

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FINEMAN KREKSTEIN & HARRIS, P.C.

A Pennsylvania Professional Corporation

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THOMAS C. WILLIAMS,	:	
Plaintiff	:	CIVIL ACTION
	:	
v.	:	NO. 2:11-cv-03680-FSH-PS
	:	
THE CBE GROUP, INC.,	:	
Defendant	:	JURY TRIAL DEMANDED

**DEFENDANT THE CBE GROUP, INC.’S REPLY MEMORANDUM IN SUPPORT OF
ITS MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendant The CBE Group, Inc. (hereinafter referred to as “CBE”), by and through its undersigned counsel, respectfully submits this Reply Memorandum in support of an Order granting CBE’s motion for a judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). As set forth more fully below, despite Plaintiff’s assertions to the contrary, CBE has no obligation to disclose to a debtor each and every method to stop communications or to otherwise the nuances in the FDCPA.

LEGAL ARGUMENT

I. CBE HAS NO OBLIGATION TO INFORM PLAINTIFF OF ALL OF THE WAYS THE FDCPA PROVIDES TO STOP COMMUNICATION.

In his opposition brief, Plaintiff attempts to argue that CBE's letter violates section 1692e of the Fair Debt Collection Practices Act ("FDCPA") because it falsely implies that payment is the *only* way for Plaintiff to prevent future letters and phone calls. (See Doc. 16, pp. 3, 4-5). Plaintiff argues that because CBE provides "gratuitous instructions" for one way to prevent receiving phone calls and letters, CBE must inform consumers of all the ways the FDCPA provides to stop communications. (See Doc. 16, pp. 5-6). Plaintiff's unsupported proposition regarding disclosure of every right a consumer may have is found nowhere in the FDCPA.

CBE has no legal obligation to affirmatively disclose the two ways provided by the FDCPA for a consumer to stop communications from a debt collector.¹ A consumer can stop all communications from a debt collector by notifying the debt collector in writing that he refuses to pay the debt or that the consumer wishes the debt collector to cease further communication with the consumer. See 15 U.S.C. § 1692c(c). Additionally, a consumer can stop communications from a debt collector at the consumer's place of employment by notifying the collector that such communication is inconvenient to the consumer. See 15 U.S.C. § 1692c(a)(1). The FDCPA does not require a debt collector to summarily provide this information to a consumer.

The FDCPA does not require a debt collector to itemize to a consumer an exhaustive list of every potential defense the consumer may have nor identify every protection afforded by each section of the FDCPA. Other district courts have held that debt collectors do not have any obligation to inform consumers of all their potential defenses to collection activities. See, e.g.,

^{1/} As explained in CBE's moving papers, a request for validation pursuant to section 1692g is not a cease and desist letter, and therefore, would not permanently stop a collector from making telephone calls or sending letters. (See Doc. 8, p. 6). Further, CBE had no obligation to explain to Plaintiff that by exercising the rights set forth in the validation notice, he could temporarily stop collection activity until CBE provided validation of the debt.

Roundtree v. Weltman, Weinberg & Reis Co., L.P.A., No. 3:10-CV-2107, 2011 U.S. Dist. LEXIS 49109 (M.D. Pa. May 9, 2011). In Roundtree, Weltman sent the consumer a letter in an attempt to enforce a judgment against the consumer by a sheriff's sale. Roundtree, No. 3:10-CV-2107, 2011 U.S. Dist. LEXIS 49109 at **2-3. The consumer sued asserting that the letter was deceptive and misleading because the letter did not state all the steps that Weltman's client would need to go through for a sheriff's sale to take place and did not outline all of the consumer's potential legal defenses. Id. at *3. The court refused to impose an obligation on Weltman to inform consumers of all their potential defenses legal defenses to a sheriff's sale. Id. at **8-9. The court noted that "to state that the debt collector has an obligation to spell out every step in the legal process as well as every possible legal defense the debtor may have would . . . be extremely burdensome for the debt collector" Id. at *9.

Various district courts have held that debt collectors have no affirmative obligation under the FDCPA to inform consumers of potential tax consequences of accepting a settlement offer. See Schaefer v. ARM Receivable Management, Inc., et al., No. 09-11666, 2011 U.S. Dist. LEXIS 77828 **14-15 (D. Mass. Jul. 19, 2011); see also Landes v. Cavalry Portfolio Servs., LLC, No. 1:11cv33, 2011 U.S. Dist. LEXIS 35467 **5-6 (E.D. Va. Mar. 30, 2011) (holding that collector was not required by the FDCPA to provide a statement in the letter referencing the tax ramifications); Kimmel v. Cavalry, No. 10-680, 2011 U.S. Dist. LEXIS 83008, **23-24 (E.D. Pa. Jul. 27, 2011) (holding that consumer provided no authority indicating collector had an obligation under the FDCPA to inform him of tax implications associated with debt cancellation). In Schaefer, after receiving a collection letter that contained a settlement offer, the consumer sued asserting that the collector violated the FDCPA by failing to advise of the tax consequences of accepting a discount of his debt if he agreed to settle it. Id. at *14. The court

found that the language of the FDCPA does not require a debt collector to make any affirmative disclosures of potential tax consequences when collecting a debt. Id. The court granted the collector's motion for judgment on the pleadings and dismissed the consumer's claims under sections 1692f and 1692e(10) of the FDCPA. Id. at *15. The court noted that the consumer cited to no authority that imposes such a requirement. Id. Further, the court explained that as a matter of law requiring debt collectors "to inform a debtor of such a potential collateral consequence of settling a pre-existing debt seems far afield from even the broad mandate of [the] FDCPA to protect debtors from abusive debt collection practices." Schaefer, 2011 U.S. Dist. LEXIS 77828, at *15.

Similar to the reasoning in Roundtree and Schaefer, CBE had no obligation to inform Plaintiff of all his rights under the FDCPA. The only information the FDCPA expressly requires a debt collector to disclose to a consumer is the list of information pursuant to 15 U.S.C. § 1692g(a). The FDCPA only provides that this information must not be overshadowed by additional or subsequent communications. See 15 U.S.C. § 1692g(b). Plaintiff's assertion that CBE can be held liable for not disclosing each and every manner in which communication could cease does not appear in the FDCPA and is not supported by prevailing case law.

As for Plaintiff's only argument in support of his claim, the sentence complained of by Plaintiff does not overshadow the validation notice as required by 15 U.S.C. § 1692g(a) as a matter of law.

CONCLUSION

For the reasons expressed above, and for the reasons set forth in CBE's Motion for Judgment on the Pleadings and Memorandum of Law in Support Thereof, CBE respectfully requests that Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,
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Dated: September 28, 2011

CERTIFICATE OF SERVICE

I, RICHARD J. PERR, ESQUIRE, hereby certify that on or about this date, I served a true and correct copy of the foregoing electronically, or by first class mail, postage prepaid, or telecopy on the following:

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