thousands of Virgin Island residents requested loan applications from the United States Department of Agriculture ("USDA"). Plaintiff alleged that these residents were forced to put their names on an unlawful waiting list instead of being actually provided an application. Plaintiff also alleged that this list did not exist for other places in the United States and constituted discrimination under the Equal Credit Opportunity Act ("ECOA") because the residents were "Black, Hispanic, women, and/or Virgin Islanders." In March of 1997, Plaintiff and 48 other residents filed an administrative class program complaint of discrimination with the USDA.

The USDA sent an investigative team to the Virgin Islands. Plaintiff alleged that the unpublished report from the investigation was ineffective and the Plaintiff then filed suit with the district court. The district court certified the class action under rule 23(b)(3). The certified class consisted of "all persons who were Black, Hispanic, female and /or Virgin Islanders who applied or attempted to apply for, and/or received, housing credit, services, home ownership, assistance, training, and/or educational opportunities from the USDA through its Rural Development offices (and predecessor designations) located in the U.S. Virgin Islands at anytime between January 1, 1981 and January 10, 2000, and who believed they were discriminated against on the basis of race, gender or national origin." Defendant, the Secretary of Agriculture, filed an interlocutory appeal claiming that the certified class was overbroad and unmanageable.

HOLDING: Affirmed.

REASONING: According to the ECOA, it is "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction…on the basis of race, color, religion, national origin, sex or marital status, or age." 15 U.S.C. § 1691(a). The ECOA regulation provides that a "credit transaction" means "every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit." 12 C.F.R. § 202.2(m). The language under the regulation is meant to be broadly interpreted. Case law also confirms that a potential creditor's refusal to provide an application is part of "credit transaction" within the meaning of the statute. *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. 2000).

One of the requirements for class certification under Rule 23(b) is "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3). Defendant contended that because the damages sought in the case were so high and would require specific, individual proof, the common question did not predominate. The necessity for proving damages individually does not defeat class predominance or class action. *Eisenberg v. Gagnon*, 766 F.2d 770, 786 (3rd Cir. 1985). There might be situations where proving individual damages would outweigh the advantages of class certification; the court under such circumstance should give appropriate considerations, but this was not such a case. The predominance and superiority requirements under Rule 23(b) were met here, and the class was certified.

DEBT COLLECTION

LAW FIRM LIABILE UNDER FAIR DEBT COLLECTION PRACTICES ACT

Fields v. Wilber Law Firm, 383 F.3d 562 (7th Cir. 2004).

FACTS: Jodi Fields incurred $122.06 in charges at Kruger Animal Hospital ("Kruger") in Bloomington, Illinois. Despite signing an agreement promising to pay the bill at a later time, Fields had not yet paid any of the debt by November of 2002. Kruger hired the Wilber Law Firm ("Wilber") to collect the debt. A letter was sent to Fields stating that the "ACCOUNT BALANCE" was $388.54. The account balance reflected the original $122.06, plus interest and service charges assessed pursuant to the contract signed by Fields, plus $250 in attorney fees for the collection of the debt by Wilber. The collection letter provided no breakdown of the charges. Subsequent letters were sent that included additional interest but no additional attorney fees. Wilber included the $250 in fees pursuant to a clause in the contract that stated, "I understand that if collection action should become necessary for recovery of any monies due under this contract, I agree to pay any and all collection costs and attorney fees."

On March 25, 2003, Fields filed an action in federal court, alleging that Wilber violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"). Specifically, Fields asserted that the collection letters failed to accurately state the amount of the debt under section 1692g(a)(1), were misleading under section 1692e, and unfairly attempted to collect unauthorized fees under section 1692f(1). The district court dismissed Fields's FDCPA claims for failure to state a claim and held that $250 in attorney fees was reasonable as a matter of law. Fields appealed.

HOLDING: Affirmed in part, reversed in part, and remanded.

REASONING: If liability for attorney fees has not been awarded by court judgment, it is usually not appropriate to include an estimate in any correspondence with the debtor. The requirement in the FDCPA to include the amount of debt in the collection letter is to inform the debtor of how much debt is owed, not total future liability. However, when a debtor has contractually agreed to pay attorney fees and collection costs, a debt collector may, without a court's permission, state those fees and costs and include that amount in the dunning letter. Doing so does not violate the FDCPA.

Even if attorney fees are authorized by contract, as in this case, and even if the fees are reasonable, debt collectors must still clearly and fairly communicate information about the amount of the debt to debtors. This includes how the total amount due was determined if the demand for payment included add-on expenses like attorney fees or collection costs. It is unfair to consumers under the FDCPA to hide the true character of the debt, thereby impairing their ability to

knowledgeably assess the validity of the debt. In this case, the letters from the law firm were inappropriate because they could mislead an unsophisticated consumer. The court also rejected the proposition that a debt collector could provide incomplete information if it provided a telephone number for the debtor to call. The court remanded the case to district court for proceedings to determine any claims under FDCPA sections 1692(e) and (f) concerning the failure to properly represent the character, amount, or legal status of the debt.

DEBT COLLECTOR VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT WHERE ITS COLLECTION LETTER COULD LEAD A DEBTOR TO FALSELY BELIEVE THAT AN OFFER OF SETTLEMENT WAS A ONE TIME, TAKE-IT-OR-LEAVE-IT OFFER

Goswami v. Am. Collections Enter., Inc., 377 F.3d 488 (5th Cir. 2004).

FACTS: Pooja Goswami owed approximately $900 on her Capital One credit card and failed to make her payment. Capital One referred the debt to American Collections Enterprise, Inc. ("ACEI"). ACEI sent a collection notice letter to Goswami. The letter read in relevant part, "Effective immediately, and only during the next thirty days, will our client agree to settle your outstanding balance due with a 30% discount off your above balance owed." Goswami filed a complaint alleging the language of the letter was deceptive in violation of section 1692(e)(10) of the Fair Debt Collections Practice Act ("FDCPA"). ACEI moved for summary judgment arguing that neutral or benign expressions on an envelope, like "priority letter," that in no way indicate that it is a collection letter are not banned by the FDCPA. ACEI further argued that the letter itself was not deceitful and thus did not violate the FDCPA. The trial court granted summary judgment for ACEI. Goswami appealed.
HOLDING: Reversed and remanded.
REASONING: Section 1692e(10) was enacted to thwart abusive, false, or misleading debt collection practices. It provides in relevant part: "A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer." The court agreed with Goswami that the language of the collection letter was deceptive in violation of the FDCPA. The letter falsely stated that "*only during the next thirty days*, will our client agree to settle your outstanding balance due with a 30% discount off your above balance owed." (Emphasis added). In fact, ACEI was authorized to give Goswami a 30% discount at any time, not just for a period of thirty days. Additionally, ACEI was authorized to offer a 50% discount at the time Goswami received the letter. The statement in the letter was untrue and made it appear that the 30% discount was a one-time, take-it-or-leave-it offer that would expire in thirty days. The obvious purpose of the statement was to push Goswami to make a rapid payment to take advantage of the purported limited time offer. The court reversed the trial court's order granting summary judgment and remanded the case.

FDCPA SHOULD BE APPLIED USING THE UNSOPHISTICATED CONSUMER STANDARD

FDCPA NOT VIOLATED BY THE USE OF "PERSONAL AND CONFIDENTIAL" AND "IMMEDIATE REPLY REQUESTED" ON ENVELOPE

Strand v. Diversified Collection Service, Inc., 380 F.3d 316 (8th Cir. 2004).

FACTS: In May and June of 2003, Elizabeth Strand received four letters from "D.C.S., Inc.". Each of the letters was sent attempting to collect a debt. Each letter had the phrase "PERSONAL AND CONFIDENTIAL" and "IMMEDIATE REPLY REQUESTED" in capital letters on the envelope. Strand sued Diversified Collection Service, Inc. ("DCS") for violations of the Fair Debt Collections Practices Act ("FDCPA"). Strand argued that the words on the four envelopes she received from DCS violated section 1692f(8) of the FDCPA, which prevents debt collectors from using "any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer…except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business."

DCS moved to dismiss the suit for failure to state a claim upon which relief could be granted. The trial court dismissed the action, declining to adopt a strict reading of section 1692f(8). Strand appealed the dismissal.
HOLDING: Affirmed.
REASONING: The court first noted that a violation of the FDCPA is reviewed using the unsophisticated consumer standard. "This standard protects the uninformed or naïve consumer, yet also contains an objective element of reasonableness to protect debt collectors from liability for peculiar interpretations of collection letters."

The court observed that the FDCPA was written "to eliminate abusive debt collection practices by debt collectors."

The court found that a strict reading of section 1692f(8) as urged by Strand would "create bizarre results likely beyond the scope of Congress's intent in enacting the statute." Under such a reading, any language besides the name and return address would be prohibited, including language like "overnight mail" or "forwarding and address correction requested." The court observed that the FDCPA was written "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). The court relied on a California case that held the "PERSONAL AND CONFIDENTIAL" language did not violate the section. That court held "Congress's intent in protecting consumers…would not be promoted by proscribing

benign language" because Congress enacted section 1692f(8) simply to prevent debt collectors from 'using symbols on envelopes indicating that the contents pertain to debt collection.'" (quoting *Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1466 (C.D. Cal. 1991). The court held that "an interpretation of § 1692f(8) exempting benign words and symbols better effectuates Congressional purpose."

INJUNCTIVE AND DECLARATORY RELIEF ARE NOT AVAILABLE TO PRIVATE LITIGANT UNDER THE FDCPA

Weiss v. Regal Collections, 385 F.3d 337 (3rd Circuit 2004).

FACTS: On October 25, 2000 defendant bill collector Regal Collections ("Regal") mailed a letter to Richard Weiss demanding payment of a debt allegedly owed to Citibank. Contending that certain statements in the letter constituted unfair debt collection practice in violation of the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. § 1692, Weiss filed a federal class action complaint seeking statutory damages on behalf of himself and a putative nationwide class. Weiss then filed an amended complaint seeking declaratory and injunctive relief under the FDCPA.

Before filing an answer, and before Weiss moved to certify a class, Regal made a Fed.R.Civ.P. 68 offer of judgment to Weiss in the amount of $1000 plus attorney's fees and expenses. The offer of judgment provided no relief to the class and offered neither injunctive nor declaratory relief. Weiss declined to accept the offer of judgment. Regal then filed a motion to dismiss, arguing Weiss's claim was rendered moot because the Rule 68 offer provided him the maximum damages available under the statute. For this reason, Regal contended the District Court no longer had subject matter jurisdiction over Weiss's claim. The District Court agreed and dismissed the class action complaint. Weiss appealed.

HOLDING: Reversed and remanded.

REASONING: The court's decision to reverse and remand was based on its finding that the putative class action was not rendered moot. Addressing the availability of injunctive and declaratory relief in private actions, the court found the FDCPA contained no express provision for such relief. The court also recognized that most courts have found equitable relief unavailable under the statute, at least with respect to private actions. The court explained that the remedies under the FDCPA differ depending on who brings the action. Because the statute explicitly provides declaratory and equitable relief only through action by the Federal Trade Commission, the court reasoned that the different penalty structure demonstrates Congress' intent to preclude equitable relief in private actions. For these reasons the Court held injunctive and declaratory relief were not available to litigants acting in an individual capacity under the FDCPA.

The court concluded that because injunctive and declaratory relief were unavailable and Weiss did not allege any actual damages, the Rule 68 offer of $1000 plus reasonable costs and fees provided the maximum statutory relief available to Weiss individually under the FDCPA.

LANDLORD TENANT

A CHAPTER 7 DEBTOR'S PREPAID RENT AND SECURITY DEPOSIT ARE EXEMPT FROM HIS BANKRUPTCY ESTATE

In re Casserino, 379 F.3d 1069 (9th Cir. 2004).

FACTS: On Nov. 22, 1999, Matthew J. Casserino filed a joint Chapter 7 petition with his then-wife. At the time Casserino was living in an apartment that he leased on a month-to-month basis. Pursuant to his rental agreement, Casserino paid $2,000 prior to occupancy: $750 for the first month's rent, $750 for the last month's rent, and $500 for the security deposit, of which $100 was refundable. When Casserino filed for bankruptcy, the landlord retained $1,150: $750 prepaid rent and $400 non-refundable deposit. Casserino claimed an exemption for this $1,150. The trustee demanded the landlord remit the retained amount. The Bankruptcy Court held that Casserino was entitled to exempt the prepaid rent and deposit pursuant to Oregon law. The Bankruptcy Court affirmed its decision on appeal. The trustee then appealed, arguing that a residential leasehold interest is not a homestead and does not qualify for the exemption.

HOLDING: Affirmed.

REASONING: The Bankruptcy Court affirmed that a lease fell within the definition of "homestead" under Oregon law because a residential lessee owns a possessory interest in the leased property. In *In re Nagel*, 216 B.R. 397, 398 (Bankr. W.D. Tex. 1997), the Texas bankruptcy court concluded that the security deposit was part of the leasehold interest because they both "arose from the same lease agreement." In *In re Quintana*, 28 B.R. 269, 270 (Bankr. D. Colo. 1983), the Colorado bankruptcy court found that because the security deposit could be applied to unpaid rent, and prepaid rent is part of the homestead, the security deposit was also subject to homestead exemption. Similarly, Casserino's security deposit was part of the leasehold, and thus the exemption. Only by depositing funds for a security deposit and the last month's rent with his landlord did Casserino become entitled to take possession of the property according to the terms of the lease. If Casserino's landlord had been required to pay these funds to the trustee, Casserino would have been in material breach of the lease. For this reason, the deposit and the lease were not severable from the homestead exemption.

Payment of the security deposit conferred on Casserino specific rights that were part of his leasehold interest. Under Oregon law, a prepaid rent deposit and a security deposit may be used by the landlord for only two purposes: to pay rent and to repair damage to the premises. Or.Rev.Stat. § 90.300(5) and (7). The actual lease Casserino signed provided that prepaid rent would be "dealt with in accordance with [Or. Rev. Stat.]