DEBT COLLECTION

A DEBT COLLECTOR DOES NOT VIOLATE THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA) BY FAILING TO HONOR A CONSUMER'S PREFERRED MEDIUM OF COMMUNICATION (E.G. EMAIL VS. MAIL) WHEN COMMUNICATING ABOUT A DEBT

SECTION 1692c(a)(1) OF THE FDCPA PROHIBITS DEBT COLLECTORS FROM COMMUNICATING WITH COMSUMERS AT INCONVENIENT TIMES OR PLACES, BUT DOES NOT GOVERN THE MEDIUM OF COMMUNICATION

Harris v. Transworld Sys. Inc., ___ F. Supp. 3d ___ (N.D. Ga. 2024).
https://plus.lexis.com/api/permalink/13704834-35b6-4d71-a908-dbf45O3f6872b/?context=1530671

FACTS: On June 17, 2023, Resurgens Orthopaedic PC placed Tracy Harris's ("Plaintiff") unpaid account with Transworld Systems Inc. ("Defendant") for collection. The same day, Defendant sent Plaintiff an initial collection notice via email explaining Plaintiff's account had been placed with Defendant for collection and informing him of his rights to dispute and request verification of the debt. The following month, Defendant emailed Plaintiff three additional notices which each contained a link to opt out of receiving additional emails from Defendant. On August 7th, 2023, Defendant received a letter from Plaintiff via Certified Mail stating that Plaintiff is disputing the alleged debt owed and would like validation of the debt The letter also stated that the only convenient way to contact Plaintiff was via email. However, Plaintiff's letter failed to include the preferred email address, therefore, Defendant mailed a response to Plaintiff with the verification documents and information request. Plaintiff mailed another letter to Defendant on September 19th, which was identical to the August 7th letter except the Plaintiff now included his email address. Defendant did not respond to Plaintiff's September 19th letter.

However, every court to consider this issue has held that a consumer's preferences for email concerns the medium rather than the time or place.

Plaintiff filed a claim on November 15th stating that Defendant violated the FDCPA by communicating with him via mail rather than email as directed in August's dispute letter. Defendant moved for summary judgment. Plaintiff then filed a cross-motion for summary judgment.

HOLDING: Granted in part; denied in part.

REASONING: Defendant argues that as a debt collector, their actions do not violate §1692c(a)(1) of the FDCPA by mailing a consumer correspondence after the consumer requests contact by email only. Plaintiff argues that Defendant was obligated to adhere to the stated communication preferences and by failing to do so, Defendant violated the FDCPA's §1692c(a)(1).

The court noted that the FDCPA was enacted in to stop debt collectors from using abusive debt collection practices and promote consistent state action to protect consumers from such practices. For Plaintiff to succeed on a claim under the FDCPA, Plaintiff must establish that (1) he has been the object of collection activity arising from a consumer debt, (2) the defendant is a debt collector as defined by the FDCPA, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA. Specifically, §1692c(a)(1) prohibits a debt collector from communicating with a consumer in any unusual time or place or a time or place known to be inconvenient to the consumer.

However, every court to consider this issue has held that a consumer's preferences for email concerns the medium rather than the time or place which falls outside the scope of §1692c(a)(1).

Because Plaintiff's argument concerns the medium of communication and not the time or place of attempted communication, the court granted Defendant's motion for summary judgment and denied Plaintiff's motion for summary judgment.

MORTGAGE LOAN WAS NOT A CONSUMER DEBT UNDER THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

Lombard Flats LLC v. Fay Servicing LLC, _____ F. Supp. 3d ___ (N.D. Cal. 2024).
https://casetext.com/case/lombard-flats-llc-v-fay-servicing-llc-4

FACTS: Plaintiffs, Lombard Flats LLC ("Lombard") and Martin Eng ("Eng") sued Defendant Fay Servicing LLC ("Fay") concerning the mortgage loan on a property. In September 2019, Eng fell behind on loan payments and later filed for bankruptcy due to communication issues with Fay regarding loan modifications and several years of missed mortgage payments.

Lombard and Eng filed suit, alleging that Fay's attempt to collect on the defaulted loan violated the Fair Debt Collection Practices Act (FDCPA). This claim was based on the alleged misrepresentation that the loan was $3.2 million when the bankruptcy court reduced it to $3 million. The district court granted summary judgment to Fay, concluding that the loan is undisputedly not a consumer debt. Therefore, there was no valid claim under the FDCPA.

HOLDING: Affirmed.

REASONING: Lombard and Eng argued the FDCPA's definition of a "consumer debt." The FDCPA defines consumer debt as a debt obtained "primarily for personal, family, or household purposes." 15 U.S.C. §1692a(3). Courts typically consider the transaction holistically, focusing on the purpose for which the credit was extended. Nevertheless, the court utilized Eng's interrogatory responses and declarations to determine that there was no genuine dispute as to any material fact and that Fay was entitled to judgment as a matter of law.

First, Eng failed to provide evidence that depicted a genuine issue for trial regarding whether the loan was a consumer debt. Despite Eng's counsel stating that Eng lived at the Lombard property during the interrogatories, Eng had the burden of

proving his consumer debt claim, which he did not meet. The undisputed evidence from the bankruptcy proceedings depicted the Lombard Flats as rental units, and the mortgage loan was used to finance the flats as an investment property. Additionally, Lombard was a limited liability company, not an individual or family. Under the FDCPA, mortgage loans on commercial or rental properties were not considered consumer debts.

Secondly, the interrogatory responses failed to demonstrate unfair practices as a matter of law under the FDCPA. The court asked the plaintiffs to provide evidence supporting their claim that Fay inflated the debt amount and added extra interest charges. Eng responded, "I do not contend that," and requested modification to the existing mortgage loan. Despite this request, Lombard and Eng failed to meet their burden to submit evidence that Fay committed unfair practices as a matter of law under the FDCPA, nor did they provide evidence that showed a genuine issue for trial. As a result, the court affirmed the district court's decision and granted summary judgement to the remaining claims.

PLAINTIFF FAILED TO STATE A CLAIM UNDER THE FDCPA AGAINST ARBORS BECAUSE HE DID NOT ALLEGE ARBORS WAS A DEBT COLLECTOR.

PLAINTIFF'S CLAIM AGAINST RENT RECOVERY IS TIME-BARRED.

Clark v. City of Pasadena, 2024 U.S. Dist. LEXIS 176801 (S.D. Tex. 2024).
https://law.justia.com/cases/federal/district-courts/texas/txsdce/4:2023cv04050/1939539/58/

FACTS: Plaintiff Clark was a tenant at the Arbors apartment complex, where he lived until June 2021. Following the termination of his lease, Clark allegedly owed unpaid rent to Arbors, which he disputed. In September 2021, Rent Recovery, a third-party debt collection agency, sent Clark a collection letter seeking to recover the outstanding balance owed to Arbors. The letter threatened further collection actions if Clark failed to pay the debt.

In October 2021, Clark contacted Rent Recovery to dispute the debt and informed them that he did not owe any money due to disputes over the lease's terms. In response, Rent Recovery continued its collection efforts, leading Clark to believe that it was violating the FDCPA by engaging in harassing collection practices.

Clark filed suit on October 30, 2023, alleging that both Arbors and Rent Recovery violated the FDCPA. Arbors and Rent Recovery filed motions to dismiss, arguing that Clark's claims were insufficient and untimely.
HOLDING: Dismissed.
REASONING: Under the FDCPA, a "debt collector" is defined as any person or entity that regularly collects or attempts to collect debts owed or due to another. The Act excludes creditors collecting their own debts, like Arbors, unless their actions suggest that they are engaging in debt collection as if they were a third-party agency. In this case, the court found that Clark failed to allege sufficient facts to establish that Arbors was acting as a "debt collector" under the FDCPA because it was collecting its own debt, not a debt owed to another party. As a result, Arbors did not fall within the statutory definition of a debt collector, and Clark's claim was dismissed.

The court further held that Clark's claim against Rent Recovery was time-barred. The FDCPA imposes a one-year statute of limitations from the date the violation occurs. Rent Recovery sent the collection letter in September 2021, but Clark did not file his lawsuit until October 2023, well beyond the one-year limit. Therefore, Clark's claim against Rent Recovery was untimely and dismissed accordingly.

CREDITOR'S LETTER WAS NOT AN ATTEMPT TO COLLECT A DEBT UNDER FDCPA BECAUSE IT DID NOT DEMAND PAYMENT, REFER TO THE AMOUNT OWED, OR DISCUSS REPERCUSSIONS FOR NON-PAYMENT.

COMMUNICATION WITH A DEBTOR VIA LETTER, AS OPPOSED TO EMAIL OR TEXT MESSAGE, IS NOT COMMUNICATING AT AN INCONVENIENT "TIME OR PLACE" UNDER FDCPA.

PROVIDING AN INFORMATIONAL LETTER IN RESPONSE TO A DISPUTE DOES NOT CONSTITUTE HARASSMENT, ABUSE OR UNFAIR OR UNCONSCIONABLE DEBT COLLECTION.

Moss v. Midland Credit Mgmt., Inc., ___ F. Supp. 3d ___ (N.D. Ga. 2024).
https://plus.lexis.com/api/permalink/422f2ab9-b992-4aa4-9c06-2d53d8761fc8/?context=1530671

FACTS: Plaintiff Kimberly Moss ("Plaintiff") filed suit against Midland Credit management, Inc. ("Defendant") for allegedly violating the Fair Debt Collection Practices Act ("FDCPA"). Plaintiff wrote to Defendant previously in dispute of all debts Defendant was seeking to collect. Plaintiff stated that Defendant was to only communicate with her via text or email, not by U.S. mail and included certain times which would be most convenient for her to communicate. Defendant continued to communicate via letter which detailed how their records were accurate and invited Plaintiff to provide more information for Defendant to better understand Plaintiff's concerns. After the informational letter, Defendant proceeded to follow Plaintiff's preferred communication.

Plaintiff raised claims under the FDCPA for communicating with Plaintiff in an inconvenient place, engaging in harassing and deceptive behavior, and for unfair conduct. Defendant removed the case to the District Court and filed a motion to dismiss whereby Plaintiff responded with an Amended Complaint. Defendant then filed a Motion to Dismiss Plaintiff's Amended Complaint.
HOLDING: Recommended to be Granted.
REASONING: Plaintiff argued that Defendant violated the FDCPA by communicating at an inconvenient place, specifically by sending a letter to her home rather than her preferred method of communication. Plaintiff also argued that the letter was deceptive, claiming she had inquired about the debt and had requested documentation. Defendant contended that Plaintiff's complaint did not plausibly allege that the letter constituted debt collection activity or that Plaintiff was the target of such activity under the FDCPA. Defendant asserted that the letter was a mere informational response and did not meet the statute's criteria for

debt collection. Defendant further argued that "means of communication" was distinct from "place of communication" under the statute, and the FDCPA did not restrict the medium of communication.

The purpose of the FDCPA is to eliminate abusive debt collection practices. To state a claim under the FDCPA requires Plaintiff to show that (1) she has been the object of collection activity arising from consumer debt; (2) the defendant is a debt collector as defined by the statute; and (3) the defendant has engaged in an act or omission prohibited by the statute. For a debt collector to use false, deceptive, or misleading representation or means in connection with the collection of debt is evident if the statement would mislead the least sophisticated consumer to pay.

The court agreed, finding that the letter merely responded to Plaintiff's dispute without demanding payment, thus failing to constitute debt collection activity. Additionally, the court found that the medium of communication was not restricted by the FDCPA's scope. Since the single informational letter contained no threats, abusive language, or other conduct recognized as harassing, Plaintiff's claim of harassment and abuse failed. The court concluded that Plaintiff's complaint lacked allegations demonstrating misleading or manipulative intent in Defendant's letter. Consequently, the court recommended dismissing all claims and granting Defendant's motion to dismiss.

DEBTOR FAILED TO SHOW AN INJURY IN FACT, LACKED ARTICLE III STANDING IN FDCPA SUIT

George v. Rushmore Serv. Ctr., LLC, ___ F.3d ___ (3d Cir. 2024).
https://caselaw.findlaw.com/court/us-3rd-circuit/116478089.html

FACTS: Appellant Alison George filed a lawsuit against Defendant Rushmore Service Center, LLC, i.e. Rushmore, alleging violations of the Fair Debt Collection Practices Act ("FDCPA") based on a collection letter she received in April 2018. The letter identified Premier Bankcard, LLC, the collection arm, as the "current/original creditor" for George's credit card debt. George claimed the naming of the collection arm on the letter was misleading because First Premier Bank, not Premier Bankcard, was the actual creditor.

Under Article III, a plaintiff must show a concrete injury to have standing.

George sought to represent a class of consumers who received similar letters as the deceptive letters would have left "the least sophisticated consumer" confused about whom the debt was owed and if it was legitimate. The District Court granted Rushmore's motion to stay proceedings and compel individual arbitration, who ruled in Rushmore's favor, and before the District Judge, who declined to vacate the arbitration award. George appealed.
HOLDING: Vacated and remanded.
REASONING: In asserting a FDCPA claim, the court agreed the complaint lacked specificity as it did not allege that George herself was confused or suffered any specific harm because of the letter. George called into question whether confusion alone is sufficient to allege a concrete injury in this context.

The court reasoned that under Article III, a plaintiff must show a concrete injury to have standing. In George's case, the amended complaint only suggested that the letter might confuse "the least sophisticated consumer," but did not claim that George herself was confused or suffered any adverse consequences. The court cited precedents, including TransUnion LLC v. Ramirez and Huber v. Simon's Agency, Inc., which emphasize the need for a concrete and particularized injury to establish standing. Because George did not allege such an injury, the court held that she lacked standing from the outset, rendering the District Court's orders void. The case was remanded with instructions to dismiss for lack of jurisdiction.

PLAINTIFF HAS STANDING BASED ON THE LIEN PLACED ON HER HOME AND DEFENDANT'S ALLEGED IMPROPER LAWSUIT.

DISPUTED ISSUES OF MATERIAL FACT PRECLUDE SUMMARY JUDGMENT ON PLAINTIFF'S §1692E CLAIMS BASED ON DEFENDANT'S CONDUCT IN OBTAINING THE DEFAULT JUDGMENT.

PLAINTIFF IS ENTITLED TO SUMMARY JUDGMENT ON HER §1692E CLAIMS BASED ON DEFENDANT'S CONDUCT IN OBTAINING THE DEFAULT JUDGMENT.

Carrera v. Allied Collection Servs., Inc., 2024 U.S. Dist. LEXIS 136030 (D. Nev. 2024).
https://casetext.com/case/carrera-v-allied-collection-servs-4

FACTS: Plaintiff Margarita Carrera ("Carrera") filed suit against Allied Collection Services, Inc. ("Allied") under the Fair Debt Collection Practices Act ("FDCPA"). Carrera alleged that Allied obtained a default judgment against her for a debt she did not owe. She claimed she began banking with Chase in 2019, years after the alleged debt was incurred. In 2022, Allied renewed the judgment and placed a lien on Carrera's home, which prevented her from selling the property or securing a home equity loan. Carrera argued Allied's conduct violated §1692e of the FDCPA, which prohibits false, deceptive, or misleading representations in debt collection, by misrepresenting her ownership of a Chase Bank account in state court and failing to produce any agreement proving her liability for the debt.
HOLDING: Granted in part; denied in part.
REASONING: Carrera argued that the lien on her home and the alleged improper lawsuit by Allied constituted concrete injuries that conferred standing under Article III. The court accepted this argument, noting that the lien was a tangible harm that affected Carrera's property rights and financial opportunities. The court further reasoned that the alleged improper conduct by Allied in initiating the state court lawsuit bore a close relationship to the well-recognized tort of wrongful use of civil proceedings, thus establishing a concrete injury necessary for standing.

The court rejected Allied's motion for summary judgment on Carrera's §1692e claims, explaining that a genuine dispute of material fact existed regarding Carrera's ownership of the account. The court noted that Allied had not produced the

underlying agreement proving Carrera's liability, and Carrera's sworn statements disavowing ownership created a triable issue. This unresolved factual dispute precluded summary judgment on the §1692e claims.

The court found that Carrera provided sufficient evidence to establish that Allied misrepresented her ownership of the debt, specifically its failure to produce the agreement proving her liability. Allied's actions were deemed improper and constituted a violation of §1692e. Consequently, the court granted summary judgment in favor of Carrera on her §1692e claims.

DEBT COLLECTOR SENT PLAINTIFFS COLLECTION LETTERS SEEKING TO RECOVER ALLEGED OVERPAYMENTS ON GRANTS

DEBT COLLECTOR'S LETTERS THREATENED LEGAL ACTION BUT DID NOT STATE THE DEBT MAY BE TIME-BARRED OR UNENFORCEABLE

Calogero v. Shows, Cali & Walsh, LLP, 2024 U.S. Dist. LEXIS 102444 (E.D. La. 2024).
https://caselaw.findlaw.com/court/us-5th-circuit/115937731.html

FACTS: Plaintiffs Iris Calogero and Margie Nell Randolph sued Shows, Cali & Walsh LLP ("Defendant") for violations of the Fair Debt Collection Practices Act ("FDCPA"). The claims arose from Defendant's efforts to collect alleged overpayments of grant funds the Plaintiffs received from the Louisiana Road Home program, which was established to distribute Community Development Block Grant funds to homeowners impacted by Hurricanes Katrina and Rita.

Plaintiffs signed grant agreements acknowledging an obligation to report funds received from FEMA or private insurers and recognized the potential for legal action if they failed to comply.

In 2007, Plaintiffs received homeowner compensation grants through the Road Home program, administered by the Louisiana Office of Community Development ("OCD"). Plaintiffs signed grant agreements acknowledging an obligation to report funds received from FEMA or private insurers and recognized the potential for legal action if they failed to comply.

Years later, the State hired Defendant to recover unreported funds that led to overpayments. In 2017 and 2018, Defendant sent Plaintiffs collection letters seeking repayment and warning that legal action could proceed if no resolution occurred within 90 days. Plaintiffs claimed these communications were intimidating, caused emotional distress, and improperly attempted to collect a time-barred debt. Plaintiffs filed suit under the FDCPA.

The lower court granted summary judgment for the Defendant. Plaintiffs appealed.

HOLDING: Reversed

REASONING: The Fifth Circuit held that a reasonable jury could find Defendant violated the FDCPA in multiple ways, one such way being by misrepresenting the judicial enforceability of time-barred debts. Although the court did not determine the applicable statute of limitations, it found the debt was untimely even under the most generous 10-year period. By threatening legal action without disclosing the debt's potential time-barred nature, the Defendant's letters could mislead or deceive a consumer regarding the enforceability of the debt. Therefore, the Fifth Circuit reversed the lower court's summary judgment ruling.

FEDERAL TAXES ARE NOT CONSIDERED "DEBT" UNDER THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)

Wilson v. Cont'l Serv. Grp., LLC, ___ F. Supp. 3d ___(D. Colo. 2024).
https://www.casemine.com/judgement/us/673036f668a05673e580cc3d

FACTS: Continental Services Group, LLC ("Continental") sent a collection letter ("Letter") to Rashad Wilson ("Wilson") about an alleged federal tax debt Wilson originally owed to the Internal Revenue Service, under which Continental was a contractor authorized to collect outstanding tax debts. The Letter stated the amount owed included taxes, interest, and penalties, and interest and penalties would continue to accrue until the full amount of debt was paid. However, the Letter failed to inform Wilson that under the Federal Debt Collection Practices Act (FDCPA), he had a right to dispute the debt.

Wilson filed an Amended Complaint alleging that Continental violated the FDCPA by omitting information about his right to dispute the debt. In response, Continental filed a Motion to Dismiss.

REASONING: Rule 12(b)(6) states a complaint may be dismissed for "failure to state a claim upon which relief can be granted." The FDCPA applied to "any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5).

The court held in previous cases that federal tax debt did not qualify as a debt for the FDCPA. A person who has accumulated tax debt would not be described as a consumer and the payment of taxes would not be described as a transaction for personal, family, or household purposes. The term "transaction" implied a purchase or an exchange for some good or service to be used for personal, family, or household purposes, while taxes represented a unilateral financial obligation. For this reason, Wilson's debt was not covered by the FDCPA and, therefore, Continental was not required to inform Wilson of a right to dispute the debt in the Letter.

Because the Letter addressed a federal tax debt, it fell outside the scope of the FDCPA, and Continental was not required to include information about Wilson's right to dispute the debt. Therefore, Wilson's Amended Complaint did not establish a claim that could be remedied under the FDCPA, meeting the criteria for dismissal under Rule 12(b)(6).

The court dismissed Wilson's claim against Continental.

O'DRISCOLL, AS THE PREVAILING PARTY AGAINST RPM, IS ENTITLED TO REASONABLE ATTORNEY'S FEES AND COSTS FROM RPM INCURRED DURING THE ENTIRETY OF THE ACTION UNDER THE FDCPA AND FCCPA

O'DRISCOLL IS NOT ENTITLED TO RECOVER ANY ATTORNEY'S FEES OR COSTS FROM ARBOR GROVE SINCE HE DID NOT PREVAIL AGAINST ARBOR GROVE

O'DRISCOLL REJECTED DEFENDANTS' OFFER OF JUDGMENT, AND THEREFORE, HE CANNOT RECOVER COSTS INCURRED AFTER THE OFFER BUT DEFENDANTS CAN RECOVER THEIR COSTS INCURRED AFTER THE OFFER

O'Driscoll v. Arbor Grove Condo. Ass'n, Inc., ___ So. 2d ___ (M.D. Fla. 2024).
https://casetext.com/case/odriscoll-v-arbor-grove-condo-assn-2?

FACTS: Plaintiff William O'Driscoll ("O'Driscoll") owned a condominium within the community Defendant Arbor Grove Condominium Association, Inc. ("Arbor Grove"). Arbor Grove levied two fines against O'Driscoll, while Resource Property Management ("RPM") sent letters and filed suit against O'Driscoll for violating its governing documents. O'Driscoll in return filed a complaint alleging violations by both Arbor Grove and RPM (collectively "Defendants") of the Florida Consumer Collection Practices Act ("FCCPA"), as well as the FDCPA by improperly imposing fines related to his condominium fees.

O'Driscoll contended that he was entitled to recover attorney's fees and costs from RPM as the prevailing party.

RPM offered a settlement of $2,002 to resolve all claims, including attorney's fees and costs incurred up to the offer. RPM and Arbor Grove later claimed O'Driscoll rejected this offer, although O'Driscoll claimed to have accepted. The jury awarded O'Driscoll $2,000 in statutory damages against RPM, and $0 in statutory damages against Arbor Grove. O'Driscoll filed his Motion for Entitlement to Attorney's Fees and Costs. RPM and Arbor Grove responded and filed their Motion for Entitlement to Attorney's Fees and/or Costs.

HOLDING: O'Driscoll's motion granted against RPM and denied against Arbor Grove. Defendant's motion against O'Driscoll granted in part and denied in part.

REASONING: O'Driscoll contended that he was entitled to recover attorney's fees and costs from RPM as the prevailing party. The court accepted this argument, noting that RPM's stipulated liability under FDCPA and FCCPA justified a fee award. The court held that O'Driscoll, having succeeded against RPM, was entitled to attorney's costs.

As to O'Driscoll's claim for attorney's fees and costs against Arbor Grove as the prevailing party, the court rejected this argument. The court explained that O'Driscoll had not prevailed against Arbor Grove, emphasizing that although O'Driscoll obtained a judgment against Arbor Grove, only $0 in damages were awarded. Obtaining no damages renders O'Driscoll's action unsuccessful and O'Driscoll could not claim fees or costs from it. Defendants argued that O'Driscoll's rejection of their Offer of Judgment barred him from recovering litigation costs incurred after the offer was rejected and entitled them to recover their own post-offer costs. The court agreed, holding that because O'Driscoll rejected the offer, he was prevented from claiming costs after that point, while RPM and Arbor Grove could recover their post-offer costs. The court relied on Fed. R. Civ. P. 68, permitting Defendants to recover costs when the final judgment is less favorable than the unaccepted offer served to the opposing party. The court ultimately held O'Driscoll's motion for attorney's fees and costs was granted in part and denied in part while Defendants' motion for fees and costs was also granted in part and denied in part.