

Forgiveness of Debt Can Prove Unforgiving, But a New Federal Court Decision Gives Cause for Optimism

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A federal court in New Jersey recently dismissed a putative class action filed under the Fair Debt Collection Practices Act, which had argued that it was deceptive conduct for a debt collector to inform the debtor that forgiveness of debt, in some circumstances, may be reportable to the Internal Revenue Service. The specific language included in the debt collector's letter was as follows: "We will report forgiveness of debt as required by the IRS regulations. Reporting is not required every time a debt is canceled or settled, and might not be required in your case."

The debtor in the case claimed that this language was deceptive because his debts were not subject to reporting. However, contrary to the debtor's claim, simply invoking the IRS does not violate the FDCPA. The Court concluded that the IRS disclosure was not a representation of the law but instead contained only factual statements and could not violate the FDCPA. The Court found only one reasonable interpretation for the IRS disclosure: "in certain circumstances, debt settlement and/or discharge may be reportable to other IRS, not all settlements and/or discharges are reportable, and that the subject statement may not be applicable to the reader."

For debt collectors, the key takeaway from this decision was the Court's reliance on explicit clarifying language in the IRS disclosure. Other courts have refused to dismiss cases where the IRS disclosure did not include this clarifying language: See *Medina v. AllianceOne Receivables Mgmt.*, No. 16-4664, 2017 WL 220328, at * 1 (E.D. Penn. Jan. 19, 2017)(finding possible FDCPA violation because IRS disclosure stating "we will report forgiveness of debt as required by IRS regulations" could be open to two interpretations, one of which was inaccurate); *Bautz v. ARS Nat'l Servs.*, No. 16-cv-768(JFB)(SIL), 2016 WL 7422301, at* 1 (E.D.N.Y. Dec. 23, 2016).

Download a copy of the decision here, [Schultz v. Midland Credit Management, Inc.](#), No. 16-4415(JLL) (D.N.J. May 8, 2017).

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Topics

New Jersey, IRS, Federal, FDCPA, Debt Collection, Fair Debt Collection Practices Act