

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TENNESSEE
 AT KNOXVILLE

DENISE E. SHIPLEY,)	
Plaintiff,)	
)	CASE NO. 3:12-450
v.)	
)	
BUFFALOE & ASSOCIATES, PLC)	ORDER
and)	
CAPITAL ONE BANK (USA), N.A.)	
Defendants)	

*** *** *** ***

This matter is before the Court on the Motion for Partial Dismissal (DE 8) filed by the Defendant Buffalo & Associates, PLC. For the following reasons, the Court will GRANT the motion.

With her Complaint, the Plaintiff alleges that the Defendant Capital One Bank (USA), N.A. issued a credit card to her and that she incurred debt on the card. (DE 1, Complaint, ¶ 7.) She concedes that she defaulted on the debt. (DE 1, Complaint, ¶ 7.) She alleges that Buffalo is a debt collector (DE 1, Complaint, ¶ 5) and that, after she defaulted on the debt, Capital One sold the debt to Buffalo for collection. (DE 1, Complaint, ¶ 8.) She alleges that, on October 3, 2011, Buffalo and Capital One filed a collection action against her in state court.

She alleges that, with these actions, the Defendants violated various provisions of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692, et seq. and the Truth in Lending Act, 15 U.S.C. §§ 1601 et seq.

The Plaintiff asserts that Buffalo violated the following nine provisions of the FDCPA: 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(2)(B), 1692e(8), 1692e(10), 1692e(11), 1692f, 1692f(1), and 1692i(a)(2). The Plaintiff’s FCDPA claims are largely based on her allegations

that the Defendants misrepresented the amount of her debt in the state-court complaint and summons and that Buffaloe failed to disclose in the complaint or summons that it was a debt collector.

The Plaintiff also alleges that both Defendants violated the following 11 provisions of TILA: 15 U.S.C. §§ 1637(b)(4), 1637(b)(5), 1637(b)(6), 1637(b)(7), 1637(b)(8), 1637(b)(9), 1637(b)(10), 1637(b)(11)(A), 1637(b)(11)(B), 1637(b)(12)(A), and 1637(b)(12)(B). The Plaintiff's TILA claims are largely based on her allegations that Buffalo and Capital One failed to send her a periodic statement in the months of August 2011 and September 2011.

With its Motion for Partial Dismissal (DE 8), Buffaloe moves the Court to dismiss all of the TILA claims against it, arguing that it is not a "creditor" or a creditor's "agent" for purposes of TILA and that only creditors and their agents are required to send periodic statements under the Act. Buffaloe also moves to dismiss the FDCPA claims contained in paragraph 43 of the Complaint because they are predicated on the TILA violations.

The Plaintiff has not responded to Buffaloe's Motion for Partial Dismissal. Further, the Court agrees with the analysis in the motion. Accordingly, the Court hereby ORDERS as follows:

1) the Motion for Partial Dismissal filed by Defendant Buffaloe & Associates, PLC (DE 8) is GRANTED;

2) all of the Plaintiff's claims against Buffaloe under the Truth in Lending Act, 15 U.S.C. § 1601 et seq. are DISMISSED; and

3) the Plaintiff's claim set forth in paragraph 43 of the Complaint that the Defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 et seq., by failing to comply with TILA is DISMISSED.

Dated this 21st day of August, 2013.



Signed By:

Karen K. Caldwell *KKC*

United States District Judge