

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

LOLITA J. MCSHANN,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 15-00314-CV-W-GAF
)	
NORTHLAND GROUP, INC.,)	
)	
Defendant.)	

ORDER

Presently before the Court is Defendant Northland Group, Inc.’s (“Defendant”) Motion for Judgment on the Pleadings. (Doc. # 19). Plaintiff Lolita J. McShann (“Plaintiff”) opposes. (Doc. # 24). For the reasons set forth below, Defendant’s Motion is GRANTED.

DISCUSSION

I. FACTS

Defendant is a debt collector to which Plaintiff owed a consumer debt. (Petition, ¶¶ 9-10). On March 26, 2014, Defendant sent Plaintiff a demand letter regarding that debt (the “Letter”). (*Id.*, ¶ 12). The Letter’s envelope had a window through which Plaintiff’s name, address, and account number were visible. (*Id.*, ¶¶ 14-16). Defendant claims this number was not a number provided by Plaintiff, but was instead assigned by Defendant and known only internally. (Doc. # 20, pp. 6-7). Plaintiff does not dispute this claim. (*See* Doc. # 24).

On March 26, 2015, Plaintiff filed suit against Defendant in the Circuit Court of Jackson County, Missouri alleging the Letter violated the Fair Debt Collection Practices Act (the “FDCPA”) because it included her personally identifiable information, specifically, the account number. (Petition, ¶ 22). Defendant thereafter removed the case to this Court. (Doc. # 1).

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(c), “a party may move for judgment on the pleadings” anytime “[a]fter the pleadings are closed—but early enough not to delay trial.” When reviewing a motion for judgment on the pleadings, courts apply the same standard applied to Rule 12(b)(6) motions to dismiss. *Saterdalen v. Spencer*, 725 F.3d 838, 840-41 (8th Cir. 2013). “A motion for judgment on the pleadings will be granted only where the moving party has clearly established that no material issue of fact remains and the moving party is entitled to judgment as a matter of law.” *Waldron v. Boeing Co.*, 388 F.3d 591, 593 (8th Cir. 2004) (internal quotation marks and citation omitted). A court accepts all facts pleaded by the non-moving party as true and grants all reasonable inferences in favor of that party. *Clemons v. Crawford*, 585 F.3d 1119, 1124 (8th Cir. 2009). “Well-pleaded facts, not legal theories or conclusions, determine the adequacy of the complaint.” *Id.* (alterations and citations omitted). To survive a motion for judgment on the pleadings, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Gallagher v. City of Clayton*, 699 F.3d 1013, 1016 (8th Cir. 2012) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). “[L]abels and conclusions” or “formulaic recitation[s] of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)) (internal quotation marks omitted).

III. ANALYSIS¹

¹ The undersigned recently issued a decision granting a motion to dismiss in *Alvarado v. Northland Group, Inc.*, No. 15-00645-CV-W-GAF, 2015 WL 7567091 (W.D. Mo. Nov. 19, 2015). There, the plaintiff alleged nearly identical facts. Because the same standard applies to motions for judgment on the pleadings, the Court adopts and reproduces its analysis from *Alvarado* here.

Plaintiff contends that the Letter violated §1692f(8) of the FDCPA. (Petition). It is a violation of the FDCPA to use “any language or symbol, other than the debt collector’s address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.” 15 U.S.C. § 1692f(8). The Letter allowed Plaintiff’s account number to be visible from through the window of the envelope. (Petition, ¶¶ 14-16). Thus, under the plain language of the FDCPA, Defendant’s conduct was a violation.

However, the Eighth Circuit has analyzed this section of the FDCPA and determined that adhering to its plain language would “create bizarre results.” *Strand v. Diversified Collection Serv., Inc.*, 380 F.3d 316, 318 (8th Cir. 2004). For example, the plain language of the statute would prevent the debtor’s address, postage, or other postal marks such as “overnight mail” from being placed on the outside of an envelope. *Id.* The Eighth Circuit also considered that the FDCPA’s purpose is “to eliminate abusive debt collection practices by debt collectors’ and protect consumers.” *Id.* at 318-19 (quoting 15 U.S.C. § 1692(e)). The Eighth Circuit ultimately concluded that the FDCPA “does not proscribe benign language and symbols” from being visible on the outside of an envelope. *Id.* at 319. Thus, the key consideration is whether Plaintiff’s account number was benign.

In *Strand*, the language printed on the envelope that the Eighth Circuit found to be benign was “personal and confidential” and “immediate reply requested.” *Id.* at 317. The Eighth Circuit concluded that these phrases were benign because “they did not, individually or collectively, reveal the source or purpose of the enclosed letters.” *Id.* at 319. Under this test, the account number from the Letter was benign because the number alone did not reveal the source

or purpose of the Letter. Instead, the number appeared without context as a mere collection of random numbers.

Plaintiff argues that the account number was not benign because it violated consumer privacy. (Doc. # 15, p. 8). Plaintiff urges this Court to adopt the Third Circuit's interpretation in *Douglass v. Convergent Outsourcing*, 765 F.3d 299 (3d Cir. 2014). In *Douglass*, the Third Circuit analyzed whether an internal account number and scanable QR code printed on the outside of an envelope violated the FDCPA. 765 F.3d at 302. The Third Circuit determined that it did, stating that the inclusion of the number was not benign because "it [wa]s a piece of information capable of identifying [the plaintiff] as a debtor. And its disclosure has the potential to cause harm to a consumer that the FDCPA was enacted to address." *Id.* at 306. In distinguishing itself from *Strand*, the Third Circuit noted that *Strand* was inapposite because it "did not confront an envelope that displayed core information relating to the debt collection and susceptible to privacy intrusions." *Id.* at 305.

This Court believes that following the Third Circuit's interpretation would be contrary to the Eighth Circuit's own interpretation in *Strand*. In *Strand*, the Eighth Circuit looked to the Federal Trade Commission's interpretation of the statute as support for their own interpretation. *Strand*, 380 F.3d at 319, n. 3. The same interpretation cited by the Eighth Circuit went on to state that "a rigid, literal approach to section [15 U.S.C. § 1692f(8)] would lead to absurd results The legislative purpose was to prohibit a debt collector from using symbols or language on envelopes that would reveal that the contents pertain to debt collection." 53 FR 50097-02. While debtor privacy may be a legitimate concern, and a concern addressed in other laws, the purpose of this section of the FDCPA was not to prevent disclosure of internal account numbers, but to prevent identification of the recipient as a debtor. Other Courts have similarly rejected

Douglass's interpretation and found that an internal account number on an envelope does not violate 15 U.S.C. § 1692f(8). See *Perez v. Glob. Credit & Collection, Corp.*, No. 14 CIV. 9413 CM, 2015 WL 4557064, at *3 (S.D.N.Y. July 27, 2015); *Gelinas v. Retrieval-Masters Creditors Bureau, Inc.*, No. 15-CV-116-JTC, 2015 WL 4639949, at *4 (W.D.N.Y. July 22, 2015); *Gonzalez v. FMS, Inc.*, No. 14 C 9424, 2015 WL 4100292, at *6 (N.D. Ill. July 6, 2015).

Additionally, this Court agrees with *Gonzales* that *Douglass* is different from the present case because in *Douglass*

the envelope at issue contained an account number and a visible code, which, when scanned by a smart phone or similar device, revealed various personal information about the plaintiff, including the monetary amount corresponding to [the plaintiff's] alleged debt.” . . . In this case . . . Plaintiff does not allege that someone viewing the envelope could use the string of numbers to obtain information about the amount of his debt or other private information; instead, the gist of his claim is that the mere presence of the numbers violated Section 1692f(8). But an unsophisticated consumer² viewing the envelope could not plausibly divine that the letter inside was associated with a delinquent debt.

Gonzalez, 2015 WL 4100292, at *5 (internal citations omitted) (quoting *Douglass*, 765 F.3d at 300). Accordingly, Plaintiff's Petition fails to establish a valid claim for relief under the FDCPA.

CONCLUSION

Under the plain language of the FDCPA, any language on an envelope to a debtor other than the debt collector's address is improper. However, this rule would create bizarre results wherein the debtor's address and stamps would be prohibited from inclusion. As such, benign information which does not reveal that the recipient is a debtor may be included. The account number contained on the Letter to Plaintiff did not reveal that she was a debtor and therefore was

² “A violation of the FDCPA is reviewed utilizing the unsophisticated-consumer standard.” *Strand*, 380 F.3d at 317.

not improper under the FDCPA. Accordingly, for these reasons and the reasons set forth above, Defendant's Motion for Judgment on the Pleadings is GRANTED.

IT IS SO ORDERED.

s/ Gary A. Fenner
GARY A. FENNER, JUDGE
UNITED STATES DISTRICT COURT

DATED: December 1, 2015