No. 11-13574-G

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PAUL BIRSTER and ANGELA BIRSTER,

Plaintiffs-Appellants,

v.

AMERICAN HOME MORTGAGE SERVICING, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF OF THE CONSUMER FINANCIAL PROTECTION BUREAU AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS AND REVERSAL

LEONARD J. KENNEDY
General Counsel
ROBERTO J. GONZALEZ
Principal Deputy General Counsel
DAVID M. GOSSETT
Assistant General Counsel
PETER G. WILSON
KRISTIN BATEMAN
Attorneys
(202) 435-7821

CONSUMER FINANCIAL PROTECTION BUREAU
1801 L Street, NW
Washington, D.C. 20036
www.consumerfinance.gov

Counsel for *Amicus Curiae*

December 21, 2011

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Eleventh Circuit Rule 26.1-1, I hereby certify that, to my knowledge, interested persons in this case are those listed in the Certificate of Interested Persons accompanying Appellant Paul and Angela Birster's brief and the following persons and entities:

Bateman, Kristin

Consumer Financial Protection Bureau

Gonzalez, Roberto J.

Gossett, David M.

Gupta, Deepak

Kennedy, Leonard J.

Wilson, Peter G.

December 21, 2011 Kristin Bateman

STATEMENT REGARDING ORAL ARGUMENT

The Consumer Financial Protection Bureau (the Bureau) respectfully requests an opportunity to participate in oral argument. This case presents important questions regarding the interpretation of the Fair Debt Collection Practices Act (FDCPA), a statute for which Congress has granted the Bureau rulemaking and enforcement authority. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, §§ 1002(12)(H), 1022(b)(1), 1061(b)(5), 1089 (2010). In particular, the Bureau wishes to present argument on the extent to which the FDCPA prohibits harmful debt collection practices that occur in the context of foreclosure proceedings.

TABLE OF CONTENTS

Page

TABLE OF CITATIONS iv

STATEMENT OF RELATED CASES 1

STATEMENT OF THE ISSUES 1

INTEREST OF *AMICUS CURIAE* 3

STATEMENT 4

A. Statutory Background 4

B. Facts 6

C. Proceedings Below 8

SUMMARY OF ARGUMENT 8

ARGUMENT 12

I. An Entity that Meets the FDCPA's General Definition of "Debt Collector" Qualifies as a "Debt Collector" for Purposes of the Entire Act, Even If Its Principal Purpose Is Enforcing Security Interests and Even If It Was Enforcing a Security Interest in the Particular Case 14

A. An entity can qualify as a "debt collector" under both the general and the additional definition. 16

B. The additional definition of "debt collector" does not exempt enforcers of security interests who also meet the general definition of "debt collector" from provisions other than § 1692f(6).....17

C. The additional definition does not imply that an entity that regularly collects debts no longer qualifies as a "debt collector" for purposes of the entire Act if it enforces a security interest in the particular case.....23

II. The FDCPA Bars Harassing, Abusive, and Unfair Debt Collection Activities that Occur in the Context of Foreclosure Proceedings.....25

A. Neither the text nor the purposes of the Act suggest that debt collection activities are exempt from the FDCPA's requirements if they accompany foreclosure proceedings.....26

B. The overwhelming weight of authority holds that attempting to obtain payment of money from a

debtor in the context of proceedings to enforce a security interest constitutes debt collection activity. 29

C. The Court need not decide in this case whether foreclosure by itself constitutes debt collection activity covered by the Act. 32

CONCLUSION 34

STATUTORY APPENDIX 1a

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)(7)

CERTIFICATE OF SERVICE

TABLE OF CITATIONS

Cases

Ausar-El v. BAC (Bank of Am.) Home Loans Servicing LP, 2011 WL 4375971 (11th Cir. 2011) 15, 20, 21

Beadle v. Haughey, 2005 WL 300060 (D.N.H. 2005) 28

Chomilo v. Shapiro, Nordmeyer & Zielke, LLP, 2007 WL 2695795 (D. Minn. 2007) 15, 16

Eley v. Evans, 476 F. Supp. 2d 531 (E.D. Va. 2007) 20, 21

Gburek v. Litton Loan Servicing LP, 614 F.3d 380 (7th Cir. 2010) 25, 30

Grden v. Leikin Ingber & Winters PC, 643 F.3d 169 (6th Cir. 2011) 25, 33

Harris v. Americredit Fin. Servs., Inc., 2005 WL 2180477 (W.D. Va. 2005) 20, 21

Heintz v. Jenkins, 514 U.S. 291 (1995) 2, 11, 26

In re *Greer*, 2010 WL 4817993 (Bankr. M.D. Tenn. 2010) 19

Jordan v. Kent Recovery Servs., Inc., 731 F. Supp. 652 (D. Del. 1990) 19, 20, 28, 29

**Kaltenbach v. Richards*, 464 F.3d 524 (5th Cir. 2006) 13, 18, 22

Kingsland v. City of Miami, 382 F.3d 1220 (11th Cir. 2004) 7

Long v. Nat'l Default Servicing Corp., 2010 WL 3199933 (D. Nev. 2010) 20

Mabry v. Ameriquest Mortg. Co., 2010 WL 1052353 (E.D. Mich. 2010) 16

Memmott v. OneWest Bank, 2011 WL 1560985 (D. Ore. 2011) 31

**Montgomery v. Huntington Bank*, 346 F.3d 693 (6th Cir. 2003) 19

Overton v. Foutty & Foutty, LLP, 2007 WL 2413026 (S.D. Ind. 2007) 13, 31, 33

Pflueger v. Auto Fin. Grp., Inc., 1999 WL 33740813 (C.D. Cal. 1999) 20

**Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227 (3d Cir. 2005) 19, 27, 30

**Romea v. Heiberger & Assocs.*, 163 F.3d 111 (2d Cir. 1998) 30

Rosado v. Taylor, 324 F. Supp. 2d 917 (N.D. Ind. 2004) 28, 29, 31

**Shapiro & Meinhold v. Zartman*, 823 P.2d 120 (Colo. 1992) 19, 33

Trent v. Mortg. Elec. Registration Sys., Inc., 618 F. Supp. 2d 1356 (M.D. Fla. 2007) 32

Warren v. Countrywide Home Loans, Inc., 342 Fed. Appx. 458 (11th Cir. 2009) 20, 32

**Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373 (4th Cir. 2006) 18, 27, 28, 30, 33

Ziemba v. Am. Home Mortg. Servicing, Inc., 2011 WL 3420646 (N.D. Ga. 2011) 15

Statutes

Fair Debt Collection Practices Act, Pub. L. No. 95-109, § 802, 91 Stat. 874, 874 (1977) 4

15 U.S.C. § 1692 ..... 22, 27

*15 U.S.C. § 1692a 2, 5, 9, 12, 14, 15, 16, 18, 23, 26

15 U.S.C. § 1692c 1, 5, 12, 13, 25

15 U.S.C. § 1692d 1, 5, 12, 13, 25

15 U.S.C. § 1692e 1, 5, 12, 13, 25

15 U.S.C. § 1692f 1, 5, 12, 13, 25

15 U.S.C. § 1692g 1, 5, 12, 13, 25

15 U.S.C. § 1692i 11, 24

15 U.S.C. § 1692*l* (2010) 5

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 1002(12)(H) (2010) 3

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 1022 (2010) 3, 6

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, §1061(b)(5) (2010) 3

Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, § 1089 ..... 3, 5, 6

Dodd-Frank Act, §1089(4) 6

Federal Register Notices

Designated Transfer Date, 75 Fed. Reg. 57,252 (Sept. 20, 2010) 4

Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43569, 43570 (July 21, 2011) 22

Statements of General Policy or Interpretation Staff Commentary On the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50108 (Dec. 13, 1988) 22

Other Authorities

Federal Trade Commission, Annual Report 2010: Fair Debt Collection Practices Act (2010) 5

Federal Trade Commission, Annual Report 2011: Fair Debt Collection Practices Act (2011) 4

S. Rep. No. 95-382, 95th Cong., 1st Sess. 3, *reprinted in* 1977 U.S. Code Cong. & Admin. News 1695 29

STATEMENT OF RELATED CASES

Similar issues are presented in *Reese v. Ellis, Painter, Ratterree, & Adams, LLP*, No. 10-14366, which was argued before this Court in August 2011, and *Hasbun v. Recontrust Co., N.A.*, No. 11-15214, which was appealed from the Southern District of Florida in November 2011. Appeals presenting similar issues are also pending before other circuits.[1]

STATEMENT OF THE ISSUES

The Fair Debt Collection Practices Act (FDCPA or Act) prohibits "debt collectors" from using certain means to collect debts and from engaging in certain conduct "in connection with the collection of a debt." *See* 15 U.S.C. §§ 1692c–1692g. Thus, to state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a "debt collector" and that the challenged conduct is a means of, or otherwise relates to, collecting debts. This appeal presents two questions concerning the FDCPA's scope:

---

[1] *See, e.g.*, *Burnett v. Mortg. Elec. Registration Sys.*, No. 09-4216 (10th Cir.); *Larson v. Regional Tr. Servs. Corp.*, No. 11-36045 (9th Cir.); *Mellentine v. Ameriquest Mortg. Co.*, No. 11-2467 (6th Cir.).

1. The Act defines "debt collector" as a person whose "principal purpose" is debt collection or "who regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6). For the purposes of a single provision of the Act, § 1692f(6), the term "debt collector" "also includes" a person whose "principal purpose" is "the enforcement of security interests." *Id.* Does a person who meets the FDCPA's general definition of "debt collector" qualify as a debt collector for purposes of the entire Act if (a) he also qualifies as a debt collector under the additional definition applicable to § 1692f(6), and (b) he is enforcing a security interest in the particular case?

2. Although the Act does not define "debt collection," attempting to obtain payment of a consumer debt unquestionably constitutes debt collection under the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Does attempting to obtain payment of a consumer debt cease to qualify as debt collection covered by the Act if the debt collector or a related party simultaneously attempts to enforce a security interest backing the debt?

INTEREST OF *AMICUS CURIAE*

The FDCPA protects consumers from abusive debt collection practices. Some courts have unduly restricted the FDCPA's protections by rejecting challenges to abusive practices occurring in the context of foreclosure proceedings. In particular, courts have erroneously concluded that businesses involved in enforcing security interests are not "debt collectors" subject to most of the Act's requirements, and that activity surrounding foreclosure or other enforcement of security interests is not debt collection covered by the Act. These decisions have left consumers vulnerable to abusive collection tactics as they fight to save their homes from foreclosure.

Congress has granted the Consumer Financial Protection Bureau (the Bureau) the authority to enforce, and to promulgate rules regarding, the FDCPA. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Pub. L. No. 111-203, §§ 1002(12)(H), 1022(b)(1), 1061(b)(5), 1089 (2010) (codified at 12 U.S.C. §§ 5481(12)(H), 5512(b)(1), 5581(b)(5), 15 U.S.C. § 1692 *et seq.*). Powers under the FDCPA and other federal consumer financial laws transferred to the Bureau on July 21, 2011. *See id.* § 1061; Designated Transfer Date, 75

Fed. Reg. 57,252 (Sept. 20, 2010) (setting July 21, 2011, as the designated transfer date). The Bureau therefore has a substantial interest in the issues in this case. Because the Bureau is a federal government agency, Federal Rule of Appellate Procedure 29(a) permits it to file this brief without the parties' consent or leave of court.

STATEMENT

A. Statutory Background

Congress enacted the FDCPA in 1977 to eliminate "abusive, deceptive, and unfair debt collection practices," which had "contribute[d] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." Pub. L. No. 95-109, § 802, 91 Stat. 874, 874 (1977) (codified at 15 U.S.C. § 1692(a)). Abusive collection practices remain a widespread problem today: In recent years, the Federal Trade Commission (FTC) has received more consumer complaints about the debt collection industry than any other. *See* Federal Trade Commission, Annual Report 2011: Fair Debt Collection Practices Act 4 (2011), http://www.ftc.gov/os/2011/03/110321fairdebtcollect

report.pdf.[2] In 2010 alone, the FTC received over 140,000 such complaints. *Id.* at 4–5.

The FDCPA is the key federal statute protecting these consumers. Among other things, the Act forbids debt collectors from employing harassing, oppressive, or abusive practices; making misleading or deceptive representations; and using unfair or unconscionable means to collect debts. *See* 15 U.S.C. §§ 1692d–1692f. The Act also limits when debt collectors can contact debtors, guarantees consumers an opportunity to dispute their debts, and generally bars attempts to collect a disputed debt until the debt is verified. *Id.* §§ 1692c, 1692g(a)–(b). The Act applies only to professional debt collectors' interactions with individual consumers; it does not apply to commercial debts or to creditors who collect their own debts in their own name. *See id.* § 1692a(3), (5), (6)(A).

Until recently, the FTC was the primary agency charged with enforcing the FDCPA. *See* 15 U.S.C. § 1692*l* (2010). With passage of the Dodd-Frank Act in 2010, Congress granted the Bureau authority to enforce the Act along with the FTC and other agencies. *See* Dodd-Frank

---

[2] *See also* Federal Trade Commission, Annual Report 2010: Fair Debt Collection Practices Act 4 (2010), http://www.ftc.gov/os/2010/04/P104802fdcpa2010annrpt.pdf.

Act, § 1089(3) (to be codified at 15 U.S.C. § 1692*l*(b)). The Dodd-Frank Act also gives the Bureau exclusive authority to issue advisory opinions and rules implementing and interpreting the FDCPA. *See* Dodd-Frank Act, §1089(4) (to be codified at 15 U.S.C. § 1692*l*(d)); *see also id.* § 1022(b)(4)(B) (codified at 12 U.S.C. § 5512(b)(4)(B)) (addressing the deference due to Bureau interpretations of Federal consumer financial law). The Bureau is the first agency ever to have general rulemaking authority under the FDCPA.

B. Facts

Paul and Angela Birster refinanced their home in 2006 and modified the refinanced loan in 2007 and 2008. (Doc. 29 ¶¶ 1–3, 5–6, 9; Doc. 38 ¶¶ 1–3, 5–6, 9.)[3] According to the foreclosure complaint ultimately filed against them, the Birsters defaulted on their loan on June 1, 2008. (Doc. 38-1, Ex. A.) Two months later, American Home Mortgage Servicing, Inc. (AHMSI) began servicing the loan. (Doc. 29 ¶ 9; Doc. 38 ¶ 9.) After attempting to collect payment for two months, AHMSI sent the

[3] Doc. 29 and Doc. 38 refer to the defendant's Statement of Undisputed Material Facts and the plaintiffs' Response to that statement, respectively. This brief cites those documents for undisputed facts. Because the underlying evidence was filed under seal (*see* Doc. 29-1), the Bureau has not reviewed it.

Birsters a letter claiming they were in default. (Doc. 29-5.) The letter advised the Birsters that AHMSI would foreclose on their home unless they cured the default by paying $7,761.14 within 30 days. (*Id.*) AHMSI's letter stated: "THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE." (*Id.*) Several months later, the trustee for the lien holders—U.S. Bank, N.A.—initiated a judicial foreclosure action against the Birsters. (Doc. 38-1, Ex. A.) AHMSI is not a party to that suit. (*See id.*)

While the foreclosure suit proceeded, AHMSI representatives repeatedly visited the Birsters' home and made harassing and threatening phone calls to induce them to pay their debts.[4] (Doc. 38-2 ¶ 8.) One representative told Angela Birster that she and her husband "would be kicked out of [their] home[,] on streets[,] and living in 120° heat" if they did not pay. (Doc. 38-2 ¶ 8f.) Another threatened to advance the foreclosure sale date if they did not pay by the end of the month. (*See id.* ¶ 8i.) AHMSI representatives repeatedly called the Birsters directly about

[4] Because this is an appeal from an order granting summary judgment to the defendant, this brief accepts as true the allegations in the Birsters' affidavits. *See Kingsland v. City of Miami*, 382 F.3d 1220, 1227 (11th Cir. 2004).

their debt, even though they were represented by counsel, and even though they had told AHMSI to stop calling. (*Id.* ¶ 8a–*l*.)

C. Proceedings Below

The Birsters sued AHMSI under the FDCPA and related state laws. (Doc. 1-3.) AHMSI moved for summary judgment on several grounds, including that its conduct was not debt collection subject to the Act because it related to foreclosing on a mortgage. (Doc. 28 at 3–5.) The district court granted summary judgment to AHMSI on the FDCPA claim and remanded the remaining claims to state court. (Doc. 76 at 8.) The court concluded that the FDCPA claim failed as a matter of law because the alleged conduct related to enforcement of a security interest and therefore was not debt collection covered by the Act. (Doc. 76 at 4–7.) The court also appeared to conclude that AHMSI qualified as a "debt collector" only for purposes of § 1692f(6), and that the Birsters therefore could not assert claims under other provisions. (*Id.* at 6–7.) The Birsters appealed. (Doc. 80.)

SUMMARY OF ARGUMENT

To state a claim under most provisions of the FDCPA, a plaintiff must show both that the defendant is a "debt collector" and that the challenged conduct related to debt collection. The court below concluded

that, because AHMSI was involved in a foreclosure, it did not qualify as a debt collector and its actions in this case did not relate to debt collection. These conclusions misconstrue the FDCPA.

Debt Collector: The FDCPA generally defines "debt collector" as an entity whose "principal purpose" is debt collection or "who regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6). Under an additional definition applicable for purposes of a single provision, § 1692f(6), the term "debt collector" "also includes" any entity whose "principal purpose" is "the enforcement of security interests." *Id.* Six categories of people are specifically excluded from the definition of "debt collector." *Id.* § 1692a(6)(A)–(F). Enforcers of security interests do not appear on that list.

Courts that have concluded that enforcers of security interests qualify as "debt collectors" only for purposes of § 1692f(6) have failed to consider that enforcers of security interests may also "regularly collect" debts and thus qualify as "debt collectors" under the general definition. Recognizing that an entity may meet both the general and the additional definition does not render the additional definition superfluous. Some enforcers of security interests, such as repossession agencies that rarely

contact debtors, constitute "debt collectors" only under the additional definition, while others—like entities that initiate foreclosure proceedings and then seek payment in lieu of foreclosure—both "regularly" collect debts and "principal[ly]" enforce security interests. The additional definition requires the former category of people to comply with § 1692f(6), even though they are not generally subject to the Act.

By the Act's plain terms, an entity that meets both definitions of "debt collector" qualifies as a "debt collector" for purposes of the entire Act. The additional definition does not exclude enforcers of security interests from the general definition, but rather "also includes" them for purposes of a particular provision. Notably, unlike other entities, enforcers of security interests are not explicitly excluded from the definition of debt collector. Nearly every court, including every federal appellate court, to have considered this question agrees. This conclusion is also consistent with a prior administrative interpretation of the Act, and furthers the Act's consumer-protection purposes.

An entity that satisfies both definitions of "debt collector" remains a "debt collector" subject to the entire FDCPA even if it is enforcing a security interest in a particular case. That an entity is enforcing a secu-

rity interest in a particular case bears on whether its actions constitute debt collection, not on whether the entity is a debt collector. The statute defines "debt collectors" by reference to their "principal purpose" and "regular[]" activities, not their activities in a particular case. Section 1692i(a)(1), which regulates "debt collectors" enforcing security interests in real property, confirms that entities enforcing a security interest in a particular case can qualify as "debt collectors" under provisions other than § 1692f(6).

Because AHMSI did not contest below that it regularly collects debts, it constitutes a "debt collector" for purposes of the entire FDCPA.

Debt Collection: Attempting to obtain payment of a consumer debt constitutes debt collection covered by the FDCPA. *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). Nothing in the Act suggests that seeking payment from a debtor ceases to qualify as debt collection if it accompanies proceedings to enforce a security interest. That conclusion would create an enormous loophole, allowing debt collectors to abuse consumers with impunity whenever they happened also to seek to enforce a security interest. Every federal appellate court to have published a decision on this issue, and nearly every other court, agrees.

Although the district court suggested that pursuing foreclosure, by itself, cannot constitute debt collection covered by the Act, the Court need not reach that question here. At a minimum, seeking payment from a debtor unquestionably qualifies as debt collection, even if it occurs in the context of foreclosure proceedings. The Birsters allege that AHMSI repeatedly attempted to induce them to pay amounts owed on their mortgage. That was debt collection even though it occurred in the context of foreclosure proceedings.

ARGUMENT

The FDCPA protects consumers by, among other things, prohibiting debt collectors from engaging in unfair, abusive, or deceptive debt collection practices; requiring debt collectors to cease contacting a debtor about a debt if the debtor so demands or is represented by counsel; and obligating debt collectors to verify disputed debts and to notify debtors of their dispute rights. 15 U.S.C. §§ 1692c–1692g. Two threshold criteria determine whether these provisions apply. First, the defendant must qualify as a "debt collector." *See id.* §§ 1692a(6), 1692c–1692g. Second, because these provisions regulate conduct "in connection

with the collection of a debt" and means used "to collect or attempt to collect any debt," the challenged conduct must relate to debt collection.[5]

Courts, including the court below, often conflate these two analytically distinct inquiries. *But see Kaltenbach v. Richards*, 464 F.3d 524, 529 & n.5 (5th Cir. 2006); *Overton v. Foutty & Foutty, LLP*, 2007 WL 2413026, at *3 (S.D. Ind. 2007). This brief addresses them in turn. Under a proper understanding of the FDCPA, AHMSI both constitutes a "debt collector" for purposes of the entire Act and engaged in debt collection activities covered by the Act.[6] The district court therefore erred in rejecting the Birsters' FDCPA claims as a matter of law.

---

[5] Specifically, the Act requires debt collectors to notify debtors of their dispute rights shortly after first communicating with them "in connection with the collection of a debt" and bars debt collectors from engaging in certain conduct "in connection with the collection of a debt" and from using certain "means to collect or attempt to collect any debt." 15 U.S.C. §§ 1692c(a)(1), (2), 1692d–1692f, 1692g(a). The Act also prohibits debt collectors from contacting a consumer "with respect to [a] debt" if the consumer has asked that the debt collector stop, and from continuing "collection of [a disputed] debt" until the debt is verified. *Id.* §§ 1692c(c), 1692g(b).

[6] AHMSI did not argue below that it was not a "debt collector" because it enforces security interests. Nevertheless, because the district court appeared to conclude that AHMSI's involvement in foreclosure exempted it from the definition of "debt collector" (Doc. 76 at 6), this brief addresses that argument.

I. An Entity that Meets the FDCPA's General Definition of "Debt Collector" Qualifies as a "Debt Collector" for Purposes of the Entire Act, Even If Its Principal Purpose Is Enforcing Security Interests and Even If It Was Enforcing a Security Interest in the Particular Case.

The FDCPA provides both a general definition of "debt collector" and an additional definition applicable for purposes of a single provision. Under the general definition, "[t]he 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." 15 U.S.C. § 1692a(6). The additional definition further provides that, "[f]or the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests." *Id.* Section 1692f(6) bars debt collectors from "[t]aking or threatening to take nonjudicial action to effect dispossess-

---

AHMSI did argue that, under § 1692a(6)(F), it is not a "debt collector" because it obtained the debt before it went into default. (Doc. 28 at 5.) This argument appears to fail on the facts: AHMSI admits it began servicing the debt on July 30, 2008 (Doc. 29 ¶ 9), and the foreclosure complaint alleges that the Birsters defaulted on June 1, 2008 (Doc. 38-1, Ex. A ¶ 5). In any event, this dispute is beyond this brief's scope.

sion or disablement of property" if they are not legally entitled to. *Id.* § 1692f(6). The definition of "debt collector" goes on to list six categories of entities excluded from the definition of "debt collector." *Id.* § 1692a(6)(A)–(F). That list does not include enforcers of security interests. *See id.*

Relying on this multi-part definition, some courts have suggested that entities whose "principal purpose" is enforcing security interests necessarily qualify as "debt collectors" *only* for purposes of § 1692f(6). *See, e.g.*, *Ausar-El v. BAC (Bank of Am.) Home Loans Servicing LP*, 2011 WL 4375971, at *1 (11th Cir. 2011); *Ziemba v. Am. Home Mortg. Servicing, Inc.*, 2011 WL 3420646, at *3 (N.D. Ga. 2011); *Chomilo v. Shapiro, Nordmeyer & Zielke, LLP*, 2007 WL 2695795, at *3 (D. Minn. 2007). These decisions largely overlook the fact that such entities might also "regularly collect" debts and therefore meet the general definition of "debt collector." *See, e.g.*, *Ausar-El*, 2011 WL 4375971, at *2–3; *Ziemba*, 2011 WL 3420646, at *3. Other courts have recognized this possibility but nonetheless concluded that entities meeting both the general and the additional definition should nonetheless be treated as "debt collector[s]" only for purposes of § 1692f(6) if they enforced a security in-

terest in the particular case. *See, e.g.*, *Mabry v. Ameriquest Mortg. Co.*, 2010 WL 1052353, at *3 (E.D. Mich. 2010); *Chomilo*, 2007 WL 2695795, at *3–5.

These courts are incorrect. The plain language, purposes, and prior administrative interpretations of the Act all make clear—and the great weight of authority confirms—that an entity meeting the general definition of "debt collector" qualifies as a "debt collector" for purposes of the entire Act, even if its principal purpose is enforcing security interests and even if it is enforcing a security interest in the particular case.

A. An entity can qualify as a "debt collector" under both the general and the additional definition.

An entity can meet both the general and the additional definition of "debt collector": an entity whose "principal purpose" is "the enforcement of security interests" can also "regularly collect[] or attempt[] to collect … debts."[7] *See* 15 U.S.C. § 1692a(6).

This conclusion does not render superfluous the additional definition characterizing enforcers of security interests as "debt collectors" for

---

[7] The Court need not decide whether an entity could have as its "principal purpose" both collecting debts and enforcing security interests. An entity need not have debt collection as its "principal purpose" to qualify as a "debt collector" under the general definition; it qualifies if it "regularly collects or attempts to collect" debts. 15 U.S.C. § 1692a(6).

purposes of § 1692f(6). Some enforcers of security interests may regularly attempt to collect debts; others may not. For instance, some businesses that principally enforce security interests by pursuing foreclosures also regularly attempt to collect homeowners' overdue mortgage payments. By contrast, some repossession agencies never attempt to collect payment from debtors and simply repossess the cars in which creditors hold security interests without ever contacting the debtors. The former qualify as "debt collectors" under both the general and additional definitions, while the latter qualify only under the additional definition. The Act's inclusion of the additional definition ensures that these no-contact repossession agencies, and other enforcers of security interests who do not otherwise satisfy the Act's general definition of "debt collector," are subject to § 1692f(6)'s requirements. The provision therefore is not superfluous.

B. The additional definition of "debt collector" does not exempt enforcers of security interests who also meet the general definition of "debt collector" from provisions other than § 1692f(6).

1. If an entity qualifies as a "debt collector" under the Act's general definition, it constitutes a "debt collector" for purposes of the entire Act, even if it also meets the additional definition. Nothing in the stat-

ute suggests that businesses whose principal purpose is enforcing security interests constitute debt collectors *only* for purposes of § 1692f(6), regardless of whether they also "regularly collect" debts and thus meet the general definition of "debt collector." The Act phrases the additional definition in terms of inclusion, not exclusion: For purposes of § 1692f(6), the term "debt collector" "also includes" enforcers of security interests. 15 U.S.C. § 1692a(6). Moreover, enforcers of security interests are notably missing from the list of entities *excluded* from the definition of "debt collector." *See* 15 U.S.C. § 1692a(6)(A)–(F). If Congress had intended to exempt enforcers of security interests from all provisions except § 1692f(6), it would have included them in the list of exclusions.

2. Every appellate court—and nearly every other court—that has considered the possibility that an entity could meet both the general and the additional definition of "debt collector" agrees that such entities qualify as "debt collectors" for purposes of the entire Act. The Third, Fourth, and Fifth Circuits and the Colorado Supreme Court have all explicitly so held. *Kaltenbach*, 464 F.3d at 528; *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 378 (4th Cir. 2006); *Piper v. Portnoff*

Law Assocs., Ltd., 396 F.3d 227, 236 (3d Cir. 2005); *Shapiro & Meinhold v. Zartman*, 823 P.2d 120, 124 (Colo. 1992).

Other courts that have allowed only § 1692f(6) claims against particular defendants who principally enforce security interests have, at the same time, indicated that those defendants would be subject to the entire Act if they also met the general definition of "debt collector." *See, e.g.*, *Montgomery v. Huntington Bank*, 346 F.3d 693, 700–01 (6th Cir. 2003); *Jordan v. Kent Recovery Servs., Inc.*, 731 F. Supp. 652, 660 (D. Del. 1990). For example, in concluding that a repossession agency was not a "debt collector" for purposes of provisions other than § 1692f(6), the Sixth Circuit noted that the plaintiff had not alleged that the defendant's "'principal purpose' [was] debt collection, or that it regularly collect[ed] or attempt[ed] to collect debts owed to another." *Montgomery*, 346 F.3d at 700–01; *accord, e.g.*, In re *Greer*, 2010 WL 4817993, at *4 (Bankr. M.D. Tenn. 2010) (following *Montgomery* and explaining that "a person whose business has the principal purpose of enforcing security interests *but who does not otherwise satisfy the definition of a debt collector* is subject only to 15 U.S.C. § 1692f(6)" (emphasis altered)). Other courts have exempted enforcers of security interests from provisions

other than § 1692f(6) only after concluding that they did not meet the general definition of "debt collector." *See, e.g.*, *Long v. Nat'l Default Servicing Corp.*, 2010 WL 3199933, at *3 (D. Nev. 2010); *Pflueger v. Auto Fin. Grp., Inc.*, 1999 WL 33740813, at *4 (C.D. Cal. 1999); *Jordan*, 731 F. Supp. at 659–60.

To be sure, some cases, including unpublished Eleventh Circuit decisions, have stated without qualification that enforcers of security interests qualify as "debt collectors" only for purposes of § 1692f(6). *See, e.g.*, *Ausar-El*, 2011 WL 4375971, at *1; *Warren v. Countrywide Home Loans, Inc.*, 342 Fed. Appx. 458, 460 (11th Cir. 2009); *Eley v. Evans*, 476 F. Supp. 2d 531, 534 (E.D. Va. 2007); *Harris v. Americredit Fin. Servs., Inc.*, 2005 WL 2180477, at *2 (W.D. Va. 2005). But each such case of which we are aware did not involve allegations that the defendants also "regularly collect[ed]" debts, and the courts accordingly overlooked the possibility that an entity could satisfy both the general and the additional definition of "debt collector." *See, e.g.*, *Ausar-El*, 2011 WL 4375971, at *1; *Warren*, 342 Fed. Appx. at 460; *Eley*, 476 F. Supp. 2d at 534; *Harris*, 2005 WL 2180477, at *2. Nothing in those cases reveals any conscious decision to exempt all enforcers of security interests from

provisions other than § 1692f(6) no matter what. To the contrary, most of these cases relied on *Montgomery*, which acknowledges that enforcers of security interests who also regularly collect debts qualify as "debt collectors" subject to the entire Act. *Ausar-El*, 2011 WL 4375971, at *1 (citing *Montgomery*, 346 F.3d at 700); *Eley*, 476 F. Supp. 2d at 534 (same); *Harris*, 2005 WL 2180477, at *2 (same).

3. A prior administrative interpretation of the Act also supports the conclusion that entities whose principal purpose is enforcing security interests constitute "debt collectors" for purposes of the entire Act if they also satisfy the general definition of "debt collector." In long-standing staff commentary that the FTC published after notice and comment and maintained in effect for over 20 years, the FTC wrote that, "because the FDCPA's definition of 'debt collection' includes parties whose principal business is enforcing security interests only for [§ 1692f(6)] purposes, such parties (*if they do not otherwise fall within the definition*) are subject only to this provision and not to the rest of the FDCPA."[8] Statements of General Policy or Interpretation Staff

[8] As noted at page 5, the FTC was the primary agency charged with enforcing the FDCPA before Congress passed the Dodd-Frank Act in 2010. The Bureau has determined that FTC commentary on the FDCPA

Commentary On the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50108 (Dec. 13, 1988) (emphasis added). As the Fifth Circuit has acknowledged, the parenthetical phrase reflects the FTC's understanding that an entity whose principal purpose is enforcing security interests can constitute a debt collector for purposes of the entire FDCPA if it "otherwise fall[s] within" the general definition of "debt collector." *Kaltenbach*, 464 F.3d at 527–28.

4. Finally, this understanding best serves the FDCPA's purposes. Congress passed the FDCPA "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e). It would undercut these purposes to exempt entities that regularly collects debts from the Act's prohibitions on abusive, deceptive, and unfair practices simply because their principal purpose is enforcing security interests. That not

---

will be given "due consideration." *See* Identification of Enforceable Rules and Orders, 76 Fed. Reg. 43569, 43570 (July 21, 2011). The Bureau agrees with this commentary to the extent that it indicates that entities satisfying the general definition of "debt collector" are subject to the entire Act.

only would leave consumers unprotected from damaging debt collection practices, but would also give debt collectors that principally enforce security interests an unfair competitive advantage.

C. The additional definition does not imply that an entity that regularly collects debts no longer qualifies as a "debt collector" for purposes of the entire Act if it enforces a security interest in the particular case.

Contrary to the district court's suggestion, an entity that meets the general definition of "debt collector" remains a "debt collector" for purposes of the entire Act even if it is enforcing a security interest in the particular case. The fact that an entity attempts to enforce a security interest in a particular case bears on whether its activity relates to debt collection, not on whether the entity is a debt collector. By its plain terms, the statute defines "debt collector" not by reference to an entity's conduct in any particular case, but rather by reference to the "principal purpose" of its "business" or the activities it "regularly" undertakes. *See* 15 U.S.C. § 1692a(6). If an entity has debt collection as its "principal purpose," or if it "regularly collects or attempts to collect … debts," it qualifies as a "debt collector" for purposes of the entire Act, regardless of its activity in the particular case.

This understanding is confirmed by the FDCPA's distant-venue prohibition, § 1692i, which protects consumers from the inconvenience and cost of having to defend suits in distant forums. 15 U.S.C. § 1692i(a)(1); *see Piper*, 396 F.3d at 235 (explaining provision's purpose). That section specifically requires a "debt collector" who brings "an action to enforce a[] [security] interest in real property" to do so only in the venue "in which such real property is located." 15 U.S.C. § 1692i(a)(1). This provision thus clearly contemplates that entities enforcing a security interest in a particular case can qualify as "debt collector[s]" for purposes of provisions other than § 1692f(6).

* * *

In its motion for summary judgment, AHMSI did not dispute the Birsters' allegation that AHMSI regularly collects debts. AHMSI accordingly satisfies the general definition of "debt collector" and must comply with the entire FDCPA, even if the principal purpose of its business is enforcing security interests and even though it may have participated in pursuing foreclosure in this case.

II. The FDCPA Bars Harassing, Abusive, and Unfair Debt Collection Activities that Occur in the Context of Foreclosure Proceedings.

As explained above, most FDCPA provisions apply only to communications and conduct "in connection with the collection of a debt" or means used "to collect or attempt to collect any debt."[9] *See* 15 U.S.C. §§ 1692c–1692g. The court below rejected the Birsters' FDCPA claims as a matter of law because the challenged conduct related to the enforcement of a security interest and therefore did not qualify as debt collection covered by the Act. By disregarding the Birsters' claims that AHMSI had repeatedly sought to collect overdue payments from them, the district court effectively concluded that activities occurring in the context of foreclosure proceedings can never relate to debt collection. This conclusion finds no support in the Act's text or purposes and contradicts the great weight of authority.

---

[9] This brief refers to activities as "debt collection" or conduct "relating to" debt collection as a shorthand for actions "in connection with the collection of a debt" and "means" of collecting debts. To be clear, an activity need not itself constitute debt collection to be subject to the Act. Rather, actions that do not themselves qualify as debt collection are also subject to the Act if they are "connect[ed]" to debt collection. *See Grden v. Leikin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011); *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 385 (7th Cir. 2010).

A. Neither the text nor the purposes of the Act suggest that debt collection activities are exempt from the FDCPA's requirements if they accompany foreclosure proceedings.

The Supreme Court has made clear that attempting to "obtain payment of consumer debts" constitutes debt collection under the FDCPA. *See Heintz v. Jenkins*, 514 U.S. 291, 294 (1995) (citing Black's Law Dictionary as stating that "[t]o collect a debt or claim is to obtain payment or liquidation of it, either by personal solicitation or legal proceedings"). Nothing in the FDCPA's text suggests that attempting to obtain payment of a debt ceases to qualify as debt collection if it occurs in the context of foreclosure proceedings. To be sure, the Act's definition of "debt collector," discussed above, suggests that the enforcement of a security interest, standing alone, does not necessarily qualify as debt collection. *See* 15 U.S.C. § 1692a(6). This reflects the reality that people sometimes enforce security interests without also seeking payment from the debtor. For example, when a repossession agency that has never contacted a debtor surreptitiously repossesses a car in the middle of the night, it does not attempt to obtain payment as an alternative to repossession. Such a repossession without debtor contact would not in itself qualify as debt collection activity covered by the entire Act.

In other contexts, however, activities relating to enforcement of security interests can also relate to debt collection. In fact, some common conduct inherently relates to both: Debt collectors regularly use the threat of enforcing a security interest to induce consumers to pay their debts. *See, e.g.*, *Piper*, 396 F.3d at 230 (debt collector threatened sheriff's sale of home if consumers did not pay debts); *Wilson*, 443 F.3d at 376–77 (debt collector initiated foreclosure proceedings and then requested money to "reinstate the … account"). In the context of both judicial and nonjudicial foreclosures, debt collectors regularly initiate foreclosure proceedings and then advise debtors to pay a specified amount to avoid foreclosure. Because such communications both move toward foreclosure and seek to obtain payment of a debt, they relate both to enforcement of a security interest and to collection of a debt. Neither AHMSI nor the district court has pointed to any statutory text suggesting otherwise.

A contrary interpretation would not only find no support in the FDCPA's text, but would also contravene the Act's purpose. Congress passed the FDCPA to "eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e). Exempting debt collection from the

Act's protections whenever it accompanies foreclosure proceedings would undermine this purpose by creating an "enormous loophole" allowing debt collectors to subject consumers to abusive collection practices whenever a "debt happened to be secured by a real property interest and foreclosure proceedings were used to collect the debt." *Wilson*, 443 F.3d at 376.

Moreover, such an interpretation would not even serve the purposes that some courts have speculated Congress had for treating debt collection and enforcement of security interests differently. According to some courts, Congress believed that consumers facing debt collection unfairly experienced "suffering and anguish" because, through no fault of their own, they were unable to satisfy the debt collector's demands. *See Jordan*, 731 F. Supp. at 658 (quoting S. Rep. No. 95-382, 95th Cong., 1st Sess. 3, *reprinted in* 1977 U.S. Code Cong. & Admin. News 1695, 1697); *Beadle v. Haughey*, 2005 WL 300060, at *3 (D.N.H. 2005) (following *Jordan*); *Rosado v. Taylor*, 324 F. Supp. 2d 917, 924–25 (N.D. Ind. 2004) (same). By contrast, according to these courts, debtors facing enforcement of a security interest could avoid any ongoing harassment

by simply turning over the secured property.[10] *Jordan*, 731 F. Supp. at 658.

Even assuming this reasoning correctly reflects Congress's intent, it would not support exempting from the Act debt collection activities occurring in the context of home foreclosures. Abusive collection tactics will inflict just as much "suffering and anguish" on a consumer whose misfortune prevents him from saving his home as on a consumer who cannot pay his unsecured debts. *Accord Rosado*, 324 F. Supp. 2d at 925 (noting that *Jordan*'s explanation "may wane in the context of real property" because "turning over one's house is unlikely to ever be easy").

B. The overwhelming weight of authority holds that attempting to obtain payment of money from a debtor in the context of proceedings to enforce a security interest constitutes debt collection activity.

Every circuit to have considered the question agrees that seeking payment of money from a debtor qualifies as debt collection even if the debt collector also seeks to enforce a security interest at the same time.

---

[10] This explanation of Congress's reasoning is in fact pure conjecture. The Senate Report that *Jordan* cites neither discusses the Act's treatment of enforcers of security interests nor suggests that secured debtors are less likely to experience "suffering and anguish" when subjected to abusive debt collection activity. *See* S. Rep. No. 95-382.

In *Wilson*, the Fourth Circuit held that "actions surrounding [a] foreclosure proceeding," including sending a letter with "a specific request for money to 'reinstate the … account,'" were "attempts to collect [a] debt." *Wilson*, 443 F.3d at 376–77. The Seventh Circuit similarly concluded that letters offering to discuss foreclosure alternatives constituted communications "in connection with the collection of a debt." *Gburek*, 614 F.3d at 386. In *Piper*, the Third Circuit concluded that a debt collector enforcing a lien for unpaid utility bills was collecting a debt because "the whole purpose" of its communications with the debtor "was to secure the payment of money in satisfaction of [the] debt." *Piper*, 396 F.3d at 233. And in *Romea v. Heiberger and Associates*, the Second Circuit similarly concluded that a notice sent in connection with a possessory *in rem* action seeking summary eviction qualified as debt collection activity because the notice aimed "at least in part to induce [the debtor] to pay the back rent she allegedly owed." *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 116 (2d Cir. 1998).

Even courts that have dismissed FDCPA claims in the context of foreclosure proceedings have held that related attempts to collect money would be actionable as debt collection activity. The Southern District of

Indiana, for example, concluded that "invok[ing] judicial remedies only to enforce the security interest in property" is not subject to most provisions of the FDCPA, while the Act would apply "if the person is also seeking additional relief, such as a personal judgment against the borrower." *Overton*, 2007 WL 2413026, at *6. That court noted that this conclusion "appear[ed] to be consistent with" decisions of the Northern District of Indiana, the Northern District of Texas, and the Districts of Delaware, New Hampshire, West Virginia, Oregon, and Kansas. *Id.*

Moreover, even cases on which the district court relied make clear that actions surrounding foreclosure proceedings can also qualify as debt collection activity subject to the Act. *Memmott* rejected an interpretation that would "create a blanket exemption for all conduct … once … foreclosure proceedings have been initiated" and held that "conduct beyond that actually necessary to foreclose" was actionable under the FDCPA. *Memmott v. OneWest Bank*, 2011 WL 1560985, *8, *12 (D. Ore. 2011). *Rosado* similarly held that a notice sent along with a foreclosure complaint that advised a consumer about her debt constituted debt collection activity subject to the FDCPA because it was not necessary to the foreclosure action. *Rosado*, 324 F. Supp. 2d at 925.

This Court's unpublished decision in *Warren* does not contradict this authority.[11] In that case, the panel concluded that "enforcement of a security interest through the foreclosure process is not debt collection for purposes of the Act." *Warren*, 342 Fed. Appx. at 460. The court did not, however, express any view on whether accompanying attempts to obtain payment from the debtor would qualify as debt collection covered by the Act. *See id.* Moreover, the *Warren* court relied on cases holding that the Act applies when a debt collector seeks payment of money and not merely the enforcement of a security interest. *Id.* (citing, *inter alia*, *Overton*, 2007 WL 2413026, at *3–6; *Beadle*, 2005 WL 300060, at *3).

C. The Court need not decide in this case whether foreclosure by itself constitutes debt collection activity covered by the Act.

Although the district court suggested that foreclosure by itself does not constitute debt collection activity subject to the entire FDCPA,

---

[11] The only other case on which the district court relied likewise does not contradict this authority. *Trent* considered only whether "a mortgage foreclosure action *itself* qualifies as 'debt collection'" and cited *Rosado* in support of its conclusion that it did not. *Trent v. Mortg. Elec. Registration Sys., Inc.*, 618 F. Supp. 2d 1356, 1360 (M.D. Fla. 2007) (emphasis added).

that issue is not actually presented in this case.[12] The Birsters' claims are not based on the foreclosure itself, but rather on AHMSI's related attempts to induce the Birsters to pay amounts they owed.

At a minimum, it is clear that communications and conduct occur "in connection with the collection of a debt" or "attempt to collect a debt" when they seek to induce payment by the debtor. *See Grden*, 643 F.3d at 173. Here, the Birsters have clearly alleged that AHMSI made harassing and threatening phone calls and visited their home to induce them to pay amounts owed, not merely to pursue foreclosure. For instance, Angela Birster attested that AHMSI threatened to move up the foreclosure sale date if the Birsters did not pay their debt by the end of the month. (Doc. 38-2 ¶ 8i.) Another AHMSI representative threatened that the Birsters "would be kicked out of [their] home[,] on streets[,] and living in 120° heat" if they did not pay their mortgage arrearages. (*Id.* ¶ 8f.) AHMSI also repeatedly called the Birsters about their overdue amounts, even though they were represented by counsel, and even though they had told AHMSI to cease further contact. (*Id.* ¶ 8a–*l*.) The-

[12] Courts have split on this question. *Compare Wilson*, 443 F.3d at 376, *and Shapiro & Meinhold*, 823 P.2d at 124, *with Hulse v. Ocwen Fed. Bank, FSB*, 195 F. Supp. 2d 1188, 1204 (D. Ore. 2002), *and Overton*, 2007 WL 2413026, at *6.

se claims allege attempts by AHMSI to collect a debt. The district court's conclusion that this conduct was exempt from the Act simply because it also related to foreclosure proceedings finds no support in the statutory text, the Act's purposes, or the vast weight of case authority.

CONCLUSION

The Court should reverse the district court and hold that an entity, such as AHMSI, that satisfies the FDCPA's general definition of "debt collector" qualifies as a "debt collector" for purposes of the entire Act, even if its principal purpose is enforcing security interests and even if it attempted to enforce a security interest in the particular case. The Court should also hold that, at a minimum, AHMSI engaged in activity related to debt collection insofar as it attempted to obtain payment of money from the Birsters, even if it also took steps to enforce a security interest at the same time.

Respectfully submitted,

LEONARD J. KENNEDY
General Counsel
ROBERTO J. GONZALEZ
Principal Deputy General Counsel
DAVID M. GOSSETT
Assistant General Counsel

PETER G. WILSON
Attorney

KRISTIN BATEMAN
Attorney
CONSUMER FINANCIAL PROTECTION BUREAU
1801 L Street, NW
Washington, D.C. 20036
(202) 435-7821
Kristin.Bateman@cfpb.gov

December 21, 2011

Counsel for *Amicus Curiae*

STATUTORY APPENDIX

15 U.S.C. § 1692a. Definitions

As used in this subchapter--

* * *

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also

includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include--

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

* * *

15 U.S.C. § 1692c. Communication in connection with debt collection

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt--

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except--

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) "Consumer" defined

For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

15 U.S.C. § 1692d. Harassment or abuse

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. § 1692e. False or misleading representations

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. § 1692f. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if--

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

* * *

15 U.S.C. § 1692g. Validation of debts

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) of this section unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original

creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

* * *

15 U.S.C. § 1692i. Legal actions by debt collectors

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall--

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity--

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

CERTIFICATE OF COMPLIANCE WITH RULE 32(A)(7)

I certify that this brief complies with the type-volume limitation set forth in FRAP 32(a)(7)(B). My word processing program, Microsoft Word, counted 6,996 words in the foregoing brief, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii).

December 21, 2011 Kristin Bateman

CERTIFICATE OF SERVICE

I hereby certify that on this date I have filed and served the foregoing brief by causing an original and six copies to be sent by UPS two-day delivery, postage pre-paid, to the Clerk of the Court, and by causing one copy to be sent in the same manner to each of the following counsel:

Diane J. Zelmer
Zelmer Law
150 N Federal Hwy Ste. 230
Fort Lauderdale, FL 33301

Counsel for Plaintiffs

Nancy M. Wallace
Akerman Senterfitt, LLP
106 E College Ave. Ste. 1200
Tallahassee, FL 32301-7741

Counsel for Defendant

December 21, 2011 Kristin Bateman