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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ATHENS DIVISION

STEVEN SCHMIDT,  
Plaintiff

vs.

JOHN DOE, a/k/a E.T. HOWELL \*  
and CREDIT BUREAU OF ATHENS, \*  
INC., \*  
Defendants \*

DOCKET NO: 95-6-ATH(DF)

DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION  
FOR MORE DEFINITE STATEMENT AND TO STRIKE

COMES NOW Defendant CREDIT BUREAU OF ATHENS, INC., and files  
its Reply legal brief as follows:

Plaintiff has missed the importance of FRCP 12(e) by arguing  
that FRCP 54(c) allows, in every final judgement, any relief to  
which Plaintiff seeks against Defendant, even if the claim is not  
alleged in Plaintiff's Complaint. This is an absurd result, as  
Defendant cannot possibly know what alleged violations, under the  
Fair Debt Collection Practices Act, for which Plaintiff is  
seeking redress unless it is made known in the pleadings. FRCP  
54(c) envisions relief to a successful litigant of that which the  
Fair Debt Act would allow. However, Plaintiff cannot allege  
violations of the FDCPA under specific sections of the Act, and  
then later claim relief under other sections of the FDCPA,  
pursuant to FRCP 54(c). Defendant is entitled to know the

grounds upon which Plaintiff alleges that there are violations under the FDCPA by Defendant against Plaintiff. If the law was such, as espoused by Plaintiff, then there would be no reason for FRCP 15. In fact, FRCP 15(b) allows for issues to be tried where not raised by the pleadings, but only by the expressed or implied consent of the parties. This is the result for which Defendant attempts to avoid. It is possible for there to be an argument for implied consent by Defendant of certain other violations of the Fair Debt Collection Practices Act where it did not intend that result. Therefore, the issues must be made clear at the beginning for both sides to be able to seek further court guidance in a later Motion for Summary Judgment.

The primary reason for FRCP 54(c) is to allow the Plaintiff relief under alternative theories of recovery, though they have not specifically requested it; such as equitable relief in addition to a monetary award. See Walker vs. Anderson Elec. Connectors, 944 F2d 841 (11th Cir. 1991). Further, Georgia law allows for a claimant to pursue inconsistent remedies, in a contract or tort, and thereby pursue inconsistent remedies until a verdict is reached (O.C.G.A §9-2-4), and to allow a claim for rescission under a contract theory of recovery in a case, even though that remedy was not specifically sought in the claimant's prayer for relief. See U.S. vs. Koonce, 991 F2d 693 (11th Cir. 1993). However, the function of the Complaint, under the Federal

Rules of Civil Procedure, is to give the Defendant fair notice of the Plaintiff's claims and the grounds upon which the Plaintiff relies. See Connally vs. Gibson, 355 US 41, 47 (1957).

FRCP 54(c) primarily concerns the judgment, or demand for judgment, and is not considered part of the claim. FRCP 54(c) primarily concerns the remedy given in a case and not the claim for relief to which Plaintiff must plead with specificity.

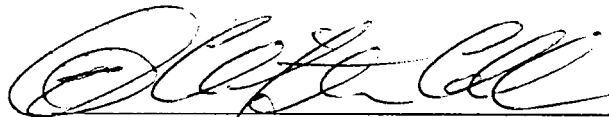
It is clear that Plaintiff is seeking the remedies available under the Federal Rules of Civil Procedure, as contained in 15 USC §1692k. Therefore, FRCP 54(c) does not come into play unless there is some relief under §1692k for which Plaintiff has not prayed for, but for which proof is made at the time of trial. Relief under 15 U.S.C. §1692k is immaterial and irrelevant at this particular point in the litigation. Therefore, Plaintiff has failed to sufficiently respond to Defendant's Motion for a More Definite Statement. In fact, Plaintiff has provided no definite statement, as Defendant has moved, and has not moved this Court to Amend the original Complaint. The only thing Plaintiff has done, in response to Defendant's Motion, is to contend that Defendant has not answered the enumerated paragraphs, of Plaintiff's Complaint, that is not the subject matter of Defendant's Motion. Plaintiff must know that a Motion under FRCP 12 may be made in lieu of an Answer. There are no cases, cited by Plaintiff, advancing the proposition that

Defendant must answer those paragraphs, in Plaintiff's Complaint, which are not specifically part of Defendant's Motion for a More Definite Statement. In fact, FRCP 12 does not make this a requirement. FRCP 12(e) does specifically state that Defendant need not file an Answer until the Court rules on a FRCP 12(e) Motion.

Defendant prays that this Court grant it the relief to which it prays, thereby striking the requested paragraph in Plaintiff's Complaint which does not allege a specific violation under the FDCA, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

GREER, KLOSIK AND DAUGHERTY



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