

Additional Disclosure Requirements in Massachusetts for Debt Buyers

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Aylix K. Jensen offers analysis and insights for the debt collection industry in her monthly newsletter, *The Safe Harbor: Debt Collection Law Update by Aylix Jensen*. This monthly newsletter provides an update of changes and developments in the law that impact the debt collection industry. It highlights new debt collection laws and practices, discusses what these may mean for the collection industry, and provides tips to ensure compliance. This article is featured in the September/October 2022 edition.

On September 15, 2022, Encore Capital Group, Inc. (“Encore”) entered into an Assurance of Discontinuance with the Commonwealth of Massachusetts (“Assurance”) based on Encore’s alleged debt collection practices in Massachusetts. As a result of the investigation, the Attorney General concluded that Encore engaged in unfair and deceptive acts and practices in connection with the collection of debts pursuant to G.L. c. 93A, § 2, 940 C.M.R. 7.00 *et seq.*, and G.L. c. 93, § 49. In lieu of litigation, Encore entered into the Assurance with the Attorney General and agreed to pay a total of \$4.5 million to the Commonwealth.

Among other assertions in the Assurance, the Attorney General alleged that Encore did not comply with certain provisions of the regulations promulgated by the Attorney General. Specifically, the Attorney General claimed that Encore “did not include in its initial communication or within five business days thereafter a statement, as required by 940 C.M.R. 7.08, that [Encore] would provide the debtor, or an attorney for the debtor, additional materials described in 940 CMR 7.08(2).”

940 C.M.R. 7.08(1) provides as follows:

(1) It shall constitute an unfair or deceptive act or practice for a creditor to fail to provide to a debtor or an attorney for a debtor the following within five business days after the initial communication with a debtor in connection with the collection of a debt, unless the following information is contained in the initial communication or the debtor has paid the debt:

- (a) The amount of the debt;
- (b) The name of the creditor to whom the debt is owed;
- (c) A statement that unless the debtor, within 30 days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the creditor; and

(d) A statement that if the debtor notifies the creditor in writing within 30 days after receipt of this notice that the debt, or any portion thereof is disputed, the creditor will obtain verification of the debt and provide the debtor, or an attorney for the debtor, additional materials described in 940 CMR 7.08(2).

While paragraphs (a) through (c) above are substantially similar to paragraphs (1) through (3) of section 1692g(a) of the FDCPA, paragraph (d) in 940 C.M.R. 7.08(1) varies slightly and provides different requirements for creditors.¹

Accordingly, this Assurance serves as an important reminder that debt buyers should include a disclosure that tracks paragraph (d) in its initial validation notice sent to Massachusetts consumers, in addition to the disclosure requirements set forth in section 1692g of the FDCPA, to ensure compliance with 940 C.M.R. 7.08.

¹“Creditors” is defined as:

[A]ny person and his or her agents, servants, employees, or attorneys engaged in collecting a debt owed or alleged to be owed to him or her by a debtor and shall also include a buyer of delinquent debt who hires a third party or an attorney to collect such debt provided, however, that a person shall not be deemed to be engaged in collecting a debt, for the purpose of 940 CMR 7.00, if his or her activities are solely for the purpose of serving legal process on another person in connection with the judicial enforcement of a debt.

940 C.M.R. 7.03.

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Practice Areas

Financial Services

