**Daily Decision** for publication on 5/16/2024 Thumbs down

**Title:** Devoe v. Frontline Asset Strategies: New Jersey District Court Denies Motion to Dismiss FDCPA Claims Based on an Undated Validation Notice.

**Description:** A New Jersey federal district court held that a consumer stated a claim under Section 1692g(a) of the FDCPA due to the lack of a date on a validation notice.

**Tags:** FDCPA, Regulation F, MVN, Validation Notice, New Jersey

**Quick Links**: devoe-frontline-fdcpa-mvn-undated-letter-regulation-f-new-jersey

*Devoe v. Frontline Asset Strategies, LLC*, No. 223CV10069BRMJRA, 2024 WL 2045642 (D.N.J. May 7, 2024)

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**Background:**

A consumer (plaintiff) sued a collection agency (defendant), alleging that the defendant violated the Fair Debt Collection Practices Act by sending him a validation notice that failed to include a date. The plaintiff claimed that the failure to include a date on the notice was suspicious, misleading, deceptive, and confusing and in violation Regulation F and Sections 1692d, 1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692f, and 1692g of the FDCPA.

The defendant moved to dismiss, arguing that: (1) the plaintiff’s complaint failed to show that the letter violated any provision of the FDCPA; (2) the defendant complied with the FDCPA and its corresponding regulations; (3) the defendant was entitled to safe harbor protection under the FDCPA because the letter mirrored the Consumer Financial Protection Bureau’s model validation notice (MVN); and (4) another federal court recently dismissed the same claims against the defendant brought by a plaintiff in California based on a letter nearly identical to the one the defendant sent the plaintiff in the instant case.

In opposition, the plaintiff argued that: (1) the safe harbor does not apply to violations of the FDCPA and even if it did, the defendant was not entitled to it; (2) the defendant's actions in sending an undated initial debt collection letter violated the FDCPA because it left the plaintiff with no way to determine the accurate current amount of the debt by attempting to define that amount on an unspecified date; and (3) other district courts, including the instant court, have found plaintiffs sufficiently stated a claim for an FDCPA violation in cases with similar allegations involving debt collectors that sent undated debt collection letters.

**Decision:**

First, the court agreed with the plaintiff’s argument that compliance with Regulation F and the CFPB's Model Form in and of itself does not provide a “safe harbor” from all alleged violations of the FDCPA. Thus, the court rejected the defendant’s contention that it complied with the FDCPA, as a matter of law, by using the MVN. Citing other district courts, the court observed that “nowhere within [12 C.F.R., Section 1006.34] does the CFPB state that compliance with the regulation’s requirements—by use of the [MVN] or otherwise—suffices as compliance with the corresponding statutory requirements of [15 U.S.C., Section 1692g of the FDCPA].” See e.g., *Roger v. GC Servs. Ltd. P'ship*, 655 F. Supp. 3d 1201, 1208 (S.D. Fla. 2023).

Put another way, the court explained that “while use of the [MVN] might be sufficient to provide the information required by [12 C.F.R., Section 1006.34], it does not guarantee compliance with the requirements of [15 U.S.C., Section 1692g].”

Turning to the plaintiff’s FDCPA and Regulation F claims, the court agreed with the defendant that the lack of a date on the letter did not violate Regulation or Sections 1692d, 1692e, 1692f, and 1692g(b) of the FDCPA.

Nevertheless, the court found that the plaintiff had alleged sufficient facts to sustain a claim under Section 1692g(a) of the FDCPA, because, among other things, Section 1692g(a) requires debt collectors to include “the amount of the debt” in the validation notice. With the in mind, that court found that the plaintiff plausibly alleged a violation of Section 1692g(a) because the plaintiff claimed that the undated letter created confusion regarding the current amount of the debt owed when the plaintiff received the letter, because the terms “today” and “now” as used in the letter were ambiguous and untethered to a specified date.

The court opined that under the least sophisticated debtor standard, the recipient of the letter would be unable to determine whether the amount of the debt owed was still accurate as of the date they received the letter and/or whether, and by how much, the debt could or would increase, whether through interest or fees or otherwise, absent prompt payment.

Based on this analysis, the court granted the defendant’s motion to dismiss the plaintiff’s Section 1692d, 1692e, 1692f, 1692g(b), and Regulation F claims, while denying the defendant’s motion to dismiss the 1692g(a) claim.

**ACA’s Take:**

While a number of courts have recently rejected claims related to undated model validation notices for lack of Article III standing, this court joins several courts that have found that the lack of a date on a validation notice may state a claim under Section 1692g(a) of the FDCPA. Curiously, in this case the court did not engage in an analysis of whether the plaintiff’s complaint sufficiently alleged that he suffered a concrete injury as a result of his receipt of the letter.

In any event, likely the best way to avoid such claims is to include a date on any validation letter, even though it is not explicitly required by the FDCPA or Reg F.

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