

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

---

Amanda Baltasar,	)	
	)	2022 CH 00907
Plaintiff,	)	
	)	Motion to Dismiss
v.	)	
	)	Calendar 1
Nationwide Credit Inc.,	)	
	)	Hon. Thaddeus L. Wilson
Defendant.	)	Judge Presiding

---

**ORDER**

On February 7, 2022, Plaintiff Amanda Baltasar (“Baltasar”) filed a class action complaint against Defendant Nationwide Credit Inc. (“NCI”). On September 26, 2022, NCI filed a motion to dismiss pursuant to 735 ILCS 5/2-615. For the reasons set forth below, Defendant’s motion to dismiss is Granted.

**FACTUAL BACKGROUND**

In an attempt to collect a debt owed to American Express, NCI sent an email containing settlement offers to the Plaintiff. Plaintiff alleges NCI’s email violated several sections of the Fair Debt Collection Practices Act. (“FDCPA”).

**LEGAL STANDARD**

A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Tedrick v. Cmty. Resource Ctr, Inc.*, 235 Ill. 2d 155, 160-61 (2009). The court accepts as true the well-pleaded facts and reasonable inferences in the complaint and construes the allegations in the light most favorable to the plaintiff. *Tedrick*, 235 Ill. 2d at 161. Given these standards, a cause of action should not be dismissed, pursuant to a

section 2-615 motion, unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Id.*

Conclusions of fact are insufficient to state a cause of action regardless of whether they generally inform the defendant of the nature of the claim against him. *Adkins v. Sarah Bush Lincoln Health Center*, 129 Ill. 2d 497, 519-20 (1989). Rather, under Illinois fact pleading, the pleader is required to set out ultimate facts that support his or her cause of action. *People ex rel. Fahner v. Carriage Way West, Inc.*, 88 Ill. 2d 300, 308 (1981). *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 22.

### **ANALYSIS**

In her complaint, Plaintiff brings the following claims under the Fair Debt Collection Practices Act: (1) a claim for a violation of the clear and conspicuous requirements of Regulation F.; (2) a claim for a violation of §1692c(a)(1) of the FDCPA; (3) a claim for a violation of 15 U.S.C. § 1692f. In seeking dismissal, NCI contends Plaintiff's complaint is factually and legally insufficient to state a cause of action against NCI.

The Consumer Financial Protection Bureau ("CFPB") implemented Regulation F to prescribe Federal rules governing certain activities of debt collectors, as that term is defined in the FDCPA. 12 C.F.R. § 1006.1. Regulation F requires debt collectors in communications with consumers in connection with the collection of a debt, to include a clear and conspicuous statement describing a reasonable and simple method by which the consumer can opt out of further electronic communications. 12 C.F.R. § 1006.6(e).

On its face, the term clear and conspicuous provides little guidance on its practical application. However, the CFPB provides supplementary commentary on its meaning. In its commentary, the CFPB interprets clear and conspicuous as meaning "readily understandable and

in case of written and electronic disclosures, the location and type size also must be readily noticeable and legible to consumers, although no minimum type size is mandated.” 12 CFR Part 1006 Supplement I at ¶ 6(d)(4)(ii)(C).

The Court is unaware of and Plaintiff fails to cite case law addressing the meaning of clear and conspicuous in the context of Regulation F. In her brief, Plaintiff cites several cases in which the phrase clear and conspicuous has been interpreted in similar contexts, such as the Truth in Lending Act and Fair Credit Reporting Act disclosures. However, the CFPB provides its own interpretation of the term clear and conspicuous.

The email in controversy is attached to Plaintiff’s complaint as Exhibit A. In viewing the email, the opt-out provision is located on the second page of the three-page email. The provision appears immediately after the substantive portion of the email. The provision is the same sized font as the rest of the text of the email and is in its own spaced-out paragraph. The paragraph is three lines and contains a blue highlighted phone number and a blue underlined hyperlink that says “click here.” The opt-out provision is not intentionally in smaller font, it is not buried within a larger paragraph, and it is not concealed in any manner to hide from consumers. Although not bolded, the spacing and the location of the opt-out provision make it readily noticeable and legible.

In addition to arguing the opt-out notice is not conspicuous, Plaintiff contends the opt-out provision is unclear and ambiguous. As well as the opt-out provision, the email contains a section warning consumers if they email NCI customer support they authorize Nationwide Credit to contact them. Baltasar argues that this section directly conflicts with the email’s opt-out provision and is in violation of Regulation F.

The Court in viewing the email finds that the opt-out provision and the consumer contact authorization provisions are not contradictory and are “readily understandable.” Before the authorization provision, the email contains a table of potential settlement offers. After the settlement offers, the email contains instructions on how to accept the settlement offers. Specifically, the email states “to confirm your interest in one of these offers, you may contact NCI using any of the following options:” and then lists a phone number and an email address as options. Following the email address and the phone number, in a stand-alone paragraph, the email includes the authorization provision.

It is clear the authorization provision is in connection with consumers wishing to contact NCI in regards to settlement offers not for consumers wishing to opt-out. The section informing consumers how to inquire into potential settlement offers ends with a colon, followed by the email address and number and authorization provision. The authorization provision is then ended by a period which indicates the end of the section concerning settlement offers.

Furthermore, if the section authorizing NCI to contact consumers is ambiguous or confusing, the opt-out provision still states “if at any point.” The language conveys that the consumer always possesses the option to opt-out of receiving emails from NCI should they wish. The opt-out provision contains three methods for consumers to opt-out of receiving communications. Consumers have the option to (1) call; (2) click a hyperlink; or (3) send an email. The opt-out provision is clear in notifying consumers of their options should they wish to opt-out of receiving communications from NCI.

In her complaint, the Plaintiff also asserts a claim for a violation of 1692c(a)(1). Plaintiff alleges Nationwide Credit communicated with her at an inconvenient time or place in the collection of a debt. Section 1692c(a)(1) states:

**(a) Communication with the consumer generally**

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt-

- (1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location. 15 U.S.C.S. § 1692c.

The Plaintiff in her brief admits that this section is inapplicable to her claim and warrants striking. Response at 2. Furthermore, the email was sent on December 14, 2021, at 4:10 P.M. CST. This timeframe is within the parameters proscribed by the statute.

Finally, Plaintiff brings a claim for a violation of 15 U.S.C. § 1692f. Plaintiff alleges that NCI used unfair and unconscionable means to collect a debt in violation of § 1692f. when NCI engaged in collection activity prohibited by the Consumer Financial Protection Bureau. Plaintiff argues that NCI's violation of Regulation F is a per se violation of § 1692f. As stated above, Plaintiff is unable to allege facts supporting a violation of Regulation F.

While courts should liberally grant leave to amend, a party does not have an absolute and unlimited right to amend. *See Hiatt v. Illinois Tool Works*, 2018 IL App (2d) 170554, ¶ 36. The relevant factors considered in determining whether to grant leave to amend a pleading are: "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified." *Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273 (1992).

In viewing the factors, the first factor alone warrants dismissal with prejudice. The only question presented is a question of law, no proposed amendments will cure the defective

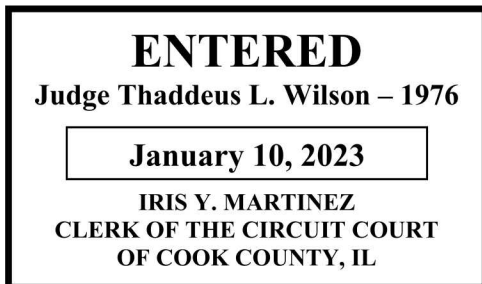
pleadings. Plaintiff is unable to show as a matter of law, the opt-out provision was not clear and conspicuous as required by Regulation F.

### **CONCLUSION**

Based on the foregoing discussion, this Court finds the Plaintiff as a matter of law is unable to allege facts sufficient to support the alleged violations of Fair Debt Collection Practices Act.

### **IT IS HEREBY ORDERED:**

1. Defendant's motion to dismiss is **Granted**.
2. Plaintiff's complaint is dismissed in its entirety with prejudice.



**ENTERED:**

A handwritten signature in blue ink, followed by the year "1976" also in blue ink.

Judge Thaddeus L. Wilson  
Circuit Court of Cook County