

Week 10 – FDCPA

- 5:30 Today's agenda
 - Spokeo*
 - FDCPA elements
 - FDCPA charts
 - Henson v. Santander*
- 6:00 Break
 - Common FDCPA violations
 - Bankruptcy violations
 - Paul v Providence*
- 6:45 Guest Speaker Julie Engbloom
- 7:20 Next Week

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Spokeo

FDCPA elements

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Bankruptcy violations

Paul v Providence

6:45 Guest Speaker Julie Engbloom

7:20 Next Week

Announcements

OSB Consumer Section Meeting

March 21 – 12pm to 1pm
Oregon DOJ Downtown

Consumer Law Focus Group

April 2 – 6pm to 9pm
US Bancorp Tower

Spring Course Evaluations

April 12 – 5:30pm
Class – Bring Laptop



Week 10 – FDCPA

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Henson v. Santander

6:00 Break

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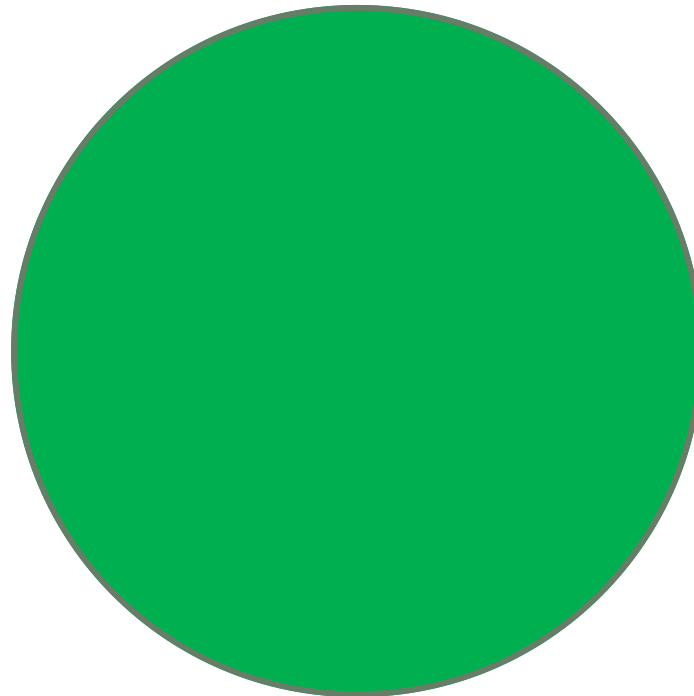
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Class Break Over



▲ Caution
As of: February 17, 2018 11:10 PM Z

Spokeo, Inc. v. Robins

Supreme Court of the United States
November 2, 2015, Argued; May 16, 2016, Decided
No. 13-1339

Reporter

136 S. Ct. 1540 *; 194 L. Ed. 2d 635 **; 2016 U.S. LEXIS 3046 ***; 84 U.S.L.W. 4263; 100 Empl. Prac. Dec. (CCH) P45,556; 26 Fla. L. Weekly Fed. S 128

SPOKEO, INC., Petitioner v. THOMAS ROBINS

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Subsequent History: As Revised May 24, 2016.

On remand at, Motion granted by, in part, Motion denied by, in part *Robins v. Spokeo, Inc.*, 2016 U.S. App. LEXIS 22052 (9th Cir. Cal., June 20, 2016)

Decision reached on appeal by, On remand at, Remanded by *Robins v. Spokeo, Inc.*, 2017 U.S. App. LEXIS 15211 (9th Cir., Aug. 15, 2017)

Prior History: [***] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Robins v. Spokeo, Inc., 742 F.3d 409, 2014 U.S. App. LEXIS 2136 (9th Cir. Cal., Feb. 4, 2014)

Disposition: Vacated and remanded.

Core Terms

concrete, consumer, injury in fact, requirements, rights, particularized, vindicate, courts, private right, individualized, private plaintiff, public right, consumer report, statutory right, injury-in-fact, injuries, limitations, cases, consumer reporting agency, internal quotation marks, standing doctrine, legal right, Common-law, incorrect, confer, procedural violation, reasonable procedure, credit reporting, standing to sue, judicial power

Case Summary

Overview

HOLDINGS: [1]-The injury-in-fact requirement for standing under Article III of the Constitution required a plaintiff to allege an injury that was both concrete and particularized; [2]-In the action under the *Fair Credit Reporting Act of 1970*, the appellate court's standing analysis was incomplete because it failed to fully appreciate the distinction between concreteness and particularization, and it did not address whether the particular procedural violations alleged in the case entailed a degree of risk sufficient to meet the concreteness requirement.

Outcome

Judgment vacated. Case remanded. 6-2 Decision; 1 Concurrence; 1 Dissent.

LexisNexis® Headnotes

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN1 Standing, Injury in Fact

The injury-in-fact requirement for standing requires a plaintiff to allege an injury that is both concrete and particularized.

Constitutional Law > The Judiciary > Case or Controversy

Constitutional Law > Congressional Duties & Powers

Constitutional Law > The Presidency

Michael Fuller

136 S. Ct. 1540, *1540; 194 L. Ed. 2d 635, **635; 2016 U.S. LEXIS 3046, ***1

Page 2 of 15

Constitutional Law > The Judiciary

HN2 The Judiciary, Case or Controversy

The Constitution confers limited authority on each branch of the Federal Government. It vests Congress with enumerated legislative Powers, *U.S. Const. art. I, § 1*; it confers upon the President the executive Power, *U.S. Const. art. II, § 1, cl. 1*; and it endows the federal courts with the judicial Power of the United States, *U.S. Const. art. III, § 1*. In order to remain faithful to this tripartite structure, the power of the Federal Judiciary may not be permitted to intrude upon the powers given to the other branches. Although the Constitution does not fully explain what is meant by "the judicial Power of the United States," *U.S. Const. art. III, § 1*, it does specify that this power extends only to "Cases" and "Controversies," *U.S. Const. art. III, § 2*. And no principle is more fundamental to the judiciary's proper role in the United States' system of government than the constitutional limitation of federal-court jurisdiction to actual cases or controversies.

Civil

Procedure > ... > Justiciability > Standing > Burdens of Proof

Constitutional Law > ... > Case or Controversy > Standing > Elements

Constitutional Law > The Judiciary > Case or Controversy > Standing

Civil

Procedure > ... > Pleadings > Complaints > Requirements for Complaint

HN3 Standing, Burdens of Proof

Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy. The doctrine developed in the U.S. Supreme Court's case law to ensure that federal courts do not exceed their authority as it has been traditionally understood. The doctrine limits the category of litigants empowered to maintain a lawsuit in federal court to seek redress for a legal wrong. In this way, the law of Article III of the Constitution standing serves to prevent the judicial process from being used to usurp the powers of the political branches, and confines the federal courts to a properly judicial role. Cases have established that the irreducible constitutional minimum of standing consists of three elements. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.

The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements. Where a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

Civil Procedure > ... > Class Actions > Class Members > Named Members

HN4 Standing, Injury in Fact

That a suit may be a class action adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN5 Standing, Injury in Fact

Injury in fact is the first and foremost of standing's three elements. Injury in fact is a constitutional requirement, and it is settled that Congress cannot erase Article III of the Constitution's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing. To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.

Civil Procedure > ... > Justiciability > Standing > Injury in Fact

Constitutional Law > ... > Case or Controversy > Standing > Elements

HN6 Standing, Injury in Fact

In the context of standing, for an injury to be "particularized,"

Michael Fuller

Spokeo v. Robins

Factual Background

- Spokeo operates a “people search engine”
- Spokeo **falsely** reported that Thomas Robins was married with children, in his 50's, **employed**, was relatively **affluent**, and held a **graduate degree**
- Thomas Robins filed a **federal** FCRA class action lawsuit against Spokeo



Search People. Reunite.

NAME

SOCIAL

PHONE

ADDRESS

Enter a First and Last Name

SEARCH



Article III of the US Constitution **limits the power of the federal judiciary** to:

Article III of the US Constitution limits the power of the federal judiciary to:

Actual cases or
controversies

federal
questions

controversies
over \$75,000

intra-state
disputes



Which of these is **NOT** an element of **standing** under the “case or controversy” requirement?

Which of these is NOT an element of standing under the "case or controversy" requirement?

an injury in fact

fairly traceable to the
challenged conduct

likely to be redressed
by a favorable decision

against a private party



Injury in fact means:

Injury in fact means:

All of the below

an invasion of a legally
protected interest

that is concrete

and particularized



Particularized means:

Particularized means:

Both C and D

able to cause ascertainable
economic loss

it must affect the plaintiff
in a personal way

it must affect the plaintiff
in an individual way



Concrete means:

Concrete means:

All of the below

real, not abstract

tangible or intangible

harm traditionally regarded
as a basis for a lawsuit

[HNS](#) Standing, Injury in Fact

Injury in fact is the first and foremost of standing's three elements. Injury in fact is a constitutional requirement, and it is settled that Congress cannot erase Article III of the Constitution's standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing. To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.

COMPARE

[HNS](#) Standing, Injury in Fact

In the context of standing, "concrete" is not necessarily synonymous with "tangible." Although tangible injuries are perhaps easier to recognize, the U.S. Supreme Court has confirmed in many of its previous cases that intangible injuries can nevertheless be concrete. In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles. Because the doctrine of standing derives from the case-or-controversy requirement, and because that requirement in turn is grounded in historical practice, it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. In addition, because Congress is well positioned to identify intangible harms that meet minimum Article III of the Constitution requirements, its judgment is also instructive and important. Thus, Congress may elevate to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law. Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.

[HN9](#) [📄] Standing, Injury in Fact

Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right. Article III standing requires a concrete injury even in the context of a statutory violation. For that reason, a plaintiff could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III of the Constitution. This does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness. For example, the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure. Just as the common law permitted suit in such instances, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any additional harm beyond the one Congress has identified.

ANALYSIS

In the context of this particular case, these general principles tell us two things: On the one hand, Congress plainly sought to curb the dissemination of false information by adopting procedures designed to decrease that risk. On the other hand, Robins cannot satisfy the demands of Article III by alleging a bare procedural violation. A violation of one of the *FCRA's* procedural requirements [***18] may result in no harm. For example, even if a consumer reporting agency fails to provide the required notice to a user of the agency's consumer information, that information regardless may be entirely accurate. In addition, not all inaccuracies cause harm or present any material risk of harm. An example that comes readily to mind is an incorrect zip code. It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.⁸

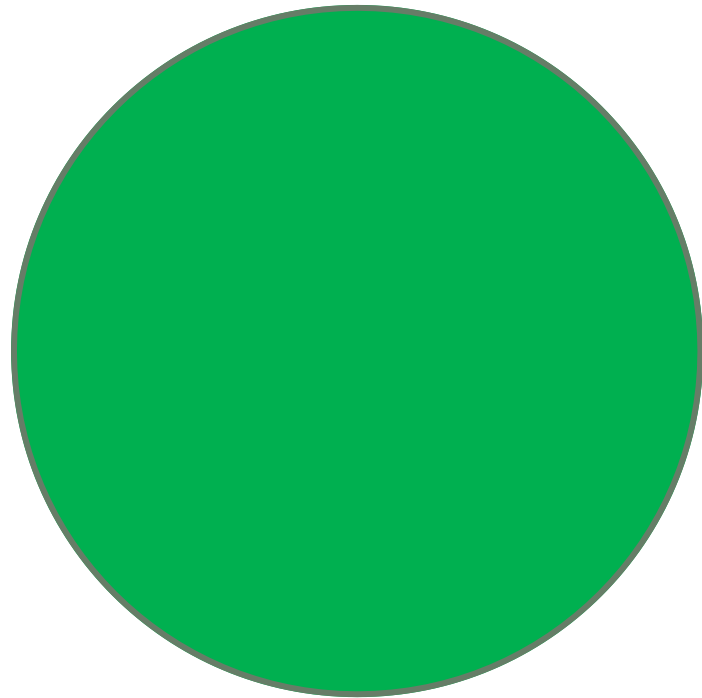
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Class Break
Over



Fair Debt Collection Practices Act

PRIVATE RIGHT OF ACTION	CLAIM ELEMENTS	DAMAGES	ATTORNEY FEES	STATUTE OF LIMITATIONS
15 U.S.C. § 1692k	(1) consumer (2) consumer debt (3) debt collector (4) violation	Actual and statutory damages	Prevailing plaintiff	One year

Fair Debt Collection Practices Act

“A debt collector may not engage in any conduct the natural consequence of which is to **harass, oppress, or abuse** any person in connection with the collection of a debt.”

- 15 U.S.C. § 1692d



Fair Debt Collection Practices Act

“A debt collector may not use any **false, deceptive, or misleading** representation or means in connection with the collection of any debt.”

- 15 U.S.C. § 1692e



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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

Jeremy Estrella, a consumer
residing in Oregon, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

Convergent Outsourcing,
Inc., a foreign corporation,

Defendant.

Case No. 3:17-cv-117

CLASS ACTION
ALLEGATION COMPLAINT

15 U.S.C. § 1692k

Demand for Jury Trial

CLASS ACTION ALLEGATION COMPLAINT – Page 1 of 21

ATER\$001
PO Box 1022
Wixom MI 48393-1022
CHANGE SERVICE REQUESTED



Convergent Outsourcing, Inc.
800 SW 39th St./PO Box 9004
Renton, WA 98057
Mon-Fri 8AM-5PM PT
800-423-9397

Date: 06/13/2016
Creditor: National Collegiate Student Loan
Trust 2006-1

Client Account #: i2331

Convergent Account #: 9345

Settlement In Full: \$22,974.34

Principal:	\$38,279.73
Interest:	\$ 10.83
Total Balance:	\$38,290.56

Jeremy Estrella
17214 SW 120th Pl
Portland OR 97224-2487

Settlement Offer

Dear Jeremy Estrella:

This notice is being sent to you by a collection agency. The records of National Collegiate Student Loan Trust 2006-1 show that your account has a past due balance of \$38,290.56.

Our client has advised us that they are willing to settle your account for 60% of your total balance due to settle your past balance. The full settlement must be received in our office by an agreed upon date. If you are interested in taking advantage of this offer, call our office within 45 days of this letter. Your settlement amount would be \$22,974.34 to clear this account in full. Even if you are unable to take advantage of this offer, please contact our office to see what terms can be worked out on your account. We are not required to make this offer to you in the future.

Sincerely,

Convergent Outsourcing, Inc.

THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE. THIS COMMUNICATION IS FROM A DEBT COLLECTOR.

NOTICE: PLEASE SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION.

3. CONVENIENT WAYS TO PAY:

Pay Online: Email our office or pay your bill online with your credit/debit card or checking account at www.payconvergent.com. Your temporary identification number is: 13.48519345.569

Pay by Phone: Please call Convergent Outsourcing, Inc. at 800-423-9397. We offer check by phone, Western Union, and debit card. We offer check by phone, Western Union, and credit/debit card.

Pay by Mail: Send Payments to Convergent Outsourcing, Inc., PO Box 9004, Renton WA 98057-9004

Ex 1 – Page 1 of 2

Fair Debt Collection Practices Act

“A debt collector may not use **unfair or unconscionable** means to collect or attempt to collect any debt.”

- 15 U.S.C. § 1692f



V.

560 South Herlong Avenue
Post Office Box 36788
Rock Hill, South Carolina 29732-0512
803-323-5205
877-427-6344

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, the office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of this debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request of this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

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Fair Debt Collection Practices Act

Private Right of Action

- A private right of action exists for **any** violation of the FDCPA. 15 U.S.C. § 1692k.
- The FDCPA is a **strict liability** statute, making “debt collectors liable for violations that are not knowing or intentional.” *Reichert v. Nat'l Credit Sys., Inc.*, 531 F.3d 1002, 1005 (9th Cir. 2008).



Fair Debt Collection Practices Act

Private Right of Action (cont.)

- A collector is not liable for violations that were “**not intentional** and resulted from a **bona fide error** notwithstanding the maintenance of **procedures** reasonably **adapted** to avoid any such error.” 15 U.S.C. § 1692k(c).



FDCPA Elements

A “consumer”

“The term ‘consumer’ means any *natural person* obligated or allegedly obligated to pay any debt.”

§ 1692a(3)



A “consumer debt”

“The term ‘debt’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction ... for *personal, family or household purposes*.”

§ 1692a(5)



A “debt collector”

“The term ‘debt collector’ means any person who uses any instrumentality of interstate commerce or the mails in any business the *principal purpose* of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be *owed or due another*.”

§ 1692a(6)



A “violation”

Any abusive practice, false representation, or unfair practice.

§ 1692d, e, f



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Damages Chart

CONSUMER LAW	STATUTORY AUTHORITY	EMOTIONAL HARM	ECONOMIC LOSS	STATUTORY DAMAGES	PUNITIVE DAMAGES
UTPA	ORS 646.638				
FCRA	15 U.S.C. § 1681n				
FDCPA	15 U.S.C. § 1692k				
TCPA	47 U.S.C. § 227(b)(3)				
ORTLA	ORS 90 et seq.				

Fair Debt Collection Practices Act

Damages

- Consumers may recover **actual** damages and up to \$1,000 **statutory** damages. 15 U.S.C. § 1692k(a)(1), (2)(A).
- No punitive damages are available under the FDCPA. 15 U.S.C. § 1692k.



Fee Shifting Chart

CONSUMER LAW	STATUTORY AUTHORITY	AMERICAN RULE	PREVAILING PLAINTIFF	PREVAILING PARTY
UTPA	ORS 646.638(3)			
FCRA	15 U.S.C. § 1681o(a)(2)			
FDCPA	15 U.S.C. § 1692k(a)(3)			
TCPA	47 U.S.C. § 227(b)(3)			
ORLTA	ORS 90.255			

Fair Debt Collection Practices Act

Attorney Fees

- Unlike the American rule, a **prevailing plaintiff** under the FDCPA may recover reasonable attorney fees and costs at trial and on appeal. 15 U.S.C. § 1692k(a)(3).
- A defendant may only recover its fees in a FDCPA claim as **sanctions**, or after successfully defending an action brought in **bad faith** or for purposes of **harassment**. FRCP 11, FRCP 37, 15 U.S.C. § 1692k(a)(3).
- A reasonable fee award under the UTPA is based on the **lodestar** method, which takes into account the time expended and hourly rate. *Camacho v. Bridgeport Fin., Inc.*, 523 F.3d 973 (9th Cir. 2008).



Statute of Limitations Chart

CONSUMER LAW	STATUTORY AUTHORITY	ONE YEAR	TWO YEARS	THREE YEARS	FOUR YEARS
UTPA	ORS 646.638				
FCRA	15 U.S.C. § 1681n		*		
FDCPA	15 U.S.C. § 1692k				
TCPA	28 U.S.C. § 1658				
ORLTA	ORS 90 et seq.				

Fair Debt Collection Practices Act

Statute of Limitations

- Actions brought under the FDCPA must be commenced within **one year** after discovery of the violation. 15 U.S.C. § 1692k(d).



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▲ Caution
As of: February 18, 2018 6:51 AM Z

Henson v. Santander Consumer USA Inc.

Supreme Court of the United States
April 18, 2017, Argued; June 12, 2017, Decided
No. 16-349.

Reporter

137 S. Ct. 1718 *; 198 L. Ed. 2d 177 **; 2017 U.S. LEXIS 3722 ***; 85 U.S.L.W. 4346; 26 Fla. L. Weekly Fed. S 638; 2017 WL 2507342

RICKY HENSON, et al., Petitioners v. SANTANDER
CONSUMER USA INC.

Notice: The LEXIS pagination of this document is subject to change pending release of the final published version.

Prior History: [***1] ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Henson v. Santander Consumer USA Inc., 817 F.3d 131, 2016 U.S.App. LEXIS 5378 (4th Cir. Md., Mar. 23, 2016)

Disposition: Affirmed.

Core Terms

debt collector, defaulted, collection, originators, purchasers, regularly, qualify, debts owed, parties, debt collection, own account, statute's, participle, excludes

Case Summary

Overview

HOLDINGS: [1]-Individuals and entities who regularly purchased debts originated by someone else and then sought to collect those debts for their own account were not debt collectors under 15 U.S.C.S. § 1692a(6) where past participles like "owed" were routinely used to describe the present state of a thing, that use was consistent with other uses of the word in the *FDCPA*, and such an interpretation presumed that Congress said what it meant and meant what it said.

Outcome

Judgment affirmed; Unanimous decision.

LexisNexis® Headnotes

Banking Law > Consumer Protection > Fair Debt
Collection > Liability for Violations

[HN1](#) Fair Debt Collection, Liability for Violations

15 U.S.C.S. § 1692a(6) defines debt collectors to include those who regularly seek to collect debts owed another. By its plain terms this language seems to focus attention on third party collection agents working for a debt owner, not on a debt owner seeking to collect debts for itself. Neither does this language appear to suggest that courts should care how a debt owner came to be a debt owner, i.e., whether the owner originated the debt or came by it only through a later purchase. All that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for another. And given that, it seems a debt purchaser may indeed collect debts for its own account without triggering the statutory definition of debt collector.

Governments > Legislation > Interpretation

[HN2](#) Legislation, Interpretation

While it is the court's job to apply faithfully the law Congress has written, it is never its job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone's account, it never faced. Indeed, it is quite mistaken to assume that whatever might appear to further the statute's primary objective must be the law. Legislation is, after all, the art of compromise, the limitations expressed in statutory terms often the price of passage, and no statute yet known pursues its stated purpose at all costs.

Governments > Legislation > Interpretation

Michael Fuller

question have ruled otherwise—and it is to resolve this conflict that we took the case. Compare 817 F.3d 131, 133-134, 137-138 (2016) (case below); *Davidson v. Capital One Bank (USA), N.A.*, 797 F.3d 1309, 1315-1316 (CA11 2015), with *McKinney v. Coldewey Properties, Inc.*, 548 F.3d 496, 501 (CA7 2008); *FTC v. Check Investors, Inc.*, 502 F.3d 159, 173-174 (CA3 2007).

Before attending to that job, though, we pause to note two related questions we do not attempt to answer today. First, petitioners suggest that Santander can qualify as a debt collector not only because it regularly [***6] seeks to collect for its own account debts that it has purchased, but also because it regularly acts as a third party collection agent for debts owed to others. Petitioners did not, however, raise the latter theory in their petition for certiorari and neither did we agree to review it. Second, the parties briefly allude to another statutory definition of the term "debt collector"—one that encompasses those engaged "in any business the principal purpose of which is the collection of any debts." §1692a(6). But the parties haven't much litigated that alternative definition and in granting certiorari we didn't agree to address it either.

With these preliminaries by the board, we can turn to the much narrowed question properly before us. In [***181] doing so, we begin, as we must, with a careful examination of the statutory text. And there we find it hard to disagree with the Fourth Circuit's interpretive handiwork. [HN1](#) [1] After all, the Act defines debt collectors to include those who regularly seek to collect debts "owed . . . another." And by its plain terms this language seems to focus our attention on third party collection agents working for a debt owner—not on a debt owner seeking to collect debts for itself. [***7] Neither does this language appear to suggest that we should care how a debt owner came to be a debt owner—whether the owner originated the debt or came by it only through a later purchase. All that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for "another." And given that, it would seem a debt purchaser [***1722] like Santander may indeed collect debts for its own account without triggering the statutory definition in dispute, just as the Fourth Circuit explained.

Petitioners reply that this seemingly straightforward reading overlooks an important question of tense. They observe that the word "owed" is the past participle of the verb "to owe." And this, they suggest, means the statute's definition of debt collector captures anyone who regularly seeks to collect debts previously "owed . . . another." So it is that, on petitioners' account, the statute excludes from its compass loan originators (for they never seek to collect debts previously

owed someone else) but embraces many debt purchasers like Santander (for in collecting purchased debts they necessarily seek to collect debts previously owed another). If Congress wanted to exempt [***8] all present debt owners from its debt collector definition, petitioners submit, it would have used the present participle "owing." That would have better sufficed to do the job—to make clear that you must collect debts currently "owing . . . another" before implicating the Act.

But this much doesn't follow even as a matter of good grammar, let alone ordinary meaning. Past participles like "owed" are routinely used as adjectives to describe the present state of a thing—so, for example, *burnt* toast is inedible, a *fallen* branch blocks the path, and (equally) a debt owed to a current owner may be collected by him or her. See P. Peters, *The Cambridge Guide to English Usage* 409 (2004) (explaining that the term "past participle" is a "misnomer" [], since" it "can occur in what is technically a present . . . tense"). Just imagine if you told a friend that you were seeking to "collect a debt owed to Steve." Doesn't it seem likely your friend would understand you as speaking about a debt currently owed to Steve, not a debt Steve used to own and that's now actually yours? In the end, even petitioners find themselves forced to admit that past participles can and regularly do work just this way. [***9] as adjectives to describe the present state of the nouns they modify. See Brief for Petitioners 28; see also B. Garner, *Modern English Usage* 666 (4th ed. 2016) (while "owing . . . is an old and established usage . . . the more logical course is simply to write *owed*").

Widening our view to take in the statutory phrase in which the word "owed" appears—"owed or due . . . another"—serves to underscore the point. Petitioners acknowledge that the word "due" describes a debt currently due at the time of collection and [***182] not a debt that was due only in some previous period. Brief for Petitioners 26-28. So to rule for them we would have to suppose Congress set two words cheek by jowl in the same phrase but meant them to speak to entirely different periods of time. All without leaving any clue. We would have to read the phrase not as referring to "debts that are owed or due another," but as describing "debts that were owed or are due another." And supposing such a surreptitious subphrasal shift in time seems to us a bit much. Neither are we alone in that assessment, for even petitioners acknowledge that theirs "may not be the most natural interpretation of the phrase standing in isolation." *Id.*, at 26-27.

Given [***10] that, you might wonder whether extending our gaze from the narrow statutory provision at issue to take in the larger statutory landscape might offer petitioners a better perspective. But it does not. Looking to other neighboring provisions in the Act, it quickly comes clear that Congress

Michael Fuller



The FDCPA **defines a debt collector** as:

The FDCPA defines a debt collector as:

Both B and C

any person who uses the mails in any business the principal purpose of which is the collection of any debts

any person who regularly collects debts owed or due or asserted to be owed or due another



Why did the US Supreme Court reason that Santander was **NOT** a debt collector?

Why did the US Supreme Court reason that Santander was NOT a debt collector?

All of the below

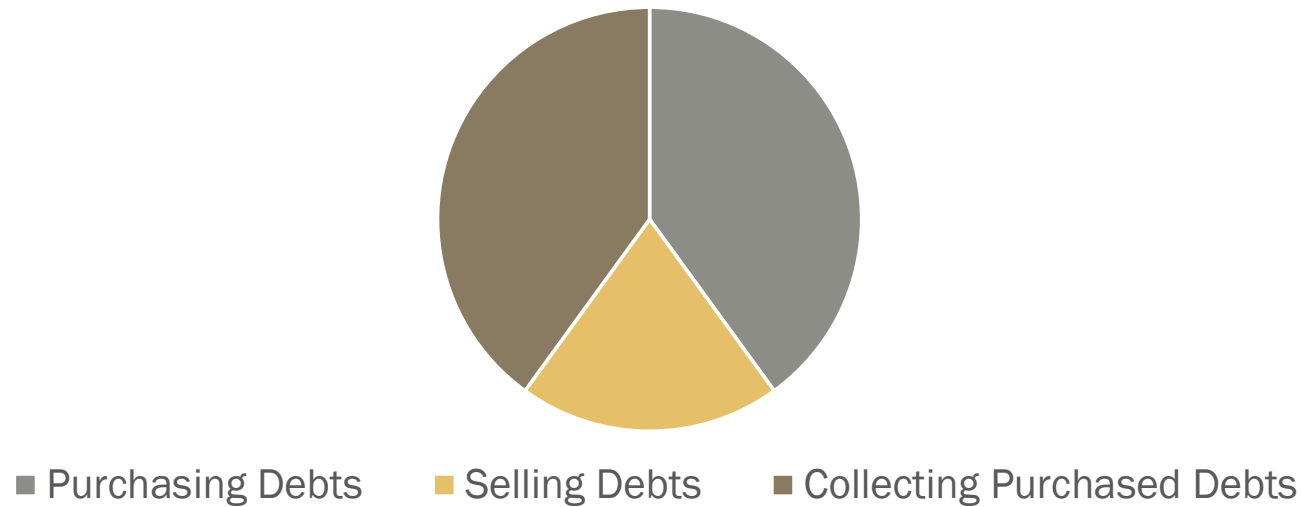
The FDCPA focuses on third party collection agents, not debt owners

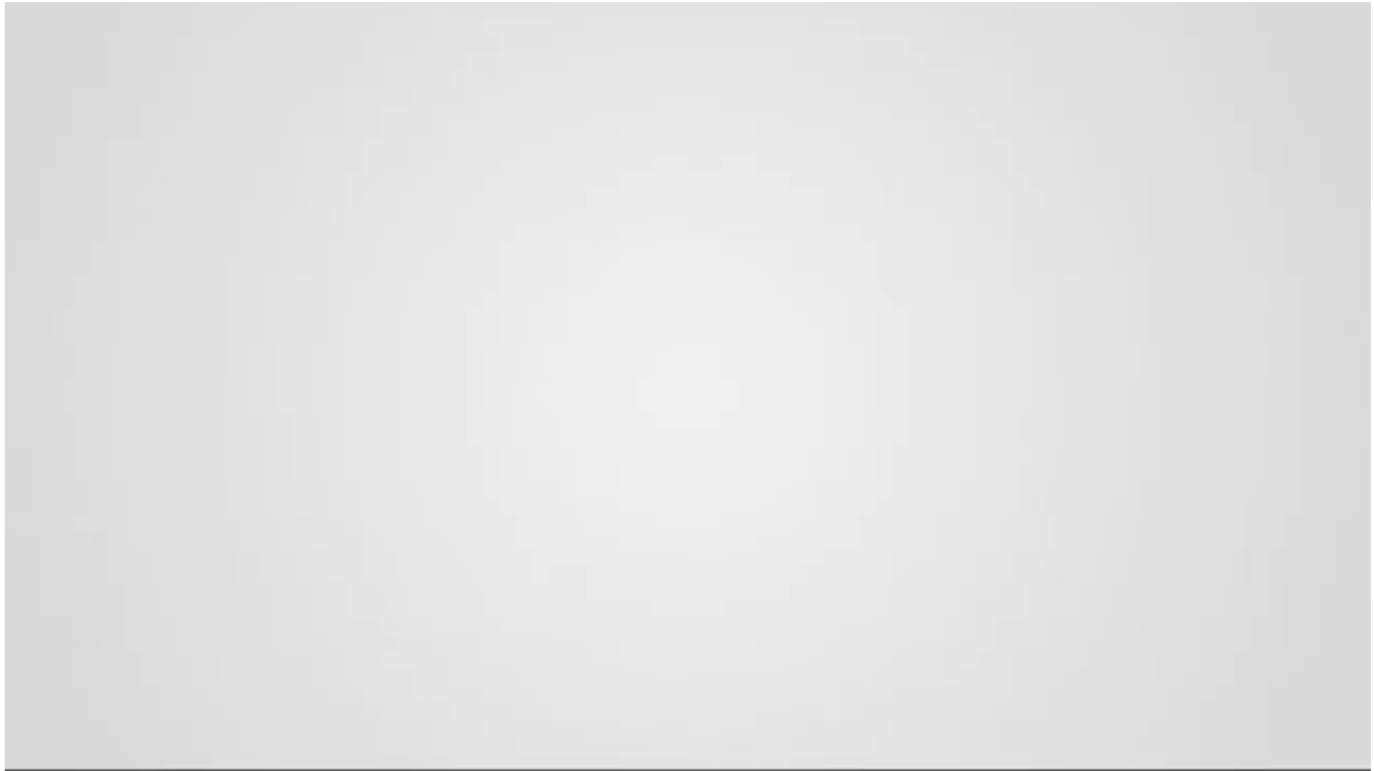
The FDCPA uses the term "owed" instead of "owing"

The FDCPA uses the term "due or asserted to be owed or due another"

Post-Henson Debt Collection Business Model

Purpose of Business





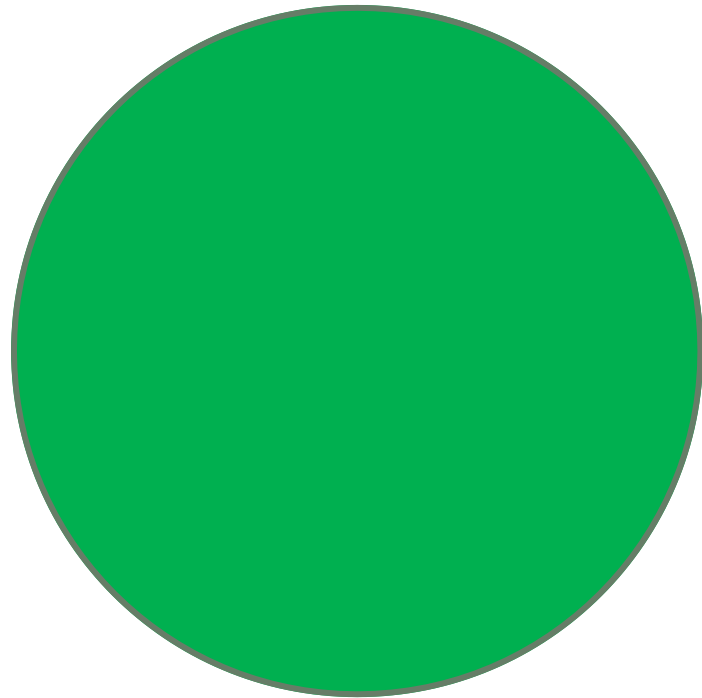
Week 10 – FDCPA

- 5:30 Today's agenda
 - Spokeo*
 - FDCPA elements
 - FDCPA charts
 - Henson v. Santander*
- 6:00 Break
 - Common FDCPA violations
 - Bankruptcy violations
 - Paul v Providence*
- 6:45 Guest Speaker Julie Engbloom
- 7:20 Next Week

Week 10 – FDCPA

- 5:30 Today's agenda
Spokeo
FDCPA elements
FDCPA charts
Henson v. Santander
- 6:00 **Break**
Common FDCPA violations
Bankruptcy violations
Paul v Providence
- 6:45 Guest Speaker Julie Engbloom
- 7:20 Next Week

Class Break
Over



Collection Communications

- No collection calls before **9am or after 8pm**
- No collection calls or letters to consumers represented **by an attorney**
- No collection calls or letters **at work** if prohibited by a consumer's employer
- No collection calls or letters to **third parties** except to verify location information
- No collection calls or letters after a consumer asks to be left alone **in writing**

15 U.S.C. § 1692c



False Representations

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MICHAEL FULLER,
a consumer residing in
Multnomah County,

Plaintiff,

v.

**COLLECTION SERVICE
BUREAU, INC.** aka **CSB SYSTEMS
OF ARIZONA** aka **COLLECTION
SERVICE BUREAU**, an Arizona
business corporation,

Case No. 3:13-cv-1999

**UNLAWFUL DEBT COLLECTION
COMPLAINT**

**15 USC § 1692 *et seq.*
28 USC § 2201(a)**

DEMAND FOR JURY TRIAL

Harassment

Case 3:14-cv-01048-AA Document 1 Filed 07/01/14 Page 1 of 5 Page ID#: 1

David Johnson, Oregon Bar No. 123553
Trial Attorney for Plaintiff
OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
djohnson@olsendaines.com
Office 503-362-9393

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MICHAEL FULLER,
a consumer residing in
Multnomah County,

Plaintiff,

v.

**PROGRESSIVE FINANCIAL
SERVICES, INC.**,
a foreign business corporation,

Defendant.

Case No. 3:14-cv-1048

**UNLAWFUL DEBT COLLECTION
COMPLAINT**

15 U.S.C. § 1692 *et seq.*

DEMAND FOR JURY TRIAL

1.

JURISDICTION AND THE PARTIES

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1331 because the Fair Debt Collection Practices Act (FDCPA) is a federal law.

COMPLAINT - Page 1

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204

Contacting Third Parties

David Johnson, Oregon Bar No. 123553
Lead Attorney for Plaintiff
OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
djohnson@olsendaines.com
Office 503-362-9393

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

MICHAEL FULLER,
a consumer residing in
Multnomah County,

Plaintiff,

v.

F.H. CANN & ASSOCIATES, INC.,
a foreign business corporation,

Defendant.

Case No. _____

UNLAWFUL DEBT COLLECTION COMPLAINT

15 U.S.C. § 1692 *et seq.*

DEMAND FOR JURY TRIAL

1.

JURISDICTION AND THE PARTIES

The United States District Court for the District of Oregon has jurisdiction of this action pursuant to 28 U.S.C. § 1331 because the Fair Debt Collection Practices Act (FDCPA) is a federal law.

COMPLAINT - Page 1

OlsenDaines, P.C.
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204

Validation of debts

In its initial communication (or within five days), a collector must send **written notice** of the amount of debt, the creditor name, and the right to request verification of debt.

If the consumer requests validation in writing within 30 days, **collections must stop** until the debt is verified.

15 U.S.C. § 1692g



Multiple debts

If a consumer owes multiple debts, a collector can't apply payments to disputed debts and **must apply payments as the consumer requests.**

15 U.S.C. § 1692h



Lawsuits by collectors

Foreclosures must be filed where the real property is located and collection lawsuits must be filed where the consumers **lives or signed** the contract.

15 U.S.C. § 1692i



Deceptive forms

Collectors can't give consumers forms to create the **false belief** that a third party is participating in the collection of any debt.

15 U.S.C. § 1692j



Week 10 – FDCPA

- 5:30 Today's agenda
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- 7:20 Next Week

The Automatic Stay

The automatic stay protects debtors from **all acts to collect debt** that arose before the commencement of a bankruptcy case.

- 11 U.S.C. § 362(a)



The Automatic Stay

Private Right of Action

- Any individual may bring a private right of action for any **willful** violation of the automatic stay for **actual damages, punitive damages, and attorney fees**.
11 U.S.C. § 362(k).
- Willful means a party **(1) had notice** of the stay and **(2) intended conduct** that violated the stay. *In re Pinkstaff*, 974 F.2d 113, 115 (9th Cir. 1992).



The Automatic Stay

Claim Elements

- A **notice of bankruptcy** constitutes notice of the automatic stay. *In re Ramirez*, 183 B.R. 583, 589 (9th Cir. BAP 1995).
- A **“good faith belief”** that the stay is not being violated is not relevant to whether a collection attempt is intentional or whether compensation **“must be awarded.”** *In re Campion*, 294 B.R. 313, 316 (9th Cir. BAP 2003).



Rivera v LVNV Funding LLC et al.

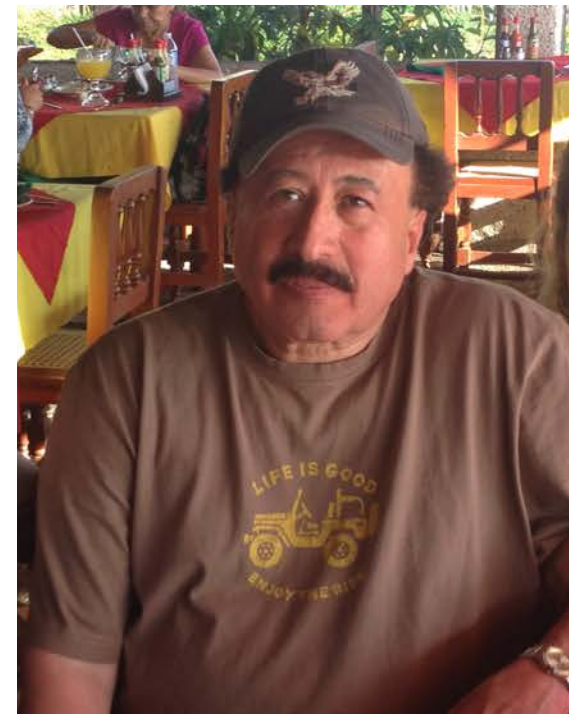
Jose Loreto Echeagaray Rivera,

Plaintiff,

v.

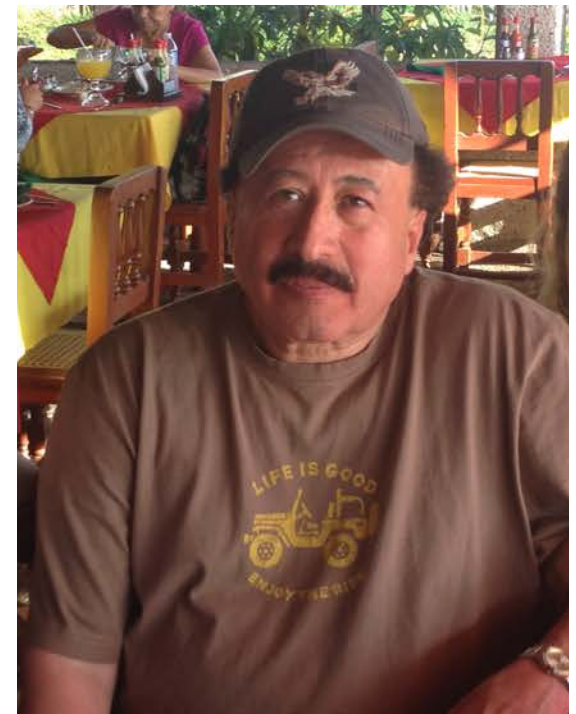
LVNV Funding LLC, Johnson Mark LLC, Onemain Financial, Inc., Accounts Receivable, Inc., Michael Borge, American Express Co., GC Services LP, FIA Card Services, NA, Bank of America Corp., First Source Advantage, LLC, FMA Alliance, LLC, Macy's Corporate Services, Inc., Department Stores National Bank, Capital Management Services, LP, CitiFinancial, Inc., LTD Financial Services LP, and United Recovery Systems,

Defendants.



Case Background

- Mexican immigrant
- Spoke broken English
- Used an ITIN to obtain credit in the 1990's
- Later assigned a different SSN in the 2000's
- aka Loreto Echeagaray aka Rivera J. Echeagaray
- Multiple calls a day to collect debt he didn't owe
- Credit ruined by false derogatory reporting
- Owed \$7,800 at 25% interest on a \$400 pickup
- Worked full time in a factory to support his family
- Contemplated suicide due to his financial nightmare
- Advised to file bankruptcy in November 2012



2012 Bankruptcy Filing

Case 12-38328-elp7 Doc 1 Filed 11/02/12

olsendaines.com

BI (Official Form 1)(12/11)

United States Bankruptcy Court District of Oregon		Voluntary Petition
Name of Debtor (if individual, enter Last, First, Middle): Echeagaray Rivera, Jose Loreto		Name of Joint Debtor (Spouse) (Last, First, Middle):
All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): AKA Loreto Echeagaray; AKA Rivera J. Echeagaray		All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names):
Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all): xxx-xx-4375		Last four digits of Soc. Sec. or Individual-Taxpayer I.D. (ITIN) No./Complete EIN (if more than one, state all):
Street Address of Debtor (No. and Street, City, and State): 16400 NE Las Brisas Ct. Apt. 13 Portland, OR		Street Address of Joint Debtor (No. and Street, City, and State):
ZIP Code 97230		ZIP Code
County of Residence or of the Principal Place of Business: Multnomah		County of Residence or of the Principal Place of Business:
Mailing Address of Debtor (if different from street address):		Mailing Address of Joint Debtor (if different from street address):
ZIP Code		ZIP Code
Location of Principal Assets of Business Debtor (if different from street address above):		
Type of Debtor (Form of Organization) (Check one box) <input checked="" type="checkbox"/> Individual (includes Joint Debtors) <i>See Exhibit D on page 2 of this form.</i> <input type="checkbox"/> Corporation (includes LLC and LLP) <input type="checkbox"/> Partnership <input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and state type of entity below.)	Nature of Business (Check one box) <input type="checkbox"/> Health Care Business <input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B) <input type="checkbox"/> Railroad <input type="checkbox"/> Stockbroker <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Clearing Bank <input type="checkbox"/> Other	Chapter of Bankruptcy Code Under Which the Petition is Filed (Check one box) <input checked="" type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding
Chapter 15 Debtors Country of debtor's center of main interests: Each country in which a foreign proceeding by, regarding, or against debtor is pending:	Tax-Exempt Entity (Check box, if applicable) <input type="checkbox"/> Debtor is a tax-exempt organization under Title 26 of the United States Code (the Internal Revenue Code).	Nature of Debts (Check one box) <input checked="" type="checkbox"/> Debts are primarily consumer debts, defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." <input type="checkbox"/> Debts are primarily business debts.

Harassment Continues...

MICHAEL FULLER

CASE 12-38328 EPT

IMPORTANT INFORMATION

Register with on-line account management! You can make payments, view your balance, set alerts and more! Learn more at www.onemainfinancial.com/myaccount.

The Servicemembers Civil Relief Act provides active duty military personnel and their dependents with a wide range of legal and financial protections. Please contact your branch or center for more information.

Past Due Loan Amount	\$ 489.65	Due Date	01/15/13	What's your balance, call us for details.	FOR STATEMENT INQUIRIES:
Loan Payment	\$ 249.57	Current Balance*	\$ 7,503.47		OneMain Financial
Total Payment Due	\$ 766.22	Prior Balance	\$ 7,503.47		805 MUNN ROAD
					P.O. BOX 70918
					CHARLOTTE, NC 28272-0918
					(877) 241-6335

YOUR ACCOUNT ACTIVITY DURING THIS BILLING PERIOD					
DESCRIPTION	AS OF 01/05/13	AMOUNT	APPLIED TO LOAN CHARGE/FEES	APPLIED TO BALANCE	APPLIED TO INTEREST
NO ACTIVITY					

OneMainFinancial.com

REFERENCE YOUR ACCOUNT NUMBER:

67090912-0159616

Credit Bureau Dispute: OneMain Financial, Credit Bureau Corrections Dept., 6001 Colwell Blvd., Irving, TX 75039; Bankruptcy Final Estate: OneMain Financial, Bankruptcy Dept., P.O. Box 140089, Irving, TX 75014-0089; Bankruptcy Personal: OneMain Financial, Bankruptcy Dept., P.O. Box 140485, Irving, TX 75014-0485.

If you have an inquiry involving either quality of service, mis treatment, or inappropriate financial products, please call toll free 1-888-850-2437.

In Florida: OneMain Financial, Inc. (DB) - NMLS No. 997343.

OVERPAYMENT: The amount of any overpayment will be applied to reduce the outstanding principal balance. However, interest will continue to accrue on the new outstanding balance. A payment is required each month under the terms of your loan agreement.

ONEMAIN FINANCIAL
P.O. BOX 70918
CHARLOTTE, NC 28272-0918

Address Service Requested



Please mail this coupon with your payment.

Mail Payment To: OneMain Financial
P.O. Box 183172
Columbus, OH 43218-3172

DEBTORS' EXHIBIT 1 - Page 1 of 1

YOUR PAYMENT COUPON

Total Payment Due	\$766.22
Payment Due Date	01/15/13
Late Charges Due On 01/05/13	\$5.00
Total Payment Amount Enclosed	\$

Please check here to indicate mailing address / phone number changes and enter them on back of coupon.

JOSE ECHEAGARAY
18400 NE LAS BRISAS 13
PORTLAND, OR 97230-5080



ATTORNEYS AT LAW
Payment Processing Center
P.O. Box 7811
Sandy, Utah 84091-7811
Toll Free: 866.356.3838
Fax: 877-288-5701

Offices Located in:
Draper, Utah
Newberg, Oregon
Meridian, Idaho
West Lake Village, California

December 7, 2012

MICHAEL R FULLER

9415 SE STARK ST
STE 207
PORTLAND, OR 97216

CURRENT BALANCE

RE: LYNV Funding LLC vs JOSE L ECHEAGARAY RIVERA

REFERENCE NUMBER: 5121075030880962

JM NUMBER: 484331

Dear MICHAEL R FULLER:

The current balance as stated above consists of the following:

Judgment Amount:	\$4,214.18
Post Judgment Costs:	\$28.60
Post Judgment Interest:	\$104.41
Post Judgment Payments:	\$1,244.19
Current Balance	\$3,103.00

As of the date of this letter, your client owes the current balance shown above. Because of accruing interest, if any, the account balance may vary from that shown above. For an updated current balance, please contact us. Online payments can be made at payjm.com.

Please call Johnson Mark, LLC at 888-599-6333 ext. 5700 to discuss this matter further or to make payment and/or settlement arrangements.

Sincerely,

JOHNSON MARK LLC

This communication is from a debt collector. Federal and State law prohibit certain methods of debt collection and require that we treat you fairly. Please view our website



www.UnderdogLawyer.com

And Continues...

Statement Date: 05-09-13
Creditor: FIA CARD SERVICES, N.A.
Our Reference #: 51757494
Original Account #: XXXXXXXXXXXX3931
Current Account #: XXXXXXXXXXXX3931
Account Balance: \$5,468.99

MICHAEL FOLK
CASE NUMBER 12-38328 EIP 7

firstsource
Firstsource Advantage, LLC
235 Bryant Woods South, Amherst, NY 14228
1-866-697-4095

Dear Rivera J Echeagaray:

This account has been placed with our office for collection in order to resolve your delinquent debt. Please enclose your payment in the envelope provided and make your check or money order payable to Firstsource Advantage, LLC.

Should you wish to speak to a representative concerning your account you may contact this office toll free at 1-866-697-4095. Please refer to the account number indicated above.

This is a communication from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Sincerely,

Firstsource Advantage, LLC
A Professional Debt Recovery Agency

This account is issued and administered by FIA Card Services, N.A.

Customer Service and Payment Information
Telephone: Toll free: 1-866-697-4095 TTY / TDD Users: 1-800-962-1220
Office Hours (Eastern Time): Monday - Friday 8am-9pm, Saturday 8am-1pm.
Send correspondence to: Firstsource Advantage, LLC, 205 Bryant Woods South, Amherst, NY 14228

Do not send correspondence to this address.



CZFRST01
PO Box 1022
Whom MI 48393-1022
CHANGE SERVICE REQUESTED

05-09-13 51757494

BOA89/N1BOA 50591176
RIVERA J ECHEAGARAY
16400 NE LAS BRISAS CT APT 13
PORTLAND OR 97230-5080

Account #: 51757494
Balance Due: \$5,468.99

Amount Paid:

Make Payment To:
FIRSTSOURCE ADVANTAGE, LLC
PO BOX 628
BUFFALO NY 14240-0628

IMPORTANT: To receive proper credit, be sure to enclose this portion with your payment

www.UnderdogLawyer.com

August 12, 2013

MICHAEL FOLK
CASE # 12-38328 EIP 7

ACCOUNT INFORMATION
Creditor: FIA Card Services, N.A.
Account #: XXXXXXXXXXXX3931
Original Account #: XXXXXXXXXXXX1584
File #: 30006519
Balance Due: \$5,468.99 as of August 12, 2013

FMA Alliance, Ltd.
12339 Cutten Road, Houston TX 77066
877-254-9751
A different kind of collection experience!

FMA knows - if you had the money to pay off the balance, you would. We understand repaying your debt isn't easy in today's economy. FMA is here to help create a win-win solution to resolve this debt. Experience the FMA difference!



Simple! Fast! Secure! Available 24 hours/365 days!
Pay on-line at www.FMAPayOnline.com

No conversations and no interaction with a live person when online.

Plus our professionally trained staff is here to assist you on the phone.
Our hours of operation are Monday - Thursday 8 am - 9 pm, Friday 8 am - 5 pm
and Saturday 8 am - 12 pm Central time.



Scan here to access
www.FMAPayOnline.com
Mobile data rates may apply.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt, or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

Notice About Electronic Check Conversion: When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as they same day we receive your payment and you will not receive your check back from your financial institution.

This account is issued and administered by FIA Card Services, N.A.
This has been sent to you by a debt collector and is an attempt to collect a debt; any information obtained will be used for that purpose.

P.O. Box 69
Nashport OH 43830-0069

FORWARD SERVICE REQUESTED

Make mailed payments payable to FMA Alliance, Ltd.

Amount Paid: \$

Account #: XXXXXXXXXXXX3931
Original Account #: XXXXXXXXXXXX1584
Creditor: FIA Card Services, N.A.

Please send all payments or correspondence to:

FMA Alliance, Ltd.
PO Box 2409
Houston, TX 77252-2409

PERSONAL & CONFIDENTIAL
RIVERA J ECHEAGARAY
16400 NE LAS BRISAS CT APT 13
PORTLAND OR 97230-5080

1117 30006519 26331750

And Continues...

MICHAEL FOLLEN
CASE NUMBER 12-38328 EIP 7

Bank of America

RIVERA J ECHEAGARAY
16400 NE LAS BRISAS CT APT 13
PORTLAND, OR 97230-5080

April 17, 2013

Regarding account number ending in: XXXXXXXXXXXX1584

Dear Rivera J Echeagaray:

This is our final letter to you regarding the above referenced account before it will be charged off. If your account is charged off, you will still be responsible for this debt and we may continue to pursue collection efforts.

Please contact us toll-free at 1.800.242.2379 and schedule a payment before 11 p.m. Eastern on April 29, 2013 to prevent this from happening. Additionally, please contact us before this date if you plan to make your payment at a banking center or online at bankofamerica.com.

Our knowledgeable associates are ready to assist you Monday through Thursday from 8 a.m. to midnight, Friday from 8 a.m. to 11 p.m., Saturday from 8 a.m. to 7 p.m. and Sunday from noon to 9 p.m. Eastern. Thank you for your prompt attention to this matter.

Sincerely,

Bank of America

This is an attempt to collect a debt and any information obtained will be used for that purpose. This account is issued and administered by FIA Card Services, N.A. Correspondence may be mailed to Bank of America, PO Box 982236, El Paso, TX 79998-2236. Payments may be mailed to Bank of America, PO Box 15019, Wilmington, DE 19850-5019.

180FIN
975

00-61-0700B 09-2002

Recycled Paper

DEPT. HOVS 066
PO BOX 3044
LIVONIA MI 48151-3044
RETURN SERVICE REQUESTED



0502013007000678 0868 01
P2FM3V00518469 - 185573027 136978
JOSE ECHEAGARAY RIVERA
16400 NE LAS BRISAS CT APT 13
PORTLAND OR 97230-5080

GC Services Limited Partnership
6330 Gullfion, Houston, TX 77081

Please call: (800) 926-3136
Between 8:00 AM and 9:00 PM.

USE ENCLOSED ENVELOPE AND SEND PAYMENT TO:

PO BOX 46960
SAINT LOUIS MO 63146

YOU OWE: AMERICAN EXPRESS
CLIENT ACCOUNT NUMBER: ENDING 31004

FILE NUMBER: 1824749
BALANCE DUE: \$6,248.81

Please detach and return upper portion of statement with payment

January 8, 2013

File Number: 1824749
Client Account Number: ENDING 31004

Dear Jose Echeagaray Rivera,

Your account with AMERICAN EXPRESS, in the amount of \$6,248.81, has been referred to us. By this time, you must realize that you are delinquent.

Send us your payment in full in the enclosed envelope. Please include the top portion of this letter to assure proper credit of your payment.

Remit your balance in full or phone (800) 926-3136.

Sincerely,

P. CORBETT
Account Representative

IF YOU HAVE CONCERNS REGARDING THE HANDLING OF YOUR ACCOUNT BY GC SERVICES, PLEASE CONTACT E. P. BERNHAGEN, GENERAL MANAGER, AT 800-926-3136.

NOTICE: SEE REVERSE SIDE FOR IMPORTANT CONSUMER INFORMATION

GC Services Limited Partnership - Collection Agency Division - 6330 Gullfion, Houston, TX 77081

0868-01 868-01A 0502013007000678 4955764

www.UnderdogLawyer.com

www.UnderdogLawyer.com

PART I: DEBTOR'S PROPERTY GENERALLY
(ALL GARNISHEES MUST FILL OUT THIS PORTION OF THE RESPONSE)

Place a check in front of all the following statements that apply. You may need to check more than one statement.

☐ I have discovered that a voluntary or involuntary bankruptcy petition has been filed by or on behalf of the Debtor after the date shown on the face of the writ as the date on which the judgment was entered against the debtor or after the debt otherwise became subject to garnishment. (You need not complete any other part of this response, but you must sign the response and deliver it in the manner specified in Step 2 of the Instructions to Garnishee form)

☐ I do not employ the Debtor, I do not have in my possession, control or custody any personal property of the Debtor, and I do not own any debts or other obligations to the Debtor.

☐ I employ the Debtor. (You must complete Part II of this response)

(FINANCIAL INSTITUTIONS ONLY) We hold one or more accounts for the Debtor, of which \$_____ is not subject to garnishment under Chapter 430, Oregon Laws 2009. We are forwarding all other garnishable amounts, or enough of it to satisfy the garnishment, to the Garnisher.

☐ I have in my possession control or custody money that belongs to the Debtor (other than wages), or I owe a debt or other obligation to the Debtor (other than wages) that is due as of the time of this response. I am forwarding this money, or enough of it to satisfy the garnishment, to the Garnisher.

☐ I owe a debt or other obligation to the Debtor (other than wages) that is not due as of the time of this response but will become due within 45 days. I will forward the money, or enough of it to satisfy the garnishment, to the Garnisher when the debt or other obligation becomes due.

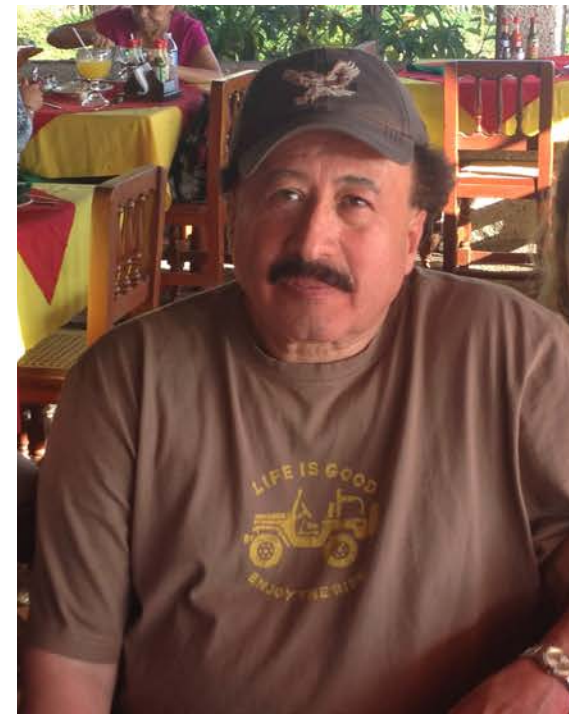
☐ I owe the following debt or other obligation to the Debtor (other than wages) that will not become due within 45 days of the time of this response. I will not make any payments on the debt or obligation until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form)

☐ I have in my possession, control or custody the following personal property (other than money) that belongs to the Debtor. I will hold all of the property for the Garnisher until I receive instructions from the Sheriff or until 30 days have passed from the date on which I deliver this response. (See Instructions to Garnishee form)

A1 MCO-DS2

2013 Bankruptcy Litigation

- Fourteen federal court lawsuits
- Five motions for contempt
- 8 subpoenas to third party collection agencies
- 5,000+ pages of document production requests
- 500+ requests for admission
- 25+ motions, briefs, etc.
- 50+ hearings, conferences, etc.



2013 Hearing Transcript

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re:)
) Case No. 12-38328-elp7
)
JOSE LORETO ECHEAGARAY RIVERA,)
) PORTLAND, OREGON
) OCTOBER 24, 2013
Debtor.) 11:12 a.m. TO 11:32 a.m.
)
) MOTION FOR CONTEMPT AGAINST
) FIA CARD SERVICES, N.A. AND
) BANK OF AMERICA CORP. AND
) SUPPORTING DOCUMENT(S).
) FILED BY DEBTOR JOSE LORETO
) ECHEAGARAY RIVERA (FULLER,
) MICHAEL) (44)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE ELIZABETH L. PERRIS
United States Bankruptcy Judge

APPEARANCES:

For the Debtor: Michael Fuller
OLSEN DAINES
9415 SE Stark Street, Suite 207
Portland, OR 97216

For FIA Card Services, N.A.
and Bank of America
Corporation: Jennifer P. Knox
REED SMITH LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
-and-
Bethany L. Coleman-Fire
DAVIS WRIGHT TREMAINE, LLP
1300 SW Fifth Avenue, Suite 2400
Portland, OR 97201-5610

5 send a message to you that this is not about running up the
6 bills for the Debtor's lawyer. And if you think you're going
7 to wear out Mr. Fuller, I'm sure Ms. Coleman-Fire has told you,
8 you're not going to wear out Mr. Fuller. You're just going to
9 increase what he's ultimately going to ask for for legal fees.
10 I'm not saying I'm enthusiastic about his tactics
11 sometimes, but he doesn't wear out; I can say that about him.
12 MS. KNOX: Thank you, Your Honor. And I think that's
13 an excellent point and one that we've been thinking about
14 ourselves. I think that Ms. Coleman-Fire has telegraphed to us
15 Mr. Fuller's perseverance. And in light of that we would like

The Automatic Stay

The stay imposes “an affirmative duty” on creditors to discontinue all collections upon learning about bankruptcy. *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1216 (9th Cir. 2002).



2013 Results

- Two orders of contempt + title to car
- Sixteen confidential settlements
- Over \$200,000 settlement proceeds

Case 12-38328-elp7 Doc 36 Filed 03/13/13
DISTRICT OF OREGON
FILED
March 13, 2013
Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.

Elizabeth Perros
ELIZABETH PERROS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Jose Loreto Echeagaray Rivera,
Debtor.

Case No. 12-38328-elp7
ORDER HOLDING
ACCOUNTS RECEIVABLE, INC.
IN CONTEMPT OF COURT

Case 12-03325-elp Doc 15 Filed 02/01/13
DISTRICT OF OREGON
FILED
February 01, 2013
Clerk, U.S. Bankruptcy Court

Below is an Order of the Court.

Elizabeth Perros
ELIZABETH PERROS
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re
Jose Loreto Echeagaray Rivera,
Debtor.

Case No. 12-38328-elp7
Adv. Proc. No. 12-03325-elp
ORDER HOLDING JOHNSON MARK
LLC IN CONTEMPT OF COURT

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December 2015 Collection Letter

2016-01-04 12:42

MFP06654PLT01

5036670418 >>

FAXTRAN61 P 1/1

698 1/2 SOUTH OGDEN STREET
BUFFALO, NY 14206-2317

CASE NUMBER 12.38328 E1P7



CAPITAL MANAGEMENT SERVICES, LP

698 1/2 South Ogden Street Buffalo, NY 14206-2317

Office Hours: M-F 8 am - 9 pm ET

Sat 8 am - 1 pm ET

Toll Free: 1-877-211-9175, Fax: 716-512-6046

Original Creditor: (DSNB) Department Store National Bank

Current Creditor: (DSNB) Department Store National Bank

Description: Macy's

Account #: XXXXXXXXXXXX4850

AMOUNT ENCLOSED:

Amount of Debt: \$1708.60

Reference# 099996464



T114 P3*****AUTO**3-DIGIT 972

Rivera Echeagaray
16400 NE LAS BRISAS CT APT 13
PORTLAND, OR 97230-5080

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT TO ADDRESS LISTED BELOW

Dear Rivera Echeagaray:

December 04, 2015

This company has been engaged by Macy's to resolve your delinquent debt of \$1708.60.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different than the current creditor.

You may contact Capital Management Services, LP. at 698 1/2 South Ogden Street, Buffalo, NY 14206-2317 or call 1-877-211-9175 Mon. through Fri. 8 am to 9 pm ET, Sat. 8 am to 1 pm ET. Please submit your payment and make your check or money order payable to DSNB to the address listed below. Payments and correspondence should be mailed to: Capital Management Services, LP, P.O. Box 120, Buffalo, NY 14220-0120. Overnight deliveries should be addressed to: Capital Management Services, LP., 698 1/2 South Ogden Street, Buffalo, NY 14206-2317. You may also make payments online at: www.cms-trans.com.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

www.UnderdogLawyer.com

Motion for Contempt
against Macy's,
CitiFinancial, and
DSNB
+
FDCPA class action
against Capital
Management

www.UnderdogLawyer.com

Michael Fuller, Oregon Bar No. 09357
Special Counsel for Debtor
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In re

Jose Loreto Echeagaray Rivera
aka Loreto Echeagaray
aka Rivera J. Echeagaray

Debtor.

Case No. 12-38328-tmb7

**DEBTOR'S MOTION FOR ORDER OF
CONTEMPT AND JUDGMENT
AGAINST MACY'S CORPORATE
SERVICES, INC.**

Discharge Injunction Violation

Oral Argument Requested

Evidentiary Hearing Requested

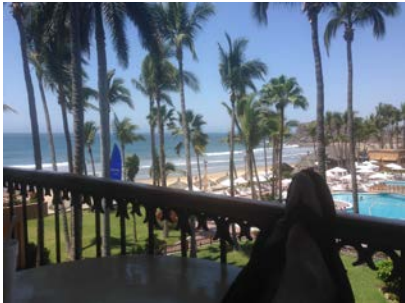
MOTION

Pursuant to 11 U.S.C. §§ 105 and 524 and this Court's inherent power, debtor moves for an order of contempt and judgment against Macy's Corporate Services, Inc. ("creditor") based on clear and convincing evidence that after receiving notice of the discharge order, creditor continued to demand payment of its pre-petition debt from debtor, and repeatedly engaged various collectors to harass debtor with demand letters. [Ex. 1]

**DEBTOR'S MOTION FOR ORDER OF CONTEMPT AND JUDGMENT AGAINST
MACY'S CORPORATE SERVICES, INC. - Page 1 of 8**

Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., 31st Fl.
Portland, Oregon 97204

Case 12-38328-tmb7 Doc 68 Filed 01/18/16



Michael Fuller <michael@underdoglawyer.com>

FW: Jose Loreto Echeagaray Rivera

1 message

White, Katherine M <katherine.m.white@citi.com>
To: "michael@underdoglawyer.com" <michael@underdoglawyer.com>

Tue, Feb 16, 2016 at 5:17 AM

2/16/16 – confidential settlement communications

Mr. Fuller – I have not yet been able to fully connect with Capital Management. In the interests of resolving this before I have to retain Kathy Salyer, I think I can get \$25,000 for a global settlement if the attached proposed settlement agreement will work.

Please let me know. Thanks, Katherine

Katherine M. White
Assistant General Counsel
Consumer Litigation
Citibank, N.A.
14000 Citi Cards Way, C1-B236
Jacksonville, FL 32258
904-954-2739 - Ph
904-954-8716 – Fax
248-808-4110 - Mobile
katherine.m.white@citi.com

From: White, Katherine M [LEGL]
Sent: Monday, February 15, 2016 12:14 PM
To: 'michael@underdoglawyer.com'
Subject: Jose Loreto Echeagaray

2/15/16

Mr. Fuller – I just left you a v/m to discuss the above matter and the 2/23/16 show cause hearing involving Macy's. Citibank's subsidiary issues Macy's credit cards. Please call so that we can discuss this matter. Thank

The Discharge Order

The discharge order protects debtors from **all acts to collect debt as a personal liability** that arose before the commencement of a bankruptcy case.

- 11 U.S.C. § 524(a)



The Discharge Order

Motion for Contempt

- Debtors must enforce discharge orders by filing **motions for contempt**. *Walls v. Wells Fargo*, 276 F.3d 502, 506-07 (9th Cir. 2002).
- Aggrieved debtors are entitled to **actual damages, attorney fees, and mild sanctions** under § 524. *In re Marino*, 2017 Bankr. LEXIS 4400 (9th Cir. BAP 2017).



The Discharge Order

Contempt Elements

- Contempt requires proof that a party **(1) had knowledge** of a bankruptcy court order and **(2) intended conduct** that violated the order. *In re ZiLOG, Inc.*, 450 F.3d 996, 1007 (9th Cir. 2006).
- Contempt must be proved with **clear and convincing evidence**. *In re Bennett*, 298 F.3d 1059, 1069 (9th Cir. 2002).





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Week 10 – FDCPA

- 5:30 Today's agenda
 - Spokeo*
 - FDCPA elements
 - FDCPA charts
 - Henson v. Santander*
- 6:00 Break
 - Common FDCPA violations
 - Bankruptcy violations**
 - Paul v Providence*
- 6:45 Guest Speaker Julie Engbloom
- 7:20 Next Week

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 - Bankruptcy violations
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- 7:20 Next Week

▲ Caution
As of: March 10, 2018 9:51 PM Z

Paul v. Providence Health System-Oregon

Supreme Court of Oregon

September 21, 2011, Argued and Submitted; February 24, 2012, Filed
SC S059131

Reporter

351 Ore. 587 *; 273 P.3d 106 **; 2012 Ore. LEXIS 108 ***; 2012 WL 604183

LAURIE PAUL, Plaintiff, and RUSSELL GIBSON and WILLIAM WEILLER, DDS, individually and on behalf of all similarly-situated individuals, Petitioners on Review, v. PROVIDENCE HEALTH SYSTEM-OREGON, an Oregon corporation, Respondent on Review.

Prior History: [***1] CC 060101059; CA A137930. On review from the Court of Appeals. *

Paul v. Providence Health System-Oregon, 237 Ore. App. 584, 240 P.3d 1110, 2010 Ore. App. LEXIS 1190 (2010)

Disposition: The decision of the Court of Appeals and the judgment of the circuit court are affirmed.

Core Terms

plaintiffs', monitoring, damages, emotional distress, identity theft, patient, theft, confidential, personal information, emotional distress damages, economic damages, expenses, cases, statutes, stolen, negligence claim, services, future harm, increased risk, economic loss, distress, records, disks, tapes, third party, medical records, parties, special relationship, defendant's conduct, healthcare provider

Case Summary

Procedural Posture

Plaintiff patients sought review of an order from the Oregon Court of Appeals, which upheld the dismissal of their action against defendant nonprofit health corporation for negligence and violation of the Oregon Unlawful Trade Practices Act

* Appeal from Multnomah County Circuit Court.

Marilyn E. Litzberger, Judge.

237 Ore. App. 584, 240 P.3d 1110 (2010).

Michael Fuller

(UTPA), Or. Rev. Stat. § 646.638(1) (2005).

Overview

The patients brought a suit against the corporation, claiming economic and noneconomic damages for financial injury and emotional distress that they allegedly suffered when, through the corporation's alleged negligence, computer disks and tapes containing personal information were stolen from the car of one of the corporation's employees. The court of appeals upheld the determination of the trial court that the patients failed to state claims for negligence or for violation of UTPA. On review, the court found that the patients failed to allege actual, present injury caused by the corporation's conduct. The cost of credit monitoring that resulted, not from any "present economic harm" to the patients, but from the risk of possible future harm, was insufficient to state a negligence claim. The patients did not allege actual identity theft or financial harm, other than credit monitoring and similar mitigation costs. They did not offer a cogent basis for overruling Oregon's well-established negligence requirements, which required the allegation of present injury. There was no indication that the UTPA was intended to protect against such speculative losses as the risk of identity theft.

Outcome

The judgment of the court of appeals was affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > General Overview

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

[HN1](#) Appeals, Standards of Review

351 Ore. 587, *587; 273 P.3d 106, **106; 2012 Ore. LEXIS 108, ***1

Page 2 of 10

When reviewing a trial court order granting a motion to dismiss, an appellate court accepts as true all well-pleaded facts in the complaint.

law of negligence imposes on persons at large.

Torts > Negligence > Elements

Torts > ... > Compensatory Damages > Types of Losses > Economic Losses

[HN6](#) Negligence, Elements

The threat of future harm, by itself, is insufficient as an allegation of damage in the context of a negligence claim.

[HN3](#) Types of Losses, Economic Losses

To recover damages for purely economic harm, liability must be predicated on some duty of the negligent actor to the injured party beyond the common law duty to exercise reasonable care to prevent foreseeable harm.

Torts > Negligence > Elements

[HN7](#) Negligence, Elements

The fact that a defendant's negligence poses a threat of future physical harm is not sufficient, standing alone, to constitute an actionable injury.

Torts > ... > Pain & Suffering > Emotional Distress > General Overview

[HN3](#) Pain & Suffering, Emotional Distress

A plaintiff may recover damages for emotional distress, in the absence of physical injury, where the defendant's conduct infringed on some legally protected interest apart from causing the claimed distress, even when that conduct was only negligent.

Torts > Negligence > Elements

[HN8](#) Negligence, Elements

Proof of damage is an essential part of a plaintiff's negligence case. Nominal damages, to vindicate a technical right, cannot be recovered in a negligence action, where no actual loss has occurred.

Torts > Negligence > Elements

[HN4](#) Negligence, Elements

Not all negligently inflicted harms give rise to a negligence claim. Rather, to recover in negligence, a plaintiff must suffer harm to an interest of a kind that the law protects against negligent invasion.

Torts > ... > Compensatory Damages > Types of Losses > Economic Losses

Torts > Negligence > Elements

[HN9](#) Types of Losses, Economic Losses

If there is no relationship between parties, or other source of a duty on the part of a defendant to protect a plaintiff against economic loss, the plaintiff cannot recover economic losses caused by the defendant's negligence. But even if such a duty is alleged, Lowe indicates that the cost of monitoring to protect against an increased risk of harm, in the absence of present injury, is not recoverable in a negligence action.

Torts > ... > Compensatory Damages > Types of Losses > Economic Losses

[HN5](#) Types of Losses, Economic Losses

Under the economic loss doctrine, one ordinarily is not liable for negligently causing a stranger's purely economic loss without injuring his person or property. Damages for purely economic losses, however, are available when a defendant has a duty to guard against the economic loss that occurred. A duty to protect against economic loss can arise from a defendant's particular status or relationships, or from legislation, beyond the generalized standards that the common

Torts > ... > Compensatory Damages > Types of Losses > Economic Losses

Torts > Negligence > Elements

Michael Fuller

Paul v Providence

Factual Background

- Providence Health was sued after 365,000 **patients' data was stolen** from an employee's car.
- Plaintiffs brought class-wide **negligence** and **UTPA** claims.
- The patient data was **never used or viewed** by the thief or any other person.





In *Paul v Providence*, **what financial injury** did plaintiffs allege?

In Paul v Providence, what financial injury did plaintiffs allege?

All of the below

credit monitoring and fraud
alert costs

costs of notifying gov't
agencies regarding the theft

possible future costs
related to identity theft



In *Paul v Providence*,
why couldn't plaintiffs recover
economic loss damages?

In Paul v Providence, why couldn't plaintiffs recover economic loss damages?

All of the below

plaintiffs did not allege injury to person or property

plaintiffs did not allege actual, present injury

plaintiffs cannot recover damages for the risks of future economic harm



In *Paul v Providence*,
why did plaintiffs' UTPA claim fail?

In Paul v Providence, why did plaintiffs' UTPA claim fail?

defendant did not make any
false representations

defendant's conduct was
not willful

ascertainable loss must be
based on present harm

none of the above

PORTLAND NEWS

Man sues Verizon when his intimate photos show up on stranger's phone

Updated Feb 14, 9:18 PM; Posted Feb 14, 7:59 PM



Comment    

By [Everton Bailey Jr.](#), ebailey@oregonian.com
The Oregonian/OregonLive

Michael Fuller, OSB No. 09357
Olsen Daines PC
US Bancorp Tower
111 SW 5th Ave., Suite 3150
Portland, Oregon 97204
michael@underdoglawyer.com
Direct 503-201-4570

Lead Trial Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JEFF SMITH,

Plaintiff,

v.

**RURAL CELLULAR
CORPORATION dba
VERIZON WIRELESS,**

Defendant.

Case No. 3:18-cv-291

COMPLAINT

Unlawful Trade Practices Act
Negligent Data Breach

Demand for Jury Trial

1.

JURISDICTION AND THE PARTIES

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy exceeds \$75,000.

COMPLAINT – Page 1 of 7

2.

Plaintiff Jeff Smith is an individual living in Clackamas County, Oregon and a "person" as defined by the Oregon Unlawful Trade Practices Act (UTPA) at ORS 646.605(4).

3.

Defendant Rural Cellular Corporation dba Verizon Wireless (Verizon) is a Minnesota corporation and a "person" as defined by the UTPA at ORS 646.605(4).

4.

This complaint's allegations are based on personal knowledge as to plaintiff's conduct and made on information and belief as to the acts of others.

5.

FACTUAL ALLEGATIONS

In the regular course of its business, Verizon advertised and sold its wireless devices and services to plaintiff for personal, family use. Verizon advertised that plaintiff could use its devices and services to store personal photos that he could "cherish for a lifetime." Verizon certified that its products and services were "protected" on its "secure servers" and advertised that plaintiff could control access to his photos with a personal passcode.

COMPLAINT – Page 2 of 7

6.

On February 8, 2018, plaintiff discovered for the first time that Verizon's advertisements about the security quality of its devices and services was false. Despite assurances from Verizon that his personal photos would be protected on its secure servers and devices, Verizon negligently breached plaintiff's privacy by exposing his personal photos to at least one other customer without his permission. Among the personal information stored on plaintiff's device that Verizon negligently exposed was private photos of plaintiff's family, including photos of his child and infant nephew. Also exposed were intimate photos of plaintiff's fiancé, including photos of plaintiff's fiancé topless, and photos of plaintiff's fiancé's vagina.

7.

The Verizon customer who was provided access to plaintiff's personal photos was ultimately able to identify plaintiff, and called plaintiff to let him know about Verizon's data breach.

8.

Upon learning of the data breach, plaintiff immediately went to the Verizon branch office in Molalla, Oregon. Plaintiff had hoped to resolve the issue outside of court but he was told by Verizon's agent that nothing could be done unless plaintiff hired a "big shot lawyer" to try to take on Verizon.

COMPLAINT – Page 3 of 7

9.

CAUSES OF ACTION

Claim One – Violation of the UTPA

Plaintiff would have never paid for Verizon's wireless devices and services had Verizon not made false representations to plaintiff about the security characteristics and qualities of its wireless devices and services. Verizon's behavior as alleged in this complaint willfully and maliciously violated the UTPA, ORS 646.608(1)(b), (e), and (g), causing plaintiff the ascertainable loss of his purchase price. Under ORS 646.638, plaintiff requests actual damages or statutory damages, punitive damages, and reimbursed fees and costs from Verizon.

COMPLAINT – Page 4 of 7

9.

CAUSES OF ACTION

Claim One – Violation of the UTPA

Plaintiff would have never paid for Verizon's wireless devices and services had Verizon not made false representations to plaintiff about the security characteristics and qualities of its wireless devices and services. Verizon's behavior as alleged in this complaint willfully and maliciously violated the UTPA, ORS 646.608(1)(b), (e), and (g), causing plaintiff the ascertainable loss of his purchase price. Under ORS 646.638, plaintiff requests actual damages or statutory damages, punitive damages, and reimbursed fees and costs from Verizon.

10.

Claim Two – Negligent Data Breach

Verizon had a duty to protect plaintiff's personal photos on its wireless devices and services from unauthorized access. Plaintiff had a legally protected interest in the security of his personal photos. Plaintiff's protected privacy interests were of sufficient importance as a matter of policy to merit protection from the emotional impact of having his photos negligently exposed to unauthorized third parties.

11.

Based on plaintiff's special relationship with Verizon, and Verizon's encouragement that plaintiff rely on the security of its devices and services to store his most cherished photos, Verizon could foresee that exposure of plaintiff's personal photos would likely cause plaintiff significant harm. Verizon negligently and recklessly breached its duty to plaintiff by exposing his personal photos to at least one other customer without his permission. Verizon's data breach as alleged in this complaint directly caused plaintiff severe ongoing feelings of invasion of privacy, shock, horror, and paralyzed his family with anxiety.

12.

JURY TRIAL DEMAND


Plaintiff is entitled to and so respectfully demands a trial by jury.

MENU


PORTLAND
BUSINESS JOURNAL

Q Sign In

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and the community since 1945.



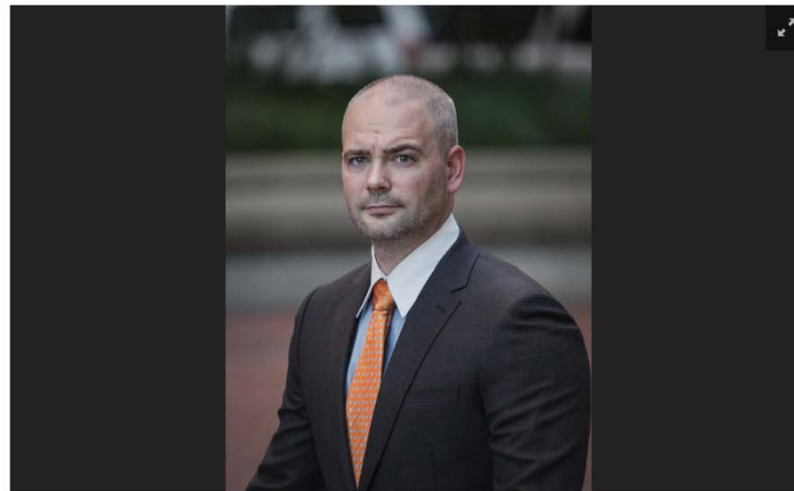
Click here to learn
more about Tom Becic



MELVIN
BROKERAGE

BANKING & FINANCIAL SERVICES

Watch out Equifax: Oregon's 'underdog lawyer' has the embattled credit monitor in his sight



Michael Fuller, Portland's "underdog lawyer," said Equifax's liability, for the breach revealed Sept. 7, should cost the company at least \$68 billion.

www.UnderdogLawyer.com

6.

Deanna Paik is an individual consumer residing in the Bend, Oregon area. In or around June 2017, Ms. Paik suffered identity theft and credit harm and was unable to get pre-approved for a mortgage, requiring her to pay for credit freezes, solely because her credit and personal information was compromised by Equifax. Ms. Paik could have prevented this credit harm had Equifax notified her that her information was compromised in "the most expeditious manner possible" as required by Oregon law.

7.

JURISDICTION AND VENUE

This Court has jurisdiction under 28 U.S.C. § 1332 because the parties are citizens of different states and the amount in controversy for the Oregon class estimated at 2,860,000 consumers exceeds \$1.36 billion exclusive of penalties. Venue is proper under 28 U.S.C. § 1391 because the bulk of Oregon consumers with credit and personal information stored by Equifax live in the Portland area.

8.

FACTUAL ALLEGATIONS

Plaintiffs file this complaint as a class action on behalf of an estimated 2,860,000 Oregon consumers harmed by Equifax's failure to adequately protect their credit and personal information. This

AMENDED COMPLAINT – Page 4 of 14

22.

OREGON CLASS CLAIM FOR RELIEF

NEGLIGENCE

As alleged in this complaint, Equifax undertook care of credit and personal information belonging to plaintiffs and the Oregon putative class, then breached its legal duty by failing to maintain adequate technological safeguards, falling below the standard of care in the technological industry, directly and proximately causing foreseeable risk of data loss and credit harm and identity theft and other economic losses, in amounts to be decided by the jury. Equifax's failure to comply with Oregon law requiring it to notify consumers of its data breach in "the most expeditious manner possible" constituted negligence per se.

23.

Plaintiffs and the Oregon class are entitled to equitable relief in the form of an accounting of exactly how their credit and personal information was accessed without authorization by third parties, restitution, and unless agreed upon by Equifax, an order to preserve all documents and information (and electronically stored information) pertaining to this case.

24.

Demand for jury trial.

AMENDED COMPLAINT – Page 12 of 14

Week 10 – FDCPA

- 5:30 Today's agenda
 - Spokeo*
 - FDCPA elements
 - FDCPA charts
 - Henson v. Santander*
- 6:00 Break
 - Common FDCPA violations
 - Bankruptcy violations
 - Paul v Providence*
- 6:45 Guest Speaker Julie Engbloom
- 7:20 Next Week

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- 6:45 **Guest Speaker Julie Engbloom**
- 7:20 Next Week

Next Week – Negotiations

- 5:30 Today's agenda
 - Common settlement terms
 - Mediations
 - Positional bargaining
 - Principled negotiation
 - Litigation negotiation
 - Settlement negotiation
- 6:30 Break
- 6:45 Guest Speaker: David Sugerman