

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

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RANDY WAYNE FRICKE,

Plaintiff,

OPINION AND ORDER

v.

14-cv-846-wmc

ENHANCED RECOVERY CO.,  
also known as ERC,

Defendant.

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Plaintiff Randy Wayne Fricke filed this lawsuit against Enhanced Recovery Co., also known as “ERC,” for allegedly attempting to collect a debt on behalf of DirectTV, Inc., in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681, the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(B), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, and the Wisconsin Consumer Act, Wis. Stat. § 427.104. Fricke requests leave to proceed without prepayment of the filing fee and other costs in this case.

Because Fricke proceeds *in forma pauperis*, the court is required to screen the complaint and determine whether the proposed action is (1) frivolous or malicious; (2) fails to state a claim upon which relief may be granted; or (3) seeks money damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(b). In addressing any *pro se* litigant’s pleadings, the court must construe the allegations generously, and hold the complaint “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Under this lenient standard, Fricke may proceed on his claim under the Telephone Consumer Protection Act, but he may not

proceed on his remaining claims unless he amends his complaint, pursuant to Fed. R. Civ. P. 15, to cure the deficiencies described below.

#### ALLEGATIONS OF FACT\*

Fricke resides in La Crosse, Wisconsin. Defendant ERC is “a debt collection company” with headquarters located in Jacksonville, Florida.

In 2014, ERC made “multiple inquiries” into Fricke’s consumer credit reports with three credit reporting agencies (Experian, TransUnion and Equifax). ERC also made “multiple unauthorized phone calls originated from an automated dialer to [Fricke’s] cell phone” without his consent.

According to exhibits attached to the complaint, ERC was attempting to collect a debt in the amount of \$405.00 owed by Fricke to a satellite television provider (DirectTV, Inc.), which was past due. Fricke contends, therefore, that ERC violated the Fair Credit Reporting Act, 15 U.S.C. § 1681, the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(B), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, and the Wisconsin Consumer Act, Wis. Stat. § 427.104, by attempting to collect the debt.

#### OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Rule 8 of the Federal Rules of Civil Procedure. Rule 8(a) requires a “short and plain

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\* For purposes of this order, the court accepts all well-pled allegations as true and assumes the following probative facts.

statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). It is not necessary for a plaintiff to plead specific facts. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Nevertheless, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2007) (citing *Twombly*, 550 U.S. at 555) (observing that courts "are not bound to accept as true a legal conclusion couched as a factual allegation"). As noted below, the sparse allegations in Fricke's complaint articulate a viable claim under the Telephone Consumer Protection Act, but not under the other three grounds for relief cited in the complaint.

#### **I. Fair Debt Collection Practices Act**

The Fair Debt Collection Practices Act ("FDCPA") seeks to protect consumers from abusive means of collecting debts. *See* 15 U.S.C. § 1692(e). Under § 1692g(b), if a consumer disputes a debt in writing within thirty days of being informed of the debt, a debt collector must cease all efforts of collection until the collector receives verification of the debt, a copy of the judgment, or the name and address of the original creditor, and mails that information to the consumer. Debt collectors are liable to consumers for violations of this statute for any actual damages and other damages up to \$1,000. *See* 15 U.S.C. § 1692k.

Fricke alleges that ERC “never properly validated” the debt they were attempting to collect on behalf of DirectTV. However, Fricke does not allege facts showing that he disputed the debt that ERC was attempting to collect, much less did so in writing. Under these circumstances, Fricke does not establish that ERC had a duty to validate the debt in violation of the FDCPA. Accordingly, his complaint is insufficient to state a viable cause of action.

## II. Fair Credit Reporting Act

Fricke contends that ERC violated the Fair Credit Reporting Act (“FCRA”) by “accessing” his credit reports (also allegedly known as “inquiries”) with three credit reporting agencies. The purpose of the FCRA is to require that “consumer reporting agencies adopt reasonable procedures” to provide the credit industry with information, while treating consumers fairly and equitably. 15 U.S.C. § 1681(b). However, a company that merely inquires into a debtor’s credit status, even if by doing so furnishes information to a consumer reporting agency, is not liable under the FCRA. *See Patterson v. Asset Acceptance Corp.*, No. 04-cv-4674, 2004 WL 1660838, \*1 (N.D. Ill. July 22, 2004) (citing *Rush v. Macy’s New York, Inc.*, 775 F.2d 1554, 1557 (11th Cir. 1985); *Batchelor v. First Nat’l Bank of Blue Island*, 1993 WL 22859 at \*3 (N.D. Ill. 1993)). Since ERC is only alleged to have accessed Fricke’s credit reports -- not even to have provided information about Fricke’s apparently legitimate debt -- to three credit reporting agencies, therefore, he fails to state a claim under the Fair Credit Reporting Act.

### III. Telephone Consumer Protection Act

In 1991, Congress enacted the Telephone Consumer Protection Act (“TCPA”), codified as amended at 47 U.S.C. § 227, to prohibit abusive telemarketing practices and intrusive nuisance calls to consumers by telephone, fax, and automated telephone dialing system (“ATDS”). *See Mims v. Arrow Fin. Servs., LLC*, — U.S. —, 132 S. Ct. 740, 744 (2012). To state a cause of action under the TCPA, a plaintiff must allege that: (1) a call was made; (2) the caller used an ATDS or artificial or prerecorded voice; (3) the telephone number called was assigned to a cellular telephone service; and (4) the caller did not have prior express consent of the recipient. *See Hanley v. Green Tree Servicing, LLC*, 934 F. Supp. 2d 977, 982 (N.D. Ill. 2013) (citing 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1))(citations omitted).

Here, Fricke affirmatively alleges facts supporting three of the four required elements of a TCPA claim, leaving only a lack of prior express consent to be inferred. However, Fricke does allege that ERC made multiple automated calls to his cell phone in 2014, some of which were from blocked numbers. It appears, therefore, that Fricke did not consent to at least some of ERC’s automated phone calls to his cell phone, or at least that is a reasonable inference. Given that ERC was making collection efforts for DirecTV, it also seems unlikely that any lingering consent to contacts by DirecTV could reasonably have been conferred to ERC. These allegations are sufficient to create an inference that Fricke has a claim against ERC under the TCPA, and so Fricke will be permitted to proceed on this claim.

#### IV. Wisconsin Consumer Act

Fricke's complaint makes brief references to two provisions found in the Wisconsin Consumer Act. One contains a laundry list of prohibited practices, Wis. Stat. § 427.104, and the other provides a statutory remedy for damages, Wis. Stat. § 425.304. Fricke provides no facts, however, showing that ERC has engaged in any of the prohibited practices listed in § 427.104 or explaining how ERC is liable for violating the Wisconsin Consumer Act. Because Fricke fails to articulate a claim upon which relief can be granted, the court will deny Fricke leave to proceed with a cause of action under the Wisconsin Consumer Act.

#### ORDER

IT IS ORDERED that:

1. Plaintiff Randy Fricke is GRANTED leave to proceed on his Telephone Consumer Protection Act claim against defendant ERC.
2. Plaintiff is DENIED leave to proceed on his FDCPA, FCRA and Wisconsin Consumer Act claims.
3. The clerk's office will prepare summons and the U.S. Marshal Service shall affect service upon this defendant.
4. For the time being, plaintiff must send defendant a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendant, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendant or to the defendant's attorney.

5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.

Entered this 26th day of October, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge