

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

KEITH DIXON,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
LAW OFFICES OF PETER E.	:	
MELTZER & ASSOCIATES, P.C., et al,	:	No. 06-148
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

January 26, 2007

Plaintiff Keith Dixon asserts violations of the Fair Debt Collection Practices Act (“FDCPA”) by Defendants, Law Offices of Peter Meltzer & Associates and Peter Meltzer (“Meltzer Defendants”), and Wachovia Bank, N.A., President G. Kennedy Thompson, Regional President Katie Smarilli, and Senior Vice President of Collections Jay Friedberg (“Wachovia Defendants”). Presently before the Court is Defendants’ motion to dismiss Plaintiff’s Second Amended Complaint. For the reasons that follow, Defendants’ motion is granted.

I. BACKGROUND

Plaintiff disputes the validity of two debts that Defendants assert he owes to Wachovia Bank, N.A. as successor in interest to First Union National Bank, N.A. (*See* Second Am. Compl. ¶¶ 34, 38, 43; Defs.’ Mot. to Dismiss at 2-3.) In August 2003, Dixon sent Wachovia Defendants a letter entitled “Notice To Cease and Desist Collection Activities Prior to Validation of Purported Debt,” in an effort to stop collection efforts and to validate the alleged debt. (Second Am. Compl. ¶ 13 & Ex. P-1 (Aug. 1, 2003 Letter).) After Wachovia Defendants failed to respond within 30 days, as Dixon requested in his letter, he sent a second letter entitled “Notice of Default” on September 2,

2003. (*Id.* ¶ 14 & Ex. P-2 (Sept. 2, 2003 Letter).) In this letter, Dixon stated: “I am formerly [sic] asking you (again) to stop ‘harassing’ me by phone or mail under the Fair Debt Collection Act.” (*Id.* Ex. P-2 at 2.)

Dixon received a letter dated October 1, 2003 from Wachovia Bank informing him that his concerns were being investigated by Wachovia’s legal division and that a response would be sent no later than October 15, 2003. (*Id.* ¶ 16 & Ex. P-3 (Oct. 1, 2003 Letter).) Dixon subsequently mailed another letter on October 8, 2003, again disputing the validity of his alleged debts and asserting that Wachovia was violating federal law through its collection efforts. (*Id.* ¶ 17 & Ex. P-4 (Oct. 8, 2003 Letter).) Wachovia Bank sent a letter to Dixon dated October 14, 2003, denying violation of any federal laws with respect to their collection efforts and concluding that his allegations regarding his account were unwarranted. (*Id.* ¶ 18 & Ex. P-5 (Oct. 14, 2003 Letter).)

On May 10, 2004, Wachovia filed two debt collection actions against Dixon in the Court of Common Pleas of Berks County. (*Id.* ¶ 21 & Exs. P-6 & P-7 (Berks County Complaints, Civ. A. Nos. 04-6250 & 04-6251).) Dixon asserts in his present Complaint that Wachovia’s attorneys, Meltzer Defendants, conspired with Wachovia Defendants to extort money from him by bringing the state court actions seeking \$34,242.89 and \$29,290.75 in alleged debts. (*Id.* ¶¶ 20-21.) Dixon further avers that the verifications, affidavits of lost note, and representations that the loans were for a business entity, “Keith Dixon System” or “Keith Dixon Warehouse Supply,” were fraudulently included in the state court complaints filed by Defendants. (*Id.* ¶¶ 22-23, 27.) Dixon asserts that Defendants violated the FDCPA by misrepresenting the existence, amount, and legal status of his alleged loans and by failing to reference account numbers in the complaints. (*Id.* ¶¶ 24-26.)

Dixon filed identical answers to the state court complaints on June 1, 2004, stating, “It is

specifically denied that Keith Dixon executed a note in favor of First Union National Bank. Keith Dixon has NEVER signed any agreement or note with First Union National Bank.” (*Id.* ¶ 51 & Exs. P-8 & P-9 (Answers to Berks County Complaints).) Defendants sent requests for admissions to Dixon on November 11, 2004, and also attempted to arrange Dixon’s deposition. (*Id.* ¶¶ 52, 55 & Ex. P-10 (Request for Admissions).) Dixon did not attend the scheduled depositions, and therefore Defendants filed a motion to compel his attendance on April 20, 2005. (*Id.* ¶ 55 & Ex. P-12 (Berks County Docket Summaries).) On December 5, 2005, the state court entered an order compelling Dixon’s attendance at his deposition. (*Id.* Ex. P-12.)

Meltzer Defendants noticed Dixon’s deposition a few weeks later, sending Dixon two identical documents (one for each state court action) entitled “Notice of Deposition in Aid of Execution.” (*Id.* ¶ 62 & Exs. P-13 & P-13a (Dec. 23, 2005 Dep. Notices).) As no judgment had been entered against Dixon, the portion of the notices labeled “in execution of judgment” was erroneous. (*Id.* ¶ 64; *see also* Defs.’ Mem. of Law in Supp. of Mot. to Dismiss at 22-23, 23 n.7.) Dixon checked the dockets at the prothonotary’s office and confirmed that no judgments had been entered against him. (Second Am. Compl. ¶ 64.)

Dixon asserts that he has suffered financially, physically and emotionally as a result of Defendants’ actions prior to and during the state court debt collection actions against him. In addition to the alleged violations of the FDCPA, Dixon avers that Defendants violated the Pennsylvania Fair Credit Extension Uniformity Act (“PFCEUA”) and the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“PUTPCPL”). Plaintiff filed a *pro se* Complaint in this Court against Defendants on January 11, 2006. Prior to serving the Complaint, Plaintiff filed a *pro se* Amended Complaint on February 17, 2006. Defendants filed a motion to dismiss the Amended

Complaint on April 24, 2006. As a result, Plaintiff requested leave of the Court to file a Second Amended Complaint. The Court granted Plaintiff's request and denied without prejudice Defendants' motion to dismiss. After Plaintiff filed his Second Amended Complaint on June 19, 2006, Defendants renewed their motion.

II. STANDARD OF REVIEW

In considering a motion to dismiss for failure to state a claim upon which relief may be granted, a court must accept as true all factual allegations pleaded in the complaint and draw all reasonable inferences in favor of the non-moving party. *Bd. of Trs. of Bricklayers & Allied Craftsmen Local 6 of N.J. Welfare Fund v. Wettlin Assocs., Inc.*, 237 F.3d 270, 272 (3d Cir. 2001). A motion to dismiss will be granted only if it is clear that the plaintiff cannot obtain relief under any set of facts that could be proven consistent with the allegations in the complaint. *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

Because it appears on the face of Plaintiff's Second Amended Complaint that his FDCPA claims may be barred by the applicable statute of limitations, the limitations defense is properly raised at this stage of the proceedings. *See Arizmendi v. Lawson*, 914 F. Supp. 1157, 1160 (E.D. Pa. 1996).

III. DISCUSSION

A. Plaintiff's FDCPA Claims Are Time-Barred

FDCPA claims must be filed "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k(d) (2007). This statute of limitations is not subject to waiver or tolling. *Hutt v.*

Albert Einstein Med. Ctr., Civ. A. No. 04-3440, 2005 WL 2396313, *8 (E.D. Pa. Sept. 28, 2005) (citations omitted). The final communication from Wachovia Defendants to Dixon was the letter they sent on October 14, 2003. (*See* Second Am. Compl. Ex. P-5.) Because Dixon filed his initial *pro se* Complaint on January 11, 2006 – more than two years after the letter – Dixon’s FDCPA claim against Wachovia Defendants is time-barred. Similarly, the filing of the state court complaints against Dixon by Meltzer Defendants on May 10, 2004 cannot support a FDCPA claim because it falls outside the statute of limitations and thus is time-barred as well. (*See id.* ¶ 21 & Exs. P-6 & P-7.) Indeed, the only conduct by Defendants that occurred within the one year limit was Meltzer Defendants’ noticing of Dixon’s deposition on December 23, 2005. (*See id.* Exs. P-13 & P-13a.) As explained below, however, Plaintiff fails to state a FDCPA claim against Meltzer Defendants based on the deposition notices.

B. Plaintiff Fails to State a FDCPA Claim Against Meltzer Defendants

The FDCPA is intended to protect consumers by providing a remedy for “abusive, deceptive or unfair debt collection practices by debt collectors.” *Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 232 (3d Cir. 2005). “Attorneys who regularly engage in debt collection or debt collection litigation are covered by the FDCPA, and their litigation activities must comply with the requirements of that Act.” *Id.* (citing *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995)); *see also* 15 U.S.C. § 1692a(6) (defining debt collector). Although conceding that they qualify as debt collectors, Meltzer Defendants assert that Dixon has failed to allege a single violation of any of the statute’s subsections.

The FDCPA prohibits three general categories of conduct by debt collectors: (1) harassment, oppression, or abuse; (2) false, deceptive, or misleading representations; and (3) unfair or

unconscionable practices. *See* 15 U.S.C. §§ 1692d, 1692e, 1692f. Each section lists specific activities that violate the FDCPA. Sending inaccurate deposition notices simply cannot qualify as either harassment, oppression, or abuse under Section 1692d or an unfair or unconscionable practice under Section 1692f.

The remaining section, 1692e, provides that: “[a] debt collector may not use any false, deceptive, or misleading representations or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. The only subsection of 1692(e) that is possibly relevant here is the general catch-all provision, which prohibits “[t]he use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. § 1692e(10). The depositions notices sent by Meltzer Defendants were false insofar as they indicated that Dixon’s deposition was being scheduled “in aid of the execution of judgment” against him. Yet sending the notices could not be a “means to collect” the debts Defendants allege that Dixon owed to Wachovia, because the sole action the notices prompted from Dixon was his appearance at the scheduled deposition. The state court had already issued an order compelling Dixon’s presence at the deposition, and the mislabeled notice simply provided the date upon which Dixon was required to appear. Even assessing Meltzer Defendants’ conduct from the perspective of “the least sophisticated debtor,” the Court concludes that the mislabeled deposition notices are insufficient to state a FDCPA claim against Meltzer Defendants. *See Brown v. Card Serv. Ctr.*, 464 F.3d 450, 454 (3d Cir. 2006) (setting standard for assessing communications from lenders to debtors).

IV. CONCLUSION

The Court finds it necessary to warn Plaintiff of the dangers inherent in filing federal FDCPA actions in bad faith with the principal intent of muddying the waters of ongoing state court debt collection proceedings. The FDCPA exists to protect debtors from abusive debt collection practices, not to permit debtors to gain leverage in state court actions regarding disputed debts.¹

Because Plaintiff's FDCPA claims are time-barred and Plaintiff has failed to state a FDCPA claim against Meltzer Defendants, the Court grants Defendants' motion to dismiss the Second Amended Complaint.² An appropriate Order follows.

¹ Particularly in light of Plaintiff's history of frequent and frivolous filings in similar actions, Defendants' assertion that Plaintiff brought this action in bad faith and as a pretext for embarrassing attorney Peter Meltzer has considerable merit. (*See* Defs.' Reply Mem. of Law in Supp. of Mot. to Dismiss at 2-4, Ex. A (Op. by Honorable Jeffrey Schmehl, Berks County Court of Common Pleas) & Ex. B (Dixon Dep.) ("I have been working on and will be suing Mr. Meltzer in a [FDCPA] suit. And once it is filed it becomes public record. I will be distributing it around Rutgers University. As an adjunct professor of law they should be happy to see one of their own being sued for a violation of federal law."); Defs.' Mem. of Law in Supp. of Mot. to Dismiss Ex. A.)

² Plaintiff also names Defendants John Doe, Jane Doe and One Up; the Court dismisses this action with respect to these Defendants. In addition, the Court declines to exercise supplemental jurisdiction over Plaintiff's state law claims. Accordingly, the Second Amended Complaint is dismissed in its entirety.

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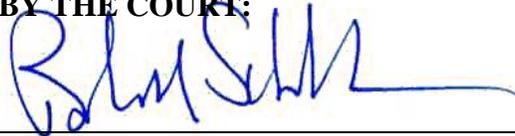
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Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
LAW OFFICES OF PETER E.	:	
MELTZER & ASSOCIATES, P.C., et al,	:	No. 06-148
Defendants.	:	

ORDER

AND NOW, this 26th day of **January, 2007**, upon consideration of Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint, Plaintiff's response thereto, Defendants' reply thereon, and for the foregoing reasons, it is hereby **ORDERED** that:

1. Defendants' motion (Document No. 11) is **GRANTED**.
2. This action is **DISMISSED with prejudice**.

BY THE COURT:



Berle M. Schiller, J.