

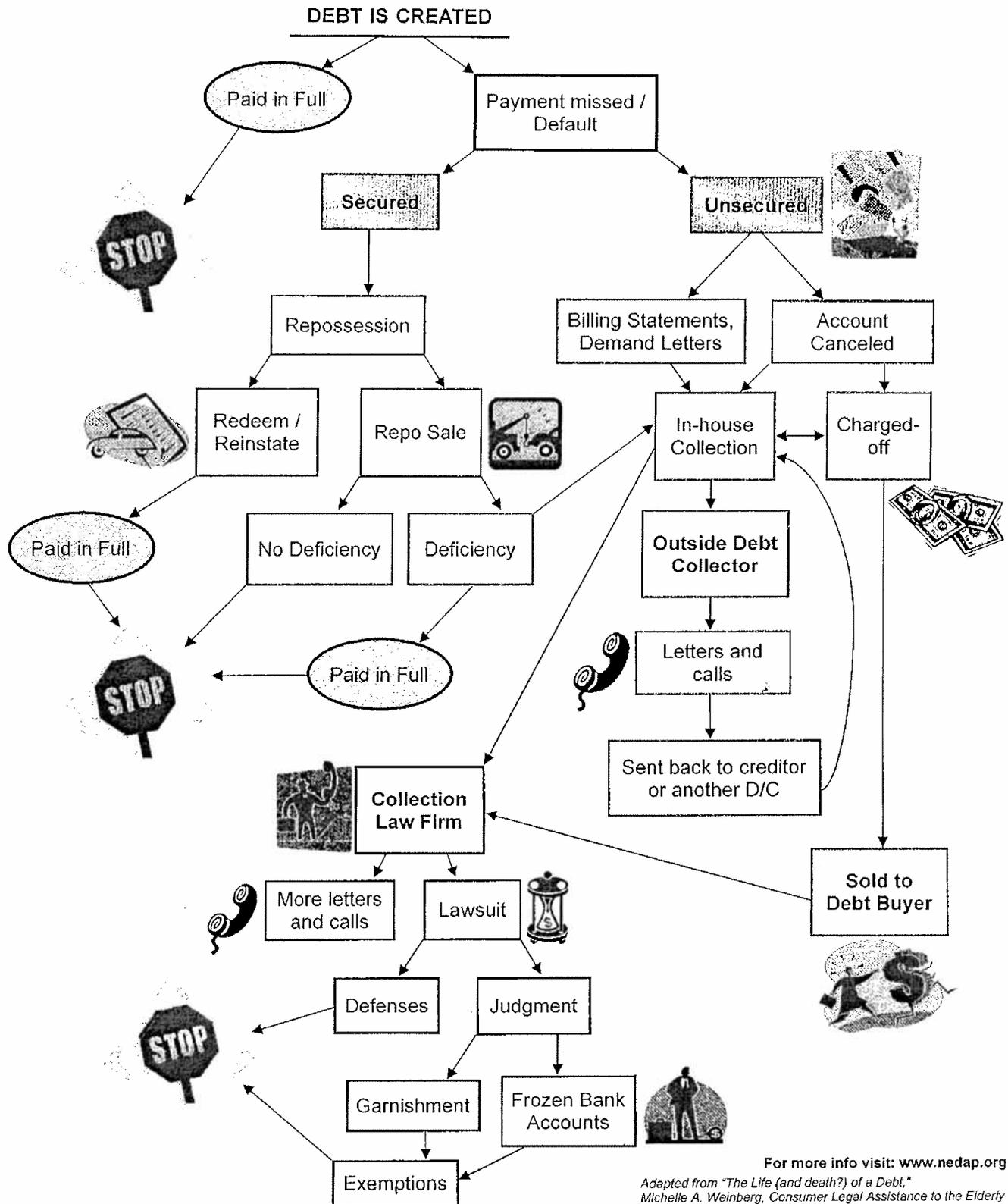
**SUBSTANTIVE DEFENSES
TO
CONSUMER DEBT COLLECTION
SUITS**

APPENDIX



THE LIFE OF A DEBT:

follow the paths of a single debt, from its creation to its end...



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Adapted from "The Life (and death?) of a Debt," Michelle A. Weinberg, Consumer Legal Assistance to the Elderly - Legal Assistance Foundation of Metropolitan Chicago.

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FDCPA Claims Arising Out of State Court Collection Litigation

By Richard Rubin

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Introduction

State debt collection litigation often presents opportunities for the debtor/defendant to assert affirmative Fair Debt Collection Practices Act (FDCPA) claims. These opportunities have been widely available at least since 1995 when the Supreme Court ruled in *Heintz v. Jenkins*¹ that litigation activities of collection lawyers are covered by the FDCPA. The field has blossomed in recent years with the advent of an industry of bad debt buyers whose unsavory business model includes filing massive numbers of collection suits in the expectation of receiving default judgments and rarely with the intent or means of proving the case.

Especially because of the breadth and facial appeal of the options created by the FDCPA, careful consideration and application of a variety of factors are required to optimize litigation choices. Determining whether an FDCPA violation has occurred is only one consideration; deciding whether to file the claim at all involves other concerns. In addition, electing where and when to file—either in federal or state court, and if the latter, whether as an independent action or in the collection case itself—are separate matters.

The Scope of the FDCPA Opportunities

A wide range of state court collection activity is subject to the FDCPA. The Supreme Court in *Heintz* confirmed that normal collection litigation is included among the collection activities regulated by the FDCPA. Congress itself has since reaffirmed that principle twice by amending the FDCPA to exempt disclosure requirements from “a formal pleading” made in a “legal” or “civil action.”² These exceptions would be meaningless if inclusion of collection litigation were not already the rule.

FDCPA coverage is present whenever the state court plaintiff is a bad debt buyer or other “debt collector” as defined pursuing a qualifying consumer debt.³ Even when the state court plaintiff is an exempt creditor and not a debt collector, the attorneys filing the collection actions are debt collectors as defined and subject to suit so long as collecting consumer debts is part of their “regular” business activities.⁴ Similarly, attorneys who use foreclosure proceedings—judicial or non-judicial—to directly or indirectly collect the underlying debt are subject to FDCPA coverage even when their clients are exempt creditors/mortgagees or mortgage servicers.⁵

Among the Strongest FDCPA Cases Are Objectively False Assertions Made in State Court or Unlawful Threats in Violation of Established State Law

The basis for some of the clearest FDCPA violations is the prohibition in § 1692e against “any” false or deceptive representations or means made in connection with the collection of a debt. Included among the



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recited statutory examples illustrating this broad proscription are the “false representation of the character, amount, or legal status of any debt”⁶ and “the threat to take any action that cannot legally be taken.”⁷ At first blush, these violations describe much of the collection litigation initiated by the debt buyer industry.

Literally applied, this language from § 1692e could be seen as establishing automatic FDCPA violations whenever debt collectors file collection actions that are ultimately unsuccessful. However, the Supreme Court in *Heintz* imposed a restriction on the FDCPA’s application to collection litigation when, in response to this specific prospect, it stated that “we do not see how the fact that a lawsuit turns out ultimately to be unsuccessful could, by itself, make the bringing of it an ‘action that cannot legally be taken.’”⁸ One challenge in asserting FDCPA claims is determining what additional conditions will meet the Supreme Court’s directive that something more than a losing collection case is necessary to establish a derivative FDCPA violation.

The FDCPA protects consumers from unlawful debt collection practices, regardless of whether a valid debt actually exists.⁹ Accordingly, the FDCPA encourages aggrieved consumers to file suit to remedy false, unfair, and abusive collection practices irrespective of the validity of the debt. Consistent with the *Heintz* admonition, the resulting liability inquiry focuses on the method of collection and not the result.

An FDCPA action in federal court is not an appropriate vehicle to establish the rules or parameters of state law or to determine whether the consumer owes the debt. Among the criteria for good case selection is not only the obvious need to prove that the defendant collector used a prohibited means to collect the debt but also as a practical matter the ability to show that the collector knew or should have known that the challenged conduct was wrongful.

Although the FDCPA is a strict liability statute,¹⁰ intent and knowledge can always be relevant. For example, one of the recited factors in setting statutory damages is the extent to which the collector’s “noncompliance was intentional.”¹¹ In addition, some specific violations require establishing the collector’s knowledge or intent.¹²

Irrespective of the requirements of any specific violation, all debt collectors may raise the affirmative bona fide error defense in which good intentions and the absence of culpable knowledge are necessary elements.¹³ The bona error defense was given added strength in the current context when the Supreme Court in *Heintz* cited it as an available mechanism to defeat the suggestion that litigation coverage “automatically would make liable any litigating lawyer who brought, and then

lost, a claim against a debtor.”¹⁴

State court collection litigation presents recurring examples of FDCPA noncompliance where collectors engage in objectively dishonest, false, and illegal collection methods. These unlawful practices include cases where the collector misrepresents its legal entitlement to fees, interest, or other additional charges that are prohibited by established state law.¹⁵ Also, collectors who file in the collection court sworn declarations that they reviewed certain documents when they in fact have not done so or that misrepresent the specific contents of those documents are good candidates for a derivative FDCPA claim.¹⁶

On the other hand, an allegation made “on information and belief” or otherwise where applicable state law imposes no duty of inquiry or due diligence may not a good basis for a successful FDCPA action even when the statement turns out to be false. An assertion in the collection proceedings of the collector’s entitlement to relief, even if ultimately proven to be unlawful, is an especially poor candidate for a derivative FDCPA violation where the illegality of the assertion was not a matter of settled law when it was made.

Other established FDCPA violations occur where the collection court plaintiff is not authorized to appear or sue under state law.¹⁷ These violations typically result from the failure of the collection court plaintiff to be properly licensed or registered in accordance with state laws regulating who may file suit in the state.¹⁸ Also included are the unauthorized practice of law violations recognized in some states where a plaintiff is not allowed to sue based on a contingency assignment of the debt¹⁹ and other defects where the plaintiff is not the real party in interest.²⁰

Another recurring affirmative FDCPA claim arises from the rule that a collector, either as a party or attorney, may not file suit on a known time-barred debt.²¹ This rule is a response to the unfair and abusive practice where debt collectors “launder” these stale and worthless debts and trap unsophisticated and untrained consumers into reviving the limitations period by failing to assert (and therefore waiving) the statute of limitations affirmative defense, whether by default or even in the less likely event that they file an answer. The practice is part of a larger collection abuse that is so well entrenched that the industry has given it a name: “duping.” “Duping” occurs where consumers are unwittingly tricked into reviving time-barred debts by making partial payments, acknowledging the debts in writing, or any other means sufficient under applicable state law.²²

The FDCPA violation arising from collectors suing on known time-barred debts has been recognized for

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decades, yet even this violation can be limited where the above criteria are absent. Thus, in two recent instructive cases,²³ consumers lost this FDCPA claim because the particular limitations rule applicable in these cases was not yet established under state law when the time-barred suits were filed. Both courts excused the resulting violations as bona fide errors because of the unsettled state of the state law when the violation occurred.

Choosing the Forum Can Minimize Risk and Maximize Gain

Winning an FDCPA claim that arises out of state court collection cases can involve a myriad of issues in addition to and separate from the merits of the underlying collection case. Prevailing in the derivative FDCPA litigation often requires proving two cases: first, succeeding in defending against the collection case or exposing the overcharge, misrepresentation, or other aspect of it from which the FDCPA claim flows; and second, establishing the additional FDCPA elements showing the unlawful collection method, the absence of a bona fide error, and entitlement to damages. In addition, federal FDCPA litigation that arises from state court litigation may evoke arcane issues of res judicata, claim or issue preclusion, the Rooker-Feldman doctrine, and First Amendment Petition Clause privilege.²⁴ There may exist an additional, non-legal hurdle because some federal judges personally find FDCPA derivative actions objectionable, particularly those filed against attorneys.

These secondary complications of an FDCPA claim can be avoided in those jurisdictions where consumers

can be made whole in the state court action when they successfully defend the collection action. The principal monetary damages suffered by consumers wrongly sued on a debt are the attorney's fees incurred in defense. Those costs, which constitute actual damages under the FDCPA,²⁵ can be recovered in many jurisdictions, typically pursuant to the reciprocal terms of the subject credit contract, in tort, or under UDAP, RISA, mini-FDCPA, or other state statutes of specific application.²⁶

Some of these same state law sources may provide for recovery of other actual damages that are generally not available under the FDCPA, including for aggravation and for lost time and wages in attending to the proceedings, as well as treble or punitive damages under some circumstances.²⁷ When these or other remedies are available in the collection court, whether by counterclaim, affirmative defense, or simply prevailing party status, filing a derivative FDCPA action in federal court may provide little or no additional benefit.²⁸

In some jurisdictions the state forum may be superior to federal court. In that event, even if state substantive law is unsatisfactory, the consumer may assert the federal claim as a counterclaim in the collection suit since the FDCPA confers concurrent jurisdiction in both federal and state courts.²⁹ The consumer's decision to litigate the FDCPA claim in state court cannot be disturbed since a federal counterclaim filed in state court cannot be a basis for removal to federal court.³⁰ Even a federal FDCPA class action counterclaim filed in the state collection suit cannot be removed.³¹



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Delaying Filing the FDCPA Claim Usually Improves the Case

Some FDCPA violations occur at the time the collector files the collection suit. As mentioned above, suing on a known time-barred debt and suing without standing or proper authorization under state law are prime examples of violations that are complete upon filing. Nevertheless, even such FDCPA cases which have fully accrued can only become more appealing as the collection case proceeds.³²

Some of the core false representation violations do not occur upon filing of the collection complaint, or even if they appear to, may initially be of marginal quality. However, those deceptive, unsubstantiated, and sham allegations in the collection complaint

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are almost always repeated or ratified at a later point in the proceedings under circumstances that strengthen the resulting FDCPA claim.

For example, the Sixth Circuit has held that the routine practice of a bad debt buyer filing a collection suit without having immediate means of proving the allegations of the complaint is not unfair or an unlawful deception in violation of the FDCPA.³³ However, the same court later held that a collector who submitted with the complaint an affidavit which falsely stated that the plaintiff was entitled to the relief sought did violate the FDCPA.³⁴

Any perceived inconsistency between the two cases may be the result of nothing more than that the court analyzed these cases under different FDCPA subsections. In any event, the federal courts appear to be more receptive to FDCPA violations based, for example, on false verifications attached to a pleading or false affidavits submitted in support of summary judgment, default judgment, or post-judgment proceedings than they are to essentially the same misrepresentation when merely recited in the pleading itself.

To be sure, false allegations in the collection complaint demanding relief that is expressly prohibited by the underlying contract or substantive law, for example, are actionable ipso facto.³⁵ Still, waiting for the collector to act on the misrepresentation improves the violation exponentially. And conversely, suing immediately gives the collector the opportunity to try to undermine the federal claim with contentions such as that the falsehood was misunderstood, a mistake, or never intended to be acted upon.

Another reason to allow the state court collection suit to proceed before filing a federal action is to permit the collection suit to run its normal course. The indiscriminate and routine nature of the violations committed in collection mills helps establish the FDCPA case; filing a derivative federal action while the state case is continuing disrupts that flow. A pending derivative federal FDCPA suit imbues the state collection case with an exceptional significance that insures that it will receive very careful and special treatment that can only strengthen the collection suit and weaken the FDCPA case. This effect can be particularly dramatic when the federal defendant is the state court collection attorney.

Furthermore, res judicata and issue preclusion flowing from a final judgment in the state case are potentially dispositive in some derivative cases. In that event, knowing the outcome of the state case before filing the federal claim is a powerful advantage available to the federal plaintiff.

In a similar vein, when the FDCPA violation has

occurred in a collection suit where a default judgment has been entered, setting that default judgment aside may be required before filing the federal suit, and in any event is usually advantageous. Filing a motion to set the default judgment aside gives the collector an opportunity to commit the same or additional violations through its response, and successfully setting the default aside of course will nullify any of its potential preclusive effects. Conversely, as in any other derivative suit, a hasty federal court filing will guarantee special treatment that may diminish the existing violations or avoid the natural repetition or ratification, or even preclude other violations, that otherwise might occur.

Every strategic decision of course requires determining the plan that best serves the interests of the client. Taking the offensive against unlawful litigation collection practices is often that course of action. Still, a tactic of some collection mills is to immediately and voluntarily dismiss collection suits when, for example, the consumer raises certain defenses or an attorney enters an appearance, or simply once it is apparent that a default judgment will not be entered.³⁶ For many consumers a dismissal of the collection case is by far the best result possible, and advocates must be vigilant not to take any action, whether filing an early federal FDCPA case or even a counterclaim to the collection complaint, that would deter that desired result.

Filing the federal case before the conclusion of the state case generally will not benefit the consumer. Of course, in light of the short one-year FDCPA statute of limitations,³⁷ sometimes delay may not be an option. However, even then, depending on the state law claims that are available and countless other local conditions, balancing the various advantages and disadvantages of acting may in some circumstances result in the decision that the client's interests are best served by biding one's time, foregoing the FDCPA claim entirely, and waiting to decide whether to file a state court action once the collection case has concluded.

Litigating Debt Collectors May Violate the FDCPA as a Result of the Recent Amendment Eliminating Court Pleadings as an "Initial Communication" Under § 1692g(a)

At the urging of the collection industry, Congress amended the FDCPA in 2006 by adopting new § 1692g(d) that states in full as follows: "A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a)." Accordingly, serving a collection complaint is not the occasion for collection attorneys or bad debt buyers to provide the mandatory § 1692g(a) 30-day validation disclosure when that service is their first contact with the consumer.

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The question that naturally arises is when, if ever, does a litigating debt collector's "initial communication" which triggers the obligation to give the validation disclosure occur in the normal collection scenario. Clearly, the litigating collector who provides an initial pre-suit dun or notice is unaffected by the amendment and must therefore provide the § 1692g(a) 30-day validation disclosure at that time.³⁸ Having once complied, that collector need never give the disclosure again. For all other litigating collectors who do not communicate with the consumer pre-suit, the answer is not as clear.

The starting point is the definition of the operative phrase "a formal pleading in a civil action." In jurisdictions whose civil rules mirror the Federal Rules of Civil Procedure, the exclusive list of the complaint, answer, and counterclaims, cross-claims, and third-party complaints and answers as pleadings in Rule 7(a) may well be determinative. If so, then all other communications that occur in the normal course of collection litigation, including discovery responses, motions, legal memoranda, cover letters conveying pleadings or other documents, settlement discussions, and even courtroom testimony, each may be the occasion that triggers the § 1692g(a) 30-day validation disclosures. Other possible initial communications may occur during post-judgment proceedings or at the latest if and when the litigating collector duns the consumer for payment of the judgment.³⁹

An initial pre-suit communication containing the validation notice allows collectors to insure their compliance with § 1692g(a) and provides consumers the opportunity to dispute the debt and to receive verification, admittedly though usually of limited scope and value.⁴⁰ Those litigating collectors who choose to not provide a pre-suit notice are left to navigate at their peril the currently unanswered consequences of their industry's 2006 Congressional handiwork.

Bad Debt Buyers Violate the FDCPA When They Re-Sell Accounts for Collection After Losing the Collection Suit

Occasionally, but with some consistency, debt buyers who lose a collection case will re-package the extinguished debt into one of their regular portfolios and sell it to another debt buyer for further collection. The consumer only learns about the collector's failure to honor the court judgment when the new debt buyer starts collecting. This inexcusable misconduct on the part of the state court plaintiff of course violates the FDCPA. The second debt buyer may also be liable for various violations of § 1692e when it duns the consumers on a non-existent debt, though it will claim to be nothing more than an innocent victim of its assignor's deception.

The leading case illustrating this practice and the debt seller's resulting FDCPA liability is *Magrin v. Unifund*.⁴¹ It is important to allege and prove in any such case the essential ingredient of the *Magrin* holding: that the debt seller sold the extinguished debt knowing that it was misrepresenting the debt's legal status (either by affirmative false representation or by omission of the material fact that the debt had been extinguished) with the knowledge that the second debt buyer would undertake efforts to collect the debt. The reason for this precaution is to emphasize that the misconduct occurred "in connection with the collection" of the debt (thus within the scope of § 1692e) and to counter any contrary argument by the debt seller because it itself was not intending to collect the debt.

An alternative grounds to establish the debt seller's FDCPA liability is § 1692e(8), which requires a collector whenever communicating "credit information" to disclose that a known disputed debt is disputed. The debt seller can hardly deny that it knew that the consumer disputed the debt once it has litigated and lost the state collection suit. Furthermore, the information contained in the assignment documents necessary to allow the next buyer to begin collecting would typically have to include "credit information." Therefore, when the assignor sells the account, it must disclose the crucial fact that the debt is disputed.⁴²

The most productive way to address the second debt buyer's defense that it too is an innocent victim is to convert that protestation into the proof establishing the debt seller's liability. In the highly unlikely event that the debt seller actually disclosed to its assignee that the debt had been extinguished, the second debt buyer rather than the assignor would become the principal target of the litigation. Much more likely is that the assignee would produce the assignment documentation proving the assignor's misrepresentations and omissions. Either way, the consumer should have no difficulty establishing the liability of the culpable party.

Insuring the Accuracy of the Consumer's Credit Reports After Winning the Collection Suit

Even after the consumer has prevailed in the collection action, all too often the consumer's credit reports remain sullied with the remnants of the debt. Often the plaintiff in the collection suit either fails to update the prior credit reporting that still shows the debt as past due and owing or continues to make its regular reports to the credit bureaus without noting the changed status. In addition, the credit bureaus themselves may be responsible for continuing to report the pendency of the collection action without noting its resolution through the failure of their own flawed systems for retrieving and reporting public record information.

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Consumers have the right under the Fair Credit Reporting Act (FCRA) to know the contents of the files maintained on them by any credit bureau.⁴³ Various options are available to consumers to exercise that right,⁴⁴ including receiving a free credit report disclosure annually from nationwide credit bureaus, including each of the Big Three: Equifax, Experian, and Trans Union.⁴⁵ Consumers who have prevailed in a collection action should review their reports after about sixty days from entry of judgment, and periodically thereafter, to be certain that the debt is not being improperly reported.

A debt buyer or other FDCPA debt collector violates the FDCPA, and specifically § 1692e(8), when it affirmatively furnishes a credit bureau with information that it knows or should know is false.⁴⁶ Thus, a consumer has a clear-cut FDCPA remedy against any debt buyer who wrongfully sued and who re-reports the debt after a judgment was entered for the consumer.

More complicated issues arise under other circumstances. For example, whether the FDCPA requires a collector to affirmatively act to update a report with newly acquired accurate information—and not just refrain from reporting false information—is a complex question whose answer may depend on a number of factors. In that event, as well as where the problem is the result of the credit bureaus' own public records reporting or the result of reporting by an exempt creditor who is not subject to the FDCPA, consumers who find that their credit reports remain inaccurate after winning the collection case should initiate a formal FCRA dispute with the credit bureaus. Indeed, even where a debt buyer has already violated the FDCPA by reporting known false credit information, the aggrieved consumer should still initiate a formal FCRA dispute since doing so is the surest way to clear up the credit report and the FCRA provides a broad array of remedies in addition to those available under the FDCPA.

The first and most important step to start the formal FCRA process is to mail a dispute directly to the credit bureau that is reporting the debt.⁴⁷ Disputing the debt with the collector or other furnisher and not with the credit bureau that is reporting the information is ineffective for FCRA dispute purposes.⁴⁸

The dispute should be detailed and specific and should enclose a court endorsed copy of the judgment from the collection action. The NCLC FCRA manual contains substantial practical advice that can be essential to enhance a consumer's dispute.⁴⁹ The FCRA sets a 30-45 day timeframe to resolve a formal dispute. After that, the failure to correct a patent inaccuracy, particularly one that is irrefutably documented by a copy of the court judgment, provides a host of FCRA remedies against the credit bureau and the furnisher. In addition, a debt

buyer/collector who continues to communicate objectively false information to the credit bureau as part of the FCRA dispute resolution process will be liable for the additional resulting violations of FDCPA § 1692e(8).⁵⁰

Conclusion

Abusive collection litigation mills overburden state courts, take unfair advantage of unsophisticated consumers, and misuse the credit reporting system. A carefully planned FDCPA initiative can redress and deter deceptive litigation tactics, as the FDCPA is designed to do.

Endnotes

1. Heintz v. Jenkins, 514 U.S. 291 (1995).
2. 15 U.S.C. § 1692e(11) and § 1692g(d).
3. 15 U.S.C. § 15 U.S.C. 1692a(5) and (6).
4. See National Consumer Law Center, Fair Debt Collection, § 4.2.8 (6th ed. 2008).
5. See National Consumer Law Center, Fair Debt Collection, §§ 4.2.6.3, 4.2.8 (6th ed. 2008).
6. 15 U.S.C. § 1692e(2)(A).
7. 15 U.S.C. § 1692e(5).
8. 514 U.S. at 295-96.
9. See National Consumer Law Center, Fair Debt Collection, § 4.4.1 (6th ed. 2008).
10. See National Consumer Law Center, Fair Debt Collection, § 5.2.3 (6th ed. 2008).
11. 15 U.S.C. § 1692k(b).
12. See secs. 1692e(5) (the second clause prohibiting the threat to take any action "that is not intended to be taken"); 1692e(8) (communicating credit information "which is known or which should be known to be false"); 1692f(3) (solicitation of postdated check "for the purpose of threatening or instituting criminal prosecution"); 1692f(6)(B) (threatening repossession of property without a "present intention" to do so); 1692c(a)(1) (communicating with a consumer at a "time or place known or which should be known to be inconvenient"); 1692c(a)(2) (communicating with a consumer "if the debt collector knows the consumer is represented by an attorney"); 1692c(a)(3) (communicating with a consumer at work "if the debt collector knows or has reason to know that the consumer's employer prohibits" such contacts); 1692d(5) (using the telephone "with the intent to annoy, abuse, or harass any person"); and 1692j (furnishing forms "knowing that such forms would be used to create the false belief" of third party participation).
13. 15 U.S.C. § 1692k(c);
14. 514 U.S. at 295.
15. See National Consumer Law Center, Fair Debt Collection, §§ 5.5.4.3, 5.6.3 (6th ed. 2008).
16. See National Consumer Law Center, Fair Debt Collection, Appx. K.2.4.12 (6th ed. 2008).
17. See National Consumer Law Center, Fair Debt Collection, § 5.6.2 (6th ed. 2008).
18. See National Consumer Law Center, Fair Debt Collection, § 5.5.8.5 (6th ed. 2008).

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19. See National Consumer Law Center, Fair Debt Collection, § 5.5.8.6 (6th ed. 2008).

20. See National Consumer Law Center, Collection Actions § 4.3 (2008).

21. See National Consumer Law Center, Fair Debt Collection, § 5.5.2.12.3 (6th ed. 2008).

22. One particularly devious example of duping is sending consumers duns on known time-barred debts with detachable return stubs that provide a menu of options, including space to request easy payment terms, that at the same time constitutes a written acknowledgement of the debt that revives the statute of limitations under state law. This practice exemplifies the FDCPA violation described in *Wallace v. Capital One*, 168 F.Supp.2d 526, 528 (D.Md. 2001).

23. *Pescatrice v. Orovitz*, 539 F.Supp.2d 1375 (S.D.Fla. 2008), and *McCorry v. L.W.T., Inc.*, 536 F.Supp.2d 1268 (M.D.Fla. 2008).

24. See National Consumer Law Center, Fair Debt Collection, § 7.4 (6th ed. 2008).

25. See National Consumer Law Center, Fair Debt Collection, §§ 2.5.2.2.3, 6.3.2 (6th ed. 2008).

26. See National Consumer Law Center, Collection Actions, § 14.1 (2008).

27. See National Consumer Law Center, Collection Actions, §§ 14.4.4, 14.4.5 (2008).

28. For example, established state tort and statutory claims in New Mexico provide greater relief than the remedies available under the FDCPA for collection litigation misconduct. The state Unfair Practices Act is a comprehensive UDAP that is also a super-FDCPA whose prohibitions extend to virtually any FDCPA violation. *Russey v. Rankin*, 911 F.Supp. 1449, 1461-62 (D.N.M. 1995). The state statute is not limited to third party debt collectors, covers FDCPA exempt creditors as well, and allows for the recovery of actual, statutory, and treble damages, injunctive relief, and reasonable attorney's fees. Secs. 57-12-2(D) and -10(A), (B), and (C), NMSA 1978. State common law provides tort remedies, including punitive damages, for unreasonable collection practices, *Billsie v. Brooksbank*, 525 F.Supp.2d 1290, 1297 (D.N.M. 2007), including specifically for litigation abuse such as suing or continuing to sue the wrong person once put on notice. *Montgomery Ward v. Larragoite*, 467 P.2d 399 (N.M. 1970). And attorney's fees are always available to the prevailing party in any action "to recover on an open account." Sec. 39-2-2.1, NMSA 1978.

29. See National Consumer Law Center, Fair Debt Collection, § 6.11.1 (6th ed. 2008).

30. See e.g. *Chase Manhattan Mortg. Corp. v. Smith*, 507 F.3d 910 (6th Cir. 2007); see generally National Consumer Law Center, Collection Actions, § 5.5.2 (2008).

31. See National Consumer Law Center, Collection Actions, § 5.5.4 (2008).

32. Another example where the violation accrues upon filing is a § 1692i violation when collectors sue consumers in a prohibited distant forum. This violation is different from other FDCPA claims arising from state collection suits since it is based on federal law that preempts contrary state venue provisions and thus is not derived from state law at all. Accordingly, different considerations from those discussed here may be in order. For example, a state court counterclaim in the offending collection suit to remedy this violation would be inappropriate, as it could result in the transfer of the action to the proper venue rather than in its dismissal.

33. *Harvey v. Great Seneca Fin. Corp.*, 453 F.3d 324 (6th Cir. 2006).

34. *Gionis v. Javitch Block, Rathbone, LLP*, 238 Fed.Appx. 24, 2007 WL 1654357 (6th Cir. 2007) (unpublished), cert. denied. 128 S.Ct. 1259 (2008).

35. See National Consumer Law Center, Fair Debt Collection, § 5.5.7 (6th ed. 2008).

36. Such tactics themselves may be further evidence of collection abuse, such as when used as part of a plan to "dupe" a consumer into reviving a time-barred debt.

37. See National Consumer Law Center, Fair Debt Collection, § 6.10 (6th ed. 2008). However, a suit may be filed in federal court within the limitations period but not served until some four months later. F.R.Civ.P. 4(m).

38. See National Consumer Law Center, Fair Debt Collection, § 5.7.2.5 (6th ed. 2008).

39. See National Consumer Law Center, Fair Debt Collection, § 4.2.8.5.4 (6th ed. 2008).

40. See National Consumer Law Center, Fair Debt Collection, § 5.7.3.3 (6th ed. 2008).

41. *Magrin v. Unifund CCR Partners, Inc.*, 2002 WL 31804268, 52 Fed.Appx. 938 (9th Cir. 2002) (unpublished).

42. See National Consumer Law Center, Fair Debt Collection, § 5.5.11 (6th ed. 2008).

43. 15 U.S.C. § 1681g.

44. See National Consumer Law Center, Fair Credit Reporting, § 3.3 (6th ed. 2006 and Supp.).

45. The three nationwide credit reporting agencies have established a "centralized source," required by the FCRA, where consumers can obtain their free annual credit report on-line [www.annualcreditreport.com]; see National Consumer Law Center, Fair Credit Reporting, § 3.3.2 (6th ed. 2006 and Supp.).

46. See National Consumer Law Center, Fair Debt Collection, § 5.5.11 (6th ed. 2008).

47. See National Consumer Law Center, Fair Credit Reporting, § 4.5 (6th ed. 2006 and Supp.).

48. See National Consumer Law Center, Fair Credit Reporting, §§ 6.10 and 10.2.4 (6th ed. 2006 and Supp.).

49. See National Consumer Law Center, Fair Credit Reporting, § 4.5.2.5 (6th ed. 2006 and Supp.).

50. See National Consumer Law Center, Fair Debt Collection, §§ 5.5.11, 9.6 (6th ed. 2008). ■

Bio

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RECENT FAIR DEBT COLLECTION PRACTICES ACT CASE SUMMARIES,

by Rand Bragg, Joanne Faulkner, Robert Hobbs, Richard Rubin

FDCPA COVERAGE

“Debt,” 15 U.S.C. § 1692a(5)

General Principles

Fausto v. Credigy Serv. Corp., 598 F. Supp. 2d 1049 (N.D. Cal. 2009). Debt collector argued there was no debt covered by the FDCPA because the consumer claimed the debt had been paid off. Because a FDCPA “debt” includes an “alleged debt” and the collector had tried to get the consumer to pay the debt, the debt collector’s motion for summary judgment was denied.

Rent, Condo Fees, and Co-op Fees Covered

Sanz v. Fernandez, 633 F. Supp. 2d 1356 (S.D. Fla. 2009). Allegations that the defendants operated a landlord collection service and sent the consumer letters demanding past due rent on a residential lease stated facts that established that the defendants were FDCPA debt collectors.

American Mgmt. Consultant, L.L.C. v. Carter, 915 N.E.2d 411 (Ill. App. Ct. 2009). FDCPA applied to forcible entry and detainer action that also sought back rent. Notice posted on door did not comply with § 1692g.

Other

Beal v. Himmel & Bernstein, LLP, 615 F. Supp. 2d 214 (S.D.N.Y. 2009). A judgment to pay legal fees incurred in post-divorce litigation was not a “debt” within the FDCPA.

Consumer debts covered.

Garcia v. LVNV Funding L.L.C., 2009 WL 3079962 (W.D. Tex. Sept. 18, 2009). Since plaintiff denied that the debt was his and defendants denied knowledge of whether it was a consumer debt, summary judgment granted to defendants for lack of proof of consumer nature of debt.

Kawa v. U.S. Bank, NA, 2009 WL 700593 (D. Neb. Mar. 13, 2009). The complaint sufficiently alleged a possible consumer purpose for the underlying debts to require the court to deny the defendants’ motion to dismiss the FDCPA claim, since “at this point in the proceedings, the Court cannot definitively say that the extensions of credit were primarily commercial in nature.”

Retained Realty, Inc. v. Spitzer, 643 F. Supp. 2d 228 (D. Conn. 2009). In this non-FDCPA case, where the court cited the FDCPA and other federal consumer protection for guidance, the court held that the phrase “personal, family, or household purposes” in the state statute under scrutiny applied to the debtor’s mortgage incurred for the benefit of his cousin to permit her to remain living in her home.

Mangum v. Action Collection Serv., Inc., 575 F.3d 935 (9th Cir. 2009). No FDCPA claim against employer that received from debt collector wrongfully disclosed information.

Whittiker v. Deutsche Bank Nat. Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio Mar. 17, 2009). Dismissed because plaintiff made no attempt to show

that the foreclosed properties were for personal, family, or household purposes.

Randolph v. Crown Asset Mgmt., LLC, 254 F.R.D. 513 (N.D. Ill. 2008) A \$60 business-related expense included in a \$12,602.69 credit card debt did not establish that the credit card was not primarily used for personal, family, or household purposes.

Business debts not covered

Hobbs v. Duggins, 318 Fed. Appx. 375 (6th Cir. 2009) (not for publication). The legal fees owed as a result of a personal guaranty to pay such fees in business litigation were not subject to the FDCPA because they constituted a “business” debt, rather than a “personal” or consumer debt.

Dunn v. Meridian Mortg., 2009 WL 1165396 (W.D. Va. May 1, 2009). A loan to improve investment business properties was not a debt covered by the FDCPA.

Garcia v. LVNV Funding L.L.C., 2009 WL 3079962 (W.D. Tex. Sept. 18, 2009). Whether a debt is a consumer debt is determined by the use of loan proceeds by the borrower and not by the motive or intent of the lender.

Henderson v. Wells Fargo Bank, 2009 WL 1259355 (W.D.N.C. May 5, 2009). Mortgage loans on commercial property could not be considered consumer debt.

Isaacson v. Saba Commercial Serv. Corp., 636 F. Supp. 2d 722 (N.D. Ill. 2009). Where plaintiff rented the vehicle on behalf of his non-profit business for a cross-country charity run and did not agree to personally guarantee any debts of the business, the debt was squarely outside of the category of transactions that the FDCPA was intended to cover.

In re Howe, 2009 WL 3747236 (Bankr. E.D. Pa. Nov. 3, 2009). In view of discrepancy between plaintiff’s deposition testimony and her affidavit opposing summary judgment, court found that personal credit card account was used for business debt and granted summary judgment to defendant.

Baird v. ASA Collections, 910 N.E.2d 780 (Ind. Ct. App. 2009). Plaintiff was investor in residential properties, purchasing them for resale, so FDCPA did not apply.

“Debt Collector,” 15 U.S.C. § 1692a(6)

General Definition

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Even though the collection of mortgages it acquired after a default was a miniscule portion of its overall busi-

ness, the court held that defendant “regularly” collected debts because the volume of that part of its business was substantial.

Hampton v. Countrywide Home Loans, 2009 WL 1813648 (D. Neb. June 24, 2009). Mortgage companies collecting their own debts were not “debt collectors” within the FDCPA.

Matmanivong v. Unifund CCR Partners, 2009 WL 1181529 (N.D. Ill. Apr. 28, 2009). A debt collector violated the FDCPA where it did not own the debt but nonetheless filed collection suits misrepresenting that it was an assignee of that debt.

Coverage of Specific Types of Collectors

Attorneys

Cole v. Charleston, 2009 WL 960337 (E.D. Pa. Apr. 7, 2009). FDCPA claim against attorney dismissed where the consumer could not find evidence that he regularly collected debts.

Kirk v. Gobel, 622 F. Supp. 2d 1039, (E.D. Wash. June 3, 2009). The collection attorney was held to be an FDCPA “debt collector” based on the undisputed evidence that he advertised himself as a collection lawyer and that he “filed supplemental collection proceedings on many creditors’ behalf.”

Riley v. Giguere, 631 F. Supp. 2d 1295, (E.D. Cal. 2009). Attorney was debt collector where collections actions constituted 40 to 50% of her total work, including unlawful detainer actions. For a single client she had filed forty debt collection cases over the last three years, comprising approximately 5% of her work and 2% of her income.

Repossession

Johnson v. Americredit Fin. Services, Inc., 2009 WL 2929396 (M.D. Tenn. Sept. 8, 2009). “[T]he only evidence before the Court is that United Auto is a towing company that was acting in its role as a repossession company when it allegedly had dealings with Plaintiff. However, the Sixth Circuit has made clear that a repossession agency does not fall within the definition of a ‘debt collector’ for purposes of the FDCPA. *Montgomery*, 346 F.3d at 699/-/701. Thus, summary judgment will be granted to United Auto dismissing the FDCPA claim.” The court and the plaintiff both missed the point that since the claim against this towing/repo agency was for a breach of the peace in its attempted repossession, the 6th Circuit’s *Montgomery* case actually supports a § 1692f(6) claim, since *Montgomery* holds only that a repo agency was not subject to the FDCPA except for § 1692f(6).

Foreclosure companies

Rogers v. Cal State Mortg. Co. Inc., 2010 WL 144861 (E.D. Cal. Jan. 11, 2010). Consumers failed to state an FDCPA claim arising from the defendants’ alleged foreclosure misconduct: “Foreclosing on a trust deed is distinct from the collection of the obligation to pay money.”

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Although Countrywide asserted that only 0.21% of its total business is dedicated to the acquisition and ser-

ving of the loans in default at the time of acquisition, the total dollar value associated with that portion of the business was more than \$2 billion and constituted a regular debt collection practice qualifying it as a “debt collector” pursuant to the FDCPA.

Castro v. Executive Trustee Services, L.L.C., 2009 WL 438683 (D. Ariz. Feb. 23, 2009). Defendants’ Rule 12(b)(6) motion to dismiss FDCPA claims was granted with prejudice holding that foreclosure on a deed of trust without seeking recovery of monies was not debt collection covered by the FDCPA.

Connors v. Home Loan Corp., 2009 U.S. Dist. LEXIS 48638 (S.D. Cal. May 9, 2009). Motion to dismiss granted: “Although plaintiff makes the legal conclusion that defendants attempted to collect a debt from plaintiff, the facts alleged in the [Second Amended Complaint] unequivocally demonstrate that defendants were foreclosing on the property and were not collecting a debt within the meaning of... the FDCPA.”

Crittenden v. HomeQ Servicing, 2009 WL 3162247 (E.D. Cal. Sept. 29, 2009). Foreclosure by deed of trust is not within FDCPA.

Diessner v. Mortgage Elec. Registration Sys., 618 F. Supp. 2d 1184 (D. Ariz. 2009). Non-judicial foreclosure involving property secured by a mortgage is not debt collection.

Figueroa v. Citibank, N.A., 2009 WL 1024678 (S.D. Cal. Apr. 15, 2009). A trustee pursuant to a deed of trust was not a debt collector under the FDCPA.

Frasco v. Wells Fargo Bank, N.A., 2009 WL 2843284 (S.D. Miss. Aug. 31, 2009). Summary judgment granted to the defendant foreclosure attorneys since “where a law firm is hired to conduct a non-judicial foreclosure to enforce a security interest in the property, not to collect any deficiency, the firm’s efforts do not constitute debt collection under the FDCPA,” and the attorneys thus were not FDCPA-covered debt collectors.

Fuentes v. Duetsche Bank, 2009 WL 1971610 (S.D. Cal. July 8, 2009). FDCPA claim dismissed on the pleadings since “the act of foreclosing on a residential loan [is] outside the definition of debt collection.”

Gaitan v. Mortgage Elec. Registration Sys., 2009 WL 3244729 (C.D. Cal. Oct. 5, 2009) (unreported). Foreclosure pursuant to a deed of trust is not within FDCPA.

Gamboa v. Trustee Corps, 2009 WL 656285 (N.D. Cal. Mar. 12, 2009). “[F]oreclosing on a property pursuant to a deed of trust is not a debt collection within the meaning of the [FDCPA].”

Johnson v. Wilshire Credit Corp., 2009 WL 559950 (E.D. Tenn. Mar. 5, 2009). Although “an entity whose business has the principal purpose of enforcing security interests, without more, is not subject to any of the provisions of the FDCPA except for § 1692f,” the defendant substitute-trustees’ motion for summary judgment as to their violation of other

provisions of the FDCPA was denied, since they failed to establish that they did not also otherwise act as debt collectors while pursuing the underlying home foreclosure.

Mansour v. Cal-Western Reconveyance Corp., 618 F. Supp. 2d 1178 (D. Ariz. 2009). A non-judicial foreclosure proceeding was not the collection of a debt for the purposes of the FDCPA.

Muldrow v. EMC Mortg. Corp., [rule] F. Supp. 2d [rule], 2009 WL 3069731 (D.D.C. Sept. 28, 2009). Law firm acting as substitute trustee in judicial foreclosure proceeding is a debt collector where it offered to accept payment arrangements.

Rendon v. Countrywide Home Loans, Inc., 2009 WL 3126400 (E.D. Cal. Sept. 24, 2009). Foreclosing on a deed of trust is not within FDCPA.

Salazar v. Trustee Corps, 2009 WL 690185 (S.D. Cal. Mar. 12, 2009). The defendant was not an FDCPA “debt collector” since it was only “acting as a substituted trustee under a deed of trust to sell the property by power of sale at foreclosure, and was not attempting to collect funds from the debtor plaintiff.”

Siegel v. Deutsche Bank Nat’l Trust Co., 2009 WL 3254491 (D. Neb. Oct. 8, 2009). Because foreclosing on a home is not debt collection and defendants were not the debt collectors, the FDCPA complaint was dismissed.

Ung v. GMAC Mortg., L.L.C., 2009 WL 2902434 (C.D. Cal. Sept. 4, 2009) (unreported). FDCPA claims arising from the defendants’ alleged unlawful home foreclosure were dismissed in the absence of allegations that the defendants were debt collectors.

Walker v. Equity 1 Lenders Group, 2009 WL 1364430 (S.D. Cal. May 14, 2009). FDCPA claim dismissed against the defendant mortgage servicer because the complaint did not allege that this defendant was a “debt collector” and failed to allege any debt collection activity on its part, having alleged instead only that it had participated in the non-debt collection activity of foreclosing on the plaintiff’s property.

Yulaeva v. Greenpoint Mortg. Funding, Inc., 2009 WL 2880393 (E.D. Cal. Sept. 3, 2009). The court denied the defendants’ motion to dismiss based on the argument that the underlying foreclosure activities did not constitute debt collection within the FDCPA, since the consumer’s claim was based on defendants’ alleged improper “reporting of default to credit reporting agencies, an activity that might have some incidental connection to foreclosure, but that is also squarely connected to debt collection.”

Maynard v. Cannon, 650 F. Supp. 2d 1138 (D. Utah 2008) Nonjudicial foreclosure of a deed of trust pursuant to Utah law is not subject to the FDCPA.

Debt buyers [See also K.1.2.3.8, Debts assigned before default]

Ruth v. Triumph Partnerships, 577 F.3d 790 (7th Cir. 2009). Purchaser of a defaulted debt is a debt collector. Debt buyer’s control over the drafting

and mailing of the privacy notice by the debt collector plainly constituted affirmative conduct with regard to collecting a debt.

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Although Countrywide asserted that only 0.21% of its total business is dedicated to the acquisition and servicing of the loans in default at the time of acquisition, the total dollar value associated with that portion of the business was more than \$2 billion and constituted a regular debt collection practice qualifying it as a “debt collector” pursuant to the FDCPA.

Herkert v. MRC Receivables Corp., [rule] F. Supp. 2d [rule], 2009 WL 2998557 (N.D. Ill. Sept. 17, 2009). Court rejected Encore’s argument that it could not be considered a debt collector because it was not directly involved in the collection activities at issue. It held that Encore was a debt collector because its public filings described itself as a “leading consumer debt management company” and a “purchaser and manager of charged-off consumer receivables portfolios,” and described what it called “our collection strategies,” which included the use of “our own collection workforce.”

Johnson v. Americredit Fin., Services, Inc., 2009 WL 2929396 (M.D. Tenn. Sept. 8, 2009). Where the consumer stopped payment on her down payment check because of alleged fraud by the car dealer and tried to cancel her car purchase with the seller shortly after the sale, and where the record was silent as to the precise time when the installment contract was assigned to its pre-arranged assignee, the assignee’s motion for summary judgment because it purportedly was an exempt creditor was denied, since “a genuine issue of material fact exists as to whether the Plaintiff was in default when AmeriCredit was assigned the loan.”

Johnson v. Wilshire Credit Corp., 2009 WL 559950 (E.D. Tenn. Mar. 5, 2009). The defendant mortgage holder and its servicer qualified as FDCPA debt collectors since the plaintiff alleged that they obtained the mortgage after default and then sought to collect payments.

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. 2009). Defendant Encore Capital Group, Inc. was an FDCPA “debt collector” liable for the § 1692e(5) violation since it was the holding company that purchased the subject bad debts and owned the subject accounts.

Moses v. The Law Office of Harrison Ross Byck, 2009 WL 2411085 (M.D. Pa. Aug. 4, 2009). An entity acquiring a debt in default is not a “creditor,” thus, CACH, L.L.C. fit within the definition of “debt collector” for the purpose of the FDCPA.

Scope of Specific Exclusions.

Creditor exempt

Copeland v. Lehman Bros. Bank, FSB, 2009 WL 5206435 (S.D. Cal. Dec. 23, 2009). The complaint which failed to allege sufficient facts to show that Lehman Bros. Bank and Aurora Loan Services were a “debt collector” or engaged in the “collection

of a debt” within the meaning of the FDCPA was dismissed.

Matudio v. Countrywide Home Loans, Inc., 2010 WL 114185 (C.D. Cal. Jan. 6, 2010). Defendant not a debt collector.

Allen v. United Fin. Mortg. Corp., [rule] F. Supp. 2d [rule], 2009 WL 2984170 (N.D. Cal. Sept. 15, 2009). FDCPA did not apply to foreclosing lender or servicer.

Batiste v. American Gen. Fin., 2009 WL 2590199 (E.D. Cal. Aug. 21, 2009). Creditor does not become debt collector when it sends employees out on field calls to visit clients’ houses and collect debts owed.

Boone v. Wells Fargo Bank, N.A., 2009 WL 2086502 (D. Minn. July 13, 2009). The defendant bank is an exempt creditor and not a debt collector.

Bridge v. Ocwen Fed. Bank, [rule] F. Supp. 2d [rule], 2009 WL 2781103 (N.D. Ohio Aug. 28, 2009). The defendant banks were an exempt creditor and loan servicer not subject to the FDCPA.

Carillo v. Citimortgage, Inc., 2009 WL 3233534 (C.D. Cal. Sept. 30, 2009). Lender is not within FDCPA.

Garcia v. Wachovia Mortg. Corp., [rule] F. Supp. 2d [rule], 2009 WL 3837621 (C.D. Cal. Oct. 14, 2009). Foreclosing creditor not subject to FDCPA.

Henderson v. Wells Fargo Bank, 2009 WL 1259355 (W.D.N.C. May 5, 2009). Wells Fargo Bank, the mortgagee of commercial property, was not a debt collector.

Manown v. Cal-Western Reconveyance Corp., 2009 WL 2406335 (S.D. Cal. Aug. 4, 2009). Under the FDCPA, a borrower’s home mortgage creditor or servicing company does not qualify as a debt collector.

Melendez-Febus v. Toyota Credit De Puerto Rico Corp., 2009 WL 2950369 (D. P.R. Sept. 9, 2009). Toyota Credit was a creditor and not a debt collector subject to the FDCPA.

Nera v. American Home Mortg. Servicing, Inc., 2009 WL 2423109 (N.D. Cal. Aug. 5, 2009). Creditors, mortgagors, and mortgage servicing companies are not “debt collectors” and are exempt from liability under the FDCPA.

Olivier v. NDEX West, L.L.C., 2009 WL 2486314 (E.D. Cal. Aug. 12, 2009). Foreclosing creditor not subject to FDCPA.

Owusu v. New York State Ins., [rule] F. Supp. 2d [rule], 2009 WL 2486928 (S.D.N.Y. Aug. 14, 2009). HSBC Bank USA was the creditor who sent a letter regarding the debt in its own name and did not qualify as a “debt collector” under the FDCPA.

Reese v. JPMorgan Chase & Co., [rule] F. Supp. 2d [rule], 2009 WL 3346783 (S.D. Fla. Oct. 15, 2009). FDCPA claims against Chase and Chase Home Finance were dismissed because they are not debt collectors.

Reynoso v. Paul Fin., L.L.C., 2009 WL 3833298 (N.D. Cal. Nov. 16, 2009). The FDCPA’s

definition of debt collector does not include the consumer’s creditors.

Ricon v. Recontrust Co., 2009 WL 2407396 (S.D. Cal. Aug. 4, 2009). A creditor collecting its own debt is not covered by the FDCPA.

Smith v. CitiMortgage, Inc., 2009 WL 1976513 (S.D. Miss. July 7, 2009). Summary judgment for defendant mortgage company since it was collecting its own debt in its own name and therefore was an exempt FDCPA creditor.

Wilson v. GMAC Fin. Services Corp., 2009 WL 467583 (E.D. Tenn. Feb. 24, 2009). Consumer’s FDCPA claim was dismissed because GMAC did not meet the definition of “debt collector.”

Burns v. Bank of America, [rule] F. Supp. 2d [rule], 2008 WL 5110824 (S.D.N.Y. Dec. 4, 2008) Mortgagee was creditor, not debt collector.

Creditor covered

Pickering v. Coast Ctr. for Orthopedic Arthroscopic Surgery & Treatment, 2009 WL 932629 (Cal. Ct. App. Apr. 8, 2009) (unpublished). FDCPA jury verdict against medical services provider (Coast) was affirmed over its objections that it is an exempt creditor collecting its own debt; court held that the evidence “permit[ed] a reasonable jury to conclude that Coast used Lake Valley [its collection agent] as a mere surrogate in attempting to collect more than it was entitled to under the Contract for the surgical services and thus that Coast qualified as a ‘debt collector’ ” under the § 1692a(6) false name exception.

Affiliated corporations, 15 U.S.C. § 1692a(6)(B)

Burns v. Bank of America, [rule] F. Supp. 2d [rule], 2008 WL 5110824 (S.D.N.Y. Dec. 4, 2008). Affiliate was not debt collector because affiliation was disclosed and it collected only for the affiliate.

Legal process servers, 15 U.S.C. § 1692a(6)(D)

Mateti v. Activus Fin., L.L.C., 2009 WL 2507423 (D. Md. Aug. 14, 2009). Attorneys cannot rely on the process server exemption to insulate themselves from liability if they either gave the process server incorrect address information or themselves committed a violation in the papers to be served or later improperly relied on affidavits of service that were fraudulent.

Fiduciaries and escrows, 15 U.S.C. § 1692a(6)(F)(i)

Rowe v. Educational Credit Mgmt. Corp., 559 F.3d 1028 (9th Cir. 2009). A student loan guarantee agency has a fiduciary obligation within the meaning of § 1692a(6)(F); however, where its sole function was a post-default assignment to collect, the collection function is central, rather than incidental, to its fiduciary duty, and it is thus subject to the FDCPA.

Gruen v. EdFund, 2009 WL 2136785 (N.D. Cal. July 15, 2009). Student loan guarantee agency was denied the § 1692a(6)(F) fiduciary exemption on a motion to dismiss: “[A] guarantee agency that does

not act as the guarantor of the loan, but instead was assigned the loan in order to act as a collection agent, does not engage in collection activity that is ‘incidental to’ the original guarantor’s fiduciary duty to the Department of Education.... Because the complaint alleged that the defendant’s only role in the case was to collect the loan assigned to it after the Plaintiff’s default, the defendant did not fall within the exception under the FDCPA.”

Originators, 15 U.S.C. §

1692a(6)(F)(ii)

Distor v. U.S. Bank N.A., 2009 WL 3429700 (N.D. Cal. Oct. 22, 2009). Complaint dismissed against the originator of the loan as it does not qualify as a debt collector.

Robinson v. Managed Accounts Receivables Corp., [rule] F. Supp. 2d [rule], 2009 WL 2500571 (C.D. Cal. Aug. 4, 2009). Employees of a debt collection organization may be “debt collectors” under the FDCPA and held personally liable for acts committed during the scope of their employment.

Rubenstein v. Dovenmuehle Mortg., Inc., 2009 WL 3467769 (E.D. Pa. Oct. 28, 2009). The defendant mortgage company that originated the loan and that was collecting its own debt was exempt under § 1692a(6)(F)(ii).

Debts assigned before default, 15 U.S.C. § 1692a(6)(F)(iii) [See also K.1.2.2.6, Debt buyers]

Caballero v. Ocwen Loan Servicing, 2009 WL 1528128 (N.D. Cal. May 29, 2009). Creditors, mortgagors, and mortgage servicing companies (who did not receive the mortgage in default) are not “debt collectors” within the coverage of the FDCPA.

Croce v. Trinity Mortg. Assur. Corp., 2009 WL 3172119 (D. Nev. Sept. 28, 2009). Mortgage servicer not debt collector.

Diessner v. Mortgage Elec. Registration Sys., 618 F. Supp. 2d 1184 (D. Ariz. 2009). Mortgage servicers receiving an obligation for servicing which is not in default are not debt collectors within the FDCPA.

Distor v. U.S. Bank NA, 2009 WL 3429700 (N.D. Cal. Oct. 22, 2009). Complaint dismissed against the loan servicer who obtained the debt prior to default since it is not a debt collector.

Frazier v. HSBC Mortg. Services, Inc., 2009 WL 4015574 (M.D. Fla. Nov. 19, 2009). HSBC Mortgage Services was not a debt collector covered by the FDCPA.

Johnson v. AmeriCredit Fin. Services, Inc., 2009 WL 2929396 (M.D. Tenn. Sept. 8, 2009). Where the consumer stopped payment on her down payment check because of alleged fraud by the car dealer and tried to cancel her car purchase with the seller shortly after the sale, and where the record was silent as to the precise time when the installment contract was assigned to its pre-arranged assignee, the assignee’s motion for summary judgment because it purportedly was an exempt creditor was denied, since

“a genuine issue of material fact exists as to whether the Plaintiff was in default when AmeriCredit was assigned the loan.”

Johnson v. Wilshire Credit Corp., 2009 WL 559950 (E.D. Tenn. Mar. 5, 2009). The defendant mortgage holder and its servicer qualified as covered FDCPA debt collectors, since the plaintiff alleged that they obtained the mortgage after default and then sought to collect payments.

Kellers v. Ocwen Loan Servicing, L.L.C., 2009 WL 2899813 (D. Or. Sept. 9, 2009). Loan servicer that acquired the debt before default not within FDCPA.

Kesselman v. The Rawlings Co., L.L.C., [rule] F. Supp. 2d [rule], 2009 WL 3805587 (S.D.N.Y. Nov. 13, 2009). Subrogation agents who obtained the debt prior to default were excluded from the definition of debt collector pursuant to § 1692a(6)(F)(ii).

Martinez v. Quality Loan Serv. Corp., 2009 WL 586725 (C.D. Cal. Feb. 10, 2009) (unreported). Where consumer’s complaint failed to allege sufficient facts that a loan servicing company was a “debt collector,” defendant’s motion to dismiss was granted.

Mitchell v. EMC Mortg. Corp., 2009 WL 3274407 (D. Ariz. Oct. 13, 2009). The FDCPA does not include a mortgage servicing company (which received the obligation before default) within the definition of a debt collector.

Nguyen v. LaSalle Bank Nat’l Ass’n, 2009 WL 3297269 (C.D. Cal. Oct. 13, 2009). LaSalle Bank, N.A. and MERS, Inc. were not debt collectors within the FDCPA.

North Star Capital Acquisitions, L.L.C. v. Krig, 611 F. Supp. 2d 1324 (M.D. Fla. 2009). North Star Capital Acquisitions, which acquired the debt after it had become delinquent, was a “debt collector” under the FDCPA.

Reese v. JPMorgan Chase & Co., [rule] F. Supp. 2d [rule], 2009 WL 3346783 (S.D. Fla. Oct. 15, 2009). Citimortgage was servicing a debt which was not in default and thus was not a debt collector within the FDCPA.

Reynoso v. Paul Fin., L.L.C., 2009 WL 3833298 (N.D. Cal. Nov. 16, 2009). The FDCPA’s definition of debt collector does not include any assignee of the debt so long as the debt was not in default at the time of assignment.

Rubenstein v. Dovenmuehle Mortg., Inc., 2009 WL 3467769 (E.D. Pa. Oct. 28, 2009). Complaint against the consumers’ mortgage company and servicer was dismissed for failure to state a claim in the absence of an allegation that the mortgage was in default at the time that the defendants acquired it so as to render the defendants debt collectors subject to the FDCPA.

Sanchez v. U.S. Bancorp, 2009 WL 3157486 (S.D. Cal. Sept. 25, 2009). Loan servicer not debt collector.

Santos v. Countrywide Home Loans, 2009 WL 2500710 (E.D. Cal. Aug. 14, 2009). Lender and servicer who acquired mortgage before default not within FDCPA.

Sullivan v. Ocwen Loan Servicing, L.L.C., 2009 WL 2140075 (D. Colo. July 14, 2009). The defendant mortgage servicer was not a “debt collector” since it obtained the mortgage prior to it being in default.

Derivative Liability of Defendants.

Frasco v. Wells Fargo Bank, N.A., 2009 WL 2843284 (S.D. Miss. Aug. 31, 2009). “[A] creditor who hires a debt collector is not vicariously liable for the collector’s FDCPA violations.”

Persons Protected; Standing Issues

Johnson v. Bullhead Invs., LLC, 2010 WL 118274 (M.D.N.C. Jan. 11, 2010). The consumer plaintiff, a person with a name similar to the actual debtor, who was served with the actual debtor’s state court collection suit even after she notified the collector of the mistaken identity and who incurred attorney’s fees in having the collection case dismissed against her and incurred other actual damages as a result of the debt collector’s collection efforts, had standing to assert the resulting FDCPA violations.

Midland Funding L.L.C. v. Stowe, 2009 WL 5258458 (Ohio Dec. 23, 2009). Reversing the trial court’s dismissal of the consumer’s FDCPA counterclaim because the consumer lacked standing once he denied the collection complaint allegations that he was the subject debtor, the appellate court held that the FDCPA conveyed standing “for a consumer in Stowe’s position, i.e., one who was wrongfully sued for a debt he did not owe” since “the term ‘consumer’ meant any natural person obligated or allegedly obligated to pay any debt.”

Bank v. Pentagroup Fin., L.L.C., 2009 WL 1606420 (E.D.N.Y. June 9, 2009). The court erroneously held that one who received recorded calls aimed at a different consumer has no standing under § 1692c. “[Plaintiff] lacks standing to bring a claim under § 1692c because: (1) he was not obligated or allegedly obligated to pay any debt; and (2) he has not alleged that he is a consumer’s spouse, parent, guardian, executor or administrator. Accordingly, [defendant’s] motion to dismiss [plaintiff’s] § 1692c(b) claim is granted.”

Barasch v. Estate Info. Services, L.L.C., 2009 WL 2900261 (E.D.N.Y. Sept. 3, 2009). The widow of the deceased debtor to whose estate the subject dun was addressed lacked standing to sue over the letter’s allegedly insufficient § 1692g verification disclosures since she was not the consumer and had not been appointed executrix or personal representative of the estate so as to “stand in the shoes of the consumer.”

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Even though the plaintiff had not signed the note or the related loan modification agreement, he would be

still protected as “consumer” under 15 U.S.C. § 1692c.

Drossin v. National Action Fin. Services, Inc., 255 F.R.D. 608 (S.D. Fla. 2009). Plaintiff, who received an initial prerecorded telephone message from the debt collector and then a letter from the same entity stating that she owed a debt, had standing to assert FDCPA claims arising from the telephone message that was allegedly intended for another person with the same last name as plaintiff. The FDCPA is broadly written to provide standing to “any person” and should be liberally construed to protect “alleged” debtors.

Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321 (D. Conn. 2009). In granting class certification, court observed “[t]he legal convention that communications with a represented party’s attorney are tantamount to communications with the party herself....” “[I]n the context of this strict liability statute, the Second Circuit does not require the consumer to demonstrate *damages* in order to have an ‘injury’ that suffices to establish standing to sue under the FDCPA.”

Prophet v. Myers, 2009 WL 1437799 (S.D. Tex. May 21, 2009). While acknowledging that “a third-party, non-debtor [has] standing to bring FDCPA claims [where] the alleged debt collection practices were directed towards the third-party,” the court granted the defendant summary judgment because the letter at issue was addressed and sent to the plaintiff’s son [who has a similar name] at the son’s separate address and was in no manner directed to the father, who could not even meet his burden to explain how the letter came into his possession.

Schwartz v. Resurgent Capital Services, L.P., 2009 WL 3756600 (E.D.N.Y. Nov. 9, 2009). The plaintiff was not a “consumer” with standing to sue for the alleged § 1692g(a) disclosure violation where the collector sent the dun to an unknown individual “in care of” the plaintiff at the plaintiff’s address.

Communications Covered

Donohue v. Quick Collect, Inc., 2010 WL 103653 (9th Cir. Jan. 13, 2010). “[A] complaint served directly on a consumer to facilitate debt-collection efforts is a communication subject to the requirements of §§ 1692e and 1692f.”

Grden v. Leikin, Ingber & Winters, P.C., 2010 WL 199947 (E.D.Mich. Jan. 19, 2010). “[A]ffidavits attached to state-court complaints are communications governed by the FDCPA.” The collector’s misstatement of the amount of the debt communicated in response to the consumer’s direct inquiry was not made “in connection with the collection of” the consumer’s debt and thus did not violate § 1692e(2)(A) where the collector did not demand payment, did not imply that the consumer was in default, and did not “allude to the consequences of default.”

Captain v. ARS Nat. Services, Inc., 636 F. Supp. 2d 791 (S.D. Ind. 2009). Section 1692e(5)

summary judgment granted to the plaintiff where it was undisputed that the collector misrepresented to the consumer's lawyer that a \$15 per day fee would be added to account if it was not paid within two weeks, because that statement was false and deceptive under the "competent attorney" standard established by the Seventh Circuit [*Evory*] applicable to attorney communications.

Gillespie v. Chase Home Fin., L.L.C., 2009 WL 4061428 (N.D. Ind. Nov. 20, 2009). A collection letter requesting that the debtor call its mortgage specialist to resolve a delinquency was not a communication requesting payment covered by the FDCPA under the *Bailey* decision. The mailing of the letter therefore did not violate § 1692c(a)(2).

Inman v. NCO Fin. Sys., Inc. 2009 WL 3415281 (E.D. Pa. Oct. 21, 2009). Followed *Foti*, holding prerecorded messages left on an answering machine were communications.

Kline v. Mortgage Elec. Sec. Sys., [rule] F. Supp. 2d [rule], 2009 WL 3064660 (S.D. Ohio Sept. 21, 2009). Letter sent to attorney for debt collector not actionable (followed *Guerrero*, rejected *Sayyed* and *Evory*.)

Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321 (D. Conn. Mar. 31, 2009). In granting class certification, court observed "[t]he legal convention that communications with a represented party's attorney are tantamount to communications with the party herself..."

Mark v. J.C. Christensen & Associates, Inc., 2009 WL 2407700 (D. Minn. Aug. 4, 2009). Messages left by the debt collector on the consumer's answering machine are "communications" under the FDCPA.

Matmanivong v. Unifund CCR Partners, 2009 WL 1181529 (N.D. Ill. Apr. 28, 2009). Communications to lawyers and the court are subject to § 1692e of the FDCPA just like communications to consumers.

an exhibit, because such false statements are not immunized by the petition clause.

Ruth v. Triumph P'ships, 577 F.3d 790 (7th Cir. 2009). The FDCPA is a strict liability statute, and debt collectors whose conduct falls short of its requirements are liable here respective of their intentions.

Boyko v. Am. Intern. Group, Inc., 2009 WL 5194431 (D.N.J. Dec. 23, 2009). The FDCPA is generally a strict liability statute and does not require proof of actual damages to support a claim.

Mark v. J.C. Christensen & Associates, Inc., 2009 WL 2407700 (D. Minn. Aug. 4, 2009). The FDCPA's requirement that the debt collector identify itself and inform the consumer that the communication is from a debt collector does not violate the First Amendment of the U.S. Constitution.

Mushinsky v. Nelson, Watson & Assoc., L.L.C., 642 F. Supp. 2d 470 (E.D. Pa. 2009). FDCPA is a remedial statute and should be construed broadly.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). Affidavits attached to complaints for money themselves constitute communications for the purposes of the FDCPA.

Ogbin v. Fein, Such, Kahn & Shepard, P.C., 2009 WL 1587896 (D.N.J. June 1, 2009). Communications that were directed to the consumers' attorney are not actionable under the FDCPA.

Costa v. National Action Fin. Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007). Telephone messages left by a debt collector are "communications" subject to the FDCPA.

Capital Credit & Collection Serv., Inc. v. Armani, 206 P.3d 1114 (Or. Ct. App. 2009). A "false, deceptive, or misleading representation or means in connection with the collection of any debt" under § 1692e includes communications by the debt collector to the debtor's attorney, since the FDCPA applies to direct and indirect collection efforts.

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). The debt collector's alleged contacts with the deceased debtor's daughter, the daughter's employer, and the employer's daughter in an attempt to determine the proper person to contact to obtain payment from the deceased debtor's estate were all made "in connection with the collection of a debt."

Interpretation of FDCPA

Hartman v. Great Seneca Fin. Corp., 569 F.3d 606 (6th Cir. 2009). Application of the FDCPA did not violate the Commerce Clause, assertedly because the federal government was unconstitutionally interfering with state rules of civil procedure. Neither the Petition Clause of First Amendment or the *Noerr-Pennington* doctrine bars FDCPA suits based on intentional misrepresentations made in state court collection cases. The FDCPA was not unconstitutionally vague as applied to the misconduct in this case, which was an alleged intentional misrepresentation of

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). FDCPA is a strict liability statute, so the consumer need not show that the violation was intentional.

Ramos v. NDEX West, L.L.C., 2009 WL 1675911 (E.D. Cal. June 1, 2009). Court lacked jurisdiction over the complaint, whose general allegations included a claim under the FDCPA arising from purportedly unlawful residential foreclosure activity, because the FDIC had been substituted as the defendant for the originally-named failed bank defendant and the plaintiff did not exhaust administration remedies required by FIRREA: "The exhaustion requirement 'applies to any claim or action respecting the assets of a failed institution for which the FDIC is Receiver,' and extends to post-Receivership claims arising out of acts by the Receiver as well as the failed institution."

Reed v. Pinnacle Credit Services, L.L.C., 2009 WL 2461852 (E.D. Pa. Aug. 11, 2009).

FDCPA is a remedial statute and should be construed broadly.

Stover v. Fingerhut Direct Mktg., Inc., [rule] F. Supp. 2d [rule], 2009 WL 2606555 (S.D. W. Va. Aug. 26, 2009). First Amendment challenge to West Virginia's debt collection laws rejected. Defendants' debt collection practice of calling debtors at home to discuss debts is entitled to only a modicum of First Amendment protection because it: (1) involves commercial speech; (2) pertains to a matter of purely private, rather than public, concern; (3) includes non-communicative conduct; and (4) implicates plaintiffs' right to privacy in their home. "Defendants' debt collection activities interject commercial speech directly into Plaintiffs' home against their wishes. Defen-

VIOLATIONS

Acquisition of Location Information, 15 U.S.C. § 1692b

Baker v. I.C. Sys., Inc., 2009 WL 1365002 (Conn. Super. Ct. May 11, 2009). A claim for contacting the consumer's friend despite having the consumer's location information was not well pleaded.

Bolton v. Pentagroup Fin. Services, L.L.C., 2009 WL 734038 (E.D. Cal. Mar. 17, 2009). The defendant's threat to contact the consumer's employer/commanding officer could not have been a lawful attempt to acquire location information since the defendant was speaking to the consumer at the very time when the threat was made.

Deas v. American Recovery Sys., Inc., 2009 WL 3514560 (N.D. Miss. Oct. 29, 2009). Defendant violated § 1692b(3) by placing dozens of telephone calls to the plaintiff's home, purportedly attempting to locate a third party debtor, after plaintiff informed defendant that the debtor did not live at his residence and requested defendant to cease calling.

Puttner v. Debt Consultants of Am., 2009 WL 1604570 (S.D. Cal. June 4, 2009). The complaint stated a claim for relief by alleging that the defendant's collectors called the consumer's parents without stating that they were confirming or correcting location information, disclosed the existence of the son's debt, and called the parents repeatedly so as to constitute harassment.

Communication in Connection with Debt Collection, 15 U.S.C. § 1692c

Communicating with Represented Consumer, 15 U.S.C. § 1692c(a)(2).

Gillespie v. Chase Home Fin., L.L.C., 2009 WL 4061428 (N.D. Ind. Nov. 20, 2009). A collection letter requesting that the debtor call its mortgage specialist to resolve a delinquency was not a communication requesting payment covered by the FDCPA under the *Bailey* decision. The mailing of the letter therefore did not violate § 1692c(a)(2).

Randall v. Midland Funding, L.L.C., 2009 WL 2358350 (D. Neb. July 23, 2009). The court found that the plaintiff stated a claim under § 1692c(a)(2), because the pleadings allege defendant

dants' right to engage in this manner of speech is in direct conflict with Plaintiffs' right to privacy in their home. Where these two rights are in the balance, it is the right to privacy that generally carries more weight."

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008) Contents of state court complaint are subject to the FDCPA.

Relation to Other Laws

Scott v. Suburban Journals of Greater St. Louis, L.L.C., 2009 WL 3514437 (E.D. Mo. Oct. 29, 2009). "[A] violation of the FDCPA is not actionable under 42 U.S.C. § 1981."

contacted the plaintiff by mail after the plaintiff had informed defendant that he was represented by an attorney.

Thomas v. Boscia, 2009 WL 2778105 (S.D. Ind. Aug. 28, 2009). Summary judgment granted to the plaintiff on the defendants' bona fide error defense to excuse their admitted violation of § 1692c when they communicated directly with her once on notice of her attorney's representation. The defendants' only preventive procedures relied on information provided by the defendants' creditor clients, and thus the procedures were inadequate as a matter of law, since they were incapable of cross-checking for attorney representation when, as here, notification was received independently of their clients.

In re Webster, 2009 WL 2634576 (Bankr. D. Mass. Aug. 21, 2009). Whether the consumer's attorney refused to confirm his representation when requested by the debt collector was a disputed fact that precluded summary judgment on the plaintiff's claim that the collector's direct consumer contact violated § 1692c(a)(2).

Communications at Workplace, 15 U.S.C. § 1692c(a)(3).

Jenkins v. Eastern Asset Mgmt., L.L.C., 2009 WL 2488029 (E.D. Mo. Aug. 12, 2009). On default, court awarded \$1000 statutory damages, \$2000 emotional distress damages, and \$3250 fees and costs for multiple calls to place of employment threatening suit after being told plaintiff could not accept personal calls at work.

Nichols v. GC Services, L.P., 2009 WL 3488365 (D. Ariz. Oct. 27, 2009). Disputed facts precluded summary judgment for either party on the consumer's claims that the defendant violated § 1692c(a)(3) by continuing to telephone him at work after being told not to do so.

Robinson v. Managed Accounts Receivables Corp., 654 F. Supp. 2d 1051 (C.D. Cal. 2009). Where the complaint specifically alleged the date and contents of several telephone calls made by defendants with specific alleged facts to show that the defendant knew that plaintiff's employer prohibited her from receiving collection calls at work, a claim was sufficiently stated for violation of § 1692c(a)(3) in order to survive the defendant's motion to dismiss.

**Communications with Third Parties,
15 U.S.C. § 1692c(b)**

Edwards v. Niagara Credit Solutions, Inc., 584 F.3d 1350 (11th Cir. 2009). The district court properly denied the bona fide error defense arising from the defendant's failure to identify itself as a debt collector as required by § 1692e(11) when leaving consumers a message on an answering machine; first, the violation was in fact intentional, the result of a deliberate policy decision to not comply with § 1692e(11), purportedly to avoid violating § 1692c(b) in the event that the message was heard by a third party who would then know that a collection agency was calling the consumer; second, to be bona fide "the mistake must be objectively reasonable," and "[i]t was not reasonable for [defendant] to violate § 1692e(11) of the FDCPA with every message it left in order to avoid the possibility that some of those messages might lead to a violation of § 1692c(b)."

Ruth v. Triumph P'ships, 577 F.3d 790 (7th Cir. 2009). The lower court erred in granting the defendants summary judgment, as the privacy notice was sent to the consumer in connection with an attempt to collect a debt when it was sent in the same envelope with a dunning letter. The debt collector's privacy statement falsely stated that it would share the consumer's information with others, in violation of § 1692c(b).

Bank v. Pentagroup Fin., L.L.C., 2009 WL 1606420 (E.D.N.Y. June 9, 2009). The court erroneously held that one who received recorded calls aimed at a different consumer has no standing under § 1692c. "Bank lacks standing to bring a claim under § 1692c because: (1) he was not obligated or allegedly obligated to pay any debt; and (2) he has not alleged that he is a consumer's spouse, parent, guardian, executor or administrator. Accordingly, Pentagroup's motion to dismiss Bank's § 1692c(b) claim is granted."

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Even though the plaintiff had not signed the note or the related loan modification agreement, he would be still protected as a "consumer" under 15 U.S.C. § 1692c.

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. 2009). Summary judgment for the defendants on the § 1692c(b) claim (unlawful third party communication) and the § 1692d(3) claim (publication of list of debtors) since the plaintiff failed to submit evidence to support the allegation that the defendants shared information with a third party bank as part of a "balance transfer" joint marketing program. Summary judgment for the plaintiffs on the § 1692e(5) claim where the defendants' privacy notice stated that certain information may be disclosed to third parties unless the consumer opted out, since § 1692c(b) made such disclosure an unlawful third party communication even if the consumer failed to act.

Nichols v. GC Serv., L.P., 2009 WL 3488365 (D. Ariz. Oct. 27, 2009). Disputed facts precluded summary judgment for either party on the consumer's claims that the defendant violated § 1692c(b) by calling the consumer's mother over a dozen times and revealing the existence of the alleged debt.

Puttner v. Debt Consultants of Am., 2009 WL 1604570 (S.D. Cal. June 4, 2009). The complaint stated a claim for relief by alleging that the defendant's collectors called the consumer's parents without stating that they were confirming or correcting location information, disclosed the existence of the son's debt, and called the parents repeatedly so as to constitute harassment.

Wideman v. Monterey Fin. Services, Inc., 2009 WL 1292830 (W.D. Pa. May 7, 2009). The complaint stated a claim for an unlawful contact in violation of § 1692c(b), since the collector's telephone message given to the consumer's administrative assistant to return an "urgent" call regarding the disclosed original creditor was a communication that indirectly conveyed information about the debt to a third party.

Ceasing Communications, 15 U.S.C. § 1692c(c)

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants engaged in a campaign of unlawful harassment, threats, misrepresentations, and other misconduct in violation of multiple FDCPA provisions. Defendant persisted in contacting plaintiff even after being expressly instructed not to do so, and failed to provide her with any of the notices required by law.

Nichols v. GC Serv., L.P., 2009 WL 3488365 (D. Ariz. Oct. 27, 2009). Summary judgment granted to the debt collector on the consumer's claim that the collector failed to cease communication after he sent a certified mail § 1692c(c) letter, since the collector denied receiving the letter, the consumer did not receive a return receipt, and "[t]here is no delivery presumption for certified mail when the sender does not receive a requested return receipt."

Sembler v. Attention Funding Trust, 2009 WL 2883049 (E.D.N.Y. Sept. 3, 2009). Plaintiff's § 1692c(c) claim was dismissed since the complaint failed to allege that the plaintiff made the cease communication request as required in writing.

Harassment or Abuse, 15 U.S.C. § 1692d.

Abusive Language, 15 U.S.C. § 1692d(2)

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants engaged in a campaign of unlawful harassment, threats, misrepresentations, and other misconduct in violation of multiple FDCPA provi-

sions: "Defendant made repeated threats against Plaintiff to sue her, made abusive accusations and threatened to embarrass her by disclosing the debt to her family, neighbors and employer. In addition, Defendant persisted in contacting her even after being expressly instructed not to do so, and failed to provide Plaintiff with any of the notices required by law."

Repeated or Continuous Telephone Calls, 15 U.S.C. § 1692d(5)

Majeski v. I.C. Sys., Inc., 2010 WL 145861 (N.D. Ill. Jan. 8, 2010). Summary judgment denied despite "The astonishingly high frequency of calls placed by debt collector during February and May could easily be interpreted as indicative of debt collector's intent to harass by a reasonable juror." However, the Court could not decide the issue as a matter of law, given additional facts, such as the consumer had screened the calls.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants engaged in a campaign of unlawful harassment, threats, misrepresentations, and other misconduct in violation of multiple FDCPA provisions: "Defendant made repeated threats against Plaintiff to sue her, made abusive accusations and threatened to embarrass her by disclosing the debt to her family, neighbors and employer. In addition, Defendant persisted in contacting her even after being expressly instructed not to do so, and failed to provide Plaintiff with any of the notices required by law."

Deas v. American Recovery Sys., Inc., 2009 WL 3514560 (N.D. Miss. Oct. 29, 2009). Defendant violated § 1692d(5) by placing dozens of telephone calls to the plaintiff's home, purportedly attempting to locate a third party debtor, after plaintiff informed defendant that the debtor did not live at his residence and requested defendant to cease calling.

Hartung v. J.D. Byrider, Inc., 2009 WL 1876690 (E.D. Cal. June 26, 2009). Default judgment recommended for extreme cell phone and text messaging harassment in the amount of \$27,000.

Robinson v. Managed Accounts Receivables Corp., 654 F. Supp. 2d 1051 (C.D. Cal. 2009). Where the complaint specifically alleged that the defendants threatened to sue the consumer for writing a dishonored check and refusing to provide verification of its claim, the complaint stated a claim for violation of § 1692d.

Meaningful Telephone Identification, 15 U.S.C. § 1692d(6)

Costa v. National Action Fin. Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007). Meaningful disclosure pursuant to § 1692d(6) requires that the caller state his or her name and capacity and disclose enough information so as not to mislead the recipient of the telephone message.

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). Court accepted

as true plaintiff's allegations that defendant left a series of prerecorded messages for plaintiff which did not state the name of the company placing calls or that the communications were from a debt collector attempting to collect a debt and concluded that these communications violated § 1692d(6).

Mark v. J.C. Christensen & Associates, Inc., 2009 WL 2407700 (D. Minn. Aug. 4, 2009). A telephone message that merely states the name of the person calling and a telephone number to return the call does not provide meaningful disclosure that the call was from a debt collector. The FDCPA's requirement that the debt collector identify itself and inform that the communication is from a debt collector does not violate the First Amendment of the U.S. Constitution. When a debt collector calls and leaves a message on a consumer's phone, it is not required that the call and message also be considered harassing, oppressing, or abusive in order to be a violation of § 1692d(6).

Puttner v. Debt Consultants of Am., 2009 WL 1604570 (S.D. Cal. June 4, 2009). The complaint stated a claim for relief by alleging that the defendant's collectors called the consumer without providing meaningful disclosure of their identity.

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). "A debt collector's failure to identify herself as such in communications relating to the collection of a debt [is]... a per se violation" of § 1692d(6).

General Standard: Harass, Oppress, or Abuse, 15 U.S.C. § 1692d, violated

Majeski v. I.C. Sys., Inc., 2010 WL 145861 (N.D. Ill. Jan. 8, 2010). "Yelling and rude language, while disrespectful, does not by itself violate § 1692d."

Bank v. Pentagroup Fin., L.L.C., 2009 WL 1606420 (E.D.N.Y. June 9, 2009). A debt collection program that negligently misplaces numerous calls to a single wrong number can plausibly have the natural consequence of harassment or abuse. Based on the volume of calls alleged, and the fact that some did not identify the debt consumer or contain a return phone number, the court found that the recipient of the calls had sufficiently alleged an "injurious exposure" to offending communication.

Neill v. Bullseye Collection Agency, Inc., 2009 WL 1386155 (D. Minn. May 14, 2009). The consumer's allegations that the collector's printing at the top of its duns the acronym "WWJD," which stands for the phrase "what would Jesus do?," "has the effect of invoking shame or guilt in alleged debtors and portrays the debtor as a sinner who is going to hell" stated a claim for engaging in conduct that is harassing, oppressive, or abusive in violation of § 1692d and unfair or unconscionable in violation of § 1692f.

Puttner v. Debt Consultants of Am., 2009 WL 1604570 (S.D. Cal. June 4, 2009). The complaint stated a claim for relief by alleging that the defendant's collectors called the consumer's parents

without stating that they were confirming or correcting location information, disclosed the existence of the son's debt, and called the parents repeatedly so as to constitute harassment.

Robinson v. Managed Accounts Receivables Corp., 654 F. Supp. 2d 1051 (C.D. Cal. 2009). The defendant's motion to dismiss was defeated, as the complaint stated a plausible claim for violation of § 1692d harassment in connection with the collection of a debt when the plaintiff alleged that she was told by the defendant that she had written a bad check, that she was about to be sued to collect on the debt, and also that she could not be sent a written validation of the debt, which the court inferred from the complaint to be untrue.

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). Rejecting the defendant's argument that it was entitled to summary judgment because the evidence showed at most "rude and obnoxious" conduct that is legally insufficient to be "harassing, oppressive or abusive," the court concluded that the a jury could find § 1692d violations if it believed the plaintiffs' versions of the disputed facts.

General standard not violated

Gallagher v. Gurstel, Staloch & Chargo, P.A., 645 F. Supp. 2d 795 (D. Minn. 2009). "A single laugh" in a phone call with the debt collector does not violate § 1692d.

Saltzman v. I.C. Sys., Inc., 2009 WL 3190359 (E.D. Mich. Sept. 30, 2009). One or two nonthreatening calls per day without leaving a message not oppressive within § 1692d.

Other harassment issues

Kaniewski v. Nat'l. Action Fin. Servs., 2009 WL 5166209 (E.D. Mich. Dec. 17, 2009). One who knows that he is not alleged to owe the debt is not a "consumer" and does not have standing to bring claims under §§ 1692e and g, but does have standing as "any person" to bring claims pursuant to § 1692d.

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Even though the plaintiff had not signed the agreement, he would be still covered as "consumer" under 15 U.S.C. § 1692d.

Neill v. Bullseye Collection Agency, Inc., 2009 WL 1386155 (D. Minn. May 14, 2009). The court declined to consider the collector's argument that its use of the acronym "WWJD" was protected by "its constitutional rights to freedom of speech, equal protection of the laws, and free exercise of religion."

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. 2009). Summary judgment for the defendants on § 1692c(b) claim (unlawful third party communication) and § 1692d(3) claim (publication of list of debtors), since the plaintiff failed to submit evidence to support the allegation that the defendants shared information with a third party bank as part of a "balance transfer" joint marketing program.

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). For the purposes of determining if defendant's acts violated §§ 1692d and 1692f of the FDCPA, several acts of defendant had to be viewed as a single course of conduct.

False or Misleading Representations, 15 U.S.C. § 1692e

Least Sophisticated Consumer and Other General Standards.

Donohue v. Quick Collect, Inc., 2010 WL 103653 (9th Cir. Jan. 13, 2010). "[F]alse but non-material representations ... are not actionable under §§ 1692e."

Gonzalez v. Kay, 577 F.3d 600 (5th Cir. 2009). "We do not construe the disclaimer in isolation but must analyze whether the letter is misleading as a whole. We caution lawyers who send debt collection letters to state clearly, prominently, and conspicuously that although the letter is from a lawyer, the lawyer is acting solely as a debt collector and not in any legal capacity when sending the letter. The disclaimer must explain to even the least sophisticated consumer that lawyers may also be debt collectors and that the lawyer is operating only as a debt collector at that time. Debt collectors acting solely as debt collectors must not send the message that a lawyer is involved, because this deceptively sends the message that the 'price of poker has gone up.' "

Hahn v. Triumph P'ships, L.L.C., 557 F.3d 755 (7th Cir. 2009). "[Plaintiff's] only argument is that the letter is false--and, as we have concluded that the statement is true, the case is over. The statement's immateriality is another way to reach the same conclusion." "[T]he difference between principal and interest is no more important to the [FDCPA] than the color of the paper that [defendant] used." "The statute is designed to provide information that helps consumers to choose intelligently, and by definition immaterial information neither contributes to that objective (if the statement is correct) nor undermines it (if the statement is incorrect)."

Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (6th Cir. 2009). The defendant state court collection attorney's characterization in the collection complaint of the consumer's credit card debt as a "loan," while perhaps more properly characterized as an "account," nevertheless involved no trickery, would not deceive the least sophisticated consumer as to the nature of the debt, and thus was not the type of false representation that would violate § 1692e.

Adopting the position of the Seventh Circuit in *Hahn v. Triumph P'ships L.L.C.*, 557 F.3d 755 (7th Cir. 2009) and *Wahl v. Midland Credit Mgmt., Inc.*, 556 F.3d 643 (7th Cir. 2009) that "materiality [is] required in an action based on § 1692e," the court held that the alleged misrepresentations here were not material and thus could not mislead the least sophisticated consumer.

Muha v. Encore Receivable Mgmt., Inc., 558 F.3d 623 (7th Cir. 2009). If the average unsophisticated consumer would not be influenced by a state-

ment rightly or wrongly claimed to be literally false (“your agreement has been revoked”), the case should end right there. If a technical falsehood is not misleading, it does not violate the FDCPA. False statements that are immaterial in the sense that they would not influence a consumer’s decision—in the present context his decision to pay a debt in response to a dunning letter—do not violate the FDCPA. When it is neither clear that a challenged statement is misleading nor clear that it is not, the question whether it is misleading is one of fact. “Confusing language in a dunning letter can have an intimidating effect by making the recipient feel that he is in over his head and had better pay up rather than question the demand for payment. The intimidating effect may have been magnified in this case by the reference to revocation, which might have suggested to an unsophisticated consumer that any right he might have to challenge the demand for payment had been extinguished by the revocation of his contract with the issuer, the original creditor.” The defendant should explain why the sentence was included and justify the inclusion, because there is enough indication of confusion to place a burden of production on the defendant.

Ruth v. Triumph P’ships, 577 F.3d 790 (7th Cir. 2009). Subsections of § 1692e are merely non-exclusive examples of the ways the section can be violated. Where a statement is clearly deceptive, the consumer need not introduce extrinsic evidence to show the statement would be deceptive to the least sophisticated consumer.

Wahl v. Midland Credit Mgmt., Inc., 556 F.3d 643 (7th Cir. 2009). The plaintiff had to show both that the statement was false and that it would mislead the unsophisticated consumer.

Kaniewski v. Nat’l. Action Fin. Servs., 2009 WL 5166209 (E.D.Mich. Dec. 17, 2009). One who knows that he is not alleged to owe the debt is not a “consumer” and does not have standing to bring claims under §§1692e and g, but does have standing as “any person” to bring claims pursuant to § 1692d.

Brazier v. Law Offices of Mitchell N. Kay, P.C., 2009 WL 764161 (M.D. Fla. Mar. 19, 2009). Whether the letter is self-contradictory and confusing is a question of interpretation and fact, not a pure legal question. Defendant contended that since the language used was identical to the disclaimer in *Greco*, was is appropriately used; however the placement of the disclaimer on the reverse and the use of letterhead are factual question not answered or addressed in *Greco*.

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). Where the plaintiff had not signed the note or the related loan modification agreement, he would not be covered as a “consumer” under 15 U.S.C. § 1692e.

DeKoven v. Plaza Associates, 2009 WL 901369 (N.D. Ill. Mar. 31, 2009). Expert’s survey on the effect of the offer on the least sophisticated consumer was stricken as not complying with *Daubert*

standards. “Unfortunately, until debtors challenging dunning letters as misleading or deceptive produce survey evidence that comports with the principles of professional survey research, better-equipped fact finders--i.e., juries--will not have the chance to judge the deceptiveness of these letters.” Settlement offer of 65% of the debt valid for a period of thirty-five days was not facially confusing or misleading, because defendant had authority to settle for 60%.

Gilmore v. Account, Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). The FDCPA imposes strict liability on the debt collector for misstatements of the amount owed as evaluated under the least sophisticated consumer standard.

Kubert v. Aid Associates, 2009 WL 1270351 (N.D. Ill. May 7, 2009). The court disapproved and struck the survey evidence offered by the plaintiff as not meeting the *Daubert* standard.

Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321 (D. Conn. 2009). In the course of granting class certification, where the defendant cited Second Circuit precedent to suggest that letters sent to attorneys do not give rise a violation of the FDCPA, the court observed that, “The Second Circuit’s observation in *Kropelnicki* that attorneys can protect their clients from ‘fraudulent or harassing’ behavior does not affect this conclusion, for two reasons. First, the claim that [plaintiff] has raised need not be based on ‘fraudulent or harassing’ behavior, since the statute also prohibits behavior which is merely ‘deceptive’ or ‘unfair or unconscionable,’ and indeed, those were precisely the grounds on which this Court found FDCPA violations in *Gaetano*. Second, the Court of Appeals specifically disclaimed its own observation as dicta, saying it was ‘not an issue on which we need to rule today.’”

Leone v. Ashwood Fin., Inc., 257 F.R.D. 343 (E.D.N.Y. 2009). The FDCPA is a strict liability statute. Courts use “an objective standard, measured by how the ‘least sophisticated consumer’ would interpret the notice received from the debt collector.”

Manlapaz v. Unifund CCR Partners, 2009 WL 3015166 (N.D. Ill. Sept. 15, 2009). The falsity of [defendant’s employee’s] statement that she had personal knowledge of facts that she gleaned from a review of business records was a technicality which would not mislead the unsophisticated consumer and was therefore not material.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). Debt collector communications are evaluated under the FDCPA according to the “least sophisticated consumer” standard. False statements in a debt buyer’s affidavit about the affiant’s personal knowledge about the debt were material where the consumer disputed the validity of the debt as described by the affiant.

Mushinsky v. Nelson, Watson & Assoc., L.L.C., 642 F. Supp. 2d 470 (E.D. Pa. 2009). Objective least sophisticated consumer standard applies. Even if the notice was not false, it could be deceptive or misleading to the least sophisticated debtor.

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). The objective least sophisticated consumer standard applies in evaluating whether the tactic is deceptive.

Reed v. Pinnacle Credit Services, L.L.C., 2009 WL 2461852 (E.D. Pa. Aug. 11, 2009). Objective least sophisticated consumer standard applies. Thus, where there are two possible meanings to a communication, one of which is inaccurate, the least-sophisticated consumer could be misled or deceived by that inconsistency.

Rodriguez v. Blatt, Hasenmiller, Leibsker & Moore, L.L.C., 2009 WL 631613 (N.D. Ill. Mar. 10, 2009). The court dismissed the § 1692e claim based on two alleged defects in the form of the summons that the attorney defendant employed in the underlying state court collection suit, holding that the defects were “nonmaterial” and thus could not give rise to FDCPA liability.

Smith v. NCO Fin. Sys., Inc., 2009 WL 1675078 (E.D. Pa. June 12, 2009). Collection letters are analyzed under the least sophisticated debtor standard.

Deceptive Threat of Legal Action.

Ruth v. Triumph P’ships, 577 F.3d 790 (7th Cir. 2009). Privacy notice was threat to take illegal action, since it was claiming a legal right to disclose nonpublic information about the consumer and was threatening to do so unless the consumer affirmatively opted out. To threaten to take some action “to the extent permitted by law” is to imply that, under some set of circumstances, the law actually permits that action to be taken. Here, the defendants have suggested no set of circumstances under which the FDCPA would have permitted disclosure of the plaintiffs’ nonpublic information without their consent. If anything, the notice’s implication to the contrary makes the statement *more* misleading, not less.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants engaged in a campaign of unlawful harassment, threats, misrepresentations, and other misconduct in violation of multiple FDCPA provisions: “Defendant made repeated threats against Plaintiff to sue her.”

Gilmore v. Account, Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). Threatening a lawsuit which the debt collector knew or should have known was unavailable by reason of § 1692g(b) was the kind of abusive practice the FDCPA intended to eliminate under §§ 1692e(5) and 1692e(10).

Harrington v. Creditors Specialty Serv., Inc., 2009 WL 1992206 (E.D. Cal. July 8, 2009). Default judgment entered as requested for both FDCPA and *Rosenthal* violations for statutory damages in the total amount of \$2000, fees in the amount of \$3029, and costs of \$400, arising from the defendant’s false threat of suit and garnishment in violation of § 1692e(5).

Leone v. Ashwood Fin., Inc., 257 F.R.D. 343 (E.D.N.Y. 2009). In determining whether a statement constitutes an actual threat of legal action, the court will consider: (1) “whether the threat to bring suit to collect the debt is one made by the debt collector himself, or whether the language merely suggests that the debt collector’s client may consider pursuing legal action in the event of nonpayment;” (2) “whether the language in the letters explicitly threatens that legal action will be taken, or whether it simply describes available alternatives which include possible legal action;” and (3) the defendant’s ability and intent to carry out the threatened conduct. The defendant’s letter implied a present ability by the debt collector itself to move forward with litigation, stating that “we may have no alternative than to turn this debt over to an attorney. This action may result in a civil suit being filed against you.” (Emphasis added by court.) However, at his deposition, [defendant’s president] revealed that, “if we got to the point where we decided the attorney would sue, then we would request an assignment from the particular client....”

Nichols v. GC Serv., L.P., 2009 WL 3488365 (D. Ariz. Oct. 27, 2009). Disputed facts precluded summary judgment for either party on the consumer’s claims that the defendant violated § 1692e(5) by threatening a tax refund seizure that was not intended.

Sanz v. Fernandez, 633 F. Supp. 2d 1356 (S.D. Fla. 2009). Allegations that the defendants were acting as debt collectors, but failed to register to collect debts as required by state law, stated a claim for violating § 1692e(5), since, “by attempting to collect the debt, [they] threatened to take action that could not legally be taken.”

Velazquez v. Arrow Fin. Serv., L.L.C., 2009 WL 2780372 (S.D. Cal. Aug. 31, 2009). The court granted the defendant’s motion to dismiss the plaintiff’s § 1692e(5) claim based on the allegation that the defendant filed its underlying state court collection suit “without adequate investigation and dismiss[ed] that suit because it knew it could not prove its allegations.” Plaintiff alleged no facts showing that defendant had no right to institute the action or that defendant did not intend to litigate the action. The California rules of civil procedure allow a plaintiff to voluntarily dismiss an action any time before trial. “That a plaintiff chooses to exercise that right early in the case cannot establish that the action was improperly brought or that the plaintiff never intended to litigate.”

Wideman v. Monterey Fin. Services, Inc., 2009 WL 1292830 (W.D. Pa. May 7, 2009). The allegation that the collector threatened to submit to the IRS a Form 1099C when it had no intent to actually do so stated a claim for violating § 1692e(5).

Other Deceptive Threats

Kuehn v. Cadle Co., 335 Fed. Appx. 827 (11th Cir. 2009) (unpublished). Defendant’s false threat, that plaintiff’s failure to supply her tax identi-

fication number would subject her to a fifty dollar penalty imposed by the IRS, violated § 1692e(10) as a matter of law.

Muha v. Encore Receivable Mgmt., Inc., 558 F.3d 623 (7th Cir. 2009). “Confusing language in a dunning letter can have an intimidating effect by making the recipient feel that he is in over his head and had better pay up rather than question the demand for payment. The intimidating effect may have been magnified in this case by the reference to revocation, which might have suggested to an unsophisticated consumer that any right he might have to challenge the demand for payment had been extinguished by the revocation of his contract with the issuer, the original creditor.”

Ruth v. Triumph P’ships, 577 F.3d 790 (7th Cir. 2009). Privacy notice was threat to take illegal action, since it was claiming a legal right to disclose nonpublic information about the consumer and was threatening to do so unless the consumer affirmatively opted out. To threaten to take some action “to the extent permitted by law,” is to imply that, under some set of circumstances, the law actually permits that action to be taken. Here, the defendants have suggested no set of circumstances under which the FDCPA would have permitted disclosure of the plaintiffs’ nonpublic information without their consent. If anything, the notice’s implication to the contrary makes the statement *more* misleading, not less.

Smith v. Allied Interstate, Inc., 2009 WL 5184313 (M.D.Ala. Dec. 23, 2009). Consumers’ complaint alleging that debt collector’s routine practice of sending letters like the one sent to consumer violated the FDCPA threatening to disclose private information to affiliated and non-affiliated parties as well as other third parties and stated a plausible cause of action.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants engaged in a campaign of unlawful harassment, threats, misrepresentations, and other misconduct in violation of multiple FDCPA provisions: “Defendant made repeated threats against Plaintiff to sue her, made abusive accusations, and threatened to embarrass her by disclosing the debt to her family, neighbors, and employer.”

Bolton v. Pentagroup Fin. Services, L.L.C., 2009 WL 734038 (E.D. Cal. Mar. 17, 2009). The defendant’s threat to contact the consumer’s employer/commanding officer violated the FDCPA.

Captain v. ARS Nat’l Services, Inc., 636 F. Supp. 2d 791 (S.D. Ind. 2009). Section 1692e(5) summary judgment granted to the plaintiff where it was undisputed that the collector misrepresented to the consumer’s lawyer that a \$15 per day fee would be added to account if it was not paid within two weeks, because that statement was false and deceptive under the “competent attorney” standard established by the Seventh Circuit [*Evoxy*] applicable to attorney communications.

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. Mar. 10, 2009). Summary judgment for the plaintiffs on the § 1692e(5) claim where the defendants’ privacy notice stated that certain information may be disclosed to third parties unless the consumer opted out, since § 1692c(b) made such disclosure an unlawful third party communication even if the consumer failed to act.

Smith v. NCO Fin. Sys., Inc., 2009 WL 1675078 (E.D. Pa. June 12, 2009). Where the privacy notice could lead the least sophisticated debtor to believe that defendants could and would legally contact employers and other persons to verify non-public personal information such as one’s Social Security number, credit history, and other financial information, motion to dismiss denied. Violation of § 1692e is not prevented by qualifying language: “We do not disclose the information we collect about you to anyone, except as permitted by law” because the least sophisticated debtor “is not expected to know there is a law that prevents defendants from performing the disclosures they otherwise indicate they will perform.”

Wagner v. Client Services, Inc., 2009 WL 839073 (E.D. Pa. Mar. 26, 2009). Court refused to dismiss claim that 1099C warning was literally false, where defendant failed to show that plaintiff was not within one of the exceptions to the reporting requirement.

Wideman v. Monterey Fin. Services, Inc., 2009 WL 1292830 (W.D. Pa. May 7, 2009). The following statement from the collector’s dun would be viewed by the least sophisticated consumer as a threat to file a Form 1099C with the IRS: “Please be advised that we have not filed a 1099C form with the IRS concerning this debt as of yet. It is imperative that you contact this office immediately to make payment arrangements to prevent further action in relation to the recovery of this loan.” The consumer adequately alleged the statement was false because the debt collector did not intend to file a 1099C.

Deceptive Implication of Attorney Involvement, 15 U.S.C. § 1692e(3)

Carrizosa v. Stassinis, 2010 WL 144807 (N.D. Cal. Jan. 10, 2010). Disputed factual issues of the extent of the debt collection attorney’s personal knowledge and involvement in sending duns on his professional letterhead precluded summary judgment on the consumers’ § 1692e(3) and (14) claims.

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). Genuine issue of material facts remained on defendant’s claim that attorney was meaningfully involved. “The court also finds it difficult to believe that a ‘meaningful’ review of the complaint against [plaintiff would have failed to detect the gross discrepancy between the debts stated on the face of the complaint and those stated in the affidavit.” Nor, apparently, is this the first time that defendant has made such an error.

Brazier v. Law Offices of Mitchell N. Kay, P.C., 2009 WL 764161 (M.D. Fla. Mar. 19, 2009). Summary judgment denied where plaintiff contends attorney acted in bad faith by placing the disclaimer that the law office was not involved on the back of the letter, out of sight from the law office letterhead and the initial impression of the letter, which created disputed issues of fact.

Dunn v. Derrick E. McGavic, P.C., 653 F. Supp. 2d 1109 (D. Or. 2009). The attorney debt collector's verbatim *Greco* disclaimer was inadequate as a matter of law to avoid the false representation of attorney involvement because 1) the disclaimer was "obscured by the relative complexity" of the remainder of the attorney's letter and 2) the letter's references to legal action and its threat of immediate suit implied that the attorney had made a "legal assessment" of the debt when he had not.

Miller v. Upton, Cohen & Slamowitz, [rule] F. Supp. 2d [rule], 2009 WL 3212556 (E.D.N.Y. Oct. 5, 2009). There was no meaningful attorney involvement where, after a perfunctory bankruptcy and decedent review, UCS's computer system would permit, and did permit, a debt-collection letter to be generated upon a bare minimum of data. Indeed, a debt collection letter could be generated on little more than the debtor's identifying information, the client name, and the balance due. An attorney's signature implies that an attorney directly controlled or supervised the process through which the letter was sent and that the signing attorney has personally considered, and formed a specific opinion about, the individual debtor's case. "In evaluating the sufficiency of attorney review, the Court's inquiry focuses not upon general procedure, but upon the sufficiency of the attorney's independent review of a *particular* case prior to the issuance of a debt collection letter. Indeed, as evident in *Nielson*, a law firm may employ a robust set of overarching procedures, but an attorney's failure to conduct an independent review of the particular circumstances of an individual debt collection letter will still doom the process."

Gonzalez v. Kay, 577 F.3d 600 (5th Cir. 2009). "We caution lawyers who send debt collection letters to state clearly, prominently, and conspicuously that although the letter is from a lawyer, the lawyer is acting solely as a debt collector and not in any legal capacity when sending the letter. The disclaimer must explain to even the least sophisticated consumer that lawyers may also be debt collectors and that the lawyer is operating only as a debt collector at that time. Debt collectors acting solely as debt collectors must not send the message that a lawyer is involved, because this deceptively sends the message that the 'price of poker has gone up.' Although the mere presence of disclaimer language might be dispositive in certain circumstances, the context and placement of that disclaimer is also important." As violations are measured against the least sophisticated or unsophisticated consumer standard, a letter from a debt collector, on a law firm letterhead,

implies that a lawyer has become involved in the debt collection process, and the fear of a lawsuit is likely to intimidate most consumers. Disclaimer of attorney involvement on reverse of attorney letterhead "completely contradicted the message on the front of the letter--that the creditor had retained [defendant] and its lawyers to collect the debt."

Unlicensed Collection Agencies

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). Summary judgment granted for defendants. Assuming *arguendo* that the statement "authorized to do business in Illinois" is literally false as applied to the debt collector, plaintiff has failed to demonstrate how this statement did anything other than further the debt collector's exercise of its right to pursue collection against plaintiff in Illinois state court.

Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321 (D. Conn. 2009). In the course of granting class certification, court observed, "The common elements that [defendant] itself admits clearly implicate the precise issue that [plaintiff] raises: whether [defendant] can legally collect consumer debts in Connecticut without a license, or whether such conduct is prohibited by §§ 1692e or 1692f of the FDCPA."

Nero v. Law Office of Sam Streeter, P.L.L.C., [rule] F. Supp. 2d [rule], 2009 WL 2981973 (E.D.N.Y. Sept. 10, 2009). Court rejected claim that mere failure to be licensed, absent an additional threat to litigate, violated the FDCPA.

Wayee v. Recovery's Unlimited, Inc., 2009 WL 3334634 (S.D.N.Y. Oct. 15, 2009). Use of an expired license number by defendant, a licensed debt collector, did not constitute a violation of § 1692e.

Kuhne v. Cohen & Slamowitz, L.L.P., 597 F.3d 189 (2d Cir. 2009). The court certified to the state's highest court the question of whether the defendant was required to be licensed pursuant to applicable law to file collection suits in state court and whether defendant was otherwise authorized to so act.

Communicating False Credit Information, 15 U.S.C. § 1692e(8)

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). The complaint stated a claim for defendant's failure to notify the credit reporting agency that plaintiff disputed the debt thus violating § 1692e(8).

Randall v. Midland Funding, L.L.C., 2009 WL 2358350 (D. Neb. July 23, 2009). "The court finds the plaintiff states a claim under § 1692e(8), since the plaintiff alleges [defendant] had constructive notice through counsel that the debt was disputed, and [defendant] reported the debt to a credit reporting service without indicating the dispute."

Providing 15 U.S.C. § 1692e(11) Notices

Hill v. Select Group, Inc., 2009 WL 2225509 (E.D. Va. July 23, 2009). The court permit-

ted the filing of an amended complaint to allege a class action to remedy the defendant's failure to provide compliant §§ 1692e(11) and 1692g notices; the defendant's opposition to the amendment based on futility, because the defendant purportedly was not a covered debt collector, was an issue that went to the merits of the claim and would not be considered in the case's current posture.

Sanz v. Fernandez, 633 F. Supp. 2d 1356 (S.D. Fla. 2009). Allegations that the defendants were debt collectors who failed to make the §§ 1692e(11) and 1692g(a) disclosures stated a claim for relief.

Sears v. Federal Credit Corp., 2009 WL 2601378 (W.D. Va. Aug. 18, 2009). Where the caller stated that he was calling because Federal Credit Corp. had tried to "settle a case" and may have "initiated legal action," or was calling regarding a legal action which could affect plaintiff's federal income tax liability, calls did not indicate that they were regarding an alleged debt as required by FDCPA, but the calls could have been with regard to a host of issues, thus confusing the least sophisticated consumer and violating § 1692e(11) disclosure requirements as well.

Shanker v. Fair Collection & Outsourcing, L.L.C., 2009 WL 1767580 (D.N.J. June 19, 2009). Debt collector need not use the "magic words" as long as the communication conveys the information that it is from a debt collector. Here, the communication sufficiently conveyed that information in that it was entitled "Verification of Debt" and suggested that consumer "call your collector."

Wideman v. Monterey Fin. Services, Inc., 2009 WL 1292830 (W.D. Pa. May 7, 2009). The collector conceded that the allegation that it sent the consumer emails that did not identify itself as a debt collector stated a claim for violating § 1692e(11).

Costa v. National Action Fin. Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007). Telephone messages left by a debt collector violated the FDCPA when they failed to convey the information required by § 1692e(11). Subsequent telephone calls by the consumer to the debt collector after the collector had informed plaintiff that the calls were to collect her account do not violate § 1692e(11).

Edwards v. Niagara Credit Solutions, Inc., 584 F.3d 1350 (11th Cir. 2009). The district court properly denied the bona fide error defense arising from the defendant's failure to identify itself as a debt collector as required by § 1692e(11) when leaving consumers an answering machine message; first, the violation was, in fact, intentional, the result of a deliberate policy decision to not comply with § 1692e(11), purportedly to avoid violating § 1692c(b) in the event that the message was heard by a third party who would then know that a collection agency was calling the consumer; second, to be bona fide "the mistake must be objectively reasonable," and "[i]t was not reasonable for [defendant] to violate § 1692e(11) of the FDCPA with every message it left

in order to avoid the possibility that some of those messages might lead to a violation of § 1692c(b)." "[Defendant] complains that if it is not permitted to leave out of its answering machine messages the disclosure required by § 1692e(11), the result will be that it cannot leave any messages on answering machines.... [T]he answer is that the Act does not guarantee a debt collector the right to leave answering machine messages."

Disclosing the Amount of the Debt, 15 U.S.C. §§ 1692e(2)(A), 1692g(a)(1)

Donohue v. Quick Collect, Inc., 2010 WL 103653 (9th Cir. Jan. 13, 2010). The debt collector did not charge a rate of interest in excess of that allowed by state law and thus did not violate §§ 1692e. The collector did not violate §§ 1692e since its mislabeling in a collection complaint of a \$32 charge as "interest," when in fact the charge was comprised of both interest and pre-assignment finance charges, would not mislead the least sophisticated consumer and therefore was not materially false.

Hahn v. Triumph P'ships, L.L.C., 557 F.3d 755 (7th Cir. 2009). Debt buyer claimed an "amount due" to which it added its own interest. Even though the "amount due" included the underlying creditor's interest, the statement was not false. "An 'amount' that is due can include principal, interest, penalties, attorneys' fees, and other components. Interest then can be added to that total." "When interest is compounded, today's interest becomes tomorrow's principal, so all past-due amounts accurately may be described as 'principal due.'"

Wahl v. Midland Credit Mgmt., Inc., 556 F.3d 643 (7th Cir. 2009). Because of interest and late fees, a debt of less than \$70 ballooned to over \$1000 by the time a bad debt buyer purchased it. The buyer stated that the balance it bought was "principal" and added its own interest thereafter. The plaintiff had to show both that the statement was false, and that it would mislead the unsophisticated consumer. From the perspective of the debt buyer, the interest charged by the original creditor was very much part of the principal. Defendant obtained the entire debt, including interest, presumably for pennies on the dollar; so the starting or original amount owed, as far as it was concerned, was full amount of the debt. The amount of the debt from the collector's perspective was what it was seeking. This would not be technically false or deceptive to the consumer.

Grden v. Leikin, Ingber & Winters, P.C., 2010 WL 199947 (E.D. Mich. Jan. 19, 2010). The collector's misstatement of the amount of the debt communicated in response to the consumer's direct inquiry was not made "in connection with the collection of" the consumer's debt and thus did not violate § 1692e(2)(A) where the collector did not demand payment, did not imply that the consumer was in default, and did not "allude to the consequences of default."

Acik v. I.C. Sys., Inc., 640 F. Supp. 2d 1019 (N.D. Ill. 2009). The debt collector violated § 1692e

by failing to disclose what the “Additional Client Charges” of \$78.50 included.

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). Inaccurate and confusing statement of the amount of interest violates the FDCPA, subject to a bona fide error defense.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). Defendant’s motion to dismiss Plaintiff’s § 1692e(2) claim that defendant failed to apply the credit of \$1297.03 to the amount of \$5881.73 and therefore made a false representation as to the amount due on the credit card account in violation of FDCPA was denied, as plaintiff had alleged sufficient facts.

Gathuru v. Credit Control Serv., Inc., 623 F. Supp. 2d 113 (D. Mass. 2009). The addition and inclusion of the debt collector’s contingency fee to the amount due in its first letter was a misrepresentation in violation of § 1692e(2)(A) because the collection fee was not yet due.

Gilmore v. Acc. Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). Accepting plaintiff’s alleged facts as true, court concluded that plaintiff owed no debt to defendant and therefore defendant’s representations to both plaintiff and the credit reporting agencies that the debt was \$1010, or double the amount owed that it previously asserted, would have violated § 1692e(2)(A).

Hawkins v. Citicorp Credit Serv., Inc. [rule] F. Supp. 2d [rule], 2009 WL 3415758 (D. Md. Oct. 23, 2009). Complaint alleging that defendants collected an unlawful rate of interest and thus violated § 1692e(2)(A) was dismissed, since applicable law authorized the rate charged.

Hepsen v. J.C. Christensen & Associates, Inc., 2009 WL 3064865 (M.D. Fla. Sept. 22, 2009). When a debt collector demands an incorrect amount of money in a dunning letter, it makes a false and misleading representation in violation of § 1692e(2)(A).

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). The defendant collection lawyer violated § 1692e when he sought and received a default judgment in state court that included attorney fees that were prohibited under applicable state law. The defendant collection lawyer violated §§ 1692e(2)(B) and 1692f(1) by requesting in the state collection court service of process fees that were prohibited by applicable state law since the process server was unregistered.

Leone v. Ashwood Fin., Inc., 257 F.R.D. 343 (E.D.N.Y. 2009). The defendant’s letter was misleading when it represented that the debts were “assigned to Ashwood Financial,” when, apparently, no written assignments had been made.

Mushinsky v. Nelson, Watson & Assoc., L.L.C., 642 F. Supp. 2d 470 (E.D. Pa. 2009). Where the “principal” included pre-existing interest and charges, two standard dictionaries support the contention that “principal” does not include interest, and

this interpretation is certainly not “bizarre or idiosyncratic.”

Sanchez v. United Collection Bureau, Inc., 649 F. Supp. 2d 1374 (N.D. Ga. 2009). Summary judgment for the defendant where the plaintiff failed to meet her burden to produce any evidence to support her alleged § 1692e(2)(A) violation that the collector misrepresented the amount of the debt: “Although Plaintiff has presented evidence showing that two other debt collection agencies sent collection letters to Plaintiff alleging an amount due on the debt that was *different* than the amount stated in [defendant’s] Apr. 20, 2007 collection letter, she has presented no evidence that the amount showing as due from [defendant] was a *false* representation of the total amount then due on the debt. Nor has she presented evidence showing what she contends was the ‘correct’ amount...”

Scioli v. Goldman & Warshaw P.C., 651 F. Supp. 2d 273 (D.N.J. 2009). Notwithstanding the plaintiff’s argument that statutory attorney fees are only due and owing after judgment is entered for the debt collector and its status as the prevailing party is established, the court dismissed the complaint for failure to state claims under § 1692e(2)(A) because the least sophisticated consumer would not be deceived by a debt collector listing a specific sum of statutory fees in the space provided in the court-approved form summons; not only did the form summons contain a blank space to insert the amount of fees requested, but it also disclosed that all amounts listed are only the amounts being requested: “[Plaintiff] essentially asks this Court to hold that the form summons created by the State of New Jersey, and used by countless lawyers and nonlawyers throughout the State, violates the FDCPA. But such a holding would defy common sense and would not further the goals of the FDCPA.”

Weiss v. Zwicker & Assocs., P.C. [rule] F. Supp. 2d [rule], 2009 WL 3366564 (E.D.N.Y. Oct. 21, 2009). A debt collector has no obligation to explain why a consumer’s debt has increased from the time that the initial dun was sent: “The Court finds that there is nothing confusing or misleading about the increased amount of debt stated [in the second dun] as even the most unsophisticated consumer would understand that credit card debt accrues interest.”

Kelly v. Wolpoff & Abramson, L.L.P., 634 F. Supp. 2d 1202 (D. Colo. 2008). The failure of the bank’s collector to disclose the putative tax benefits accruing to the bank from charging off the delinquent credit card debt in accordance with federal regulations did not misrepresent the amount of the debt in violation of § 1692e(2)(A).

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). Collection attorney’s request for fees under an inapplicable statute in a state collection complaint did not violate §§ 1692e or 1692f where the underlying agreement authorized reasonable collection fees.

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). Request for attorney fees in a complaint did not violate §§ 1692e or 1692f.

False Representation of Character or Legal Status of the Debt, 15 U.S.C. § 1692e(2)(A)

Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (6th Cir. 2009). The defendant state court collection attorney's characterization in the collection complaint of the consumer's credit card debt as a "loan," while perhaps more properly characterized as an "account," nevertheless involved no trickery, would not deceive the least sophisticated consumer as to the nature of the debt, and thus was not the type of false representation that would violate § 1692e.

Tostado v. Citibank (South Dakota), N.A., 2010 WL 55976 (W.D. Tex. Jan. 4, 2010). Consumer's argument that Citibank did not own the debt or the right to sue was dismissed as Citibank demonstrated that it owned the account despite securitization and thus was not subject to FDCPA

Bagwell v. Portfolio Recovery Associates, L.L.C., 2009 WL 1708227 (E.D. Ark. June 5, 2009). Motion to dismiss based on consumer's fifteen-year-old bankruptcy denied; the defendant debt buyer was not a party to the bankruptcy, was not listed as a creditor, and was not specifically enjoined by the Bankruptcy Court from collecting the debt. "Plaintiff is not attempting to hold Defendants in contempt for a violation of the bankruptcy discharge order but, rather, Plaintiff is attempting to establish FDCPA liability based on Defendants' pursuit of a debt which Plaintiff claims is not owed."

Cappetta v. GC Services, Ltd. P'ship, 654 F. Supp. 2d 453 (E.D. Va. 2009). Defendant debt collector's motion for judgment on the pleadings denied, since the complaint alleged that the defendant misrepresented that the plaintiff was an obligor on the credit card account, that it was in possession of the credit card account application, and that the credit card company had provided it with her Social Security number and had named her an obligor on the account. "These misrepresentations, if true, clearly violate § 1692e."

In re Jones, 2009 WL 2068387 (Bankr. E.D. Va. July 16, 2009). The court held on summary judgment that the defendant had violated § 1692e(2)(A): "[T]he dunning letter sent by Defendant to Plaintiff falsely represented the status of the debt as valid, due, and owing because it was sent after the Plaintiff commenced this bankruptcy case and the filing of the Plaintiff's bankruptcy petition changed the legal status of the debt by operation of the automatic stay of 11 U.S.C. § 362 and the discharge injunction of 11 U.S.C. § 524."

Manlapaz v. Unifund CCR Partners, 2009 WL 3015166 (N.D. Ill. Sept. 15, 2009). The falsity of a debt collector's statement in her affidavit filed in state court that she had personal knowledge of facts that she gleaned from a review of business records was a technicality which would not mislead the un-

sophisticated consumer and was therefore not material. She could have had sufficient information to establish the admissibility of the business records to establish the debt. The consumer stated a claim by alleging that the bill attached to the state court pleading was actually a document constructed by the debt buyer to simulate a bill. The consumer stated a claim by alleging the debt buyer falsely represented that it owned the debt it claimed she owed.

Matmanivong v. Unifund CCR Partners, 2009 WL 1181529 (N.D. Ill. Apr. 28, 2009). A debt collector violated the FDCPA where it did not own the debt but nonetheless filed collection suits misrepresenting that it was an assignee of that debt.

Meroney v. Pharia, L.L.C., 2009 WL 3378416 (N.D. Tex. Oct. 19, 2009). FDCPA complaint was dismissed for failure to state a claim where the court found that the least sophisticated consumer would not be misled by the state court collection complaint and affidavit.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). "The contents of the affidavit itself, and in particular the fact that the affiant allegedly had personal knowledge that the debt was valid, would effectively serve to validate the debt to the reader, whether that was [the consumer] or a court." Therefore, the affidavit was false, deceptive, and misleading in its use in conjunction with an attempt to collect a debt, and the debt collectors have violated FDCPA § 1692e.

Reed v. Pinnacle Credit Services, L.L.C., 2009 WL 2461852 (E.D. Pa. Aug. 11, 2009). The letter arguably made a false representation as to the character or legal status of the debt, in violation of § 1692e(2) by stating: "If your present debt is outside the applicable statute of limitations period, then a lawsuit cannot be filed to collect this debt. [Defendant debt collector] will not bring legal action to collect this debt even when the debt is within the reporting period." However, binding language of the condensed agreement in no way precludes defendant from initiating legal action on transferred balances.

Deceptive Practices in Debt Collection Suits

Hartman v. Great Seneca Fin. Corp., 569 F.3d 606 (6th Cir. 2009). Summary judgment for the defendant debt buyer and its attorneys reversed where question of material fact existed whether the defendants' representations made in state collection court were false or deceptive in violation of § 1692e. The defendants attached to the collection complaints documents which they represented were copies of the consumers' credit card account statements, when in fact the documents were actually created by the defendants based on general information they received electronically about the debts, lacked any detail as to purchases or payments made, and were printed to appear to be recent credit card bills.

Miller v. Javitch, Block & Rathbone, 561 F.3d 588 (6th Cir. 2009). The defendant state court

collection attorney's allegation in the collection complaint that the plaintiff/assignee of the debt "acquired, for valuable consideration, all right, title and interest in and to the claim set forth below originally owed by Defendant(s) to ASTA II/Providian-03/NAT" did not violate § 1692(e)(12) "by falsely or misleadingly implying that Providian assigned her debt to an innocent purchaser for value who enjoyed protection under the holder-in-due-course rule," since the "statement says nothing about holders in due course[, and] no reason exists to think that the least-sophisticated consumer gives any thought to holders in due course-by definition, the least-sophisticated consumer lacks any knowledge of the *concept*." (Emphasis in original.)

Grden v. Leikin, Ingber & Winters, P.C., 2010 WL 199947 (E.D.Mich. Jan. 19, 2010). Service of the "Combined Affidavit of Open Account and Motion for Default Judgment" attached to the state court collection complaint would not mislead least sophisticated consumers to believe that they were already in default and thus did not violate § 1692e. The collector's misstatement of the amount of the debt communicated in response to the consumer's direct inquiry was not made "in connection with the collection of" the consumer's debt and thus did not violate § 1692e(2)(B) where the collector did not demand payment, did not imply that the consumer was in default, and did not "allude to the consequences of default."

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). Summary judgment for defendant on claim that affiant misrepresented that she was "the employee/agent of: Inovision" when in fact she was employed by NCO Financial, Inovision's "debt servicer." Since NCO Financial acts as Inovision's agent in pursuing collection on its accounts and is part of the same corporate family as Inovision, the court found plaintiff's claim without merit. Summary judgment for defendant on claim that affidavit falsely purports to be based on "the original books and records" of "Inovision" where "Inovision" obtains computer records of accounts when purchased and then transfers that information to NCO Financial. "That the records [affiant] used in reviewing the affidavit were electronic copies stored in NCO Financial's computer records do not make them any less authentic or accurate."

Capital Credit & Collection Serv., Inc. v. Armani, 206 P.3d 1114 (Or. Ct. App. 2009). Jury could properly conclude that litigation after reaching a settlement agreement violated § 1692e.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). Plaintiff stated a claim for misrepresenting the amount due and the claim was not barred by witness nor litigation immunity. Another claim was dismissed as insufficient facts were alleged to support the claim that defendant violated § 1692e(10) by filing the state court petition outside of the statute of limitations period.

Gonzalez v. Erskine, 2008 WL 6822207 (S.D. Fla. Aug. 7, 2008). Filing a verified complaint to collect a debt in state court allegedly against the wrong person did not violate the FDCPA

Jenkins v. Centurion Capital Corp., 2009 WL 3414248 (N.D. Ill. Oct. 20, 2009). The court held that FDCPA was not violated where the defendants filed a state court lawsuit against plaintiff with only an affidavit attesting to its record keeping methods as documentation and the plaintiff alleged that defendants violated § 1692e by filing a lawsuit, the allegations of which they knew they could not prove at that time.

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). The defendant collection lawyer violated § 1692e when he sought and received a default judgment in state court that included attorney fees that were prohibited under applicable state law and §§ 1692e(2)(B) and 1692f(1) by requesting service of process fees that were prohibited by applicable state law since the process server was unregistered.

Gargiulo v. Forster & Garbus Esqs., 651 F. Supp. 2d 188 (S.D.N.Y. 2009). Admittedly truthful affidavit submitted in the underlying collection suit stating that the consumer was in default on the subject account could not be the basis for the asserted claim of a § 1692e violation.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). Deposition testimony showed there were two patently false claims in the affidavit: first, that the affiant had any personal knowledge regarding consumer's debt, and second, that the affiant was involved with the decision or act of hiring the law firm to pursue legal action. The employee did not learn anything about the accounts, which the affidavit stated were owed based on his personal knowledge, when the employee merely signed the affidavits en mass, about 400 each day, without any personal knowledge about the amount claimed, owed, or the ownership the claim. Another paragraph described how defendant acquired the debt from Citibank and, if it is read alone, it only states a fact that is very likely true. However, when read in conjunction with paragraph one: "I make the statements herein based upon my personal knowledge," it is apparently false.

Moore v. Diversified Collection Services, Inc., 2009 WL 1873654 (E.D.N.Y. June 29, 2009). The consumer's FDCPA complaint alleging a violation of 15 U.S.C. § 1692e for the collector's wage garnishment stated a cause of action, but did not state claims for violation of §§ 1692d, 1692f, and 1692g.

Morrison v. Hosto, Buchan, Prater & Lawrence, P.L.L.C., 2009 WL 3010917 (E.D. Ark. Sept. 17, 2009). Note attached to the complaint was factually true, included statutorily mandated language, and invited settlement. Merely attaching a notice to the complaint did not violate the FDCPA.

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). Whether defendant used improper means in pursuing an unlawful detainer action by

serving process at the wrong address in violation of §§ 1692d, 1692e, and 1692f of the FDCPA involved issues of fact that precluded summary judgment.

Rodriguez v. Blatt, Hasenmiller, Leibsker & Moore, L.L.C., 2009 WL 631613 (N.D. Ill. Mar. 10, 2009). The court dismissed the § 1692e claim based on two alleged defects in the form of the summons that the attorney defendant employed in the underlying state court collection suit, holding that the defects were “nonmaterial” and thus could not give rise to FDCPA liability.

Sanz v. Fernandez, 633 F. Supp. 2d 1356 (S.D. Fla. 2009). Allegations that the defendants, who were not lawyers, filed an eviction complaint seeking attorney fees as agent for the landlord, when state law prohibits such fees to nonlawyers, stated a claim for violating §§ 1692d, 1692e, 1692e(2)(A), 1692e(2)(B), 1692e(5), 1692e(10), and 1692f.

Whittiker v. Deutsche Bank Nat'l Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio 2009). The filing of a foreclosure action by a plaintiff in the process of obtaining an assignment not yet fully documented was not a deceptive, misleading, or abusive tactic and did not violate the FDCPA.

TrueBusiness Name

Carrizosa v. Stassinis, 2010 WL 144807 (N.D. Cal. Jan. 10, 2010). Summary judgment granted on the consumers' § 1692e(14) claim where letters sent in the name of the collector's client were actually sent by the defendant debt collector.

Boyko v. Am. Intern. Group, Inc., 2009 WL 5194431 (D.N.J. Dec. 23, 2009). Section 1692e(14) at its core clearly prohibits the use of a name that is neither the collector's actual corporate name nor its official trade name, licensed or otherwise

Debt Settlement Offers

Prophet v. Myers, --- F.Supp.2d ----, 2008 WL 2328349 (S.D. Tex. June 4, 2008). Settlement offers must accurately reflect the terms a debt collector is authorized by the creditor to make.

DeKoven v. Plaza Associates, 2009 WL 901369 (N.D. Ill. Mar. 31, 2009). Expert's survey on the effect of the offer on the least sophisticated consumer was stricken as not complying with *Daubert* standards. “Unfortunately, until debtors challenging dunning letters as misleading or deceptive produce survey evidence that comports with the principles of professional survey research, better-equipped fact finders--i.e., juries--will not have the chance to judge the deceptiveness of these letters.” Settlement offer of 65% of the debt valid for a period of thirty-five days was not facially confusing or misleading just because defendant had authority to settle for 60%.

Time-Barred Debts.

Avery v. First Resolution Mgmt., Corp., 568 F.3d 1018 (9th Cir. 2009). The debt collector did not file a time barred debt, since it was filed within the Oregon statute of limitations. The shorter New Hampshire period of limitations prescribed by the contract was applicable under Oregon choice of law rules until the N.H. law was determined to be tolled

as to an Oregon consumer, in which case Oregon law reverted to its own, longer statute of limitations.

Herkert v. MRC Receivables Corp., 655 F. Supp. 2d 870 (N.D. Ill. 2009). Filing or threatening to file suits to collect a time-barred credit card debt, time-barred under the Illinois statute of limitations for unwritten contracts, violates the FDCPA.

Other Deceptive Acts

Ruth v. Triumph P'ships, 577 F.3d 790 (7th Cir. 2009). A privacy notice that stated “to the extent permitted by law, we may collect and/or share all of the information we obtained in servicing your account” violated § 1692e(5) and e(10) when it was sent in the envelope containing a collection letter as it was sent “in connection with” the collection of a debt.

Johnson v. Bullhead Invts., LLC, 2010 WL 118274 (M.D.N.C. Jan. 11, 2010). The consumer stated a claim for relief for violations of § 1692e as a result of the debt collector's persistent collection efforts that she pay a debt that she did not owe and that were directed at her as a result of mistaken identity.

Durham v. Continental Cent. Credit, 2009 WL 3416114 (S.D. Cal. Oct. 20, 2009). Where the consumer had agreed to the payment of a collection fee, the collector's addition of a 40% collection fee to the principal did not violate § 1692e. A second collection letter which did not reiterate the consumer's right to dispute the debt sent within the thirty-day validation period demanding immediate payment violated § 1692g.

Hepsen v. J.C. Christensen & Associates, Inc., 2009 WL 3064865 (M.D. Fla. Sept. 22, 2009). Defendant misrepresented the current creditor to be its client, Resurgent, instead of disclosing the actual current creditor, LVNV.

Hernandez v. California Reconveyance Co., 2009 WL 464462 (E.D. Cal. Feb. 24, 2009). Where the complaint about a foreclosure on plaintiff's home lacked allegations of false or misleading representations to violate § 1692e, defendant's Rule 12(b)(6) motion to dismiss was granted without prejudice.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). With regard to the Sixth Circuit's materiality standard, “The contents of the affidavit itself, and in particular the fact that the affiant allegedly had personal knowledge that the debt was valid, would effectively serve to validate the debt to the reader, whether that was [the consumer] or a court.” Therefore, the affidavit was false, deceptive, and misleading in its use in conjunction with an attempt to collect a debt, and the debt collectors have violated FDCPA § 1692e.

Mushinsky v. Nelson, Watson & Assoc., L.L.C., 642 F. Supp. 2d 470 (E.D. Pa. 2009). A collection letter is deceptive if it can reasonably have two meanings, one of which is inaccurate. The decision in *Hahn* was distinguished, as the plaintiff in *Hahn* did not contend that the notice at issue there was misleading or deceptive--she only argued that it was *false*.

Neill v. Bullseye Collection Agency, Inc., 2009 WL 1386155 (D. Minn. May 14, 2009). The allegation that the collector sent a letter entitled "SECOND NOTICE" that was in fact its third letter to the consumer failed to state a claim for violating § 1692e since the purported "misrepresentation was immaterial and therefore not actionable," citing, *inter alia*, the recent cases of *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588 (6th Cir. 2009) and *Hahn v. Triumph P'ships, L.L.C.*, 557 F.3d 755 (7th Cir. 2009).

Pearson v. LaSalle Bank, 2009 WL 1636037 (E.D. Pa. June 9, 2009). Several misrepresentations in foreclosure complaint were de minimis and did not "materially affect" the collection of the debt. Note that the plain language of the FDCPA mandates that the nature of the violation is to be considered only in determining damages.

Perez v. EMC Mortg. Corp., 2009 WL 702825 (N.D. Cal. Mar. 17, 2009). Dismissed the consumer's FDCPA claims alleging that the defendant was not legally entitled to initiate foreclosure and had falsely represented its right to do so, since the public record (of which the court took judicial notice) showed that a different entity from the defendant initiated the foreclosure and "was a proper party to take such action."

Randall v. Midland Funding, L.L.C., 2009 WL 2358350 (D. Neb. July 23, 2009). Where the consumer telephoned the collection attorneys after receiving his first dun and stated that he disputed the debt because he was a theft of identity victim, the allegation that the attorneys then stated that they did not have to provide any information about the account stated a claim under § 1692e for making a false, misleading, or deceptive representation.

Reed v. Pinnacle Credit Services, L.L.C., 2009 WL 2461852 (E.D. Pa. Aug. 11, 2009). The letter was subject to at least two interpretations, one of which was inaccurate, because it stated that "Jefferson Capital will not bring legal action to collect this debt even when the debt is within the reporting period." However, the condensed agreement provided that "[a]ny claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to your Account, any transferred balances or this Condensed Agreement . . . will be resolved by binding arbitration"

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). A statement that the decedent debtor's estate was subject to liquidation to pay her debts did not violate §§ 1692e(2) or 1692e(10): "Strine never told Peoples that defendant would force a sale of the house, that it intended to do so, or the like. Instead, Strine merely stated that Phillips & Cohen could force a sale of the house. That innocuous statement is not violative of § 1692e(2) or § 1692e(10) because it is not false but is a statement of defendant's legal rights under Alabama law. Entry of summary judgment in defendant's favor is therefore warranted as to those claims."

Unfair Practices, 15 U.S.C. § 1692f General Unfairness Standards.

Donohue v. Quick Collect, Inc., 2010 WL 103653 (9th Cir. Jan. 13, 2010). "[F]alse but non-material representations . . . are not actionable under §§ 1692f." The collector did not violate §§ 1692f since its mislabeling in a collection complaint of a \$32 charge as "interest," when in fact the charge was comprised of both interest and pre-assignment finance charges, would not mislead the least sophisticated consumer and therefore was not materially false.

Johnson v. Bullhead Invts., LLC, 2010 WL 118274 (M.D.N.C. Jan. 11, 2010). The Consumer stated a claim for relief for violations of § 1692f as a result of the debt collector's persistent collection efforts that she pay a debt that she did not owe and that were directed at her as a result of mistaken identity.

Carter v. Countrywide Home Loans, Inc., 2009 WL 2742560 (E.D. Va. Aug. 25, 2009). The court erroneously held that where the plaintiff husband had not signed the mortgage agreement and was not alleged to be obligated he would not be protected as a "consumer" under § 1692f. The court failed to note only subsections 1692f(7) and (8) were limited to consumers with the rest of § 1692 more broadly applicable.

Randall v. Midland Funding, L.L.C., 2009 WL 2358350 (D. Neb. July 23, 2009). The complaint failed to state a claim for relief under § 1692f by providing no allegations other than those that supported other violations that the court had already sustained: "[T]he plaintiff fails to provide any facts showing a § 1692f violation beyond those facts alleged to violate other sections of the Act. A claim under § 1692f is deficient when the facts fail to show any improper debt collection activity other than the misconduct that the plaintiff claims is a violation of other provisions of the FDCPA."

Collection of Unauthorized Amounts

Donohue v. Quick Collect, Inc., 2010 WL 103653 (9th Cir. Jan. 13, 2010). The debt collector did not charge a rate of interest in excess of that allowed by state law and thus did not violate §§ 1692f.

Gden v. Leikin, Ingber & Winters, P.C., 2010 WL 199947 (E.D. Mich. Jan. 19, 2010). The collector's misstatement of the amount of the debt communicated in response to the consumer's direct inquiry was not made "in connection with the collection of" the consumer's debt and thus did not violate § 1692f where the collector did not demand payment, did not imply that the consumer was in default, and did not "allude to the consequences of default."

Carrizosa v. Stassinios, 2010 WL 144807 (N.D. Cal. Jan. 10, 2010). Summary judgment granted on the consumers' § 1692f(1) claim where the debt collector attempted to collect both prejudgment interest and treble damages when state law prohibited the collection of both amounts.

Acik v. I.C. Sys., Inc., 640 F. Supp. 2d 1019 (N.D. Ill. 2009). The hospital form which provided

that the patient was responsible for “all costs and fees, including attorneys fees, and interest” did not expressly authorize collection fees; therefore, the attempted recovery of collection fees and attempted collection of interest prior to the start date violated § 1692f.

Durham v. Continental Cent. Credit, 2009 WL 3416114 (S.D. Cal. Oct. 20, 2009). Where the consumer had agreed to the payment of a collection fee, the collector’s addition of a 40% collection fee to the principal did not violate 15 U.S.C. § 1692f(1).

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). The court dismissed plaintiff’s claim that defendant violated the FDCPA by seeking to collect interest accrued on the credit card account since November 22, 2005, as plaintiff’s complaint contained no assertions as to when plaintiff received demand for payment or even that defendant sought prejudgment interest on the credit card account in the state court action. Held that the complaint failed to allege facts sufficient to state a claim for violation of § 1692f(1).

Gathuru v. Credit Control Serv., Inc., 623 F. Supp. 2d 113 (D. Mass. 2009). A percentage-based fee need not be specifically mentioned in an agreement in order to satisfy the FDCPA’s “expressly authorized” requirement of § 1692f(1).

Hunt v. Cornicello & Tendler, L.L.P., 2009 WL 3335935 (S.D.N.Y. Oct. 13, 2009). The request by collection attorneys in an eviction complaint for \$3000 in attorney fees, when the lease only authorized reasonable attorney fees, did not violate the FDCPA, citing *Winn v. Unifund CCR Partners*, 2007 WL 974099 at *3 (D. Ariz. Mar. 30, 2007).

Ketchem v. American Acceptance, Co., L.L.C., 641 F. Supp. 2d 782 (N.D. Ind. 2008). The plaintiff stated a claim for defendants’ unlawful attempt to collect attorney fees to which they were not entitled based on the state rule that barred a fee recovery where there is a substantial identity of interest between the client and attorney; the complaint alleged that the attorneys here were principals in both the debt buyer and the law firm and that “American Acceptance was created as a vehicle for Bowman, Heintz to buy debt for its own account rather than collect debts for others.”

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). The defendant collection lawyer violated §§ 1692e(2)(B) and 1692f(1) by requesting in the state collection court service of process fees that were prohibited by applicable state law since the process server was unregistered.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). There was a question of material fact as to whether the debt collectors violated the FDCPA by attempting to collect interest at a higher rate than allowed by law.

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). Collection attorney’s request for fees under an inapplicable statute in a state collection complaint did not violate §§ 1692e or

1692f where the underlying agreement authorized reasonable collection fees.

Russo v. Puckett & Redford, P.L.L.C., 2009 WL 3837529 (W.D. Wash. Nov. 17, 2009). Partial summary judgment was entered on behalf of the consumer for the debt collector’s attempt to collect a service fee for an unregistered process server.

Richard v. Oak Tree Group, Inc., 614 F. Supp. 2d 814 (W.D. Mich. 2008). The consumer’s agreement to pay “collection costs and expenses incurred” is not an agreement to pay a collection agency’s maximum potential commission based upon percentage of the unpaid balance and violated § 1692f(1).

Repossession Practices

Burnett v. Mortgage Elec. Registration Sys., Inc., 2009 WL 3582294 (D. Utah Oct. 27, 2009). Complaint dismissed for failure to state a claim for violating § 1692f(6) since “the Deed of Trust expressly gives MERS both the authority to foreclose and the authority to appoint a successor trustee” and thus the defendant, who was the trustee in the plaintiff’s nonjudicial home foreclosure, had the necessary “present right to the possession of the property” when he foreclosed.

Durandisse v. U.S. Auto Task Force, 2009 WL 2337133 (S.D.N.Y. July 30, 2009). Where the consumer failed to present evidence that the repossession companies did not have a “present right” to her automobile “via a valid security interest,” § 1692f(6) did not apply. The consumer showed that the debt was paid prior to the repo, but the creditor had mishandled the payment.

Gallagher v. Gurstel, Staloch & Chargo, P.A., 645 F. Supp. 2d 795 (D. Minn. 2009). Section 1692f(6) does not apply to a garnishment summons which is not a “nonjudicial action.”

Unlicensed Collection

Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321 (D. Conn. 2009). In the course of granting class certification, court observed, “The common elements that [defendant] itself admits clearly implicate the precise issue that [plaintiff] raises: whether [defendant] can legally collect consumer debts in Connecticut without a license, or whether such conduct is prohibited by §§ 1692e or 1692f of the FDCPA.”

Scott v. J. Anthony Cambece Law Office, P.C., 600 F. Supp. 2d 479 (E.D.N.Y. 2009). The complaint stated an FDCPA claim against the defendant law firm for collecting debts without a debt collection license as required by the applicable New York City municipal code, since the code does not contain a per se exemption for attorneys as the defendant argued.

Unfair Practices in Debt Collection Suits

Hartman v. Great Seneca Fin., Corp., 569 F.3d 606 (6th Cir. 2009). Summary judgment for the defendant debt buyer and its attorneys reversed where a question of material fact existed as to whether the debt buyer’s representations made in state collection

court were an unfair means of collecting a debt in violation of § 1692f. The debt buyers attached to the collection complaints documents which they represented were copies of the consumers' credit card account statements, when in fact the documents were actually created by the defendants based on general information they received electronically about the debts, lacked any detail as to purchases or payments made, and were printed to appear to be recent credit card bills.

Jenkins v. Centurion Capital Corp., 2009 WL 3414248 (N.D. Ill. Oct. 20, 2009). The court held that FDCPA was not violated where the defendants filed a state court lawsuit against plaintiff with only an affidavit attesting to its record keeping methods and documentation, and the plaintiff alleged that defendants violated § 1692f by filing a lawsuit when they knew they could not prove the allegation of the suit at the time of filing.

Scioli v. Goldman & Warshaw P.C., 651 F. Supp. 2d 273 (D.N.J. 2009). Notwithstanding the plaintiff's argument that statutory attorney fees are only due and owing after judgment is entered for the debt collector and its status as the prevailing party is established, the court dismissed the complaint for failure to state claims under § 1692f(1) because the least sophisticated consumer would not be deceived by a debt collector listing a specific sum of statutory fees in the space provided in the court-approved form summons. Not only did the form summons contain a blank space to insert the amount of fees requested but it also disclosed that all amounts listed are only the amounts being requested: "Scioli essentially asks this Court to hold that the form summons created by the State of New Jersey, and used by countless lawyers and nonlawyers throughout the State, violates the FDCPA. But such a holding would defy common sense and would not further the goals of the FDCPA."

Other Unfair Practices

Neill v. Bullseye Collection Agency, Inc., 2009 WL 1386155 (D. Minn. May 14, 2009). The consumer's allegations that the collector's printing at the top of its duns the acronym "WWJD," which stands for the phrase "what would Jesus do?," "has the effect of invoking shame or guilt in alleged debtors and portrays the debtor as a sinner who is going to hell" stated a claim for engaging in conduct that is harassing, oppressive, or abusive in violation of § 1692d and unfair or unconscionable in violation of § 1692f.

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). Plaintiff alleged that collection attorney for his former lessor used improper means in pursuing an unlawful detainer action against him by obtaining service against him at the wrong address in violation of §§ 1692d, 1692e, and 1692f. Court held that issues of fact required a trial of the claims.

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). Summary judgment for the defendant on plaintiff's § 1692f

claims because they merely "rehash" and duplicate "their claims under other FDCPA sections."

Validation of Debts, 15 U.S.C. § 1692g Least Sophisticated Consumer and Other General Standards.

Ellis v. Solomon and Solomon, P.C., 591 F.3d 130 (2nd Cir. Jan. 13, 2010). Described and applied the least sophisticated consumer analysis.

Rosamilia v. ACB Receivables Mgmt., Inc., 2009 WL 1085507 (D.N.J. Apr. 22, 2009). Because the FDCPA is a strict liability statute, a debt collector violates the act by failing to provide a proper validation notice, even if there was little or no harm to the consumer.

Shami v. United Collection Bureau, Inc., 2009 WL 3049203 (E.D.N.Y. Sept. 25, 2009). Judgment on the pleadings granted to the defendant where the plaintiff claimed that a Kansas notice would confuse the least sophisticated New York consumer as to his rights. The court held that FDCPA protects not just consumers, but also debt collectors from unreasonable constructions of debt collector's communications.

Weber v. Computer Credit, Inc., 259 F.R.D. 33 (E.D.N.Y. 2009). "The law must assume that the least sophisticated consumer--even one under financial or other stresses--is not so irresponsible as to throw away a serious letter affecting her finances, such as [the debt collector's] first communication, instead of saving it for future reference or action."

Duns Overshadow Validation Notice

Ellis v. Solomon and Solomon, P.C., 591 F.3d 130, 136 -137 (2nd Cir. Jan. 13, 2010). The § 1692g validation notice that the debt collector disclosed in its dunning letter was overshadowed by its service on the consumer later during the 30-day validation period of its collection lawsuit since the collector failed to explain or clarify in either the dun or "in a notice provided with the summons and complaint" that "that commencement of the lawsuit has no effect on the information conveyed in the validation notice... Defendants did not have to serve Ellis during the validation period; they could have waited until the validation period expired. It is difficult to discern what tactical advantage was gained by commencing a lawsuit when the validation period had only two weeks to run... Of course, debt collectors may continue collection activities, including commencing litigation, during the validation period; but in doing so the debt collector must not transgress § 1692g(b)'s proscription of collections activities that "overshadow or ... [are] inconsistent with" the validation notice... If the debt collector chooses not to wait until the end of the validation period to commence debt collection litigation, an explanation of the lawsuit's impact... be provided... The best practice is to provide an explanation in both the validation notice and the summons and complaint."

Day v. Allied Interstate, Inc., 2009 WL 1139474 (E.D.N.Y. Apr. 27, 2009). The mere inclusion of a payment coupon would not confuse the least

sophisticated consumer about the right to dispute the debt and did not violate the FDCPA.

Dunn v. Derrick E. McGavic, P.C., 653 F. Supp. 2d 1109 (D. Or. 2009). The collector's unexplained threat to immediately file suit overshadowed and contradicted the § 1692g(a) disclosure: "Without a clear explanation of the simple concept that [defendant] must cease litigation if [plaintiff] disputes the debt, the least sophisticated consumer is likely to wonder what good it would do him to dispute the debt if he cannot stave off a lawsuit. Consequently, [defendant's] threat of immediate lawsuit, court costs, and attorney fees may well encourage the least sophisticated consumer to make a hasty payment rather than dispute the debt. [Defendant's] letter therefore violates § 1692g."

Durham v. Continental Cent. Credit, 2009 WL 3416114 (S.D. Cal. Oct. 20, 2009). A second collection letter, which did not reiterate the consumer's right to dispute the debt, sent within the thirty-day validation period demanding immediate payment, violated § 1692g.

Ellis v. Solomon & Solomon, P.C., 599 F. Supp. 2d 298, (D. Conn. Feb. 23, 2009). Where a consumer was served with a summons and complaint in a collection action against her by the debt collector within the thirty-day validation period, but with no accompanying communication assuring her that the validation period and rights remain in force and are not affected by service of the lawsuit, the earlier validation notice of her consumer rights was overshadowed in violation of the FDCPA.

Gilmore v. Account, Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). Court held plaintiff had sufficiently pleaded a violation of § 1692g(a) when defendant's second collection letter overshadowed the required notice of the thirty-day period for disputing the debt in the previously sent letter because it demanded full payment of the debt on a date before the thirty-day period for disputing the debt concluded.

McCormick v. Wells Fargo Bank, 640 F. Supp. 2d 795 (S.D. W. Va. 2009). The district court held that the Fourth Circuit would find the contradiction/overshadowing issue a question of law.

Stark v. RJM Acquisitions L.L.C., 2009 WL 605811 (E.D.N.Y. Mar. 9, 2009). The FDCPA disclosures on the reverse side of the dun were not overshadowed by "the placement and length of the settlement offers presented on the front page of the collection letter" since "even the least sophisticated consumer would not read a collection letter so carelessly so as not to notice a bolded instruction in larger type to 'see reverse side of this letter for important information.'" The various non-FDCPA-mandated disclosures printed in the largest print on the reverse side did not overshadow the accompanying § 1692g(a) notice that was printed in smaller print since the validation disclosure "appears squarely at the top of the page and is among the first things the consumer is likely to read. Given the validation no-

notice's prominent placement, no reasonable juror could conclude that the inclusion of other notices on the same page overly distracts from the validation notice."

Watson v. Certified Credit & Collection Bureau, 2009 WL 3068387 (D.N.J. Sept. 23, 2009). The language at issue, "if you believe that these services should have been covered by your insurance company please call your insurance carrier immediately," is sufficient to provide notice of the debt and insufficient upon which to build an actionable violation of the FDCPA. The language does not appear overly antagonistic or intimidating so as to overshadow the § 1692g notice.

American Mgmt. Consultant, L.L.C. v. Carter, 915 N.E.2d 411 (Ill. App. Ct. 2009). FDCPA applied to forcible entry and detainer action that also sought back rent. Notice posted on door did not comply with § 1692g.

Oral Validation Requests and Disputes.

Bogner v. Masari Investments, L.L.C., 257 F.R.D. 529 (D. Ariz. 2009). Class certified on a *Camacho* claim where the collector's § 1692g(a) notice stated that any dispute must be made in writing.

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The court sided with the Ninth Circuit in *Camacho* and rejected the Third Circuit in *Graziano* and held that the defendant's initial dunning letters violated "§ 1692g(a)(3) insofar as they state that disputes regarding the validity of a debt must be made in writing."

Nero v. Law Office of Sam Streeter, P.L.L.C., [rule] F. Supp. 2d [rule], 2009 WL 2981973 (E.D.N.Y. Sept. 10, 2009). The validation notice clearly omitted an important term--that the consumer must inform the debt collector *in writing* to be entitled to verification of the debt. It makes no difference whether defendant would have honored an oral request.

Proper Verification of the Debt

Consumer Solutions REO, L.L.C. v. Hillery, [rule] F. Supp. 2d [rule], 2009 WL 2711264 (N.D. Cal. Aug. 26, 2009). A request for verification pursuant to the FDCPA does not require the debt collector to take any action within five days.

Dunham v. Portfolio Recovery Associates, L.L.C., 2009 WL 3784236 (E.D. Ark. Nov. 10, 2009). Defendant debt buyer's Rule 12(c) motion denied on the consumer's § 1692g(b) inadequate verification claim where the pleadings established that the defendant merely repeated the information in its own file and failed to take any steps to confirm the debt with the original creditor: "The verification requirement demands more than that the debt collector merely repeat its assertion that a debt is due. . . . Simply repeating second--or third-hand information in the debt collector's file is insufficient under the statute."

Hernandez v. Downey Sav. & Loan Ass'n, F.A., 2009 WL 667406 (N.D. Cal. Mar. 13, 2009).

The consumers failed to state a claim for relief for the defendants' violation of § 1692g(b), since they did "not allege any facts demonstrating that Defendants continued their efforts to collect the debt" following receipt of the consumer's verification request.

Maxwell v. Barney, 2009 WL 1707959 (D. Utah June 17, 2009). Collector's providing ambulance trip ticket to plaintiff in response to her request to validate her debt did not violate FDCPA.

Proper Debt Validation Rights Notice

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Default judgment entered on well pleaded facts showing that the defendants failed to provide a § 1692g notice.

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The omission of the "receipt" language from the start of the thirty-day dispute period did not violate § 1692g(a)(3): "The Court finds that the language contained in the debt collection letter in *Chauncey* is distinguishable from the language contained in the instant letters. Specifically, the language contained in Defendant's letters stating 'IF YOU DISPUTE THIS DEBT, or any portion thereof, you must notify this office in writing of that fact within 30 days of this letter' does not require that a dispute regarding the validity of a debt be received by Defendant within thirty days of the date of the letters. Rather, the language in the debt collection letters states that any dispute by Plaintiffs must be made 'within 30 days of this letter.' On the basis of this language, it is reasonable to assume that Plaintiffs had thirty days from when they received the letters to dispute the validity of their debts. Therefore, the letters do not require that Plaintiffs provide notice of a debt dispute within thirty days of the date of the letters. Accordingly, because *Chauncey* does not support Plaintiffs' contention that Defendant's debt collection letters violate § 1692g(a)(3) by shortening the statutory thirty-day period in which they are permitted to dispute their debts, Defendant is entitled to summary judgment on this issue."

Cappetta v. GC Services, Ltd. P'ship, 654 F. Supp. 2d 453 (E.D. Va. 2009). Plaintiff's allegation that the defendant "failed to give initial notice, as required by § 1692g, that she had a right to validate the debt" stated a claim for relief.

Harris v. NCO Fin. Sys., 2009 WL 497409 (E.D. Pa. Feb. 26, 2009). Because genuine issues of fact existed as to (1) whether a validation notice was given as required by § 1692g and (2) whether plaintiff disputed the debt as set forth in that section--obligating the debt collector to submit evidence of the origin and validity of the debt--summary judgment was denied.

Kamen v. Steven J. Baum, P.C., [rule] F. Supp. 2d [rule], 2009 WL 3182611 (E.D.N.Y. Sept. 29, 2009). Plaintiff received the § 1692g notice within five days after receiving the summons and complaint, even if the summons and complaint were the initial communication.

McCormick v. Wells Fargo Bank, 640 F. Supp. 2d 795 (S.D. W. Va. 2009). There was no violation of § 1692g(a) where the debt collector did not include the § 1692g(b) rights in its dunning letter.

Nichols v. GC Serv., L.P., 2009 WL 3488365 (D. Ariz. Oct. 27, 2009). Summary judgment granted to the debt collector on the consumer's claim that the collector failed to send the required validation disclosure since, notwithstanding the consumer's claim that he never received the notice, the evidence showed that defendant complied with § 1692g by sending it.

Pierce v. Carrington Recovery Services, L.L.C., 2009 WL 2525465 (W.D. Pa. Aug. 17, 2009). Motion to dismiss denied where complaint alleged that "by the debt collector" was omitted from the § 1692g(a)(3) language.

Rosamilia v. ACB Receivables Mgmt., Inc., 2009 WL 1085507 (D.N.J. Apr. 22, 2009). Cessation of communications by the debt collector after it received a request for validation does not relieve it from the requirement to provide a proper validation notice pursuant § 1692g. Because the FDCPA is a strict liability statute, a debt collector violates the act by failing to provide a proper validation notice, even if there was little or no harm to the consumer.

Sanz v. Fernandez, 633 F. Supp. 2d 1356 (S.D. Fla. 2009). Allegations that the defendants were debt collectors who failed to make §§ 1692e(11) and 1692g(a) disclosures stated a claim for relief.

Schwartz v. Resurgent Capital Services, L.P., 2009 WL 3756600 (E.D.N.Y. Nov. 9, 2009). The plaintiff was not a "consumer" with standing to sue for the alleged § 1692g(a) disclosure violation where the collector sent the dun to an unknown individual "in care of" the plaintiff at the plaintiff's address.

Sebrow v. NCO Fin. Systems, Inc., 2009 WL 2707341 (E.D.N.Y. Aug. 27, 2009). The collector's validation disclosure informing the consumer that "[u]nless you notify this office within 30 days after receiving this notice that you dispute the debt or any portion thereof" did not unlawfully limit disputes to those that are received by the collector within thirty days of the consumer's receipt of the notice and fully complied with § 1692g(a).

Shapiro v. United Recovery Serv., L.L.C., 2009 WL 1313194 (N.D. Ill. May 12, 2009). The collector's initial dun that stated that the debt would be assumed to be valid unless disputed did not violate § 1692g(a)(3) for the reason it failed to disclose that it was the debt collector and not another entity, such as the creditor, who would make that assumption: "Although the letter does not expressly include the language 'by the debt collector,' even unsophisticated consumers would recognize that [the defendant] is the entity that will assume the debt is valid. [Plaintiff's] perception that the letter is deceptive on this basis only and that she is entitled to statutory relief is an unrealistic expectation. As such, [plaintiff] fails to

state a cognizable claim under Fed. R. Civ. P. 12(b)(6).”

Stark v. RJM Acquisitions L.L.C., 2009 WL 605811 (E.D.N.Y. Mar. 9, 2009). Based on the following § 1692g notice: “Unless you dispute the validity of all or part of this debt within 30 days after receipt of this notice, we will assume the debt is valid. If you notify us in writing within the 30-day period, we will mail a copy of verification of the debt or the judgment to you and will provide you with the name and address of the original creditor for this debt.” The court granted in part and denied in part defendant’s motion for summary judgment, holding that 1) the disclosure complied with § 1692g(a)(4), even though the second sentence makes no reference to disputing the debt as required by that subsection, since the least sophisticated consumer would understand she needed to dispute the debt as stated in the first sentence and would not believe that the right to receive verification could be triggered merely upon written request; however, 2) because of the same natural reference to the first sentence, “a reasonable juror could find that the language of the notice at issue here could lead the least sophisticated consumer to believe she must dispute the debt in order to obtain the name and address of the original creditor” when § 1692g(a)(5) requires a collector to so identify the original creditor merely upon written request.

Weber v. Computer Credit, Inc., 259 F.R.D. 33 (E.D.N.Y. 2009). The FDCPA is not violated simply because the validation notice is placed on the back side of the collection letter.

Welker v. Law Office of Horwitz, 626 F. Supp. 2d 1068 (S.D. Cal. 2009). Letter did not comply with § 1692g(a)(4) and g(a)(5) because it did not inform plaintiffs that their entitlement to verification of the debt under § 1692(a)(4), as well as their right to the name and address of the original creditor under § 1692g(a)(5), was contingent on the submission of their disputes in writing.

Weiss v. Zwickler & Assocs., P.C., [rule] F. Supp. 2d [rule], 2009 WL 3366564 (E.D.N.Y. Oct. 21, 2009). Summary judgment granted to the plaintiff on his § 1692g(a)(1) claim where the initial dun stated that the disclosed amount of the debt “may include additional charges including delinquency charges, as applied at the direction of American Express, if said charges are permissible in accordance with the terms of the parties’ agreement,” since it was unclear and confusing whether the additional charges were already included in the total balance. A debt collector who, after having sent a § 1692g(a) compliant initial disclosure, sent a subsequent dun demanding an increased balance had no duty to provide new § 1692g(a) disclosures regarding the increased balance.

Amount of Debt

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The defendant did not violate § 1692g(a)(1) by failing to disclose the “amount of the debt” as a “sum certain” since “[i]t would not be un-

reasonable to expect an unsophisticated consumer or debtor to be able to add three figures together and come up with the \$550.00 figure” that was the total of the listed components.

Hepsen v. J.C. Christensen & Associates, Inc., 2009 WL 3064865 (M.D. Fla. Sept. 22, 2009). A dunning letter must state the exact and correct amount of the debt in order to comply with § 1692g(a)(1). Defendant overstated the amount of the debt, when compared with a later letter from the debt collector.

Hutton v. Law Offices of Collins & Lamore, [rule] F. Supp. 2d [rule], 2009 WL 3747226 (S.D. Cal. Nov. 9, 2009). Section 1692g(a)(1) claim dismissed for failure to state a claim where the initial dun stated that “the outstanding balance due in the amount of \$22,519.17 . . . may not include accruing interest (and does not account for changing exchange rates after the date of this letter, for accounts originated in a foreign country),” since the dun properly disclosed the entire amount then owed and the additional language would not confuse or mislead the least sophisticated consumer as to the amount owing.

Welker v. Law Office of Horwitz, 626 F. Supp. 2d 1068 (S.D. Cal. 2009). Letter did not adequately disclose the amount of the debt within § 1692g where it disclosed the outstanding balance but asked for additional unspecified interest and costs.

Ceasing Collection of Unverified Debt.

Ford Motor Credit Co. v. Dunham, 2009 WL 4981913 (La. Dec. 23, 2009) (unpublished). The court stated that Ford Motor Credit Co. was obligated on the basis of § 1692g to stop collection efforts and investigate the consumer’s dispute that her signature was forged on the underlying sales contract, without noting that the FDCPA was inapplicable to a creditor as here and oblivious to the requirement that the § 1692g duty was limited to disputes submitted within the 30-day verification window.

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The defendant complied with § 1692g(b) by ceasing all collection efforts and further communication “once Defendant was notified by [the consumer] that the debt was disputed because it had been discharged in bankruptcy.”

Cowell v. Creditors Interchange Receivable Mgmt., L.L.C., 2009 WL 465580 (W.D. Pa. Feb. 25, 2009). Where the complaint alleged that the plaintiff’s attorney was, in fact, authorized to dispute the debt on plaintiff’s behalf and did so, the debt collector who nonetheless continued to call and send dunning letters to the plaintiff was denied dismissal of the claim for violation of § 1692g.

Gilmore v. Account, Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). Continuation of collection efforts after plaintiff disputed the validity of the debt and sought verification violated § 1692g(b).

Hepsen v. J.C. Christensen & Associates, Inc., 2009 WL 3064865 (M.D. Fla. Sept. 22, 2009).

Where a debt collector could not verify the debt and ceased collection efforts, it was not required to provide the consumer with the name of the original creditor requested by the consumer.

Other Verification Issues

Kaniewski v. Nat'l. Action Fin. Servs., 2009 WL 5166209 (E.D.Mich. Dec. 17, 2009). One who knows that he is not alleged to owe the debt is not a "consumer" and does not have standing to bring claims under §§1692e and g, but does have standing as "any person" to bring claims pursuant to § 1692d.

Harris v. NCO Fin. Sys., 2009 WL 497409 (E.D. Pa. Feb. 26, 2009). Because a genuine issue of fact existed as to (1) whether a validation notice was given as required by § 1692g and (2) whether plaintiff disputed the debt as set forth in that section--obligating the debt collector to submit evidence of the origin and validity of the debt--summary judgment was denied.

Kamen v. Steven J. Baum, P.C., [rule] F. Supp. 2d [rule], 2009 WL 3182611 (E.D.N.Y. Sept. 29, 2009). Summons and complaint constituted a single "legal pleading" excluded from the definition of an initial communication and thereby not required to contain a debt validation notice.

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. 2009). The defendants' allegedly false statement concerning the plaintiffs' rights to privacy, though sent only to comply with the requirements of a federal privacy law and enclosed as a separate second page with a dunning letter, was nonetheless sent "in connection with the collection of a debt," was not excluded by § 1692g(e), and was therefore subject to the FDCPA.

Stark v. RJM Acquisitions L.L.C., 2009 WL 605811 (E.D.N.Y. Mar. 9, 2009). Summary judgment granted to the defendant regarding plaintiff's challenge to an allegedly confusing sentence that appeared immediately after the validation disclosure since the "plaintiff does not suggest that the language [at issue] confuses the least sophisticated consumer as to her rights under the FDCPA."

Weber v. Computer Credit, Inc., 259 F.R.D. 33 (E.D.N.Y. 2009). The thirty day validation period is not a grace period, and, unless the debt is disputed, the debt collector may demand immediate payment and continue collection activity.

FDCPA REMEDIES AND LITIGATION

Damages

Actual Damages.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Court denied award of emotional distress damages on default judgment where the consumer's declaration that "Defendant's actions caused [her] to suffer damages, including emotional distress, embarrassment, humiliation, invasion of privacy, harassment, stress and anxiety, sleeplessness, and medical issues" was "too

D'Allesandro v. Vision Fin. Corp., 2009 WL 816082 (N.J. Super. Ct. App. Div. Mar. 31, 2009). The collector's third dunning--which stated that it was now collecting "on a valid debt" and was sent after the consumer had not responded to the thirty-day verification disclosure--did not falsely or deceptively "impl[y] that the debt had been deemed legally enforceable by a third party and no longer subject to challenge by plaintiff;" in response to the consumer's proffer of the dictionary meaning of the word "valid" to show that the usage here was misleading, the court said: "We reject this argument because based on a plain reading of 15 U.S.C.A. § 1692g(a)(3), [defendant] was statutorily authorized to state to plaintiff: 'Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid.' The word 'valid' in this context was not selected by [defendant]; Congress specifically included the word in the statute as a means of apprising the consumer of his or her obligation to respond to the notice. Under the Act, plaintiff's inactions have legal consequences. One of those consequences is the right of a creditor to assume that the debt is valid."

Deutsche Bank Nat'l Trust Co. v. Gillio, 22 Misc. 3d 1131(A), 881 N.Y.S.2d 362 (N.Y. Sup. Ct. 2009) (table) (unpublished). Where the defendant, in order to have his default judgment vacated, claimed that the collector did not provide a timely validation notice pursuant to § 1692g(a), the court held that it did not constitute a valid defense to plaintiff's claim of collection of the debt or foreclosure on the secured property.

Distant Forums

Hess v. Cohen & Slamowitz, LLP, 2010 WL 60322 (N.D.N.Y. Jan. 7, 2010). Summary judgment under § 1692i in favor of debt collector where he brought suit in the consumer's county of residence even though the specific court did not have jurisdiction. Requiring suit to be brought in the court of proper jurisdiction would impose undue restrictions on the actions of ethical debt collectors.

Miscellaneous

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). A single violation subjects the collector to liability. vague to establish that Plaintiff suffered significant emotional harm" "While Plaintiff's declaration shows that she understandably suffered general anxiety resulting from Defendant's conduct, the law requires a more specific and substantial showing before emotional damages may be awarded."

Berry v. Nat'l Fin. Sys., Inc., 2009 WL 2843260 (W.D.N.Y. Aug. 27, 2009). In this FDCPA case, upon entry of default and after a hearing to establish damages, husband and wife were awarded actual damages of \$3000, statutory damages of \$2000, and attorney fees of \$5999.

Bolton v. Pentagroup Fin. Services, L.L.C., 2009 WL 734038 (E.D. Cal. Mar. 17, 2009). The

court adopted the *Costa* holding that emotional distress damages under the FDCPA must be proven under the standard for the state's law tort of intentional infliction of emotional distress.

Carter v. Countrywide Home Loans, Inc., 2009 WL 1010851 (E.D. Va. Apr. 14, 2009). Section 1692k allows for recovery of emotional distress damages.

Hartung v. J.D. Byrider, Inc., 2009 WL 1876690 (E.D. Cal. June 26, 2009). The California intentional infliction of emotional distress standard was applied to determine actual damages for emotional distress arising under the FDCPA. Report recommended entry of default judgment for the consumer in the amount of \$25,000 in FDCPA actual damages. The consumer's testimony about her severe distress was sufficient without corroboration.

Jenkins v. Eastern Asset Mgmt., L.L.C., 2009 WL 2488029 (E.D. Mo. Aug. 12, 2009). On default, court awarded \$1000 statutory damages, \$2000 emotional distress damages, and \$3250 fees and costs for multiple calls to place of employment threatening suit after being told plaintiff could not accept personal calls at work.

McCullough v. Johnson, Rodenburg & Lauinger, 645 F. Supp. 2d 917 (D. Mont. June 3, 2009). Jury verdict awarded consumer \$250,000 in compensatory damages, \$1000 FDCPA statutory damages, and \$60,000 in state law punitive damages and the court awarded attorney fees in the full amount requested of over \$93,000 commenting, *inter alia*, that the litigation "confers a meaningful public benefit by discouraging illegal debt collection" in the state. "[Plaintiff's] testimony, corroborated by [its] expert testimony . . . provides a legally sufficient evidentiary basis for the jury's award. [Plaintiff] testified that the lawsuit [defendant] prosecuted against him 'definitely' caused him anxiety, increasing his temper, pain, adrenalin, and conflict with his wife . . . The lawsuit caused him to spend more time 'down' in bed with severe headaches . . . He thought that the lawsuit was 'frivolous' and 'an insult,' and he was 'being shoved around . . . The lawsuit 'was the straw that broke the camel's back. I got mad. I'm still mad.' "

Rodriguez v. Florida First Fin. Group, Inc., 2009 WL 535980 (M.D. Fla. Mar. 3, 2009). The court awarded \$1000 FDCPA statutory and \$1000 actual damages (plus \$1000 state law punitive and \$1000 statutory damages) where the defendant knowingly misrepresented the identity of its agents, falsely threatened to have the plaintiff arrested, and engaged in other false and deceptive conduct.

Shepherd v. Law Offices of Cohen & Slamowitz, L.L.P., [rule] F. Supp. 2d [rule], 2009 WL 3496863 (S.D.N.Y. Oct. 29, 2009). The attorney fees incurred by the consumer to vacate an improperly obtained default judgment in the underlying state collection action, the "additional fees to right her credit rating," and the charges that she paid to her bank in connection with the defendant's allegedly

wrongful attachment of her bank account were among the recited actual damages that a Rule 68 offer would have to satisfy in order to moot the case.

Suszka v. Capital Collections, L.L.C., 2009 WL 959798 (E.D. Wis. Apr. 8, 2009). Plaintiff awarded \$1000 statutory damages, \$2380 fees and costs upon defendant's default, but no actual damages. Conclusory allegations of an emotional injury were insufficient to establish damages, and the court did not consider defendant's conduct so inherently degrading that emotional distress could be reasonably inferred.

Thomas v. Boscia, 2009 WL 2778105 (S.D. Ind. Aug. 28, 2009). Summary judgment dismissed the consumer's claim of actual damages since her supporting evidence was no more than "conclusory statements of emotional distress" that were insufficient "unless the facts underlying the case [unlike here] are so inherently degrading that it would be reasonable to infer the person suffered emotional distress."

Costa v. Nat'l Action Fin. Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007). In order to sustain a claim for emotional distress damages under the FDCPA and the California FDCPA, the consumer must establish the elements of a claim for intentional infliction of emotional distress under California law.

In re Eastman, 419 B.R. 711 (Bankr. W.D. Tex. 2009). Denied actual damages for loss of military career as speculative and for emotional distress for lack of evidence.

Statutory Damages in Individual Actions

Ellis v. Solomon and Solomon, P.C., 591 F.3d 130 (2nd Cir. Jan. 13, 2010). "To recover damages under the FDCPA, a consumer does not need to show intentional conduct on the part of the debt collector."

Beaudry v. TeleCheck Services, Inc., 579 F.3d 702 (6th Cir. 2009). FCRA case held that consumer may recover statutory damages if the debt collector violates the FDCPA, even if the consumer suffered no actual damages

Jones v. Morgan Stone Assocs., 2010 WL 55884 (N.D. Cal. Jan. 4, 2010). \$2000 statutory damages at \$1000 per count awarded on default judgment.

Dabu v. Becks Creek Industry, 2009 WL 517826 (N.D. Cal. Dec. 22, 2009). Consumer's motion for default judgment was granted awarding \$2,000.00 in statutory damages (\$1000 per FDCPA and \$1000 per RFDCPA).

Estay v. Moren and Woods LLC, 2009 WL 5171881 (W.D.N.Y. Dec. 22, 2009). On entry of default, \$250 in statutory damages awarded.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Maximum \$1000 statutory damages awarded on default judgment.

Beeders v. Gulf Coast Collection Bureau, 632 F. Supp. 2d 1125 (M.D. Fla. 2009). Where the

consumer filed multiple FDCPA lawsuits, one for each identical telephone message left, the lawsuits were joined into a single action with statutory damages limited up to \$1000 pursuant to § 1692k. “These claims, which seek the same remedy and share the same nucleus of operative fact, are parts of the same cause of action and, therefore, should be joined in the same suit as separate claims within the same cause of action.”

Berry v. Nat’l Fin. Sys., Inc., 2009 WL 2843260 (W.D.N.Y. Aug. 27, 2009). Upon entry of default and after a hearing to establish damages, husband and wife were awarded FDCPA actual damages of \$3000, statutory damages of \$2000, and attorney fees of \$5999.

Brown v. Sterling & King, Inc., 2009 U.S. DIST. LEXIS 15599 (S.D. Tex. Feb. 27, 2009). Default judgment was entered in the amount of \$1000 FDCPA statutory damages and \$3756 attorney fees.

Clark v. Brewer, Michaels & Kane, L.L.C., 2009 WL 3303716 (W.D.N.Y. Oct. 14, 2009). Default judgment was entered for \$500 as FDCPA statutory damages and \$2386 as attorney fees.

Dunn v. Derrick E. McGavic, P.C., 653 F. Supp. 2d 1109 (D. Or. 2009). The court awarded maximum statutory damages of \$1000. “Relevant to the statutory damages inquiry is that [defendant] knowingly walked perilously close to the edge of the law. Although [plaintiff] has not shown these letters were sent to other consumers, the abusive collection practices evidenced here should be deterred.” Although “actual damages would be inappropriate, as [plaintiff] alleges no emotional distress or other basis for such an award in his complaint, [t]his does not bar his request for statutory damages.”

Ellis v. Solomon & Solomon, P.C., 599 F. Supp. 2d 298 (D. Conn. 2009). Based upon the debt collectors’ filing and service of collection suits within the thirty-day validation period, the court determined that the frequency and persistence of defendants’ conduct existed such that the maximum statutory damages of \$1000 should be awarded.

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). After entry of default the magistrate judge recommended an award of \$1000 as FDCPA statutory damages.

Harrington v. Creditors Specialty Serv., Inc., 2009 WL 1992206 (E.D. Cal. July 8, 2009). Default judgment entered, as requested for both FDCPA and Rosenthal violations, of statutory damages in the total amount of \$2000, fees in the amount of \$3029, and costs of \$400, arising from the defendant’s false threat of suit and garnishment in violation of § 1692e(5).

Hartung v. J.D. Byrider, Inc., 2009 WL 1876690 (E.D. Cal. June 26, 2009). The report recommended entry of default judgment for the consumer in the amount of \$1000 in FDCPA statutory damages.

Hill v. First Integral Recovery, L.L.C., 2009 WL 3353012 (D. Ariz. Oct. 16, 2009). Default

judgment was granted the consumer awarding \$1000 in FDCPA statutory damages.

Jenkins v. Eastern Asset Mgmt., L.L.C., 2009 WL 2488029 (E.D. Mo. Aug. 12, 2009). On default, court awarded \$1000 statutory damages, \$2000 emotional distress damages, and \$3250 fees and costs for multiple calls to place of employment threatening suit after being told plaintiff could not accept personal calls at work.

McCullough v. Johnson, Rodenburg & Lauinger, 645 F. Supp. 2d 917 (D. Mont. June 3, 2009). Jury verdict awarded consumer \$250,000 in compensatory damages, \$1000 FDCPA statutory damages, and \$60,000 in state law punitive damages and the court awarded attorney fees in the full amount requested of over \$93,000 commenting, *inter alia*, that the litigation “confers a meaningful public benefit by discouraging illegal debt collection” in the state. While evidence of the debt collector’s pattern or practice of violations may not have been admissible in support of FDCPA statutory damages, it was admissible to support the state law punitive damages.

Molinar v. Coleman, 2009 WL 435274 (N.D. Tex. Feb. 20, 2009). Plaintiff’s motion for entry of judgment by default was entered awarding no actual damages, \$250 statutory damages, \$2800 costs and attorney fees.

Nelson v. Eastern Asset Mgmt., L.L.C., 2009 WL 3255244 (D. Minn. Oct. 7, 2009). Default judgment for \$1000 FDCPA statutory damages.

Nero v. Law Office of Sam Streeter, P.L.L.C., 655 F. Supp. 2d 200 (E.D.N.Y. 2009). Court awarded \$500 statutory damages on default.

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). For the purpose of determining if defendant’s acts violated §§ 1692d and 1692f, and for the purpose of award of maximum statutory damages of \$1000, which is awarded per action and not per violation, several acts of defendant, including some acts outside of the statute of limitations, were viewed as a single course of conduct.

Rodriguez v. Florida First Fin. Group, Inc., 2009 WL 535980 (M.D. Fla. Mar. 3, 2009). The court awarded \$1000 FDCPA statutory damages and \$1000 actual damages (plus \$1000 state law punitive and \$1000 statutory damages) where the defendant knowingly misrepresented the identity of its agents, falsely threatened to have the plaintiff arrested, and engaged in other false and deceptive conduct.

Sears v. Federal Credit Corp., 2009 WL 2601378 (W.D. Va. Aug. 18, 2009). Court awarded \$1000 based on the nature of the violation, but per proceeding, not per violation.

Weiss v. Zwicker & Associates, P.C., [rule] F. Supp. 2d [rule], 2009 WL 3366564 (E.D.N.Y. Oct. 21, 2009). The court awarded statutory damages of \$500 for the defendant’s § 1692g(a)(1) violation.

Costa v. Nat’l Action Fin. Services, 634 F. Supp. 2d 1069 (E.D. Cal. 2007). Statutory damages in the amount of \$1000 were awarded to the con-

sumer for the debt collector's violation of §§ 1692d(6) and 1692e(11).

In re Eastman, 419 B.R. 711 (Bankr. W.D. Tex. 2009). Plaintiff need not establish actual damages to recover FDCPA statutory damages.

Other Damages Issues

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). After entry of default, the magistrate recommended an award of general damages for mental distress of \$10,000 as a result of stress caused by dunning for a fully disputed debt during a time when the consumer was having heart problems and recovering from open heart surgery, trebled to \$30,000 pursuant to the state consumer protection statute.

Lee v. Security Check, L.L.C., 2009 WL 3790455 (M.D. Fla. Nov. 9, 2009). "Punitive damages are not available under the FDCPA."

Miller v. Midpoint Resolution Group, L.L.C., 608 F. Supp. 2d 389 (W.D.N.Y. 2009). Bench trial resulted in \$500 for emotional distress, \$1000 in statutory damages (multiple violations), and \$7000 in fees.

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). Defendant admitted *Foti* violation, but court ruled that damages had to be assessed by the jury.

Class Actions

Hunt v. Imperial Merchant Services, Inc., 560 F.3d 1137 (9th Cir. 2009). Shifting cost of notice in class action to defendant after consumer obtained summary judgment was not an abuse of discretion.

Anderson v. Nationwide Credit Inc., 2009 U.S. Dist. LEXIS 57157 (E.D.N.Y. June 25, 2009). FDCPA class settlement permanently enjoined the defendant as follows: "All telephone voice messages left by Defendant for consumers on telephone answering devices will meaningfully identify the Defendant as the caller, state the purpose or nature of the communication, and disclose that the communication is from a debt collector."

Aramburu v. Healthcare Fin. Services, Inc., 2009 WL 1086938 (E.D.N.Y. Apr. 22, 2009). The court approved this FDCPA class action settlement finding it to be fair, adequate, and reasonable.

Asset Acceptance, L.L.C. v. Hanson, 2009 WL 840047 (Cal. Ct. App. Apr. 1, 2009) (unpublished). Denial of class certification affirmed on the basis of the trial court's "finding that there was no well-defined community of interest among the purported class members;" this state law based class certification decision was decided in the context of the plaintiff's substantive claim, which the court assumed to be true, that "Asset Acceptance's standard corporate policy of concealing from, and willfully failing to disclose to, debtors that any payment made towards a debt the enforcement of which is barred by the statute of limitations may create a new, distinct and enforceable legal obligation is a false, deceptive

and misleading practice in violation of the FDCPA . . ."

Bogner v. Masari Inv., L.L.C., 257 F.R.D. 529 (D. Ariz. 2009). Class certified on a *Camacho* claim where the collector's § 1692g(a) notice stated that any dispute must be made in writing.

Cappetta v. GC Services, L.P., 2009 WL 482474 (E.D. Va. Feb. 24, 2009). Consumer's motion to file an amended FDCPA complaint to add allegations for class certification was denied without prejudice to renew her motion after completion of extended discovery to establish the validity of class certification.

Castro v. Collecto, Inc., 256 F.R.D. 534 (W.D. Tex. 2009). This FDCPA case was certified to proceed as a class action defined as (a) all individuals with Texas addresses (b) who were sent a letter in the form represented by Exhibit A to plaintiff's complaint, (c) seeking to collect a cellular telephone debt (d) which became delinquent more than two years prior to the sending of the letter, (e) which letter was sent between June 16, 2007 and July 6, 2008.

Dotson v. Portfolio Recovery Associates, L.L.C., 2009 WL 1559813 (E.D. Pa. June 3, 2009). Class certification denied where the named plaintiff's lack of credibility ("having given false testimony under oath by denying his prior claims under the FDCPA"), his admitted post traumatic stress syndrome and resulting cognitive disabilities ("I forget a lot of things. I can't remember faces, people's names, things of that nature. I think about it but I can't recall."), and his "demonstrate[d] lack of involvement or understanding of the claims asserted on his behalf by his attorney" prevented him from adequately representing the proposed class.

Gravina v. Client Services, Inc., 2009 U.S. Dist. LEXIS 78204 (E.D.N.Y. Aug. 25, 2009). Settlement of nationwide class claims arising from messages left by defendant for settlement class members on telephone answering device included an injunction permanently enjoining defendant as follows: All telephone voice messages left by defendant for consumers on telephone answering devices will meaningfully identify the defendant as the caller, state the purpose or the nature of the communication, and disclose that the communication is from a debt collector.

Gutierrez v. LVNV Funding, L.L.C., 2009 U.S. Dist. LEXIS 54479 (W.D. Tex. Mar. 16, 2009). Class action certified alleging that the defendant debt buyer violated § 1692e, 1692e(2), and 1692e(10) by filing all of its state court collection complaints with an attached "Affidavit of Account" that falsely attested that the affiant had "personal knowledge" of the supporting account documents.

Hale v. AFNI, Inc., [rule] F.R.D. [rule], 2009 WL 3578872 (N.D. Ill. Oct. 23, 2009). Class certified where the plaintiffs alleged §§ 1692e and 1692g violations from the defendant's failure to provide the required verification notice, falsely claimed that it had insufficient information to verify the debt,

and falsely implied that consumers bore an obligation to prove that they did not owe the debt.

Hicks v. Client Services, Inc., 257 F.R.D. 699 (S.D. Fla. 2009). Defendant's motion to decertify the class on the basis that any recovery to its members would be de minimis, thus defeating the superiority requirement of Rule 23, was denied, with the court explaining that they found the reasoning of the cases supporting an FDCPA class action despite de minimis recovery by the class members to be more persuasive. The court also noted that decertifying the class would (theoretically) create a perverse incentive for debt collectors using unfair practices to use them as widely as possible, in order to prevent a class action from being certified, and thus held that class action was the superior method of adjudication.

Huntley v. Law Office of Richard Clark, P.L.L.C., [rule] F.R.D. [rule], 2009 WL 3403177 (E.D.N.Y. Oct. 23, 2009). Class certification denied where the plaintiff, who allegedly received a threatening phone call from defendant, submitted "no evidence in the record--other than the Plaintiff's speculative allegation--to suggest that other consumers received threatening phone calls."

Leone v. Ashwood Fin., Inc., 257 F.R.D. 343 (E.D.N.Y. 2009). The court modified and approved the FDCPA class notice.

Miller v. Midland Credit Mgmt., Inc., 621 F. Supp. 2d 621 (N.D. Ill. 2009). In this FDCPA litigation a class of 135,571 Cook County residents was certified.

Mund v. EMCC, Inc., 259 F.R.D. 180 (D. Minn. 2009). On meeting all requirements, class certification was granted in an FDCPA case claiming that the debt collector violated § 1692f(1) by adding a collection fee based on a percentage rather than actual costs of collection.

Ybarrondo v. NCO Fin. Sys., Inc., 2009 WL 3612864 (S.D. Cal. Oct. 28, 2009). Settlement of the class action, arising from the defendant's unlawful threats to report obsolete debts to a credit bureau, approved on terms that included a cash payment to the class members and a stipulation that each class members' debt was forgiven and "[b]ecause the debt is disputed, no IRS 1099 tax forms will be submitted to the Internal Revenue Service or any Class members as a result of the Settlement."

Ybarrondo v. NCO Fin. Sys., Inc., 2009 U.S. Dist. LEXIS 55424 (S.D. Cal. June 30, 2009). Denied final FDCPA class action approval, without prejudice, based on the failure to provide adequate notice to the class and ordered that new notice be sent.

Griffith v. Javitch, Block & Rathbone, L.L.P., 241 F.R.D. 600 (S.D. Ohio 2007). A named plaintiff in a FDCPA class action filed bankruptcy before certification of the FDCPA class; her FDCPA claim was settled by the bankruptcy trustee; and the federal court dismissed the FDCPA claim. The court reversed its prior ruling and held that the named plaintiff need not send notice of the settlement to the

class, as the class action had not received publicity and the settlement was without collusion or bad faith.

Sadler v. Midland Credit Mgmt., Inc., 2009 WL 901479 (N.D. Ill. Mar. 31, 2009). For the purpose of a class statutory damages claim, defendants' simple act of mailing letters with allegedly misleading information constitutes a "use" of deceptive means, irrespective of whether the letters were read by the consumer.

Del Campo v. American Corrective Counseling Services, Inc., 254 F.R.D. 585 (N.D. Cal. Dec. 3, 2008). FDCPA case was certified to proceed as a hybrid class action pursuant to Rules 23(b)(2) and 23(b)(3) with the class consisting of all persons who were mailed at least one demand letter purporting to be from a district attorney's office in California attempting to collect a dishonored check, which had not been returned.

Consumer's Attorney Fees and Costs Standards for Award of Attorney Fees

Dowling v. Litton Loan Servicing L.P., 320 Fed. Appx. 442 (6th Cir. 2009). The district court did not abuse its discretion in refusing to adjust the lodestar downward on the basis of the plaintiff's refusal to accept pretrial settlement offers where the settlement offers never exceeded plaintiff's ultimate recovery plus the attorney fees that had accrued at the time when each of the offers was made. No downward adjustment in the lodestar was warranted for the plaintiff's unsuccessful claims since where, as here, "the claims are related, the fact that some claims ultimately fail while others succeed is not reason to reduce the fee award." The plaintiff was entitled to reasonable attorney fees incurred for successfully defending the appeal.

Schlacher v. Law Offices of Phillip J. Rotche & Associates, P.C., 574 F.3d 852 (7th Cir. 2009). Award of reasonable FDCPA attorney fees affirmed since the district court adequately explained both its reduction of the attorney's requested time as well as its determination of an appropriate, lower hourly rate, and thus did not abuse its discretion. Courts normally begin with the lodestar rate and may then adjust for various factors, such as duplicative work, excessive billing, and proportionality. The attorneys who referred the case to a FDCPA specialist should have relinquished their involvement in the case.

Aslam v. Malen & Associates, P.C., [rule] F. Supp. 2d [rule], 2009 WL 3853191 (E.D.N.Y. Apr. 1, 2009). No reduction of fees for degree of success where plaintiff settled for \$1000 statutory damages and \$278 actual damages.

Barrows v. Tri-Financial, 2009 WL 3672069 (W.D.N.Y. Oct. 30, 2009). Fourteen hours ranging from \$250 to \$400 excessive for a default. Court awarded half the requested rate and noted that the \$1855 was proportional to the \$1000 statutory damage award.

Danow v. Law Office of David E. Borback, P.A., 634 F. Supp. 2d 1337 (S.D. Fla. 2009). Court

rejected “bad faith” and “limited success” arguments to reduce fees. “The fact that plaintiff brought and pursued related claims later dismissed or dropped before trial, does not imply bad faith or improper purpose, or lead to the conclusion that plaintiff had only ‘limited success.’ ”

Guerrero v. Hudson & Keyse, L.L.C., 2009 U.S. Dist. LEXIS 4921 (W.D. Tex. Jan. 20, 2009). Plaintiff was entitled to reasonable attorney fees for thirty hours at \$275 an hour. Where the offer of judgment provided for the consumer’s attorney fees, none were awarded for the fee petition after the offer was accepted, as that is the ordinary rule if not addressed in the offer. Consumer’s requested thirty hours were reduced to ten because the disallowed time had been spent by the attorney after the offer of judgment was made. Thus, attorney fees in the amount of only \$8676 were awarded.

Jenkins v. General Collection Co., 2009 WL 3631014 (D. Neb. Oct. 26, 2009). The court reduced the \$419,715.67 attorney fees requested for based on 1667 hours to \$50,000. The reduction was based on the plaintiffs’ failure to achieve class certification and the limited value of the settlement to the three individual plaintiffs, \$21,000. The defendant’s recommendations of \$45,000 and to exclude fees for the two out-of-state attorneys were rejected.

Kim v. Barro, 2009 WL 1616271 (N.D. Ga. June 9, 2009). In light of the FDCPA statutory maximum amount of \$1000 in damages, consumer who accepted a \$250 offer of judgment was a prevailing party and obtained more than the “nominal” damages awarded to the civil rights plaintiff in *Farrar*.

Middlesworth v. Oaktree Collections Inc., 2009 WL 3720884 (E.D. Cal. Nov. 3, 2009). Consumer’s request for fees for anticipated \$750 costs of collection of a default FDCPA judgment denied as unprecedented.

Miller v. Midpoint Resolution Group, L.L.C., 608 F. Supp. 2d 389 (W.D.N.Y. 2009). \$7000 in fees awarded, a reduction from the unopposed \$18,000 requested because plaintiff had requested \$10,000 for emotional distress but recovered only \$500.

Richard v. Oak Tree Group Inc., 2009 WL 3234159 (W.D. Mich. Sept. 30, 2009). Fee award reduced substantially to twelve hours at \$250 per hour; fee entries were unintelligible; case was simple with small recovery.

Sandin v. United Collection Bureau, Inc., 2009 WL 2500408 (S.D. Fla. Aug. 14, 2009). The rates for a consumer advocate will not necessarily mirror those for a defense attorney, who does not work on a contingency basis. The court awarded \$300 per hour for attorney and \$175 per hour for first year associate. “Consumer law” is a term that encompasses areas of practice ranging from the open-and-shut FDCPA case to complex litigation involving anything from fraud to personal injury. Thus, there is presumably not a single, reasonable hourly rate for all of “consumer law.”

Tomovich v. Wolpoff & Abramson, L.L.P., 2009 WL 2447710 (S.D. Cal. Aug. 7, 2009). Court reduced claimed hourly rates from \$385 to \$300, noting that this was a simple case not justifying the rate used by the consumer attorney in a class action. Reduced the hours compensated by about half because of the simplicity of the case and the experience of the counsel.

Conner v. BCC Fin. Mgmt. Services, Inc., 597 F. Supp. 2d 1299 (S.D. Fla. 2008). Defendant’s motion for attorney fees was granted in part with 15% reduction in hours requested where the law firm’s invoice failed to specify how much time was spent on listed tasks.

Pietrowski v. Merchants & Med. Credit Corp., 256 F.R.D. 544, (E.D. Mich. 2008) Where the jury found defendants liable for violations of the FDCPA but awarded no damages, plaintiff was not “successful” and attorney fees would not be awarded to her counsel.

Examples of Attorney Fee Awards.

Schlacher v. Law Offices of Phillip J. Rotche & Associates, P.C., 574 F.3d 852 (7th Cir. 2009). Court affirmed award of \$6500 in fees where case settled in three months with no discovery; reduced from a fee application of some \$12,500 by four attorneys.

Jones v. Morgan Stone Assocs., 2010 WL 55884 (N.D. Cal. Jan. 4, 2010). \$2,312.40 in attorneys fees awarded in a default judgment.

Dabu v. Becks Creek Industry, 2009 WL 517826 (N.D. Cal. Dec. 22, 2009). Consumer’s motion for default judgment was granted awarding \$3,350.00 in attorney’s fees and costs.

Estay v. Moren and Woods LLC, 2009 WL 5171881 (W.D.N.Y. Dec. 22, 2009). On entry of default, \$1,767.50 in costs and fees were awarded.

Aslam v. Malen & Associates, P.C., [rule] F. Supp. 2d [rule], 2009 WL 3853191 (E.D.N.Y. Apr. 1, 2009). An hourly rate of \$250 was a reasonable rate for a lawyer of about five year’s experience, and 259 hours were reasonably expended on a straightforward FDCPA case that was settled during the first day of trial. Total fee award was \$63,927.50. Thirteen hours for preparing jury instructions were reduced to two where the instruction were “lifted, almost verbatim” from NCLC’s *Fair Debt Collection*.

Basinger-Lopez v. Tracy Paul & Associates, 2009 WL 1948832 (N.D. Cal. July 6, 2009). Attorney fees of full lodestar of \$4002 awarded on default judgment, based on billing rates ranging from \$225 to \$355 per hour for 15.3 hours for the attorneys and about an hour of paralegal time at \$125 per hour.

Berry v. Nat’l Fin. Sys., Inc., 2009 WL 2843260 (W.D.N.Y. Aug. 27, 2009). Upon entry of default and after a hearing to establish damages, husband and wife were awarded FDCPA actual damages of \$3000, statutory damages of \$2000, and \$5999 in attorney fees: 25.1 hours at \$215 per hour for the partner, 1.1 hours at \$175 per hour for the associate, plus filing fees and costs.

Brown v. Sterling & King, Inc., 2009 U.S. DIST. LEXIS 15599 (S.D. Tex. Feb. 27, 2009). Default judgment was entered in the amount of \$1000 FDCPA statutory damages, \$3756 attorney fees, and \$425 costs.

Clark v. Brewer, Michaels & Kane, L.L.C., 2009 WL 3303716 (W.D.N.Y. Oct. 14, 2009). Default judgment was entered for \$500 FDCPA statutory damages and \$2386 attorney fees at hourly rates of \$180 to \$215 for attorneys and \$50 for paralegals.

Danow v. Law Office of David E. Borback, P.A., 634 F. Supp. 2d 1337 (S.D. Fla. 2009). Fee award at \$300 per hour for two of the attorneys; the third was “second chair” at trial and his services were superfluous.

Ellis v. Solomon & Solomon, P.C., 2009 WL 3418231 (D. Conn. Oct. 20, 2009). FDCPA attorney fees at \$350 per hour for 99 hours were reasonable and the award totaled \$34,720 plus costs of \$1413 for successfully obtaining summary judgment, defeating defendant’s motion for summary judgment, and taking several depositions. Travel time to the deposition was reasonably expended and compensated at the same hourly rate.

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). After entry of default the magistrate recommended an award of attorney fees of \$1858.50 (\$295 per hour for 6.3 hours).

Guerrero v. Hudson & Keyse, L.L.C., 2009 U.S. Dist. LEXIS 4921 (W.D. Tex. Jan. 20, 2009). “[A]ttorney should not have needed more than ten (10) hours to research, investigate, draft and file the complaint; five (5) hours to draft and respond to discovery; five (5) hours to draft Plaintiff’s motion for partial summary judgment; and ten (10) hours for other miscellaneous work . . .”

Harper v. Phillips & Cohen Associates, Ltd., 2009 WL 3059113 (D. Colo. Sept. 21, 2009). Fee award of \$9225 for 36.9 hours at \$250 per hour on \$2000 offer of judgment.

Hartung v. J.D. Byrider, Inc., 2009 WL 1876690 (E.D. Cal. June 26, 2009). Recommends entry of default judgment for the consumer in the amount of \$27,000 damages and attorney fees for 23.8 hours at \$250 per hour, totaling \$5962.

Hill v. First Integral Recovery, L.L.C., 2009 WL 3353012 (D. Ariz. Oct. 16, 2009). Motion for default judgment by the consumer was granted awarding \$1889.50 in FDCPA attorney fees.

Kim v. Barro, 2009 WL 1616271 (N.D. Ga. June 9, 2009). Fee award at \$250 per hour for four hours; court denied \$60 for service costs since plaintiff did not show a request for waiver of service.

Kuhne v. Law Offices of Timothy E. Baxter & Associates, P.C., 2009 WL 1798126 (E.D. Mich. June 23, 2009). Attorney fees for 5.85 hours at \$265 per hour (for an attorney with almost twenty years of experience) for a total of \$1550.25 was awarded.

McCollough v. Johnson, Rodenburg & Lauinger, 2009 WL 2476543 (D. Mont. June 3,

2009). Following a plaintiff’s jury verdict that awarded \$250,000 in compensatory damages, \$1000 FDCPA statutory damages, and \$60,000 in state law punitive damages, the court awarded attorney fees in the full amount requested of over \$93,000, commenting, *inter alia*, that the litigation “confers a meaningful public benefit by discouraging illegal debt collection” in the state.

Middlesworth v. Oaktree Collections Inc., 2009 WL 3720884 (E.D. Cal. Nov. 3, 2009). Fee award on default ranging from \$394 per hour to \$250 per hour. Less than thirteen hours is a reasonable expenditure of time to, among other things, draft, serve, and file a complaint, an amended complaint, and move for entry of default judgment.

Molinar v. Coleman, 2009 WL 435274 (N.D. Tex. Feb. 20, 2009). Plaintiff’s motion for entry of judgment by default was entered for defendant’s FDCPA violation with the court awarding no actual damages, \$250 statutory damages, \$2800 costs and attorney fees, and interest to run at 0.60% per annum.

Morris v. I.C. Systems, Inc., 2009 WL 1362594 (E.D. Pa. May 15, 2009). Following settlement of the two plaintiffs’ FDCPA claims for a total of \$18,500, the court awarded attorney fees of \$64,684, based on rates ranging from \$275 to \$390 per hour and a paralegal’s time at \$120 per hour, reimbursement for computerized legal research expenses of \$376, and a reduction of the requested lodestar hours by 15% to “correct for duplicative or unnecessary legal work,” plus costs of \$3782.

Nelson v. Eastern Asset Mgmt., L.L.C., 2009 WL 3255244 (D. Minn. Oct. 7, 2009). Default judgment entered for \$4237 attorney fees and costs.

Nero v. Law Office of Sam Streeter, P.L.L.C., 655 F. Supp. 2d 200 (E.D.N.Y. 2009). Court awarded attorney fees for 9.2 hours at \$200 per hour on default.

Rodriguez v. Florida First Fin. Group, Inc., 2009 WL 535980 (M.D. Fla. Mar. 3, 2009). The court awarded the entire \$38,363.50 requested in attorney fees at \$350 per hour to attorney Donald Peterson, stating, *inter alia*, that “the overall amount of time spent is reasonable, considering that the case involved motion practice, evidentiary hearing and a particularly difficult defendant.”

Sakaria v. FMS Inv. Corp., 2009 WL 1322356 (D. Haw. May 12, 2009). Attorney fees of almost \$4000 were awarded following settlement of this FDCPA case, based on \$150 per hour for the plaintiff’s attorney with five years of experience.

Sandin v. United Collection Bureau, Inc., 2009 WL 2500408 (S.D. Fla. Aug. 14, 2009). Fee application of \$5132.40 reduced to \$4096.20 award.

Shelago v. Marshall & Ziolkowski Enter., L.L.C., 2009 WL 1097534 (D. Ariz. Apr. 22, 2009). Attorney fees of \$17,175.33 for about 60 hours at \$300 to \$400 per hour to obtain a default judgment plus costs of \$1177.58 was awarded in this FDCPA action.

Sievert v. Federal Credit Corp., 2009 WL 3165392 (W.D. Wis. Sept. 28, 2009). \$15,791.20 fee award in a settled case.

Simmons v. Roundup Funding, L.L.C., 2009 WL 3049586 (S.D.N.Y. Sept. 23, 2009). Fees and costs awarded to debt collector in conclusory finding that the claim was frivolous, without referring to the § 1602k(a)(3) standards.

Stair ex rel. Smith v. Thomas & Cook, 2009 WL 1635346 (D.N.J. June 10, 2009). Distinguishing *Carroll*, court awarded \$325 per hour, noting: "As was their right, Defendants litigated this case to the hilt, raising a wide array of arguments over multiple motions that ranged from innovative (but unavailing) to frivolous." "The upshot of Defendants' vigorous but unsuccessful litigation strategy was to significantly increase the resources necessary to litigate this case on all sides, notwithstanding the statutory cap on the potential damages at stake." "Defendants bear the responsibility for the disproportion between the attorney hours expended in litigating this case and the modest damages awarded." Award exceeded \$36,000 in this class action. Ninety-nine attorney and eleven paralegal hours were reasonably spent to obtain summary judgment and class certification after defeating the collection attorney's motion for summary judgment.

Stone v. Nat'l Enter. Sys., 2009 WL 3336073 (M.D. Fla. Oct. 15, 2009). In this FDCPA case the hourly rate for one attorney was reduced to \$300 and the paralegal to \$95. Court awarded fee of \$7850 for the nonduplicative work of twelve members of the firm on a simple case settled after a answer and one conference.

Tomovich v. Wolpoff & Abramson, L.L.P., 2009 WL 2447710 (S.D. Cal. Aug. 7, 2009). As the court found it unreasonable, plaintiff's claim for \$80,777.45 attorney fees and litigation expenses was reduced to \$42,725.95 by reducing the number of hours expended and reducing claimed hourly rates from \$420 to \$350 and from \$385 to \$300. The case settled after some discovery.

Small v. Absolute Collection Serv., Inc., 2006 WL 6183287 (S.D. Fla. Mar. 23, 2006). After making some small deductions of time, the court awarded over \$40,000 in fees for this settled FDCPA case, including all time spent on the contested fees issue.

Dowling v. Litton Loan Servicing L.P., 320 Fed. Appx. 442 (6th Cir. Apr. 9, 2009). The district court did not abuse its discretion in awarding the prevailing plaintiff, who had recovered at a bench trial over three days \$1000 in statutory damages and \$25,000 in emotional distress actual damages, attorney fees of \$49,460 calculated at the lodestar rate of \$300 per hour over 165.2 reasonably expended hours.

Injunctive or Declaratory Relief (Including Class Actions).

Anderson v. Nationwide Credit Inc., 2009 U.S. Dist. LEXIS 57157 (E.D.N.Y. June 25, 2009). FDCPA class settlement permanently enjoined the

defendant as follows: "All telephone voice messages left by Defendant for consumers on telephone answering devices will meaningfully identify the Defendant as the caller, state the purpose or nature of the communication, and disclose that the communication is from a debt collector."

Gravina v. Client Services, Inc., 2009 U.S. Dist. LEXIS 78204 (E.D.N.Y. Aug. 25, 2009). Settlement of nationwide class claims arising from messages left by defendant for settlement class members on telephone answering device included an injunction permanently enjoining defendant as follows: All telephone voice messages left by defendant for consumers on telephone answering devices will meaningfully identify the defendant as the caller, state the purpose or the nature of the communication, and disclose that the communication is from a debt collector.

Hampton v. Countrywide Home Loans, 2009 WL 1813648 (D. Neb. June 24, 2009). Injunctive relief is not an available remedy under the FDCPA.

Holmes v. Collection Bureau of Am., Ltd., 2009 WL 3762414 (N.D. Cal. Nov. 9, 2009). Preliminary injunction to bar continued FDCPA violations denied in absence of showing irreparable harm since the collector had already ceased the allegedly offending misconduct.

Huertas v. Dep't of Educ., 2009 WL 3165442 (D.N.J. Sept. 28, 2009). Injunctive and declaratory relief is not available under the FDCPA.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). The consumer was not entitled to declaratory judgment or injunctive relief for the violations of the FDCPA; but was granted injunctive relief under the Ohio consumer protection act against filing false mass produced affidavits in support of debt collection suits that falsely claimed to be based on personal knowledge about the claimed debt.

FDCPA Statute of Limitations

Kuehn v. Cadle Co., 335 Fed. Appx. 827 (11th Cir. 2009). Amendment to change name of defendant to closely related defendant related back to filing and was thus within the statute of limitations.

Mangum v. Action Collection Serv., Inc., 575 F.3d 935 (9th Cir. 2009). The statute of limitations provision in § 1692k(d) is not jurisdictional. Court applied federal discovery rule to FDCPA statute of limitations. Since plaintiff filed within one year of discovering that her personal information had been improperly disclosed by the debt collector, her suit was within the statute of limitations. Concurring opinion claims that equitable tolling applies, rather than discovery rule, based on plain language of the statute. (Result peculiar to Ninth Circuit.)

Naranjo v. Universal Sur. of Am., --- F.Supp.2d ---, 2010 WL 173555 (S.D.Tex. Jan. 14, 2010). The complaint alleged that the violations of the FDCPA occurred within one year of its filing and therefore was not barred by the statute of limitations.

Malik v. Unifund CCR Partners, 2009 WL 519782 (W.D.Wash. Dec. 22, 2009). Consumer's

FDCPA claim arising from garnishment which occurred roughly three months before filing his action was within one year of filing the complaint and was not barred by the statute of limitations. Nothing in the language of the FDCPA suggests that the statute of limitations runs from the first possible violation and encompasses all later-occurring and distinct violations of the Act. The filing of a writ of garnishment is a “legal action on a debt” which starts the FDCPA statute of limitations.

Basile v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 632 F. Supp. 2d 842 (N.D. Ill. 2009). An “affidavit of the indebtedness” and monthly credit card statements did not provide sufficient evidence of a written agreement; thus, the state court collection action was based on an unwritten contract and the Illinois five-year statute of limitations applied. The debt collector violated §§ 1692e and 1692f by filing a time barred debt collection suit, unless the violation was excusable as a bona fide error.

Castro v. Collecto, Inc., 256 F.R.D. 534 (W.D. Tex. 2009). The ability to bring or threaten suit on the subject cell phone debts were governed by the Federal Communications Act’s two-year limitations period. A class of consumers was certified in FDCPA suit for collecting time-barred debts.

Charbonneau v. Mary Jane Elliott, P.C., 611 F. Supp. 2d 736 (E.D. Mich. 2009). Defendant relied on the information provided by the selling creditor to determine the statute of limitations, which was sufficient to establish a bona fide error defense.

Consumer Solutions REO, L.L.C. v. Hillery, 658 F. Supp. 2d 1002 (N.D. Cal. 2009). An alleged violation of the FDCPA taking place more than one year prior to the filing of the complaint was barred by the one-year statute of limitations.

Davis v. Countrywide Fin. Corp., 2009 WL 2922896 (E.D. Mich. Sept. 9, 2009). Consumers’ FDCPA claims alleging that the defendant wrongfully foreclosed on their home were time barred since the foreclosure proceedings were instituted and in fact concluded more than one year prior to filing the FDCPA suit.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). Plaintiff’s claim dismissed as it presented insufficient facts to support claim that defendant violated § 1692e(10) by filing the state court petition outside of the statute of limitations period.

Grimsley v. Messerli & Kramer, P.A., 2009 WL 928319 (D. Minn. Mar. 31, 2009). Statute of limitations did not run from the initial demand letters sent when defendants did not know the debt had been paid, but from the filing of a lawsuit after receiving the consumer’s notice that the debt had been paid.

Gruen v. EdFund, 2009 WL 2136785 (N.D. Cal. July 15, 2009). Claims arising within one year from filing were timely: “The Court rejects [defendant’s] proposed theory that unlawful conduct occurring within the statute of limitations is time barred if some unlawful conduct also occurred outside of the

statutory limitation period. The only case that [defendant] cites in support of this proposition, *Wilhelm v. Credico, Inc.*, 455 F. Supp. 2d 1006 (D.N.D. 2006), is not persuasive.” Note that *Wilhelm* is not only not persuasive, but it was overruled in relevant part in *Wilhelm v. Credico, Inc.*, 519 F.3d 416 (8th Cir. 2008).

Hoang v. Worldwide Asset Purchasing, L.L.C., 2009 WL 3669883 (S.D. Ill. Nov. 2, 2009). Where lawsuit was dismissed within one year, that was the final act in the course of a state court lawsuit. Under the continuing violation theory, the FDCPA lawsuit was timely.

Jenkins v. Centurion Capital Corp., 2009 WL 3414248 (N.D. Ill. Oct. 20, 2009). The debt collector’s delay in dismissing its state court collection suit when the debt was sold to another collector was an issue best left to the state court and did not give rise to an FDCPA cause of action.

Kline v. Mortgage Elec. Sec. Sys., [rule] F. Supp. 2d [rule], 2009 WL 3064660 (S.D. Ohio Sept. 21, 2009). The FDCPA claim predicated upon the proof of claim filed in their bankruptcy case under chapter 13 was dismissed as barred by the statute of limitations, since the proof of claim was filed more than one year before this litigation was initiated. However, another claim was not barred, based on allegation that the defendants continue to seek illegal late fees and the like outside of bankruptcy.

Kubiski v. Unifund CCR Partners, 2009 WL 774450 (N.D. Ill. Mar. 25, 2009). While the FDCPA statute of limitations started when the state lawsuit was filed, it was equitably tolled because the lawsuit was not served for two years.

Lennon v. Penn Waste, Inc., 2009 WL 3255238.

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). Court allowed relation back of new claim related to imposition of excessive interest since it arose out of the same collection circumstances.

Parker v. Pressler & Pressler, L.L.P., 650 F. Supp. 2d 326 (D.N.J. 2009). Regardless of whether the FDCPA statute of limitations began to run from the date of filing the state court complaint or the date of service, the consumer’s FDCPA complaint filed one year and three months after the alleged violation was barred by § 1692k(d).

Peralta v. Accept Acceptance, L.L.C., 2009 WL 723910 (W.D. Mich. Mar. 10, 2009). The portion of consumer’s FDCPA amended complaint adding class claims, that the defendant debt buyer routinely used false and deceptive supporting affidavits and documents when suing consumers in state court, did not relate back to the original complaint which alleged only that the defendant had unlawfully sued the plaintiff on a known time-barred debt. Thus, since the new claims did not arise out of the same conduct, transaction, or occurrence as the claim in the original complaint, those claims that arose more than one year prior to the FDCPA filing were dismissed as

time barred. Equitable tolling of the statute of limitations, assuming that it even applies to FDCPA claims, did not apply under these circumstances, since the fraudulent concealment needed to support equitable tolling was not met simply by the alleged use of deceptive practices. The court held that the portion of the amended complaint adding only the plaintiff's individual claim for the use of false and deceptive supporting affidavits and documents in the underlying state collection case did relate back to the original, as it rested on the same common core of operative facts that were alleged in his original complaint alleging FDCPA violation. The court also stated that the mere fact that "plaintiff's Amended Complaint adds a new theory does not negate the opportunity for relation back to the original complaint. Where the parties are the same, a court will permit a party to add a new legal theory that arises out of the same transaction or occurrence."

Perez v. Bureaus Inv. Group No. II, L.L.C., 2009 WL 1973476 (S.D. Fla. July 8, 2009). Plaintiff's FDCPA claim that the defendant filed a state court collection suit on a time-barred debt was dismissed as time barred; the court stated that "service, not filing, constitutes the violation and triggers the statute of limitations period;" still, the plaintiff did not file the federal case until more than one year after both filing and service of the state case, so the federal suit was time barred in either event.

Pincus v. Law Offices of Erskine & Fleisher, 617 F. Supp. 2d 1265 (S.D. Fla. 2009). The collection attorney defendants whose underlying state court collection suit was dismissed as barred by the statute of limitations were now collaterally estopped in this FDCPA affirmative suit from re-litigating that issue and from now arguing that the collection suit was not time barred.

Ruth v. Unifund CCR Partners, 2009 WL 585847 (N.D. Ohio Mar. 6, 2009). FDCPA claims alleging that defendants filed state court collection litigation without legal capacity were time barred since the federal action was filed more than one year after the plaintiff was served with the collection complaint. Defendants' litigation of the collection action based on the filing of a complaint without legal capacity is not the type of "continuing wrong" to support a continuing violation theory to extend the statute of limitations. FDCPA claim alleging that defendants illegally assigned the debt was time barred since the action was filed more than one year after the alleged violation.

Smith v. Rubin & Raine of New Jersey, L.L.C., 2009 WL 2143644 (D.N.J. July 14, 2009). New FDCPA claims alleged in the amended complaint were time barred since they raised new violations based on new facts "which differ in both time and type from the claims asserted in the Initial Complaint" and therefore did not relate back to the original pleading. "[T]he date the letters were sent [and not when they were received], is the relevant period from which the statute of limitations begins to run."

Whittiker v. Deutsche Bank Nat'l Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio 2009). Dismissed based on statute of limitations; equitable tolling not appropriate here where defendants did not conceal the state court action.

Zimmerman v. The CIT Group, Inc., 2009 WL 900172 (D. Colo. Mar. 31, 2009). Dismissed based on statute of limitations, since state court service was made more than a year before the action was brought even though plaintiff claimed that he was never served.

Debt Collector's Defenses and Counterclaims. Bona Fide Error Defense, 15 U.S.C. § 1692k(c)

Danow v. Borack, 2009 WL 2883469 (11th Cir. Sept. 10, 2009). Jury could properly reject bona fide error based on evidence that defendant trains its callers in the FDCPA and supervisors monitor the calls when an employee actually talks to a debtor, but defendant did not produce any written procedures concerning how it processes letters from consumers, how it determines whether to place a "cease and desist" on an account, or if anyone reviews the employees' actions to determine whether a letter has been properly processed, and also acknowledged that the firm never receives an itemized list of its outbound calls from the telephone company, and never compares its internal telephone logs with telephone-company records to "make sure that your employees are not making phone calls that you don't know about." Finally, when the firm's employees call consumers and leave tape-recorded messages, the firm does not record or monitor those calls.

Ruth v. Triumph P'ships, 577 F.3d 790 (7th Cir. 2009). A defendant is entitled to the bona fide error defense only if it can show that the violation: (1) was unintentional; (2) resulted from a bona fide error; and (3) occurred despite the defendant's maintenance of procedures reasonably adapted to avoid such error. If a claimed error is legal, it is only available to debt collectors, if it is permissible, "who can establish that they reasonably relied on either: (1) the legal opinion of an attorney who has conducted the appropriate legal research, or (2) the opinion of another person or organization with expertise in the relevant area of law—for example, the appropriate government agency." (Dictum.) Although the debt collectors produced evidence that their employees attend training sessions on FDCPA compliance, and they had procedures in place to prevent violations of other provisions of the FDCPA, the debt collectors could not establish a bona fide error defense where no evidence in the record indicated that they had ever sought legal or regulatory advice as to whether the collection letter and notice were in compliance with the FDCPA.

Majeski v. I.C. Sys., Inc., 2010 WL 145861 (N.D. Ill. Jan. 8, 2010). "With regard to pre-dispute procedures, debt collector is entitled to rely on its client's obligation to deliver accurate account information on reported debts." Whether a debt collector's

procedures are reasonable is, by its nature, fact-intensive, and should therefore typically be left to the jury.

Holmes v. Mann Bracken, LLC, 2009 WL 518448 (E.D.Pa. Dec. 22, 2009). Where Mann Bracken sent the communication knowing that the contents could be “deceptive” because such communication could have “two or more different meanings, one of which is inaccurate,” the court could not determine if Mann Bracken's alleged bona fide error was “unintentional” and/or whether Mann Bracken employed “procedures designed to avoid such errors” and denied defendant’s motion for summary judgment.

McMahon v. Credex Am. Inc., 2009 WL 5171889 (W.D.N.Y. Dec. 22, 2009). Viewing the facts in the light most favorable to the non-moving party, and considering the defendant debt collector's bona fide error defense that it has used the “tickler” procedure for 10 years to deposit thousands of checks and the instant case was the first time that a post-dated check had been deposited improperly, a jury could find that the procedure employed by the defendant was reasonably adopted to avoid the error of prematurely depositing post-dated checks

Acik v. I.C. Sys., Inc., 640 F. Supp. 2d 1019 (N.D. Ill. 2009). The debt collector could not establish a bona fide error defense where it was aware that the un-itemized “Additional Client Charges” contained \$60.00 in collection fees and \$18.50 in interest.

Baker v. I.C. Sys., Inc., 2009 WL 1365002 (Conn. Super. Ct. May 11, 2009). No bona fide error defense where debt collector called third parties without the consumer’s permission and after consumer provided location information.

Basile v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 632 F. Supp. 2d 842 (N.D. Ill. 2009). Law firm’s bona fide error defense to filing a collection action after the Illinois five-year statute of limitations ran presented a question of fact.

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). Inaccurate and confusing statement of the amount of interest violated the FDCPA, unless excused subject to a bona fide error defense. Defendants offered some evidence of procedures in place to avoid errors in the filing of collection complaints, but were unable to explain how the errors in this case occurred or how their processes of review are reasonably designed to prevent these specific kinds of errors. There is, thus, a genuine issue of material fact as to whether defendants’ procedures for reviewing collection complaints and accompanying affidavits were sufficient.

Brazier v. Law Offices of Mitchell N. Kay, P.C., 2009 WL 764161 (M.D. Fla. Mar. 19, 2009). Summary judgment denied where plaintiff contends that attorney acted in bad faith by placing the disclaimer on the back of the letter, out of sight from the

letterhead and the initial impression of the letter’s authority, which creates disputed issue of fact.

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The court held that the bona fide error defense applies to mistakes of law. The court withheld ruling on the defendant’s bona fide error defense on the *Camacho* § 1692g(a)(3) violation to allow the defendant additional time to develop the factual record.

Castro v. Collecto, Inc., [rule] F. Supp. 2d [rule], 2009 WL 3617557 (W.D. Tex. Oct. 27, 2009). Bona fide error of law defense upheld where reasonable lawyers, as this case demonstrates, readily disagree on whether the federal (FCC two years) or state (four years) statute of limitations period applied.

Charbonneau v. Mary Jane Elliott, P.C., 611 F. Supp. 2d 736 (E.D. Mich. 2009). Defendant relied on the information provided by the selling creditor to determine the statute of limitations, which was sufficient to establish a bona fide error defense.

Durham v. Continental Cent. Credit, 2009 WL 3416114 (S.D. Cal. Oct. 20, 2009). The fact that corrective procedures had been put into place suggests that there were no safeguards previously in place to establish a bona fide error defense. The fact that the debt collector’s employees received training upon being hired does not establish that the collector had implemented policies and procedures to ensure compliance with the FDCPA.

Elder v. David J. Gold, P.C., 2009 WL 2580320 (W.D.N.Y. Aug. 18, 2009). Court questioned validity of bona fide error defense where defendant continued prosecuting lawsuit in wrong venue after notice that it was wrong.

Gathuru v. Credit Control Serv., Inc., 623 F. Supp. 2d 113 (D. Mass. 2009). The debt collector failed to present evidence of reasonable procedures to avoid not claiming collection fees as owed before they were incurred sufficient to qualify for the bona fide error defense.

Herkert v. MRC Receivables Corp., 655 F. Supp. 2d 870 (N.D. Ill. 2009). If the bona fide error defense is available at all for legal errors, it is only available to debt collectors “who can establish that they reasonably relied on either: (1) the legal opinion of an attorney who has conducted the appropriate legal research, or (2) the opinion of another person or organization with expertise in the relevant area of law--for example, the appropriate government agency.” Defendants’ view of the law, in view of appellate decisions, was “at best wishful thinking.” Defendants did not meet their burden to establish that they relied on the “legal opinion of an attorney who has conducted the appropriate legal research.” The defendants refused to reveal their attorney’s advice. Assertion of a bona fide error defense under the FDCPA acts as a waiver of the attorney-client privilege, since the privilege was not meant to be used “both as a sword and a shield.” Applying the bona fide error defense here would essentially reward a business’s ignorance of the law.

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). “The FDCPA is a strict liability statute, unless the debt collector can prove that it committed a bona fide error.”

Midland Funding L.L.C. v. Brent, 644 F. Supp. 2d 961 (N.D. Ohio 2009). “It is unclear to this Court why such a patently false affidavit would be the standard form used at a business that specialized in the legal ramifications of debt collection. [Defendants] could easily prepare a form affidavit that achieved the same goals without being misleading, by reflecting the truth, plain and simple. Rather than basing the affidavit on false personal knowledge, they could base it on the accuracy of the records kept and the accuracy of the data.” No bona fide error defense where the affidavit form was “prepared by in-house counsel and then populated with data that was obtained from Citibank.” “They have provided little or no explanation for how the mistake of preparing a form affidavit that asserts personal knowledge on the part of an affiant who could not possibly have it could be without intent.” Defendants completely failed to show any procedure to avoid this error.

Pincus v. Law Offices of Erskine & Fleisher, 617 F. Supp. 2d 1265 (S.D. Fla. 2009). “Defendants’ bona fide error defense turns on questions of fact and cannot be resolved on a motion to dismiss.”

Rice v. Troon Co. Partners, L.L.C., 2009 WL 935745 (W.D. Okla. Apr. 3, 2009). Defendant did not establish the bona fide error defense for the purpose of summary judgment by an affidavit that it “monitors industry publications, attends conferences, and keeps abreast of court decisions regarding FDCPA, that all employees who perform debt collection complete a two-week training class on procedures and FDCPA compliance, and that the training covers company training and operations manuals as well as videos and written materials prepared by the American Collectors Association.” Defendant “does not explain the procedures used to generate letters to debtors or what procedures are in place to prevent the specific clerical error at issue—an employee of TCP allegedly using the wrong computer template or otherwise printing a document on TC letterhead and, without noticing the error despite distinct letterheads, mailing a TC letter to a TCP debtor.”

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). Court rejected “intentional infliction” standard by reference to standards applied in FCRA cases, as well as reference to the factors listed in § 1692k(c).

Sanchez v. United Collection Bureau, Inc., 649 F. Supp. 2d 1374 (N.D. Ga. 2009). The debt collector was entitled to summary judgment on its un rebutted assertion of the bona fide error defense for allegedly misrepresenting the amount of the debt where the collector relied on and restated the amount as represented to it by its client. For summary judgment purposes, Mr. Klein’s affidavit regarding the process and procedures utilized by debt collector to avoid making errors in transmitting to the debtor the

amount due that it receives from its client rises to the level of a preponderance of the evidence. Plaintiff has offered no facts to rebut or challenge the procedures articulated by debt collector in the Klein affidavit, or from which a jury could reasonably conclude that debt collector intentionally falsely represented the amount of plaintiff’s debt. Accordingly, the bona fide error defense shields debt collector from liability for the FDCPA violation that plaintiff has alleged, and debt collector should be granted summary judgment on plaintiff’s claim under the FDCPA.”

Thomas v. Boscia, 2009 WL 2778105 (S.D. Ind. Aug. 28, 2009). Summary judgment granted to the defendant debt collectors on their bona fide error defense to excuse their admitted violation of § 1692e when they sued the consumer after receiving notice of her bankruptcy filing. The defendants “employed numerous safeguards” to identify cases in bankruptcy, demonstrated that this case was the only one out of 3327 where the error occurred because a bankruptcy was not properly flagged, and immediately dismissed the collection case once alerted to the mistake. Summary judgment granted to the plaintiff on the defendants’ bona fide error defense to excuse their admitted violation of § 1692c when they communicated directly with her once on notice of her attorney’s representation. The defendants’ only preventive procedures relied on information provided by the defendants’ clients, and thus the procedures were inadequate as a matter of law since they were incapable of cross-checking for attorney representation when, as here, notification was received independently of their clients.

Thompson v. Crown Asset Mgmt., L.L.C., 2009 WL 3059123 (D. Ariz. Sept. 23, 2009). Defendants’ affidavits entitle them to the bona fide error defense based on declarations that defendant unintentionally contacted Thompson as a result of a clerical error, immediately corrected the error, and had policies and procedures in place to avoid such errors.

Pietrowski v. Merchants & Med. Credit Corp., 256 F.R.D. 544 (E.D. Mich. 2008) Where the jury found that the debt collector had violated the FDCPA in two of nine alleged violations and found further that that defendant had established a bona fide error defense with regard to these violations, the court stated that plaintiff’s request for over \$31,000 in attorney fees was “patently unreasonable.”

In re Jones, 2009 WL 2068387 (Bankr. E.D. Va. July 16, 2009). “Genuine issues of material fact regarding whether this violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error” precluded summary judgment on the defendant’s bona fide error defense.

CA Partners v. Spears, 274 S.W.3d 51 (Tex. App. 2008). Where the record contained no evidence that the debt collector instituted reasonable procedures to prevent the error which caused the violations of the Fair Debt Collection Practices Act, the collec-

tor was not entitled to the protection of the bona fide error defense.

Hartman v. Great Seneca Fin. Corp., 569 F.3d 606 (6th Cir. 2009). Summary judgment for the defendants on their bona fide error defense reversed where the district court had erred in concluding that it was sufficient that the defendant debt buyer had no intent to mislead or misrepresent, had “exhaustive procedures in place to verify financial information associated with debts,” and had hired a law firm to manage its portfolio, and that the defendant attorneys had relied on their client’s representations and “did not believe that calling Exhibit A an ‘account’ was prohibited by the FDCPA;” instead, the evidence supported the conclusion that the violation was intentional in order to circumvent state pleading rules, and the procedures in place--to insure accuracy of the data--were not procedures designed to avoid the violation at issue, i.e., the deceptive nature of the document itself.

Edwards v. Niagara Credit Solutions, Inc., 584 F.3d 1350 (11th Cir. 2009). The district court properly denied the bona fide error defense arising from the defendant’s failure to identify itself as a debt collector as required by § 1692e(11) when leaving consumers an answering machine message; first, the violation was in fact intentional, the result of a deliberate policy decision to not comply with § 1692e(11) purportedly to avoid violating § 1692c(b) in the event that the message was heard by a third party who would then know that a collection agency was calling the consumer; second, to be bona fide “the mistake must be objectively reasonable,” and “[i]t was not reasonable for Niagara to violate § 1692e(11) of the FDCPA with every message it left in order to avoid the possibility that some of those messages might lead to a violation of § 1692c(b).”

Gaisser v. Portfolio Recovery Associates, L.L.C., 593 F. Supp. 2d 1297 (S.D. Fla. 2009). Attorney’s bona fide error defense presented questions of fact as to whether he maintained procedures reasonably adapted to prevent the filing of collection suits in Florida barred by the New Hampshire statute of limitations, and whether his conduct was intentional was a question for the jury.

Hepsen v. J.C. Christensen & Associates, Inc., 2009 WL 3064865 (M.D. Fla. Sept. 22, 2009). To avail itself of the bona fide error defense, a debt collector must maintain “reasonable preventive procedures” aimed at avoiding the errors. Reasonable preventive procedures by debt collectors include: publication of an in-house fair debt collection compliance manual, training seminars on compliance issues, detailed pre-litigation review process, and creditor’s verification under oath regarding the accuracy of each charge. In addition the procedures must be reasonably adapted to avoid the specific error at issue. Furthermore, a debt collector’s mere assertion that the procedures are reasonably adapted to avoid errors is not sufficient to satisfy the “procedures” requirement of the bona fide error defense. A debt

collector must explain the procedures and the manner in which they were adapted to avoid error. No bona fide error where defendant elected to name its client as the creditor in demand letters. It followed this practice even when a client was a debt collector under the FDCPA. Defendant did not show that it maintained adequate safeguards designed to prevent the misstatement of the debt amount. It did not require its clients to certify that the account information is true and accurate. Its account balancing system merely verified that any adjustments received from a client were posted correctly. In light of the numerous interest adjustments to plaintiff’s account, it might have been prudent to confirm the accuracy of the debt amount with its client. Nonetheless, defendant’s policy did not require such confirmation. Thus, defendant did not establish that it maintained procedures reasonably adapted to avoid misstating the amount of debt in its demand letter to plaintiff. Defendant’s reliance on debt information from its client may not act as substitute for the maintenance of adequate procedures to avoid future mistakes.

Kujawa v. Palisades Collection, L.L.C., 614 F. Supp. 2d 788 (E.D. Mich. 2008). Debt collectors did not violate the FDCPA by recording a judgment lien on property of the plaintiff who had the same last name as the debtor and by mailing a garnishment release to plaintiff. Even if this were a violation of the FDCPA, the bona fide error defense would apply.

Sparks v. Phillips & Cohen Associates, Ltd., 641 F. Supp. 2d 1234 (S.D. Ala. 2008). The court denied summary judgment for the defendant’s bona fide error defense where the plaintiffs alleged reprehensible collector misconduct: “The Court finds that there are genuine issues of fact as to, at a minimum, the first two prongs of the bona fide error defense. [Defendant] directs the Court to no evidence or testimony from [its employee] that she did not intend to violate the FDCPA; to the contrary, they tout her many years of experience and expertise in compliance with that statute. If that is true, and if plaintiffs’ version of the facts is accepted as true, a reasonable jury could find that [defendant’s employee] must have subjectively known that her acts of calling [plaintiffs’] home despite knowledge that [plaintiff] was not involved with the Glover matter, refusing to identify herself when calling [plaintiffs’] home telephone number, berating Ashley even after Ashley told her to call her mother, casting aspersions on Ashley and Peoples in her communications with [plaintiff], browbeating [plaintiff] with a statement that defendant had already investigated her, and going out of her way to denigrate and calumniate Peoples to her boss were all outside the scope of permissible activity under the FDCPA. Even if [defendant’s employee] were not well-versed in the FDCPA, an intent to violate the Act could reasonably be inferred by reference to the numerous inconsistencies between [defendant’s employee’s] course of conduct and that prescribed by [defendant] in its training manuals for collection specialists. Moreover, on this evidence, a

reasonable finder of fact could readily determine that the aforementioned conduct was not objectively reasonable, even if [defendant's employee's] violations of the FDCPA were unintentional.”

Other Defenses and Counterclaims

Naranjo v. Universal Sur., --- F.Supp.2d ---, 2010 WL 173555 (S.D.Tex. Jan. 14, 2010). The consumer's federal action alleging that the debt collectors violated the FDCPA by obtaining a default judgment in the state court collection case when they knew that the debt was beyond the statute of limitations was not barred by claim preclusion since the consumer “is not asking this Court to review or reject the state default judgment itself [but] is complaining about Defendants' alleged practices of bringing time-barred collections actions.”

Cappetta v. GC Services, L.P., 645 F. Supp. 2d 453 (E.D. Va. 2009). Voluntary payment doctrine is a state law defense that was not applicable, since the FDCPA claim arose under federal law, and to the extent that it was otherwise applicable, the defense was preempted “to the extent the doctrine afforded less protection to consumers than the FDCPA.”

Dexter v. Tran, 654 F. Supp. 2d 1253 (E.D. Wash. 2009). In a state court collection action where plaintiff presented a counterclaim for violation of § 1692i and the state court ruled for the collector, plaintiff's subsequent FDCPA action in federal court was barred by claim preclusion and issue preclusion.

Gutierrez v. LVNV Funding, L.L.C., 2009 U.S. Dist. LEXIS 54479 (W.D. Tex. Mar. 16, 2009). FDCPA action, alleging that the defendant debt buyer violated the FDCPA by filing state court collection complaints with an attached false “Affidavit of Account,” was not a compulsory counterclaim in the state collection action and therefore was not barred by res judicata.

Hutton v. Law Offices of Collins & Lamore, [rule] F. Supp. 2d [rule], 2009 WL 3747226 (S.D. Cal. Nov. 9, 2009). The California anti-SLAPP statute, which protects against retaliation for filing protected litigation, did not apply in this case since this FDCPA suit alleged a violation in the defendant's collection letter sent prior to its initiation of collection litigation in state court.

Martin v. Law Offices of John F. Edwards, [rule] F.R.D. [rule], 2009 WL 3245926 (S.D. Cal. Oct. 6, 2009). Motion to dismiss debt collection counterclaim granted for sound public policy reasons, including entanglement in state law issues and involvement of limited resources in legal questions of no federal significance.

Moore v. Diversified Collection Services, Inc., 2009 WL 1873654 (E.D.N.Y. June 29, 2009). Debt collector's counterclaim for attorney fees pursuant to § 1692k(a)(3) was dismissed where the consumer had survived the debt collector's motion to dismiss.

Raydos v. Cohen & Slamowitz, L.L.P., 2009 WL 2929166 (W.D.N.Y. Sept. 9, 2009). The court lacked jurisdiction under the Full Faith and Credit

Clause of the U.S. Constitution to hear the consumer's claim that the defendant violated the FDCPA by filing its state court collection suit beyond the applicable statute of limitations, since that suit resulted in a default judgment that under state law had preclusive effect and constituted a waiver of the limitations defense.

Riley v. Giguere, 631 F. Supp. 2d 1295 (E.D. Cal. 2009). Plaintiff alleged that collection attorney acted as the agent for the plaintiff's former lessor and used improper means in pursuing an unlawful detainer action against him and in seeking to recover a related debt violating §§ 1692d, 1692e, and 1692f. Court held that defendant was not liable, as he acted as an agent.

Taylor v. United Collection Bureau, Inc., 2009 WL 1708762 (S.D. Ill. June 17, 2009). Rejected defendant's efforts to put its answer and counterclaim under seal lest it violate state privacy laws. State law privileges and protections do not control in federal question cases.

Welker v. Law Office of Horwitz, 626 F. Supp. 2d 1068 (S.D. Cal. 2009). The mere sending of a debt collection letter, without more, does not invoke anti-SLAPP protection.

Whittiker v. Deutsche Bank Nat'l Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio 2009). No *Younger* abstention where plaintiff does not ask the court to enjoin or otherwise interfere with the pending foreclosure action. Court did not reach issues of preclusion, estoppel, or waiver on a motion to dismiss since they are affirmative defenses.

Conner v. BCC Fin. Mgmt. Services, Inc., 597 F. Supp. 2d 1299 (S.D. Fla. 2008). Plaintiff and her counsel held jointly liable for award of attorney fees for continuing to litigate the case in bad faith, even after being advised of defendant's valid registration as a debt collector. Court rejected plaintiff's argument that Florida Act prevented the imposition of fees against her (regardless of whether the case filed was frivolous) when she could not be held personally liable for fees under FDCPA.

O'Neil v. Wolpoff & Abramson, L.L.P., 210 P.3d 482 (Colo. Ct. App. 2009). Appeals court reversed the lower court's entry of summary judgment that claim preclusion, resulting from the parties' earlier settlement of the consumer's FDCPA federal court case, barred the consumer's current TCPA claim; the appeals court held that outstanding issues of material fact as to the parties' intent and the interpretation of the scope and intent of the settlement agreement precluded summary judgment.

Cobb v. Wells Fargo Home Mortg., Inc., 2009 WL 1636281 (Ky. Ct. App. June 12, 2009). Possible FDCPA counterclaim did not constitute a relevant basis to vacate foreclosure.

Offers of Judgment., Individual actions

Ardito v. Wolpoff & Abramson, L.L.P., 2009 WL 449159 (C.D. Cal. Feb. 23, 2009). In this FDCPA case an individual lawyer defendant was granted relief from a mistakenly entered offer of

judgment but would not be dismissed from the reopened action.

Bolton v. Pentagroup Fin. Services, L.L.C., 2009 WL 734038 (E.D. Cal. Mar. 17, 2009). Even though the plaintiff failed to accept an offer of judgment that provided all of the relief available, the case would not be deemed to be moot since the court's instant ruling adopting the *Costa* standard of emotional distress that now eliminated the plaintiff's claim for actual damages could not have been known before and thus "[a]t the time the settlement offer was made, Plaintiff did not know if the offer was more than his maximum legal recovery."

Danow v. Law Office of David E. Borback, P.A., 634 F. Supp. 2d 1337 (S.D. Fla. 2009). Court ignored \$1000 offer of judgment as a basis to reduce fees because it was not "less favorable" than the \$1000 jury award.

Guerrero v. Hudson & Keyse, L.L.C., 2009 U.S. Dist. LEXIS 4921 (W.D. Tex. Jan. 20, 2009). Citing *Grissom v. The Mills Corp.*, 549 F.3d 313, 319/-/20 (4th Cir. 2008), the district court held that under Rule 68 any fees or expenses incurred after the making of an Rule 68 offer of judgment were not recoverable unless the offer so provided.

Harper v. Phillips & Cohen Associates, Ltd., 2009 WL 3059113 (D. Colo. Sept. 21, 2009). Fee award of \$9225 at \$250 per hour on \$2000 offer of judgment.

Kuhne v. Law Offices of Timothy E. Baxter & Associates, P.C., 2009 WL 861244 (E.D. Mich. Mar. 27, 2009). Court dismissed the case for lack of jurisdiction where plaintiff did not accept Rule 68 offer that would make her whole; but simultaneously entered judgment for plaintiff in the amount of the offer, and retained jurisdiction to determine attorney fees.

Kuhne v. Law Offices of Timothy E. Baxter & Associates, P.C., 2009 WL 1798126 (E.D. Mich. June 23, 2009). In this FDCPA case, time expended by the consumer's attorney after receipt of defendant's offer of judgment and its motion to dismiss was not recoverable.

Pollock v. Bay Area Credit Serv., L.L.C., 2009 WL 2475167 (S.D. Fla. Aug. 13, 2009). The Rule 68 offer did not provide complete relief to plaintiff as it did not encompass attorney fees and costs incurred after the offer was made. Rule 68 offer did not offer complete relief, since plaintiff sought injunctive relief under state law. Rule 68 offer was ambiguous because of the scope of the release which included nonparties.

Shepherd v. Law Offices of Cohen & Slamowitz, L.L.P., [rule] F. Supp. 2d [rule], 2009 WL 3496863 (S.D.N.Y. Oct. 29, 2009). The attorney fees incurred by the consumer to vacate an improperly obtained default judgment in the underlying state collection action, the "additional fees to right her credit rating," and the charges that she paid to her bank in connection with the defendant's allegedly wrongful attachment of her bank account were

among the recited actual damages that a Rule 68 offer would have to satisfy in order to moot the case. Defendant's rejected Rule 68 offer of judgment did not offer all relief requested so as to moot the plaintiff's case, since the offer provided only the maximum \$1000 for statutory damages plus fees and costs and omitted any sum for plaintiff's alleged actual damages.

Skaer v. Nat'l Action Fin. Services, Inc., 2009 WL 724054 (D. Colo. Mar. 18, 2009). Fee award for 8.5 hours at \$250 per hour, as requested, after acceptance of \$4001 offer of judgment.

Tillman v. Calvary Portfolio Services, L.L.C., 2009 WL 510921 (D. Ariz. Feb. 27, 2009). Because the validity of an offer of judgment ripens only after the entry of a judgment less favorable than the defendant's offer, plaintiff's motion to strike was procedurally improper.

Linko v. Nat'l Action Fin. Services, 2007 WL 6882431 (M.D. Pa. Oct. 29, 2007). In this FDCPA action seeking recovery of actual damages, statutory damages, punitive damages, costs and attorney fees, the debt collector's motion for summary judgment, claiming that its offer of judgment in the amount of \$4000 satisfied the consumer's claims, was denied because at the time of the offer of judgment what the actual damages were was unclear.

Pietrowski v. Merchants & Med. Credit Corp., 256 F.R.D. 544 (E.D. Mich. 2008). Upon reconsideration of an award of \$38,215 as reasonable attorney fees to the defendant as part of costs on its offer of judgment, the court vacated its award of attorney fee to the defendant. Because the FDCPA defines "costs" without including attorney fees, such fees cannot be recovered in FDCPA action pursuant to Rule 68.

Debt Collector's Claim for Attorney Fees and Costs, 15 U.S.C. § 1692k(a)(3)

Brooks v. Citibank (South Dakota), 2009 WL 2870046 (9th Cir. Sept. 8, 2009). Remanded for factual findings on whether lawsuit was filed in bad faith within § 1692k(a)(3).

Hyde v. Midland Credit Mgmt., Inc., 567 F.3d 1137 (9th Cir. 2009). Attorney fees and costs may not be awarded under § 1692k(a)(3) against an attorney for an unsuccessful and allegedly abusive consumer plaintiff.

Dexter v. Tran, 2009 WL 5208800 (E.D. Wash. Dec. 22, 2009). Action was not brought in bad faith or for the purpose of harassment and defendants were not entitled to recover their attorney fees and costs by virtue of the parties' reaffirmation agreement because the consumer brought this action pursuant to the FDCPA and did not allege a breach of the reaffirmation agreement.

Allers-Petrus v. Columbia Recovery Group, L.L.C., 2009 WL 1160061 (W.D. Wash. Apr. 29, 2009). The court, giving the plaintiff the benefit of the doubt that the action was not filed in bad faith and for the purpose of harassment, denied the debt collec-

tor's motion for attorney fees and costs pursuant to § 1692k(a)(3).

Bank v. Cooper, 2009 WL 1491227 (E.D.N.Y. May 27, 2009). Defendants' motion for an award of costs, disbursements, and attorney fees pursuant to § 1692k(a)(3) was denied where the court found that the action was not brought in bad faith or for the purpose of harassment.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). Defendant held not entitled to award of attorney fees under § 1692k(a)(3), as defendant only argued that only one claim of plaintiff, under § 1692e(10), was brought in bad faith for the purposes of harassment as opposed to the entire lawsuit as required for the award of fees, and also because plaintiff's § 1692e claim was sufficiently supported by facts in the complaint and thus not brought in bad faith for purposes of harassment.

Hoang v. Worldwide Asset Purchasing, L.L.C., 2009 WL 3669883 (S.D. Ill. Nov. 2, 2009). Denied sanctions under § 1692k(a)(3), where plaintiff did not file a claim in bad faith by bringing a "clearly time-barred claim," nor has the claim created unnecessary costs. Thus, plaintiff is not subject to sanctions.

Moore v. Diversified Collection Services, Inc., 2009 WL 1873654 (E.D.N.Y. June 29, 2009). Debt collector's counterclaim for attorney fees pursuant to § 1692k(a)(3) was dismissed where the consumer had survived the debt collector's motion to dismiss.

Randall v. Midland Funding, L.L.C., 2009 WL 2358350 (D. Neb. July 23, 2009). The defendant's motion for an award of § 1692k(a)(3) attorney fees was denied since the court found three claims stated by the complaint and no evidence of bad faith.

Sanchez v. United Collection Bureau, Inc., 649 F. Supp. 2d 1374 (N.D. Ga. 2009). The prevailing defendant was not entitled to an award of attorney fees since it has provided no evidence of "bad faith and purposeful harassment."

Conner v. BCC Fin. Mgmt. Services, Inc., 597 F. Supp. 2d 1299 (S.D. Fla. June 25, 2008). Award of some \$20,000 fees against plaintiff under state law, but expressly not under FDCPA, and jointly against plaintiff's counsel under 28 U.S.C. § 1927, for continuing to litigate after it became clear that claim that defendant had no collection agency license was meritless. Court rejected plaintiff's argument that Florida Act prevented the imposition of fees against her (regardless of whether the case filed was frivolous) when she could not be held personally liable for fees under FDCPA.

Pietrowski v. Merchants & Med. Credit Corp., 256 F.R.D. 544 (E.D. Mich. 2008). Upon reconsideration of an award of \$38,215 as reasonable attorney fees to the defendant as part of costs on its offer of judgment, the court vacated its award of attorney fees to the defendant.

Mercy Regional Health Center, Inc. v. Brinegar, --- P.3d ---, 2010 WL 199641 (Kan. Jan.

22, 2010). Affirmed an award of attorney's fee under state law against the losing debtor, a pro se lawyer who counterclaimed under both the FDCPA and state law in this collection action to recover for medical services performed for his minor child, where the trial court found that the state law counterclaim had been brought for an impermissible purpose under the applicable state law standard but that the unsuccessful FDCPA counterclaim did not warrant an award under the fee-shifting provision of § 1692k(a)(3).

Arbitration.

Holmes v. Mann Bracken, LLC, 2009 WL 5184485 (E.D.Pa. Dec. 22, 2009). The amended Pennsylvania Rules of Civil Procedure which created a specific section governing arbitration of consumer credit transactions was not preempted by the FAA

Cunningham v. MBNA Am. Bank, 8 So.3d 438 (Fla. Dist. Ct. App. 2009). In this case, filed as an MBNA arbitration confirmation action, the dismissal of the consumer's FDCPA counterclaim, alleging misuse of the NAF arbitration process to secure payment of a credit card debt, was not final and therefore not appealable; court rules would permit appeal under these circumstances only if the counterclaim were permissive, but here the FDCPA claim is a compulsory counterclaim under state law because it was "inextricably tied to the transaction or occurrence underlying MBNA's claim."

McCracken v. Green Tree Servicing, L.L.C., 279 S.W.3d 226 (Mo. Ct. App. 2009). Mortgageors' FDCPA case against mortgage servicer alleging misapplication of their mortgage payments was ordered to arbitration pursuant to the arbitration agreement in the original mortgage documents. The lower court had denied arbitration because the agreement did not say that it applied to "successors and assigns." The appeals court reversed, holding that "[t]he scope of the arbitration provision is broad enough to include the relationship between [plaintiff and defendant] that resulted from the lender's assignment of its right to receive the loan payments." The relevant portion of the arbitration agreement states: "All disputes, claims or controversies arising from or relating to this contract or the relationships which result from this contract, or the validity of this arbitration clause or the entire contract, shall be resolved by binding arbitration by one arbitrator selected by *you* with consent of us The parties agree and understand that all disputes arising under case law, statutory law, and all other laws including but not limited to, all contract, tort, and property disputes, will be subject to binding arbitration in accord with this conduct."

Litigation Privilege, Witness and Other Immunities

Hartman v. Great Seneca Fin. Corp., 569 F.3d 606 (6th Cir. 2009). Neither the Petition Clause of First Amendment or the *Noerr-Pennington* doctrine bars FDCPA suits based on intentional misrep-

representations made in state court collection cases. The FDCPA was not unconstitutionally vague as applied to the misconduct in this case which was an alleged intentional misrepresentation of an exhibit because such false statements are not immunized by the Petition Clause.

Basile v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 632 F. Supp. 2d 842 (N.D. Ill. 2009). Collection lawsuits are not shielded from the FDCPA by the *Noerr-Pennington* doctrine.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). “Where only a debt collector can be held liable under the FDCPA, and the ‘witness’ at issue is that debt collector, who can control his or her own liability by not making knowingly false statements in attempting to collect a debt,” the doctrine of witness immunity is inconsistent with the purpose of the statute to hold debt collectors liable for conduct related to the process of debt collection.

Gallagher v. Gurstel, Staloch & Chargo, P.A., 645 F. Supp. 2d 795 (D. Minn. 2009). FDCPA claims are not barred by any common law immunity or common law privilege applicable to a lawyer’s litigation activities.

Herkert v. MRC Receivables Corp., 655 F. Supp. 2d 870 (N.D. Ill. 2009). Assertion of a bona fide error defense under the FDCPA acts as a waiver of the attorney-client privilege, since the privilege was not meant to be used “both as a sword and a shield.”

Kline v. Mortgage Elec. Sys., 2009 WL 3064660 (S.D. Ohio Sept. 21, 2009). Court rejected claim of attorney immunity.

Ogbin v. Fein, Such, Kahn & Shepard, P.C., 2009 WL 1587896 (D.N.J. June 1, 2009). The state litigation privilege applies to the FDCPA. Note that the court based its opinion on the plaintiffs’ inadequate briefing, stating (correctly) that the plaintiffs’ cited cases do not support their position.

Sain v. HSBC Mortg. Services, Inc., 2009 WL 2858993 (D.S.C. Aug. 28, 2009). State law immunity doctrine that shielded the defendant attorney from liability based on his prosecution of the underlying state foreclosure action was not applicable to this federal FDCPA claim.

Stover v. Fingerhut Direct Mktg., Inc., [rule] F. Supp. 2d [rule], 2009 WL 2606555 (S.D. W. Va. Aug. 26, 2009). First Amendment challenge to West Virginia’s debt collection laws rejected. Defendants’ debt collection practice of calling debtors at home to discuss debts is entitled to only a modicum of First Amendment protection because it: (1) involves commercial speech; (2) pertains to a matter of purely private, rather than public, concern; (3) includes non-communicative conduct; and (4) implicates plaintiffs’ right to privacy in their home. “Defendants’ debt collection activities interject commercial speech directly into Plaintiffs’ home against their wishes. Defendants’ right to engage in this manner of speech is in direct conflict with Plaintiffs’ right to privacy in their

home. Where these two rights are in the balance, it is the right to privacy that generally carries more weight.”

Taylor v. United Collection Bureau, Inc., 2009 WL 1708762 (S.D. Ill. June 17, 2009). Rejected defendant’s efforts to put its answer and counterclaim under seal lest it violate state privacy laws. State law privileges and protections do not control in federal question cases

Welker v. Law Office of Horwitz, 626 F. Supp. 2d 1068 (S.D. Cal. 2009). Litigation privilege should not be applied to claims arising under the FDCPA or California’s Rosenthal Act.

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). Any common law or First Amendment-based litigation-immunity doctrine is trumped by the statutory language of the FDCPA.

Jurisdiction and Venue.

Avery v. First Resolution Mgmt. Corp., 568 F.3d 1018 (9th Cir. 2009). The consumer’s FDCPA claim that the defendant filed a state court collection suit on a time-barred debt was properly dismissed since the suit was not time barred under “the narrow statutory argument” based on “Oregon’s choice of law regime,” the sole basis for decision presented by the consumer’s counsel.

Apostolou v. Mann Bracken, L.L.C., 2009 WL 1312927 (D.N.J. May 1, 2009). Because the court had obtained jurisdiction over the FDCPA claim, the nonresident plaintiffs’ claims could be heard under Rule 20 of Federal Rules of Civil Procedure, but jurisdiction over their state law claims was denied.

Berg v. Blatt, Hasenmiller, Leibsker & Moore L.L.C., 2009 WL 901011 (N.D. Ill. Mar. 31, 2009). The FDCPA applies to misrepresentations made in state court actions.

Bonneville Billing & Collections, Inc. v. Chase, 2009 WL 1269738 (D. Idaho May 6, 2009). Where the basis of removal to federal court was the consumer’s FDCPA counterclaim, the debt collector’s motion to remand was granted.

Cable v. Protection One, Inc., 2009 WL 2970111 (C.D. Cal. Sept. 9, 2009). State case that had been removed to federal court now remanded: “The only remaining causes of action are asserted under state law, including California’s Rosenthal Fair Debt Collection Practices Act (‘RFDCPA’) To whatever extent the RFDCPA imports elements of the FDCPA, it remains a state claim, and does not invoke federal policies of such significance to warrant federal question jurisdiction.”

First Horizon Home Loans v. Gardner, 2009 WL 1107818 (W.D. Pa. Apr. 23, 2009). A consumer’s counterclaim in a state court collection lawsuit asserting violations of the FDCPA did not form a basis for removal to federal court.

Gavitt v. NCO Fin. Sys., Inc., 2009 U.S. Dist. LEXIS 66120 (E.D. Mich. July 31, 2009). Court exercised its discretion and remanded the state law claims in this FDCPA case that the defendant

properly removed to federal court: “The Court finds that the contemporaneous presentation of Plaintiff’s parallel state claim for relief will result in the undue confusion of the jury . . . *see also* Padilla v. City of Saginaw, 867 F. Supp. 1309, 1315 (E.D. Mich. 1994).”

Matmanivong v. Unifund CCR Partners, 2009 WL 1181529 (N.D. Ill. Apr. 28, 2009). A claim challenging state court pleadings controlled by state court procedural and evidentiary law was not a valid claim under the FDCPA. If the consumer alleges more than merely state court deficiencies and, instead, alleges that a false representation was made in the pleadings, the violation may properly be considered under the FDCPA.

Rhodes Life Ins. Co. v. Mendy Prop., L.C., 2009 WL 1212476 (E.D. La. Apr. 30, 2009). The inclusion of the FDCPA validation notice in a state court pleading did not create federal jurisdiction, and plaintiff’s motion to remand was granted.

Consumer’s State Claims and Supplemental Jurisdiction

Beeders v. Gulf Coast Collection Bureau, 632 F. Supp. 2d 1125 (M.D. Fla. 2009). The consumer may recover a maximum of \$1000 for each telephone message, if found to violate the Florida Consumer Collection Practices Act.

Cannon v. Kelly, 2009 WL 1158695 (W.D.N.Y. Apr. 28, 2009). In this FDCPA case, the court exercised supplemental jurisdiction pursuant to § 1367 over the lender.

Cushman v. GC Services, L.P., 657 F. Supp. 2d 834 (S.D. Tex. 2009). Where the debt collector was a Texas corporation, opened plaintiff’s account in Texas, and sent letters generated in Texas, the mere fact that plaintiff was not a Texas resident was not sufficient reason to deny her standing to bring a claim under the Texas Debt Collection Protection Act.

Drossin v. Nat’l Action Fin. Services, Inc., 255 F.R.D. 608 (S.D. Fla. 2009). Class certification pursuant to the Florida Consumer Collection Practices Act was denied on the basis of individual questions of fact where claim involved debt collection messages left on answering machines.

Gavitt v. NCO Fin. Sys., Inc., 2009 U.S. Dist. LEXIS 66120 (E.D. Mich. July 31, 2009). Court exercised its discretion and remanded the state law claims in this FDCPA case that the defendant properly removed to federal court: “The Court finds that the contemporaneous presentation of Plaintiff’s parallel state claim for relief will result in the undue confusion of the jury. . . . *see also* Padilla v. City of Saginaw, 867 F. Supp. 1309, 1315 (E.D. Mich. 1994).”

Gilmore v. Account Mgmt., Inc., 2009 WL 2848278 (N.D. Ga. Apr. 27, 2009). After entry of default, the magistrate recommended an award of general damages for mental distress of \$10,000 as a result of stress caused by dunning for a fully disputed debt during a time when the consumer was having

heart problems and recovering from open heart surgery, trebled to \$30,000 pursuant to the state consumer protection statute.

Herman v. Nat’l Enter. Systems, Inc., 2009 WL 1874202 (W.D.N.Y. June 29, 2009). Debt collector’s motion for summary judgment on the consumer’s state claim for intentional infliction of mental distress denied where the consumer presented facts indicating daily harassing telephone calls to the nondebtor plaintiff over a five-month period, multiple insults regarding her fitness as a mother, insults directed at her son’s military service, false representations concerning her criminal liability, unauthorized withdrawals from the checking account, and other false representations.

Randall v. Nelson & Kennard, 2009 WL 2710141 (D. Ariz. Aug. 26, 2009). While the court had supplemental jurisdiction over the debt collector’s counterclaim for the underlying debt, it chose not to exercise supplemental jurisdiction because to do so would increase both the complexity and length of time to resolve this narrow and straightforward FDCPA claim.

In re Vienneau, 410 B.R. 329 (Bankr. D. Mass. 2009). In this comprehensive review of bankruptcy court jurisdiction to hear the pending FDCPA and other claims, the court held that it “cannot exercise supplemental jurisdiction” over those claims and concluded as follows: “Although the Court could stop at this juncture and simply dismiss counts III through VIII, the Court will follow the procedure espoused by other courts, namely granting the Plaintiffs an opportunity to have the district court withdraw the reference. *See, e.g.,* In re County Seat Stores, Inc., 2007 WL 4191946, *4 (Bankr. N.D. Tex. June 21, 2007). Should the district court then determine it has jurisdiction and chooses to withdraw the reference, the parties will still have a single forum in which to try this proceeding. Failing withdrawal of the reference, however, the Court will dismiss Counts III through VIII for lack of subject matter jurisdiction.”

Long-Arm Jurisdiction and Venue

Cannon v. Kelly, 2009 WL 1158695 (W.D.N.Y. Apr. 28, 2009). In this FDCPA case the court exercised personal jurisdiction pursuant to the New York long arm statute over the lender.

Fried v. Surrey Vacation Resorts, Inc., 2009 WL 585964 (W.D. Wis. Mar. 6, 2009). FDCPA complaint alleging that the defendant unlawfully placed inaccurate information on the plaintiff’s credit report with regard to a disputed timeshare debt dismissed for lack of personal jurisdiction since the plaintiff failed to meet the Wisconsin long arm statute requirement to show that “defendant carried out solicitation or service activities in the state;” in the alternative, there were insufficient minimum contacts to meet the requirements of due process since “[a]t most, defendant would send letters to plaintiff’s Wisconsin address in order to collect timeshare maintenance fees only when plaintiff failed to pay on time.”

Patterson v. Latimer Levay Jurasek L.L.C., 2009 WL 1862427 (S.D. Cal. June 29, 2009). Deference is given to a plaintiff's choice of forum, unless the defendant makes a strong showing of inconvenience that warrants upsetting plaintiff's choice of forum. A collection law firm sending a letter into the district has minimum contacts for the purposes of exercising personal jurisdiction over the firm. Venue is proper within the district where the collection letter was received.

Tobey v. Nat'l Action Fin. Services, Inc., 2009 WL 3734320 (E.D.N.Y. Nov. 4, 2009). Defendant debt collector's motion to transfer venue denied, and consumer's motion to transfer venue granted.

Bankruptcy Court Issues.

Allers-Petrus v. Columbia Recovery Group, L.L.C., 2009 WL 799676 (W.D. Wash. Mar. 24, 2009). Dismissed plaintiff's FDCPA claim based on judicial estoppel where she had not listed the claim in her chapter 13 proceeding (despite pendency of her motion to amend in bankruptcy court).

Bagwell v. Portfolio Recovery Associates, L.L.C., 2009 WL 1708227 (E.D. Ark. June 5, 2009). Motion to dismiss based on fifteen-year-old bankruptcy denied; here, the defendant debt buyer was not a party to the bankruptcy, was not listed as a creditor, and was not specifically enjoined by the bankruptcy court from collecting the debt. "Plaintiff is not attempting to hold Defendants in contempt for a violation of the bankruptcy discharge order but, rather, Plaintiff is attempting to establish FDCPA liability based on Defendants' pursuit of a debt which Plaintiff claims is not owed."

B-Real, L.L.C. v. Rogers, 405 B.R. 428 (M.D. La. 2009). The consumer's sole remedy against the collector for filing a proof of claim on a time barred debt in the bankruptcy case was under the Bankruptcy Code, which precludes any remedy under the FDCPA.

Kee v. Evergreen Prof'l Recoveries, Inc., 2009 WL 2578982 (W.D. Wash. Aug. 19, 2009). Plaintiff judicially estopped from proceeding with FDCPA claim not listed in bankruptcy.

Kline v. Mortgage Elec. Sys., [rule] F. Supp. 2d [rule], 2009 WL 3064660 (S.D. Ohio Sept. 21, 2009). The Bankruptcy Code did not impliedly repeal the FDCPA in cases where the plaintiff's claim under the FDCPA arose out of actions that occurred during a bankruptcy proceeding, specifically, filing a proof of claim seeking attorney fees which were not allowed. The FDCPA claim predicated upon the proof of claim filed in their bankruptcy case under chapter 13 was dismissed as barred by the statute of limitations, since the proof of claim was filed more than one year before this litigation was initiated. However, another claim was not barred, based on allegation that the defendants continued to seek illegal late fees and the like outside of bankruptcy.

Simmons v. Roundup Funding, L.L.C., 2009 WL 3049586 (S.D.N.Y. Sept. 23, 2009). FDCPA does not provide a remedy for allegations of wrong-

ful proof of claim. Lawsuit based on the filing of a proof of claim in the plaintiffs' bankruptcy which allegedly exceeded their admitted debt "is a careless claim made without adequate allegations, and the complaint borders on frivolity."

Whitworth v. Nat'l Enter. Sys., Inc., 2009 WL 2948529 (D. Or. Sept. 9, 2009). The consumer was not judicially estopped from seeking damages on his FDCPA claim in excess of the \$1000 that he valued the claim in his bankruptcy petition.

In re Benson, 2009 WL 2957786 (Bankr. E.D. Pa. Sept. 10, 2009). In order for a debt to arise from a transaction within the meaning of the FDCPA, the obligation must be the result of a *pro tanto* exchange.

In re Biege, 417 B.R. 697 (Bankr. M.D. Pa. 2009). Bankruptcy court dismissed FDCPA claim for lack of jurisdiction where it was not a core proceeding, did not involve the estate, and did not involve violation of a stay or discharge injunction.

In re Eastman, 419 B.R. 711 (Bankr. W.D. Tex. 2009). Defendants violated three sections of the § 1692e when they filed a claim to recover on a debt that was not recoverable due to a discharge in bankruptcy. The FDCPA is a strict liability statute; in contrast, the Bankruptcy Code requires intentional acts.

In re Jacques, 416 B.R. 63 (Bankr. E.D.N.Y. 2009). Filing a proof of claim as authorized by the Bankruptcy Code is not wrongful conduct prohibited by the FDCPA.

In re Keeler, 2009 WL 2902740 (Bankr. E.D. Pa. May 4, 2009). For purposes of this adversary proceeding, the FDCPA does not bar a creditor from filing a proof of claim, as permitted by § 501(a), where that claim is neither fraudulent nor improper.

In re Travis, 2009 WL 532363 (M.D. Ala. Mar. 3, 2009). The court withdrew from the bankruptcy court the FDCPA claim pending as an adversary proceeding because 1) since the "claims arise out of nonbankruptcy federal law, the bankruptcy court has no special expertise in resolving the claims. Thus, it is not a more efficient use of judicial, and the parties', resources, to try these claims before the bankruptcy court," and 2) "the FDCPA claims are noncore; that is, they do not 'arise under' or 'arise in' Title 11 At most, the bankruptcy court has non-core jurisdiction over the claims. The bankruptcy court's determinations, absent withdrawal, would therefore be subject to de novo review in this court, in any event."

In re Vienneau, 410 B.R. 329 (Bankr. D. Mass. 2009). In this comprehensive review of bankruptcy court jurisdiction to hear the pending FDCPA and other claims, the court held that it "cannot exercise supplemental jurisdiction" over those claims and concluded as follows: "Although the Court could stop at this juncture and simply dismiss counts III through VIII, the Court will follow the procedure espoused by other courts, namely granting the Plaintiffs an opportunity to have the district court withdraw the refer-

ence. *See, e.g.*, In re County Seat Stores, Inc., 2007 WL 4191946, 4 (Bankr. N.D. Tex. June 21, 2007). Should the district court then determine it has jurisdiction and chooses to withdraw the reference, the parties will still have a single forum in which to try this proceeding. Failing withdrawal of the reference, however, the Court will dismiss Counts III through VIII for lack of subject matter jurisdiction.”

In re Chaussee, 399 B.R. 225 (B.A.P. 9th Cir. 2008). FDCPA complaint based on filing a time-barred proof of claim in bankruptcy dismissed because the Bankruptcy Code (1) preempts debtor’s state law CPA claim against debt collector and (2) precludes her FDCPA claim. Unlike in *Randolph*, where the debtor’s claim against the creditor was based upon the creditor’s actions taken after conclusion of the bankruptcy case, the purported FDCPA violation targets the act of filing a proof of claim in the pending bankruptcy case. Court explains at length why the debt validation provisions required by FDCPA conflict with the claims processing procedures contemplated by the Bankruptcy Code and Rules. “Simply put, we find that the provisions of both statutes cannot compatibly operate.” Concurring opinion notes, “Because of the . . . lack of any discussion in *Walls* of whether the Code impliedly repeals a competing federal statute, *i.e.*, the FDCPA, I question whether the Ninth Circuit intended the holding of *Walls* to apply to any overlap between the two statutes or be limited to its facts: whether a violation of the discharge injunction of § 524 creates an FDCPA claim.”

Other Jurisdictional Issues

Taylor v. United Collection Bureau, Inc., 2009 WL 1708762 (S.D. Ill. June 17, 2009). Rejected defendant’s efforts to put its answer and counterclaim under seal lest it violate state privacy laws. State law privileges and protections do not control in federal question cases.

Vlach v. Yaple, [rule] F. Supp. 2d [rule], 2009 WL 4017249 (N.D. Ohio Nov. 20, 2009). Where the consumer alleged facts regarding the debt collector’s contact with the jurisdiction which were disputed by the collector, the court denied the debt collector’s Rule 12(b) motion to dismiss this FDCPA complaint for lack of personal jurisdiction.

Rooker-Feldman Issues

Naranjo v. Universal Sur., --- F.Supp.2d ----, 2010 WL 173555 (S.D.Tex. Jan. 14, 2010). The consumer’s federal action alleging that the debt collectors violated the FDCPA by obtaining a default judgment in the state court collection case when they knew that the debt was beyond the statute of limitations was not barred by the Rooker-Feldman doctrine since the consumer “is not asking this Court to review or reject the state default judgment itself [but] is complaining about Defendants’ alleged practices of bringing time-barred collections actions.”

Blanford v. St. Vincent Hosp. & Health Care Ctr., Inc., 2009 WL 500527 (S.D. Ind. Feb. 27, 2009). Defendant’s motion under the *Rooker-*

Feldman doctrine to dismiss the FDCPA claims accusing the plaintiff of unlawfully seeking attorney fees in the underlying state collection action was denied since the pleadings did not establish that the state court had in fact awarded fees, though the court opined, “The doctrine would apply if the state court had ordered [plaintiff] to pay attorney fees.”

Christian v. Wells Fargo Bank, 2009 WL 2876227 (E.D. Mich. Sept. 3, 2009). The court lacked subject matter jurisdiction as a result of the *Rooker-Feldman* doctrine to grant the *pro se* consumer’s request for relief from a state court’s eviction order.

Dexter v. Tran, 654 F. Supp. 2d 1253 (E.D. Wash. 2009). Where the consumer is seeking statutory damages pursuant to the FDCPA for the defendant’s conduct in bringing the state court collection lawsuit and not asserting that the injury arose from legal errors by the state court, the *Rooker-Feldman* doctrine does not preclude the claims.

Gutierrez v. LVNV Funding, L.L.C., 2009 U.S. Dist. LEXIS 54479 (W.D. Tex. Mar. 16, 2009). Even though final judgments had been entered in the underlying state court proceedings, the *Rooker-Feldman* doctrine did not bar this class action alleging that the defendant debt buyer violated the FDCPA by filing its state court collection action complaints with an attached false “Affidavit of Account” since “the instant action does not seek damages for injuries caused by the state court judgments”: “Here, Plaintiff and putative class members do not seek damages for injuries caused by state court judgments, nor do they invite the Court to review and reject those judgments. Rather, Plaintiff alleges that Defendants violated the FDCPA by filing state court petitions with false affidavits of account. The alleged violation, thus, was complete when Defendants filed the collection action in state court.”

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). Neither the *Rooker-Feldman* doctrine nor *res judicata* applied since the underlying state collection case was on appeal and there was therefore no final state judgment.

Livingston-Gross v. Bank of Am., 2009 WL 1471126 (M.D. Tenn. May 26, 2009). Where the *pro se* plaintiff requested that the amount of the state court judgment be determined to be incorrect, his FDCPA claims were barred by the *Rooker-Feldman* doctrine.

Sherk v. Countrywide Home Loans, Inc., 2009 WL 2412750 (E.D. Pa. Aug. 5, 2009). To the extent that the consumers seek to challenge the state court’s judgment in foreclosure by arguing that it was erroneously entered, their FDCPA claim was barred by the *Rooker-Feldman* doctrine.

Whittiker v. Deutsche Bank Nat’l Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio 2009). A federal plaintiff’s allegations of fraud in connection with a state court proceeding did not constitute a complaint regarding the foreclosure decree itself, but concerned defendant’s actions that preceded the decree, and

therefore plaintiff's claim that the foreclosure decree was procured by fraud was not barred by the *Rooker-Feldman* doctrine.

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). The *Rooker-Feldman* doctrine applies only when the federal plaintiff both asserts as her injury errors by the state court and seeks as her remedy relief from the state court judgment.

Pleadings and Motions Practice.

Ruth v. Triumph P'ships, 577 F.3d 790 (7th Cir. 2009). The circuit court concluded that the district court had erred in granting the defendants summary judgment, as the letter and notice were sent in connection with an attempt to collect a debt and the plaintiff had failed to produce the extrinsic evidence to satisfy the "in connection with collection of a debt" element of her FDCPA claim.

Williamson v. Ocwen Loan Servicing, LLC, 2009 WL 5205405 (M.D.Tenn. Dec. 23, 2009). Consumer's FDCPA claim was sufficient to withstand defendant's motion to dismiss.

Krasnor v. Spaulding Law Office, --- F.Supp.2d ---, 2009 WL 4927148 (D.Mass. Dec. 17, 2009). The consumer specifically and plausibly alleged with sufficient specificity eight separate violations of 15 U.S.C. §§ 1692e and g and the motion to dismiss was denied.

Allen v. United Fin. Mortg. Corp., [rule] F. Supp. 2d [rule], 2009 WL 2984170 (N.D. Cal. Sept. 15, 2009). Dismissed without prejudice for failure to allege that any defendant is a debt collector or identify which provisions were violated.

Angulo v. Countrywide Home Loans, Inc., 2009 WL 3427179 (E.D. Cal. Oct. 26, 2009). Complaint dismissed for failure to state a claim since the defendant was an exempt lender collecting its own debt.

Baker v. I.C. Sys., Inc., 2009 WL 1365002 (Conn. Super. Ct. May 11, 2009). A claim for contacting the consumer's friend despite having the consumer's location information was not well pleaded.

Beeders v. Gulf Coast Collection Bureau, 632 F. Supp. 2d 1125 (M.D. Fla. 2009). Court refused to reconsider ruling that ordered eleven separate cases, each based on a separate phone call by the collector, to be consolidated, with \$1000 per violation statutory damages in the consolidated action.

Cavalier v. Weinstein & Riley, P.S., 2009 WL 2460740 (S.D. Fla. Aug. 7, 2009). Where the FDCPA complaint only alleged violation of "each and every provision of § 1692," defendant's motion for a more definite statement was granted.

Crittenden v. HomeQ Servicing, 2009 WL 3162247 (E.D. Cal. Sept. 29, 2009). Court erroneously applied "fraud" pleading standard to FDCPA claim of deceptive or misleading tactics.

Eckert v. LVNV Funding L.L.C., 647 F. Supp. 2d 1096 (E.D. Mo. 2009). Plaintiff failed to

plead facts that would show that the defendant was not entitled to prejudgment interest under state law.

Feliciano v. Wash. Mut. Bank, 2009 WL 2390842 (E.D. Cal. Aug. 3, 2009). Allegation in the complaint that the defendant in addition to being the servicer of the loan was also a "debt collector" was sufficient to survive the motion to dismiss the FDCPA claim.

Ferrari v. U.S. Bank, 2009 WL 3353028 (N.D. Cal. Oct. 16, 2009). The FDCPA claim was dismissed because the complaint failed to allege facts that the defendant was a debt collector attempting to collect a debt covered by the FDCPA.

Gargiulo v. Forster & Garbus Esqs., 651 F. Supp. 2d 188 (S.D.N.Y. 2009). Allegation that a "Non-Military Affirmation" affidavit submitted in the underlying collection suit was false failed to contain sufficient facts under the *Iqbal* standard to state a claim for relief.

Guajardo v. GC Services, L.P., 2009 WL 3715603 (S.D. Tex. Nov. 3, 2009). Plaintiff's summary judgment motion denied where unpleasant comments were insufficient to show violation of FDCPA.

Hambrick v. Wells Fargo Bank, 2009 WL 1532676 (N.D. Miss. June 2, 2009). Complaint dismissed for failure to state a claim where the plaintiff did not allege that the defendant mortgage company, an exempt FDCPA creditor, was a debt collector; plaintiff's response that it needed to conduct discovery to determine whether the defendant obtained the debt after default so as to become a debt collector merely established that any claim based on the defendant's debt collector status "cannot meet the beyond-speculation standard" imposed by *Twombly*.

Hernandez v. Cal. Reconveyance Co., 2009 WL 464462 (E.D. Cal. Feb. 24, 2009). Where the complaint lacked allegations of violations of §§ 1692(d), 1692(e) and 1692(f), defendant's Rule 12(b)(6) motion to dismiss was granted without prejudice. Because the complaint alleged "unsubstantiated, sweeping legal conclusions," it must be dismissed.

Hernandez v. Downey Sav. & Loan Ass'n, 2009 WL 667406 (N.D. Cal. Mar. 13, 2009). The consumers failed to state a claim for relief for the defendants' violation of § 1692g(b) since they did "not allege any facts demonstrating that Defendants continued their efforts to collect the debt following receipt of the [verification request]."

Hill v. Select Group, Inc., 2009 WL 2225509 (E.D. Va. July 23, 2009). The court permitted the filing of an amended complaint to allege a class action to remedy the defendant's failure to provide compliant §§ 1692e(11) and 1692g notices; the defendant's opposition to the amendment based on futility, because the defendant purportedly was not a covered debt collector, was an issue that went to the merits of the claim that would not be considered in the case's current posture.

Hubbard v. Midland Credit Mgmt, Inc., 2009 WL 454989 (S.D. Ind. Feb. 23, 2009). The consumer's motion for approval of the proposed methodology and forms for an FDCPA survey was denied.

Johnson v. Americredit Fin. Services, Inc., 2009 WL 2929396 (M.D. Tenn. Sept. 8, 2009). In this case, the consumer stopped payment on her down payment check because of alleged fraud by the car dealer and tried to cancel her car purchase with the seller shortly after the sale. The record was silent as to the precise time when the installment contract was assigned to its pre-arranged assignee. The assignee's motion for summary judgment, because it purportedly was an exempt creditor, was denied, since "a genuine issue of material fact exists as to whether the Plaintiff was in default when AmeriCredit was assigned the loan."

Kamara v. Columbia Home Loans, L.L.C., 654 F. Supp. 2d 259 (E.D. Pa. 2009). "These allegations are not supported by sufficient facts to withstand 12(b)(6) inquiry. The plaintiff does not describe in any detail what, if any, actual collection activities any of the defendants have undertaken. She does not identify a single communication between any of these defendants and the plaintiff, much less one that constituted an attempt to collect a debt. The complaint contains no allegations regarding specific collection methods used by these defendants, threats made by them, or illegal action taken by them. Nor does it allege that any collection or foreclosure action has been commenced by any of these defendants. In addition, with respect to MERS in particular, the plaintiff does not state any actions whatsoever, other than that it allegedly engaged in an unspecified 'assignment scheme.' The plaintiff has not shown that her FDCPA and FCEUA . . . claims go beyond mere 'the-defendant-unlawfully-harmed-me' accusations. See *Iqbal*, 129 S. Ct. at 1949. She thus fails to state a claim for violation of these statutes."

Kawa v. US Bank, 2009 WL 700593 (D. Neb. Mar. 13, 2009). The complaint sufficiently alleged a possible consumer purpose for the underlying debts to require the court to deny the defendants' motion to dismiss the FDCPA claim, since "at this point in the proceedings, the Court cannot definitively say that the extensions of credit were primarily commercial in nature."

Keller v. American Express Travel Related Services, Co., 2009 WL 1473500 (D. Md. May 26, 2009). Calvary's motion to dismiss the FDCPA claims was denied because the complaint adequately stated a cause of action.

Kubert v. Aid Associates, 2009 WL 1270351 (N.D. Ill. May 7, 2009). After striking the plaintiff's survey evidence, the court entered summary judgment for the defendant since the only remaining evidence in support of the alleged deception was the plaintiff's own testimony, which was "insufficient to survive a motion for summary judgment."

Lee v. Security Check, L.L.C., 2009 WL 3790455 (M.D. Fla. Nov. 9, 2009). Complaint failed to state a claim against the merchant to whom the subject dishonored check was written in the absence of any allegation that the merchant was an FDCPA debt collector.

Leone v. Ashwood Fin., Inc., 257 F.R.D. 343 (E.D.N.Y. 2009). The plaintiff need only establish one FDCPA violation to prevail.

Martinez v. Quality Loan Serv. Corp., 2009 WL 586725 (C.D. Cal. Feb. 10, 2009). Where consumer's complaint failed to allege sufficient facts to support claim that a loan servicing company was a "debt collector," defendant's motion to dismiss was granted.

Mendiola v. MTC Fin. Inc., 2009 U.S. Dist. LEXIS 45204 (S.D. Cal. May 29, 2009). FDCPA claim dismissed for failure to state a claim: "[T]he complaint is devoid of factual allegations that would give defendants notice of plaintiff's claims concerning unfair debt collection practices."

Meroney v. Pharia, L.L.C., [rule] F. Supp. 2d [rule], 2009 WL 3378416 (N.D. Tex. Oct. 19, 2009). FDCPA complaint was dismissed for failure to state a claim where the court found that a least sophisticated consumer would not be misled by the state court collection complaint and affidavit.

Nicholas v. CMRE Fin. Services, Inc., 2009 WL 1652275 (D.N.J. June 11, 2009). Under *Twombly* and *Iqbal*, complaint dismissed where it "limit[ed] itself to the language of the statutes and fail[ed] to provide any facts specific to [plaintiff]." Plaintiff "must at least provide some relevant facts providing the context for her claim to remove vagueness and ambiguity."

Nool v. HomeQ Servicing, 653 F. Supp. 2d 1047 (E.D. Cal. 2009). FDCPA claim arising from the defendant's alleged misconduct in connection with its mortgage financing and foreclosure of the plaintiff's residence was dismissed for failure to allege that the defendant was a debt collector.

Prophet v. Myers, 645 F. Supp. 2d 614 (S.D. Tex. 2008). Whether the language of the debt collector's settlement offer is deceptive under the FDCPA cannot and should not be resolved on a motion to dismiss.

Renteria v. Nationwide Credit, Inc., 2009 WL 2754988 (S.D. Cal. Aug. 27, 2009). The court disagreed that there were heightened pleading standards of Rule 9(b) as applied to FDCPA and Rosenthal FDCPA state debt collection statutory claims, requiring a complaint to identify each communication violating the FDCPA in detail, as asserted by defendant, who cited *Townsend v. Chase Bank USA*, 2009 WL 426393 (N.D. Cal. Feb. 15, 2009), a *pro se* case. Thus, the court denied the debt collector's motion to dismiss.

Robinson v. Managed Accounts Receivables Corp., 654 F. Supp. 2d 1051 (C.D. Cal. 2009). Where the complaint specifically alleged the date and contents of several telephone calls made by defen-

dants with specific alleged facts to show that the defendant knew that plaintiff's employer prohibited her from receiving collection calls at work, a claim was sufficiently stated for violation of § 1692d in order to survive the defendant's motion to dismiss.

Saltzman v. I.C. Sys., Inc., 2009 WL 3190359 (E.D. Mich. Sept. 30, 2009). Summary judgment for defendant on "kitchen sink" complaint raising several violations based on lack of credible evidence in the course of which court observed in dicta (erroneously) that same misconduct as alleged to support violation of one section of FDCPA cannot support violation of another section.

Sands v. Wagner & Hunt, P.A., 2009 WL 2730469 (S.D. Fla. Aug. 28, 2009). The court granted the consumer's motion to enforce the parties' settlement agreement that the defendant then refused to honor when the consumer would not agree to the additional term of a confidentiality clause.

Sembler v. Attention Funding Trust, 2009 WL 2883049 (E.D.N.Y. Sept. 3, 2009). Allegations of various FDCPA violations failed to specify "accompanying facts" sufficient to state a claim under the *Iqbal* standard. "Plaintiff is incorrect in asserting that the Court must, under any circumstances, read between the lines of his pleading, inserting where necessary any stray fact required to state a claim."

Sullivan v. CTI Collection Services, 2009 WL 2495950 (M.D. Fla. Aug. 11, 2009). The elements required for a cause of action under the FDCPA are: (1) Plaintiff is the object of a collection activity arising from consumer debt; (2) Defendant is a debt collector as defined by the FDCPA; and (3) Defendants have engaged in an act or omission prohibited by the FDCPA.

Townsend v. Chase Bank USA, 2009 WL 426393 (N.D. Cal. Feb. 15, 2009). "Courts have held that the date and contents of each alleged communication in violation of the FDCPA must be pled with particularity." Dismissed *pro se*'s third amended complaint.

Ung v. GMAC Mortg., L.L.C., 2009 WL 2902434 (C.D. Cal. Sept. 4, 2009). Section 1692f(6) claims arising from the defendants' alleged unlawful home foreclosure were dismissed for failure to plead "facts from which the Court could find Defendants had no enforceable, present right to the property."

Velazquez v. Arrow Fin. Services, L.L.C., 2009 WL 2780372 (S.D. Cal. Aug. 31, 2009). Motion to dismiss granted citing *Iqbal*, with leave to amend, since "Plaintiff alleges that Defendant sought to collect a debt not actually owed, but fails to substantiate these allegations with something more than conclusory allegations not entitled to the assumption of truth."

Vester v. Asset Acceptance, L.L.C., 2009 WL 2940218 (D. Colo. Sept. 9, 2009). Court denied the consumer's §§ 1692e and 1692f summary judgment motion since, contrary to the consumer's claim, the defendant's evidence showed that interest was

added in accordance with the terms of the underlying written contract.

Walker v. Equity 1 Lenders Group, 2009 WL 1364430 (S.D. Cal. May 14, 2009). FDCPA claim dismissed against the defendant mortgage servicer because the complaint did not allege that this defendant was a "debt collector" and failed to allege any debt collection activity on its part, having alleged instead only that it had participated in the non-debt-collection activity of foreclosing on the plaintiff's property.

Webster v. Nations Recovery Ctr., Inc., 2009 WL 2982649 (D. Colo. Sept. 15, 2009). Court denied motion to strike allegation that defendant had been sued twenty-three times, since the information may be admissible under Fed. R. Evid. 404(b).

Deutsche Bank Nat'l Trust Co. v. Gillio, 22 Misc. 3d 1131(A), 2009 WL 595560 (N.Y. Sup. Ct. Feb. 26, 2009). Where, in order to have his default judgment vacated, the homeowner claimed that the collector did not provide a timely validation notice pursuant to § 1692g(a), the court held that it did not constitute a valid defense to plaintiff's claim to collect the debt or foreclosure on the secured property.

Discovery.

Mangum v. Action Collection Serv., Inc., 575 F.3d 935 (9th Cir. 2009). The discovery rule is applied to the determination of the FDCPA statute of limitations.

Muha v. Encore Receivable Mgmt., Inc., 558 F.3d 623 (7th Cir. 2009). Consumer survey inadequate where questions were leading, drafted by lawyer, and there was no control group. A survey is not the only possible way to show that a collection letter is misleading. Recipients of an allegedly misleading dunning letter can testify that they were misled, and if they are shown to be representative unsophisticated (or, *a fortiori*, sophisticated) consumers, the trier of fact may be able to infer from their testimony that the letter is misleading.

Anchondo v. Anderson, Crenshaw & Associates, L.L.C., 256 F.R.D. 661 (D.N.M. 2009). Collector who asserted the bona fide error of law defense (for its *Foti* violation) waived the attorney-client privilege as to the relevant legal research and opinions that it had received and the identity of the attorneys who performed the work. Discovery regarding, *inter alia*, putative class members identity, defendant's net worth, and the specific basis for the defendant's assertion of the bona fide error defense compelled as relevant.

Bank v. Pentagroup Fin., L.L.C., 2009 WL 1606420 (E.D.N.Y. June 9, 2009). Debt collector's fee discovery denied: "Since fees are available only if the plaintiff prevails, and the defendant contests liability, such procedures would be premature."

Del Campo v. American Corrective Counseling Services, Inc., 2009 WL 3458298 (N.D. Cal. Oct. 23, 2009). Court ordered discovery into the individual defendants' personal net worth since the

information was relevant to making the 1% class damages calculation and rejected defendants' request for bifurcation of liability and damages to allow an initial determination of liability before disclosing private financial information.

Jones v. Midland Funding, L.L.C., 616 F. Supp. 2d 224 (D. Conn. 2009). Debt collector's FDCPA expert not allowed to testify as to legal liability.

Stavroff v. Midland Credit Mgmt. Inc., 2005 WL 6329149 (N.D. Ind. June 8, 2005). The court granted the collector's motion to "bifurcate discovery so that parties may conduct staged discovery regarding the merits of the case before conducting discovery on the issue of class certification."

Trials

Campbell v. Hall, 624 F. Supp. 2d 991 (N.D. Ind. 2009). The court withheld ruling on the defendant's bona fide error defense on the *Camacho* § 1692g(a)(3) violation to allow the defendant additional time to develop the factual record.

Jones v. Midland Funding, L.L.C., 616 F. Supp. 2d 224, 227 (D. Conn. May 19, 2009). The testimony of the debt collector's expert witness "as to whether their collection letters were consistent with collection industry standards" was inadmissible on the issue of liability since "[the expert's] opinion regarding 'industry standards' is a thinly disguised legal opinion as to whether the defendants' letters violate the FDCPA" and thus "[the expert's] opinion contains legal conclusions that impermissibly invade the province of the court."

Kubert v. Aid Associates, 2009 WL 1270351 (N.D. Ill. May 7, 2009). The court disapproved and struck the survey evidence offered by the plaintiff as not meeting with the *Daubert* standard.

McCullough v. Johnson, Rodenberg & Lauinger, 645 F. Supp. 2d 917 (D. Mont. 2009). Admission of evidence of the debt collector's approximately 2700 other lawsuits against other debtors pursuant to § 1692k(b)(1) did not cause a miscarriage of justice such that the debt collector was entitled to a new jury trial. Evidence of the debt buyers similar acts, such as filing time barred or mistaken debts, directed at people other than the plaintiff was admissible to show reprehensibility to support the state law claim for punitive damages.

Molinar v. Coleman, 2009 WL 435274 (N.D. Tex. Feb. 20, 2009). Plaintiff's motion for entry of judgment by default was entered for defendant's FDCPA violation with the court awarding no actual damages, \$250 statutory damages, \$2800 costs and attorney fees, and interest to run at 0.60% per annum.

Res Judicata

Beeders v. Gulf Coast Collection Bureau, 632 F. Supp. 2d 1125 (M.D. Fla. 2009). Where the consumer filed multiple FDCPA lawsuits, one for each telephone message left, the lawsuits were joined into a single action with statutory damages limited up to \$1000 pursuant to § 1692k.

Dexter v. Tran, 654 F. Supp. 2d 1253 (E.D. Wash. 2009). Where the consumer pleaded a violation of the FDCPA in his answer filed in the state court action and requested relief in the form of damages under the FDCPA and the state court did not grant such relief and entered judgment accordingly, the consumer's filing of the FDCPA claim in federal court was barred by claim and issue preclusion.

Gutierrez v. LVNV Funding, L.L.C., 2009 U.S. Dist. LEXIS 54479 (W.D. Tex. Mar. 16, 2009). FDCPA action alleging that the defendant debt buyer violated the FDCPA by filing state court collection complaints with an attached false "Affidavit of Account" was not a compulsory counterclaim in the state collection action and therefore was not barred by res judicata.

Hawkins v. Citicorp Credit Serv., Inc., [rule] F. Supp. 2d [rule], 2009 WL 3415758 (D. Md. Oct. 23, 2009). Complaint alleging that the defendants collected an unlawful rate of interest and thus violated § 1692e(2)(A) was barred by res judicata where the consumer had litigated and lost the identical issue in the underlying state court collection case.

Kirk v. Gobel, 622 F. Supp. 2d 1039 (E.D. Wash. 2009). Neither the *Rooker-Feldman* doctrine nor res judicata applied since the underlying state collection case was on appeal and there was therefore no final state judgment.

Whittiker v. Deutsche Bank Nat'l Trust Co., 605 F. Supp. 2d 914 (N.D. Ohio 2009). Court did not reach issues of preclusion, estoppel, or waiver on a motion to dismiss since they are affirmative defenses.

Reyes v. Kenosian & Miele, L.L.P., 619 F. Supp. 2d 796 (N.D. Cal. 2008). No preclusion because law firm was not a party to the state court complaint and not in privity with a party.

Hsu v. Wolpoff & Abramson L.L.P., 2009 WL 3046141 (D. Del. Sept. 21, 2009). Since plaintiff litigated and lost the § 1692g issue in his state court counterclaim, federal action dismissed on basis of claim and issue preclusion.