IN THE COUNTY COURT
IN AND FOR BROWARD COUNTY, FLORIDA

LOUIS DESIMONE,
Plaintiff,

Case Number: COSO21000299

v.

BAPTIST HEALTH MEDICAL GROUP, INC.,
Defendant.
_____/

PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

Plaintiff, LOUIS DESIMONE, by and through undersigned counsel, files this Response to Defendant's Motion to Dismiss, stating as follows:

1. This is an action brought under Florida's Consumer Collection Practices Act (FCCPA) due to Defendant's attempts to collect money from Mr. DeSimone that he does not owe. §§ 559.55-559.785, Fla. Stat. (2020).

2. There is apparently no dispute that Louis DeSimone sustained an injury while working.

3. There is also no dispute that Defendant billed him for treatment for those injuries, even though Mr. DeSimone does not owe any money.

4. Defendant's contention is that it is not liable to Mr. DeSimone under the FCCPA because the medical debt it seeks to collect from him is not personal.

5. But Defendant incorrectly relies on Rule of Civil Procedure 1.140(b)(6), instead of the correct Small Claims Rule 7.050(a)(1).

6. And the resulting improper debt that Defendant seeks to collect against Mr. DeSimone *personally,* for his *personal* medical treatment, is *personal* debt.

7. Defendant's Motion to Dismiss should be denied.

ARGUMENT

I. Applicable Standard of Law

This action is properly pending in Broward's County Court. § 34.01, Fla. Stat. (2020). And since it is a civil action seeking an amount of money that does not exceed $8,000, exclusive of costs, interest, and attorneys' fees, Florida's Small Claims Rules apply. Fla. Sm. Cl. R. 7.010(b).

Pursuant to Rule 7.050(a)(1), "[a]ctions are commenced by the filing of a statement of claim in concise form, which shall inform the defendant of the basis and the amount of the claim." In its Motion, Defendant improperly relies on Florida Rule of Civil Procedure 1.140, which is inapplicable pursuant to Small Claims Rule 7.020(a). On this issue, Defendant also exclusively cites to caselaw based on appeals of circuit court orders. So those too are not on point.

At this stage of the proceedings, Plaintiff must concisely "inform the defendant of the basis and the amount of the claim." Fla. Sm. Cl. R. 7.050(a)(1). There is no argument that Plaintiff did not inform Defendant of the amount of the claim. And, excluding exhibits, Plaintiff's claim is five pages long. So, it is concise. It also informs Defendant of the basis of the claim. Defendant's nine-page Motion to Dismiss, arguing the FCCPA does not apply, demonstrates that Defendant knows the basis of the suit.

Under the applicable rule of law, Plaintiff has stated a cause of action and this matter should not be dismissed.

II. Mr. DeSimone's Debt is Personal

Even if Defendant's argument on the standard of law was correct, this matter still should not be dismissed. Defendant improperly seeks to collect money from Mr. DeSimone, *personally*, for his *personal* medical treatment, due to an injury to *his* body. Under Florida Workers' Compensation Law (WCL), there is no dispute—Mr. DeSimone does not owe any money for his treatment. But Defendant argues the FCCPA does not apply to its improper attempts to collect a debt because the debt is not personal to Mr. DeSimone.

"A claim under section 559.72(9) has three elements: an illegitimate debt, a threat or attempt to enforce that debt, and knowledge that the debt is illegitimate." *Davis v. Sheridan Healthcare, Inc.*, 281 So. 3d 1259, 1264 (Fla. 2d DCA 2019), *review granted on other grounds. Lab. Corp. of Am. v. Davis*, No. SC19-1923, No. SC19-1936, 2020 WL 764156 (Fla. Feb. 17, 2020).

And "[w]hen a statute like the WCL renders a debt illegitimate, that debt fulfills the first element necessary to trigger FCCPA liability. . . *the debts for medical services that [the injured worked] did not owe pursuant to the WCL constitutes an element of [their] FCCPA claims*." *Id.* (Emphasis added.)

Here, the statement of claim addresses how WCL renders the debt Defendant is attempting to collect illegitimate. Again, there is apparently no dispute that Mr. DeSimone does not owe any money to Defendant. There is also seemingly no dispute that Defendant attempted to collect from Mr. DeSimone and knew that he did not owe money.

According to law in this jurisdiction, Defendant's sole argument is not correct. "[M]edical expenses are categorized as consumer debts for pleading

purposes. . . ." *Higgens v. Trident Asset Mgmt., LLC*, 16-24035-CIV, 2017 WL 2628404, at *2 (S.D. Fla. June 16, 2017). In *Higgens*, the plaintiff sued a debt collector under the federal Fair Debt Collection Practices Act (FDCPA).[1] *Id.* Trident Asset Management moved to dismiss arguing that Higgins did not specify the debt was a consumer debt, even though the complaint asserted the debt was from a medical bill. *Id.* The court denied the motion, *finding medical expenses are consumer debts. Id. See also Frazier v. Absolute Collection Serv., Inc.*, 767 F. Supp. 2d 1354, 1364 (N.D. Ga. 2011)("Plaintiff's debt stemming from the hospital visit constitutes a consumer debt"); *Jimenez v. Account Services*, 233 F. Supp. 3d 1359, 1364 (S.D. Fla. 2017)("the Court finds that the invoice and the Second Amended Complaint's incorporation of it by reference sufficiently demonstrate that the underlying debt is related to a medical bill and . . . that the alleged activity at issue arose out of communications related to attempts to collect a 'consumer debt.'").

Recently, the United States Court of Appeals for the Eleventh Circuit affirmed summary judgment in favor of an injured Florida worker who sued under the FDCPA based on a debt collector's attempt to collect medical debt from a work-related injury. *Kottler v. Gulf Coast Collection Bureau, Inc.*, 20-12239, 2021 WL 529425 (11th Cir. Feb. 12, 2021). "Kottler alleged in her complaint that

[1] "The FDCPA and the FCCPA identically define 'debt' as 'any obligation or alleged obligation *of a consumer* to pay money *arising out of a transaction* in which the money, property, insurance, or services which are the subject of the transaction are *primarily for personal, family, or household purposes*, whether or not such obligation has been reduced to judgment.'" *Jimenez v. Account Services*, 233 F. Supp. 3d 1359, 1363 (S.D. Fla. 2017). According to footnote one of its Motion to Dismiss, Defendant does not dispute this.

she received a letter and telephone calls from Gulf Coast that falsely suggested she was liable for medical bills owed by her employer for a work-related accident." *Id.* "[B]ut in Florida an 'employee is not liable for payment for medical treatment or services provided,' and '[a] health care provider may not collect or receive a fee from an injured employee,'" *Id.* (citing §§ 440.13(13)(g) and (13)(a), Fla. Stat.). "Instead, '[s]uch providers have recourse against the employer or carrier for payment for [medical] services rendered . . . .'" *Id.* (citing to §§ 440.13(13)(g) and (13)(a), Fla. Stat.). "Gulf Coast falsely represented the legal status of the debt for Kottler's medical bills." *Id.* (citing to § 440.13(13)(a), Fla. Stat. (2020)). Defendant did the same here.

In another pending circuit court case, *Rocha v. Baptist Health South Florida, Inc.,* No. 2020-004343-CA-01 (Fla. 11th Cir. Ct. March 25, 2020), Defendant (represented by the same attorneys here) filed a Motion to Dismiss alleging that Mr. Rocha's medical bills for his workers' compensation injury were not personal debt. Citing to, inter alia, *Davis* and *Higgens*, that Motion was denied. *Rocha.,* (February 15, 2021). *See* attached Exhibit A.

Despite this adverse ruling and the above contrary precedent, Defendant relies on cases that are not on point.[2] Defendant cites to *Berman v. GC Services*

[2] Defendant also relies an underlying fallacy stated on page four of its Motion: "the primary purpose of the medical services was for employment purposes - - to return Desimone to work at a reasonable cost to his employer." Mr. DeSimone was injured while working for the City of Hollywood. But on December 14, 2019, he retired after 34 years of service to the City. *All treatment and attempts to collect from Mr. DeSimone referenced in the Complaint occurred after he retired.* The primary purpose of Mr. DeSimone's treatment was *not* for employment purposes and it was *not* for him to return to work at a reasonable cost to his employer.

Ltd. P'ship, 146 F.3d 482 (7th Cir. 1998), a case where the court found an obligation to pay unemployment insurance contributions, for an employee, is not a "debt" under the FDCPA. "Under the Illinois Unemployment Insurance Act, employers in Illinois are required to pay quarterly unemployment insurance premiums to the [Illinois Department of Employment Security] in order to fund the State's payment of benefits to Illinois residents during periods of unemployment." *Id.* This is "a more general purpose than the FDCPA requires." *Id.* And it is commercial/business debt, not personal debt. Applying this case here would prohibit the City of Hollywood (Mr. DeSimone's employer when he was injured) from claiming its workers' compensation insurance premiums are personal debt. But no one is making that claim.

Berman argued that the FDCPA applied because there was no specific exception in the definition of "debt" for money owed to the government. *Id.* at 487. The court agreed there is no exception and discussed the cases Berman cited where consumers successfully sued the government under the FDCPA *for medical debt*. *Id.* ("In the cases relied upon by plaintiff, the consumers received either medical care or educational benefits directly from the government in exchange for their payments and thus the money owed to the government met the definition of 'debt.'"). Defendant's citation to *Berman* supports that *medical debt is actionable under the FCCPA*.

Defendant also cites to *Muhliesen v. Receivable Recovery Services, L.L.C.*, 534 Fed. Appx. 232 (5th Cir. 2013), an unpublished opinion in which the court analyzed the sufficiency of a pro-se appellant's affidavit to proceed in forma

pauperis (IFP). Without reiterating specifics, the opinion states that the lower court ruled the appellant "had not asserted a claim for damages and that her claim for injunctive relief had been rendered moot by the defendant's voluntary actions." *Id.* On appeal, the court found her affidavit to proceed IFP was sufficient as to her inability to pay but, despite raising numerous issues, she did not demonstrate the appeal was filed in good faith. *Id.* So the court dismissed. *Id.* There were no finding of fact or law regarding the definition of debt under the FDCPA. *Id.*

In citing to *Derbin v. Keith M. Nathanson, PLLC*, 2:12-CV-670-FTM-29, 2013 WL 5490176, (M.D. Fla. Sept. 30, 2013), Defendant relies on a 2013 federal trial court decision that addressed whether a court-ordered arbitrator's bill is a "debt" as defined by the FDCPA. The court found that it was not because the bill "was not from plaintiff's activities as a consumer, . . . was imposed by a court order and therefore could not constitute a transaction[,] and nothing about the state court case [from which the arbitrator's bill emanated] was primarily for personal, family or household purposes." *Id.* The underlying state court case "involved allegations of breach of a business contract and various torts." *Id.*

Here, Mr. DeSimone sought and obtained care for his personal injuries from a medical provider. His treatment was not imposed by court order and he was not in litigation with his employer in a breach of business contract or tort claim. *Derbin* is not helpful.

Lastly, Defendant cites to *Orenbuch v. Leopold, Gross & Sommers, P.C.*, 586 F. Supp. 2d 105 (E.D.N.Y. 2008), where an employee's claim against her

employer for seeking repayment of overpaid salary was dismissed as the claim was not "debt," and *Saylor v. Pinnacle Credit Services, LLC*, 118 F. Supp. 3d 881, 884 (E.D. Va. 2015), an FDCPA case that was dismissed because a credit card used solely for a carpentry business was not "debt." These cases do not support Defendant's Motion. Mr. DeSimone is not suing his employer over a wage dispute nor is he suing based on credit card debt incurred from business purchases.

Defendant next argues that a provision within the FCCPA supports its argument. Section 559.72(4), Florida Statutes, states that "[i]n collecting consumer debts, no person shall: . . . Communicate or threaten to communicate with a debtor's employer before obtaining final judgment against the debtor." The statute specifies this does not apply when the debtor "gives her or his permission in writing to contact her or his employer" or "acknowledges in writing the existence of the debt after the debt has been placed for collection." *Id.* The section also "does not prohibit a person from telling the debtor that her or his employer will be contacted if a final judgment is obtained." *Id.*

Defendant misconstrues section 559.72(4). If an employer or its insurance carrier owes money to a health care provider—as part of its statutorily mandated obligations to pay for an injured worker's treatment—that debt is not personal to the employer or carrier. It is a business expense. As supported by *Berman v. GC Services Ltd. P'ship*, which was cited by Defendant (and addressed above), an employer's obligation to pay for a state-mandated service to an employee is not "debt." So, if a provider were to contact an employer to seek payment for medical treatment provided to an injured employee that the employer is obligated to pay

under Florida law, the provider would *not* be seeking a consumer debt and section 559.72(4) would not apply. As stated in the first sentence, the section only arises "[i]n collection [of] consumer debts." And the parties apparently agree that an employer's obligation to pay for medical care or workers' compensation insurance for its employees, by law, is not "debt" under the FCCPA. Because in that context, the debt the employer owes to the provider is not "an obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." § Fla. Stat. 559.55(6) (definition of "debt" or "consumer debt").

Rather, section 559.72(4) prohibits a provider from communicating or threatening to communicate with a debtor's employer, to seek payment *from* the employee, for a consumer debt the employee owes or allegedly owes.

Further, definitions[3] and common-sense support that the medical debt Defendant seeks to collect from Mr. DeSimone is personal debt. Black's Law Dictionary defines "personal" as "[o]f or affecting a person <personal injury>" and "[o]f or constituting personal property <personal belongings>." PERSONAL, Black's Law Dictionary (11th ed. 2019). And it defines personal injury, in part, as: "For purposes of workers' compensation, any harm (including a worsened preexisting condition) that arises in the scope of employment." PERSONAL INJURY, Black's Law Dictionary (11th ed. 2019).

[3] *See Allstate Ins. Co. v. Rudnick*, 761 So. 2d 289, 292 (Fla. 2000) ("courts may resort to a dictionary definition to determine the 'plain and ordinary meaning' of the statutory language.").

There can be no good-faith debate over whether Mr. DeSimone's body is personal to him. His injury is personal. The pain he feels, whether working or not, is personal. And of course, the medical treatment he receives and the medications he takes are also personal.[4]

By attempting to collect medical debt, Defendant is attempting to collect money from Mr. DeSimone for services which are personal.

CONCLUSION

Defendant's Motion should be denied. It relies on the wrong standard of law and cites to caselaw which does not support its position. One of its cases, *Berman*, directly contradicts Defendant's argument. Mr. DeSimone's medical treatment and resulting medical debt, that Defendant seeks to collect against him, is personal debt. Under the applicable substantive and procedural law, Plaintiff has sufficient pleaded. He has filed a concise statement, informing the Defendant of the basis and the amount of the claim. This is all that is required at this stage of the proceedings.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to Matthew L. Lines and Eric D. Isicoff, Isicoff Ragatz, 601 Brickell Key Drive, Suite 750, Miami,

[4] Consider too that if Defendant sues Mr. DeSimone for this alleged debt, he would be personally named in the suit. To obtain a money judgment, Defendant or its debt collector would have to personally serve Mr. DeSimone. If judgment was entered, Defendant could obtain a judgment lien certificate and garnish Mr. DeSimone's personal bank accounts and other property. Defendant could also show up at his house with a sheriff to levy personal property. And of course, if it has not already done so, Defendant may report all of this to the credit bureaus, which would negatively affect Mr. DeSimone's personal credit.

FL 33131, Lines@irlaw.com, isicoff@irlaw.com, Attorneys for Defendant, Baptist Health Medical Group by e-mail via the Florida Courts E-Filing Portal on February 22, 2021.

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EXHIBIT A

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2020-004343-CA-01
SECTION: CA27
JUDGE: Oscar Rodriguez-Fonts

David Rocha
Plaintiff(s)

vs.

Baptist Health South Florida, Inc.
Defendant(s)
_____/

ORDER ON DEFENDANT'S MOTION TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM

THIS CAUSE came before the Court for hearing on October 27, 2020. At the Zoom teleconference hearing, the Court considered the Motion to Dismiss Plaintiff's Complaint filed by Defendant, Baptist Health South Florida, Inc. (Baptist). The Court deferred ruling on the motion pending the receipt of hearing transcripts, which were subsequently filed. Having heard the arguments of counsel, thoroughly reviewed the court record and transcript and being otherwise fully advised in the premises, it is hereby:

ORDERED AND ADJUDGED that:

Defendant's Motion to Dismiss is **DENIED**.

1. The Court's consideration of the subject motion is limited to the four corners of the complaint and the incorporated exhibits. *Oceanside Plaza Condominium Ass'n. v. Foam King Industries, Inc.*, 206 So. 3d 785 (Fla. 3d DCA 2016). When testing the sufficiency of a complaint, all the allegations of the complaint are taken as true. *Strickland v. Commerce Loan Company of Jacksonville,* 158 So.2d 814 (Fla. 1st DCA 1963). As such, the Court construes the allegations of the complaint liberally in the light most favorable to Plaintiff.[1]
2. To survive a motion to dismiss, the complaint must allege sufficient ultimate facts to demonstrate entitlement to relief and establish the elements supported by facts

such that the Court and the Defendant can clearly determine what is being alleged. *Kreizinger v. Schlesinger*, 925 So. 2d 431 (Fla. 4th DCA 2006).

3. Section 559.72(9) of the Florida Statute delineates the elements of a cause of action under the Florida Consumer Collection Practices Act (FCCPA). "A claim under section 559.72(9) has three elements: an illegitimate debt, a threat or attempt to enforce that debt, and knowledge that the debt is illegitimate." *Davis v. Sheridan Healthcare, Inc.*, 281 So. 3d 1259, 1264 (Fla. 2d DCA 2019).
4. Plaintiff's complaint asserts that he had as employment-related injury and that he gave notice to Defendant of the approval of workers compensation coverage by its carrier and that Defendant attempted to collect the medical debt from him. "When a statute like the Workers' Compensation Law renders a debt illegitimate, that debt fulfills the first element necessary to trigger FCCPA liability." *Id.* Plaintiff's complaint satisfies the first element,[2] together with the remaining elements, which include the attempt to enforce that debt, and knowledge that the debt is illegitimate. *Davis v. Sheridan Healthcare, Inc.*, 281 So. 3d 1259, 1264 (Fla. 2d DCA 2019). *See also, Higgens v. Trident Asset Mgmt., LLC*, 2017 WL 2628404 (S.D. Fla. June 16, 2017) (medical expenses are categorized as consumer debts for pleading purposes under the FCCPA).

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[1] Florida is a fact pleading state. *Deloitte & Touche v. Gencor Industries, Inc.*, 929 So.2d 678 (Fla. 5th DCA 2006).

[2] §440.13 (13) of the Florida Statute prohibits collection of a debt from a person injured and covered by Chapter 440, Florida Workers' Compensation Laws. "When an account is subject to a Workers' compensation claim, an employee is not liable for payment ***unless and until*** a determination is made that the employee is liable. To hold otherwise would undermine the purpose of the Workers' Compensation Law and would ignore the liability insulating language of the statute." *Kottler v. Gulf Coast Collection Bureau, Inc.*, 2020 WL 2475344 (S.D. Fla. May 13, 2020).

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 15th day of February, 2021.

2020-004343-CA-01 02-15-2021 10:16 PM

Hon. Oscar Rodriguez-Fonts

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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