

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ALLISON LEWANDOWSKI,)
)
 Plaintiff)
)
 v.) 1:15-cv-00410-NT
)
 CARE CREDIT/SYNCHRONY BANK,)
)
 Defendant)

**ORDER ON DEFENDANT’S MOTION FOR
MORE DEFINITE STATEMENT (ECF NO. 5)**

This case began as a small claims action filed in the Maine District Court. Citing Plaintiff’s assertion of federal claims, Defendant “Care Credit/Synchrony Bank”¹ removed the matter to this Court. Subsequent to removal, Plaintiff filed a Motion for More Definite Statement. (ECF No. 5.) Through the motion, Plaintiff requests that the Court direct Plaintiff to file an amended complaint with more information about the bases of her claims. Plaintiff did not respond to the motion.

Following a review of the complaint, and after consideration of Defendant’s arguments, the Court grants the motion.

BACKGROUND

Plaintiff Allison Lewandowski’s factual allegations consist of the following:

[From] 01-2015 [to] current violation of [Fair Credit Reporting Act] and [Fair Debt Collection Practice Act]. Failure and/or refusal to respond to Maine UTPA demand letter. Fraud. Unfair, immoral, unethical business practices/acts. Wrongful credit reporting. Refusal to accept payment.

(Statement of Claim, ECF No. 1-1.)

¹ Defendant states that its proper name is Synchrony Bank.

Defendant argues that a more definite statement is appropriate because Plaintiff “has not described what specific conduct on the part of Synchrony forms the basis of her claims, and the Complaint does not even identify any account or accounts that are supposedly at issue.” (Motion ¶ 4.) Defendant maintains that the pleading “is too vague for [Defendant] to meaningfully respond to it.” (*Id.*)

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(a) provides in pertinent part, “A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response.” Fed. R. Civ. P. 12(e). “Rule 12(e) motions are not favored in light of the availability of pretrial discovery procedures.” *Haghkerdar v. Husson Coll.*, 226 F.R.D. 12, 14 (D. Me. 2005) (citation omitted). Such motions “are to strike at unintelligibility, rather than at lack of detail in the complaint.” *Cox v. Me. Mar. Acad.*, 122 F.R.D. 115, 116 (D. Me. 1988). The motions are thus granted “only when a party is unable to determine the issues he must meet.” *Id.*

In order to state a claim in federal court, Plaintiff’s complaint “must contain: ... a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). The requirements of Rule 8 are “minimal.” *Calvi v. Knox Cnty.*, 470 F.3d 422, 430 (1st Cir. 2006). A complaint, however, “must, at a bare minimum, give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Id.* (internal quotation marks omitted). In other words, the complaint must provide some minimal information about “who did what to whom, when, where, and why.” *Educadores Puertorriquenos en Accion v. Hernandez*, 367 F.3d 61, 68 (1st Cir. 2004). Additionally, a complaint is susceptible to dismissal if it does not plead

“enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

DISCUSSION

Plaintiff evidently seeks to assert claims for fraud and for the violation of the Fair Debt Collection Practices Act, the Fair Reporting Act, and the Unfair Practices Act. As explained below, Plaintiff’s allegations are sufficiently vague to warrant an order that requires Plaintiff to supplement her complaint.

Fair Debt Collection Practices

The Maine Fair Debt Collection Practices Act, 32 M.R.S. §§ 11001-11054, prohibits debt collectors² from engaging in certain debt collection practices, including false representations regarding the amount of the debt and false reporting of credit information. *Id.* § 11013(2)(B), (H). The Act authorizes a private cause of action for those who are harmed as the result of such practices. *Id.* § 11054(1). Federal law prohibits the same conduct, and also authorizes private civil suits under the federal Fair Debt Collection Practices Act. 15 U.S.C. §§ 1692e(2), (8), 1692k.

Defendant’s request for an account number does not compromise the intelligibility of the complaint and is the type of information that Defendant can obtain through discovery. To state a claim with sufficient particularity to permit Defendant to understand the basis of Plaintiff’s claim, however, Plaintiff must at a minimum describe in her complaint the conduct that she alleges constitutes wrongful collection activity.

² The Federal Debt Collection Practices Act defines “debt collector” as a person or entity “who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6). The Maine Fair Debt Collection Practice Act definition is identical. 32 M.R.S. § 11002(6).

Fair Credit Reporting

The federal Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(b), obligates those who furnish reports to credit reporting agencies to refrain from reporting inaccurate information and to undertake “specific duties in the event of a dispute over furnished information.” *Chiang v. Verizon New England Inc.*, 595 F.3d 26, 35 (1st Cir. 2010) (citing 15 U.S.C. § 1681s-2(b)). The failure to satisfy certain obligations in the event of a dispute generates a private cause of action. *Id.* at 36. For liability to arise, however, the person or entity reporting the information must first receive notice from a reporting agency that a consumer has disputed the report.³ *Id.* at 35 & n.8; *see also* 15 U.S.C. §§ 1681s-2(b)(1) (imposing burdens on the furnisher “[a]fter receiving notice pursuant to section 1681i(a)(2)”), 1681i(a)(2) (describing reporting agency’s duty to promptly notify furnisher of consumer’s dispute).

From Plaintiff’s complaint, one cannot discern the facts upon which Plaintiff relies to support a claim for the violation of the Fair Credit Reporting Act. Plaintiff must, therefore, supplement her filing to include additional facts to support her claim, which facts would presumably include whether she registered a dispute with a credit reporting agency.

Unfair Trade Practices

“The Maine Unfair Trade Practices Act (the UTPA) provides a private right of action for any ‘person who purchases or leases goods, services or property ... for personal, family or household purposes and thereby suffers any loss of money or property ... as a result of the use or employment by another person of’ an unfair [or deceptive] trade practice.” *Noveletsky v. Metro. Life Ins. Co.*, 49 F. Supp. 3d 123, 151 (D. Me. 2014) (quoting 5 M.R.S. §§ 207, 213). The statute “requires that the plaintiff suffer a loss of money or property as a result of the unlawful act.”

³ The Maine Fair Credit Reporting Act, 10 M.R.S. §§ 1306 – 1310-H (Supp. 2013), requires compliance with the federal Act and with the Code of Federal Regulations. 10 M.R.S. § 1309(1) (Supp. 2013).

Anderson v. Hannaford Bros. Co., 659 F.3d 151, 160 (1st Cir. 2011). As to the unfair or deceptive standard, the Maine Supreme Judicial Court has stated:

As to unfairness, we have held that to be unfair an act must cause, or be likely to cause, substantial injury that is not reasonably avoidable by consumers, and the harm is not outweighed by a countervailing benefit to consumers or competition. As to deceptive acts, we have adopted the clear and understandable standard, which states that an act or practice is deceptive if it is a material representation, omission, act or practice that is likely to mislead consumers acting reasonably under the circumstances. An intent to deceive is not required.

MacCormack v. Brower, 2008 ME 86 n. 2, 948 A.2d 1259, 1261 n. 2 (citations and internal punctuation omitted); *see also Campbell v. First Am. Title Ins. Co.*, 644 F. Supp. 2d 126, 134 (D. Me. 2009).

Plaintiff's complaint lacks any facts to inform Defendant of the conduct that Plaintiff considers to be unfair or deceptive. Plaintiff must, therefore, provide additional information regarding the basis of her claim.

Fraud

A claim of fraud can be either a claim of misrepresentation, or a claim of active concealment. The elements of a claim of fraudulent misrepresentation require: (1) the making of a false representation; (2) concerning a material fact; (3) with knowledge that the representation is false or in reckless disregard of whether it is true or false; (4) for the purpose of inducing another party to act in reliance upon it; and (5) justifiable reliance on the false representation that results in injury to the misled party. *Barr v. Dyke*, 2012 ME 108, ¶ 16, 49 A.3d 1280, 1286 – 1287. The elements of a claim of fraudulent concealment are: (1) a failure to disclose; (2) a material fact; (3) where a legal or equitable duty to disclose exists; (4) with the intention of inducing another to act or to refrain from acting in reliance on the non-disclosure; where (5) the other party justifiably relies on the failure to disclose to his or her injury. *Id.*

When asserting a claim of fraud, a plaintiff must comply with Federal Rule of Civil Procedure 9, which requires that all allegations of fraud be set forth the circumstances “with particularity.” In other words, a plaintiff must set forth in the complaint specific details related to the time, place, and content of the alleged misrepresentation. *N. Am. Catholic Educ. Programming Found., Inc. v. Cardinale*, 567 F.3d 8, 13 (1st Cir. 2009).

In her complaint, Plaintiff has not alleged with any degree of specificity the conduct that she believes is fraudulent. Defendant thus lacks “fair notice” of the grounds for Plaintiff’s fraud claim. *Calvi*, 470 F.3d at 430.

CONCLUSION

Based on the foregoing analysis, the Court grants Defendant’s Motion for More Definite Statement (ECF No. 5). On or before January 8, 2016, Plaintiff shall file an amended complaint that includes more specific factual allegations in support of her claims.

CERTIFICATE

Any objections to this Order shall be filed in accordance with Fed. R. Civ. P. 72.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 11th day of December, 2015.