

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

Janet Long, individually and on behalf)
of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
Fenton & McGarvey Law Firm, P.S.C., a)
Kentucky corporation, and Jefferson)
Capital Systems, LLC, a Georgia limited)
liability company,)
)
Defendants.)

No. 1:15-cv-1924-SEB-DKL

**PLAINTIFF'S REPLY IN SUPPORT OF
AMENDED MOTION FOR CLASS CERTIFICATION**

Plaintiff, Janet Long, individually and on behalf of all others similarly situated, hereby replies in support of her Amended Motion for Class Certification (Dkt. 33, 34):

INTRODUCTION

This case involves determining the legality, under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), of a form collection letter which the Defendants, Fenton & McGarvey Law Firm, P.S.C. ("F&M") and Jefferson Capital Systems, LLC ("Jefferson"), sent to Ms. Long and 759 other Indiana residents. As explained in Plaintiff Long's initial brief, such cases have been repeatedly certified as class actions throughout the Seventh Circuit: claims arising out of standard documents, such as in an FDCPA case, present a "classic case for treatment as a class action." Keele v. Wexler, 1996 U.S. Dist. LEXIS 3253 at [*9]-[*10] (N.D. Ill. 1996), affirmed, 149 F.3d 589 (7th Cir. 1998); see also Dkt. 29 at p. 4, fn. 1.

In opposing class certification, Defendants F&M and Jefferson both argue (in separate briefs) that Ms. Long cannot meet the requirements of Rule 23 because she lacks Article III standing -- alleging that she has not personally suffered any particularized or concrete injury-in-fact as a result of Defendants' collection letter. (Dkt. 48 at pp. 2-16; Dkt. 51 at pp. 2-4). Defendants' arguments are based on a mis-reading of the U.S. Supreme Court's recent decision in Spokeo, Inc. v. Robins, 136 S.Ct. 1540, 194 L. Ed. 2d 635 (2016), and blatantly ignore long-standing Seventh Circuit and District Court case law.

Indeed, Defendants have also moved to dismiss this action, pursuant to Fed.R.Civ.P. Rule 12(b)(6) and for judgment on the pleadings, pursuant to Fed.R.Civ.P. Rule 12(c). (Dkt. 46, 47, 53). Plaintiff has filed her response thereto, and rather than reiterate all of the arguments set forth in her Response Brief as to her Article III standing, she hereby incorporates by reference those arguments as if fully set forth herein, see, Plaintiff's Response in Opposition to Defendants' Motions to Dismiss and for Judgment on the Pleadings at Dkt. 58.

Plaintiff has clearly met all of the prerequisites for class certification as to Defendants' unlawful collection letter and this Court should certify this cause as a class action.

FACTUAL BACKGROUND

This action involves a form collection letter which was sent to 759 individuals in the State of Indiana. (Dkt. 34 at p. 5). Section 1692g(a)(2) of the FDCPA requires debt collectors to state the name of the creditor to whom the debt is owed, see 15 U.S.C. § 1692g(a)(2). Defendants' form debt collection letters stated that the ORIGINAL

CREDITOR” was COMENITY BANK, and then further stated: “Please be advised that Fenton & McGarvey Law Firm, P.S.C. has been retained by Jefferson Capital Systems, LLC to collect its account with you”. (Dkt. 1 at ¶ 7; Dkt. 1-1). Defendants’ letter failed to explain who Jefferson was, or what the difference was between it and the original creditor, Comenity Bank, or why Jefferson had retained F&M to collect the debts. This would cause a consumer to not know to whom the debts were currently owed -- was Jefferson another collection agency, a new name for Comenity Bank, or what? Thus, Defendants’ form debt collection letter failed to identify effectively the name of the creditor to whom the debt was owed, in violation of § 1692g(a)(2) of the FDCPA, see, Janetos v. Fulton Friedman & Gullace, 2016 U.S. App. LEXIS 6361 at [*7]-[*11] (7th Cir. 2016)(Hamilton, J.); Braatz v. Leading Edge Recovery Solutions, 2011 U.S. Dist. LEXIS 123118 (N.D. Ill. 2011); Walls v. United Collection Bureau, 2012 U.S. Dist. LEXIS 68079 (N.D. Ill. 2012); Deschaine v. National Enterprise Systems, 2013 U.S. Dist. LEXIS 31349 (N.D. Ill. 2013); and Pardo v. Allied Interstate, 2015 U.S. Dist. LEXIS 125526 (S.D. Ind. 2015)(Barker, J.).

ARGUMENT

Defendants’ arguments in opposition to class certification all boil down to a single issue: whether Ms. Long suffered a material/concrete injury-in-fact, such that she has standing to bring her FDCPA claim. Specifically, Defendant Jefferson alleges that Ms. Long lacks Article III standing to maintain this action in her own right because she has purportedly “. . . failed to allege any particularized or concrete injury in fact actually exists” and “. . . any claimed injury is entirely hypothetical and conjectural”; and that there is no causal connection between her injury and Defendants’ conduct. (Dkt. 48 at

pp. 2, 7-14).¹ Defendant F&M likewise argues that Ms. Long failed to prove commonality or predominance because she did not suffer a concrete injury. (Dkt. 51 at pp. 1-3).²

I. Ms. Long Has Standing To Bring Her Claim

Defendants base their arguments on a mis-reading of the U.S. Supreme Court's recent decision in Spokeo. (Dkt. 48 at pp. 2-14; Dkt 51 at pp. 1-3). Unfortunately for Defendants, Spokeo, changed none of the existing case law on whether a plaintiff has suffered a concrete injury. A "concrete injury", in fact, is nothing more than the requirement that a violation of the FDCPA be "material", which the Seventh Circuit has already stated must be shown for a violation of the FDCPA to be actionable, see, e.g., Hahn v. Triumph Partnerships, 557 F.3d 755, 757 (7th Cir. 2009); Lox v. CDA, 689 F.3d 818, 826-827 (7th Cir. 2012).

Defendants' motions claim that Plaintiff was required to allege tangible injuries – specifically, injuries that would have resulted in damage to her person or property, see,

1. As an apparent afterthought, Defendant Jefferson also challenges commonality and predominance, in the two final sections of its argument, both inexplicably set out as Section "II" (Dkt. 48 at pp. 14-17), giving Defendant's brief a total of three sections denoted as "II" (Dkt. 48 at p. 2, 14, 16).

2. Defendants recently filed a motion to cite additional authority in support of their opposition to class certification, Gubala v. Time Warner Cable, (Case No. 15-cv-1078-pp) (E.D. Wisc. June 17, 2016)(Appeal filed June 22, 2015). (Dkt. 59) The allegations in Gubala-- that the Defendant improperly maintained customer information after a business relationship had ended, in violation of Cable Communications Policy Act, are nothing like Plaintiff's claims here. Ms. Long has alleged that she was deprived of information to which she and the putative class have a statutory right, and this Court and the Seventh Circuit have already held that deprivation of such statutorily- mandated information constitutes a material/concrete injury; the plaintiff in Gubala alleged no such material/concrete injury as the result of Time Warner Cable maintaining his customer information.

e.g., Dkt. 48 at pp. 8-9; Dkt. 51 at p. 2.) As the Supreme Court noted in Spokeo, however, it has repeatedly held that a defendant's failure to provide statutorily-required information to a plaintiff constitutes a material/concrete injury-in-fact sufficient to establish standing, see, Spokeo, 194 L. Ed. 2d 635 at 645-46. Informational disclosures required by the FDCPA -- here, a clear statement of the name of the current creditor -- are explicitly mandated by the FDCPA, and thus, a failure to state that information in an effective and adequate manner is a material/concrete injury that confers standing on a consumer under the FDCPA, see, e.g., Janetos, 2016 U.S. App. LEXIS 6361 at [*15]-[*16]; Pardo, 2015 U.S. Dist. LEXIS 125526 at [*6].

Indeed, in Janetos -- a case which is directly on point -- the Seventh Circuit ruled that if a disclosure is mandated by the FDCPA, failure to provide said disclosure constitutes a material/concrete injury. In fact, the Court in Janetos discussed multiple material harms from the denial of the information required by §1692g(a)(2), including the inability to verify with the true owner of a debt, or whether a collection attempt had been fraudulent, see, Janetos, 2015 U.S. App. LEXIS 6361 at [*17]-[*18].³

Plaintiff Long has addressed the issue of Article III standing at length in her Response in Opposition to Defendants' Motions to Dismiss and for Judgment on the Pleadings, see, Dkt. 58 at Sec. I, pp 4-8, which she has incorporated by reference and

3. Defendant Jefferson engages in a lengthy discussion of the legislative history of the FDCPA to somehow argue that a "bare" or "technical" violation of the FDCPA -- such as failing to provide statutorily-mandated disclosures -- does not injure a consumer. (Dkt. 48 at pp. 7-13). Defendants do not explain why this Court should ignore the text of the FDCPA, as it was passed, nor why this Court should ignore the decades of binding case law interpreting it, including the Seventh Circuit's recent decision in Janetos, which is directly on point.

will not reiterate here. Defendants' failure to state adequately the name of the creditor to whom the debt was owed is a concrete injury and Ms. Long had Article III standing to pursue this claim.

II. A Form Debt Collection Letter Set To Hundreds Of Individuals Presents A Classic Case For Class Certification In An FDCPA Matter; Ms. Long Has Met All The Prerequisites For Class Certification And A Class Should Be Certified

Defendant have presented no other coherent arguments as to why the class should not be certified -- other than their thoroughly misguided challenge to Ms. Long's Article III standing.⁴ All of the elements necessary for class certification have been met:

- a form debt collection letter (commonality, predominance, superiority);
- sent to 759 individuals in Indiana (numerosity);
- Ms. Long's claim is identical to the class's claim (typicality); and
- Ms. Long does not have interests antagonistic to the class, has a sufficient interest in the outcome of this matter, and had hired highly-experienced FDCPA and class action counsel (adequacy).

4. Defendant Jefferson's challenges to commonality and predominance are particularly ill-advised. Jefferson argues that there is no commonality or predominance because Ms. Long and the members of the putative class may have interpreted the letter differently and that individual inquires thus will need to be made as to each recipient's understanding of the letter (Dkt. 48 at pp. 14-17). Jefferson's position ignores years of FDCPA precedence in this Circuit: the Seventh Circuit has long held that whether a given letter violates the FDCPA is to be judged by the unsophisticated consumer standard, see e.g., Gammon v. GC Services Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994); Avila v. Rubin, 84 F.3d 222, 277 (7th Cir. 1996); Bartlett v. Heibl, 128 F.3d 497, 500-01 (7th Cir. 1997); Lox v. CDA, 689 F.3d 818, 826 (7th Cir. 2012) – not the understanding of any one particular individual. Spokeo did not overrule any of these decisions.

(see, Dkt. 34 at pp. 5-8). Thus, this action satisfies the requirements of Rule 23(a)(1-4) and (b)(3) and Plaintiff's Amended Motion for Class Certification should be granted.

CONCLUSION

All of the prerequisites for class certification are met here. Ms. Long has Article III standing to pursue these claims on behalf of herself and the members of the putative class; her claims – based upon a form letter -- are typical of the claims of the class, and there are common issues of law and fact that predominate over any individual issues. This matter is an ideal case for class certification and, accordingly, the proposed class should be certified.

Janet Long, individually and on behalf
of all others similarly situated,

By: /s/ David J. Philipps
One of Plaintiff's Attorneys

Dated: June 24, 2016

David J. Philipps (Ill. Bar No. 06196285)
Mary E. Philipps (Ill. Bar No. 06197113)
Angie K. Robertson (Ill. Bar No. 06302858)
Philipps & Philipps, Ltd.
9760 S. Roberts Road
Suite One
Palos Hills, Illinois 60465
(708) 974-2900
(708) 974-2907 (FAX)
davephilipps@aol.com
mephilipps@aol.com
angiekrobertson@aol.com

John T. Steinkamp (Ind. Bar No. 19891-49)
5218 S. East Street
Suite E1
Indianapolis, Indiana 46227
(317) 780-8300
(317) 217-1320 (FAX)
steinkamplaw@yahoo.com

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016 a copy of the foregoing **PLAINTIFF'S REPLY IN SUPPORT OF AMENDED MOTION FOR CLASS CERTIFICATION** was filed electronically. Notice of this filing was sent to the following parties by operation of the Court's electronic filing system. The parties may access this filing through the Court's system.

Katherine H. Oblak
Hinshaw & Culbertson LLP
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601

koblak@hinshawlaw.com

Michael D. Slodov
Sessions, Fishman, Nathan
& Israel, LLC
15 E. Summit Street
Chagrin Falls, Ohio 44022

mslodov@sessions.legal

John T. Steinkamp
5218 S. East Street
Suite E1
Indianapolis, Indiana 46227

steinkamplaw@yahoo.com

/s/ David J. Philipps
David J. Philipps
Philipps & Philipps, Ltd.
9760 South Robert Road
Suite One
Palos Hills, Illinois 60465
davephilipps@aol.com