



GALE A. NORTON
Attorney General

STEPHEN K. ERKENBRACK
Chief Deputy Attorney General

TIMOTHY M. TYMKOVICH
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 5th Floor
Denver, Colorado 80203
Phone (303) 866-4500
FAX (303) 866-5691

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RE: Collection Efforts During 30-Day Validation Period

Dear :

The Executive Director of the Colorado Collection Agency Board referred your recent letter to me for a response. This letter addresses our policy concerning collection efforts made during the thirty-day period during which a consumer may dispute the validity of a debt under the Colorado Fair Debt Collection Practices Act, C.R.S. § 12-14-109(1)(c). That section requires disclosure to the consumer "[t]hat, unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector or the collection agency[.]" The purpose of this validation provision is to minimize instances of mistaken identity of a debtor or mistakes over the amount or the existence of a debt.

The issue has arisen as to whether a collector may threaten or continue debt collection activities during this period or whether this provision bestows a thirty-day grace period on the consumer. Since the Colorado provision concerning validation of debts is substantially identical to its counterpart in the Federal Fair Debt Collection Practices Act (the "Federal act"), 15 U.S.C. §1692g, a review of federal law is helpful to this analysis.

It appears that a collector may pursue debts during this thirty-day period as long as there is effective conveyance of the validation notice applying the "least sophisticated debtor" standard. See Baker v. G.C. Services, Inc., 677 F.2d 775, 778 (9th Cir. 1982). Effective conveyance means that the notice "must be large enough to be easily read and sufficiently prominent to be noticed . . . [and] must not be overshadowed or contradicted by other messages or notices appearing in the initial communication[.]" Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222, 1225 (9th Cir. 1988). The courts have applied this test on a case-by-case basis.

If the language is relatively vague and non-threatening and

merely encourages payment of the debt, it is probably not in violation of the statute. For example, where the consumer was "URGED TO REMIT AT ONCE", instructed to call the collection agency "IMMEDIATELY" and informed that the agency had been instructed by its client "to commence with all the collection means at our disposal", the court characterized the language as relatively mild and only a moderate threat not violative of the Federal act. Smith v. Financial Collection Agencies, 770 F. Supp. 232 (D. Del. 1991). And where the communication to the consumer contained the heading "IMMEDIATE SETTLEMENT NOTICE" and warned "Your account must be settled now", the court held that such language merely encouraged payment of the debt. Higgins v. Capitol Credit Services, Inc., 762 F. Supp. 1128 (D. Del. 1991).

It is also important that the collection language not significantly detract from the validation notice itself. Where a request was made for payment in full "TODAY" and the consumer was informed that "TIME IS OF THE ESSENCE" but such admonitions were immediately followed by the validation notice in only slightly smaller type, the court held there was no violation of the Federal act. Burns v. Accelerated Bureau of Collections, 828 F. Supp. 475 (E.D. Mich. 1993). In contrast, in Miller v. Payco-General American Credits, Inc., 943 F.2d 482 (4th Cir. 1991), the form sent to the consumer was entitled "DEMAND FOR PAYMENT" and requested "IMMEDIATE FULL PAYMENT" in large, red, boldface type, told the consumer to "PHONE US TODAY" in black, boldface type, and urged payment "NOW" with "NOW" filling approximately one-third of the page. In small letters at the very bottom of the form, the consumer was instructed to refer to the back of the form for "important information" wherein the validation notice was printed. The court held that the "[s]creaming headlines, bright colors and huge lettering 'all point[ed] to a deliberate policy on the part of the collector to evade the spirit of the notice statute, and mislead the debtor into disregarding the notice.'" *Id.* at 484, quoting Ost v. Collection Bureau, Inc., 493 F. Supp. 701, 703 (D.N.D. 1980).

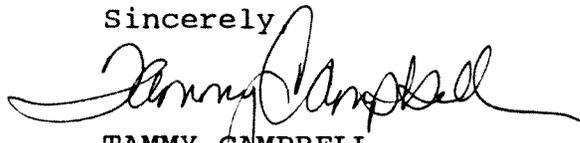
The more specific the threats and time limits become, the more likely it is that the communication will overshadow and contradict the thirty-day validation notice. For example, threats of legal action unless payment is made within 'x' number of days (less than thirty) have been held to violate the Federal act. See, Graziano v. Harrison, 950 F.2d 107 (3rd Cir. 1991) (threat of legal action within ten days unless debt resolved); Swanson v. Southern Oregon Credit Services, Inc., 869 F.2d 1222 (9th Cir. 1988) (message "IF THIS ACCOUNT IS PAID WITHIN THE NEXT 10 DAYS IT WILL NOT BE RECORDED IN OUR MASTER FILE AS AN UNPAID COLLECTION ITEM" was in boldface type several times larger than the validation notice); Cortright v. Thompson, 812 F. Supp. 772 (N.D. Ill. 1992) (threat to file a lawsuit "IN THE EVENT THE BALANCE IS NOT PAID IN FULL OR SATISFACTORY PAYMENT ARRANGEMENTS MADE WITHIN TEN DAYS").

As to other communications sent after the validation notice

but within the thirty-day period, they appear to be permissible as long as they do not contradict the original validation notice and would not be confusing to the "least sophisticated debtor." For example, a second letter which did not contain the validation notice sent within the thirty-day validation period was held to violate the Federal act. In Rabideau v. Management Adjustment Bureau, 805 F. Supp. 1086 (W.D.N.Y. 1992), a second notice was sent fifteen days after the initial communication and advised the consumer that the debt must be paid within five days "to avoid further collection measures." The court held that this notice created the impression that it shortened the thirty-day period in which a consumer may request validation of the debt and, therefore, violated the statute.

In summary, collection efforts may continue during the thirty-day validation period. However, every effort should be made to see that the validation notice is effectively conveyed. As the court decisions offer no clear cut rules which ensure compliance, we offer the following guidelines: The notice itself should not be obscured by either the presentation or language of any attempts to encourage payment of the debt. Lettering and point size used for the collection message should not exceed that used for the validation notice.¹ Further, we discourage the use of specific threats to take legal action or to report the nonpayment of the debt to a credit reporting bureau at this point in time. We also discourage giving the consumer any time limits less than thirty days in which to pay the debt. Subsequent notices sent within the thirty-day period should also follow the aforementioned guidelines.

Sincerely



TAMMY CAMPBELL
Assistant Attorney General
Consumer Protection Section
(303)866-5304

AG Alpha: LW CB HZGHC
AG File: CPTC4005.

¹ The Colorado Fair Debt Collection Practices Act varies from the Federal act in that it specifically requires all consumer rights information on the validation notice to be printed in eight-point boldface type. C.R.S. § 12-14-109(1). In addition, Colorado requires disclosure that collection agencies are regulated by the Colorado Collection Agency Board, the Collection Agency Board's current address, and how a consumer may exercise his rights to cease communication at work, cease all communication, or refuse to pay a debt and the consequences of this action. C.R.S. § 12-14-109(1)(f) and § 12-14-105(3)(a) and (c).