MISCELLANEOUS

REDEMPTION THEORY PROVIDES NO BASIS FOR CLAIMS ASSERTING WRONGFUL REPOSSESSION

McClain v. I-10 MAC Haik CDJR LTD, ___ F. Supp. 3d ___ (S.D. Tex. 2023).
https://scholar.google.com/scholar_case?case=15133617231071030270&hl=en&as_sdt=6&as_vis=1&oi=scholarr

FACTS: Plaintiff Roderick-Allen McClain ("McClain") used a bank draft to buy a truck from Defendant I-10 Mac Haik CDJR, Ltd. ("Mac Haik Chrysler"). No financial institution would honor the bank draft, so Mac Haik Chrysler, Dawn Krieg, and Henry L. Robertson (collectively, "the Mac Haik Defendants") sued McClain for damages and the return of the truck. RBEX, Inc. d/b/a Apple Towing Co. ("RBEX") repossessed the truck for the Mac Haik Defendants.

McClain sued the Mac Haik Defendants and RBEX asserting wrongful repossession under the FDCPA.
HOLDING: Dismissed.
REASONING: McClain argued that the redemption theory supported his claim. The court rejected McClain's argument as nonsensical and without merit.

The "redemption" theory claims that individuals can use the Uniform Commercial Code to create fictitious accounts in the US Treasury, redeem their birth certificates as assets, and assign them a value of up to $2 million. Followers of this theory believe that the US Treasury Department acts as a clearinghouse for the funds, and they can create money orders and sight drafts based on this "asset." Under this theory, McClain argued he could create money orders and bank drafts drawn on the Treasury Direct Accounts to pay for goods and services, and therefore, did not owe any money.

The court explained that McClain did not tender any valid payment for the repossessed truck. Instead, McClain's own filings show that he tendered a worthless piece of paper. McClain's only basis for his claim is the redemption theory, and it is meritless. The Mac Haik Defendants and RBEX did not violate the FDCPA by suing McClain and repossessing a truck that McClain never paid for because the redemption theory provides no basis for claims asserting wrongful repossession.

CFPB CANNOT NECESSARILY "IMPOSE WHATEVER CONTENT AND FORMATTING REQUIREMENTS IT CHOOSES"

PayPal, Inc. v. CFPB, ___ F.4th ___ (D.C. Cir. 2023).
https://www.cadc.uscourts.gov/internet/opinions.nsf/E944A052FDBD3C8D8525894B00533F5C/$file/21-5057-1984449.pdf

FACTS: Defendant-Appellant, the Consumer Financial Protection Bureau ("CFPB"), promulgated the Prepaid Rule, requiring digital wallet providers to disclose a prepaid account's most important fees before a consumer acquires an account and begins transacting. The Prepaid Rule also imposed formatting requirements, which dictated the disclosures' structure, the wording's font size, and the emphasis given to each fee.

PayPal filed suit, alleging that the Prepaid Rule exceeded the CFPB's statutory authority because the agency effectively mandated the adoption of a model clause in violation of the Electronic Fund Transfer Act ("EFTA"). PayPal filed for summary judgment. The district court granted PayPal's motion and vacated the Prepaid rule. The CFPB appealed.
HOLDING: Reversed and remanded.
REASONING: The CFPB argued that the Prepaid Rule did not impose mandatory model clauses. The court agreed.

The court reasoned that a model clause is a particular language that prepaid account providers can copy to satisfy their disclosure obligations. The EFTA defines a "model clause" as specific copiable language to be distinguished from content and formatting.

Although the Prepaid Rule mandates certain formatting, such requirements fall outside the scope of a model clause. The court concluded that the CFPB's Prepaid Rule did not mandate a "model clause" in contravention of the EFTA. However, the CFPB cannot necessarily impose whatever content and formatting requirements it chooses. The court remanded the case for the district court to consider PayPal's other challenges to the Prepaid Rule.

TELEPHONE CONSUMER PROTECTION ACT DOESN'T COVER FACEBOOK BIRTHDAY TEXTS

Brickman v. United States, ___F.4th ___(9th Cir. 2022).
https://cdn.ca9.uscourts.gov/datastore/opinions/2022/12/21/21-16785.pdf

FACTS: Plaintiff-Appellant Colin Brickman filed suit against Meta Platforms, Inc. ("Meta"), formerly Facebook, Inc., alleging that Meta violated the TCPA when it sent unsolicited birthday text messages to consumers. Brickman argued that the TCPA generally bans calls generated by an automatic telephone dialing system ("autodialer") and that Meta sent the messages through an autodialer employing a random or sequential number generator ("RSNG"). Brickman asserted that the software was used to sort, store, and dial the numbers that it pulled from social media accounts.

The United States intervened in the case to defend the constitutionality of the TCPA.

The United States intervened in the case to defend the constitutionality of the TCPA. The court dismissed Brickman's case with prejudice and approved the matter for appeal. Brickman appealed.
HOLDING: Affirmed.
REASONING: Under the TCPA, an autodialer is defined as a piece of equipment with the capacity to store, produce, and call telephone numbers using an RSNG.

The court held that a plain text reading of the TCPA requires autodialers to generate the phone numbers that are dialed. The court interpreted the definition of autodialer in its

entirety to determine that RSNGs must actually produce the telephone numbers to be in violation of TCPA, not merely collect, sort, or store numbers. The court held that the messages sent by Meta did not generate these numbers randomly or sequentially, and therefore did not fit the definition of an autodialer under the statute. Therefore, the TCPA does not cover Facebook birthday texts.

COURT REVIVES A PROPOSED CLASS ACTION SAYING THE CASE ACTUALLY BELONGED IN STATE COURT UNDER THE SUPREME COURT'S OPINION IN *TRANSUNION*

Brady O'Leary v. TrustedID Inc., ___ F.4th ___ (4th Cir. 2023). https://www.ca4.uscourts.gov/opinions/212144.P.pdf

FACTS: Nonparty Equifax engaged Defendant-Appellee TrustedID Inc., to inform Plaintiff-Appellant Brady O'Leary his personal data may have been impacted by a data breach. TrustedID prompted O'Leary to enter six digits of his social security number ("SSN") on a website, and O'Leary learned that his data was not compromised. O'Leary alleged that TrustedID shared the six digits of his SSN with Equifax. O'Leary initiated a class action against TrustedID in state court, claiming the practice of requiring six digits of consumers' SSNs violated South Carolina's Financial Identity Fraud and Identity Theft Protection Act ("Act").

TrustedID removed the case to a federal district court under the Class Action Fairness Act and moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court granted TrustedID's motion but determined O'Leary had standing to sue. O'Leary appealed.

HOLDING: Vacated and remanded with instructions.

REASONING: O'Leary argued that he was injured when TrustedID intentionally took personal identifying information and monetized it in some way. He further claimed that TrustedID could have complied with the Act by requesting five or fewer digits of consumers' SSNs. He asked the court to affirm the lower court's holding on standing.

The court held that O'Leary's reliance on an abstract privacy interest in his SSN failed to establish an injury with a close relationship to a traditionally recognized harm for Article III standing, as required under *TransUnion*.

The court held that O'Leary failed to establish Article III standing because he did not allege an injury in fact. Although he claimed that requiring him to enter six digits instead of five digits of his SSN on TrustedID's website increased his identity theft risk, he did not explain how. His claim was solely based on a procedural violation of the Act and was insufficient to establish Article III standing. The court held that O'Leary's reliance on an abstract privacy interest in his SSN failed to establish an injury with a close relationship to a traditionally recognized harm for Article III standing, as required under *TransUnion*. O'Leary did not allege that exchanging his partial SSN to learn about Equinox's data breach could be a close relationship to 'intrusion upon seclusion' as a traditionally recognized harm, or that the disclosure of private information could be another traditional analog for intangible harm under *TransUnion*. Thus, because O'Leary failed to establish Article III standing, the court concluded that his claim belonged in state court.