UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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JENNIFER CARALL, individually and on behalf of all others similarly situated,

Plaintiff,
-v-

THE CBE GROUP, INC.,
Defendant.
----------X

Case No. 17-cv-3678 (SFJ)(ARL)
**Memorandum and Order**

FEUERSTEIN, J., Senior District Judge

## I. Introduction

Plaintiff Jennifer Carall ("Plaintiff") brings this putative class action against Defendant The CBE Group, Inc. ("Defendant") under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq* (the "FDCPA"). (*See* Class Action Complaint, ECF No. 1 (hereafter, "Complaint").) Pursuant to Federal Rule of Civil Procedure 12(c), Defendant seeks judgment in its favor based on the pleadings. (*See* Rule 12(c) Motion (ECF No. 15) (hereafter, "Motion").) Plaintiff opposes the Motion (*see* ECF No. 15-3 (hereafter, "Opposition").) For the reasons that follow the Motion is GRANTED.

## II. Background

### *A. Factual Background*[1]

Plaintiff, an individual residing in Suffolk County, New York, is a consumer as defined under the FDCPA. Defendant is a debt collector as defined under the FDCPA. Defendant alleges Plaintiff owes a debt (hereafter, the "Debt"). Following Plaintiff's default, the Debt was assigned or otherwise transferred to Defendant for collection. Defendant sent Plaintiff a letter dated June 17, 2016 (hereafter, the "Collection Letter"), which stated, *inter alia*:

[1] The facts are drawn from Plaintiff's Complaint and are assumed to be true.

Call: (855)722-9161
Regarding: Verizon Wireless
**Account Number**: [redaction]0001
CS Number: [redaction]854
Reference Number: 0180
Principal: $649.07
Collection Fees: $116.83
Balance: $765.90

(Collection Letter, attached as Ex. 1 to Complaint (ECF No. 1-1) (located in top, right corner of Letter, within an outlined box).) In the middle of the letter was the following table:

| Disconnect Date | Service/Equipment | Amount | Collection Fees | Total Due |
|---|---|---|---|---|
| 01/17/16 | SERVICE AMOUNT | $649.07 | $116.83 | $765.90 |
| | | | Total Amount Due: | $765.90 |

Service Address: [street address, city, state, zip code].

(*Id.*)

*B. Procedural Background*

On June 19, 2017, Plaintiff commenced this FDCPA action against Defendant. (*See* Complaint.) The majority of her allegations assert violations of § 1692g(a)(1) of the FDCPA. More specifically, Plaintiff alleges that notwithstanding the Collection Letter stating "'Collection Fees' of $116.83" (Complaint ¶27), it fails, *inter alia*: to provide information allowing Plaintiff and the least sophisticated consumer to determine what she "will need to pay to resolve the debt at any given moment in the future" (*id.* at ¶¶28, 29); to provide the "date such collection fees will be added" (*id.* at ¶30) or "indicate the amount of collection fees during any measurable period" (*id.* at ¶32); "to contain an explanation, understandable to the least sophisticated consumer, of any collection fees that *may* cause the amount stated to increase in the future" (*id.* at ¶33 (emphasis added)); and "to state whether collection fees are accruing" (*id.* at ¶34). These failures, Plaintiff alleges, renders the least sophisticated consumer unable to determine: the

amount of his debt (*see id.* at ¶37); the minimum amount owed (*see id.* at ¶35); the amount to be paid to resolve the debt (*see id.* at ¶36); and, whether or not the debt is static (*id.* at ¶38). Plaintiff also alleges that from the least sophisticated consumer's perspective, the Collection Letter does not clearly, accurately, and without ambiguity convey the amount of the debt at issue. (*see id.* at ¶¶39-41); fails "to disclose whether the amount stated may increase due to additional late fees" (*id.* at ¶45); and fails "to indicate whether [CBE] will accept payment of the amount stated in full satisfaction of the debt" if paid by a specified date (*id.* at ¶45).

Plaintiff further alleges violation of § 1692e of the FDCPA, claiming that "because interest and late fees were always charged on the account and Plaintiff was never informed by anyone that interest and late fees would no longer be applied," the Collection Letter could reasonably be read by the least sophisticated consumer to mean different things, *i.e.*: "that collection fees were still accruing" (*id.* at ¶48); "that collection fees were no longer accruing" (*id.* at ¶49); "that the debt could be satisfied in full by payment of the amount stated"(*id.* at ¶50); "that the debt could be satisfied in full by payment of the amount stated at any time after receipt of the [Collection] Letter" (*id.* at ¶51); or, "that the amount stated was accurate only on the date of the [Collection] Letter because of the continued accumulation of collection fees" (*id.* at ¶52). Thus, since the Collection Letter is susceptible to two or more reasonable meanings by the least sophisticated consumer, one of which is inaccurate, the Plaintiff further alleges it is deceptive and, therefore violates § 1692e. (*See id.* at ¶¶53, 54.)

On August 28, 2017, Defendant answered Plaintiff's Complaint, denying the majority of her allegations. (*See* Answer (ECF No. 6).) On January 29, 2018, Defendant moved for judgment on the pleadings (*see* Motion (ECF No. 15)), which Plaintiff opposed (*see* Opposition (ECF No. 15-3)), and to which Defendant replied (*see* Reply (ECF No. 11)).

*C. The Parties' Positions*

Anticipating the Plaintiffs' reliance upon *Avila v. Riexinger & Associates*, 817 F.3d 72 (2d Cir. 2016), the Defendant argues that the Collection Letter does not raise the issue addressed by the Second Circuit in *Avila*, *to wit*, that if the debt is not static, a creditor must disclose that the amount due is subject to increase because of accruing interest and fees. (*See* Motion at 3-6.) It also contends that "Plaintiff fails to allege that 'paying the amount listed' in CBE's letter would, in fact, result in anything other than payment in full. A belief that payment of the amount indicated in CBE's letters[[2]] would be payment in full would therefore be 100% accurate." (*Id.* at 6 (emphasis in original; internal citation omitted).) Hence, the Collection Letter does not violate the FDCPA. Further, the Defendant contends that it has no affirmative obligation to state the amount due will not change in the future. (*See id.* at 6-8 (discussing and quoting *Dick v. Enhanced Recovery Co.*, LLC, No. 15-cv-2631, 2016 WL 5678556 (E.D.N.Y. Sept. 28, 2016), and *DeRosa v. CAC Fin. Corp.*, 278 F. Supp.3d 555 (E.D.N.Y. 2017)).)

In opposition, Plaintiff contends "that Defendant's lack of disclosures concerning the nature of the collection fees, combined with the absence of any sufficient 'safe harbor' language, renders the [C]ollection [L]etter susceptible to an inaccurate reading by the least sophisticated consumer as to the amount of the debt." (Opposition at 1 (citing *Carlin v. Davidson Fink LLP*, 852 F.3d 2017, 2016 (2d Cir. 2017).) She also asserts that "in the absence of a clear and unambiguous statement as to what Plaintiff will need to pay to fully resolve the debt at any given moment in the future, the least sophisticated consumer would not know whether collection fees would continue to accrue alongside further collection efforts." (*Id.* at 2.) She contends that since

[2] The Defendant asserts that its subsequent dunning letters to the Plaintiff establish that the amount sought from Plaintiff was static and that the Court's consideration of those letters is proper within the context of a Rule 12 motion. (*See* Motion at 5.)

"it would be neither bizarre nor idiosyncratic for the least sophisticated consumer to interpret the [Collection L]etter to mean that additional collection fees may be added to the total balance in the future . . ." or "to mean that there is a flat rate collection fee," one of these interpretations must be inaccurate, thereby violating both 15 U.S.C. §§ 1692g(a)(1) and 1692e. (*Id.*) Plaintiff relies primarily on *Carlin* to support her § 1692g(a)(1) claim, asserting, *inter alia*, "*Carlin* is not concerned with the literal accuracy of a collection notice, but rather with whether the least sophisticated consumer would inaccurately interpret same." (*See id.* at 7 (citing *Carlin*, 852 F.3d at 216; *see also id.* at 4-8.) Further, in arguing she states a plausible § 1692e claim because the Collection Letter is "'open to more than one reasonable interpretation, at least one of which is inaccurate'", *i.e.*, the "Total Balance Due" could reasonably be interpreted as being either dynamic or static, Plaintiff relies on the Circuit Court's decision in *Clomon v. Jackson*, 998 F.2d 1314 (2d Cir. 1993). (*See id.* at 9 (quoting *Clomon*, 988 F.2d at 1319); *see also id.* at 10.)

Defendant counters Plaintiff's arguments, claiming reliance upon cases involving collection letters with changing balances, which is not the case here, and that "[a]bsent an allegation the debt reference[d] in CBE's letter was subject to change, Plaintiff has failed to state a cause of action. No such allegation exists and no basis exists for the assertion of such an allegation." (Reply at 5; *see also id.* 1-4.)

## III. Discussion

### *A. Standard re: Motion for Judgment on the Pleadings*

The standard for dismissal under Rule 12(c) of the Federal Rules of Civil Procedure is the same as for dismissal under Rule 12(b)(6) for failure to state a claim, *see Irish Lesbian and Gay Org. v. Giuliani*, 143 F.3d 638, 644 (2d Cir. 1998), which is that a plaintiff plead sufficient facts "to state a claim for relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

"A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' " *Id.* (quoting *Twombly*, 550 U.S. at 555). "Nor does a complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.' " *Id.* (quoting *Twombly*, 550 U.S. at 557). "Factual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

In deciding a Rule 12(b)(6) motion, the court must liberally construe the claims, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. *See Aegis Ins. Servs., Inc. v. 7 World Trade Co., L.P.*, 737 F.3d 166, 176 (2d Cir. 2013) (quotations and citation omitted); *Grullon v. City of New Haven*, 720 F.3d 133, 139 (2d Cir. 2013). However, this tenet "is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." *Id.* at 679. "In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." *Id.*; *see also Ruston v. Town Bd. for Town of Skaneateles*, 610 F.3d 55, 59 (2d Cir. 2010). Nonetheless, a plaintiff is not required to plead "specific evidence or extra facts beyond what is needed to make the claim plausible." *Arista Records, LLC v. Doe 3*, 604 F.3d 110, 120-21 (2d Cir. 2010); *accord Pension Benefit Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt., Inc.*, 712 F.3d 705, 729-30 (2d Cir. 2013). "When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Iqbal*, 556 U.S. at 679.

Moreover, when deciding a Rule 12(b)(6) motion, the court must limit itself to the facts alleged in the complaint, which are accepted as true; to any documents attached to the complaint as exhibits or incorporated by reference therein; to matters of which judicial notice may be taken; or to documents upon the terms and effect of which the complaint "relies heavily" and which are, thus, rendered "integral" to the complaint. *Chambers v. Time Warner, Inc.*, 282 F.3d 147, 152-53 (2d Cir. 2002); *see also ASARCO LLC v. Goodwin*, 756 F.3d 191, 198 (2d Cir. 2014). The Collection Letter, attached as an exhibit to the Complaint, is properly considered on CBE's Motion.

*B. The FDCPA*

1. Generally

Congress enacted the FDCPA "with the aim of eliminating abusive practices in the debt collection industry, and also sought to ensure that 'those debt collectors who refrain from using abusive debt collection practices are not completely disadvantaged." *Jacobson v. Healthcare Fin. Servs., Inc.*, 516 F.3d 85, 90 (2d Cir. 2008) (quoting 15 U.S.C. § 1692(e)). The statute should be construed liberally. *See Katz v. Sharinn & Lipshie*, PC, 12-cv-2440, 2013 WL 4883474, *1 (E.D.N.Y. Sept. 11, 2013)(collecting cases); *see also McStay v. I.C. Sys., Inc.*, 308 F.3d 188, 191 (2d Cir. 2002) (instructing that debt collection letters are to be analyzed as a whole). To establish a violation of the FDCPA, a plaintiff must establish that: "(1) the plaintiff is a consumer within the meaning of the [A]ct; (2) the defendant is a debt collector; and (3) the defendant must have engaged in conduct in violation of the statute." *Coburn v. P.N. Fin'l*, No. 13-cv-1006, 2015 WL 520346, *3 (E.D.N.Y. Feb. 9, 2015) (internal quotation marks and citation omitted). The FDCPA "is a strict liability statute and a single violation is sufficient to establish liability." *Gonzalez v. Healthcare Recovery Mgmt., Inc.*, No. 13-cv-1002, 2013 WL 4851709, *2

(E.D.N.Y. Sept. 10, 2013); *see also Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 133-35 (2d Cir. 2010).

2. § 1692e

Section 1692e prohibits a debt collector from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt" and sets forth a nonexhaustive list of prohibited conduct. 15 U.S.C. § 1692e. Thus, "a debt collection practice can be a 'false, deceptive, or misleading' practice in violation of § 1692e even if it does not fall within any of the subsections of § 1692e." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993) ("[I]t should be emphasized that the use of *any* false, deceptive, or misleading representation in a collection letter violates § 1692e–regardless of whether the representation in question violates a particular subsection of that provision." (Emphasis in original)). "A collection notice is deceptive when it can be reasonably read to have two or more different meanings, one of which is inaccurate." *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir. 1996).

3. § 1692g

Section 1692g requires that "within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing . . . the *amount of the debt*." 15 U.S.C. § 1692g(a)(1) (emphasis added). That section lists the "minimum disclosures required in an initial communication," disclosures that must also comply with § 1692e. *Yuri Kobasyuk v. Capital Mgmt. Servs., LP*, No. 17-CV-07499 (BMC), 2018 WL 1785489, at *2 (E.D.N.Y. Apr. 14, 2018). "In other words, although § 1692g obligates a debt collector to disclose the amount of debt owed, the debt collector's recital of that amount must also satisfy § 1692e's requirement to not be misleading by, for instance, omitting accruing fees and interest." *Id.* ("The two sections

have different aims, and compliance with Section 1692g does not guarantee compliance with Section 1692e, which always applies in connection with the collection of any debt by a debt collector.").

4. The "Least Sophisticated Consumer" Standard

In analyzing whether a communication violates the FDCPA, "courts apply an objective standard based on the 'least sophisticated consumer.'" *Dewees v. Legal Servicing, LLC*, 506 F. Supp.2d 128, 132 (E.D.N.Y. 2007) (quoting *Clomon*, 988 F.2d at 1318). The "least sophisticated consumer" standard is "measured by how the 'least sophisticated consumer' would interpret the notice received from the debt collector." *DeSantis v. Comp. Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001) (quoting *Russell*, 74 F.3d at 34). Therefore, courts "must analyze 'collection letters from the perspective of a debtor who is uninformed, naïve, or trusting, but is making basic, reasonable and logical deductions and inferences." *Dewees*, 506 F. Supp.2d at 132 (quoting *Spira v. Ashwood Fin., Inc.*, 358 F. Supp.2d 150, 156 (E.D.N.Y. 2005)). Ultimately, whether a communication violates the FDCPA depends upon "whether the notice fails to convey the required information clearly and effectively and thereby makes the least sophisticated consumer uncertain as to the meaning of the message." *Weiss v. Zwicker & Assocs., P.C.*, 664 F. Supp.2d 214, 216 (E.D.N.Y. 2009) (internal quotation omitted). Thus, a collection letter may violate the FDCPA if it "could mislead a putative-debtor as to the nature and legal status of the underlying debt, or that could impede a consumer's ability to respond to or dispute collection." *Gabriele v. Am. Home Mortg. Serving, Inc.*, 503 F. App'x 89, 94 (2d Cir. 2012) (including communications which are "contradictory, vague or threatening" as possibly violating the FDCPA).

*C. The Present Case*

1. Plaintiff's § 1692e Claim

In "[c]onstruing the FDCPA in light of its consumer protection purpose," the Second Circuit recently held "that collection letters which state balances due without discussing interest or fees are not misleading within the meaning of Section 1692e." *Taylor v. Fin. Recovery Servs., Inc.*, 886 F.3d 212, 215 (2d Cir. 2018). The Circuit Court also noted that in so holding, it "join[s] the Seventh Circuit, which held: 'if the debt collector is trying to collect only the amount due on the date the letter is sent, then he complies with the Act by stating the 'balance' due, stating that the creditor 'has assigned your delinquent account to our agency for collection,' and asking the recipient to remit the balance listed—and stopping there, without talk of the 'current' balance.'" *Id.* at 215 n.1. (quoting *Chuway v. Nat'l Action Fin. Serv., Inc.*, 362 F.3d 944, 949 (7th Cir. 2004)).

Here, the Defendant's Collection Letter stated that the $765.90 balance was comprised of $649.07 in principal and $116.83 in collection fees. That information was also provided in a table format, identifying the principal as "Amount", the collection fees as "Collection Fees" and the balance as both the "*Total* Due" and the "*Total Amount* Due". (*See* Collection Letter (emphasis added).) The Collection Letter further advised, *inter alia*, that Defendant's "client, Verizon Wireless, indicates that your balance of $756.90 is past due" and that Plaintiff can go online to "easily pay your balance in full or setup payment arrangements." (*Id.*) There is nothing "prejudicially misleading" in the Collection Letter since "prompt payment of the amount[] stated in [the Collection Letter] would satisf[y] Plaintiff's] debt[]." *Taylor*, 886 F.3d at 214. Indeed, the Defendant's use of the modifier "Total" in identifying the amount due, as opposed to "Current" (used by some debt collectors, *see, e.g.*, *Hussain v. Alltran Fin., LP*, No.17-cv-3571, 2018 WL 1640584, at *1 (E.D.N.Y. Apr. 4, 2018)), makes clear that the subject

debt was static since "total" means "[w]hole; . . . full; complete; . . . ; absolute". *Total*, Black's Law Dictionary 1719 (10th ed. 2014); *see also Total*, Merriam-Webster.com. (June 6, 2018), https://www.merriam-webster.com/dictionary/total (defining "total" as "comprising or constituting a whole: ENTIRE"). Given the plain meaning of the adjective "total" and that "'even the 'least sophisticated consumer' can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care,'" *DeRosa*, 278 F. Supp.3d at 559 (quoting *Clomon*, 988 F.2d at 1318-19), the Collection Letter is not open to more than one reasonable interpretation and, therefore, is not misleading. *See Taylor*, 886 F.3d at 215; *see also Hussain*, 2018 WL 1640584, at *2 ("a reasonable consumer is likely to assume that paying the amount listed on a debt collection letter will satisfy his debt" (citing *Taylor*, 886 F.3d at 214)). Thus, Plaintiff fails to plausibly allege a claim pursuant to § 1692e.

2. Plaintiff's § 1692g Claim

In assessing a § 1692g(a) claim, a court must determine whether: there was an "initial communication" between the parties within the meaning of § 1692g; any of the communications between the parties were "in connection with the collection of any debt"; and, the debt collector provided *the amount of the debt* within five days of such a communication. *See Carlin*, 852 F.3d at 212 (emphasis added). In *Carlin*, the court first had to determine which of three items was the initial communication from the debt collector: a foreclosure complaint that "did not state the amount of the debt," *id.* at 211; a letter from the debtor "disputing the validity of the debt and requesting a verification of the dollar amount of the purported debt," *id.*, or a responsive letter that included a payoff statement, which "included a 'Total Amount Due'" and, significantly, below which and in small print was the notification:

> To provide you with the convenience of an extended "Statement Void After" date, *the Total Amount Due may include estimated fees*, costs, additional payments and/or escrow disbursements that will become due prior to the "Statement Void After" date, but which are not yet due as of the date this Payoff Statement is issued. You will receive a refund if you pay the Total Amount Due and those anticipated fees, expenses, or payment have not been incurred.

*Id.* (emphasis added). Of import, "[t]he Payoff Statement did not indicate what those estimated fees, costs, or additional payments were or how they were calculated." *Id.* While the appellate court concluded that the responsive letter was the initial communication, *see id.* at 214-15, that was sent in connection with the collection of a debt, *see id.* at 215, it also concluded that it did not adequately state the amount of the debt as required by § 1692g, *see id.* The court prefaced its analysis, stating:

> When determining whether a debt collector has violated § 1692g's notice requirements, we consider how the "least sophisticated consumer" would interpret the notice. *See Russell v. Equifax A.R.S.*, 74 F.3d 30, 34 (2d Cir. 1996)(citing *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2d Cir. 1993)). We ask whether "the notice fails to convey the required information 'clearly and effectively and thereby makes the least sophisticated consumer uncertain' as to the meaning of the message." *DeSantis v. Computer Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001)(quoting *Savino v. Computer Credit, Inc.*, 164 F.3d 81, 85 (2d Cir. 1009)). Thus, even if a debt collector accurately conveys the required information, a consumer may state a claim if she successfully alleges that the least sophisticated consumer would inaccurately interpret the message.

*Id.* at 216. Since the payoff statement did not specify what the estimated fees, costs, and additional payments were, the *Carlin* court was unable to determine whether those amounts were properly part of the amount of the debt. *See id.* (citing 15 U.S.C. § 1692a(5) (defining "debt" as "any obligation or alleged obligation of a consumer to pay money arising out of a transaction . . ."), and *Veach v. Sheeks*, 316 F.3d 690, 693 (7th Cir 2003)(noting the Seventh Circuit "expressed doubt that 'debt' includes unaccrued court costs or attorneys fees")).

> Absent fuller disclosure, an unsophisticated consumer may not understand how these fees are calculated, whether they may be disputed, or what provision of the note gives rise to them. Because the [payoff] statement gives no indication as to what the *unaccrued* fees are or how they are calculated, she cannot deduce that information from the [payoff] statement.
>
> * * * *
>
> [A] statement is incomplete where, *as here*, it omits information allowing the least sophisticated consumer to determine the minimum amount she owes at the time of the notice, what she will need to pay to resolve the debt at any given moment in the future, and an explanation of any fees and interest *that will cause the balance to increase*.

*Id.* (further stating that the Circuit Court "do[es] not hold that a debt collector may never satisfy its obligations under § 1692g by providing a payoff statement that provides an amount due, including expected fees and costs")(emphasis added).

Plaintiff argues:

> The subject collection letter herein, which sets forth collection fees of completely unspecified origin in the amount of $116.83, contains only one of these three required pieces of information—specifically, the letter allows the least sophisticated consumer to readily determine that she owed $765.90 (including the collection fees of $116.83) *as of the date of the letter*, and nothing more. To be clear, and in the specific context of the collection letter at issue herein, it is *not* Plaintiff's position that the least sophisticated consumer would inaccurately interpret the "amount of the debt" in the absence of a stated collection fee. Rather, it is Plaintiff's position, pursuant to *Carlin*, that the setting forth of "collection fees" (in an amount greater than zero dollars) triggers Defendant's obligation to: (1) Provide an explanation of the stated "collection fees," including the source of such fees, and a statement as to whether or not such fees will continue to accrue; and (2) Provide a statement indicating to the least sophisticated consumer what she will need to pay to resolve the debt at any given moment in the future. *See Carlin*, 217 F.3d at 216.
>
> In the absence of such disclosures, the least sophisticated consumer simply would not know whether the addition of "collection fees" to the principal amount of the debt was a one-time occurrence (thus rendering the total amount due static) or whether additional collection fees would continue to accrue

> alongside further collection efforts (thus rendering the total amount due dynamic—i.e., subject to future increases).

(Opposition at 6 (italicized emphasis in original; underlined emphasis added).)

The notification paragraph appended to the "Total Amount Due" in the *Carlin* payoff statement stated that the Total Amount Due "may include *estimated* fees [and] costs" which had not yet accrued, *Carlin*, 852 F.3d at 211-12 (emphasis added), without further explanation by which the debtor could determine the amount due at the time of the notice or at any given time in the future. *See id.* at 216. It was the unspecified estimates and the unexplained unaccrued fees which led the Circuit Court to conclude the debtor collector's payoff statement was insufficient under § 1692g. *See id.* Indeed, its use of the modifying phrase "that will cause the balance to increase" when referring to providing an "explanation of any fees and interest" makes clear that the *Carlin* Court was concerned with a specific type of fees, not all fees. *Carlin*, 852 F.3d at 216 (stating that a collection notice is incomplete when it omits, among other things, "an explanation of any fees and interest *that will cause the balance to increase*" (emphasis added)).

Here, the "Total Amount Due" is stated, making not mention of any estimated amounts included in the Total Amount Due or any unaccrued fees or costs. In the absence of any modifier other than the adjective "Total" to describe the amount of debt due, the Collection Letter clearly and effectively conveys to the least sophisticated consumer what she will need to pay to resolve the debt at any given moment in the future, which was not the case in *Carlin*. *Cf., e.g., Taylor*, 886 F.3d at 215 ("[I]f a collection notice correctly states a consumer's balance without mentioning interest or fees, and no such interest or fees are accruing, then the notice will neither be misleading within the meaning of Section 1692e nor fail to state accurately the amount of the debt under Section 1692g.").

Moreover and unlike *Carlin*, the present Collection Letter is complete. *Cf.*, *Carlin*, 852 F.3d at 216. First, as Plaintiff concedes, the Collection Letter permits the least sophisticated consumer to determine the minimum amount she owes as of the date of the Letter. (*See* Opposition at 6; *cf.*, *Carlin*, 852 F.3d at 216.) Second, the Collection Letter contains a static Total Amount Due, informing the least sophisticated consumer what she will need to pay to resolve the debt. (*See* Opposition at 6; *cf.*, *Carlin*, 852 F.3d at 216.) *Cf.*, *e.g.*, *DeRosa*, 278 F. Supp.3d at 560 ("Post-*Avila* cases addressing a static balance have found that a debt collector need not advise the consumer of the fact that the balance will not change.")(collecting cases). Finally, there is nothing in the Collection Letter indicating that the Collection Fee will cause the Total Amount Due to increase. Contrary to Plaintiff's argument and consistent with the tenet of *Carlin*, there is nothing triggering Defendant's obligation to explain the Collection Fee. (*See* Opposition at 6; *Carlin*, 852 F.3d at 216.) Hence, given the subject Collection Letter and mindful that such letter is to be viewed from the perspective of the least sophisticated consumer, Plaintiff does not allege a plausible § 1692g(a)(1) claim.

IV. Conclusion

Accordingly, IT IS HEREBY ORDERED that Defendant's Motion is GRANTED; Plaintiff's Complaint is dismissed. The Clerk of Court is directed to enter judgment in favor of Defendant. The July 18, 2018 Status Conference is marked off the Court's calendar.

SO ORDERED this 18th day of June 2018 at Central Islip, New York.

/s/
Sandra J. Feuerstein
United States District Judge