

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**CONSUMER FINANCIAL
PROTECTION BUREAU,**

Plaintiff,

v.

**WELTMAN, WEINBERG & REIS CO.,
L.P.A.,**

Defendant.

Civil Action No. 1:17-cv-00817-dcn

Judge Donald C. Nugent

**Magistrate Judge William H.
Baughman, Jr.**

DEFENDANT’S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Defendant Weltman, Weinberg & Reis Co., L.P.A. (“Weltman”) hereby submits its proposed findings of fact and conclusions of law pursuant to the Court’s May 8, 2018, Order. (ECF No. 84.)¹

I. PROCEDURAL BACKGROUND

Plaintiff is the Consumer Financial Protection Bureau (“CFPB”). Following an investigation that began nearly four years ago, in August 2014, the CFPB filed this suit against Weltman on April 17, 2017. Weltman is a law firm that specializes in creditor rights. Among the services Weltman provides to its clients is collection of debts related to consumer credit obligations. The Complaint alleged that Weltman, in the collection of consumer debt, violated

¹ As the Court is aware, the advisory jury was not asked to address: (a) the statute of limitations defense; (b) the imposition of civil monetary penalties; and (c) any issues relating to the constitutionality of the CFPB as recently addressed in the case of *Consumer Fin. Prot. Bureau v. RD Legal Funding, LLC*, No. 17-CV-890 (LAP), 2018 WL 3094916, at *36 (S.D.N.Y. June 21, 2018) (holding that the CFPB is unconstitutionally structured). Weltman does not address these issues in this submission of proposed findings, which is tailored to the evidence presented to the advisory jury and its advisory verdict in favor of Weltman. If necessary, Weltman will address these additional legal issues at a later date.

Sections 807(3), 807(10), and 814(b)(6) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692e(3), (10), and 1692l(b)(6); and Sections 1031(a), 1036(a)(1), 1054, and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5531(a), 5536(a)(1), 5564, and 5565. (ECF No. 1, ¶ 1.) The crux of the Complaint, in the CFPB’s words, was that “[t]he Defendant engages in unlawful collection activities by misrepresenting the level of attorney involvement in demand letters and calls to consumers.” (*Id.* at ¶ 2.)

The Complaint contained six Counts. Count I alleged that Weltman’s letters to consumers “misrepresented to consumers that the letters were from attorneys and that attorneys were meaningfully involved, when in most cases the attorneys were not meaningfully involved in preparing and sending the letters,” which violated the FDCPA, 15 U.S.C. § 1692e(3), (10). (ECF No. 1, ¶¶ 39, 41.) Count II alleged that the FDCPA violations alleged in Count I violated the CFPA, 12 U.S.C. § 5536(a)(1)(A). Count III alleged that Weltman’s letters were deceptive because they “were prepared and sent without meaningful attorney involvement” in violation of the CFPA, 12 U.S.C. §§ 5531(a)(1), 5536(a)(1)(B). (ECF No. 1, ¶¶ 45, 48.) Counts IV, V, and VI alleged that Weltman’s telephone communications were misleading. (*Id.* at ¶¶ 49-60.) Weltman denied liability as to all six counts. (ECF No. 6.)

Following discovery, both parties moved for summary judgment. (ECF Nos. 44 and 45.) The Court denied those motions on April 9, 2018, by Memorandum Opinion and Order. (ECF No. 61.) The case proceeded to an advisory jury trial on May 1, 2018. (ECF No. 84.)

The CFPB dismissed Counts IV, V, and VI with prejudice (ECF No. 84), proceeding to trial solely on Counts I, II, and III.

The trial took place on May 1, 2018, and an advisory jury of twelve was duly impaneled and sworn pursuant to Fed. R. Civ. P. 39(c)(1). (ECF No. 84.) Following opening statements, the CFPB called three witnesses: Eileen Bitterman, David Tommer, and Ronald Goodstein. (*Id.*) The CFPB rested and Weltman called two witnesses: Chuck Pona and Scott Weltman. (*Id.*) Weltman rested, the parties presented closing arguments, and the Court gave instructions and submitted four interrogatories to the advisory jury. The advisory jury deliberated and returned two unanimous interrogatory answers:

1. Do you find that the Plaintiff proved by a preponderance of the evidence that the initial demand letter sent by Weltman contained any false, deceptive, or misleading representations or means in connection with the collection of a debt? YES
2. Do you find that the Plaintiff proved by a preponderance of the evidence that Weltman's lawyers were not meaningfully involved in the debt collection process. NO

(*Id.*) Because the jury found in favor of Weltman on Interrogatory 2, which was dispositive, it did not reach Interrogatories 3 and 4.

The Court discharged the jury and instructed the parties to submit proposed findings of fact and conclusions of law. (*Id.*)

II. PROPOSED FINDINGS OF FACT

1. Weltman is a nearly ninety-year old law firm headquartered in Cleveland, Ohio, that focuses on creditors' rights. (Tr. 141:13-16; 328:23-25; 488:14-15.)
2. Among the services Weltman provides to its clients is collection of debts related to consumer credit obligations. (Tr. 44:9-15; 45:8-18.)
3. The firm is owned by its 25 shareholders (all of whom are attorneys) and managed by a Board of Directors, consisting of five of Weltman's most experienced

shareholders. (Tr. 184:14-23; 491:2, 9-10; *see also* 126:14-129:1; 130:3-13; 404:6-10.)

4. Weltman recognizes and embraces the importance of fulfilling its legal and ethical obligations under the requirements of stringent federal and state law governing debt collection. (Tr. 122:6-18; 123:5-125:14; 492:10-493:5; 494:15-21.)

5. Weltman maintains a robust compliance management program operated through a Compliance Audit Department that is headed by an attorney shareholder, Eileen Bitterman, with a staff including attorneys and with the capability of drawing upon the expertise of attorneys throughout the firm. (Tr. 123:5-125:14; 126:14-129:1.)

6. One type of consumer debt collection is called “agency collection.” (Tr. 304:22-25.) These collections entail higher file volumes for large clients, many of which are heavily regulated financial institutions. (Tr. 143:3-10; *see also* 141:24-142:3; 331:6-12.)

7. Because Weltman is a law firm, all of its practices, processes, and procedures are designed and implemented under the constant supervision of experienced Weltman attorneys. (Tr. 198:1-217:18; 218:18-223:10; *see also* 123:5-125:14; 126:14-129:1; 130:14-16; 132:4-7.) Not only are these practices, processes, and procedures consistent with the demands of the firm’s sophisticated clients, but they must also adhere to the legal and ethical obligations of attorneys and to state laws where Weltman is bonded, licensed, or registered. (Tr. 123:3-125:14; 492:10-493:5; 494:15-21; 498:6-15.)

8. Weltman’s compliance program is supervised and enforced by the attorney shareholders who manage the firm. (*See* Ex. Q.) Firm management and the Compliance Audit Department work together closely to draft and implement policies and procedures (*i.e.*, the “standard operating procedures”), and the attorneys of the management committee ultimately

approve them. (Tr. 411:22-412:7; 412:6-7.)

9. Weltman's standard operating procedures are extensive, documented in writing, and evolve with changes in law and regulation. (Exs. Q-V, Y-II, LL-QQ, SS-WW, DDD, GGG, III, JJJ, SSS; Tr. 131:2-136:17; *see also* 180:1-181:22; 198:1-217:18; 218:18-223:10.) They are drafted and enforced by attorneys. (Tr. 198:1-217:18; 218:18-223:10).

10. In addition to establishing policies and procedures, Weltman trains its employees to follow them. Weltman has an extensive training program, designed and implemented by its Compliance Audit Department, to provide its non-attorney staff with a working knowledge of the applicable laws and proper ways to interact with consumers. (Tr. 123:12-21; 181:8-22; *see also* Exs. V, X.) For example, Weltman offers online training to employees and enforces a Corporate Development and Compliance Training Policy under which the Compliance Audit Department develops and regularly schedules training courses for all employees. (Tr. 181:8-22; Ex. V.)

11. Weltman also routinely audits its extensive policies and procedures. (Tr. 124:15-17.) It conducts both internal and client audits. (*Id.*; *see also* Tr. 200:8-14; Ex. VV.) The audits can occur daily, monthly, weekly, annually, or quarterly, whether on-site or remotely. (Tr. 216:13-16.) The audit component allows Weltman to continually review its policies and procedures and update them based on industry developments. (Tr. 125:8-14.)

12. Weltman's attorneys and non-attorney staff also interact daily. (Tr. 409:24-411:2). Weltman attorneys have an open-door policy with their non-attorney staff in all aspects of the business, and Weltman's attorneys frequently meet with non-attorney personnel and managers from the firm's various divisions to discuss everything from changes in client processes and procedures to developments in recent case law. (*Id.*)

13. In the agency collection context, Weltman begins its file evaluation and handling process with a series of conversations with the client. (Tr. 149:8-151:23.) In those conversations, Weltman attorneys and staff evaluate the characteristics of the accounts for which collection services are sought to make recommendations to the client about the appropriate collection activity. (Tr. 149:8-151:23; 329:22-332:19; 416:3-418:5.)

14. During those discussions, Weltman requests examples of background documentation relating to the files. (Tr. 149:8-151:23; 416:3-418:5; 434:10-435:5.)

15. Weltman's attorneys are recognized experts in debt collection; what they ask to review is based upon their professional judgment and the specific issues that relate to the types of files being handled. (Tr. 152:16-157:19; 169:7-18; *see also* 420:10-426:11; 428:12-431:1; 431:11-434:6.)

16. For example, the handling of credit card matters involving a written contract or debt on an account could involve attorney analysis and evaluation of the terms and conditions that govern the credit card, the application that was provided to obtain the card, the last payment date on the account, and the availability of monthly account statements. (Exs. L, M, P; Tr. 420:10-426:11.)

17. Weltman reviews a subset of accounts when a new client places a debt portfolio and when existing clients place new portfolio. (Tr. 149:8-151:23; 309:18-21; 417:5-16; 434:10-21; 451:14-24; 477:12-478:5.) And an attorney from the Compliance Audit Department is always brought into conversations to address compliance issues at the outset. (Tr. 157:2-158:25.) If the client maintains individual customer account information electronically and can provide it to Weltman electronically (an "electronic placement"), Weltman's information

technology support staff works with the client to facilitate electronic data transfers and test the data. (Tr. 166:7-11; *see also* 46:17-25; 159:3-21.)

18. After completing due diligence for a new or existing client, Weltman negotiates contract terms. (Tr. 418:19-22.) In these contracts, clients warrant to Weltman that they are submitting to Weltman valid claims that are due and owing for collection. (Tr. 419:18-25.)

19. Weltman's attorneys, and staff supervised by attorneys, continue to collect information from the client, review documentation, and test data until they are satisfied that the files are appropriate for collection. (Tr. 149:8-151:23; 434:10-435:12; *see also* 167:21-169:18.)

20. When that process is completed, the electronic data is loaded and a series of electronic "scrubs" take place both before collection activity is undertaken and throughout the collection process. (Tr. 159:11-167:14; 194:7-196:10; 436:18-438:6.)

21. Weltman's scrubs, designed by attorneys in accordance with governing law, identify bankruptcies, deaths, military service, and potential statute of limitations issues, because a "hit" on an account immediately affects the handling of that account based on the information that is received. (Tr. 159:11-167:14; 194:7-196:10; 208:1-15; 208:17-209:3; 211:10-21; 436:18-438:6.) The scrub process is created and overseen by Weltman's Compliance Audit Department, attorneys within that department, and the attorneys responsible for particular business units. (Tr. 331:3-7; 438:1-6.)

22. After Weltman has concluded this preliminary evaluation, an initial demand letter is generated from a template. (Ex. F; Tr. 50:22-51:5.)

23. The template is prepared by attorneys and approved by Weltman's Compliance Audit Department. (Tr. 50:18-24; 50:22-51:2; 480:17-20.)

24. The initial demand letter is calculated to advise the putative debtor (1) that the debt has been placed with Weltman for collection and (2) that the consumer has specific rights under the FDCPA. (Tr. 172:4-178:1; 439:1-440:2.)

25. This demand letter is sent on Weltman letterhead to accurately convey the facts that Weltman is a law firm that has been retained to collect the putative debt; no more, no less. (Tr. 121:13-22; 172:2-17; 438:7-18.) The letter does not state that an attorney has reviewed the particular circumstances of the account, it does not mention any potential legal action, and it is not signed by an attorney. (*See* Ex. F.)

26. The template reads,² in its entirety:

Please be advised that the above referenced account has been placed with us to collect the outstanding balance due and owing on this account to the current creditor referenced above. As of the date of this letter you owe the amount listed above. Therefore, it is important that you contact us at [phone number] to discuss an appropriate resolution for this matter.

This communication is from a debt collector attempting to collect this debt for the current creditor and any information obtained will be used for that purpose. Unless you dispute the validity of this debt, or any portion thereof, within thirty (30) days after receipt of this letter, we will assume the debt is valid. If you notify us in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, we will obtain verification of the debt or a copy of a judgment and a copy of such verification or judgment will be mailed to you. If you request in writing within the thirty (30) day period, we will provide you with the name and address of the original creditor if different from the current creditor.

Thank you for your attention to this matter.

Sincerely,

² An earlier version of this template, in effect no later than November 2013, read: "This law firm is a debt collector attempting to collect this debt for our client and any information will be used for that purpose." (Ex. 8; Tr. 65:6-66:25.) Weltman's reference to itself as a "law firm" in this earlier template was truthful. (Tr. 65:1-9.)

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(Ex. F.)

27. Most of the content of the letter comes from the FDCPA. The first two sentences provide the information required by 15 U.S.C. § 1692g(a)(1) and (2). (Tr. 172:4-177:10.) The disclosure in the next paragraph that the communication is from a debt collector is nearly identical to the language of 15 U.S.C. § 1692e(11), and the rest of that paragraph contains the exact language required by § 1692g(a)(3)-(5). (Tr. 177:11-20; 523:12-19.)

28. Weltman's attorneys are meaningfully involved in the debt collection process, including the process by which letters are sent on Weltman's letterhead to consumers.

29. On July 1, 2009, Richard Cordray, the CFPB's former director, signed a certificate appointing Alan Weinberg of Weltman as Special Counsel to the Ohio Attorney General to collect debts for the State of Ohio. (Ex. B; Tr. 234:8-235:22; *see also* 226:15-20; 227:11-20; 228:4-10.)

30. The process to obtain that appointment involved an 80-page response to a Request for Qualifications that detailed Weltman's collection practices. (Ex. A; *see also* Tr. 227:11-20; 228:4-229:23.) Weltman disclosed in that response that it specialized in high volume placements, made innovative use of technology in its debt collection work, and had a non-attorney staff that was more than nine times the size of its attorney staff. (*Id.* at A8, A12; Tr. 230:6-10; 230:15-231:1; 231:16-23; 233:8-15.) Weltman also truthfully represented that, with approximately 100 attorneys, it attempted to collect nearly 730,000 debts in 2008, (Ex. A at A12, A15, A16; *see also* Tr. 233:8-234:6), and that non-attorney collectors worked the files in tandem with Weltman's attorneys, (Ex. A at A8; Tr. 233:8-15.)

31. Following the same appointment process, Mr. Cordray appointed Mr. Weinberg again in 2010. (Ex. H; Tr. 243:21-244:23.) And during the years Mr. Weinberg and Weltman collected the State's debts, their performance was reviewed quarterly by the Ohio Attorney General's office under a policy requiring nothing less than complete respect for the rights and reasonable expectations of the public. (Ex. C at C3, C10, C13; Tr. 50:15-52:8; 236:9-238:14; 497:5-13.) The Ohio Attorney General's office also mandated compliance with state and federal debt collection laws, including the FDCPA. (*See* Ex. C at C10, C12-13; Tr. 236:20-239:8.)

32. During the representation, the Ohio Attorney General's office required that Mr. Weinberg use Ohio Attorney General letterhead to collect the State's debts. (Tr. 239:9-241:24; *see also* Ex. E.) Mr. Cordray's name and the title "Ohio Attorney General" were centered in large font, and the letterhead provided the website for the Ohio Attorney General. (Ex. E; Tr. 239:9-241:24.) Each letter advised that Mr. Weinberg was acting for "Richard Cordray, Attorney General of Ohio, for purposes of collecting the above account balance due and owing to the State of Ohio." (Ex. E.) The letters required that payment be made to "the State of Ohio." (*Id.*) None of the letters advised the recipient that the Attorney General had not reviewed the recipient's file prior to the letter being sent on his letterhead. (*See id.*)

33. During the time Mr. Weinberg and Weltman collected debts on the Ohio Attorney General's behalf, Weltman used the same processes, policies, and procedures that are at issue in this case. (Tr. 231:9-23; 245:19-246:19.) Weltman applied the same technology, electronic communication procedures, and scrub protocols during that representation. (Tr. 230:19-231:23; 245:19-246:19.) In addition, the level of Weltman attorney involvement was the same. (Tr. 239:16-240:3; 245:19-246:19.) To the extent that the letter template used to collect debts for Mr. Cordray substantively differed from Weltman's own form demand letters, the extra verbiage

came from the Ohio Attorney General. (*Compare* Ex. E, *with* Ex. F; Tr. 241:18-24.) There was no difference in the processes or procedures that led to that letter. (Tr. 245:10-246:19.)

34. Neither Mr. Cordray nor anyone else in the Ohio Attorney General's office ever told Weltman that its procedures were not in compliance with the law or took any action to terminate Weltman's contract. (Tr. 238:21-239:8; 242:14-16.)

35. Before filing the Complaint, the CFPB conducted an extensive investigation of Weltman's practices. (Tr. 251:20-256:2.) That investigation began nearly four years ago, in August 2014. (*Id.*) The CFPB's investigation entailed four comprehensive Civil Investigative Demands, and Weltman cooperated completely, providing the CFPB with hundreds of thousands of pages of documents, over a million call recordings, and the sworn testimony of two Weltman shareholders. (*Id.*)

36. Despite access to these materials—and with 4.2 million form demand letters sent to consumers between July 1, 2011, and October 31, 2017—the CFPB never identified a single consumer who was harmed by Weltman's conduct. (Tr. 91:7-10; 254:25-255:3; 255:24-256:2.)

37. No consumers were called to testify at the trial. The CFPB offered no evidence that any consumer has been harmed by Weltman's collection practices—no evidence that any consumer has paid a debt that was not owed, no evidence that any consumer has been misled, and no evidence that any consumer has been confused. (Tr. 249:18-251:17; 254:25-255:3; 255:24-256:2.)

38. Instead, the CFPB called an expert witness, Dr. Ronald Goodstein, to testify that four out of every ten people (40%) who received a Weltman demand letter thought that a lawyer had "reviewed" their account. (Tr. 378:5-19.)

39. Dr. Goodstein did not survey the participants to determine what they expected an attorney had done to review their account. (Tr. 388:14-390:12.) Dr. Goodstein did not ask participants whether a review of the type conducted by Weltman's lawyers was consistent with the type of review they expected to have occurred. (Tr. 389:5-390:12.) Dr. Goodstein did not ask participants whether their expectations that a lawyer had reviewed their account would have influenced their decision about whether to pay the debt that was owed or if they would have prioritized when to pay the debt.

40. No evidence was presented at trial about the circumstances of any particular consumer's account or the specific collection activity in which Weltman engaged with regard to any particular consumer's account.

III. CONCLUSIONS OF LAW

1. This Court has subject-matter jurisdiction over this action, which is brought under the laws of the United States. 28 U.S.C. § 1331.

2. Defendant Weltman is a debt collector under the FDCPA, 15 U.S.C. §1692a(5), (6), and a covered person under the CFPA, 12 U.S.C. § 5481(5), (6), (15).

3. The CFPB's three claims are straightforward and based on a single legal theory: the collection letters Weltman sends to consumers misrepresent the level of attorney involvement in the collections process. Thus, to prove its case by a preponderance of the evidence, the CFPB must prove that (a) Weltman's letters imply to the least sophisticated consumer, under the FDCPA, or the reasonable consumer, under the CFPA, that they are sent by an attorney, **and** (b) Weltman's attorneys were not meaningfully involved in the debt collection process, **and** (c) the

implication that Weltman's letters were sent by an attorney was material. (*See* Tr. 540:18-541:5 (Charge of the Court).)

4. For the reasons below, the advisory jury's interrogatory responses are consistent with the evidence presented at trial and a verdict in favor of Weltman.

5. The FDCPA "bars debt collectors from deceiving or misleading consumers[.]" *Sheriff v. Gillie*, --- U.S. ---, 136 S. Ct. 1594, 1603 (2016). But "it does not protect consumers from fearing the actual consequences of their debts." *Id.*

6. Under FDCPA § 1692e(3), a debt collector may not falsely represent or imply that any communication is "from an attorney." Similarly, FDCPA § 1692e(10) prohibits the "use of any false representation or deceptive means to collect or attempt to collect any debt." The mere fact that a letter is written on law firm or attorney letterhead does not, however, violate the FDCPA. *See, e.g., Gillie*, 136 S. Ct. at 1598, 1600-01.

7. The Sixth Circuit has applied a "least sophisticated consumer" standard to determine whether a debt collector's practice is deceptive or misleading under § 1692e. This standard is "lower than simply examining whether particular language would deceive or mislead a reasonable debtor," *Smith v. Computer Credit, Inc.*, 167 F.3d 1052, 1054 (6th Cir. 1999), but it does not create a free-for-all. The standard "preserv[es] a quotient of reasonableness," prohibiting "frivolous misinterpretations or nonsensical interpretations of being led astray." *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 592 (6th Cir. 2009) (citing *Fed. Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 514 (6th Cir. 2007)).

8. The hypothetical least sophisticated consumer is "uninformed, naive, and trusting, but possesses . . . reasonable intelligence, and is capable of making basic logical

deductions and inferences.” *Sanford v. Portfolio Recovery Assocs., LLC*, No. 12-11526, 2013 WL 3798285, at *12 (E.D. Mich. July 22, 2013) (quoting *Williams v. OSI Educ. Servs., Inc.*, 505 F.3d 675, 678 (7th Cir. 2007)).

9. Courts have held that when an attorney signs a letter on law firm letterhead, the least sophisticated consumer may believe that the attorney was involved in the debt collection process. *See, e.g., Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996); *Clomon v. Jackson*, 988 F.2d 1314 (2d Cir. 1993); *Miller v. Wolpoff & Abramson, LLP*, 321 F.3d 292, 301 (2d Cir. 2003) (Sotomayor, J.). Thus, if the attorney signs a letter but is not sufficiently involved in the debt collection process, that act is false, deceptive, or misleading under the FDCPA.

10. Whether an attorney is sufficiently involved “turns on a case-specific analysis.” *Miller v. Upton, Cohen & Slamowitz*, 687 F. Supp. 2d 86, 97 (E.D.N.Y. 2009). In other words, there is no minimum standard for whether an attorney is sufficiently involved in the debt collection process. *See Miller*, 321 F.3d at 304.

11. Similar to the FDCPA, the CFPA prohibits “any unfair, deceptive, or abusive practice” regarding consumer products or services. 12 U.S.C. § 5336.

12. The standard under § 5536(a)(1)(B) of the CFPA “is the same as the standard under § 5(a) of Federal Trade Commission Act . . . , which prohibits unfair or deceptive acts or practices in or affecting commerce.” *C.F.P.B. v. Frederick J. Hanna & Assocs., P.C.*, 114 F. Supp. 3d 1342, 1369-70 (N.D. Ga. 2015) (internal citation omitted). To establish liability for allegedly deceptive practices under the CFPA, the CFPB must prove “(1) there was a representation, (2) the representation was likely to mislead [consumers] acting reasonably under the circumstances, and (3) the representation was material.” *Id.* at 1370 (applying FTC Act

standard to CFPA claims); *see also F.T.C. v. E.M.A. Nationwide, Inc.*, 767 F.3d 611, 630 (6th Cir. 2014) (applying same standard to claims under Section 5 of the FTC Act).

13. When determining whether a representation is likely to mislead a consumer under the FTC Act (and, correspondingly, the CFPA), courts apply a “reasonable consumer” standard. *E.M.A. Nationwide*, 767 F.3d at 631.

14. While the standard is the “reasonable consumer” under the CFPA rather than the “least sophisticated consumer” used in the FDCPA, the analysis as to whether a particular act is unfair, deceptive, or abusive is otherwise the same.

15. Only “material” violations can result in liability under either the FDCPA or the CFPA. *See, e.g., Wallace v. Washington Mut. Bank, F.A.*, 683 F.3d 323, 326-27 (6th Cir. 2012) (discussing the FDCPA’s materiality requirement); *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 366 (7th Cir. 2018) (same); *Frederick J. Hanna*, 114 F. Supp. 3d at 1370 (addressing the CFPA’s materiality requirement).

16. Under the FDCPA, a technically false representation is “material” only if it would influence the least sophisticated consumer’s decision whether and when to pay a debt. *See, e.g., Boucher*, 880 F.3d at 366; *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623, 627 (7th Cir. 2009); *Midland Funding LLC v. Brent*, 644 F. Supp. 2d 961, 969 (N.D. Ohio 2009), *modified on other grounds on reconsideration*, No. 3:08CV1434, 2009 WL 3086560 (N.D. Ohio Sept. 23, 2009).

17. Similarly, a false representation is material under the CFPA only if it would be likely to influence a reasonable consumer to pay a debt. *See Fanning v. F.T.C.*, 821 F.3d 164, 173 (1st Cir. 2016) (considering whether consumers “altered their behavior” and whether a

representation would “influence” a consumer’s decision in evaluating the materiality element under Section 5 of the FTC Act); *see also F.T.C. v. Johnson*, 96 F. Supp. 3d 1110, 1133 (D. Nev. 2015); *F.T.C. v. Renaissance Fine Arts, Ltd.*, No. 1:94-CV-0157, 1994 WL 543048, at *7 (N.D. Ohio Sept. 1, 1994).

18. Weltman’s letters are sent on Weltman’s letterhead and sent from the law firm as a debt collector. These letters do not mislead consumers about the level of attorney involvement in the debt collection process because Weltman’s attorneys are meaningfully involved in that process.

19. Because Weltman’s letters do not misrepresent the level of attorney involvement, they do not violate FDCPA §§ 1692e(3), (10) nor do they violate the CFPA, 12 U.S.C. § 5336.

20. Alternatively, Weltman cannot be held liable for violating either FDCPA §§ 1692e(3), (10) or the CFPA, 12 U.S.C. § 5336, because the CFPB presented no evidence that the representation that Weltman’s demand letters are from an attorney—even if false—is material. That is, the CFPB presented no evidence of any kind that any representation that Weltman’s demand letters are from an attorney is likely to influence the decision of any consumer—whether the “least sophisticated consumer” under the FDCPA or the “reasonable consumer” under the CFPA—as to whether and when to pay a debt.

21. It follows that, consistent with the applicable law and the evidence at trial, the Court will enter judgment in favor of Weltman on Counts I, II, and III of the Complaint.

Dated: June 29, 2018

Respectfully submitted,

s/ Ryan A. Doringo

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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following at their e-mail addresses on file with the Court:

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s/ Ryan A. Doringo

One of the Attorneys for Weltman, Weinberg &
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