

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

CALVIN WILLIAMS,

Plaintiff,

OPINION AND ORDER

v.

14-cv-557-wmc

GLA COLLECTION CO., INC., and CARLE
FOUNDATION PHYSICIANS SERVICE,

Defendants.

Plaintiff Calvin Williams is currently incarcerated by the United States Bureau of Prisons at the Federal Correctional Institution in Oxford, Wisconsin (“FCI-Oxford”). Before the court for screening under 28 U.S.C. § 1915(e)(2)(B) is Williams’ proposed civil action for alleged violations of the Fair Debt Collection Practices Act (“FDCPA”) and the Truth in Lending Act.¹ Because Williams claims defendants GLA Collection Co., Inc. and Carle Foundation Physicians Service falsely reported that he has debts in collections, the court concludes he has stated viable claims under the FDCPA, and so he may proceed past screening on those claims.

¹ Williams is proceeding *in forma pauperis*, having previously been found eligible for indigent status and having made an initial payment toward the full filing fee for this lawsuit.

FACTS²

Williams makes no specific factual allegations regarding the defendants except as it related directly to his claims, but defendant Carle Foundation Physicians Service (“CFPS”) appears to provide billing service for physicians employed by the Carle Foundation Physicians Group. The Carle Foundation is a not-for-profit, parent company of a network of healthcare providers and services, including the Carle Foundation Hospital in eastern central Illinois. *See* The Carle Foundation, <http://www.carle.org/about.aspx> (last visited Nov. 16, 2016). Defendant GLA Collection Company, Inc., is a collection agency located in Louisville, Kentucky.

In June of 2011, Williams claims that CFPS falsely attributed three debts, totaling \$808.00, to him under three different account numbers. GLA Collection was allegedly working as CFPS’s credit collection agency during this period, and erroneously reported these same debts in September of 2011. Williams later discovered the false entries by reviewing his Experian Credit Report.

Williams alleges that he has no knowledge of the three debts and that the information appearing on his credit report is inaccurate. He further alleges that he never signed a contract, conducted an interview, entered any agreements with CFPS, nor had any involvement with the defendants. In addition to his claims under the FDCPA and the Truth in Lending Act, he alleges common law fraud.

² In addressing any *pro se* litigant’s complaint, the court must read the allegations under “less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 521 (1972). For purposes of screening only, the court generously assumes the following facts.

OPINION

The Fair Debt Collection Practices Act (“FDCPA”) states that “[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.”³ 15 U.S.C. § 1692e. Section 1692e also contains specific examples of the type of conduct that violates this provision, including falsely representing the “character, amount, or legal status of any debt,” § 1692e(2)(A); and “[c]ommunicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed,” § 1692e(8).

Here, Williams alleges that: (1) CFPS falsely attributed three debts to him in June of 2011; and (2) GLA Collection falsely reported those debts to Experian (and by inference, to other credit reporting services). At least as alleged, CFPS’s attribution of the three debts to Williams could constitute a false representation of the amount and legal status of the debt in violation of § 1692e(2)(A). *See Smith v. Encore Capital Grp. Inc.*, 966 F. Supp. 2d 817, 826 (E.D. Wis. 2013). Likewise, GLA Collection’s report of the debt to outside credit reporting services could be a communication of false credit

³ The FDCPA provides that “[a]n action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.” 15 U.S.C. § 1692k(d). Thus, it appears that Williams’s action might be untimely. However, “plaintiffs need not anticipate and attempt to plead around all potential defenses.” *Xechem, Inc. v. Bristol-Myers Squibb Co.*, 372 F.3d 899, 901 (7th Cir. 2004). Provided the complaint otherwise states a claim, it would only be appropriate to dismiss a complaint at the pleading stage if the validity of a statute of limitations defense is “both apparent from the complaint itself” and “unmistakable.” *Walker v. Thompson*, 288 F.3d 1005, 1010 (7th Cir. 2002). Moreover, it is *possible* that equitable tolling may justify Williams’s delay, *see, e.g., Sykes v. Mel Harris & Assocs., LLC*, 757 F. Supp. 2d 413, 421-22 (S.D.N.Y. 2010), and so the court will not dismiss his complaint at screening despite the possibility of a statute of limitations defense.

information in violation of § 1692e(8). *See Smith*, 966 F. Supp. 2d at 826. While the latter section requires that the debt collector knew or should have known the information was false, the court will infer such knowledge at least at screening of a *pro se* complaint, particularly in light of Williams' allegations that not only was the debt false, he had never had *any* dealings with *any* of the defendants.⁴ Accordingly, Williams has stated a plausible claim under the FDCPA.

Williams also invokes the Truth in Lending Act, 15 U.S.C. § 1601 *et seq.*, but that act is intended to “assure a meaningful disclosure of credit terms” and “protect the consumer against inaccurate and unfair credit billing and credit card practices.” 15 U.S.C. § 1601(a). Further, the Act makes civilly liable any “creditor” who fails to comply with the Act’s provisions. *See id.* at § 1640(a). Williams alleged no facts suggesting that either is his “creditor” as defined in § 1602(g). In fact, he avers that he was never involved with either defendant in any way, and he has no debts attributed to him, precluding an inference that either CFPS or GLA Collection is a “person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement.” *Id.* at § 1602(g). Accordingly, Williams may not proceed with any claims under the Truth in Lending Act.

Finally, Williams invokes common law fraud. Under Wisconsin law, to state a claim for fraud, the plaintiff must allege:

⁴ Admittedly, the claim may prove weaker against GLA Collection to the extent it can show reasonable reliance on CFPS’s representations of debt.

(1) the defendant made a factual representation; (2) which was untrue; (3) the defendant either made the representation knowing it was untrue or made it recklessly without caring whether it was true or false; (4) the defendant made the representation with intent to defraud and to induce another to act upon it; and (5) the plaintiff believed the statement to be true and relied on it to his/her detriment.

Kaloti Enters., Inc. v. Kellogg Sales Co., 2005 WI 111, ¶ 12, 283 Wis. 2d 555, 699 N.W.2d 205 (quoting *Ramsden v. Farm Credit Servs. of N. Cent. Wis. ACA*, 223 Wis. 2d 704, 718-19, 590 N.W.2d 1 (Ct. App. 1998)).

On its face, Williams' complaint fails to meet this standard, because he has not alleged that he believed defendants' representation about his debts to be true and relied on that statement to his detriment, nor could he given the alleged facts here. Even assuming that Williams has alleged sufficient facts to satisfy the other four requirements articulated in *Kaloti*, as well as the heightened pleading standard of Federal Rule of Civil Procedure 9(b), he cannot proceed on his common-law fraud claim in light of this failure.⁵

ORDER

IT IS ORDERED that:

- 1) Plaintiff Calvin Williams's request for leave to proceed against GLA Collection Company, Inc., and Carle Foundation Physicians Service on claims under the

⁵ While plaintiff has failed to state a claim for common law fraud, *perhaps* another common law claim may apply (*e.g.*, slander). The court's denial of leave to proceed on a common law fraud claim is without prejudice to him later seeking leave to amend his complaint to add an appropriate state law claim, although the FDCPA claim alone is likely to provide all of the relief he seeks.

FDCPA is GRANTED. In all other respects, his request for leave to proceed is DENIED.

- 2) The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon these defendants.
- 3) For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to defendants' attorney.
- 4) 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 16th day of November, 2015.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge