

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

DAVID E. MACK	§	
	§	
v.	§	Case No. 4:13cv544
	§	Judge Mazzant
PROGRESSIVE FINANCIAL	§	
SERVICES, INC., CHRISTOPHER HALE	§	

**MEMORANDUM OPINION AND ORDER<sup>1</sup>**

Pending before the Court is Defendants’ Motion for Summary Judgment (Dkt. #30). Having considered the relevant pleadings, the Court finds that the motion should be granted.

**BACKGROUND**

Plaintiff David E. Mack, *pro se*, filed suit alleging that Defendants Progressive Financial Services, Inc. (“Progressive”) and Christopher Hale (“Hale”) violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (the “FDCPA”).

On December 12, 2012, Progressive sent Plaintiff a letter which notified Plaintiff that his account had been referred to Progressive for collection. This letter stated that the creditor was the City of Dallas and gave the creditor account number and the debtor’s name as Plaintiff. The letter also stated a balance due of \$145.46. The letter also stated the following:

This letter serves as formal notice that your above referenced account has been referred to us for collection. You are hereby notified that your responsibilities include repayment of the balance. The balance of your account is due in full. In order to avoid any further collection activity, mail your payment directly to my attention or call to discuss arrangements.

The letter also stated as follows:

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<sup>1</sup>On October 27, 2014, the undersigned entered a report and recommendation in this case as the United States Magistrate Judge to whom this case was referred. This case is now assigned to the undersigned as the presiding United States District Judge, and this memorandum opinion and order is issued accordingly.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of the this debt, or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

On December 22, 2012, Plaintiff disputed the debt and requested validation. On December 27, 2012, Progressive provided Plaintiff a letter pertaining to the debt. This letter stated that the City of Dallas was the original creditor and current creditor, provided the account number, reference number, and the current balance of \$145.46. The letter noted that the copy of the account details were attached. The attachment was a computer printout that had Plaintiff's name, address, and amount claimed. The attachment also listed this type of account as "water" and that "customer refuses to pay" as the reason for suspension of the account. The attachment also listed the collection agency as Penn Collection Agency. The attachment did not list the City of Dallas as the creditor.

Plaintiff now contends that Progressive's verification was inadequate and violated the FDCPA. He is seeking statutory damages, his attorney's fees<sup>2</sup> and costs, and post-judgment interest. Specifically, Plaintiff alleges that Defendants violated 15 U.S.C. § 1692g(b) and § 1692e based on Progressive's December 12, 2012 and December 27, 2012 letters.

On June 27, 2014, Defendants filed a motion for summary judgment (Dkt. #30). On August 5, 2014, Plaintiff filed a response (Dkt. #35). On August 13, 2014, Defendants filed a reply (Dkt. #36).

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<sup>2</sup> In Plaintiff's response, he concedes that he is not seeking attorney's fees in this case because he is *pro se*.

## LEGAL STANDARD

The purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Summary judgment is proper if the pleadings, the discovery and disclosure materials on file, and any affidavits “[show] that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The trial court must resolve all reasonable doubts in favor of the party opposing the motion for summary judgment. *Casey Enterprises, Inc. v. American Hardware Mut. Ins. Co.*, 655 F.2d 598, 602 (5th Cir. 1981) (citations omitted). The substantive law identifies which facts are material. *Anderson*, 477 U.S. at 248.

The party moving for summary judgment has the burden to show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Id.* at 247. If the movant bears the burden of proof on a claim or defense on which it is moving for summary judgment, it must come forward with evidence that establishes “beyond peradventure *all* of the essential elements of the claim or defense.” *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). But if the nonmovant bears the burden of proof, the movant may discharge its burden by showing that there is an absence of evidence to support the nonmovant’s case. *Celotex*, 477 U.S. at 325; *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000). Once the movant has carried its burden, the nonmovant must “respond to the motion for summary judgment by setting forth particular facts indicating there is a genuine issue for trial.” *Byers*, 209 F.3d at 424 (citing *Anderson*, 477 U.S. at 248-49). The nonmovant must adduce affirmative evidence. *Anderson*, 477

U.S. at 257.

### DISCUSSION AND ANALYSIS

Defendants move for summary judgment on all FDCPA claims. The purpose of the FDCPA is to “eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e). The FDCPA restricts debt collectors from making false or misleading representations or using unfair collection methods. *Id.*; 15 U.S.C. §§ 1692e, 1692f. Debt collectors must also provide certain written information concerning the debt collection. 15 U.S.C. § 1692g.

Defendants first assert that Plaintiff’s section 1692g(b) claim fails, asserting only that they complied with the notice requirements of the FDCPA. Section 1692g(b) provides that if a consumer notifies the debt collector in writing within 30 days of receipt of an initial communication regarding collection of a debt that the debt is disputed, the debt collector must “cease collection of the debt” until it “obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.” 15 U.S.C. § 1692g(b). To sustain a claim pursuant to section 1692g(b), the consumer must dispute the debt or any portion thereof within 30 days of receipt of the initial communication from the debt collector. *Id.*

The only question raised in Defendants’ motion for summary judgment is whether Defendants provided proper verification under the FDCPA. Defendants assert that all that is required for verification is providing in writing that the amount being demanded from the creditor is owed and that the debt collector is not required to keep detailed files of the alleged debt.

Defendants rely upon *Azar v. Hayter*, 874 F. Supp. 1314, 1317 (N.D. Fla.), *aff'd*, 66 F.3d 342 (11th Cir. 1995), *cert. denied*, 516 U.S. 1048 (1996) and *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999).

Plaintiff asserts that his request for validation requested the following: “(1) what the money you say I owe is for; (2) Explain and show me how you specifically calculated the entire amount of what you say I owe; (3) Provide me with copies of any and all papers that show I agreed to pay what you say I owe; (4) Identify the original creditor.” Plaintiff asserts that he did not ask for anything other than information that would allow him to discern what the correct amount alleged to be due was, what the obligation was incurred for, to whom it was owed, and proof that Plaintiff had agreed to pay what was allegedly due. Plaintiff agrees with Defendants that debt collectors are not required to provide copies of bills or other detailed evidence of the debt; however, Plaintiff asserts that verification requires more than what was provided by Defendants.

The FDCPA does not define what constitutes proper debt verification, nor has the Fifth Circuit specifically addressed the requirements of verification under the FDCPA. Since verification is undefined by the FDCPA the Court “carries its ordinary meaning.” *Thompson v. Somervell County*, 431 F. App’x 338, 341 (5th Cir. 2011) (quoting *Crawford v. Metro. Gov’t of Nashville & Davidson Cnty*, 555 U.S. 271 (2009)); *Garland v. Roy*, 615 F.3d 391, 399 (5th Cir. 2010). “This meaning must be determined ‘from the context in which [the words] are used.’” *Martin v. Alamo Community College Dist.*, 353 F.3d 409, 412 (5th Cir. 2003) (quoting *Thompson v. Goetzmann*, 337 F.3d 489, 497 (5th Cir. 2003)). “Dictionaries are a principal source for ascertaining the ordinary meaning of statutory language[.]” *Id.* (citations omitted).

Verification is defined as “the act or process of verifying or the state of being verified: the

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