 264310 at *3 (S.D.N.Y. Mar. 8, 2000). Defendants have identified no authority finding similar language implying a consumer must submit written documentation to dispute a debt compliant with the FDCPA. The mere possibility "[t]hat settled law might be applied differently does not establish a substantial ground for difference of opinion." Couch, 611 F.3d at 633. Because the jurisdictional requirements of § 1292(b) are not met in this case, defendant's motion (doc. 14) is DENIED.

IT IS SO ORDERED.

Dated this 19 day of December 2015.

Ann Aiken
United States District Judge