STATE OF NORTH DAKOTA | IN DISTRICT COURT

COUNTY OF STARK | SOUTHWEST JUDICIAL DISTRICT

Randall Hathoot,

Plaintiff,

vs.

ProCollect Services, LLC,

Respondent,

ORDER

Case No. 45-2025-CV-00287

[1] On May 2, 2025, the Defendant, ProCollect Services, LLC filed a motion for judgment on the pleadings and a motion to stay discovery pending the Court's decision on the motion for judgment on the pleadings. On May 19, 2025, the Plaintiff, Randall Hathoot filed a response resisting both motions. On May 19, 2025, Hathoot filed a motion to strike Defendant's untimely answer and for entry of default judgment, or in the alternative, summary judgment. On May 27, 2025, ProCollect filed replied in support of its motions. On June 2, 2025, ProCollect responded resisting the motion to strike. On June 3, 2025, Hathoot replied. No parties have requested oral argument on these motions.

[2] The undisputed facts according to the pleadings appear to be as follows: Around November 25, 2024, ProCollect sent a notice to Hathoot attempting to collect an alleged debt of $466.35 owed to SRT Communications for internet services. The notice indicated Hathoot had until December 30, 2024, to dispute the debt and request validation of the debt. Around

January 11, 2025, Hathoot sent a certified letter to ProCollect disputing the validity of the alleged debt and demanding validation. On February 19, 2025, Hathoot received a response letter from ProCollect, which included five itemized billing statements from SRT Communications. Hathoot does not believe ProCollect's original notice and response in validation of debt complied with federal and state law. Hathoot also alleges he sought medical treatment due to anxiety and depression resulting from ProCollect's alleged unlawful debt collection practices.

[3] As a preliminary matter, the Court will address Hathoot's motion to strike. Hathoot asserts ProCollect's answer should be stricken for being untimely and the Court should grant default judgment in his favor. In response, ProCollect asserts its answer is timely because Hathoot did not file a declaration with a signed return receipt and that Hathoot waived this argument, since the motion for default was not filed until after ProCollect's answer was filed. See Schwan v. Folden, 2006 ND 28, ¶ 7, 708 N.W.2d 863. (stating "In United Accounts, Inc. v. Lantz, this Court adopted the general rule that if a plaintiff does not move for default judgment after the default has accrued or within a reasonable time after the default has accrued, and the answer is subsequently filed, the plaintiff waives its right to default judgment for a defendant's. failure to appear"). Additionally, the Court in the Schwan case stated: "This Court has a strong preference for deciding cases on their merits rather than by default judgment." Id. at ¶ 9. In reply, Hathoot asserts he raised the timeliness argument as soon as he became aware of it, so default judgment is still available to him.

[4] The Court agrees with ProCollect that Hathoot's motion to strike ProCollect's answer should be denied. ProCollect's answer was filed on April 9, 2025, and Hathoot filed a motion to strike ProCollect's affirmative defenses on April 16, 2025, without asserting the answer was untimely or should be stricken. It was not until May 19, 2025, after this Court had already entered an order on Hathoot's motion to strike affirmative defenses, that Hathoot first raised this argument. Accordingly, the Court concludes Hathoot waived the argument that default judgment should be granted here and, as noted by the North Dakota Supreme Court, it is preferable for the Court to decide the case on the merits, rather than by default judgment. Hathoot's motion also requests an alternative remedy of seeking summary judgment in his favor. However, the Court concludes its decision on ProCollect's motion for judgment on the pleadings, as outlined below, makes Hathoot's alternative argument for summary judgment moot.

[5] The pertinent rule for a motion for judgment on the pleadings is N.D.R.Civ.P. 12(c), which states: "After the pleadings are closed—but early enough not to delay the trial—a party may move for judgment on the pleadings." Rule 12(d), N.D.R.Civ.P., further states: "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion." Regarding a N.D.R.Civ.P. 12(c) motion for judgment on the pleadings, the North Dakota Supreme Court has stated:

> We recognize that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which

> would entitle him to relief. The court's inquiry is directed to whether or not the allegations constitute a statement of a claim under Rule 8(a), N.D.R.Civ.P., which sets forth the requirements for pleading a claim and calls for a short and plain statement of the claim showing that the pleader is entitled to relief.
>
> The complaint is to be construed in the light most favorable to the plaintiff, and the allegations of the complaint are taken as true. The motion for dismissal of the complaint should be granted only if it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted.

Tibert v. Minto Grain, LLC, 2004 ND 133, ¶ 7, 682 N.W.2d 294. Also, Courts "may consider, in addition to the pleadings, materials embraced by the pleadings and materials that are part of the public record, without converting the motion to a summary judgment under Rule 56." Nelson v. McAlester Fuel Co., 2017 ND 49, ¶ 22, 891 N.W.2d 126.

Hathoot's Federal Law Claims

[6] The Court will first address Hathoot's federal law claims. According to Hathoot's complaint, ProCollect violated 15 U.S.C. § 1692g(a) by failing to provide the required disclosures in the dunning letter; 15 U.S.C. § 1692g(b) by failing to provide a contract or agreement verifying the alleged debt; and 15 U.S.C. § 1692e by engaging in false or misleading representations.

> 15 U.S.C. § 1692g provides:
>
> ***(a) Notice of debt; contents***
>
> Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--
>
> > **(1)** the amount of the debt;
> >
> > **(2)** the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, 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. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

> The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by Title 26, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

[7] In its motion for judgment on the pleadings, ProCollect resists Hathoot's first claim that it failed to include the required disclosures in the written notice that was sent to Hathoot. Hathoot's claim on this point appears to be that ProCollect did not indicate in the notice that he had thirty days to dispute the validity of the debt as required by 15 U.S.C. § 1692g(a), but rather provided him with an arbitrary deadline of December 30, 2024. In response, ProCollect notes that it used a Model Validation Notice ("MVN") form created by the Consumer Financial Protection Bureau (CFPB) for collection agencies to use, to ensure compliance with 15 U.S.C. § 1692g. See 12 C.F.R. § Pt. 1006, App. B, Model Validation Notice template. Further, ProCollect asserts that in order to encourage use of the form, federal regulations provide a safe harbor from Fair Debt Collection Practices Act claims based upon the language of the notice, if a debt collector uses the model form or a substantially similar form. See 12 C.F.R. § 1006.34(d)(2) (iii) (stating "A debt collector who uses Model Form B–1 as described in paragraph (d)(2)(i) or (ii) of this section may make changes to the form and retain a safe harbor for compliance with the information and form requirements of paragraphs (c) and (d)(1) of this section provided that the form remains substantially similar to Model Form B–1."). ProCollect indicates it used the Model Validation Notice for its initial notice of Hathoot's debt, so it is entitled to a safe harbor from Hathoot's claim. Additionally, despite Hathoot notifying ProCollect that he disputed the

debt outside of the thirty-day time period, ProCollect still stopped collection of the debt upon receiving Hathoot's notice and provided him with the required information.

[8] From the Court's review of the complaint and the attached notice to the complaint, it is clear Hathoot does not have a viable claim for violation of 15 U.S.C. § 1692g(a) because, beyond a doubt, he can prove no set of facts in support of his claim, which would entitle him to relief. ProCollect's initial notice appears to be the Model Validation Form, so ProCollect is entitled to safe harbor from Hathoot's claims. Additionally, regardless, Hathoot, did not timely dispute the validity of the debt, and yet ProCollect still stopped collection of the debt upon receipt of his response. As such, the Court grants ProCollect' motion for judgment on the pleadings as to this claim.

[9] The Court next turns to Hathoot's second claim that ProCollect violated 15 U.S.C. § 1692g(b) by failing to provide a contract or agreement verifying the alleged debt. In its motion for judgment on the pleadings, ProCollect argues its obligation to verify the debt was not triggered because Hathoot did not timely dispute the debt within the thirty-day period, but, despite that, ProCollect contends it did verify the debt by providing five itemized statements from the original creditor. According to ProCollect, the itemized statements show billing related to internet services, Hathoot's name, address, account number, internet number and an itemization of the balance owed between June 22, 2024 and October 22, 2024. The statements showed an amount owing of $466.67, which was consistent with ProCollect's original notice to Hathoot. Hathoot does not dispute that this was provided, but, instead, claims that ProCollect

needed to provide a contract or agreement showing Hathoot agreed to the debt, in order to comply with 15 U.S.C. § 1692g(b). ProCollect disputes that a contract or agreement is required.

[10] The Court concludes ProCollect has complied with 15 U.S.C. § 1692g(b) by providing Hathoot with the five itemized statements, despite Hathoot not timely disputing the debt. The Court is more persuaded by the case law provided by ProCollect and has not found anything to support that an agreement or contract is required to comply with 15 U.S.C. § 1692g(b). See Dunham v. Portfolio Recovery Associates, LLC, 663 F.3d 997, 1003 (8th Cir. 2011) (stating "Consistent with the legislative history, verification is only intended to 'eliminate the . . . problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.'"); Chaudhry v. Gallerizzo, 174 F.3d 394, 406 (4th Cir. 1999) (stating "Contrary to Appellants' contention, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt."); Graziano v. Harrison, 950 F.2d 107, 113 (3rd Cir. 1991) (holding that a debt collector that did not contact the original creditor satisfied the FDCPA's verification requirement by sending computer printouts that provided the alleged debtor with "the amounts of his debts, the services provided, and the dates on which the debts were incurred."). The Court finds that none of the cases cited by Hathoot support his position. As such, the Court grants ProCollect's motion for judgment on the pleadings as to this claim.

[11] Next, Hathoot claims ProCollect violated 15 U.S.C. § 1692e for sending a letter that falsely implied legal urgency and misrepresented Plaintiff's rights. 15 U.S.C. § 1692e provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of--

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to--

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating 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.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

[12] This claim relies on Hathoot's first claim that the initial notice did not comply with federal law. Since the Court has found ProCollect's initial notice is entitled to safe harbor for being a model form, the Court concludes there is no way Hathoot could have a viable claim that ProCollect acted in a fraudulent, deceptive, or misleading manner. Additionally, the Court cannot discern any "urgency" addressed in the notice, other than the deadline for submitting a dispute, which is required by 15 U.S.C. § 1692g(a). As such, this Court grants ProCollect's motion for judgment on the pleadings as to this claim as well.

Hathoot's State Law Claims

[13] This Court now turns to to Hathoot's state law claims. Hathoot asserts ProCollect's "conduct, as described above, was willful, malicious, oppressive, and fraudulent, demonstrating

a reckless disregard for Plaintiff's legal rights under N.D.A.C. § 13-04-02-08 and N.D.C.C. § 51-15-02" such that Hathoot seeks punitive damages pursuant to N.D.C.C. § 32-03.1-11.

[14] Section 13-04-02-08, N.D.A.C., provides:

> No debt collector may use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect debts or to obtain information concerning debtors. Without limiting the general application of the foregoing, no debt collector may:
>
> 1. Use any name while engaged in the collection of debts other than the debt collector's true name unless the assumed name is registered with the department as an alias for the debt collector.
>
> 2. Make misleading representations in any communication made to collect or attempt to collect a debt or to obtain or attempt to obtain information about a debtor.
>
> 3. Falsely represent that the debt collector has information in the debt collector's possession or something of value for the debtor in order to solicit or discover information about the debtor.
>
> 4. Fail to clearly disclose the name and full business address of the person to whom the debt has been assigned or is owed at the time of making any demand for money.
>
> 5. Falsely represent or imply that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent, or official of this state or any agency of federal, state, or local government.
>
> 6. Falsely represent the character, extent, or amount of a debt against a debtor, or of its status in any legal proceeding.
>
> 7. Use, distribute, or sell any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval.
>
> 8. Represent that an existing obligation of the debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation.
>
> 9. Falsely represent, or give a false impression about the status or true nature of or the services rendered by the debt collector or the debt collector's business.

Section 13-04-02-08, N.D.A.C., provides similar protections as 15 U.S.C. § 1692e, which was already addressed above. According to Hathoot's factual allegations, outlined in his complaint, which all relate to the documents mailed to him from ProCollect, it appears to the Court that Hathoot can prove no set of facts in support of his claim which would entitle him to relief on this claim that ProCollect acted in a fraudulent, deceptive, or misleading manner under state law. Accordingly, this Court grants ProCollect's motion for judgment on the pleadings as to this claim.

[15] Hathoot also cites to N.D.C.C. § 51-15-02, which provides:

> The act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon <u>in connection with the sale or advertisement of any merchandise</u>, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice. The act, use, or employment by any person of any act or practice, in connection with the sale or advertisement of any merchandise, which is unconscionable or which causes or is likely to cause substantial injury to a person which is not reasonably avoidable by the injured person and not outweighed by countervailing benefits to consumers or to competition, is declared to be an unlawful practice.

(Emphasis added.) This Court concludes N.D.C.C. § 51-15-02 does not relate to Hathoot's claims at all, since this statute involves the sale or advertisement of merchandise. As such, the Court also grants ProCollect's motion for judgment on the pleadings as to this claim. Since both of Hathoot's state law claims are not viable, there is no basis for punitive damages either.

Hathoot's New Claim

[16] In Hathoot's response to the motion for judgment on the pleadings, he has also now raised for the first time the argument that ProCollect has no authority to collect the debt from him: "In both its Answer to the Complaint and its Answer to Plaintiff's Interrogatories,

Defendants admits it does not own the debt; has no contract or purchase agreement with the *original creditor; and cannot produce any assignment or servicing agreement."* In ProCollect's answer it "admits that it does not own the debt and that it has been retained to collect the debt on behalf of the original creditor." In asserting that ProCollect cannot produce any assignment or servicing agreement, Hathoot appears to be relying on ProCollect's answer and responses to interrogatories that are outside the scope of the pleadings, in which ProCollect indicated it did not own the debt. As noted in ProCollect's reply brief, it appears Hathoot may be misrepresenting ProCollect's responses, in that ProCollect solely admitted it did not own the debt, *but did not indicate it had no legal right to collect on* the debt *on* behalf of SRT Communications.

[17] Additionally, as noted by ProCollect, if ProCollect does not have a right to collect the debt as a debt collector, then Hathoot likely would not have any viable claims against ProCollect under the Fair Debt Collection Practices Act, the purpose of which is to prevent abusive debt collection practices by debt collectors. See 15 U.S.C. § 1692(e) (stating "It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that *those debt collectors who refrain from using abusive debt collection practices are not* competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses."); 15 U.S.C. § 1692a(6) (stating "The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due

another."). This Court concludes this claim was not properly pled and does not prevent ProCollect's motion for judgment on the pleadings.

[18] Lastly, this Court will address ProCollect's motion to stay discovery pending disposition of its motion for judgment on the pleadings. Since this Court is now granting ProCollect's motion for judgment on the pleadings in full, it concludes the motion for a stay of discovery is unnecessary and should be denied as moot.

[19] In conclusion, the Court GRANTS ProCollect's motion for judgment on the pleadings and DENIES ProCollect's motion to stay discovery and Hathoot's motion to strike ProCollect's answer. Counsel for the Defendant shall prepare the proposed Judgment for the Court's signature.

Dated this 12th day of June, 2025.

BY THE COURT:

Rhonda R. Ehlis

Rhonda R. Ehlis
District Judge

Certificate of Service

A copy of the Order from June 12, 2025, was mailed to the following parties:

Randall Hathoot
2025 Yellowstone Circle
Dickinson, ND 58601

Abigail Small, Court Recorder