J.2 Sample Settlement Language to Address Credit Reporting

J.2.1 Introduction

Two alternative settlement provisions are provided below. The first requires the creditor to withdraw the entire report of the disputed debt. This withdrawal is sometimes referred to as a “hard delete.” The credit record will then be altogether silent about the debt and will not even provide a basis for another creditor, interested in the creditworthiness of the consumer, to inquire further. This is often the simplest solution for the consumer and the safest.

The second alternative permits reporting of the debt, but requires the creditor to take steps to avoid having unfavorable information about the debt included in any credit report. The consumer may benefit from this approach, especially if the consumer report contains only information which suggests good consumer experience with credit management. For the second alternative to be successful, the settlement provisions must carefully delineate what information cannot be furnished to an agency because it might be construed unfavorably to the client. The model language found at J.2.3 infra, suggests some possibilities. Even so, there is always the risk that even the limited information reported, though accurate in a narrow sense, will permit another creditor using the report to fill in the gaps incorrectly or to draw its own negative inferences. For example, if there was a dispute, a creditor might suppose there was a default as well.

J.2.2 Alternative I: Deleting All Mention of the Debt

The following is proposed settlement language that would require the creditor to request deletion of all reference to a disputed debt in a consumer’s credit reporting file where complete deletion is preferable to amendment of the information:

It is further agreed that [creditor] shall take all steps necessary to ensure that no credit report or credit reference that is unfavorable or that may be construed unfavorably to [consumer] shall be made by it or by any consumer reporting agency with regard to any debts or claims as between [creditor] and [consumer]. Without limiting the effect of the foregoing obligation, [creditor] shall also within ten days hereof send notice [in writing or electronically or both] [in the form attached hereto as Appendix A], to each consumer reporting agency to which [creditor] has reported any information about [consumer], deleting from their files all references to the [alleged] debt which is the subject of this settlement agreement. To that end, [creditor] shall submit a Metro II form coded with “DA” (delete account) [and/or] a Universal Data Form with the “Delete Tradeline” option box checked to each consumer reporting agency to which [creditor] has reported any information about [consumer]. Prior to any execution of any release of claims by [consumer], [creditor] shall submit to counsel for [consumer] clear and complete copies of these forms (with [creditor’s] subscriber/password code redacted if [creditor] chooses) and proof that [creditor] has submitted these forms. Each required “Universal Data Form” or the equivalent must contain [creditor’s] certification that it has modified its internal records so that
the information to be deleted is not re-reported. In the event Plaintiffs discover, more than forty-five (45) days following [creditor’s] submission of the [Metro II form/Universal Data form] as described, that any consumer reporting agency still reports the alleged debt, [consumer] may notify [creditor] in writing, and [creditor] will within ten business days re-submit a request for deletion of all reference to the debt.

[creditor] shall adjust its relevant internal records in a manner that will permanently reflect the agreed-upon status of the debt. [creditor] agrees to take all steps necessary or appropriate to prevent the re-reporting of any information about the [alleged] debt. In the event any such information is re-reported to any consumer reporting agency, [creditor] agrees to take all steps necessary or appropriate to ensure that the re-reported information is deleted from the files of every consumer reporting agency to which the information was re-reported. Further, should a consumer reporting agency ever notify [creditor] that [consumer] is disputing the tradeline, [creditor] will not verify the tradeline or will confirm that the tradeline should be deleted; in such an event, [creditor] will also submit to counsel for [consumer], within forty-five (45) days after receiving the notification of the dispute from the consumer reporting agency, clear and complete copies of the notification of the dispute and any and all forms (including electronic forms) by which it responds to such notification (with [creditor’s] subscriber/password code redacted if [creditor] chooses). [creditor] further agrees that it will not assign, hypothecate, or transfer the [alleged] debt to another creditor, a collection agency, or any other third party,1 and that it will not alter the account number or otherwise relabel the account. The parties agree that time is of the essence of this contract. This release shall not extend to the obligations created by this Agreement or to any claim or cause of action based in whole or in part upon a communication to a consumer reporting agency after the date of this agreement.2

J.2.3 Alterative II: Correcting the Status of an Account, But Retaining Information About the Account

The following is proposed settlement language that would require the creditor to request correction of a disputed credit account, but would leave the account listed in the consumer’s credit reporting file. This option is recommended only when there is a significant benefit to the client in maintaining information about the account, for it is far more likely to raise post-settlement problems.

It is further agreed that [creditor] shall take all steps necessary to ensure that no credit report or credit reference that is unfavorable or that may be construed unfavorably to [consumer] shall be made by it or by any consumer reporting agency with regard to any debts or claims as between [creditor] and [consumer]. Without limiting the foregoing obligation, the [creditor] shall, within ten (10) days hereof, send written or electronic notice of the current status of the debt which is the subject of this settlement agreement to each consumer reporting agency to which [creditor] has reported any information about [consumer], such notice to be in a form

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1 The consumer may also want to include a paragraph in the settlement agreement in which the creditor certifies that it has not already assigned, hypothecated, or transferred the debt.
2 This language is advisable in light of the lower court opinion that was reversed in Young v. Equifax Credit Information Services, Inc., 294 F.3d 631 (5th Cir. 2002).
[Creditor] shall adjust its relevant internal records in a manner that will permanently reflect the agreed-upon status of the debt. [Creditor] agrees to take all steps necessary or appropriate to prevent the re-reporting of any information about the debt that is inconsistent with the current status of the debt or the payment history from the date of this settlement agreement. In the event any such information is re-reported to any consumer reporting agency, [creditor] agrees to take all steps necessary or appropriate to ensure that the re-reported information is deleted from the files of every consumer reporting agency to which the information was re-reported. [Creditor] further agrees that it will not assign, hypothecate, or transfer the [alleged] debt to another creditor, a collection agency, or any other third party, and that it will not alter the account number or otherwise relabel the account. The parties agree that time is of the essence of this contract. This release shall not extend to the obligations created by this Agreement or to any claim or cause of action based in whole or in part upon a communication to a consumer reporting agency after the date of this agreement.4

If [Creditor] receives inquiries about said debt from anyone not a party to this settlement agreement, [creditor] will report only the current status of the debt as described above and the payment history from the date of this settlement. [Creditor] shall not provide, directly or

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indirectly, any information regarding the status of the debt before the date of this settlement, including [delinquencies] [repossession] [deficiencies] [judgments] [foreclosures] [collection efforts].