

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR

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compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises a broad range of law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

District Court Takes on Electronic Dispute Options under the FDCPA

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A single page collection letter recently gave the Southern District of Illinois the opportunity to address a range of issues including alleged threats of litigation and the use of a website portal for debt validation requests. In *Blanchard v. North American Credit Services*, the initial demand letter to the consumer offered "the chance to pay what you owe voluntarily by sending payment, or using our online payment process." The letter contained conflicting information as to the address to which correspondence should be sent, stating at the top of the letter not to send correspondence to a particular PO Box while listing the PO Box address for correspondence at the bottom of the letter. *Blanchard v. North American Credit Services*, C.A. No. 15-1295-DRH (S.D. Ill.) at Dkt. No. 1. To further complicate matters, the letter, after providing debt validation language that mirrored 15 U.S.C. §1692g's validation notice requirements, then allowed consumers to dispute the debt by way of stating so in the comments section of the collection agency's web page or sending the dispute to the agency at a second PO Box. The consumer filed suit under the FDCPA asserting two issues with the language of the letter. First, the consumer complained that the opportunity to pay voluntarily was a veiled threat of suit and violated section 1692e. Secondly, the consumer raised concerns with the conflicting information provided as to where to direct correspondence and where to register disputes, asserting the same was confusing and overshadowed the validation notice. The collection agency moved to dismiss the complaint contending that the complaint failed to state a claim under the FDCPA. The court agreed.

The court reviewed the language offering the consumer a chance to pay voluntarily as being, at most, puffery and held that such statements are allowed under the FDCPA since "it is perfectly obvious to even the dimmest debt collector would very much like him to pay the amount demanded straight off, sparing the debt collector any further expense." *Blanchard*, C.A. No. 15-1295-DRH, 2016 U.S. Dist. LEXIS 48548 at *9 (S.D. Ill. Apr. 11, 2016) quoting *Taylor v. Cavalry Inv., L.L.C.*, 365 F. 3d 572, 575-576 (7th Cir. 2004). The court seemed further swayed by the fact that the complaint did not explain or even mention how the statement was false or misleading.

Moving on to the conflicting statements as to where correspondence could be sent, the court disagreed with the consumer that the conflicting statements overshadowed the

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.

validation notice of Section 1692g because the letter presents “a clear path to provide a written dispute” by providing the consumer with two options to notify the debt collector of his dispute as required by Section 1692g(b). Moreover, the court was not swayed that the option of submitting comments to the debt collector’s website circumvented the requirement of section 1692g(b) that notification must be provided in writing. The court relied upon the Black Law Dictionary definition of “writing” to include electronic communications. By doing so, the court essentially blessed the website portal option.

The most interesting aspect of the case and the one for debt collectors to ponder is whether website portals are a viable option for submitting section 1692g(b) disputes. As technology continues to advance, I anticipate more companies will begin to offer this option – after all, the CFPB has a complaint portal! Having said that, a website portal alone would most likely be deemed insufficient as it arguably would leave certain consumers without a means to dispute (assuming they have no access to the internet). For debt collectors contemplating the use of an electronic dispute portal, this opinion provides some support for the validity of electronic submissions in tandem with traditional avenues of submission.

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