

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JILL ANDERSON,

Plaintiff,

v.

LAW OFFICE OF VINCENT P. CIGNARALE, LLC,
TODD GIBNEY and JOHN DOE 1,

Defendants.

OPINION AND ORDER

12-cv-89-bbc

Plaintiff Jill Anderson is suing defendants Law Office of Vincent P. Cignarale, LLC, Todd Gibney and John Doe 1 under the Fair Debt Collection Act. She is asserting several claims:

- (1) defendants continued to call her to collect a debt, even after they failed to comply with her verbal and written requests to provide information verifying the debt, in violation of 15 U.S.C. § 1692g;
- (2) defendants continued to call her daily or approximately daily with an automated dialer, often twice a day, in violation of 15 U.S.C. § 1692d; and
- (3) defendants continued to call plaintiff's mother without plaintiff's or her mother's permission, even after defendants obtained location information for plaintiff and after plaintiff demanded that such calls cease, in violation of 15 U.S.C. § 1692d, § 1692b(3) and § 1692c(b).

Because plaintiff is proceeding in forma pauperis, I must screen the complaint to determine whether it states a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2). Having reviewed the complaint, I conclude that plaintiff may proceed on each

of her claims.

Section 1692g contains two provisions. Under § 1692g(a), creditors are required to provide consumers with a letter providing certain information about the debt, such as the amount of the debt, the name of the creditor and the options the consumer has after receiving the letter. Under § 1692g(b), if a consumer disputes a debt in writing, the creditor must cease debt collection efforts “until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.” I understand plaintiff to be alleging that defendants did not comply with either of these provisions, so I will allow her to proceed under both of them.

Section 1692d prohibits a creditor from engaging in harassment as part of an attempt to collect a debt. One form of prohibited harassment is “[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.” 15 U.S.C. § 1692d(5). Because plaintiff alleges that defendants called her nearly every day, sometimes multiple times a day, it is reasonable to infer at this stage that defendant violated § 1692d(5).

With respect to defendants’ alleged calls to plaintiff’s mother, plaintiff relies on three separate provisions. In addition to § 1692d(5), she cites § 1692b(3) and § 1692c, which restrict a debt collector’s communication with third parties. In particular, § 1692c(b) prohibits debt collectors from communicating with third parties to collect a debt without the consumer’s permission, except as provided in § 1692b. Section 1692b allows the creditor

to call a third party to learn the location of the debtor, but he may do so only once “unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information.” Because plaintiff alleges that defendants called her mother repeatedly without permission, even after learning where plaintiff was located, I conclude that plaintiff has stated a claim upon which relief may be granted under each of the three cited provisions. Although these communications were directed at plaintiff’s mother rather than plaintiff, I do not see any language in the civil liability provision of the Fair Debt Collection Act, 15 U.S.C. § 1692k, that would prohibit plaintiff from recovering any damages she suffered as a result of the calls to her mother. E.g., Romano v. Williams & Fudge, Inc., 644 F. Supp. 2d 653, 657 (W.D. Pa. 2008) (granting consumer’s motion for summary judgment on claim under § 1692c(b) that creditor contacted consumer’s father).

In closing, I wish to apologize for the delay in screening this complaint. It was not until today that it came to my attention that the case needed the court’s attention. Because an in forma pauperis request is so rare in counseled cases outside the Social Security context, court staff failed inadvertently to flag this case as one that needed a court order to proceed. Although any frustration over the delay is understandable, the court will make every effort to insure a swift resolution of this case from this point forward and will try to develop procedures to prevent a similar oversight in the future.

ORDER

IT IS ORDERED that plaintiff Jill Anderson is GRANTED leave to proceed on the following claims:

(1) defendants Law Office of Vincent P. Cignarale, LLC, Todd Gibney and John Doe I continued to call plaintiff to collect a debt, even after they failed to comply with her verbal and written requests to provide information verifying the debt, in violation of 15 U.S.C. § 1692g(a) and (b);

(2) defendants continued to call plaintiff daily or approximately daily with an automated dialer, often twice a day, in violation of 15 U.S.C. § 1692d; and

(3) defendants continued to call plaintiff's mother without plaintiff's permission, even after they obtained location information for plaintiff and after plaintiff demanded that such calls cease, in violation of 15 U.S.C. § 1692d, § 1692b(3) and § 1692c(b).

FURTHER, IT IS ORDERED that the clerk of court will forward completed Marshals Service and summons forms to the U.S. Marshal, who will serve plaintiff's complaint on defendants Law Office of Vincent P. Cignarale, LLC and Todd Gibney. Because of the delay in screening the complaint, the court requests the marshal to expedite service to the extent it is possible to do so.

Entered this 30th day of October, 2012.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge