

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

WILLIAM RUPERTO and
JUDITH RUPERTO,

Plaintiffs,

v.

Case No: 5:23-cv-508-GAP-PRL

GULF HARBOUR INVESTMENTS
CORPORATION,

Defendant

ORDER

This cause came before the Court for consideration without oral argument on the Motion to Dismiss filed by Defendant Gulf Harbour Investments Corporation (“Defendant”) (Doc. 13). The Court has also considered the Response in Opposition filed by Plaintiffs William and Judith Ruperto (“Plaintiffs”) (Doc. 14).

I. Background

Plaintiffs bring this class action under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692e, 1692f.¹ *See* Doc. 1-1. In their Complaint, Plaintiffs

¹ Plaintiffs filed this case in the Circuit Court of the Fifth Judicial Circuit, in and for Lake

allege that Defendant violated the FDCPA when it initiated a foreclosure action against them without first registering as a consumer collection agency pursuant to the Florida Consumer Collection Practices Act (“FCCPA”), Florida Statute § 559.55. Doc. 1-1. Plaintiffs claim that Defendant violated: 1692e generally (Count I); § 1692e(2)(A) (Count II); § 1692e(5) (Count III); and § 1692f generally (Count IV). *Id.*

In the instant Motion, Defendant primarily argues that Plaintiffs’ claims are due to be dismissed because “the act of filing a foreclosure lawsuit as an unregistered collection agency does not constitute prohibited conduct under any of the statutory sections invoked in the Complaint.” Doc. 13 at 7. Plaintiffs, on the other hand, assert that Defendant’s Motion is meritless. Doc. 14.

II. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires “a short and plain statement of the claim” showing that the pleader is entitled to relief so as to give the defendant fair notice of what the claim is and the grounds upon which it rests. *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *overruled on other grounds*, *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). In ruling on a motion to dismiss, the Court must accept the factual allegations as true and construe the complaint in the light most favorable to the

County, Florida. *See* Docs. 1, 1-1. Defendant then removed the action, asserting that this Court has federal question jurisdiction. Doc. 1 (citing 28 U.S.C. § 1331).

plaintiff. *SEC v. ESM Grp., Inc.*, 835 F.2d 270, 272 (11th Cir. 1988). The Court must also limit its consideration to the pleadings and any exhibits attached thereto. Fed. R. Civ. P. 10(c); *see also GSW, Inc. v. Long Cnty., Ga.*, 999 F.2d 1508, 1510 (11th Cir. 1993). However, “conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.” *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003).

In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court explained that a complaint need not contain detailed factual allegations, “but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.” *Id.* at 678 (internal citations and quotations omitted). The complaint’s factual allegations “must be enough to raise a right to relief above the speculative level,” *Twombly*, 550 U.S. at 555, and cross “the line from conceivable to plausible.” *Ashcroft*, 556 U.S. at 680.

III. Analysis

The FDCPA regulates debt collectors and dictates what they can (and cannot) do when collecting a debt. *Miljkovic v. Shafritz & Dinkin, P.A.*, 791 F.3d 1291, 1297 (11th Cir. 2015). In their Complaint, Plaintiffs assert that Defendant violated two provisions of the FDCPA: § 1692e and § 1692f. Doc. 1-1.

Section 1692e prohibits debt collectors from using deceptive practices to collect debts. *Id.* It states, in relevant part: “A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” *Id.* Section 1692e also includes a list of specific conduct which violates that provision. *See, e.g.*, § 1692e(2)(A) (prohibiting a debt collector’s “false representation of the character, amount, or legal status of any debt); § 1692e(5) (prohibiting a debt collector’s “threat to take any action that cannot legally be taken or that is not intended to be taken).

Section 1692f prohibits debt collectors from engaging in unfair or unconscionable conduct to collect debts. *Id.* § 1692f. It states, in relevant part: “A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” *Id.* § 1692f. As in § 1692e, Congress also listed specific conduct that violates § 1692f. *See id.*

A. Count I – Plaintiffs’ Claim Under § 1692e Generally

To the extent Defendant asks the Court to dismiss Plaintiffs’ general § 1692e claim (Count I), Defendant’s Motion is meritless.² The filing of a lawsuit to collect a

² Notably, Defendant relies almost exclusively on an order issued more than fifteen years ago by another judge for the Middle District of Florida, *McCorriston v. LW.T., Inc.*, No. 8:07-cv-160-T-27EAJ, 2008 WL 3243865 (M.D. Fla. Aug. 7, 2008). *See* Doc. 13 at 8-10. Defendant’s singular reliance on *McCorriston* is flawed because that order constitutes persuasive—not binding—authority. *See Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004).

debt—by an entity that has no authority to do so—plainly constitutes a deceptive and misleading means in connection with the collection of any debt. Doc. 1-1, ¶ 53 (“Defendant's initiation of a lawsuit against Plaintiffs to foreclose and pursue collection of the Debt against them at a time when it was barred by Florida law from doing so constitutes a false, deceptive, and misleading representation or means in connection with the collection of any debt.”); see *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1190, 1192 (11th Cir. 2010); *id.* at 1197 (recognizing that an unregistered out-of-state consumer debt collector could not legally bring suit in Florida); see also *id.* at 1189–90 n.9 (“[A] consumer collection agency that fails to comply with state consumer protection laws—yet proceeds to engage in the business of consumer debt collection within the state—cannot threaten the consumer with litigation where its own noncompliance would prohibit it from initiating legal action in the state.”).³ Accordingly, the Court will deny Defendant’s Motion as to Count I.

B. Counts II and III – Plaintiffs’ Claims Under § 1692e(2)(A) and § 1692e(5)

Because the Court finds that Plaintiffs have stated a claim under § 1692e generally, it need not dwell on Plaintiffs’ claims brought pursuant to § 1692e(2)(A)

³ If *threatening* to file a lawsuit a debt collector cannot legally bring supports a cause of action under § 1692e(5), surely *filing* said lawsuit supports a cause of action under § 1692e generally. See *LeBlanc*, 601 F.3d at 1190, 1192.

(Count II) and § 1692e(5) (Count III). Both claims are redundant because they are implicitly included in Plaintiffs' claim brought under § 1692e generally.⁴ Accordingly, the Court will grant Defendant's Motion to the extent it relates to Counts II and III.

C. Count IV – Plaintiffs' Claim Under Section 1692f Generally

Defendant also seeks dismissal of Plaintiffs' claim brought under § 1692f generally. Although Plaintiffs have sufficiently stated a claim under § 1692e, the same cannot be said for § 1692f, as Defendant's conduct simply does not rise to the level of unfair or unconscionable. *See Miljkovic v. Shafritz & Dinkin, P.A.*, 791 F.3d 1291, 1308 (11th Cir. 2015) (stating that §1692f's catch-all provision "is not a free-for-all" and that plaintiffs are "required to allege facts showing that the least sophisticated consumer would or could view [the debt collector's conduct] as partial and unjust or as unscrupulous and unethical" in addition to abusive, deceptive, or misleading). Consequently, the Court will grant Defendant's Motion to the extent it relates to Count IV.

IV. Conclusion

Accordingly, it is hereby **ORDERED** that Defendant's Motion to Dismiss is

⁴ Although the Court has not considered these "claims" on the merits, it doubts that Defendant's conduct falls within the parameters of either provision. *See Delia v. Ditech Fin. LLC*, No. 6:16-cv-1901-Orl-31DCI, 2017 WL 2379819, at *4-5 (M.D. Fla. June 1, 2017) (Presnell, J.).

GRANTED in part and DENIED in part. To the extent the Motion seeks dismissal of Count I, the Motion is **DENIED**. To the extent the Motion seeks dismissal of Counts II-IV, the Motion is **GRANTED**.

DONE and ORDERED in Chambers, Orlando, Florida on December 5, 2023.




GREGORY A. PRESNELL
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Party