CONSUMER CREDIT

FAIR CREDIT REPORTING ACT CLAIM REGARDING REPORTING OF CHARGE -OFF DISMISSED FOR LACK OF ARTICLE III STANDING

Arriaza v. Experian Info. Sols. Inc., ___ F. Supp. 3d___ (D.MD. 2021).
https://casetext.com/case/arriaza-v-experian-info-sols

FACTS: Defendant Toyota Motor Credit Corporation ("TMCC") wrote off part of Plaintiff Deysi Arriaza's debt and reported the write off and the outstanding balance to Experian Information Solutions, Inc. ("Experian"). Experian published Arriaza's credit report with three amounts: "Recent Balance: $7,035," "$10,068 written off[,]" and "$7,035 past due."

After the alleged failure to conduct a reasonable investigation and revise the credit report, Arriaza sued TMCC and Experian ("Defendants") for violating various provisions of the Fair Credit Reporting Act ("FCRA") by inaccurately portraying her debt with TMCC. TMCC answered the complaint and Experian filed a motion to dismiss.

HOLDING: Granted.

REASONING: The district court found that Arriaza lacked injury-in-fact, thus not satisfying her Article III standing to bring an FCRA claim and the court lacked subject matter jurisdiction over Experian. Although Experian and Arriaza disagreed on how to interpret the $10,068 write off, taking the interpretation most favorable to Arriaza, the court found the alleged inaccuracy in credit reporting did not cause Arriaza's "concrete harm or risk of real harm."

Arriaza claimed that if Experian added the write off to her past-due balance, her credit score would have improved. In other words, underreporting of her Arriaza's debt *negatively* impacted her credit score.

The court found Arriaza's claim to be conclusory [and] devoid of any reference to actual events and, therefore, could not establish standing. The court also rejected Arriaza's claim that TMCC and Experian may continue to report her debt with TMCC even if that debt has been paid off because the alleged future harm is not sufficiently imminent to establish Article III standing.

DEBT COLLECTOR'S FAILURE TO INCLUDE WARNINGS ABOUT PARTICIAL PAYMENTS DOES NOT VIOLATE FAIR DEBT COLLECTION PRACTICES ACT

Christie v. Contract Callers, Inc., ___ F. Supp. 3d ___ (N.D. Tex. 2021).
https://casetext.com/case/christie-v-contract-callers-inc

FACTS: Defendant Contract Callers, Inc. ("CCI") sent Plaintiff a 30-day debt validation letter dated May 27, 2019 (the "Letter"), in which CCI sought payment of a debt. CCI informed Plaintiff at the outset that the above referenced account has been listed with their office for collection. The Letter provided that the creditor was T-Mobile and that the amount owed was $64.60. The Letter further provided several different methods of payment. Finally, the Letter explained, "[t]he law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, we [CCI] may report or continue to report it to the credit reporting agencies as unpaid."

Plaintiff filed a putative class action complaint against CCI, asserting a claim for violations of the Fair Debt Collection Practices Act ("FDCPA"). CCI filed a motion to dismiss.

HOLDING: Granted.

REASONING: CCI asserted that the quoted language of the Letter satisfied the FDCPA because the language was approved by the Fair Trade Commission ("FTC") and Consumer Financial Protection Bureau ("CFPB") in two consent decrees and because the Fifth Circuit has approved the language in Manuel v. Merchants & Professional Bureau, Inc., 956 F.3d 822, 826 (5th Cir. 2020). Plaintiff responded that CCI violated the FDCPA because although the Letter did state that "[b]ecause of the age of your debt, we will not sue you for it[,]" it failed to additionally disclose that a partial payment of the debt would revive the debt under Texas state law.

The court found that partial payment alone is not sufficient to revive a time-barred debt under Texas state law.

The court granted CCI's motion to dismiss Plaintiff's FDCPA claims based on CCI's failure to include warnings about partial payments. First, the court found that partial payment alone is not sufficient to revive a time-barred debt under Texas state law. Second, nothing in the FDCPA requires debt collectors to make disclosures that partial payments on debts may revive the statute of limitations in certain states. The court did not find any misrepresentation as to the legal enforceability of the debt from CCI in the Letter. Nor does the court find any "urgent language and vague threats of additional but unspecified collection efforts" that the Fifth Circuit has previously concluded to be violative of the FDCPA.

LETTER COLLECTING SERVICE FEE AUTHORIZED BY CONTRACT DOES NOT VIOLATE FDCPA

Martinez v. Integrated Capital Recovery, LLC, ___ F. Supp. 3d ___ (E.D. Cal. 2021).
https://casetext.com/case/martinez-v-integrated-capital-recovery-llc

FACTS: A debt was "allegedly" incurred to Build Card – Republic Bank in connection with a transaction by Plaintiff Brandon Martinez. Build Card – Republic Bank sold the debt to DNF Associates, LLC ("DNF"), who then contracted Integrated Capital Recovery ("IRC" and, together with DNF, "Defendants") to collect it. IRC sent a letter to the Martinez calling for several payments to pay off the alleged debt. The letter stated that "[a] service fee of $9.95 may be charged for payments if paying by Credit/Debit card depending on consumer's location and applicable contractual documents." Martinez stated that this service fee was not

authorized by the agreement creating the debt or permitted by law and that he did not agree to the charge, therefore, creating a false representation in the collection of a debt.

Martinez brought a class action under the Fair Debt Collection Protection Act ("FDCPA"). Defendants filed a motion to dismiss for lack of standing and for failure to state a claim.
HOLDING: Granted.
REASONING: Martinez argued that in several cases, courts had found violations of the FDCPA in connection with statements regarding the collection of service fees. However, the court noted that those cases were scenarios in which the defendants made false statements in connection with collecting debts by representing that they were entitled to collect service fees that they were not entitled to collect. Specifically, in those cases, service fees were categorically applied to all transactions of a certain type, and statements concerning the collection of service fees did not reflect the conditions or limitations set forth in Section 1692f (1).

A collection notice statement does not violate the FDCPA if it is accurate and does not contain a false representation of the defendant's power with respect to collecting payment.

A collection notice statement does not violate the FDCPA if it is accurate and does not contain a false representation of the defendant's power with respect to collecting payment. Further, if the least sophisticated debtor would not construe the notice as a threat to take action, then the notice is not unfair or unconscionable. Accordingly, the court held that the service fee from IRC follows the rules set forth in the FDCPA itself, and there was no credible allegation that this statement contained any false representation as it related to Defendant's collection powers. Finally, the court reasoned that the least sophisticated debtor would see this as accurate information useful in selecting a mode of payment, not a threat to impose unlawful fees or a false representation of IRC's debt collection powers. For these reasons, the court found that the Martinez's action must be dismissed with prejudice.