

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

Janet Long, individually and on behalf)
of all others similarly situated,)

Plaintiff,)

v.)

No. 1:15-cv-1924-SEB-DKL

Fenton & McGarvey Law Firm, P.S.C.,)
A Kentucky corporation, and Jefferson)
Capital Systems, LLC, a Georgia)
limited liability company,)

Defendants.)

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANTS’
MOTIONS TO DISMISS AND FOR JUDGMENT ON THE PLEADINGS**

Plaintiff, Janet Long (“Long”), individually and on behalf of all others similarly situated, hereby responds to Defendants’ Motions to Dismiss, pursuant to Fed.R.Civ.P 12(b)(6), and for Judgment on the Pleadings, pursuant to Rule 12(c) (Dkt. 46, 47, 53):¹

INTRODUCTION

After litigating for almost six months, Defendants, Fenton & McGarvey Law Firm (“F&M”) and Jefferson Capital Systems (“Jefferson”), now claim that Plaintiff lacks Article III standing, based on a recent non-decision from the U.S. Supreme Court.² That

1. On June 7, 2016, Defendant Jefferson moved to dismiss, or for judgment on the pleadings (Dkt. 46, 47); three days later, Defendant F&M later filed a motion adopting Jefferson’s motion. (Dkt. 53).

2. Spokeo, Inc. v. Robins, 136 S.Ct. 1540, 194 L. Ed. 2d 635, 646 (2016) (“We take no position as to whether the Ninth Circuit’s ultimate conclusion -- that Robins adequately alleged an injury in fact -- was correct.”).

non-decision has changed none of the existing case law on whether a plaintiff has suffered a concrete injury. In fact, a “concrete injury” is nothing more than the requirement that a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. (“FDCPA”) be “material”, which the Seventh Circuit has already stated must be shown for a violation of the FDCPA to be actionable, see, e.g., Hahn v. Triumph Partnerships, 557 F.3d 755, 757 (7th Cir. 2009); Lox v. CDA, 689 F.3d 818, 826-827 (7th Cir. 2012).

In a recent FDCPA decision, involving a claim nearly identical to this matter, the Seventh Circuit, in a opinion authored by Judge Hamilton, addressed the materiality requirement as it relates to §1692g(a)(2) of the FDCPA, holding that a collector’s failure to identify clearly the creditor to whom a debt is owed constitutes a material/concrete injury-in-fact, see, Janetos v. Fulton Friedman & Gullace, 2016 U.S. App. LEXIS 6361 at [*15]-[*16] (7th Cir. 2016)(Hamilton, J.)

Defendants’ motions claim that Plaintiff was required to allege tangible injuries – specifically, injuries that would have resulted in damage to her person or property, see, e.g., Dkt. 47 at p. 10. This baseless claim ignores binding precedent. As the Supreme Court noted in Spokeo, it has repeatedly held that a defendant’s failure to provide statutorily-required information to a plaintiff constitutes a material/concrete injury-in-fact sufficient to establish standing, see, Spokeo, 194 L. Ed. 2d 635 at 645-46. The informational disclosure required by the FDCPA -- here, a clear statement of the name of the current creditor – is explicitly mandated by the FDCPA, and thus, a failure to state that information in an effective and adequate manner is a material/concrete injury that confers standing on a consumer under the FDCPA, see, e.g., Janetos, 2016 U.S. App.

LEXIS 6361, [*15]-[*16]; Pardo v. Allied Interstate, 2015 U.S. Dist. LEXIS 125526 at [*6] (S.D. Ind. 2015)(Barker, J.).

Finally, § 1692g(a)(2) requires that the statement of the name of the creditor be clear enough that the unsophisticated consumer is likely to understand it, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*7]-[*8], citing Bartlett v. Heibl, 128 F.3d 497, 499 (7th Cir. 1997); Russell v. Equifax A.R.S., 74 F.3d 30, 35 (2d Cir. 1996); see also, Pardo, 2015 U.S. Dist. LEXIS 125526, at *[4-6].

The Supreme Court's recent ruling in Spokeo did not overturn, diminish, or even address the unsophisticated consumer standard as it applies to the FDCPA. Defendants' argument -- that Ms. Long had to demonstrate that she suffered *personally* (Dkt. 47. at pp. 9-16) -- contradicts long-standing legal precedent. Defendants' motions must be denied.

ARGUMENT

Defendants' motions have been filed pursuant to both Fed.R.Civ.P. Rule 12(b)(6) and Rule 12(c), but Plaintiff has clearly pled facts sufficient to survive both standards of review. A Rule 12(b)(6) motion tests the sufficiency of the complaint, not the merits of the case, see, Gibson v. City of Chicago, 910 F.2d 1510, 1520 (7th Cir. 1990). The Court must accept the complaint's well-pleaded factual allegations as true and draw all reasonable inferences in plaintiff's favor. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-56 (2007). To survive a motion to dismiss, a complaint must contain sufficient facts to state a facially plausible claim to relief. Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009). To provide a defendant with "fair notice of what the claim is and the grounds upon which it rests," a complaint must provide "a short and plain statement of the claim

showing that the pleader is entitled to relief,” see, Fed.R.Civ.P. 8(a)(2). The allegations of the Complaint must also plausibly suggest that the plaintiff has a right to relief and raise that possibility above the “speculative level”, see, Twombly, 550 U.S. at 555.

A motion for judgment on the pleadings under Fed.R.Civ.P.12(c) is evaluated by the same standard as a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), see, Buchanan-Moore v. County of Milwaukee, 570 F.3d 824, 827 (7th Cir. 2009); Guise v. BMW Mortgage, 377 F.3d 795, 798 (7th Cir. 2004); Patinkin v. City of Bloomington, 2008 U.S. Dist. LEXIS 23561 at [*9]-[*10] (S.D. Ind. 2008)(Barker, J.). Here, Ms. Long has pled facts sufficient to withstand both Defendants’ Motions pursuant to both Rule 12(b)(6) and 12(c).

Finally, claims made pursuant to the FDCPA must be evaluated using the unsophisticated consumer standard, see, Gammon v. GC Services, Ltd. Partnership, 27 F.3d 1254, 1257 (7th Cir. 1994). Courts have repeatedly held that a collector’s statement of the name of the current creditor to whom a debt is owed cannot be presented in a confusing manner, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*7]-[*8]; see also, Pardo, 2015 U.S. Dist. LEXIS 125526 at [*7]-[*9]; see also, Braatz v. Leading Edge Recovery Solutions, 2011 U.S. Dist. LEXIS 123118 (N.D. Ill. 2011) Walls v. United Collection Bureau, 2012 U.S. Dist. LEXIS 68079 (N.D. Ill. 2012); and Deschaine v. National Enterprise Systems, 2013 U.S. Dist. Lexis 31349, (N.D. Ill. 2013).

I. Plaintiff Has Standing To Bring This FDCPA Claim

A. The Denial Of Information Required By Statute Constitutes A Material/Concrete Injury-in-Fact

As the U.S. Supreme Court noted in Spokeo:

The violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any additional harm beyond the one Congress has identified.

Spokeo, 194 L. Ed. 2d at 646. The multiple examples Spokeo gives of statutory violations that confer standing without proof of additional harm are cases involving the plaintiff's statutory right to information, Id., see, for example, Public Citizen v. Department of Justice, 491 U.S. 440, 449 (1989) ("[A] plaintiff suffers an "injury in fact" when the plaintiff fails to obtain information which must be publicly disclosed pursuant to a statute."); FEC v. Akins, 524 U.S. 11, 21, (U.S. 1998) (failure to obtain information subject to disclosure under Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue"); see also, Spokeo, 194 L.Ed 2d at 649-650 (Thomas, J. concurring), citing, Havens Realty Corp. v. Coleman, 455 U.S. 363, 373-374, 71 L. Ed. 2d 214, 102 S. Ct. 1114 (1982) (violation of a plaintiff's statutory right to truthful information about housing availability is a "specific injury" that confers standing).

There is no legitimate basis to reach a different result here. To the contrary, other courts have already found, consistent with Public Citizen, Akins and Havens Realty, that a plaintiff has standing to sue a debt collector who violates the consumer's right to information under the FDCPA, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*15]-[*16]; Pollard v. Law Office of Mandy L. Spaulding, 766 F.3d 98, 102-103 (1st Cir. 2014)(holding that an overshadowing violation of §1692g(a)(3) of the FDCPA constituted statutory standing, despite the fact that the consumer plaintiff had not actually been misled by the letter at issue.); Matmanivong v. Nat'l Creditors Connection, 79 F. Supp. 3d 864, 870-871 (N.D. Ill. 2015)(a collector's failure to comply with §1692g(a) constituted injury in fact sufficient to establish standing, despite the fact that

the plaintiff had not alleged that he suffered actual damages).

Indeed, binding Seventh Circuit case law has long recognized that the FDCPA is a statute that mandates the disclosure of specific information in order to better inform consumer decision-making and avoid confusion and abusive collection practices. In enacting 15 U.S.C. § 1692g(a)(2), Congress determined that a debt collector *must* include in its § 1692g(a) notice "the name of the creditor to whom the debt is owed", see, Janetos, 2016 U.S. App. LEXIS 6361 at [*15]-[*16].

In Janetos, the Seventh Circuit ruled that if a disclosure is mandated by the FDCPA, failure to provide said disclosure constitutes a material/concrete injury. Indeed, the Court in Janetos found that the ineffective conveyance of the required information is enough to constitute a violation:

Since § 1692g(a)(2) clearly requires the disclosure, we decline to offer debt collectors a free pass to violate that provision on the theory that the disclosure Congress required is not important enough. There is also no need for individual inquiry about the materiality to any given recipient.

See, Id. at [*16] (internal citations omitted). Moreover, the Court in Janetos discussed multiple material harms from the denial of the information required by §1692g(a)(2), including the inability to verify with the true owner of a debt, or whether a collection attempt had been fraudulent, see, Id., at [*17-18]. Additionally, knowing the owner of a debt assists the consumer with knowing what her negotiating power may be, i.e., whether the debt may be settled for less money because it has been sold multiple times, for less and less money each time. Here, an unsophisticated consumer would not be able to verify that F&M was collecting a legitimate debt, nor would that consumer have any knowledge as to whether or not the debt had been sold, which would affect her ability to negotiate.

Thus, consistent with the Supreme Court's repeated conclusion that a violation of the plaintiff's statutory right to receive information is a material/concrete injury by itself, Defendants' failure to disclose to a consumer the name of the current creditor to whom a debt is owed, in violation of Congress' express command that Defendants provide this information to Plaintiff, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*15]-[*16], is a material/concrete injury, and this confers standing.

B. An Unsophisticated Consumer Suffers A Material/Concrete Injury When The Name Of The Creditor To Whom A Debt Is Currently Owed Is Not Clear

This Court has already rejected Defendants' argument -- that Ms. Long and the putative class have not suffered a material/concrete injury (Dkt. 47 at pp. 9-16). In Pardo, this Court held that violations of §1692g(a)(2) are material and cause both tangible and intangible harm to consumers:

"If [the name of the creditor] is missing or presented in an arguably confusing manner, it could influence the consumer's decision. For example, it could cause an unsophisticated consumer to worry about being defrauded or paying the incorrect creditor and continuing to have an outstanding debt."

Pardo, 2015 U.S. Dist. LEXIS 125526 at [*6], citing Walls, 2012 U.S. Dist. LEXIS 68079, at [*2].

This Court's holding in Pardo was echoed by the Seventh Circuit in Janetos, which held that a violation of §1692g(a)(2) of the FDCPA had the material/concrete impact of hindering a consumer's ability to verify whether the collection attempt was fraudulent, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*17]-[*18]. Indeed, in recent years, reports of fraud have topped the lists of complaints with the Consumer Financial Protection Bureau, as well as States' attorney generals, see, Consumer Financial

Protection Bureau 2015 Consumer Response Annual Report, at [*14-16, 27]³, (documenting that, of all complaints submitted to the CFPB during 2015, 31% involved debt collection; of those, 40% involved attempts to collect debts not owed or no longer owed; 11% of Complaints regarding credit cards involved fraud or identity theft.). See also, “Indiana’s Top 10 Consumer Complaints 2015”, published by Indiana Attorney General Greg Zoeller, published March 8, 2016⁴, (stating that debt collection and identity theft were both in the top 10 of the most complained about consumer issues to the Indiana Attorney General during 2015). See also, Halpern, Jake, “Inside the Dark, Labyrinthine, and Extremely Lucrative World of Consumer Debt Collection,” *New York Times Magazine*⁵, (describing the debt-buying industry as an “often-lawless marketplace, [where] large portfolios of debt — usually in the form of spreadsheets holding debtors’ names, contact information and balances — are bought, sold and sometimes simply stolen.”). With increasing incidences of fraud and identity theft, especially as it impacts the debt buying industry, hindering a consumer’s ability to verify the true owner of her alleged debt is a concrete, material harm.

II. Defendants’ Letter Does Not Clearly State The Name Of The Creditor To Whom The Debt Is Owed

Congress determined that a debt collector must include, in its § 1692g(a) notice,

3. Available online at http://files.consumerfinance.gov/f/201604_cfpb_consumer-response-annual-report-2015.pdf

4. Available online at, https://secure.in.gov/activecalendar/EventList.aspx?fromdate=3/8/2016&todate=3/8/2016&display=Day&type=public&eventidn=243513&view=EventDetails&information_id=239079

5. Available online at: http://www.nytimes.com/interactive/2014/08/15/magazine/bad-paper-debt-collector.html?_r=0

"the name of the creditor to whom the debt is owed." With that specific disclosure requirement, Congress decided that the failure to make the disclosure is a failure the Act is meant to penalize, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*15]-[*16].⁶ Furthermore, it has long been held that such disclosures must be made in a way so as to be understood by the letter's intended recipient, the unsophisticated consumer, see, e.g., Bartlett, 128 F.3d at 500.

A. Defendants' Letter Must Be Judged From The Perspective Of The Unsophisticated Consumer

Although Defendants argue that Plaintiff has not alleged that their failure to state adequately the name of the creditor to whom the debt was owed influenced her decision-making (Dkt. 47, pp. 10-11), the issue is whether the missing information is the type of information that could influence an unsophisticated consumer's decision-making, see, Lox, 689 F.3d 818, at 827.

As is the case with all FDCPA lawsuits, whether a communication in connection with the collection of a debt is confusing or misleading is to be evaluated from the perspective of an unsophisticated consumer, see, Gammon, 27 F.3d 1254, 1257 (7th Cir. 1994) ("[The] unsophisticated consumer standard protects the consumer who is uninformed, naive, or trusting, yet it admits an objective element of reasonableness."); see also, Evory v. RJM, 505 F.3d 769, at 776 (7th Cir. 2007); Johnson v. Revenue

6. Instead of addressing the holding of Janetos, which is directly on point as to Congress's intent in enacting §1692g(a)(2), Defendants instead engage in a laborious discussion of the legislative history of the FDCPA, how prior versions of the bill did not include non-monetary damages (Dkt. 47, at pp. 12-16), and testimony from the American Retail Federation had opposed such damages and felt it should have been left to the states (Dkt. 47, at pp. 14-15). Defendants do not explain why this Court should ignore the text of the FDCPA, as it was passed, or the decades of binding case law interpreting it.

Mgmt. Corp., 169 F.3d 1057, 1060 (7th Cir. 1999); McMahon v. LVNV Funding, LLC, 744 F.3d 1010, 1019-1020 (7th Cir. 2014) (describing the unsophisticated consumer as a person of “modest education and limited commercial savvy”).

Unsophisticated readers typically require more explanation than do federal judges or attorneys, see, Evory, 505 F.3d at 776; McMahon, 744 F.3d 1010, at 1019-1020.

To constitute a material/concrete violation of the FDCPA, the information at issue need not actually influence the specific consumer, rather it need only be the kind of information that a consumer could consider in her decision making process, see, Lox, 689 F.3d at 827. Indeed, since the standard is whether the letter would confuse an unsophisticated consumer, and not the plaintiff consumer herself, it is unnecessary for Plaintiff to even plead that she has read the letter:

If reading were an element of the violation, then Bartlett would have to prove that he read the letter. But it is not. The statute, so far as material to this case, requires only that the debt collector "send the consumer a written notice containing" the required information.

See, Bartlett, 128 F.3d at 499.

Thus, the issue is not whether Ms. Long, *herself*, was able to determine the name of the creditor to whom the debt was owed, based on Defendants' collection letter (neither of the Defendants have even bothered to depose Ms. Long, nor has Defendant Jefferson issued any written discovery to Plaintiff). The issue, rather, and the claim for relief set forth in Ms. Long's Complaint (Dkt. 1 at ¶¶ 7-8, Dkt. 1-1), is that Defendants' letter fails to state the name of the current creditor in such a way that it would be clear to an unsophisticated consumer who the current creditor is to whom the debt is owed. None of Defendants' arguments, denying that Ms. Long experienced any personal injuries as a result of their misconduct, are, therefore, relevant to the analysis of

whether their letter violated §1692g(a)(2) of the FDCPA, because how their letter would impact an unsophisticated consumer is what is relevant. For this reason, Defendants' motion should be denied.

B. Defendants' Letter Fails To State Effectively The Name Of The Creditor To Whom The Debt Is Owed

Despite Defendants' claim that merely including the name of the creditor somewhere in the letter is enough (Dkt. 47, at p. 18), courts have long held that:

[C]ompliance [with FDCPA §1692g(a)(2)] demands more than simply including that information in some unintelligible form. Otherwise, as we have said, "the collection agency could write the letter in Hittite and have a secure defense."

See, Janetos, 2016 U.S. App. LEXIS 6361 [*7]-[*8] (internal citations omitted). As the Seventh Circuit held in Janetos:

. . . standing alone the fact that the form letter included the words "Asset Acceptance, LLC" did not establish compliance with § 1692g(a)(2). The Act required Fulton's letter to identify Asset Acceptance as the "creditor to whom the debt is owed." 15 U.S.C. § 1692g(a)(2). The letter had to make that identification clearly enough that the recipient would likely understand it.

Janetos, 2016 U.S. App. LEXIS 6361 at [*8]; see also, Chuway v. Nat'l Action Fin. Servs., 362 F.3d 944, 948 (7th Cir. 2004).; Bartlett, 128 F.3d 497, 500; Russell, 74 F.3d 30, 35.

Defendants attempt to distinguish their letter from those in Braatz, Walls, Deschaine, Pardo, and Janetos, but their analysis falls far short (Dkt. 47, at pp. 19-21). Moreover, whether Defendants' letter is more or less confusing than the letters at issue in those cases is of no importance whatsoever.

Defendants' confidence that "the letter clearly and unequivocally relays the unambiguous meaning that the account belongs to JCAP" (Dkt. 47 at p. 17) is entirely

misplaced and their grammar lesson as to the definition of the word “its” is not helpful here. According to Defendants, “[t]he... *absolute possessive pronoun* ‘its’ following the reference to JCAP and in front of the noun ‘account,’ leaves no room for ambiguity or guesswork as to whom the account belongs.” (Id., emphasis added). Defendants may themselves be confused as to the definition of an *absolute* possessive pronoun. A possessive pronoun does not modify a noun, but, rather, stands as a noun on its own, i.e., “Did you finish your draft yet? I have finished *mine*.” Defendants’ letter, actually, uses “its” as a *possessive pronoun*, which modifies the noun ‘account.’

The issue, as Plaintiff pled in her Complaint (Dkt. 1, at ¶ 7), is that there is no statement in Defendants’ letter which informs Ms. Long who owned her debt.

Defendants’ letter stated:

“Please be advised that Fenton & McGarvey Law Firm, P.S.C. has been retained by Jefferson Capital Systems, LLC to collect its account with you”.

See, Dkt. 1-1.

To someone with no familiarity with the debt buying industry, i.e., an unsophisticated consumer, it would be unclear whether “its” refers to Jefferson, F&M, Comenity Bank, or something else, see, Id. at ¶ 8. If an unsophisticated consumer were to consult Jefferson’s website, she would find that it both purchases debts and collects debts on behalf of other companies, see, “About Us” page from Jefferson’s webpage, (“Our clients include creditors and national debt buyers.”)⁷. “Its” account could be an account it owns, or an account it is collecting on for another creditor. In addition to the letter’s confusing, vague use of a possessive pronoun, the sentence at issue is the

7. Available online at: <http://www.jeffersoncapitalinternational.com/us/about-jefferson-capital.html>

letter's *only* mention of Jefferson, see, Dkt. 1-1.

Indeed, Defendants' letter is identical to the one at issue in Janetos, which merely contained the name of the current creditor without explaining that the entity was the current owner of the debt, see Janetos, 2016 U.S. App.LEXIS 6361 at [*2]-[*3],[*8]; Likewise, Defendants' letter contains no clear statement with the sole purpose of informing its recipient who currently owns the debt. For this reason alone, it is likely to confuse an unsophisticated consumer. Whether "its" refers to the subject (F&M), or the object (Jefferson) would be difficult for an unsophisticated consumer to decipher—especially in light of the fact that the letter contains no other explanation.

C. Whether Defendants' Letter Violates The FDCPA May Be Decided By This Court, May Be Put To A Jury At Trial, Or May Be Proved By Extrinsic Evidence -- But Dismissal Is Not Warranted

Plaintiff Long clearly has standing to bring her FDCPA claim on behalf of the putative class (see, Sec. I, above), and has pled facts sufficient to withstand both a motion to dismiss and a motion for judgment on the pleadings (see, Sec. II.A. and B., above). In fact, dismissal of this matter is not warranted, and this Court is left with three options: 1) find that the letter violates the FDCPA on its face (as the Seventh Circuit did in Janetos); 2) put the question of whether the name of the creditor is adequately disclosed to the unsophisticated consumer to a jury (as Judge Shadur astutely suggested in Braatz, see, attached Exhibit A, transcript of April 26, 2012 hearing at p. 2, ln. 8 to p. 4, ln.11); or 3) allow Plaintiff to present extrinsic evidence, in the form of a consumer survey, to determine whether Defendants' letter adequately discloses the name of the creditor to whom the debt is owed.

For their part, Defendants of course wrongly assert that violations of §

1692g(a)(2) of the FDCPA always present a question of law, not of fact, but none of the cases cited by Defendants actually support this conclusion⁸. In Janetos, which overturned summary judgment in favor of a collector, the Seventh Circuit held that if a validation notice does not “identify the current creditor clearly and accurately... a plaintiff need not offer additional evidence of confusion or materiality to prove the violation.”, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*18]. Meanwhile, Pardo, Braatz, Walls and Deschaine all denied debt collectors’ Rule 12(b)(6) motions to dismiss, holding that allegations of consumer confusion as to the name of the creditor were sufficient to withstand a Rule 12(b)(6) motion, see, Pardo, 2015 U.S. Dist. LEXIS 125526 at [*9]; Braatz, 2011 U.S. Dist. LEXIS 123118 at [*3]-[*4]; Walls, 2012 U.S. Dist. LEXIS 68079 at [*4]-[*6]; and Deschaine, 2013 U.S. Dist. Lexis 31349 at [*3].

This Court may very well find, as did the Seventh Circuit in Janetos, that no extrinsic information is necessary to rule in favor of the Plaintiff and the putative class; or the Court may find that the letter is confusing enough to be presented to a jury at trial (see, Exhibit A at p. 4, Ins. 6-11). In the alternative, Plaintiff Long must be given the opportunity to obtain extrinsic evidence, in the form of a consumer survey, to support her claim, see, Pettit v. Retrieval Masters Creditors Bureau, Inc., 211 F.3d 1057, 1061-

8. Defendants wrongly claim that two cases stand for this holding regarding §1692g(a)(2), namely Sheriff v. Gillie, 194 L. Ed. 2d 626, at n. 7, which involved violations of §1692e (prohibition of false or misleading information in connection with the collection of a debt), and noted that where “all of the relevant facts are undisputed, ... the application of the FDCPA to those facts is a question of law” and Walters v. PDI Mgmt. Servs., 2004 U.S. Dist. LEXIS 13972, at [*15]-[*18] (S.D. Ind. 2004), which dealt with plainly false information (that a debt must be disputed by certified mail), which required no extrinsic evidence. (Dkt. 48 at p.9) Neither of these cases support the idea that consumer confusion is a question of law, except when the violation of §1692g(a)(2) is plainly false, see, Janetos, 2016 U.S. App. LEXIS 6361 at [*18].

1062 (7th Cir. 2000); Durkin v. Equifax Check Services, Inc., 406 F.3d 410, 419 and 422-423 (7th Cir. 2005).⁹

CONCLUSION

Plaintiff has stated a claim for relief pursuant to §1692g(a)(2) of the FDCPA because Defendants' letter failed to state adequately the name of the creditor to whom the debt was owed and would likely confuse an unsophisticated consumer. More importantly, Plaintiff has Article III standing because the FDCPA confers the informational right to a clear statement of the name of the creditor – the obfuscation of which has been held by this Court and the Seventh Circuit to constitute a material/ concrete injury-in-fact.

Janet Long, individually and on behalf
of all others similarly situated,

By: David J. Philipps
One of Plaintiff's Attorneys

Dated: June 24, 2016

9. Should this Court conclude that extrinsic evidence is necessary to determine whether Defendants' letter violates the FDCPA, this Court should immediately appoint its own neutral expert to conduct a survey, see, DeKoven v. Plaza Associates, 599 F.3d 578, 582-583 (7th Cir. 2010).

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CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2016 a copy of the foregoing **Plaintiff's Response in Opposition to Defendants' Motions to Dismiss and for Judgment on the Pleadings** was filed electronically. Notice of this filing was sent to the following parties by operation of the Court's electronic filing system. The parties may access this filing through the Court's system.

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