FAIR DEBT COLLECTION PRACTICES ACT ISSUES

I. In General

The Fair Debt Collection Practices Act regulates the conduct of "debt collectors" in collecting "debts" owed or allegedly owed by "consumers." It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct that harasses, oppresses, or abuses any debtor; and any false, deceptive, or misleading statements in connection with the collection of a debt. It also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d – 1692g.

The FDCPA also contains a venue provision requiring suit to be brought where the consumer signed a written contract or where the consumer resides at the time suit is filed. 15 U.S.C. §1692i.

II. What is a "Debt Collector"

Generally, the FDCPA covers the activities of a "debt collector." There is a two-part definition of "debt collector": "any person [1] 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 [2] 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) (emphasis added). In addition, "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," and for purposes of 15 U.S.C. §1692(6), it "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 creditor's outside collection attorney is a "debt collector" if the balance of the test is met.)

Excluded from the definition of "debt collector" are the following:

1. Officers and employees of the creditor while collecting the debt in the creditor's name;

2. Affiliates of the creditor. 15 U.S.C. §1692a(6)(B) creates an exemption for "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." There is no requirement that the affiliate identify itself as an affiliate of the creditor. *Aubert v. American General Finance, Inc.,* 137 F.3d 976 (7th Cir. 1998).

3. Officers or employees of the United States or any state. Private debt collectors collecting student loans and other obligations that meet the definition of a "debt" and were

originally owed to a governmental unit do not qualify for this exemption. *Brannan v. United Student Aid Funds, Inc.,* 94 F.3d 1260 (9th Cir. 1996); *Jones v. Intuition, Inc.,* 12 F.Supp.2d 775 (W.D.Tenn. 1998). However, in *Davis v. United Student Aid Funds, Inc.,* 45 F.Supp.2d 1104 (D.Kan. 1998), the court held that the guaranty agency itself is covered by the fiduciary exception.

4. Process servers "while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt." This exemption does not extend to the person who hired the process server and may not extend to someone who prepares or files a false affidavit or return of service representing that someone has been served when that is not true. *Romea v. Heiberger & Associates,* 163 F.3d 111, 117 (2d Cir. 1998); *Alger v. Ganick, O'Brien & Sarin,* 35 F.Supp.2d 148, 153 (D.Mass. 1999).

5. Bona fide nonprofit debt counselors;

6. Persons who service debts that are not in default (*e.g.,* servicers of mortgages and student loans) *Perry v. Stewart Title Co.,* 756 F.2d 1197 (5th Cir. 1985); *Coppola v. Connecticut Student Loan Foundation,* 87cv398, 1989 WL 47419 (D.Conn. Mar. 22, 1989). This "servicer exemption" does not operate in favor of such entities when they acquire a loan after default. *Brannan, supra,* 94 F.3d at 1262 ("The FDCPA does not provide an exemption for guaranty agencies that acquire a student loan after default in order to pursue its collection."); *Student Loan Fund of Idaho, Inc. v. Duerner,* 131 Idaho 45, 951 P.2d 1272 (Idaho 1997). However, when a loan is restructured and the restructured loan is not in default, the fact that the loan was in default prior to being restructured does not make entities purchasing or servicing the loan FDCPA debt collectors. *Bailey v. Security National Servicing Corp.,* 154 F.3d 384 (7th Cir. 1998). "[D]efault" reflects the meanings found in relevant contractual agreements and non-FDCPA federal and state law. *De Dios v. Int'l Realty & RC Invs.,* 641 F.3d 1071, 1074–75 (9th Cir. 2011):

> Although the Act does not define "in default," courts interpreting §1692a(6)(F)(iii) look to any underlying contracts and applicable law governing the debt at issue. See, e.g., Fed. Trade Comm'n, Advisory Op. n.2 (April 25, 1989) ("Whether a debt is in default is generally controlled by the terms of the contract creating the indebtedness and applicable state law."), available at www.ftc.gov/os/statutes/fdcpa/ letters/cranmer.htm; *Berndt v. Fairfield Resorts, Inc.*, 339 F. Supp. 2d 1064, 1068-69 (W.D. Wis. 2004) (examining plaintiff 's timeshare purchase contract and defendant's management agreement to determine if overdue association fees were in default); *Skerry v. Mass. Higher Educ. Assistance Corp.*, 73 F. Supp. 2d 47, 52-54 (D. Mass. 1999) (applying federal regulations governing student loans at issue to determine if they were in default).

Also, since the statute uses "alleged" to modify "debt," an obligation that the defendant treats as being in default is covered even if (a) the defendant is attempting to collect an apparent consumer debt from the wrong person, *Loja v. Main Street Acquisition Corp.*, No. 17-2477, --- F.3d ----, 2018 WL 5077679 (7th Cir., Oct. 18, 2018); *Queen v. Walker*, 09cv3428, 2010 U.S. Dist. LEXIS 67263, 2010 WL 2696720 (D. Md. July 7, 2010) (victim of forgery and fraud against whom collection efforts were directed had standing to maintain suit for the resulting

FDCPA violation), or (b) the debt is not in fact in default. *Schlosser v. Fairbanks Capital Corp.*, 323 F.3d 534 (7th Cir. 2003); *McKinney v. Cadleway Props., Inc.*, 548 F.3d 496 (7th Cir. 2008).

7. "[A]ny person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement." 15 U.S.C. §1692a(6)(F). The fiduciary relationship must exist for purposes other than debt collection. Thus, a receiver or trustee of a corporate creditor or the personal representative or trustee of an individual creditor is treated as if it were the original creditor. Most courts have held that the student loan guaranty agencies are covered by the fiduciary exception. *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1034-5 (9th Cir. 2009); *Davis v. United Student Aid Funds,* 45 F.Supp. 2d 1104 (D. Kans. 1998). The fact that a collection attorney or agency is the agent, and therefore the fiduciary, of the creditor does not give rise to an exemption.

8. Persons who collect debts "originated by such person[s]." 15 U.S.C. §1692a(6)(F)(ii). An "originator" is one who played a significant role in originating the obligation. *Buckman v. American Bankers Insurance Company of Florida,* 115 F.3d 892 (11th Cir. 1997), *aff'g* 924 F.Supp. 1156 (S.D.Fla. 1996).

9. A secured party who takes possession of the creditor's receivables by enforcing its security interest (That is, if consumer lender ABC pledges its consumer receivables to commercial lender XYZ, and XYZ, pursuant to its rights under the security agreement, takes the collateral and directs the consumer to pay XYZ, XYZ is not a "debt collector".).

A. Debt buyers

Debt buyers are probably covered under the first, "principal purpose" portion of the definition in 15 U.S.C. § 1692a(6).

In *Henson v. Santander Consumer USA, Inc.*, __ U.S. __, 137 S.Ct. 1718, 198 L.Ed.2d 177, 2017 WL 2507342 (June 12, 2017), the Supreme Court held that an entity that "regularly" purchases defaulted debts to collect for its own account is not a "debt collector" under the second prong of the definition in 15 U.S.C. § 1692a(6) covering a person who "regularly collects or attempts to collect ... debts owed or due ... another." The defendant in that case was the auto finance unit of a bank, which regularly purchased portfolios, most of which were current debts but which contained a small percentage of defaulted debts. The Supreme Court expressly refrained from addressing the "principal purpose" portion of the definition, because it was clear that the "principal purpose" of the defendant was the extension of credit, not the collection of defaulted debts. See lower court decisions, *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131, 134, 137, 140 (4th Cir. 2016), and *Henson v. Santander Consumer USA, Inc.*, 12cv3519, 2014 WL 1806915, at *4 (D. Md. May 6, 2014). The Supreme Court held that defendant could not be held liable under the "regularly collects" portion of the definition because the debts were not owed to "another." Prior decisions holding that anyone who regularly acquires delinquent debt for collection is a "debt collector" are no longer good law. *Schlosser v. Fairbanks Capital Corp.,* 323 F.3d 534 (7th Cir. 2003); *McKinney v. Cadleway Properties, Inc.,* 548 F.3d 496 (7th Cir. 2008); *Kimber v. Federal Financial Corp.,* 668 F.Supp. 1480 (M.D.Ala. 1987).

Some debt buyers dun consumers themselves and file suits through in-house attorneys. There is no question but that such debt buyers are debt collectors under the "principal purpose" part of the definition. The phrase "debts owed or due or asserted to be owed or due another" that was dispositive in *Henson* is properly read as modifying *only* the second prong of the definition, that is, one "who regularly collects or attempts to collect, directly or indirectly," and not the first prong, "any business the principal purpose of which is the collection of any debts."

However, the industry sometimes argues that even if the sole source of revenue of an entity is the liquidation of defaulted consumer debts which it purchases, it is not a "principal purpose" debt collector if it hires collection agencies as independent contractors to dun consumers and outside law firms as independent contractors to file suits against consumers, in the name of the debt buyer. The debt buyers claim that they are merely acquiring and investing in debts, not "collecting" them.

This is incorrect. First, the "principal purpose" of a "business" is the source of its revenue. A "business" is, by definition, an activity conduct for profit. *Drobny v. C.I.R*, 113 F.3d 670, 673 n.5 (7th Cir. 1996) ("[I]n order to constitute a 'trade or business,' the activity in question must have had the 'actual and honest objective of making a profit.'"). Acquiring bad debts by itself is not a potential source of profit and thus not a "business" at all. It is what is done with the debts afterward – selling them, collecting them, etc. – that determines what "business" the entity is engaged in.

Second, the fact that the persons engaging in the collection activity are independent contractors rather than employees is not relevant. There is no question but that the dunning of consumers or filing of lawsuits against consumers is authorized by the debt buyer and that the relationship between a collection agency or collection attorney and the owner of the claim is that of agent and principal.

Under federal law, the authorized activities of independent contractor agents are imputed to the principal. *AT&T v. Winback and Conserve Program, Inc.,* 42 F.3d 1421, 1434-8 (3d Cir.1994); *Taylor v. Peoples Natural Gas Co.*, 49 F.3d 982 (3d Cir. 1995); *Smith v. State Farm Mut. Auto Ins. Co.,* 30 F.Supp.3d 765, 773-4 (N.D.Ill. 2014); *Worsham v. Nationwide Ins. Co.*, 772 A.2d 868, 878 (Md.App. 2001); *Hooters of Augusta v. Nicholson*, 537 S.E.2d 468, 472 (Ga.App. 2000). The distinction between employees and independent contractors is relevant only to the principal's liability for negligent physical injury caused by the employee. *AT&T v. Winback and Conserve Program, Inc.*, *supra.*

As a result, most cases hold that debt buyers are "principal purpose" debt collectors even if all collection activity is outsourced to "independent contractors." *Schweer v. HOVG, LLC*, 3:16cv1528, 2017 WL 2906504, *5 (M.D.Pa., July 7, 2017); *Torres v. LVNV Funding, LLC*, 2018 WL 1508535, *5 (N.D. Ill. March 27, 2018)*; McMahon v. LVNV Funding, LLC*, 2018 WL 1316736 (N.D. Ill. March 14, 2018); *Mitchell v. LVNV Funding, LLC*, 2017 WL 6406594 (N.D. Ind. Dec. 15, 2017).

B. Collection lawyers

Lawyers who "regularly" collect consumer debts are covered. *Heintz v. Jenkins,* 514 U.S. 291, 131 L.Ed.2d 395, 115 S.Ct. 1489, 1493 (1995). "Reguarly" does not require a very substantial percentage. "[A] person may regularly render debt collection services, even if these services are not a principal purpose of his business. Indeed, if the volume of a person's debt collection services is great enough, it is irrelevant that these services only amount to a small fraction of his total business activity; the person still renders them 'regularly.'" *Garrett v. Derbes*, 110 F.3d 317, 318 (5th Cir. 1997).

In *Goldstein v. Hutton, Ingram, Yuzek, Gainen, Carroll & Bertollotti,* 374 F.3d 56 (2d Cir. 2004), the court held that a trier of fact could find a law firm was subject to FDCPA based on 145 demands during one year even though attorney only received $ 5,000 in revenues amounting to 0.05% of its $ 10,000,000 revenue over that period.. The *Goldstein* court considered relevant "(1) the absolute number of debt collection communications issued, and/or collection-related litigation matters pursued, over the relevant period(s), (2) the frequency of such communications and/or litigation activity, including whether any patterns of such activity are discernable, (3) whether the entity has personnel specifically assigned to work on debt collection activity, (4) whether the entity has systems or contractors in place to facilitate such activity, such as use of mailing services, collection software, and use of form letters, and (5) whether the activity is undertaken in connection with ongoing client relationships with entities that have retained the lawyer or firm to assist in the collection of outstanding consumer debt obligations", as well as (6) "whether the law practice seeks debt collection business by marketing itself as having debt collection expertise". Factor (5) includes relationships with collection agencies, "lenders or other creditors, landlords or other lessors, and service providers ".

C. Foreclosure lawyers

Every Court of Appeals to have addressed the issue has held that foreclosure lawyers are subject to the FDCPA, either generally or unless they neither attempt to collect money nor enforce personal liability. *Glazer v. Chase Home Finance, LLC*, 704 F.3d 453 (6th Cir. 2013) (leading case); *Cohen v. Rosicki, Rosicki & Associates, P.C.,* 897 F.3d 75, 82 (2nd Cir. 2018); *Kaltenbach v. Richards*, 464 F.3d 524 (5th Cir. 2006); *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380 (7th Cir. 2010) (request for information to evaluate modification covered even if there is no "explicit demand for payment."); *Wallace v. Washington Mut. Bank, F.A.,* 683 F.3d 323 (6th Cir. 2012); *Reese v. Ellis, Painter, Ratterree & Adams LLP*, 678 F.3d 1211, 1217-18 (11th Cir. 2012) (noting that a contrary "rule would create a loophole in the FDCPA. A big one. In every case involving a secured debt, the proposed rule would allow the party demanding payment on the underlying debt to dodge the dictates of §1692e by giving notice of foreclosure on the secured interest. The practical result would be that the Act would apply only to efforts to collect unsecured debts. So long as a debt was secured, a lender (or its law firm) could harass or mislead a debtor without violating the FDCPA. That can't be right. It isn't. A communication related to debt collection does not become unrelated to debt collection simply because it also relates to the enforcement of a security interest. A 'debt' is still a 'debt' even if it is secured."); *Birster v. American Home Mortgage Servicing, Inc.*, 481 Fed.Appx. 579 (11th Cir. 2012) (same); *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 376 (4th Cir. 2006) (FDCPA applies to actions of attorneys hired to initiate non-judicial foreclosure; concerned over the "enormous loophole" that would result otherwise, but also relying on direct requests for payment

to conclude that FDCPA applies); *Brown v. Morris*, 243 Fed. Appx. 31 (5th Cir 2007) (same); *Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 233-36 (3d Cir. 2005) (FDCPA applies to collection of overdue water and sewer obligations via lien filed against consumer's house; also relied on letters requesting payment); *Rawlinson v. Law Office of William M. Rudow, LLC,* 460 Fed. Appx. 254 (4th Cir. 2012) (replevin action is covered by FDCPA). *Accord, McDaniel v. South & Assocs*., 325 F. Supp. 2d 1210, 1217 (D. Kan. 2004) (judicial foreclosure is subject to the FDCPA, because it seeks a personal judgment against the consumer; distinguishing cases finding that non-judicial foreclosures are not subject to FDCPA); *Overton v. Foutty & Foutty, LLP*, 1:07cv0274, 2007 WL 2413026, 2007 U.S. Dist. LEXIS 61705 (S.D. Ind. Aug. 21, 2007); *Levin v. Kluever & Platt,* 03cv2160, 2003 U.S. Dist. LEXIS 20861, 2003 WL 22757763 (N.D. Ill. Nov. 19, 2003); *Shapiro & Meinhold v. Zartman*, 823 P.2d 120 (Colo. 1992).

D. Creditors

The (pre-default) creditor itself is excluded from the definition of "debt collector" unless he "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." 15 U.S.C. §1692a(6) . Illustrative of the type of conduct which may result in a creditor being treated as a "debt collector" are *Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232 (2nd Cir. 1998) (Citicorp Retail Services sent out letters under the letterhead of "Debtor Assistance" to collect private label credit card debts); *Catencamp v. Cendant Timeshare Resort Group -- Consumer Finance, Inc.,* 471 F.3d 780 (7th Cir. 2006) (creditor CTRG used name "Resort Financial Services" on collection letters); and *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002) (creditor arranged for attorney to send out letters to induce communication with creditor's own collection department on attorney letterhead for small sum per letter).

Creditors may become "debt collectors" by using names in collecting their debts which falsely suggest the involvement of third party debt collectors or attorneys. The simplest situation covered by the "other name" exception of §1692a(6) is that where creditor ABC sends its debtors letters which demand payment in the name of XYZ Collection Agency, XYZ either being a totally fictitious entity or a real entity which has no significant involvement in the actual collection of ABC's debts. On its face, such conduct makes ABC a "debt collector" under §1692a(6) and simultaneously violates the prohibition against deceptive collection practices, §1692e. Numerous pre-FDCPA cases held that this practice violated §5 of the FTC Act. *Wm. M. Wise Co. v. FTC.*, 246 F.2d 702 (D.C. Cir. 1957); *In re Teitelbaum*, 49 FTC 745 (1953); *In re Bureau of Engraving, Inc*., 39 FTC 192 (1944); *In re National Remedy Co.*, 8 FTC 437 (1925); *In re B.W. Cooke*, 9 FTC 283 (1925); *In re U.S. Pencil Co.*, 49 FTC 734 (1953); *In re Perpetual Encyclopedia Corp.,* 16 FTC 443 (1932).

The FTC has stated that a creditor is using a name "other than [the creditor's] own" if the creditor is using a name which on its face it "would indicate that a third person is collecting or attempting to collect [the creditor's] debts" and no disclosure is made of the relationship between the name used in dealing with the consumer prior to default and the name used in attempting to collect after default, even if the creditor lawfully owns the name used to make collection. Sept. 19, 1985 opinion letter. The FTC commentary on the FDCPA states:

Creditors are generally excluded from the definition of "debt collector" to the extent that

they collect their own debts in their own name. However the term specifically applies to "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" involved in the collection.

A creditor is a debt collector for purposes of this act if:

- He uses a name other than his own to collect his debts, including a fictitious name.

- His salaried attorney employees who collect debts use stationery that indicated that attorneys are employed by someone other than the creditor or are independent or separate from the creditor [the same should apply to salaried nonattorney employees, as herein]. . . .

- The creditor's collection division or related corporate collector is not clearly designated as being affiliated with the creditor; however, the creditor is not a debt collector if the creditor's correspondence is clearly labeled as being from the "collection unit of the (creditor's name)," since the creditor is not using a "name other than his own" in that instance. (Emphasis added.)

A creditor collects its own debts by using a different name, implying that a third party was the debt collector, either (a) when the creditor uses an alias, or (b) when the creditor controls all aspects of the collection effort. *E.g., Sokolski v. Trans Union Corp.*, 53 F.Supp. 2d 307, 312 (E.D.N.Y. 1999); *Flamm v. Sarner & Associates, P.C.*, 02-4302, 2002 WL 31618443 (E.D.Pa., Nov. 6, 2002).

Another court has stated that "The 'false name' exception applies to any creditor who, in the process of collecting its debts, 'indicate[s] that a third party is collecting or attempting to collect such debts . . . pretends to be someone else or uses a pseudonym or alias . . . or . . . [who] owns and controls the debt collector, rendering it the creditor's alter ego.'" *Wood v. Capital One Servs., LLC*, 718 F. Supp. 2d 286, 291 (N.D.N.Y. 2010), citing *Mazzei v. Money Store*, 349 F. Supp.2d 651, 659 (S.D.N.Y. 2004).

E. Furnishers of deceptive forms

15 U.S.C. §1692j(a) provides that "It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating." This language covers an attorney who allows a creditor to send out letters on his letterhead, or a collection agency which provides form letters purporting to come from the agency for a creditor to send out. 15 U.S.C. §1692j(b) provides that "Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under [15 U.S.C. §1692k] for failure to comply with a provision of this title."

F. Repossessors

15 U.S.C. §1692a(6) provides "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." Section 1692f(6) defines as an unfair practice --

> **(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**.

A repossessor that also demands payment of the debt may also qualify as a "debt collector" under the general definition.

III. What is a "Debt"

"Debt" is defined as "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." 15 U.S.C. §1692a(5) (emphasis added).

The key elements in this definition are “consumer,” which is "any natural person obligated or allegedly obligated to pay any debt," 15 U.S.C. §1692a(3); a “transaction,” which excludes certain non-consensual obligations; and “personal, family or household purposes.” In addition, the effect of the definition of “debt collector” and the exclusions to that definition is to limit the scope of the FDCPA to debts which are actually or allegedly delinquent when the “debt collector” first becomes involved with them.

A. Personal, family or household purposes

Business and agricultural loans are therefore not "debts" covered by the FDCPA. *Bloom v. I.C. System, Inc.,* 972 F.2d 1067 (9th Cir. 1992) (business loan); *Munk v. Federal Land Bank*, 791 F.2d 130 (10th Cir. 1986) (agricultural loan); *Kicken v. Valentine Production Credit Ass'n*, 628 F. Supp. 1008 (D. Neb. 1984), aff'd mem., 754 F.2d 378 (8th Cir. 1984)(agricultural loan).

A personal guaranty of a business loan is also not covered. *Ranck v. Fulton Bank,* 93cv1512, 1994 WL 37744 (E.D. Pa. 1994).

B. Transaction

Condominium and homeowners’ association assessments on property acquired for personal, family or household purposes are FDCPA debts. *Newman v. Boehm, Pearlstein &*

Bright, 119 F.3d 477 (7th Cir. 1997); *Ladick v. Van Gemert*, 146 F.3d 1205 (10th Cir. 1998); *Thies v. Law Offices of William A. Wyman*, 969 F. Supp. 604 (S.D.Cal. 1997); *Taylor v. Mount Oak Manor Homeowners Ass'n*, 11 F.Supp.2d 753 (D.Md. 1998); *Garner v. Kansas*, 98cv1274, 1999 WL 262100 (E.D.La., Apr. 30, 1999). Because of the definition of "debt collector," a management company that collects such assessments prior to default is not covered by the FDCPA, but a lawyer or collection agency who duns or sues to enforce defaulted assessments is.

Rent for a residential apartment is a "debt" covered by the FDCPA. *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998); *Wright v. BOGS Management, Inc.*, 98cv2788, 2000 WL 1774086, *17 (N.D.Ill., Dec. 1, 2000). The statutory notice in a summary eviction action, *if given by a debt collector*, is subject to the FDCPA, regardless of whether the landlord seeks back rent or merely to evict for nonpayment. *Romea v. Heiberger & Associates*, *supra.* Again, because of the definition of "debt collector," a management company or landlord that collects rent before it is delinquent is not covered by the FDCPA, but a collection agency or lawyer that receives the claim after the rent is overdue is covered.

Liabilities for taxes are not considered "debts" within the FDCPA. *Staub v. Harris*, 626 F.2d 275 (3d Cir. 1980) (per capita tax is not a debt as defined by the FDCPA); *Coretti v. Lefkowitz*, 965 F. Supp. 3 (D. Conn. 1997); *Beggs v. Rossi*, 994 F. Supp. 114(D. Conn. 1997), aff'd, 145 F.3d 511 (2d Cir. 1998) (personal property taxes are not debt as defined by the FDCPA); *Berman v. GC Services, LP*, 97cv489, 1997 WL 392209 (N.D. Ill. June 30, 1997), aff'd, 146 F.3d 482 (7th Cir. 1998) (taxes are not covered even if they are imposed on the basis of a "transaction").

One court has held that a fine for failing to return a library book is not a debt. *Riebe v. Juergensmeyer & Assoc.*, 979 F.Supp. 1218 (N.D. Ill. 1997). This seems to be a close case, in part dependent on the absence of any required payment for the basic loan of the book. The court suggested that if there had been a charge for borrowing a DVD or video, there would have been a debt. Certainly, if one pays to rent goods for nonbusiness purposes and there is an extra charge for late return or late payment, both the basic rental and the extra charge are a "debt."

Charges for water and sewer service originally owed to a municipality and purchased by a buyer of bad debts were "debts" subject to the FDCPA, although property tax obligations are not. *Pollice v. National Tax Funding, LP*, 225 F.3d 379 (3rd Cir. 2000).

Fines for moving violations are not "debts." *Reid v. American Traffic Solutions,* Inc., 10cv204 and 10cv269, 2010 WL 5289108, 2010 U.S. Dist. LEXIS 134518 (S.D.Ill., Dec. 20, 2010). Parking tickets have also been held not to constitute "debts", at least where the fine was imposed for "parking one's vehicle in an unauthorized location," *Graham v. ACS State & Local Solutions, Inc.,* 06cv2708, 2006 WL 2911780, at *2 (D. Minn. Oct. 10, 2006), and automobile impoundment and storage fees are not debts, *Betts v. Equifax Credit Information Servs., Inc.,* 245 F. Supp. 2d 1130, 1133-34 (W.D. Wash. 2003). On the other hand, a fee owed for the privilege of parking in an unmanned parking lot is a "debt." *Hansen v. Ticket Track, Inc.,* 280 F. Supp. 2d 1196, 1203 (W.D. Wash. 2003). The fact that the creditor is a governmental entity does not take essentially contractual obligations outside the definition of "debt." *Pollice v. National Tax Funding, LP*, *supra*, 225 F.3d 379 (3rd Cir. 2000).

Yazo v. Law Enforcement Systems, Inc., 08cv03512, 2008 WL 4852965 (C.D.Cal., Nov. 7, 2008), addressed toll road charges. The court held that a fine for using a toll road without payment is akin to a penalty for theft and is not covered. The court left open the possibility that one who has a contract for using the road but is assessed a fine may be protected by the FDCPA. Another case holds that toll road charges generally are not "debts," even if there is a contract for their payment (e.g., EZ Pass or I-Pass). *St. Pierre v. Retrieval-Masters Creditors Bureau, Inc.*, 898 F.3d 351, 358 (3rd Cir. 2018). A different court disagrees. *Brown v. Transurban USA, Inc.*, 144 F.Supp.3d 809, 842 (E.D.Va. 2015).

Liabilities for child support obligations are not considered "debts" within the FDCPA. *Mabe v. GC Services, L.P.*, 32 F.3d 86 (4th Cir. 1994); *Battye v. Child Support Servs.*, 873 F. Supp. 103 (N.D.Ill. 1994); *Brown v. Child Support Advocates*, 878 F. Supp. 1451 (D.Utah. 1994); *Jones v. U.S. Child Support Recovery*, 961 F.Supp. 1518 (D.Utah 1997).

Tort claims by a third party with which the consumer has no contractual relationship are not covered because there is no "transaction." *Hawthorne v. MAC Adjustment, Inc.,* 140 F.3d 1367 (11th Cir. 1998). Other courts have held that the FDCPA does not apply to claims for statutory damages for shoplifting, *Shorts v. Palmer*, 155 F.R.D. 172 (S.D.Ohio 1994), and claims arising from the illegal reception of microwave television signals are also not within the definition of "debt". *Zimmerman v. H.B.O. Affiliate Group*, 834 F.2d 1163 (3d Cir. 1987).

However, the fact that a claim arising out of a transaction by a consumer is cast in terms of a tort or statutory violation rather than breach of contract does not deprive the consumer of the protection of the FDCPA when collection agencies or collection lawyers ask the consumer to pay. *Brown v. Budget Rent-A-Car Systems, Inc.*,119 F.3d 922 (11th Cir. 1997) (a claim by a rental company against a consumer for damage to a car that the consumer rented is a "debt" whether brought as a claim for breach of the rental agreement or as one for negligent damage to property). Thus, it is now settled that dishonored checks are covered, even if liability is based on a bad check statute rather than the contract (check). *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322 (7th Cir. 1997); *Ryan v. Wexler & Wexler,* 113 F.3d 91 (7th Cir. 1997); *Charles v. Lundgren & Associates, P.C.*, 119 F.3d 739 (9th Cir. 1997); *Duffy v. Landberg,* 133 F.3d 1120 (8th Cir. 1998); *Snow v. Riddle*, 143 F.3d 1350 (10th Cir. 1998); *Hawthorne v. MAC Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998); *FTC v. Check Investors, Inc.*, 502 F.3d 159 (3rd Cir. 2007). In the case of checks, each endorsement of a check should be treated as a separate contract for purposes of analyzing the purpose of the transaction. Thus, if a business issues a paycheck to an employee, the employee deposits or cashes it, and the check bounces, any attempt to enforce the statutory warranty against the employee should be covered by the FDCPA because the employee's endorsement is for personal purposes, even if the original issuance of the check was not. *Broadnax v. Greene Credit Service*, No. 95-3829, 1997 WL 14777, 1997 U.S. App. LEXIS 776 (6th Cir. Jan. 15, 1997) (businessman issued a check to pay a contractor and then prevented its negotiation because of a complaint about the work; contractor negotiated the check to a merchant to pay a personal debt; businessman was protected by the FDCPA when a debt collector for the merchant falsely accused him of passing a bad check, reasoning that "the defendants had attempted to collect a consumer obligation through the use of an arguably abusive, deceptive, and unfair debt collection practice (or practices).").

IV. Violations -- prohibited third party contacts and contacts with represented

consumers -- 15 U.S.C. §1692c

Section 1692c provides:

(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 communicationIf 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.

Section 1692b, referred to in §1692c, provides:

Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

Section 1692c provides debtors the "extremely important protection" of prohibiting debt collectors from contacting third parties, including a debtor's employer, relatives (other than the debtor's spouse), friends or neighbors, for *any purpose* other than obtaining "location information." See also S. Rep. No. 382, 95th Cong. 2d Sess. 4, reprinted in 1977 U.S.C.C.A.N. 1695, 1698-99. There are a few highly regulated exceptions where the debtor consents, a court has granted permission or to effect a post-judgment judicial remedy. § 1692c; *F.T.C. Official*

Staff Commentary § 805(b), 53 Fed. Reg. 50104; S. Rep. No. 382 , at 4. As stated by the Senate, "[s]uch contacts are not legitimate collection practices and result in serious invasions of privacy, as well as loss of job." Id. Debt collectors cannot communicate a consumer's personal affairs to third persons". Id.

A. The section is violated by any communication to a third party, even if the debt is not expressly referenced, other than one that strictly complies with the provision allowing location information to be gathered. Thus, a message left with a neighbor for the debtor to call regarding some urgent matter is illegal. *West v. Nationwide Credit, Inc.*, 998 F. Supp. 642 (W.D.N.C. 1998); *Shaver v. Trauner*, 97cv1309, 1998 WL 35333713, 1998 U.S.Dist. LEXIS 19648 (C.D.Ill., Jul. 31, 1998), adopting, 1998 WL 35333712, 1998 U.S.Dist. LEXIS 19647 (C.D.Ill., May 29, 1998); Krapf v. Collectors Training Institute of Illinois, Inc., 09cv391, 2010. U.S. Dist. LEXIS 1306, 2010 WL 584020 (W.D.N.Y. Feb. 16, 2010); *Romano v. Williams & Fudge, Inc.,* 644 F.Supp.2d 653 (W.D.Pa. 2008); *Thomas v. Consumer Adjustment Co.*, 579 F.Supp.2d 1290 (E.D.Mo. 2008); *Krug v. Focus Receivables Mgmt., LLC*, 09cv4310, 2010 WL 1875533 , 2010 U.S.Dist. LEXIS 45850 (D.N.J. May 11, 2010); *Leyse v. Corporate Collection Services*, 03cv8491, 2006 WL 2708451, 2006 U.S.Dist. LEXIS 67719 (S.D.N.Y. Sept. 18, 2006); *Wideman v. Monterey Fin. Servs.*, 08cv1331, 2009 WL 1292830, 2009 U.S.Dist LEXIS 38824 (W.D.Pa. May 7, 2009).

B. Contacts with the consumer's relatives, other than the spouse, violate the FDCPA. *West v. Costen, supra*, 558 F.Supp. 564 (W.D.Va. 1983).

C. Leaving a message on an answering machine or voice mail system may result in an illegal third party communication if it is foreseeable that a third party with whom the collector could not communicate directly would access the device or system. *Chlanda v. Wymard*, C-3-93-321, 1995 WL 17917574, 1995 U.S. Dist. LEXIS 14394 (S.D.Ohio Sept. 5, 1995). *See Committe v. Dennis Reimer Co., L.P.A.*, 150 F.R.D. 495 (D.Vt. 1993). One case states that the collector must intend to communicate with a third party, *Mostiller v. Chase Asset Recovery Corp.,* 09cv218, 2010 WL 335023 , 2010 U.S. Dist. LEXIS 5208 (W.D.N.Y. Jan. 22, 2010), but this seems clearly wrong, and most other decisions are to the contrary. *Thompson v. Diversified Adjustment Service, Inc.*, H-12-922, 2013 WL 3973976, *6 (S.D.Tex., July 31, 2013).

D. "Express permission" of a court includes court rules governing whether service of papers must be made directly on a consumer and when an attorney is deemed to represent a consumer. *Holcomb v. Freedman Anselmo Lindberg, LLC,* 900 F.3d 990 (7th Cir. 2018) (in Illinois, if an attorney has not filed an appearance for a consumer, motions and pleadings relating to a lawsuit must be sent to the consumer).

E. A debt collector cannot, in obtaining location information, request more information than specified in the statute. *Shaver v. Trauner*, 97cv1309, 1998 WL 35333713, 1998 U.S.Dist. LEXIS 19648 (C.D.Ill., Jul. 31, 1998), adopting, 1998

WL 35333712, 1998 U.S.Dist. LEXIS 19647 (C.D.Ill., May 29, 1998); or purport to obtain location information where the collector already has the permitted information. *Id*. A Federal Trade Commission Act case, *United States v. Consumer Portfolio Services, Inc.*, 14cv00819 (C.D.Cal., May 28, 2014), requires a lender to make location calls only if (1) mail directed to the consumer's last known address is returned as undeliverable; (2) the consumer's "known telephone number(s)" are disconnected; (3) "at each number known to belong to the consumer the voice mailbox is full or does not accept messages;" or (4) a third party at the consumer's last telephone number claims the consumer is no longer using it. (https://www.ftc.gov/enforcement/cases-proceedings/112-3010/consumer-portfolio-services-inc)

V. Violations -- harassing and abusive conduct -- 15 U.S.C. §1692d

15 U.S.C. §1692d provides:

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. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity

A. Messages left by debt collectors will often violate 15 U.S.C. §§1692c-e and 1692g. Potential violations include:

1. Failure to include the warning required by 15 U.S.C. §1692e(11) and, if the initial communication, failure to provide the §1692g notice within 5 days.

2. If the voicemail is not solely accessed by the debtor, illegal third party communications (see below).

3. Failure to identify the caller's company. 15 U.S.C. §1692d(6) makes it unlawful for a debt collector to engage in the following conduct: "Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity." Under §1692d(6), it is essential that the caller provide the name of the debt collection business.

B. The nature and frequency of calls that results in a violation of 15 U.S.C. §1692d is fact-intensive and dependent on such matters as whether calls are answered, whether calls are made immediately after the consumer terminates a conversation, whether the consumer has explained an inability to pay, whether the consumer has requested that the calls cease, whether the calls are threatening or offensive or made at inappropriate times, whether the consumer was called at work, and similar facts, rather than a simple tally of calls. *Roth v. NCC Recovery, Inc.*, 1:10cv02569, 2012 U.S. Dist. LEXIS 101592, 2012 WL 2995456 (N.D.Ohio July 23, 2012); *Hoover v. Monarch Recovery Mgmt., Inc.*, 11cv04322, 2012 U.S. Dist. LEXIS 120948, 2012 WL 3638680 (E.D.Pa., August 24, 2012).

VI. Violations -- false, deceptive or misleading communications -- 15 U.S.C. §1692e

15 U.S.C. §1692e provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

A. Unsophisticated consumer standard.

The standard for determining whether a communication is false, deceptive or misleading is that of an unsophisticated consumer or "least sophisticated" consumer. *Clomon v. Jackson,* 988 F.2d 1314 (2d Cir. 1993); *Taylor v. Perrin, Landry, de Launay & Durand,* 103 F.3d 1232 (5th Cir. 1997); *McKenzie v. E.A. Uffman & Assoc., Inc.*,119 F.3d 358 (5th Cir. 1997); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991); *Smith v. Transworld Systems, Inc*., 953 F.2d 1025, 1028-29 (6th Cir. 1992); *Swanson v. Southern Oregon Credit Service, Inc.,* 869 F.2d 1222, 1225-26 (9th Cir. 1988); *Clark v. Capital Credit & Collection Services, Inc.*, 460 F.3d 1162, 1171 (9th Cir. 2006); *Jeter v. Credit Bureau, Inc.,* 760 F.2d 1168 (11th Cir. 1985); *United States v. National Financial Servs.*, 820 F. Supp. 228, 232 (D.Md. 1993), aff'd, 98 F.3d 131, 135 (4th Cir. 1996); *Gammon v. GC Services L.P.*, 27 F.3d 1254 (7th Cir. 1994).

With respect to communications sent to a consumer's attorney, some courts hold that the test is whether a competent lawyer would be deceived by a misleading statement, or whether there was a false statement of fact. *Evory v. RJM Acquisitions Funding L.L.C.,* 505 F.3d 769 (7th Cir. 2007).

A collection communication which is ambiguous -- it can plausibly be read in two or more ways, at least one of which is misleading -- violates the law. *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir. 1996).

B. Materiality

It is not necessary to show that the plaintiff was actually misled by a collection notice. *Avila v. Rubin*, 84 F.3d at 227 (7th Cir. 1996); *Bartlett v. Heibl*, 128 F.3d 497 (7th Cir. 1997). However, some courts require that a misrepresentation or omission be material to the unsophisticated or least sophisticated consumer. *Wahl v. Midland Credit Mgmt.*, 556 F.3d 643 (7th Cir. 2009); *Hahn v. Triumph P'ships LLC*, 557 F.3d 755, 757 (7th Cir. 2009); *Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 596 (6th Cir. 2009); *Donohue v. Quick Collect, Inc.,* 592 F.3d 1027 (9th Cir. 2010). Statements are material if they influence a consumer's decision or if they would impair the consumer's ability to challenge the debt at issue. *Hale v. AFNI, Inc.*, 08cv3918, 2010 WL 380906, 2010 U.S. Dist. LEXIS 6715, *22 (N.D.Ill., Jan. 26, 2010). This does not require that a consumer believe false threats or false statements that the collector has the right to engage in certain conduct. For example, even a consumer who understands that a creditor cannot legally recover attorney's fees should not be subjected to baseless attempts to recover them or threats to do so. *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012).

All conduct specifically prohibited or disclosures specifically required by the FDCPA is "material." *Mark v. J. C. Christensen & Assoc., Inc.*, 09cv100, 2009 WL 2407700, 2009 U.S.Dist. LEXIS 67724, *11 (D.Minn. Aug. 4, 2009); *Warren v. Sessoms & Rogers, P.A.*, 676 F.3d 365, 374 (4th Cir. 2012) (violations of §1692e(11) are always "material"). For example, providing a compliant §1692g

notice is specifically required and should always be "material." *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317 (7th Cir. 2016). Similarly, informing a credit bureau that a debt is disputed is specifically required and material. *Evans v. Portfolio Recovery Associates, LLC,* 889 F.3d 337 (7th Cir. 2018).

C. False threats.

1. Threats which are not intended to be carried out or are unlawful. For example, threatening criminal prosecution or liability for multiple damages or civil penalties, when collecting bad checks is improper unless the collector regularly carries out the threats and they are legal. Otherwise, the communications violate §1692e(5). *Alger v. Ganick, O'Brien & Sarin*, 35 F.Supp. 2d 148 (D.Mass. 1999); *Davis v. Commercial Check Control, Inc.,* 98cv631, 1999 WL 89556 (N.D.Ill. Feb. 16, 1999).

2. The threat to file suit or take other collection actions within a short time when the creditor has not authorized the action or the debt collector does not take the action within the period stated. *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2d Cir. 1993); *Graziano v. Harrison, supra,* 950 F.2d 107 (3d Cir. 1991); *Pipiles v. Credit Bureau of Lockport, Inc., supra*, 886 F.2d 22 (2d Cir. 1989) (48 hour notice); *Oglesby v. Rotche*, 93cv4183, 1993 WL 460841 (N.D.Ill. 1993).

3. Threats may be implicit as well as express. Statements that a debt will be subject to "legal review" or "will be transferred to an attorney" are implicit threats of suit. *Drennan v. Van Ru Credit Corp.*, 950 F.Supp. 858 (N.D.Ill. 1996); *United States v. National Financial Services, Inc.,* 98 F.3d 131 (4th Cir. 1996).

4. Threatening to enforce creditor remedies that cannot be enforced at the time stated or to the extent stated is a violation. For example, a debt collector may threaten to obtain a wage garnishment or execution without disclosing that this can be done only after notice, hearing, and judgment or may threaten to garnish "all" of a consumer's wages when the law clearly imposes limitations on the amount that may be garnished. *Oglesby v. Rotche,* No. 93 C 4183, 1993 WL 460841 (N.D.Ill. 1993) (threat to garnish all wages and attach all property); *Woolfolk v. Van Ru Credit Corp.,* 783 F.Supp. 724 (D.Conn. 1990) (oppressive list of postjudgment remedies); *Seabrook v. Onondaga Bureau of Medical Economics, Inc.,* 705 F.Supp. 81 (N.D.N.Y. 1989) (threat to garnish wages in excess of amounts permitted under federal law); *Cacace v. Lucas,* 775 F.Supp. 502 (D.Conn. 1990) (letter stating that litigation could result in seizure of real estate and bank account deceptive; mere filing of litigation could not have any of stated effects); *Holt v. Wexler,* 98cv7285, 1999 U.S.Dist. LEXIS 8785 at *1 (N.D.Ill. May 28, 1999) ("Additional legal proceedings *will* be

implemented to enforce collection; credit bureaus have recorded the fact in your credit report that you are a judgment debtor and skip tracers may contact your references, your former employers, your relatives and your neighbors in an effort to gain information about your assets.").

5. Threats to contact employers or take other action prohibited by the FDCPA or other law, *Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222, 1226-27 (9th Cir. 1988), or which is not in fact taken. *Beasley v. Collectors Training Institute of Ill. Inc.*, 98cv8113, 1999 WL 675196, 1999 U.S. Dist. LEXIS 13275 (N.D.Ill. August 19, 1999).

6. The statement that "Late payments, missed payments or other defaults may be reflected on your credit report" is unlawful if late or missed payments or other defaults are not in fact reported to credit bureaus after the initial reporting of a defaulted account, or the debt is too old to report. *Fainbrun v. Southwest Credit Systems, L.P.*, 246 F.R.D. 128 (E.D.N.Y. 2007); see also, *Harrison v. Palisades Collections, LLC*, 06cv3239 (E.D.N.Y. May 7, 2007).

7. False statements in a collection complaint, affidavits, etc., *e.g.,* that the affiant has personal knowledge of records establishing debt, that the plaintiff is holder in due course, etc., are violations. A debt collector's misrepresentation in a pleading that it is a subrogee was held to be actionable in *Gearing v. Check Brokerage Corp.,* 233 F.3d 469 (7th Cir. 2000). *See also Sayyed v. Wolpoff & Abramson,* 485 F.3d 226 (4th Cir. 2007). Filing false affidavits in state court collection litigation is actionable. *Todd v. Weltman, Weinberg & Reis Co.,* 434 F.3d 432 (6th Cir. 2006); *Delawder v. Platinum Financial Services Corp.,* 443 F.Supp.2d 942 (2005), *reconsideration denied in part,* 2007 WL 1245848 (S.D. Ohio Apr. 27, 2007); *Griffith v. Javitch, Block & Rathbone, LLP,* No. 1:04cv238 (S.D. Ohio July 8, 2004); *Hartman v. Asset Acceptance Corp.,* 467 F.Supp.2d 769 (S.D. Ohio 2004); *Gionis v. Javitch, Block & Rathbone,* 405 F.Supp.2d 856 (S.D. Ohio 2005); *Blevins v. Hudson & Keyse, Inc.,* 395 F.Supp.2d 655, *motion denied,* 395 F.Supp.2d 662 (S.D. Ohio 2004); *Stolicker v. Muller, Muller, Richmond, Harms, Meyers & Sgroi, P.C.,* 1:04cv733, 2005 WL 2180481 (W.D.Mich. Sept. 9, 2005); *Eads v. Wolpoff & Abramson, LLP,* 538 F.Supp.2d 981 (W.D.Tex. 2008).

8. The Federal Trade Commission has addressed false threats as follows:

6. *Threat of legal or other action*. Section 807(5) [15 U.S.C. §1692e(5)] refers not only to a false threat of legal action, but also a false threat by a debt collector that he will report a debt to a credit bureau, assess a collection fee, or undertake any other action if the debt is not paid. A debt collector may also not misrepresent the imminence of such action.

A debt collector's implication, as well as a direct statement, of planned

legal action may be an unlawful deception. For example, reference to an attorney or to legal proceedings may mislead the debtor as to the likelihood or imminence of legal action.

A debt collector's statement that legal action has been recommended is a representation that legal action may be taken, since such a recommendation implies that the creditor will act on it at least some of the time.

Lack of intent may be inferred when the amount of the debt is so small as to make the action totally unfeasible or when the debt collector is unable to take the action because the creditor has not authorized him to do so.

FTC Official Staff Commentary on the Fair Debt Collection Practices Act, Statements of General Policy or Interpretation Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, 50106 (Dec. 13, 1988).

D. Time-barred debts

1. Suing or threatening to sue on time-barred debts is a violation. *Phillips v. Asset Acceptance, LLC,* 736 F.3d 1076, 1079 (7th Cir. 2013); *Kimber v. Federal Financial Corp.,* 668 F.Supp. 1480 (M.D.Ala. 1987); *Goins v. JBC & Associates, P.C.,* 352 F.Supp.2d 262 (D.Conn. 2005); *Parkis v. Arrow Financial Services, LLS,* 07cv410, 2008 WL 94798 (N.D.Ill. Jan. 8, 2008); *Ramirez v. Palisades Collection LLC,* 07cv3840, 2008 WL 2512679 (N.D.Ill. June 23, 2008); *Schutz v. Arrow Financial Services, LLC,* 465 F.Supp.2d 872 (N.D.Ill. 2006). "A threat to sue a consumer on a claim that the debt collector knows is barred by the statute of limitations violates section 1692e(2)(A) of the FDCPA." *Aronson v. Commercial Financial Services, Inc.,* 96cv2113, 1997 WL 1038818 at *2 (W.D.Pa. Dec. 22, 1997). It should be noted that a February 2009 FTC report states: "It thus is a violation of the FDCPA to sue or threaten to sue consumers to recover on time-barred debt." *Collecting Consumer Debts: The Challenges of Change: A Workshop Report,* p. 63 (Feb. 2009), www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf.

2. Offering to settle time-barred debts without disclosing that they are time-barred is a violation. *McMahon v. LVNV Funding, LLC,* 744 F.3d 1010 (7th Cir. 2014); *Pantoja v. Portfolio Recovery Associates, LLC,* 852 F.3d 679, 683 (7th Cir. 2017); *Daugherty v. Convergent Outsourcing, Inc.*, 836 F.3d 507, 511 (5th Cir. 2016); *Buchanan v. Northland Group, Inc.,* 776 F.3d 393, 398 (6th Cir. 2015).

E. Discharged debts.

The attempted collection of debts discharged in bankruptcy is an FDCPA violation. *Ross v. RJM Acquisitions Funding LLC*, 480 F.3d 493, 495 (7th Cir. 2007).

F. Phony attorney letters.

Unless the attorney has in fact reviewed the debtor's file and made a professional judgment that whatever action is threatened is appropriate, and the threatened action has been authorized by the creditor, the sending of attorney letters is a violation of §1692e(3), which prohibits "[t]he false representation or implication that any individual is an attorney or that any communication is from an attorney." *Clomon v. Jackson*, 988 F.2d 1314, 1321 (2d Cir. 1993); *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996); *Nielsen v. Dickerson*, 307 F.3d 623 (7th Cir. 2002); *United States v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996); *Taylor v. Perrin, Landry, DeLaunay & Durand,* 103 F.3d 1232 (5th Cir. 1997). The violation may be avoided if the letter prominently states that no attorney has yet reviewed the matter. *Greco v. Trauner, Cohen & Thomas, LLP,* 412 F.3d 360, 364 (2d Cir. 2005) ("at this time, no attorney with this firm has personally reviewed the particular circumstances of your account"). However, this assumes that the attorney's office has in fact been assigned the file and is merely sending the letter as a preliminary screening and consumer-locating mechanism. Even with the disclaimer, there is still a misrepresentation if the attorney is simply allowing a creditor or collection agency to send letters using his or her letterhead, as the disclaimer represents that the attorney's office is involved in collecting the debt and implies that non-response may result in actual attorney involvement. Also, *Greco* is inconsistent with the treatment of disclaimers under the Federal Trade Commission Act, where disclaimers which purport to negate a central message are generally not considered sufficient to avoid deception, *In re Cliffdale Associates*, 103 FTC 110, 184 (1984) ("the Commission recognizes that in many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller"), and in trademark law, where it is not permissible to use an established trademark coupled with a disclosure that the trademark owner has not authorized the defendant's product, *Boston Professional Hockey Ass'n v. Dallas Corp. & Emblem Mfg., Inc.,* 510 F.2d 1004, 1013 (5th Cir. 1975).

G. Sewer service (not serving defendant and filing false return of service stating that they were served, to obtain a default judgment) is a violation. *Sykes v. Mel S. Harris and Associates LLC,* 780 F.3d 70 (2d Cir. 2015).

H. Suing or dunning the wrong person is a violation. *Heathman v. Portfolio Recovery Associates, LLC*, 12cv201, 2013 WL 755674 (S.D.Cal., Feb. 27, 2013); *Cox v. Hilco Receivable, L.L.C.*, 726 F.Supp.2d 659, 666 (N.D.Tex.2010); *Davis v. Midland Funding, LLC*, 2:13cv2316, 2014 WL 3889971 (E.D.Cal., August 7, 2014); *Gonzalez v. Law Firm of Sam Chandra, APC*, 13cv0097, 2013 WL 4758944, 2013 U.S.Dist. LEXIS 126375 (E.D.Wash., Sept. 4, 2013); *Dunham v. Portfolio Recovery Associates*, 663 F.3d 997 (8th Cir. 2011).

I. Misrepresentation of components of debts is a violation. *Fields v. Wilber Law Firm, P.C.,* 383 F.3d 562 (7th Cir. 2004).

J. **Attempting to collect debts of decedents** from surviving family members who do not personally owe the debts may be a violation. See FTC release on collecting debts of decedents, "Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts," 76 FR 44915 (Wed., July 27, 2011).

K. **Courts have divided on whether filing unprovable collection cases is actionable.** Some courts find it actionable, at least where it is clear that the collector could not have or did not intend to proceed to trial. *In re Maxwell*, 281 B.R. 101 (Bankr. D. Mass. 2002); *Kuria v. Palisades Acquisition XVI, LLC*, 1:09cv03321, 2010 WL 4780769 at *6 (N.D. Ga. 2010). The Seventh Circuit has held that filing a lawsuit is not a representation that the plaintiff will pursue it to judgment. *St. John v. Cach, LLC,* 822 F.3d 388 (7th Cir. 2016).

VII. Violations -- unfair practices -- 15 U.S.C. §1692f

15 U.S.C. §1692f provides:

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:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(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.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

A. With respect to 15 U.S.C. §1692f(1), the FTC Staff Commentary provides that "A debt collector may attempt to collect a fee or charge in addition to the debt if either (a) the charge is expressly provided for in the contract creating the debt and the charge is not prohibited by state law, or (b) the contract is silent but the charge is otherwise expressly permitted by state law. Conversely, a debt collector may not collect an additional amount if either (a) state law expressly prohibits collection of the amount, or (b) the contract does not provide for collection of the amount and state law is silent." *Federal Trade Commission Staff Commentary on the Fair Debt Collection Practices Act*, 53 Fed.Reg. 50,097, at 50,108 (Dec. 13, 1988).

B. Adding unauthorized amounts to debts, *e.g.,* attorneys' fees, is a violation. *Shula v. Lawent,* 359 F.3d 489 (7th Cir. 2004), *aff'g* 01cv4883, 2002 WL 31870157 (N.D.Ill. Dec. 23, 2002). In *Lox v. CDA, Ltd.*, 689 F.3d 818 (7th Cir. 2012), the Seventh Circuit held that a letter stating that attorney's fees could be awarded violated the FDCPA where there was no contractual or statutory basis for fees. "[I]t is improper under the FDCPA to imply that certain outcomes might befall a delinquent debtor when, legally, those outcomes cannot come to pass." The court relied on *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055 (9th Cir. 2011), and *Ruth v. Triumph P'ships*, 577 F.3d 790, 794 n.2 (7th Cir. 2009).

VIII. Violations -- validation notice -- 15 U.S.C. §1692g

One of the most important rights conferred by the FDCPA is the debtor's right to "validation" or "verification" of a debt under §1692g. "This provision will eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." Sen.R. No. 95-382, 95th Cong., 1st. Sess., p. 4, reprinted in 1977 USCCAN 1695, 1698. Under 15 U.S.C. §1692g:

§ 1692g. Validation of debts [Section 809 of P.L.]

Notice of debt; contents

(a) 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.

Disputed debts

(b) Disputed debts. If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) 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 title may continue during the 30-day period referred to in subsection (a) 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.

No Admission of liability

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings. A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions. The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

A. Typical violations relating to validation notices include

1. Failing to state that a dispute must be in writing to obtain verification (oral disputes are permitted and are sufficient to require a debt to be reported as disputed on a credit report, but do not trigger verification obligations). The failure to inform the consumer that a dispute must be in writing to obtain verification is a violation of §1692g. *McCabe v. Crawford & Co.*, 272 F.Supp.2d 736, 742–44 (N.D.Ill. 2003); *Crafton v. Law Firm of Jonathan B. Levine*, 12cv602, 2013 WL 3441243, *5 (E.D.Wisc., July 9, 2013); *Greif v. Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 217 F. Supp. 2d 336, 340 (E.D.N.Y. 2002).

2. Threatening suit within 30 days without stating that exercise of verification rights requires suspension of collection activities until it is provided. *Bartlett v. Heibl*, 128 F.3d 497, 500 (7th Cir. 1997).

3. Not making clear that the 30 days in which to dispute a debt runs from receipt of the notice of debt, not the date on the letter, and does not require receipt of a verification request within 30 days, *Chauncey v. JDR Recovery Corp.*, 118 F.3d 516, 518, 519 (7th Cir. 1997); *Cavallaro v. Law Office of Shapiro & Kreisman*, 933 F. Supp. 1148, 1151 (E.D.N.Y. 1996) (notice which stated that the consumer could dispute the debt "within thirty (30) days from the date of this notice" is inaccurate); *Rivera*

v. Amalgamated Debt Collection Servs., 462 F. Supp. 2d 1223 (S.D.Fla. 2006) ("By mailing notices stating that debtors have thirty days from the date of the letter to challenge the debt, Defendant led debtors to believe that they had less than thirty days to obtain verification of the debt. That is a clear violation of the statute . . . .").

4. The right to dispute a part of the debt is material and the notice must disclose that right. *Harvey v. United Adjusters*, 509 F.Supp. 1218 (D.Ore. 1981); *Forsberg v. Fidelity National Credit Services*, 03cv2193, 2004 U.S. Dist. LEXIS 7622, 2004 WL 3510771 (S.D.Cal., Feb. 26, 2004); *McCabe v. Crawford & Co.*, 210 F.R.D. 631 (N.D.Ill. 2002), later opinion, 272 F.Supp.2d 736 (N.D.Ill. 2003).

5. "Overshadowing" or contradicting the statutory notice. The notice must be large and prominent enough to be noticed and easily read. *Riveria v. MAB Collections, Inc*. 682 F.Supp. 174, 177 (W.D.N.Y. 1988)*; Rabideau v. Management Adjustment Bureau*, 805 F.Supp. 1086, 1093 (W.D.N.Y. 1992). The validation notice may not be either "overshadowed" or contradicted by other language or material in the original or subsequent collection letters sent within 30 days after receipt of the first one. *Swanson v. Southern Oregon Credit Service, Inc.,* 869 F.2d 1222 (9th Cir. 1988); *Miller v. Payco-General American Credits, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991); *Harris v. Payco General American Credits, Inc.,* 98cv4245, 1998 U.S.Dist. LEXIS 20153 (N.D. Ill. Dec. 9, 1998). "A notice is overshadowing or contradictory if it would make the least sophisticated consumer uncertain as to her rights." *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2d Cir. 1996). However, general statements to "act now" or references to potential legal action, without any specific deadline that falls within the 30-day period, may not be actionable. *Zemeckis v. Global Credit & Collection Corp*., 679 F.3d 632 (7th Cir. 2012).

6. If the validation notice is placed on the back of the correspondence, there must be a legible and reasonably prominent reference on the front. *Riveria v. MAB Collections, Inc., supra*, 682 F. Supp. 174, 178 (W.D.N.Y. 1988); *Ost v. Collection Bureau, Inc.,* 493 F.Supp. 701 (D.N.D. 1980); *Phillips v. Amana Collection Servs*., 89cv1152, 1992 WL 227839, 1992 U.S. Dist. LEXIS 13558 (W.D.N.Y. Aug. 25, 1992). However, the enclosure of a separate 8-1/2 x 11" validation notice page in the same envelope has been found to be acceptable. *Cavallaro v. Law Office of Shapiro & Kreisman*, 933 F.Supp. 1148 (E.D.N.Y. 1996).

7. Failing to correctly and clearly identify the current creditor. *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317 (7th Cir. 2016).

8. Suggesting that anyone other than the debt collector (and its client) may assume the debt to be valid. *Guerrero v. Absolute Collection Service, Inc.*, 1:11cv02427, 2011 WL 8183860, 2011 U.S. Dist. LEXIS 155541, *10 (N.D. Ga. Oct. 6, 2011) ("ACS's failure to limit its statement that any undisputed debt would be assumed valid to the debt collector violates the notice requirements of §1692g(a)(3) by "making the least sophisticated consumer uncertain as to her rights.").

9. Return address: Failure to include the collector's address violates §1692g even if the complete text of the §1692g notice is provided and nothing requires action in less than 30 days. *Cortez v. Trans Union Corp.*, 94cv7705, 1997 WL 7568, 1997 U.S. Dist. LEXIS 31 (N.D. Ill. Jan. 3, 1997); *Wegmans Food Markets, Inc. v. Scrimpsher*, 17 B.R. 999, 1014 (Bankr. N.D.N.Y. 1982) ("The absence of a return address on a debt collector's notices effectively nullifies the consumer's rights set out in 15 U.S.C 1692g, which arise from a consumer's written notification to the debt collector").

10. Directing the consumer to contact the creditor rather than the debt collector if he disputes the debt violates §1692g. *Blair v. Collectech Systems, Inc.*, 97cv8630, 1998 WL 214705, 1998 U.S. Dist. LEXIS 6173 (N.D. Ill. April 24, 1998); *Macarz v. Transworld Systems,* 26 F.Supp. 2d 368 (D.Conn. 1998). Contacting the creditor does not preserve the consumer's rights.

11. Failing to accurately state the full amount of the debt that the collector is attempting to collect. If the debt is increasing, that must be stated, and the reasons for increase (interest, late fees) must be accurately stated for the particular debt. *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000) (not sufficient to state that unpaid principal balance of residential mortgage loan was $178,844.65, and that this did not include unspecified accrued but unpaid interest, unpaid late charges, escrow advances, and other charges authorized by loan agreement). It is not appropriate to refer to charges that cannot be imposed in the particular case. *Boucher v. Finance System of Green Bay, Inc.,* 880 F.3d 362 (7th Cir. 2018) (late charges where none are authorized by contract or statute).

12. Proceeding with collection attempts after verification is demanded, but not provided. *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC,* 758 F.3d 777 (6th Cir. 2014).

13. Generally, "verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what

the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt." *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999); see also, *Walton v. EOS CCA,* 885 F.3d 1024 (7th Cir. 2018)*; Clark v. Capital Credit & Collection Servs.,* 460 F.3d 1162, 1174 (9th Cir. 2006) ("At the minimum, verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed."). At least, this is the case where a general request for verification is received. More specific responses may be required where a specific item on a bill is challenged, or the consumer claims identity theft. *Haddad v. Alexander, Zelmanski, Danner & Fioritto, PLLC,* 758 F.3d 777 (6th Cir. 2014).

14. Although the notice literally requires the debt collector to provide validation information, the Seventh Circuit has held that the debt collector does not violate the statute if it ceases all further collection activities without providing the information. *Jang v. A. M. Miller & Assoc., Inc.,* 122 F.3d 480 (7th Cir. 1997).

15. The debt collector cannot require the consumer to articulate a reason for disputing the debt. *Sambor v. Omnia Credit Services,* 183 F.Supp.2d 1234 (D.Haw. 2002) ("the FDCPA does not require the consumer to provide any reason at all in order to dispute a debt"); *Whitten v. ARS National Services, Inc.*, 00cv6080, 2002 WL 1050320, 2002 U.S.Dist. LEXIS 9385 (N.D.Ill., May 23, 2002); *Mendez v. M.R.S. Assocs.*, 03cv6753, , 2005 WL 1564977, 2005 U.S.Dist. LEXIS 13705, *13 (N.D.Ill. June 27, 2005) (consumer can dispute debt for "a good reason, a bad reason, or no reason at all"); *Foresberg v. Fid. Nat'l Credit Servs.,* 03cv2193, 2004 WL 3510771, 2004 U.S. Dist. LEXIS 7622 (S.D.Cal., Feb. 26, 2004).

16. Pleadings were removed from the scope of §1692g to avoid contradictions between instructions on a summons and the §1692g notice. If a lawsuit is served in close proximity to the §1692g notice, the debt collector should use the language in *Thomas v. Simpson & Cybak,* 392 F.3d 914 (7th Cir. 2004), instructing the consumer to deal with each document separately, as well as the *Bartlett v. Heibl* language. Including §1692-type language in a summons or complaint without doing so is misleading. *Marquez v. Weinstein, Pinson & Riley, P.S.*, 836 F.3d 808 (7th Cir. 2016).

17. The better view is that each new debt collector must comply with §1692g. *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317 (7th Cir. 2016); *Griswold v. J & R Anderson Bus. Servs*., 82cv1474, 1983 U.S.Dist. LEXIS 20365, *2-4 (D.Ore. Oct. 21, 1983); *Robinson v. Nationstar Mortgage, LLC*, 2:12cv718, 2012 U.S. Dist. LEXIS 163268, 2012 WL 5596421 (S.D.Ohio, Nov. 15, 2012); *Turner v. Shenandoah*

Legal Group, P.C., 3:06cv045, 2006 U.S. Dist. LEXIS 29341, *32-39, 2006 WL 1685698, *11 (E.D.Va. June 12, 2006); *Tipping-Lipshie v. Riddle*, 99cv4646, 2000 WL 33963916, *3 (E.D.N.Y. March 2, 2000); *Sparkman v. Zwicker & Assoc., P.C.*, 374 F.Supp.2d 293, 300-01 (E.D.N.Y. 2005); *Stair v. Thomas & Cook*, 254 F.R.D. 191, 197 (D.N.J. 2008); *Sutton v. Law Offices of Alexander L. Lawrence,* 90cv369, 1992 U.S.Dist. LEXIS 22761, *8 (D.Del. June 17, 1992); *Horkey v. J.V.D.B. & Associates*, 179 F.Supp.2d 861, 865 (N.D.Ill. 2002), aff'd, 333 F.3d 769 (7th Cir. 2003); *Minh Vu Hoang v. Rosen*, 12cv1393, 2013 WL 781780 (D.Md. Feb. 28, 2013). This is the view of the FTC. FTC Commentary on the Fair Debt Collection Practices Act, 53 Fed. Reg. 50097, at 50108 (Dec. 13, 1988) ("an attorney who regularly attempts to collect debts . . . must provide the required notice, even if a previous debt collector (or creditor) has given such notice").

IX. Violations -- venue -- 15 U.S.C. §1692i

15 U.S.C. §1692i provides:

(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.

A. **Each of the six Municipal Districts in Cook County, Illinois** and the nine township small claims courts in Marion County, Indiana is considered a separate "judicial district" for cases filed in those courts. *Suesz v. Med-1 Solutions, LLC,* 757 F.3d 636 (7th Cir. 2014).

B. **Wage garnishment proceedings** in Illinois state court are not considered legal actions against consumers. *Jackson v. Blitt & Gaines, P.C.*, 833 F.3d 860 (7th Cir. 2016). A different result is likely if a collection proceeding requires the personal participation of the consumer, e.g., a citation to discover assets, which may result in contempt proceedings, as the *Jackson* court emphasized that in the case of wage garnishment "the judgment debtor is not a necessary participant" and that no "penalty exists for the judgment debtor" in such proceedings. 833 F.3d at 864.

X. Civil remedies -- 15 U.S.C. §1692k

Civil remedies for violation of the FDCPA are provided by 15 U.S.C. §1692k, which provides:

> **(a) Amount of damages Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—**
>
> > **(1) any actual damage sustained by such person as a result of such failure;**
> >
> > **(2)**
> >
> > > **(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or**
> > >
> > > **(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and**
> >
> > **(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.**
>
> **(b) Factors considered by court In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—**
>
> > **(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such**

noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of [Consumer Financial Protection] Bureau

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

A. Who may sue

The civil remedy provision allows "any person" to sue. However, the FDCPA applies to "consumer" debts, and certain substantive provisions, e.g., §1692c(a), only protect "consumers," meaning "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. §1692a(3). On the other hand, certain substantive protections of the FDCPA are not limited to "consumers," e.g., §1692e. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983); *Villareal v. Snow*, 95cv2484, 1996 WL 28254, 1996 WL 28282, 1996 U.S. Dist. LEXIS 667, *6 (N.D.Ill. Jan. 19, 1996); *Whatley v. Universal Collection Bureau*, 525 F.Supp. 1204, 1205-6 (N.D.Ga. 1981). Persons who are not alleged to owe money but who are subjected to improper practices by debt collectors are entitled to the protection of the FDCPA. *Dutton v. Wolhar*, 809 F.Supp. 1130, 1134-5 (D.Del. 1992); *Flowers v. Accelerated Bureau of Collections*, 96cv4003, 1997 U.S.Dist.

LEXIS 3354, 1997 WL 136313 (N.D.Ill. Mar 19, 1997), later opinion, 1997 WL 224987, 1997 U.S. Dist. LEXIS 6070 (N.D. Ill. Apr. 30, 1997); *Riveria v. MAB Collections, Inc.,* 682 F.Supp. 174, 175 (W.D.N.Y. 1988) ("any person who comes in contact with proscribed debt collection practices may bring a claim").

Even under the provisions limited to consumers, persons standing in the shoes of consumers, such as a personal representative of a deceased consumer, may sue. *Wright v. Finance Service of Norwalk, Inc.*, 22 F.3d 647 (6th Cir. 1994) (en banc); *Riveria v. MAB Collections, Inc.*, 682 F.Supp. 174 (W.D.N.Y. 1988).

B. Amount of statutory damages

In an individual action, each plaintiff is entitled to not more than $1,000 for the lawsuit. *Portalatin v. Blatt, Hasenmiller, Leibsker & Moore, LLC,* 900 F.3d 377, 385 (7th Cir. 2018) ("[W]e conclude FDCPA additional damages are not multiplied by the number of defendants where the plaintiff suffered an indivisible harm caused by defendants who did not violate the FDCPA independently of each other"); *Harper v. Better Bus. Servs., Inc.,* 961 F.2d 1561, 1563 (11th Cir.1992) ("Because Congress instead chose to write that additional damages would be limited to $1,000 per 'action,' we agree with the district court that 'the plain language of section 1692k(a)(2)(A) provides for maximum statutory damages of $1,000.' "); *Smith v. Greystone All., LLC,* 772 F.3d 448, 449 (7th Cir.2014) ("Statutory damages are subject to a cap of $1,000 per suit, 15 U.S.C. § 1692k(a)(2)(A), no matter how many violations of the Act a given debt collector commits.").

Nothing prevents a consumer from filing a separate FDCPA suit for violations occurring after the filing of an initial action. *Goins v. JBC*, 352 F.Supp.2d 262 (D.Conn. 2005).

C. Actual damages

Actual damages include mental and emotional stress, embarrassment, and humiliation caused by improper debt collection activities. *Kleczy v. First Federal Credit Control, Inc.,* 21 Ohio App.3d 56, 486 N.E.2d 204, 207 (1984); *Venes v. Professional Service Bureau, Inc.*, 353 N.W.2d 671 (Minn. Ct. App. 1984); *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 185 (D.Del. 1991); *Crossley v. Lieberman*, 90 B.R. 682 (E.D.Pa. 1988), aff'd, 868 F.2d 566 (3d Cir. 1989).

D. Vicarious liability

If debt collector A hires debt collector B and B violates the FDCPA, A is liable. *Janetos v. Fulton Friedman & Gullace, LLP*, 825 F.3d 317 (7th Cir. 2016); *Fox v. Citicorp Credit Servs., Inc*., 15 F.3d 1507, 1516 (9th Cir. 1994); *Pollice v. National Tax Funding, L.P.,* 225 F.3d 379, 404 (3d Cir. 2000). However, a non-debt collector is not vicariously liable for the FDCPA violations of its debt collector, on the ground that the FDCPA manifests Congressional

intent to exclude such persons from its scope. *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103, 108 (6th Cir. 1996).

Vicarious liability against creditors may be available under state collection practices laws, such as the Illinois Collection Agency Act. 225 ILCS 425/1 et seq. *Sherman v. Field Clinic*, 74 Ill.App.3d 21, 392 N.E.2d 154 (1st Dist. 1979).

General partners of a debt collector organized as a partnership are liable. *Bartlett v. Heibl, supra*, 128 F.3d 497, 499 (7th Cir. 1997).

E. Where suit may be filed

Generally, an FDCPA case may be filed in the state or federal court where the consumer received the communication. *Pope v. Vogel*, 97cv1835, 1998 WL 111576, 1998 U.S. Dist. LEXIS 2868 (N.D. Ill. March 5, 1998); *Russey v. Rankin*, 837 F.Supp. 1103 (D.N.M. 1993); *Sluys v. Hand,* 831 F. Supp. 321, 325 (S.D.N.Y. 1993); *Brujis v. Shaw*, 876 F. Supp. 975 (N.D.Ill. 1995); *Vlasak v. Rapid Collection Systems, Inc.,* 962 F. Supp. 1096, 1102 (N.D. Ill. 1997).

F. Limitations

There is a one-year statute of limitations. It begins to run when a collection letter is mailed or an improper legal action is filed. *Naas v. Stolman,* 130 F.3d 892 (9th Cir. 1997); *Maloy v. Phillips*, 64 F.3d 607, 608 (11th Cir. 1995); *Mattson v. U.S. West Communications,* 967 F.2d 259, 261 (8th Cir. 1992); *Prade v. Jackson & Kelley*, 941 F.Supp. 596, 599-600 (N.D. W. Va. 1996), aff'd mem. 135 F.3d 770 (4th Cir. 1998); *Blakemore v. Pekay*, 895 F.Supp. 972, 982-83 (N.D. Ill. 1995).

The one year is subject to tolling under appropriate circumstances. *Kubiski v. Unifund CCR Partners,* 08cv6421, 2009 WL 774450, 2009 U.S. Dist. LEXIS 26754 (N.D.Ill., March 25, 2009).

It is unclear whether a discovery rule applies. *Rotkiske v. Klemm,* 890 F.3d 422 (3d Cir. 2018) (en banc) (no); *Lembach v. Bierman*, 528 Fed.Appx. 297 (4th Cir. 2013) (per curiam) (yes); *Mangum v. Action Collection Serv., Inc.*, 575 F.3d 935 (9th Cir. 2009) (yes).
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