



## The Third Circuit Explains That the ‘Least Sophisticated Consumer’ is Presumed to Have a Willingness to Read Collection Letters With Care

In the recent Third Circuit opinion rendered in *Moyer v. Patenaude & Felix, A.P.C.*, the plaintiff brought a putative class action alleging that Patenaude & Felix violated the Fair Debt Collection Practices Act (“FDCPA”) by sending her a single collection letter. The letter advised the plaintiff that her debt had been assigned to the firm and stated: “If you wish to eliminate further collection action, please contact us at 800-832-7675 ext. 8500.” The letter then went on to advise the plaintiff of her validation rights under §1692g. Resolution of the alleged class action claims required the Third Circuit to decide whether the inclusion of the single sentence inviting a call would confuse the least sophisticated consumer.

The plaintiff first argued that the letter violated §1692e(10) because the invitation to “eliminate” collection action through a phone call would deceive the least sophisticated consumer into believing that a call would, by law, require collection efforts to cease. The Third Circuit held that plaintiff read “into the invitation [to call] an implication that it does not create.” That is, nothing in the letter stated that a phone call would force the law firm to cease collection activities. Therefore, the Third Circuit affirmed the entry of summary judgment in favor of the defendant on this claim.

The plaintiff then argued that the letter violated §1692g because the letter would confuse the least sophisticated consumer into being unsure how to exercise her validation rights. The Third Circuit determined that the plaintiff “sees confusion where none exists.” It was undisputed that the letter contained the requisite validation language under §1692g. The court determined that the sentence inviting a call to resolve the debt did not create any confusion with respect to a consumer’s

validation rights under §1692g.

By entering its decision, the Third Circuit rejected the notion that the least sophisticated consumer is not capable of reading the plain language of a letter and understanding his or her rights. The Third Circuit unequivocally held that these garden-variety and hyper-technical overshadowing claims must fail when they do not presume “a basic level of understanding and willingness to read with care.” This common sense opinion is a piece of good news for debt collectors who continue to face these types of claims.

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