

RECENT DEVELOPMENTS

DEBT COLLECTION

NOT REMOVING DISPUTE NOTATION WHEN CONSUMER STATES HE IS NO LONGER DISPUTING THE ACCOUNT VIOLATES FDCPA

Samano v. LVNV Funding, LLC, ___ F. Supp.3d ___ (E.D. Cal. 2022).

<https://casetext.com/case/samano-v-lvnx-funding-llc-3?sort=relevance&type=case&resultsNav=false&tab=keyword>

FACTS: Defendant LVNV Funding, LLC, an acquirer and collector of delinquent consumer debts, received a letter from Plaintiff Luis Samano indicating that he was no longer disputing his accounts and wished them reported as such. Despite this, Defendant continued to report to credit reporting agencies that Plaintiff disputed his accounts. Plaintiff was denied a mortgage

A debt collector violates 15 U.S.C. §1692e when he communicates, or threatens to communicate knowingly, constructive or otherwise, false credit information.

loan because of the disputed debt on his credit report. Plaintiff filed a complaint, alleging that Defendant violated the FDCPA by falsely reporting his debt as disputed.

Defendant's original motion to dismiss for failure to state a claim under the FDCPA was granted with leave to amend for failing to allege

conduct in connection with the collection of any debt pursuant to 15 U.S.C. §1692e. Plaintiff's Second Amended Complaint was rejected on the same grounds and the Court granted one last opportunity to amend. Plaintiff filed his Third Amended Complaint. Defendant raised the same grounds for dismissal.

HOLDING: Denied.

REASONING: Plaintiff alleged that Defendant violated the FDCPA when it willfully communicated credit information that was known, or should have been known, to be false. Defendant countered that Plaintiff had failed to state a claim under the FDCPA.

The court disagreed with Defendant. 15 U.S.C. §1692e prohibits debt collectors from using false, deceptive, and misleading representations in connection with debt collection. A debt collector violates 15 U.S.C. §1692e when he communicates, or threatens to communicate knowingly, constructive or otherwise, false credit information. Neither the FDCPA nor the Ninth Circuit has defined the phrase "in connection with the collection of any debt" in this context. Still, other Circuit Courts of Appeals generally accept that the action must be done with the animating purpose of inducing payment by the debtor. Plaintiff alleged that Defendant misreported his dispute of the debts to induce him to pay so that he could obtain a mortgage loan. This assertion sufficiently meets the requirements for a valid claim because it is plausible on its face. The FDCPA does not strictly require Defendant to report a change in dispute status.

However, Defendant's alleged choice to willfully communicate false information to credit reporting agencies by failing to remove the dispute notations when Plaintiff stated he was no longer disputing the account was a clear violation of the FDCPA.

ARTICLE III STANDING REQUIRES A CONCRETE INJURY EVEN IN THE CONTEXT OF A FDCPA VIOLATION

Perez v. McCreary, Veselka, Bragg, & Allen, P.C., ___ F.4th ___ (5th Cir. 2022).

<https://law.justia.com/cases/federal/appellate-courts/ca5/21-50958/21-50958-2022-08-15.html>

FACTS: Appellant McCreary, Veselka, Bragg & Allen, P.C. ("MVBA") sent a letter to Appellee Mariela Perez ("Perez") demanding payment of a delinquent debt. The limitations period on that debt had run but the letter did not disclose that.

Perez sued MVBA, alleging that MVBA violated the FDCPA by making a misrepresentation in connection with an attempt to collect her debts. Both parties moved for summary judgment. Although factual disputes precluded summary judgment, the trial court held that the violation of Perez's statutory rights under the FDCPA constituted a concrete injury-in-fact because those rights were substantive, not procedural. The district court reasoned that because the suit related to Perez's substantive right to be free from misleading information, her claim was therefore distinguishable from a "bare procedural violation" of the FDCPA that would not be cognizable under *Spokeo, Inc. v. Robins* 578 U.S. 330 (2016). MVBA appealed.

HOLDING: Reversed.

REASONING: Perez argued that the violation of her rights under the FDCPA itself qualified as a concrete injury-in-fact.

The court disagreed, noting that for purposes of Article III standing, *Spokeo* concluded that the "[d]eprivation of a procedural right without some concrete interest that is affected by the deprivation . . . is insufficient to create Article III standing." Similarly, under *Transunion v. Ramirez* 594 U.S. ___ (2021), injuries are concrete only if they bear a "close relationship" to injuries that American courts have traditionally recognized as concrete.

Here, Perez did not show that she suffered any tangible loss or material risk of harm as a result of MVBA's debt-collection letter, nor did she offer a common-law analog to the injuries she claimed. Perez could not establish a concrete injury in connection with MVBA's alleged violation of the FDCPA. As such, the court held that Perez lacked Article III standing to bring suit.

FDCPA PLAINTIFF "SIMPLY NO WORSE OFF" AS A RESULT OF OUTSOURCING MAILING LIST

NO CONCRETE HARM WAS SUFFERED HERE UNDER *TRANSUNION V. RAMIREZ*

Hunstein v. Preferred Collection & Mgmt. Servs., Inc., ___ F.3d ___ (11th Cir. 2022).

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<https://media.ca11.uscourts.gov/opinions/pub/files/201914434.enb.pdf>

FACTS: Plaintiff-Appellant Richard Hunstein incurred debt from his son's medical treatment. The hospital transferred the debt to Defendant-Appellee Preferred Collection & Management Services ("Preferred Collection") to collect the debt from Hunstein. Preferred Collection hired a commercial mail vendor to remind Hunstein of the debt via a dunning letter. In preparation for the letter, Preferred Collections electronically sent the mail vendor certain data about Hunstein, including his debtor status, the amount of debt owed, the fact that the debt arose from his son's medical treatment, and his son's name. The mail vendor then used that information to create and mail a dunning letter to Hunstein.

Hunstein filed suit, alleging that Preferred Collection violated the FDCPA by disclosing his information to a third-party vendor. The district court granted Preferred Collection's motion to dismiss, holding there was no FDCPA violation because the communication between Preferred Collection and the mail vendor was not made with respect to the collection of debt. Hunstein appealed.

HOLDING: Vacated and remanded.

REASONING: Hunstein alleged that Preferred Collection's disclosure of sensitive medical information to the mail vendor caused him a concrete injury and therefore, he had standing to sue.

The court rejected this argument, concluding there was no concrete harm because the disclosure was not public. The court used the approach outlined in *Transunion v. Ramirez* 594 U.S. ____ (2021), and compared Hunstein's alleged reputational injury to an injury redressed in a traditional common-law tort. The court compared Hunstein's alleged harm to the common-law tort of public disclosure and concluded that the two were not analogous because the transmittal of Hunstein's information was not public. The court held that Hunstein was "simply no worse off" as a result of Preferred Collection outsourcing the mailing list data. Because Hunstein suffered no concrete harm, he lacked standing and the district court lacked jurisdiction to consider his claim.

PRO SE PLAINTIFF LACKS STANDING TO ASSERT THE FDCPA CLAIMS OF THE OTHER INDIVIDUAL

Young v. Portfolio Recovery Assocs., LLC, ___ F. Supp.3d ___ (E.D. Tex. 2022).

<https://casetext.com/case/young-v-portfolio-recovery-assocs-2>

FACTS: Plaintiff Bradley Young filed a pro se action against Defendant Portfolio Recovery Associates, LLC alleging violations of the FDCPA. Plaintiff's allegations related to an alleged debt owed by a Mr. Jim Baldwin, for which Plaintiff contended he had been assigned 100 percent of the claims. Plaintiff alleged that Baldwin disputed this debt, but that Defendant did not note his dispute, and as a result, his credit score was materially lowered.

Plaintiff asserted a claim pursuant to 15 U.S.C. § 1692e(8) of the FDCPA for Defendant's failure to disclose to the consumer reporting agencies that Baldwin's alleged debt was in dispute. Defendant filed an instant motion to dismiss pursuant to FRCP 12(b)(1), arguing that the complaint be dismissed for lack of standing.

HOLDING: Granted.

REASONING: Defendant argued that Baldwin's FDCPA claim is not assignable to Plaintiff, and thus Plaintiff cannot bring the case on Baldwin's behalf.

Constitutional Standing contains three elements: (1) the plaintiff must have suffered an injury in fact, which is concrete and particularized and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it is likely that a favorable decision will redress the injury. Here, the entirety of Plaintiff's allegations related to an alleged injury suffered by Baldwin, not Plaintiff. Plaintiff failed to allege he can stand in the shoes of Baldwin or that he had any "injurious exposure from Defendant's alleged actions." Therefore, Plaintiff, as pro se, lacked Article III standing for Baldwin's injuries. Furthermore, because Plaintiff did not have any standing and is not a licensed attorney, proceeding as a pro se for Baldwin's injuries would result in the unauthorized practice of law, as a layperson has the right to represent himself, but not others.

PLAINTIFF'S SELF-SERVING, UNCORROBORATED TESTIMONY MAY BE SUFFICIENT EVIDENCE DEBT COLLECTOR MOCKED OR BELITTLED PLAINTIFF IN VIOLATION OF FDCPA

MATERIALITY AND THE QUESTION OF WHETHER A PARTICULAR COMMUNICATION IS FALSE OR MISLEADING ARE GENERALLY MATTERS FOR THE JURY TO DECIDE

Higdon v. Francy Law Firm, P.C., ___ F. Supp. 3d. ___ (D. Colo. 2022).

https://scholar.google.com/scholar_case?case=6960890341518854334&hl=en&cas_sdt=6&cas_vis=1&oi=scholar

FACTS: Plaintiff Kelsi Higdon ("Plaintiff") incurred a debt to Bellco Credit Union ("Bellco"). Bellco referred Plaintiff's account to Defendant Francy Law Firm P.C. ("Defendant") for collection. Defendant filed a lawsuit against Plaintiff to collect on Plaintiff's debt, and the parties executed a settlement agreement to which Plaintiff eventually ceased compliance.

Plaintiff called Defendant to discuss a settlement and was connected to Janet Cruze, a legal assistant. Cruze explained that Defendant had been attempting to collect on Plaintiff's account for a long time, that there were pending costs that Bellco was unaware of, and that Cruze would have to contact Bellco. Based on these statements, Plaintiff testified that Cruze lectured, mocked, and belittled her, as well as made false misrepresentations as to the total debt amount.

Plaintiff brought a claim in violation of the FDCPA.

The FDCPA provides that debt collectors may not engage in conduct that results in harassment, oppression, or abuse of any person in connection with the collection of a debt.

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Defendant sought summary judgment on all claims.

HOLDING: Denied.

REASONING: The FDCPA provides that debt collectors may not engage in conduct

The determination of a misrepresentation and its materiality are generally matters for the jury to decide.

that results in harassment, oppression, or abuse of any person in connection with the collection of a debt. These sections also prohibit the use of misleading representations or unconscionable means to collect, or attempt to collect, any debt. The court ruled that Plaintiff's self-serving, uncorroborated testimony may be sufficient evidence that Defendant mocked and belittled Plaintiff. Because the court must view the evidence in the light most favorable to Plaintiff as the non-moving party, the court concluded that a reasonable jury could find Defendant's conduct in violation of the FDCPA. Courts have held that whether certain conduct is annoying, abusive, or harassing is a fact question for the jury.

The court further argued that a misrepresentation must be material for it to violate the FDCPA. The determination of a misrepresentation and its materiality are generally matters for the jury to decide. The court denied Defendant's motion on this issue because a jury could find that the least sophisticated consumer would interpret the communications to mean that \$1,400 was all Plaintiff owed.

A CLERK'S ENTRY OF DEFAULT DOES NOT CHANGE THE ANALYSIS THAT A DISTRICT COURT MUST UNDERTAKE IN DECIDING WHETHER TO CERTIFY A CLASS

McAllister v. Lake City Credit, LLC, ___ F. Supp.3d ___ (N.D. Miss. 2022).

<https://www.accountsrecovery.net/wp-content/uploads/2022/10/McAllister-v.-Lake-City-Credit.pdf>

FACTS: Plaintiff Melinda McAllister and other consumer debtors received collection letters from defendant Lake City Credit, LCC that failed to abide by the FDCPA notice requirements. McAllister filed a complaint against Lake City Credit that did not receive a timely response. As a result, the Clerk of Court granted McAllister's subsequent motion for default.

McAllister then filed a class action complaint and motion requesting certification, alleging that joinder of similar statewide complaints was appropriate pursuant to the requirements of FRCP Rule 23 ("Rule 23").

HOLDING: Granted.

REASONING: McAllister asserted that Lake City Credit's practice of subjecting consumers in Mississippi to similar letters satisfied the certification requirements pursuant to Rule 23. Rule 23(a) requires a party seeking class certification to prove that "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a).

The court agreed, concluding that the procedural analysis for determining certification under Rule 23 was not altered by Lake City Credit's default status. The court reasoned that exempting the motion from customary analysis due to Lake City Credit's default status might incentivize defendants to default to avoid a class action. Consequently, a district court may certify a class only after its own rigorous analysis of the Rule 23 prerequisites.