CLOSING

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING COURTHOUSE
50 WALNUT ST. ROOM 4066
NEWARK, NJ 07101
973-297-4903

May 16, 2019

VIA ECF

LETTER ORDER

Re: Poplin v. Chase Receivables, Inc.
Civil Action No. 18-404

Dear Litigants:

This matter comes before the Court on a Motion for Summary Judgment brought by Defendant Chase Receivables, Inc. ("Chase Receivables" or "Defendant"). ECF No. 41. Plaintiff Damian Poplin ("Poplin" or "Plaintiff") opposed Defendant's Motion. ECF No. 49. For the reasons explained below, the Motion is **GRANTED.**

I. Background

This matter arises from an initial collection letter (the "letter") sent by Chase Receivables to Poplin regarding an alleged debt owed to a third party. Def. Statement of Material Facts ("SOMF") ¶ 1. The letter contained the following 30-day validation notice:

> Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion of it, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. . . .
>
> We are proud of our reputation of treating people with the utmost respect and courtesy. The creditor would like to resolve this matter with you. Please contact this office at the phone number listed below. Or, you can make payment online at . . . using your account number shown on this letter.

ECF No. 41.4.

Plaintiff alleges that the letter violates sections 1692e and 1692g of the Fair Debt Collections Practices Act (the "FDCPA") because its wording creates confusion regarding the

recipient's rights. See Am. Compl. ¶¶ 9–14 ("On the one hand, Defendant specifically requests of Plaintiff to call concerning the debt. On the other hand, Plaintiff is instructed to communicate with Defendant concerning the debt in writing."). Consequently, Plaintiff, on behalf of himself and a class of similarly situated individuals, asserts that Defendant engaged in unfair and deceptive acts and practices in violates of the FDCPA. See id. ¶¶ 35-36.

Defendant now moves for summary judgment pursuant to Federal Rule of Civil Procedure 56. ECF No. 41.

II. Legal Standard

Summary judgment should be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The moving party bears the burden of establishing that no genuine issue of material fact remains. See Celotex Corp. v. Catrett, 477 U.S. 317, 322–23 (1986). If the moving party meets its threshold burden, the opposing party must present actual evidence that creates a genuine issue as to a material fact for trial. Anderson, 477 U.S. at 248. "The standard by which the court decides a summary judgment motion does not change when the parties file cross–motions." Clevenger v. First Option Health Plan of N.J., 208 F. Supp. 2d 463, 468-69 (D.N.J. 2002) ("[T]he court must consider the motions independently . . . and view the evidence on each motion in the light most favorable to the party opposing the motion.").

III. Analysis

Defendant argues that its letter violates neither Section 1692e nor Section 1692g of the FDCPA. Although this Court initially denied Defendant's Motion to Dismiss, ECF No. 19, the Court has reconsidered the language of Defendant's letter and the Third Circuit precedent and now agrees that Defendant's letter effectively conveys the debtor's rights.[1]

A. The FDCPA

Congress enacted the FDCPA "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692e; see also Marx v. Gen. Revenue Corp., 568 U.S. 371, 374 n.1 (2013). The FDCPA creates a private right of action for plaintiffs to bring suits against debt collectors who violate the FDCPA's provisions. See 15 U.S.C. § 1692k. In connection with the present case, the FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. Furthermore, the FDCPA requires debt collectors to provide the consumer with a written notice containing certain information regarding the debt allegedly owed within five days of initial communication. See 15 U.S.C. § 1692g(a).

To state a claim under the FDCPA, a plaintiff must establish that "(1) he or she is a consumer who is harmed by violation of the FDCPA; (2) the debt arises out of a transaction entered

[1] Because this Court finds that Defendant's letter does not violate the FDCPA, it need not consider Defendant's alternate argument for summary judgment. See Def. Br. at 17–19 (arguing that the 15 U.S.C. § 1692g(a) is unconstitutionally void for vagueness).

into primarily for personal, family, or household purposes; (3) the defendant collecting the debt is a debt collector; and (4) the defendant has violated, by act or omission, a provision of the FDCPA." Riccio v. Credit Collection Services., 17-8889 (FLW) (LHG), 2019 WL 979159, at *3 (D.N.J. Feb. 28, 2019) ("Riccio I") (internal quotation marks omitted). "[L]ender-debtor communications potentially giving rise to claims under the FDCPA . . . should be analyzed from the perspective of the least sophisticated debtor." Brown v. Card Serv. Ctr., 464 F.3d 450, 454 (3d Cir. 2006). "Although the 'least sophisticated debtor' standard is a low standard," the debtor is presumed to have "a basic level of understanding and willingness to read with care." Rosenau v. Unifund Corp., 539 F.3d 218, 221 (3d Cir. 2008); see Campuzano-Burgos v. Midland Credit Mgmt., Inc., 550 F.3d 294, 299 (3d Cir. 2008) ("[T]he least sophisticated debtor is bound to read collection notices in their entirety.").

B. Section 1692g

Defendant argues that its letter is clear and effective, and therefore, does not violate Section 1692g of the FDCPA. The Court agrees.

Section 1692g outlines the required written disclosures that a debt collector must provide to a debtor, including a "validation notice," which explains a debtor's rights. 15 U.S.C. § 1692g; see also Caprio v. Healthcare Revenue Recovery Grp., LLC, 709 F.3d 142, 148 (3d Cir. 2013). To comply with Section 1692g, a validation notice must effectively convey the FDCPA's requirement that debts be disputed in writing (the "writing requirement"). See Magana v. Amcol Sys., Inc., 17-11541 (RBK/AMD), 2018 WL 2723828, at *2 (D.N.J. June 6, 2018); see also Wilson v. Quadramed Corp., 225 F.3d 350, 354 (3d Cir. 2000) ("[M]ore is required than the mere inclusion of the statutory debt validation notice in the debt collection letter—the required notice must also be conveyed effectively to the debtor."). "To determine whether notice has been effectively conveyed and whether the writing requirement is clear, or if it has been overshadowed or contradicted, the Court must evaluate the notice from the perspective of the least sophisticated debtor." Magana, 2018 WL 2723828 (internal quotation marks omitted). As the Third Circuit has explained, a validation notice is ineffective if it can "be reasonably read to have two or more different meanings, one of which is inaccurate." Caprio, 709 F.3d at 149 (internal quotation marks omitted).

Having reconsidered the Third Circuit precedent on this issue, the Court finds that Defendant's validation notice effectively conveys that disputes must be made in writing. First, the Third Circuit has found nearly identical language to effectively convey the writing requirement. See Caprio, 709 F.3d at 149. In Caprio v. Healthcare Revenue Recovery Group, LLC, the plaintiff challenged a double-sided collection letter as violative of Sections 1692g and 1692e. 709 F.3d 142 (3d Cir. 2013). The back of the collection letter contained nearly the same validation notice as the one Chase Receivables sent to Plaintiff. See id. at 146 ("If you request this office in writing within 30 days after receiving this notice . . . ."). Although the Third Circuit ultimately found the collection letter deceptive because the "substance" and "form" of the letter overshadowed and contradicted the language of the validation notice, the Third Circuit noted that the validation notice itself was not violative of the FDCPA when viewed in isolation. Id. at 149; see also Magana, 2018 WL 2723828, at *3–4 (finding language in a validation notice nearly identical to Chase Receivables' to effectively convey the writing requirement for disputing a debt); Reizner v. Nat'l Recoveries, Inc., 17-2572, 2018 WL 2045992, at *9 (D.N.J. May 2, 2018) (same); Riccio v. Sentry Credit, Inc., 17-1773 (BRM) (TJB), 2018 WL 638748, at *4 (D.N.J. Jan. 31, 2018) (same).

Accordingly, the Court declines to find that the language of the validation notice would confuse the least sophisticated debtor.

Second, an invitation to call, without more, does not overshadow a validation notice's writing requirement. Chase Receivables' letter contained a single sentence welcoming the debtor to contact the debt collector: "[t]o speak with us directly, contact us at (818) 251-9361." ECF No. 41.4. The overwhelming authority in this District has found that invitations to call do not overshadow the writing requirement where, as here, "the sentence referencing the toll-free phone number has no mention of disputing the debt." Borozan v. Fin. Recovery Servs., Inc., 17-11542 (FLW), 2018 WL 3085217, at *6 (D.N.J. June 22, 2018) (upholding the following language: "You owe $346.43. Please feel free to call us at the toll free number listed below or use our online consumer help desk."); Magana, 2018 WL 2723828, at *4 ("One must stretch their imagination past their point of discomfort, and past the point of the least sophisticated debtor, to read the phrase 'please contact' for 'questions' as being equivalent to an invitation to call to dispute, quarrel, or argue over the validity of a claim."); compare Riccio I, 2019 WL 979159, at *5 (upholding the following language, "If you have any questions, concerns, or would simply like personal assistance, our Customer Service Agents are available during the hours listed above."), and Ferrulli v. BCA Fin. Servs., Inc., 17-13177, 2018 WL 4693968, at *3 (D.N.J. Sept. 28, 2018) (finding that the following language did not supersede or swallow the writing requirement: "If you have any questions regarding this debt you may speak to an account representative by calling our office."), and Reizner, 2018 WL 2045992, at *9 (upholding the following phrase because it did not "expressly state that Plaintiff should call to contest the debt": "[f]or further information, please write or call us at the address or number contained in this notice"), with Caprio, 709 F.3d at 150–51 (finding that the following language would confuse the least sophisticated debtor: "If we can answer any questions, or if you feel you do not owe this amount, please call us" (emphasis added)).

Moreover, when viewed in connection with the rest of the paragraph, it is clear that Defendant's invitation to call is not related to disputing the debt. The sentence immediately precedng the invitation indicates that the creditor is seeking to "resolve" the matter, and the sentence immediately following the invitation provides that payments can be made online. See ECF No. 41.4. As such, the Court sees no reason to find that Defendant's invitation to call overshadowed or contradicted the prior paragraph's mandate that disputes be made in writing.

Nor is there anything else about the collection letter—with respect to form or substance—that overshadows or contradicts the information in the validation notice. See Riccio I, 2019 WL 979159, at *6 (finding no overshadowing of the validation notice where the phone number was not bolded, the font was large and easy to read, and the letter did not emphasize any portion of the document in a manner that could lead to confusion for the least sophisticated consumer). Accordingly, Plaintiff fails to state a claim under Section 1692g.

C. Section 1692e

Plaintiff's claim under Section 1692e also fails as a matter of law. Section 1692e prohibits the use of any "false, deceptive, or misleading representations or means in connection with the collection of any debt." 15 U.S.C. § 1692e. However, [w]hen allegations under [§ 1692e] are based on the same language or theories as allegations under 15 U.S.C. § 1692g, the analysis of the § 1692g claim is usually dispositive." Caprio, 709 F.3d at 155 (internal quotation marks omitted).

Because Plaintiff has failed to make any alternative arguments with respect to his Section 1692e claim, this claim also fails.

IV. Conclusion

For the reasons stated above, Defendant's Motion for Summary Judgment, ECF No. 41, is **GRANTED**. Plaintiff's Complaint is therefore dismissed. All outstanding motions are now dismissed as moot. See ECF No. 21; ECF No. 29; ECF No. 37.

SO ORDERED.

/s Madeline Cox Arleo
MADELINE COX ARLEO
UNITED STATES DISTRICT JUDGE