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

APR 17 1996  
*Donna N. Thilly*  
DEPUTY CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF GEORGIA

STEVEN SCHMIDT,  
Plaintiff,

vs.

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:  
:  
: 3:95-cv-6 (WDO)  
:  
:  
:  
:  
:

JOHN DOE, a/k/a E.T.  
HOWELL and CREDIT  
BUREAU of ATHENS,  
Defendants.

**ORDER**

Before the court is plaintiff's "motion for summary judgment on the pleadings," apparently brought pursuant to Federal Rule of Civil Procedure 12(c). In support of his motion, plaintiff has filed a copy of a letter sent by defendant to plaintiff's employer seeking a verification of plaintiff's employment. Plaintiff alleges that this letter violates one or more provisions of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § § 1692-16920. Defendant's response to this motion was accompanied by an affidavit, and requested the court to treat this as a motion for summary judgment under Rule 56. Because "matters outside the pleadings" have

been presented to and considered by the court, the court will treat this as a summary judgment motion under Rule 56. After careful consideration of the argument of counsel, the relevant caselaw, and the record as a whole, the court issues the following order.

### **UNDISPUTED FACTS**

A medical services debt, owed by plaintiff to St. Mary's Hospital, was referred to defendant Credit Bureau of Athens ("CBA") for purposes of collection.' "CBA provides a variety of services, including collections, credit reporting, employment reports, business reports, and mortgage reports for a variety of industries." Fountain Aff., at ¶ 3. CBA admits that it is a "debt collector" as that term is defined at 15 U.S.C. § 1692a(6), and avers on information and belief that plaintiff is a "consumer" within the meaning of 15 U.S.C. § 1692a(3).

On or about January 12, 1994, CBA attempted to obtain employment "location information" from plaintiff's employer over the phone; CBA was attempting to verify employment information because of a returned check issued by plaintiff in the amount of \$50.00 on December 27, 1993. CBA


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**Plaintiff does not challenge the validity of that debt in this action.**

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was told by the personnel department at plaintiff's employer that such information could not be verified over the phone. E.T. Howell, at the time an employee of CBA, then sent a written request for "employment verification" on behalf of CBA, which was as follows:

**CBA**  
G-edit Bureau of Athens   
1765 Old West Broad Street  
P.O. Box 1645  
Athens, Georgia 30603-1645  
(404) 549-2263  
Fax 353-7450

DATE:

TO:

Carrier Transcold  
700 Olympic A  
Athens GA 30601  
706-546-6469

THIS IS A REQUEST FOR **EMPLOYMENT** VERIFICATION ON THE PERSON NAMED BELOW:

NAME: Steven Douglas Schmidt SOCIAL SECURITY NO.: 281-46-2583

ADDRESS: \_\_\_\_\_

JOB TITLE: \_\_\_\_\_ DEPARTMENT: \_\_\_\_\_

DATE HIRED: \_\_\_\_\_ MONTHLY INCOME: \_\_\_\_\_

If you have any questions, feel free to call me. 357-9152

Sincerely,

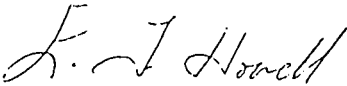
  
Credit Bureau of Athens, Inc.  
Section Manager

Exhibit   A    
Page   1   Of   1  

COLLECTION  
CREDIT REPORTING  
MANAGEMENT  
MARKETING  
MORTGAGES

*an Equifax Affiliate*

The sole question is whether this written communication, on its face, violates either 15 U.S.C. § 1692b(1) or 15 U.S.C. § 1692b(5).

### **DISCUSSION**

Federal Rule of Civil Procedure ("FED. R. CIV. P.") 56(c) provides that summary judgment may be entered in favor of the movant where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is [1] no genuine issue as to any material fact and that [2] the moving party is entitled to judgment as a matter of law." See also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986); *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995). Material facts are defined by reference to the substantive law that controls the case. *Anderson*, 477 U.S. at 248.; *Mulhall v. Advance Sec., Inc.*, 19 F.3d 586, 590 (11th Cir.), cert. denied, 115 S. Ct. 298 (1994).

The substantive law controlling this case is found in 15 U.S.C. §§ 1692b(1) and 1692b(5), which provide:

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall --

(1 ) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

\* \* \* \* \*

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt, collection business or that the communication relates to the collection of a debt . . . .

“Location information,” a term also statutorily defined, means “a consumer’s place of abode and his telephone number at such place, or his place of employment.” 15 U.S.C. § 1692a(7). The legislative history of these code sections is instructive:

When contacting third persons to establish a consumer’s whereabouts, a debt collector may not: state that the consumer owes a debt; contact the third person more than once unless reasonably necessary; or use language symbols on mail indicating that it pertains to debt collection.

S. REP. No. 382, 95th Cong. 1 st Sess. 1-2 (1977), *reprinted in 1977 U.S.C.C.A.N.* 1695. This prohibition “is designed to protect a consumer’s reputation and privacy, as well as to prevent loss of jobs resulting from a debt collector’s communication with a consumer’s employer concerning the collection of a debt.” *West v. Costen*, 558 F. Supp. 564, 575 (W.D. Va. 1983).

Plaintiff contends that the verification form (reproduced above) violates §§ 1692b(1) and 1692b(5) by informing plaintiff’s employer that CBA is in the debt collection business, viz., the lower right-hand corner of the form states that CBA provides collection services. Plaintiff further

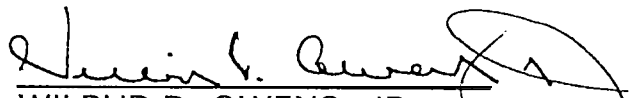
claims that it was a violation of the FDCPA for E.T. Howell to make it known that he was employed **by** CBA, since Howell should only have done so if expressly requested by plaintiff's employer. Defendant CBA responds that plaintiff's employer 'asked for the verification request to be made in writing, and that it was necessary to list CBA and its address on the form so that plaintiff's **employer would know where to return the form.** Defendant also argues that the communication does not conclusively establish by its face that it pertains to a debt, or that plaintiff *in fact* owes a debt. Defendant says that the communication might just have well been a part of a mortgage reporting process.

In the court's considered judgment, defendant has violated the FDCPA as a matter of law. The employment verification form used by defendant CBA undisputedly indicates "that the [Credit Bureau of Athens] is in the debt collection business or that the communication relates to the collection of a debt," *i.e.*, the lower right-hand corner of the form states that CBA is in the collections business. The statute plainly states that debt collectors may not, in attempting to obtain location information, indicate that they are in the collections business. 15 U.S.C. § 1692b(5). The form *sub judice* so states in violation of the statute.

**CONCLUSION**

This is precisely the type of debt collection practice that Congress intended to prevent -- "Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to *the loss of jobs*, and to invasions of individual privacy." 15 U.S.C. § 1692(a) (emphasis supplied). Through the FDCPA, Congress strictly limited the nature and form of a debt collector's communications with a debtor's employer to prevent loss of jobs resulting from such communications. See, e.g., *West v. Costen*, 558 F. Supp. 564, 575 (W.D. Va. 1983). Defendant's employment verification request form did not comply with those limitations. Let **SUMMARY JUDGMENT BE ENTERED IN PLAINTIFF'S FAVOR ON THE ISSUE OF LIABILITY.**

SO ORDERED, this <sup>1</sup>/<sub>3</sub> day of April, 1996.

  
WILBUR D. OWENS, JR.  
UNITED STATES DISTRICT JUDGE

BW:lab

ENTERED ON DOCKET

April 17, 1996

Gregory J. Leonard, Clerk

by Donna M. Phillips  
Deputy Clerk

