HELPFUL FDCPA DECISIONS

SOME FEDERAL & SOME STATE

Simon v. FIA Card Serv., ___ F.3d ___, 2013 WL 5508868 (3d Cir. Oct. 7, 2013). Neither the least sophisticated consumer, nor competent attorney standards were pertinent to the allegations by the consumer that the creditor" attorney engaged in FDCPA violations by failing to provide a § 1692e(11) notice and subpoenaed the consumer in a manner violating the Bankruptcy rules.

Easterling v. Collecto, Inc., 692 F.3d 229 (2d Cir. 2012). Where the collection letter asserted that the plaintiff" student loan was not eligible for discharge, "the least sophisticated consumer might very well refrain from seeking the advice of counsel, who could then assist her in pursuing all available means of discharging her debt through bankruptcy." • The letter" capacity to discourage debtors from fully availing themselves of their legal rights was just the kind of "court representation that the FDCPA" proscription was designed to target. Under the least sophisticated consumer standard, letters can be deceptive if they are open to more than one reasonable interpretation, at least one of which is inaccurate. A debtor" particular subjective circumstances are irrelevant, but in this case the district court placed considerable weight upon "court the facts and circumstances surrounding the plaintiff in an apparent effort to establish that she was not deceived by the collection letter in question. "By its very nature. . . the least sophisticated consumer test pays no attention to the circumstances of the particular debtor in question, and it was error for the district court to rely on such circumstances here." •

Lox v. CDA, Ltd., 689 F.3d 818, 822, 826, 827 (7th Cir. 2012) (citations omitted). "Contrary to some other circuits,. . . we treat the question of whether an unsophisticated consumer would find certain debt collection language misleading as a question of fact.. . . As an outgrowth of this practice, we have determined that there are three categories of § 1692e cases. . . The first category includes cases in which the allegedly offensive language is plainly and clearly not misleading. In cases of this nature, no extrinsic evidence is needed to show that the reasonable unsophisticated consumer would not be confused by the pertinent language.. . . The second category of cases includes debt collection language that is not misleading or confusing on its face, but has the potential to be misleading to the unsophisticated consumer.. . . If a case falls into this category, we have held that plaintiffs may prevail only by producing extrinsic evidence, such as consumer surveys, to prove that unsophisticated consumers do in fact find the challenged statements misleading or deceptive. . . The final category includes cases involving letters that are plainly deceptive or misleading, and therefore do not require any extrinsic evidence in order for the plaintiff to be successful."□ The plaintiff was not obliged under the Seventh Circuit" jurisprudence to provide extrinsic evidence of the subject statement" deception and falsity since the statement that a court "could award" • attorney fees where such fees were categorically precluded by applicable state law was "misleading on its face." • "The naive, trusting, unsophisticated consumer is therefore likely to believe a debt collector when it says that attorney fees are a potential consequence of nonpayment, and the language at issue is therefore misleading."□ The plaintiff" testimony purportedly showing that he himself was not misled by the collector" threat of obtaining an award of attorney fees that were precluded by applicable state law was "not dispositive for three reasons. First, an unsophisticated consumer without the knowledge of a lawyer could likely be shaken from a general belief that attorney fees cannot be

assessed against a losing party if a debt collector implies that attorney fees are, in fact, a legitimate possibility. Second, [the plaintiff] could have been concerned about the mere possibility of a fight over attorney fees, even if he felt confident that he would win that fight. . . Finally, and most importantly, the unsophisticated consumer test is "˜an objective one,". . . meaning that it is unimportant whether the individual that actually received a violative letter was misled or deceived." • The false statement that attorney fees might be illegally assessed if suit were filed and a judgment were obtained was a material misrepresentation notwithstanding that no such assessment actually occurred here, since the misrepresentation had the capacity to influence a consumer" course of action: the false threat itself "would have undoubtedly been a factor in [the consumer"] decision-making process, and very well could have led to a decision to pay a debt that he would have preferred to contest." •

Garden v. Leikin Ingber & Winters P.C., 643 F.3d 169 (6th Cir. 2011). The least sophisticated consumer test is objective, and "asks whether there is a reasonable likelihood that an unsophisticated consumer who is willing to consider carefully the contents of a communication might yet be misled by them." •

McCollough v. Johnson, Rodenburg & Lauinger, L.L.C., 637 F.3d 939 (9th Cir. 2011). Summary judgment on the §§ 1692e and 1692f claims was affirmed where the state court collection attorney served requests for admission containing false information upon the *pro se* defendant without an explanation that the requests would be deemed admitted after thirty days. "The least sophisticated debtor cannot be expected to anticipate that a response within thirty days was required to prevent the court from deeming the requests admitted." •

Wahl v. Midland Credit Mgmt., Inc., 556 F.3d 643 (7th Cir. 2009). The plaintiff had to show both that the statement was false and that it would mislead the unsophisticated consumer.

Campuzano-Burgos v. Midland Credit Mgmt., Inc., 550 F.3d 294 (3d Cir. 2008). The court summarized the law of deception under the least sophisticated consumer standard:

A communication is deceptive for purposes of the Act if: "it can be reasonably read to have two or more different meanings, one of which is inaccurate." This standard is less demanding than one that inquires whether a particular debt collection communication would mislead or deceive a reasonable debtor. . . . Nevertheless, the least sophisticated standard safeguards bill collectors from liability for "bizarre or idiosyncratic interpretations of collection notices" • by preserving at least a modicum of reasonableness, as well as "presuming a basic level of understanding and willingness to read with care [on the part of the recipient]." • Although established to ease the lot of the naive, the standard does not go so far as to provide solace to the willfully blind or non-observant. Even the least sophisticated debtor is bound to read collection notices in their entirety. [Citations omitted.]

Rosenau v. Unifund Corp., 539 F.3d 218, 221 (3d Cir. 2008). "It is a remedial statute that we "˜construe. . . broadly, so as to effect its purpose." " • Communications are to be analyzed under the least sophisticated debtor standard. A debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.

Kistner v. Law Offices of Michael P. Margelefsky, L.L.C., 518 F.3d 433 (6th Cir. 2008). "[A] jury should determine whether the letter is deceptive and misleading-specifically, whether the letter gives the impression that it is from an attorney even though it is not." • "[T]he "˜more than one reasonable interpretation" standard is applicable to the entirety of § 1692e as a useful tool in analyzing the "˜least-sophisticated-consumer" test. *See Clomon*, 988 F.2d at 1319 (discussing the "˜more than one reasonable interpretation" test as one of the "˜variety of ways" in which courts attempt to protect consumers under the least-sophisticated-consumer standard). Accordingly, the question for the jury becomes whether one can reasonably conclude that the letter sent to Kistner is susceptible to a reading by the least sophisticated consumer that it is from an attorney, even though Margelefsky has admitted that he had no direct role in sending the letter." •

Brown v. Card Serv. Ctr., 464 F.3d 450 (3d Cir. 2006). FDCPA is remedial, strict liability statute to be liberally construed. Communications from collectors to debtors are analyzed from the perspective of the least sophisticated consumer. A debt collection letter is deceptive where it can be reasonably read to have two or more different meanings, one of which is inaccurate.

Greco v. Trauner, Cohen & Thomas, L.L.P., 412 F.3d 360, 363 (2d Cir. 2005). "[O]ur Circuit" "least sophisticated consumer" standard is an objective analysis that seeks to protect "˜the naive" from abusive practices. . . while simultaneously shielding debt collectors from liability for "˜bizarre or idiosyncratic interpretations" of debt collection letters." •

Durkin v. Equifax Check Servs., Inc., 406 F.3d 410 (7th Cir. 2005). Because the consumer provided no extrinsic evidence in support of the claims, the court granted summary judgment for the collector on all claims alleging that its series of duns was confusing and misleading; the court" earlier disqualification of the consumer" expert for failing to meet the *Daubert* standards left him with no evidence other than the collector" own expert" testimony that the letters "might" • be confusing, testimony which the court found insufficient, stating, "[t]he mere possibility that someone might be confused by the dunning letters does not raise a genuine issue of material fact that the class of unsophisticated consumers receiving Equifax" letters may be confused by them." •

Peters v. General Serv. Bureau, Inc., 277 F.3d 1051 (8th Cir. 2002). The court found that a collector" letter requesting the consumer" voluntary appearance in lieu of service of process was not false, deceptive or misleading on its face in the absence of evidence of its deceptiveness. The consumer complained that the letter misstated that service by constable was the only alternative to a voluntary appearance when certified mail service was also available, but the court found that constable service was the only other feasible method. The consumer argued that the statement that the consumer must "appear and defend" • was misleading because a consumer would interpret it to require a personal visit to the courthouse, but the court found it was not confusing. The omission of the period for filing an answer did not violate the FDCPA where the collector would provide that information after service. Whether a collection letter was false was a question of law for the court using the unsophisticated consumer test. The court found that, even if the statement about alternative methods of service was literally false, it was not misleading.

White v. Goodman, 200 F.3d 1016 (7th Cir. 2000). Court reasoned that the FDCPA "protects the unsophisticated debtor, but not the irrational one." •

Chaudhry v. Gallerizzo, 174 F.3d 394 (4th Cir. 1999). Jury instruction on least sophisticated consumer upheld: "When I refer to a person unsophisticated in matters of law or finance, I am referring to a person of reasonable intelligence who has a basic understanding and has a willingness to listen to what is being said with care. I am not referring to a person who places an unrealistic or irrational interpretation upon what was said." •

Johnson v. Revenue Mgmt. Corp., 169 F.3d 1057 (7th Cir. 1999). "Unsophisticated readers may require more explanation than do federal judges; what seems pellucid to a judge, a legally sophisticated reader, may be opaque to someone whose formal education ended after sixth grade. To learn how an unsophisticated reader reacts to a letter, the judge may need to receive evidence." •

Goldberg v. Transworld Sys., Inc., 164 F.3d 617 (2d Cir. 1998) (table, text at 1998 WL 650793). The language "grace period about to expire" • does not suggest to the least sophisticated consumer that he has less than thirty days to dispute the debt.

Schweizer v. Trans Union Corp., 136 F.3d 233 (2d Cir. 1998). The "least sophisticated consumer" • standard was applied in evaluating FDCPA claims.

Lewis v. ACB Bus. Servs., Inc., 135 F.3d 389 (6th Cir. 1998). Courts apply the objective test based on the understanding of the "least sophisticated consumer." •

United States v. Nat"l Fin. Servs., Inc., 98 F.3d 131 (4th Cir. 1996). Fact that collection lawyer had filed a small number of suits and that some of the duns said only that suit would be considered did not lessen the capacity of the letters to deceive an unsophisticated consumer.

Wade v. Regional Credit Ass"n, 87 F.3d 1098 (9th Cir. 1996). While the debt collector violated state law by trying to collect a debt when it was not licensed pursuant to state law, this was not a per se or other violation of the FDCPA. The court used the least sophisticated consumer standard.

Russell v. Equifax A.R.S., 74 F.3d 30 (2d Cir. 1996). The "least sophisticated consumer" • lacks the astuteness of an attorney and even the sophistication of the average consumer. The court stated, "in the general context of consumer protection—of which the Fair Debt Collection Practices Act is a part—it does not seem "unfair to requiree that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." •

Gammon v. G.C. Servs., 27 F.3d 1254 (7th Cir. 1994). In a case involving § 1692e the court rejected the "least sophisticated consumer" • standard but adopted the functionally equivalent "unsophisticated consumer" • standard.

Bentley v. Great Lakes Collection Bureau, 6 F.3d 60 (2d Cir. 1993). An objective test based on the understanding of the least sophisticated consumer is applied to the determination of whether a collection letter violates § 1692e.

Clomon v. Jackson, 988 F.2d 1314 (2d Cir. 1993). "The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." •

Swanson v. S. Oregon Credit Serv., 869 F.2d 1222 (9th Cir. 1988). The least unsophisticated consumer standard was applied.

Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985). An objective standard of deception looking to judicial interpretations of the FTC Act protecting unsophisticated consumer should be applied in interpreting the FDCPA.

Alabama

Sparks v. Phillips & Cohen Assocs., Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). The least sophisticated consumer standard is applied in an FDCPA action involving an attorney plaintiff.

California

De Amaral v. Goldsmith & Hull, 2014 WL 572268 (N.D. Cal. Feb. 11, 2014). Collectors cannot evade liability simply because they communicated a misrepresentation to a consumer who was not misled. The collection complaint falsely stated that the debt buyer "provided" • credit to the consumers and that the debt buyer and the consumers had an agreement "in writing." •

Riding v. Cach L.L.C., ___ F. Supp. 2d ___, 2014 WL 198764 (C.D. Cal. Jan. 17, 2014). The alleged falsity of a statement must actually distort the consumer" perception, and may not be a minor technical glitch that even the least sophisticated consumer could understand.

Basich v. Patenaude & Felix, A.P.C., 2013 WL 1755484 (N.D. Cal. Apr. 24, 2013). A collector" notice of levy against a person mistaken for the debtor after the collector was informed that the person was not the debtor could violate § 1692e and § 1692f. Even though the plaintiff "was not herself confused by this activity since she maintained all along that she did not owe the debt," • it is possible that a hypothetical least sophisticated debtor could have been misled or deceived.

Lopez v. Profl Collection Consultants, 2013 WL 708701 (C.D. Cal. Feb. 26, 2013). Even though plaintiff, alleging the phone bill was not his, was not deceived about whether he owed the debt, the applicable standard is least sophisticated consumer.

Herrera v. LCS Fin. Servs. Corp., 274 F.R.D. 666 (N.D. Cal. 2011). Whether the notice was deceiving or misleading from the plaintiff" perspective is irrelevant, as the least sophisticated debtor standard is an objective one.

Miranda v. Law Office of D. Scott Carruthers, 2011 WL 2037556 (E.D. Cal. May 23, 2011). Because most debtors, not only the least sophisticated debtor, would interpret "NOTICE OF PENDING COURT PROCEEDINGS" • to mean that a lawsuit has already been filed, the plaintiff" motion for summary judgment as to liability under § 1692e(10) was granted.

Janti v. Encore Capital Group, Inc., 2010 WL 3058260 (S.D. Cal. Aug. 3, 2010). Where the collection letter stated "if Consumer sent MCM $250 she could stop this account from going to an attorney," • it would mislead the hypothetical least sophisticated debtor into believing that legal action was a "real possibility." •

Elliott v. Credit Control Servs., Inc., 2010 WL 1495402 (S.D. Cal. Apr. 14, 2010). A letter containing the heading "Warning Notice-Warning Notice" • in a dun stating that "This notice and all further steps undertaken by this agency will be in compliance with applicable State and Federal Law(s)" • was not false or misleading in violation of § 1692e. The court rejected the consumer" argument that this statement "could lead an unsophisticated debtor to forego obtaining independent legal counsel because the debtor may conclude that Defendants are acting in compliance with state and federal law," • finding that "even if the statement was somehow misleading, it would be merely a technical falsehood." •

Gonzalez v. Arrow Fin. Servs. L.L.C., 2005 U.S. Dist. LEXIS 19712 (S.D. Cal. July 25, 2005). The debt collector" reference to reporting an FCRA obsolete debt to a credit reporting agency was false and deceptive, notwithstanding the collector" disclaimer "if we are reporting the account," • since "the least sophisticated debtor could likely believe his debt is reportable just because the letters indicate the credit bureaus will be notified." •

Palmer v. Stassinos, 348 F. Supp. 2d 1070 (N.D. Cal. 2004). The court, not a jury, determines as a matter of law whether a particular collection letter or series of letters violated the FDCPA by confusing a least sophisticated debtor.

Perretta v. Capital Acquisitions & Mgmt. Co., 2003 WL 21383757 (N.D. Cal. May 5, 2003). What the language used in the collection of a debt conveys to the least sophisticated consumer is a question of law for the court in the Ninth Circuit.

Irwin v. Mascott, 96 F. Supp. 2d 968 (N.D. Cal. 1999). The fact that the named plaintiffs had attorneys and may have received advice from their attorneys did not render their claims atypical. The least sophisticated consumer standard is "an objective standard, imposed to further the protective purposes of the FDCPA. The standard applies even to those who have lawyers." •

Masuda v. Thomas Richards & Co., 759 F. Supp. 1456 (C.D. Cal. 1991). Least sophisticated debtor standard would be applied to determine whether collector" practice was unfair, deceptive or misleading.

Connecticut

Johnson v. NCB Collection Servs., 799 F. Supp. 1298 (D. Conn. 1992) (settled upon collector" payment of $4000 for consumer to withdraw appeal). Challenged collection practices must be evaluated by the likely effect on the least sophisticated consumer.

Latella v. Atl. Advisors, Inc., 1992 U.S. Dist. LEXIS 22849 (D. Conn. May 11, 1992). Whether a collection demand was deceptive or misleading was tested by the "least sophisticated debtor" • standard.

Delaware

Dutton v. Wolhar, 809 F. Supp. 1130 (D. Del. 1992), *aff"d*, 5 F.3d 649 (3d Cir. 1993). The least sophisticated debtor standard was more rigorous than an examination of whether a "reasonable consumer" • would find a debt collectors" communications false, deceptive, or misleading.

Higgins v. Capitol Credit Servs., Inc., 762 F. Supp. 1128 (D. Del. 1991). A collection notice that would mislead the least sophisticated debtor and cause him to ignore his rights violated the FDCPA.

Florida

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). The objective least sophisticated consumer standard applies in evaluating whether the tactic is deceptive.

Pescatrice v. Orovitz, 539 F. Supp. 2d 1375 (S.D. Fla. 2008). Although the content of the allegedly deceptive proposed stipulation sent by the collection attorneys to the consumer as a settlement offer to resolve the underlying state court collection action was uncontroverted, the court denied cross motions for summary judgment since it could not determine the issue of deception as a matter of law and as a result whether the material was "deceptive is a material issue of disputed fact for the jury, as fact finder, to resolve." •

Fuller v. Becker & Poliakoff, P.A., 192 F. Supp. 2d 1361 (M.D. Fla. 2002). The Eleventh Circuit has adopted the least sophisticated consumer standard for § 1692e(10) claims.

Georgia

Schimmel v. Slaughter, 975 F. Supp. 1357 (M.D. Ga. 1997). Attorney letter stating that garnishment was available "after judgment was obtained" • could convey to the least sophisticated consumer the impression that a judgment was a virtual certainty and therefore was deceptive.

Phillips v. Stokes, 1992 U.S. Dist. LEXIS 22731 (N.D. Ga. Jan. 8, 1992). Attorney" letter stating that unless the debt was paid in seventy-two hours further action as might be necessary would be taken to satisfy the claims would lead the least sophisticated consumer to believe that legal action would be filed, and thus violated § 1692e(5).

Cravey v. Credit Rating Bureau, Inc., 1991 U.S. Dist. LEXIS 21812 (N.D. Ga. Oct. 24, 1991). Applies least sophisticated standard to collector" use of term "credit bureau." •

Wright v. Credit Bureau of Ga., Inc., 548 F. Supp. 591 (N.D. Ga. 1982), *modified on other grounds*, 555 F. Supp. 1005 (N.D. Ga. 1983). The court rejected use of an average reasonable consumer standard under § 1692e and noted that actions in connection with attempts to collect debts are encompassed within the language of § 1692e.

Hawaii

Keli v. Universal Fid. Corp., 1997 U.S. Dist. LEXIS 23940 (D. Haw. Feb. 25, 1997). Collection agency threatened to sue when it had never sued. The threat, among other threats, to *TAKE EVERY STEP* was a threat of legal action to an unsophisticated consumer.

Illinois

Wheeler v. Codilis & Assocs., P.C., 2013 WL 6632125 (N.D. Ill. Dec. 16, 2013). The test under the FDCPA is not whether the plaintiffs were deceived but whether an unsophisticated consumer would have been deceived. The homeowners" allegations that the letter contained false information and that the information was crucial to their (and others") pursuit of loan modifications and other relief were sufficient at this stage of the litigation to support materiality.

Casso v. LVNV Funding, L.L.C., ___ F. Supp. 2d ___, 2013 WL 3270654 (N.D. Ill. June 6, 2013). In a case in which the consumer alleged that the false affidavit was meant to misrepresent to the consumer that business records regarding her debt had been reviewed in order to intimidate her into not disputing the debt, the court found that the defendants" purported misrepresentations about possessing business records were material as to how the plaintiff, as a consumer, might act.

Delgado v. Capital Mgmt. Servs. L.P., 2013 WL 1194708 (C.D. Ill. Mar. 22, 2013). The court found persuasive the FTC" position and studies on collecting time-barred debts and refused to dismiss the complaint where the debt collector did not disclose that the debt could not be enforced and, by offering settlement, implied that the debt was enforceable.

Tilmon v. LVNV Funding, L.L.C., 2013 WL 1001237 (S.D. Ill. Mar. 13, 2013). The "unsophisticated consumer" • isn"t a dimwit although she may be uninformed, naive, and trusting.

Clark v. Retrieval Masters Creditors Bureau, Inc., 185 F.R.D. 247 (N.D. Ill. 1999). Applies unsophisticated consumer standard.

Beasley v. Collectors Training Inst., 1999 U.S. Dist. LEXIS 13275 (N.D. Ill. Aug. 17, 1999). Adopting language from *Clomon v. Jackson*, court interpreted "unsophisticated consumer" • as a consumer of "below-average sophistication or intelligence but nevertheless possesses "˜a rudimentary amount of information about the world and a willingness to read a collection notice with some care." " •

Blum v. Fisher & Fisher, 961 F. Supp. 1218 (N.D. Ill. 1997). Summary judgment denied based on unsophisticated consumer standard, which created a jury question that might not have existed using the least sophisticated consumer test. The court rejected the argument that a higher level of sophistication should be assumed where a mortgage was involved.

Drennan v. Van Ru Credit Corp., 950 F. Supp. 858 (N.D. Ill. 1996). Complaint stated a claim where an unsophisticated consumer could interpret defendant" "legal review notification" • and

"notice of possible wage garnishment," • despite frequent use of "may" • and "might" • as imminent threats when in fact no action was taken for over a year after dunning letters were sent.

Finch v. Silverstein, 1996 WL 467251 (N.D. Ill. Aug. 13, 1996). The consumer stated a claim by alleging that the defendant" correspondence would lead an unsophisticated consumer to believe that a lawsuit was imminent, by including a legal caption and language implying that a lawsuit would be pursued, when suit was not imminent.

Vaughn v. CSC Credit Servs., Inc., 1995 WL 51402 (N.D. Ill. Feb. 3, 1995). "The unsophisticated consumer, while not at the bottom rung of the ladder, is still unsophisticated—uninformed, naive, trusting, possessing below average intelligence." •

Tolentino v. Friedman, 833 F. Supp. 697 (N.D. Ill. 1993). A collection attorney" notice urging the consumer to arrange payment of the debt and to avoid bankruptcy put in the same envelope as a copy of a summons and complaint would mislead the least sophisticated debtor about the court" role in the debt collection process.

Friedman v. HHL Fin. Servs., Inc., 1993 WL 367089 (N.D. Ill. Sept. 17, 1993). For violations of § 1692e the court looks at the activity from the prospective of the "least sophisticated consumer." •

Cortright v. Thompson, 812 F. Supp. 772 (N.D. Ill. 1992). In determining violations of the FDCPA the court was required to apply the least sophisticated consumer analysis.

Strange v. Wexler, 796 F. Supp. 1117 (N.D. Ill. 1992). The standard of review for FDCPA violations is "whether the conduct would be unfair or deceptive as applied to an unsophisticated consumer." •

Kansas

Carman v. CBE Group, Inc., 782 F. Supp. 2d 1223 (D. Kan. 2011). The FDCPA does not define "deceptive," • which has a general definition of "tending or having power to deceive; misleading. "˜Deceive" is generally defined as "˜to cause to accept as true or valid what is false or invalid." " •

Louisiana

Johnson v. Eaton, 873 F. Supp. 1019 (M.D. La. 1995). Communications must be viewed from the perspective of the least sophisticated consumer in determining compliance with the FDCPA.

Maryland

Bradshaw v. Hilco Receivables, L.L.C., 765 F. Supp. 2d 719 (D. Md. 2011). In the Fourth Circuit, the "least sophisticated debtor" • standard applies to evaluate violations of § 1692e(5).

Massachusetts

Devlin v. Law Offices Howard Lee Schiff, P.C., 2012 WL 4469139 (D. Mass. Sept. 25, 2012). Under the generally approved standard, a "least sophisticated consumer" • is not obliged "to closely parse the words of a communication in order to divine its meaning." •

In re Maxwell, 281 B.R. 101 (Bankr. D. Mass. 2002). Bankruptcy court applied the least sophisticated consumer standard, surveying cases.

Michigan

Ewers v. Collecto, Inc., 2013 WL 6241710 (E.D. Mich. Dec. 3, 2013). The least sophisticated consumer test "asks whether there is a reasonable likelihood that an unsophisticated consumer who is willing to consider carefully the contents of a communication might yet be misled by them." •

McDermott v. Randall S. Miller & Assocs., P.C., 835 F. Supp. 2d 362 (E.D. Mich. 2011). Holding the plaintiff cannot meet the objective least sophisticated consumer test and cannot sustain an FDCPA claim under § 1692e or § 1692f, although he may be able to do so pursuant to § 1692d or § 1692g where a plaintiff knows that the debt collector was attempting to collect on a debt not owed by him, following other local decisions.

Daniel v. West Asset Mgmt., Inc., 2011 WL 5142980 (E.D. Mich. Oct. 28, 2011). Violations of the FDCPA are analyzed under a least sophisticated consumer standard.

Gradisher v. Check Enforcement Unit, Inc., 210 F. Supp. 2d 907 (W.D. Mich. 2002). In determining whether a debt collector violated the FDCPA, courts in the Sixth Circuit apply the "least sophisticated consumer" standard which focuses upon whether the debt collector"actions would mislead or deceive the least sophisticated consumer.

Diamond v. Corcoran, 1992 U.S. Dist. LEXIS 22793 (W.D. Mich. Aug. 3, 1992). "Language alleged to violate the act is judged under the "˜least sophisticated debtor" standard." •

Minnesota

Adams v. J.C. Christensen & Assocs., Inc., 777 F. Supp. 2d 1193 (D. Minn. 2011). Language in a debt-collection letter cannot be viewed in isolation; the letter must be viewed "as a whole" • to determine whether it runs afoul of the FDCPA. A plaintiff who feels threatened by a debt collection letter does not automatically state a claim. What matters is that the debt collector" conduct—when viewed objectively" must violate the statute.

Nebraska

Erickson v. Credit Bureau Servs., Inc., 2011 WL 5237759 (D. Neb. Nov. 1, 2011). The unsophisticated consumer test is used to evaluate collection letters.

Nevada

Edwards v. Nat"l Bus. Factors, Inc., 897 F. Supp. 455 (D. Nev. 1995). Threat of "action" • by an attorney "without further notice" • is a threat of immediate legal action to the least sophisticated consumer.

New Jersey

Wilson v. Mattleman, Weinroth & Miller, 2013 WL 2649507 (D.N.J. June 12, 2013). The court stated that no court in the Third Circuit has held that the omission of a statement required by § 1692g(a) constitutes a deceptive practice per se. "Typically, an omission is held to violate § 1692e only when proffered with evidence that causes a least-sophisticated debtor to read a provision with competing interpretations." •

Chulsky v. Hudson Law Offices, P.C., 777 F. Supp. 2d 811 (D.N.J. 2011), *amended by*, 777 F. Supp. 2d 823 (D.N.J. 2011). Attorney debt collectors warrant closer scrutiny because their abusive collection practices "are more egregious than those of lay collectors." • That the debt was owned and prosecuted by a law firm could have created in a least sophisticated consumer" mind an impression of legal validity not typically imputed to a creditor" actions.

Frias v. MRS Assocs., Inc., 2011 WL 5599984 (D.N.J. Nov. 16, 2011). A collection letter is analyzed using the objective least sophisticated consumer standard.

Smith v. Harrison, 2008 WL 2704825 (D.N.J. July 7, 2008). Attorney debt collector" motion to dismiss denied where attorney argued that his attempted *Greco* disclaimer in a dun sent on attorney stationery and with an attorney signature insulated him from the consumer" claim of a false representation of attorney involvement, with the court providing the following explanation:

An attorney advising the least sophisticated debtor that he should not imply that an attorney reviewed his account is like asking someone not to think about pink elephants. From the least sophisticated debtor" perspective, a debt collection letter from an attorney would imply that an attorney has reviewed the debtor" account at some level. While Defendant" disclaimer advises the debtor not to imply that an attorney has reviewed his account, the answer to whether an attorney did in fact reviewed [sic] his account is no or yes at some level. A debt collection letter "is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate." • *Wilson v. Quadramed Corp.*, 225 F.3d 350, 354 (3d Cir. 2000). Here, there is sufficient ambiguity in Defendant" debt collection letter that the least sophisticated debtor could believe that an attorney has reviewed the debtor" account. Construing § 1692e(3) of the FDCPA liberally and under the standard of the least sophisticated debtor, the Court finds that Plaintiff has stated a claim under the FDCPA.

New Mexico

Spinarski v. Credit Bureau of Lancaster & Palmdale, Inc., 1996 U.S. Dist. LEXIS 22547 (D.N.M. Sept. 19, 1996). Purpose of the "least sophisticated consumer standard" • was to protect "the consumer who was uninformed, naive, or trusting, with consideration given to an objective element of reasonableness which shield complying debt collectors from liability for unrealistic or peculiar interpretations of collection letters" • (citations omitted).

New York

Shami v. Nat"l Enter. Sys., 914 F. Supp. 2d 353 (E.D.N.Y. 2012). Where one or several sentences in a collection letter might be construed as misleading, but the subsequent sentences unequivocally remove or clarify the ambiguity, there is no violation of the FDCPA.

Nichols v. Frederick J. Hanna & Assocs., P.C., 760 F. Supp. 2d 275 (N.D.N.Y. 2011). An unsophisticated consumer is still to be perceived as reasonable and is expected to read a collection notice with care.

Beauchamp v. Fin. Recovery Servs., Inc., 2011 WL 891320 (S.D.N.Y. Mar. 14, 2011). In applying the "least sophisticated consumer" standard, the court must bear in mind the FDCPA" "dual purpose" • of (1) protecting consumers against deceptive debt collection practices and (2) protecting debt collectors from unreasonable constructions of their communications. The least sophisticated consumer standard is not concerned with the literal accuracy of a statement, but rather, with the impression that it may reasonably leave upon a consumer.

Puglisi v. Debt Recovery Solutions, L.L.C., 2010 WL 376628 (E.D.N.Y. Jan. 26, 2010). To determine whether a practice is deceptive, an objective test based on the understanding of the least sophisticated consumer is applied.

Johnson v. Equifax Risk Mgmt. Servs., 2004 WL 540459 (S.D.N.Y. Mar. 17, 2004). The court held that the "fact that plaintiff is an attorney does not alter the application of the objective "˜least sophisticated consumer" standard in this case." •

Weber v. Goodman, 9 F. Supp. 2d 163 (E.D.N.Y. 1998). The "least sophisticated consumer" • standard was an objective standard intended to protect those most in need of protection.

Berrios v. Sprint Corp., 1998 WL 199842 (E.D.N.Y. Mar. 16, 1998). A collection letter that would deceive the least sophisticated consumer but would not deceive a reasonable consumer violated the FDCPA but not N.Y. Gen. Bus. Law § 349.

Rabideau v. Mgmt. Adjustment Bureau, 805 F. Supp. 1086 (W.D.N.Y. 1992). The least sophisticated consumer standard was employed in the analysis of violations of §§ 1692g and 1692e(11).

Ohio

Edwards v. Velocity Invs., L.L.C., 2011 WL 4007394 (N.D. Ohio Sept. 8, 2011). The court applied the objective least sophisticated consumer test.

Rice v. Javitch Block & Rathbone, L.L.P., 2011 WL 3861701 (S.D. Ohio Aug. 31, 2011). On remand, the court applied the objective least sophisticated consumer standard.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). Debt collector communications are evaluated under the FDCPA according to the "least sophisticated

consumer”□ standard. False statements in a debt buyer”affidavit about the affiant”personal knowledge about the debt were material where the consumer disputed the validity of the debt as described by the affiant.

Lee v. Robins Preston Beckett Taylor & Gugle Co., 1999 U.S. Dist. LEXIS 12969 (S.D. Ohio July 9, 1999). Least sophisticated consumer standard applied even if the actual plaintiff might have been more sophisticated as a result of her multiple FDCPA suits.

Smith v. Transworld Sys., 1997 U.S. Dist. LEXIS 23775 (S.D. Ohio July 31, 1997). A debt collection letter violated § 1692e(10) if it was objectively false, or if not objectively false, it would mislead or deceive the least sophisticated consumer.

Knight v. Schulman, 102 F. Supp. 2d 867 (S.D. Ohio 1996), *aff”d*, 166 F.3d 1214 (6th Cir. 1998). “Least sophisticated consumer standard” • was an objective standard under which debt collector was in violation of FDCPA if collection letters or other communications would have deceived least sophisticated consumer.

Adams v. First Fed. Credit Control, Inc., 1992 WL 131121 (N.D. Ohio May 21, 1992). Least sophisticated consumer standard employed to analyze alleged FDCPA violation.

Pennsylvania

Lorandeau v. Capital Collection Serv., 2011 WL 4018248 (E.D. Pa. Sept. 8, 2011). FDCPA is a remedial statute that is interpreted per the least sophisticated consumer standard. This standard provides more protection for consumers than a “reasonable debtor” • standard. The technically false statement that the consumer had not responded to the first letter would not mislead the least sophisticated consumer.

Webb v. Envision Payment Solutions, Inc., 2011 WL 2160789 (W.D. Pa. May 31, 2011). FDCPA claims are evaluated under the least sophisticated consumer standard which is less demanding than one that inquires whether a particular debt collection communication would mislead or deceive a reasonable debtor.

Mushinsky v. Nelson, Watson & Assoc., L.L.C., 642 F. Supp. 2d 470 (E.D. Pa. 2009). Objective least sophisticated consumer standard applies. Even if the notice was not false, it could be deceptive or misleading to the least sophisticated debtor.

Reed v. Pinnacle Credit Servs., L.L.C., 2009 WL 2461852 (E.D. Pa. Aug. 11, 2009). Objective least sophisticated consumer standard applies. Thus, where there are two possible meanings to a communication, one of which is inaccurate, the least-sophisticated consumer could be misled or deceived by that inconsistency.

Smith v. NCO Fin. Sys., Inc., 2009 WL 1675078 (E.D. Pa. June 12, 2009). Collection letters are analyzed under the least sophisticated debtor standard.

Catherman v. Credit Bureau, 634 F. Supp. 693 (E.D. Pa. 1986). The consumer failed to establish that letters from a collection agency/credit reporting agency threatening the consumer"ability to obtain credit were unconscionable or deceptive. The letters were not likely to convey the impression to an unsophisticated consumer that they would be immediately denied all credit, but only that there would be a chance of future denials.

South Carolina

Moore v. Ingram & Assocs., Inc., 805 F. Supp. 7 (D.S.C. 1992). A "court must look to whether the letter would mislead a general unsophisticated recipient." • Use of the word "judgment" • in the § 1692g validation notice was not misleading even though a judgment had not been obtained.

Utah

Ditty v. CheckRite, Ltd., 973 F. Supp. 1320 (D. Utah 1997). A reasonable jury applying the least sophisticated consumer standard could conclude that the letter" warning that "other actions. . . may be considered" • threatened suit.

Washington

Braham v. Automated Accounts, Inc., 2012 WL 554036 (E.D. Wash. Feb. 21, 2012). Court applied "least sophisticated debtor" standard.