

# FAIR DEBT COLLECTION PRACTICES ACT

By

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## I. INTRODUCTION

- A. The context of a Fair Debt Collection Practices Act (FDCPA) action.
1. A claim by a debtor that a third part debt collector has engaged in prohibited conduct in collecting or attempting to collect a consumer debt.
  2. The creditor is typically not a party.
  3. The validity of the underlying debt is not relevant or an issue in the action.
- B. The FDCPA mandates three areas of collector compliance.
1. Identifying oneself as a debt collector.
  2. Advising the debtor of the right to verify and dispute the debt.
  3. Refraining from harassment, false representations and third party communications.

## II. PRIMARY SOURCES OF THE LAW

- A. Fair Debt Collection Practices Act. 15 U.S.C. § 1692 et seq.
- B. Federal Trade Commission Staff Commentary to the FDCPA. 12 C.F.R. Pt. 226, Supp. I, § 226.1 *et seq.*
1. The FTC is statutorily limited from promulgating regulations under the FDCPA - 15 U.S.C. Section 1692l(d); *Harrison v. NBD Inc.*, 968 F.Supp. 836 (E.D.N.Y. 1997).
    - a. Contrast to statutory scheme of Truth-in-Lending Act (TILA).
    - b. TILA explicitly delegates regulatory authority to the FTC [15 U.S.C. Section 1604].

- c. Consequently, FTC regulatory pronouncements are given virtually conclusive effect [*Ford Motor Credit Company v. Milhollin*, 444 U.S. 555 (1980)].
  2. Thus, FTC Commentary and staff opinions have limited precedential value - *Heintz v. Jenkins*, 514 U.S. 291 (1995).
    - a. In *Carroll v. Walpoff & Abramson*, 961 F.2d 459, 461 (4th Cir. 1995), the Fourth Circuit rejected Ninth Circuit reliance on FTC informal advisory opinions: “We find the position of the FTC unpersuasive and it is well settled that we need not defer to an agency’s construction of its governing statute if the construction violates an unambiguous statutory command.”
    - b. In *Scott v. Jones*, 964 F.2d 314, 317 (4th Cir. 1992), the Fourth Circuit refused to follow the debt collector’s argument that the court adopt the position of the FTC in the “Federal Trade Commission, Statements of General Policy or Interpretation, Staff Commentary or the Fair Debt Collection Practices Act.”
- C. FDCPA is a remedial statute to be liberally construed., *Cirkot v. Diversified Financial Systems, Inc.*, 839 F. Supp. 941 (D. Conn. 1993)
- D. Legislative history will seldom be consulted.
  1. The bill that became the FDCPA was drafted by the Senate, making Senate Report 382 [S.Rep. No. 95-382] (August 2, 1977), reprinted in 1977 U.S.C.C.&A.N. 1965, the most useful piece of legislative history. It describes the provisions of the bill and the intentions of its drafters. The Senate Report is included with the appendix to this portion of the course materials.
  2. The report was written by the Senate Committee on Banking, Housing and Urban Affairs (the Senate Banking Committee) to accompany the bill that was enacted.
  3. Legislative activity in the House of Representatives is also important because much of the Act’s language and structure were shaped in the House during a three year period of rewrite and debate. However, legislative history of House activity leading to the passage of the FDCPA involves detail beyond the scope of this seminar.

4. The language of the Act is the clearest expression of Congressional will, and is the first point of reference in any litigation under the FDCPA.
5. Ignoring the carefully chosen language and policies of the FDCPA, which Congress spent a great deal of time and effort drafting and enacting, would frustrate Congressional will and authority. *Heintz v. Jenkins*, 115 S.Ct. 1489 (1995); *Frey v. Gangwish*, 970 F.2d 1516 (6th Cir. 1992). (The FDCPA is “an extraordinarily broad statute” and must be enforced “as Congress has written it.”). *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385 (5th Cir. 2002). (“Fifth Circuit law is clear that when, as here, the language of a statute is unambiguous, this Court has no need to and will not defer to extrinsic aids or legislative history.”)
6. Where, as in the case of the FDCPA, the statute’s language is plain, the sole function of the courts is to enforce it according to its terms. *Scott v. Jones*, 964 F.2d 314, 316 (4th Cir. 1992). The Fourth Circuit refused to follow the debt collector’s argument that the court resort to legislative history.
7. Resort to legislative history to determine Congress’ intent is to be undertaken cautiously, and it should not occur unless the statute itself is ambiguous or unclear. *United States v. Oregon*, 366 U.S. 643, 648 (1961).
8. Courts should construe ambiguous or unclear portions of the Act so as to effectuate the Congressional findings and purposes stated in 15 U.S.C. § 1692. Legislative history should be considered only when necessary. *Mourning v. Family Publications Serv.*, 411 U.S. 356, 364 (1973). (Interpreting TILA.)

E. The Act is primarily self enforcing by consumers through the private attorneys general mechanism.

1. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983) (“The FDCPA ... is ‘primarily self-enforcing’ ... through private causes of action.”)
2. "The committee views this legislation as primarily self-enforcing; consumers who have been subjected to collection abuses will be enforcing compliance" - Senate Report No. 95-382, at 5 (Aug. 2, 1977), *reprinted in* 1977 U.S.C.C. & A.N. 1695, 1699

3. Because Congress chose a 'private attorney general' approach to enforcement, the award of fees is mandatory in an FDCPA case. *Carroll v. Wolpoff & Abramson*, 53 F.3d 626 (4th Cir. 1995); *Tolentino v. Friedman*, 46 F.3d 645 (7th Cir.), cert. denied 515 U.S. 160 (1995).

### III. COVERAGE UNDER THE ACT

- A. Arises only in a "consumer" "debt" "transaction.", 15 U.S.C. Sections 1692a(3) and (5); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 1997).
  1. Natural person obligated to pay any obligation or alleged obligation arising from a transaction the subject of which is primarily for personal, family, or household purposes.
  2. Underlying debt must arise from a "transaction," thus child support, tort claims, and personal taxes are excluded - *Mabe v. G.C. Services Limited Partnership*, 32 F.3d 86 (4th Cir. 1994); *Zimmerman v. HBO Affiliate Group*, 834 F. 2d 1163 (3rd Cir. 1987); *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367 (11th Cir. 1998); *Beggs v. Rossi*, 145 F.3d 511 (2nd Cir. 1998); *Staub v. Harris*, 626 F.2d 275 (3rd Cir. 1980); *Turner v. Cook*, 2004 U.S. App. LEXIS 6092 (9th Cir, April 1, 2004).
    - a. Note distinction between *Hawthorne*, where debt arising from tortuous conduct is not a "consumer transaction," and
    - b. *Hamilton v. United Healthcare of Louisiana, Inc.*, 310 F.3d 385 (5th Cir. 2002), where a subrogation claim arising from consumer's transaction of purchasing insurance was a "debt" within the coverage of the FDCPA
  3. When debt incurred for combined consumer and nonconsumer purposes, fact question as to which purpose was primary reason debt was incurred - 15 U.S.C. Section 1692a(5).
  4. Act applies to bad check debts, condominium assessment fees, residential rental payments, municipal water and sewer service, and other non-credit consumer obligations - *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322 (7th Cir. 1997); *Charles v. Lundgren & Associates*, 119 F.3d 739 (9th Cir. 1997), cert. denied sub nom *Checkrite Ltd., Inc. v. Charles*, \_\_\_ U.S. \_\_\_ (Dec. 15, 1997); *Snow v. Jesse L. Riddle, P.C.*, 143 F.3d 1350 (10th Cir. 1998); *Ladick v. Van Gemert*, 146 F.3d 1205 (10th

Cir. 1998); *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998); *Ryan v. Wexler & Wexler*, 113 F.3d 91 (7th Cir. 1997); *Brown v. Budget Rent-a-Car Systems, Inc.*, 119 F.3d 922 (11th Cir. 1997); *Newman v. Boehm, Pearstein & Bright, Ltd.*, 119 F.3d 477 (7th Cir. 1997); *Pollice v. National Tax Funding, L.P.*, 225 F.3d 385 (5th Cir. 2002).

a. The ruling in *Newman v. Boehm, Pearestein & Bright, Limited*, 119 F.3d 477 (7th Cir.) 1997, is contrary to *Nance v. Petty, Livingston, Dawson & Devening*, 881 F.Supp. 223 (W.D.Va. 1994), a Western District decision finding homeowners or condominium association assessments not to be covered, relying on *Mabe v. G.C. Services Limited Partnership*, 32 F.3d 86 (4th Cir. 1994).

b. *Mabe* held that the obligation to pay child support assigned to the Commonwealth of Virginia is not a debt. In light of *Newman, Bass, Charles, and Brown*, it seems reasonable to think that new Fourth Circuit cases on this issue might not follow *Nance*, since *Mabe* does not address the situation involving homeowners or condominium association assessments.

5. There is no exception to liability for violating the Act as the result of fraud on the part of the consumer - *Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322 (7th Cir. 1997); *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998).

6. As long as underlying obligation is a "debt," method of collection (e.g., action in tort) is irrelevant - *Strange v. Wexler*, 796 F. Supp. 1117 (N.D. Ill. 1992).

7. Unemployment insurance contributions for a nanny are primarily for public benefit, therefore not incurred for a consumer purpose - *Berman v. GC Services Ltd. Partnership*, 146 F.3d 482 (7th Cir. 1998).

B. FDCPA only covers "debt collectors" as statutorily defined. 15 U.S.C. Section 1692a(6).

1. Any person collecting debts on behalf of another.

2. Act excludes original creditors and their employees - *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997).

3. Assignees of debt are not covered, provided that the assignment occurs prior to default - *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (D. Ala. 1987).
4. Check guarantee companies are considered debt collectors - *Holmes v. Telecredit Service Corp.*, 736 F. Supp. 1289 (D. Del. 1990).
5. The Act specifically excludes creditor employees, government employees, process servers, "bona fide" consumer credit counselors, and certain fiduciaries and escrow companies - *Buckman v. American Bankers Insurance Co.*, 924 F.Supp. 1156 (S.D. Fla. 1996); *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998); *Brannan v. United Student Aid Funds*, 94 F.3d 1260 (9th Cir. 1996); cf. *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997), compare, *Harrison v. NBD Inc.*, 990 F.Supp. 179 (E.D.N.Y. 1998)(Creditor may be a "debt collector" if it used alias or assumed name to collect its debts, creditor and its affiliated collection agency should be deemed to constitute a single economic enterprise, or creditor controlled almost all aspects of agency's debt collection activities).
6. The Act extends to a creditor who "uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts" - *Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232 (2d Cir. 1998); *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997).
7. The common ownership and affiliation exemption of § 1692a(6)(B) is not applicable where affiliate's principal business is the collection of debts for the related entity - *Harrison v. NBD Inc.*, 968 F.Supp. 836 (E.D.N.Y. 1997), later opinion 990 F.Supp. 179 (E.D.N.Y. 1998); compare, *Aubert v. American General Finance, Inc.*, 137 F.3d 976 (7th Cir. 1998).
  - a. In *Aubert*, the affiliate met both prongs of the § 1692a(6)(B) exception, specifically, the second prong, that the affiliate's principal business is not debt collection.
  - b. In *Maguire*, on the other hand, the Citicorp affiliate only collected debts and therefore could not invoke the exception.
8. Mortgage servicer communicating about a current, non-defaulted forbearance agreement obtained after a prior but now cured default is not a debt collector - § 1692a(6)(F) - *Bailey v. Security National*

*Servicing Corp.*, 154 F.3d 384 (7th Cir. 1998). However, lender who purchased a debt identified as in default, and treated it as such, although it was not in default, is a debt collector – *Schlosser v. Fairbanks Capital Credit Corporation*, 2003 U.S. App. Lexis 5488 (7th Cir. 2003). A collector could not exclude itself from the definition of debt collector through its contract with the creditor identifying itself as a servicer and the debts it was servicing as delinquent rather than in default when the debt had, in fact, been declared in default before the servicing was transferred. The Second Circuit, however, rejected the consumer’s argument that default automatically occurs immediately after payment becomes due and granted the creditor and servicer great leeway in defining what constitutes default. - *Alibrandi v. Fin. Outsourcing Servs., Inc.*, 333 F.3d 82 (2nd Cir. 2003).

9. The statutory definitions cover those who collect debts both directly as well as indirectly - *Romine v. Diversified Collection Services, Inc.*, 155 F.3d 1143 (9th Cir. 1998).

C. Attorney debt collectors are covered.

1. 1986 amendment deleted statutory exclusion for attorneys - *Heintz v. Jenkins*, 514 U.S. 291 (1995).
2. Attorneys whose debt collection activities are limited to collection litigation on behalf of creditor clients are covered - *Heintz v. Jenkins*, 514 U.S. 291 (1995); *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992); *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).
3. Attorneys are not entitled to statutory exemption for process servers - *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998).
4. FDCPA liability is imputed to the law firm when the firm is a partnership, allowing the plaintiff to sue the partners as well as the partnership. The partnership is jointly liable for one acting as its associate or partner. – *Bartlett v. Heibl*, 128 F.3d 497, 499 (7th Cir.1997); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC*, 214 F.3d 872, 876 (7th Cir. 2000). General partners are liable as indirect debt collectors. *Randle v. GC Services*, 1998 U.S. Dist. LEXIS 16222 (N.D. Ill.).

D. Collector must "regularly" attempt to collect debts., 15 U.S.C. Section 1692a(6); *Heintz v. Jenkins*, 514 U.S. 291 (1995).

1. Collections need not be majority portion of the collector's business - *Garrett v. Derbes*, 110 F.3d 317 (5th Cir. 1997).
2. Genuinely sporadic collection activity is not regular - *Nance v. Petty, Livingston, Dawson & Devening*, 881 F.Supp. 223 (W.D.Va. 1994) (When debt collection cases composed only 0.61% of his practice, and composed only 1.07% of his firm's practice over an 18 month period, defendants were not debt collectors as a matter of law).
3. Regularly collecting occurs when undertaking collection activity "more than a handful of times per year" - *Crossley v. Lieberman*, 868 F. 2d 566 (3rd Cir. 1989).

E. Both collection agency/employer and supervisor and offending employee are liable., *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983).

1. Statutory definition includes both - Commentary Sections 803(6)-1, Illustration 1, and 813-1; *Newman v. Checkrite California*, 912 F.Supp. 1354 (E.D.Ca. 1995); *Drennan v. Van Ru Credit Corp.*, 950 F.Supp. 858 (N.D.Ill. 1996); *Ditty v. Checkrite, Ltd., Inc.*, 973 F.Supp. 1320 (D.Utah 1997).
2. Joint and several liability - *Teng v. Metropolitan Retail Recovery, Inc.*, 851 F.Supp. 61 (E.D.N.Y. 1994).
3. Principal/employer who is not a "debt collector" is not vicariously liable for agent/employee's violations - *Wadlington v. Credit Acceptance Corp.*, 76 F.3d 103 (6th Cir. 1996); compare, *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).
4. "Debt collectors employing attorneys or other agents to carry out debt collection practices that violate the FDCPA are vicariously liable for their agent's conduct" - *Martinez v. Albuquerque Collection Services, Inc.*, 867 F.Supp. 1495 (D.N.M. 1994).

F. Repossessions are covered by 15 U.S.C. Section 1692f(6).

1. For conversions occurring in the course of repossessions - *Clark v. Auto Recovery Bureau Conn., Inc.*, 889 F.Supp. 543 (D. Conn. 1994).
2. Repossessor who also regularly collects debts for third parties is subject to the FDCPA in its entirety - *Jordan v. Kent Recovery Services, Inc.*, 731 F. Supp. 652 (D. Del. 1990).

G. Validity of the underlying debt is immaterial. *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992); *Baker v. G.C. Services Corp.*, 677 F.2d 775 (9th Cir. 1982); *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997); *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998) (Focus is on the debt collector's conduct, not the consumer's)

IV. PERMISSIBLE COLLECTION RELATED COMMUNICATIONS ARE LIMITED

- A. When "the debt collector knows the consumer is represented by an attorney" concerning the debt. 15 U.S.C. Section 1692c(a)(2); *Kuhn v. Account Control Technology, Inc.*, 865 F.Supp. 1443 (D. Nev. 1994); *Herbert v. Monterey Financial Services, Inc.*, 863 F.Supp. 76 (D. Conn. 1994).
1. Representation as to one debt does not automatically extend to another debt - *Graziano v. Harrison*, 950 F.2d 107 (3rd Cir. 1991).
  2. Notice of attorney representation need not be formally conveyed, but creditor's knowledge of attorney representation is not imputed to collector - Commentary Section 805(a)-3.
- B. At any "unusual" or "inconvenient" time or place. 15 U.S.C. Section 1692c(a)(1).
1. Not before 8:00 a.m. or after 9:00 p.m. - *Id.*
  2. When or where the consumer notifies the collector to be inconvenient - *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997).
- C. At consumer's place of employment if debt collector knows or has reason to know the employer prohibits such communication. 15 U.S.C. Section 1692c(a)(3). Where consumer told debt collector that she could not discuss her debt while at work, and debt collector presented no evidence that the employer did allow consumer to take debt-related calls at work, the collector had reason as a matter of law to know that the consumer's employer prohibited her from receiving calls related to debt collection while at work. "Unsophisticated consumers, whatever else may be said about them, cannot be expected to assert their § 1692c(a)(3) rights in legally precise phrases. It is therefore enough to put debt collectors on notice under § 1692c(a)(3) when a consumer states in plain English that she cannot speak to the debt collector at work." *Horkey v. JVDB & Associates, Inc.*, 333 F. 3d 769 (7th Cir. 2003); *Adams v. Law Offices of Stuckert & Yates*, 926 F.Supp. 521 (E.D. Pa. 1996).

- D. After written notice by the consumer that consumer refuses to pay or that the consumer wishes the debt collector to cease communication . 15 U.S.C. Section 1692c(c); *Herbert v. Monterey Financial Services, Inc.*, 863 F.Supp. 76 (D. Conn. 1994) (letter sent by consumer's attorney).
- E. Generally no third party contacts whatsoever. 15 U.S.C. Section 1692c(b). *West v. Costen*, 558 F. Supp. 564 (W.D. Va. 1983).
1. Third party contact permitted to locate the consumer - 15 U.S.C. Section 1692a(7).
  2. Strict limitations on content of communication to locate the consumer - *West v. Nationwide Credit, Inc.*, 998 F.Supp. 642 (W.D.N.C. 1998) Third party contact prohibition broadly bars communicating information relating to a debt, and not merely information specifically about a debt. Debt collector left a message with the consumer's neighbor to call about a "very important" matter. The typical collection agency ploy of contacting a neighbor to have the consumer telephone can include no other information at all about the reason for the call.

V. ALL ABUSIVE, FALSE, AND UNFAIR COLLECTIONS PRACTICES ARE PROHIBITED

- A. Three central substantive provisions prohibit, without limitation, all abusive, false and unfair practices. 15 U.S.C. Sections 1692d, 1692e and 1692f.
1. Each section contains in identical format general prohibitions and, "[w]ithout limiting the general application of the foregoing . . .," provides a list of *per se* violations.
  2. Each section lists examples of prohibited conduct which does not limit the general prohibitions against abusive, false, and unfair means - Commentary, Sections 806-1, 807-1, and 808-1; accord, *United States v. National Financial Services, Inc.*, 98 F.3d 131,135 (4th Cir. 1996) (§ 1692e provides a non-exhaustive list of prohibited conduct); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2nd Cir. 1993).
  3. The U. S. Supreme Court has directed that statutory proscriptions using general terms such as unfairness are to be given effect by "consider[ing] public values beyond simply those enshrined in the letter or encompassed in the spirit of" the statute - *Federal Trade Commission v. Sperry & Hutchinson Co.*, 405 U.S. 233 (1972).

B. Frequent violations.

1. Threatening to take or taking any action that cannot legally be taken or is not intended to be taken - 15 U.S.C. Section 1692e(5); *Withers v. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997); *Morgan v. Credit Adjustment Board*, 999 F.Supp. 803 (E.D. Va. 1998).
  - a. Threatening to contact third parties - *Rutyna v. Collection Accounts Terminal, Inc.*, 478 F. Supp. 980 (D. Ill. 1979);
  - b. Action constituting the unauthorized practice of law under applicable state law – *Withers v. Eveland*, 988 F. Supp. 942, 946 (E.D. Va. 1997); *Poirier v. Alco Collections, Inc.*, 107 F.3d 347 (5th Cir. 1997); *Jones v. Vest*, 2000 U.S. Dist. Lexis 18413 (E.D. Va. 1999)
  - c. Filing time-barred collection litigation - *Kimber v. Federal Financial Corp.*, 668 F. Supp. 1480 (D. Ala. 1987);
  - d. Threatening collection litigation which is in fact not intended or then authorized by the creditor – *U.S. v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996); *Withers v. Eveland*, 988 F. Supp. 942 (E.D. Va. 1997); *Morgan v. Credit Adjustment Board*, 999 F.Supp. 803 (E.D. Va. 1998);
  - e. Suing on debt when consumer is not in default - *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994);
  - f. Sending dunning letters in the name of a non-existent person - *Supan v. Medical Bureau of Economics, Inc.*, 785 F.Supp. 304 (D. Conn. 1991);
  - g. Threatening to sue in nonpermitted venue - *Wiener v. Bloomfield*, 901 F.Supp. 771 (S.D.N.Y. 1995);
  - h. Threatening garnishment or other post judgment remedies exceeding that permitted by law - *Seabrook v. Onondaga Bureau of Medical Economics*, 705 F.Supp. 81 (N.D.N.Y. 1989);
  - i. Demanding payment of illegal or unauthorized amounts - *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983) See attached excerpt discussing the applicable portion of the

ruling; Misrepresenting the “debt” [as defined by the FDCPA] as including treble damages, court costs, and attorney’s fees, before there has been a judgment by a court - *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003);

- j. Sending letter from layperson falsely claiming to have been sent by an attorney - *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997); *Russey v. Rankin*, 911 F.Supp. 1449 (D.N.M. 1995);
  - k. Implying future judicial remedies are a virtual certainty - *Schimmel v. Slaughter*, 975 F.Supp. 1357 (M.D.Ga. 1997);
  - l. Failure to report to credit bureau that a known disputed debt is disputed - *Brady v. Credit Recovery Company, Inc.*, 160 F.3d 64 (1st Cir. 1998); Reporting outstanding unpaid check to Wal-Mart without stating that the debt was disputed - *Perez v. Telecheck Services, Inc.*, 208 F. Supp. 2d 1153 (D.Nev. 2002);
2. Attempting to collect any amount not "expressly authorized by the agreement creating the debt or permitted by law" - 15 U.S.C. Section 1692f(1).
- a. Interest - *Venes v. Professional Service Bureau, Inc.*, 353 N.W.2d 671 (Minn. App. 1984); *Patzka v. Viterbo College*, 917 F.Supp. 654 (W.D.Wis. 1996);
  - b. Dishonored check charges - *West v. Costen*, 558 F. Supp. 564 (W.D. Va. 1983) [See attached excerpt discussing the applicable portion of the ruling]; *Ozkaya v. Telecheck Services, Inc.*, 982 F.Supp. 578 (N.D.Ill. 1997);
  - c. Credit insurance - *Jenkins v. Heintz*, 25 F.3d 537 (7th Cir. 1994);
  - d. Various unauthorized fees - *Newman v. Checkrite California*, 912 F.Supp. 1354 (E.D.Ca. 1995);
  - e. Collection fees - *Patzka v. Viterbo College*, 917 F.Supp. 654 (W.D.Wis. 1996);
  - f. A fee for providing the mandatory debt validation notice- *Sandlin v. Shapiro & Fishman*, 919 F.Supp. 1564 (M.D.Fla. 1996);

- g. Additional assessments only available from a court - *Ditty v. Checkrite, Ltd., Inc.*, 973 F.Supp. 1320 (D.Utah 1997);
  - h. A debt that is in fact not owing - *Finnegan v. University of Rochester Medical Center*, 21 F.Supp.2d 223 (W.D.N.Y. 1998).
3. False sense of urgency - Commentary, Section 807(10)-2; *Morgan v. Credit Adjustment Board, Inc.*, 999 F.Supp. 803, 808 (E.D.Va. 1998); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 416 (E.D.Va. 1997) (Embodies the concept without using the term “false sense of urgency”); *Schweizer v. Trans Union Corp.*, 136 F.3d 233 (2nd Cir. 1998); *Ozkaya v. Telecheck Services, Inc.*, 982 F.Supp. 578 (N.D.Ill. 1997). *Peter v. GC Services L.P.*, 310 F.3d 344 (5th Cir. 2002) (Section 1692e was enacted against a backdrop of cases in which courts held that communications designed to create a false sense of urgency were deceptive.)
  4. False representation of the imminence of any action - Commentary, Section 807(5)-6; *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 416 (E.D.Va. 1997); *Rosa v. Gaynor*, 784 F. Supp. 1 (D. Conn. 1989); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2nd Cir. 1993).
  5. Immediately re-calling the consumer who has hung up the telephone on the collector - *Bingham v. Collection Bureau, Inc.*, 505 F. Supp. 864 (D. N.D. 1981); *Kuhn v. Account Control Technology, Inc.*, 865 F.Supp. 1443 (D. Nev. 1994).
  6. Telephone inquiry about personal assets that refers to highly personal items like wedding bands has a natural consequence to harass - *Bingham v. Collection Bureau, Inc.*, 505 F. Supp. 864 (D.N.D. 1981).
  7. Using profane or obscene language or language the natural consequence of which is to abuse the hearer or reader. - 15 U.S.C. § 1692d(2). Collector’s telephone message to consumer’s coworker to “(T)ell Amanda to quit being such a (expletive) bitch” was abusive as a matter of law. *Horkey v. JVDB & Associates, Inc.*, 333 F. 3d 769 (7th Cir. 2003)

C. False Representations.

1. Any representation which is objectively false constitutes a *per se* violation of Section 1692e - *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 1997).

2. Even if not objectively false, any statement which is capable of deceiving or misleading violates Section 1692e - *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985).
  - a. Deception is tested under the standard of the "least sophisticated consumer" - *U.S. v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996).
  - b. Standard measures tending to deceive "consumers of below-average sophistication or intelligence" - *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993).
  - c. Any "plausible" interpretation of a representation which is deceptive or false to the "least sophisticated consumer" violates the FDCPA - *Dutton v. Wolhar*, 809 F. Supp. 1130 (D. Del. 1992).
  - d. A "message that is open to an inaccurate yet reasonable interpretation by the consumer...is...deceptive as a matter of law" - *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 416 (E.D.Va. 1997) *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *accord, Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232 (2d Cir. 1998).
3. Falsely simulating judicial or official documents - 15 U.S.C. Section 1692e(9); *Tolentino v. Friedman*, 833 F.Supp. 697 (N.D. Ill. 1993), *aff'd* on other grounds 46 F.3d 645 (7th Cir.), *cert. denied* 515 U.S. 160 (1995); *Wiener v. Bloomfield*, 901 F.Supp. 771 (S.D.N.Y. 1995).
4. Attempting to collect a known time-barred account - *Lindbergh v. Transworld Systems, Inc.*, 846 F.Supp. 175 (D. Conn. 1994); *Martinez v. Albuquerque Collection Services, Inc.*, 867 F.Supp. 1495 (D.N.M. 1994).
5. Making "final demand" for payment yet continuing collection activities - *Herbert v. Monterey Financial Services, Inc.*, 863 F.Supp. 76 (D. Conn. 1994).
6. Any "contradicting and inaccurate" statements - *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).
7. Any demand for payment that does not comply with relevant state law - *Newman v. Checkrite California*, 912 F.Supp. 1354 (E.D.Ca. 1995).

8. "Flat rating," i.e. designing, compiling, and furnishing forms knowing that they will be used to create the false impression that a person other than the creditor is involved in the collection process - *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232 (5th Cir. 1997).
9. Misrepresenting affiliation with credit reporting agency - *McKenzie v. E.A. Uffman and Associates*, 119 F.3d 358 (5th Cir. 1997).
10. Misrepresenting the "character, amount, or legal status" of the debt; e.g. by collecting a debt which is not owing - *Finnegan v. University of Rochester Medical Center*, 21 F.Supp.2d 223 (W.D.N.Y. 1998).

D. Violations by Attorney Debt Collectors.

1. Lawyer letters "connote that a real attorney, acting like an attorney, has considered the debtor's file and concluded in his professional judgment that the debtor is a candidate for legal action. Using the attorney language conveys authority, instills fear in the debtor, and escalates the consequences." Attorney letters generally imply the threat of litigation. *U.S. v. National Financial Services, Inc.*, 98 F.3d 131, 137 (4th Cir. 1996).
2. A dunning letter sent on attorney letterhead violates numerous provisions of the Act if the lawyer does not personally review the debtor's file and have some knowledge about the alleged debt - *Avila v. Rubin*, 84 F.3d 222 (7th Cir. 1996); *Boyd v. Wexler*, 275 F.3d 642 (7th Cir. 2001); *Nielson v. Dickerson*, 307 F. 3d 623 (7th Cir. 2002); *Miller v. Wolpoff & Abramson*, 2003 U.S. App. Lexis 3409 (2nd Cir. 2/25/03).
3. A communication purportedly signed by an attorney violates Section 1692e unless the attorney reviews the debtor's file, determines when particular letters should be sent, approves the sending of particular letters that are based upon the recommendations of others, and does not see particular letters before they are sent - *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993).
4. Attorney debt collectors may not file a collection action, including post-judgment execution proceedings, in any venue other than "the judicial district or similar legal entity" where the consumer resides

or signed the contract being sued upon (or where real property is located when enforcing an interest in that property) - 15 U.S.C. Section 1692i; *Scott v. Jones*, 964 F.2d 314 (4th Cir. 1992); *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).

E. Affirmative disclosure requirements.

1. Collector must disclose in the first written communication with the consumer that "the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose" and in all others that "the communication is from a debt collector"- 15 U.S.C. Section 1692e(11). 1996 amendment provides that only "communication is from a debt collector" need be included in communications after the first written.
2. 15 U.S.C. Section 1692g validation notice.
  - a. In the initial communication or within five days after the initial communication, debt collector must disclose in writing the following:
    - i. The amount of the debt;
      - a. The amount must be precisely stated.
      - b. A statement in the first dun of the accelerated unpaid balance plus unspecified interest, late charges, etc., that "changes daily" and an 800 number to call to get the current amount owed violates the § requirement that the dun state the "amount of the loan." - *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, and Clark, LLC*, 214 F.3d 872 (7th Cir. 2000)
      - c. Dunning letter stating that the "balance" is \$367.42, the adding "(T)o obtain your most *current balance information*, please call 1-800-916-9006. Our friendly and experienced representatives will be glad to assist you and answer any questions you may have," would not allow the least sophisticated consumer to know the exact amount of the debt without making a further inquiry. "It is not enough that the dunning letter state the amount of the debt that is due. It must state it clearly

enough that the recipient is likely to understand it.” (emphasis supplied) - *Chuway v. National Action Financial Services, Inc.*, 2004 U.S. App. LEXIS 5836 (7th Cir., March 30, 2004).

- d. Misrepresenting the amount of the debt as including treble damages, court costs, and attorney’s fees, before there has been a judgment by a court assumes the outcome of future events, in violation of 15 U.S.C. § 1692g(a)(1). The collector may not demand an amount that is unliquidated. - *Veach v. Sheeks*, 316 F.3d 690 (7th Cir. 2003).
  - i. Debt collectors cannot adjudicate the amount of the debt. This is the “*moving target*” scam - putting the squeeze on the consumer to pay more -- a conscientious debtor might find out the real amount of the debt and pay it. § 1692g(a), e(2)(A), and f(1) violations arise.
  - ii. The name of the creditor to whom the debt is owed;
  - iii. 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;
  - iv. A statement that if the consumer notifies the debt collector in writing within the thirty day period that the dispute the debt, or any portion thereof, is disputed, the debt collector will obtain verification thereof;
  - v. A statement that, upon the consumer's written request within the thirty day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.
- b. The validation notice "must be large enough to be easily read and sufficiently prominent to be noticed" - *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222 (9th Cir. 1988). Format overshadowing results from smaller print or

size or contrasting color - *Miller v. Payco General American Credit, Inc.*, 943 F.2d 482 (4th Cir. 1991).

- c. Adequacy and legality of section 1692g notice is a question of law tested by the least sophisticated consumer standard - *U.S. v. National Financial Services, Inc.*, 98 F.3d 131, 135 (4th Cir. 1996); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 415 (E.D.Va. 1997).
- d. Contradictory messages violate validation disclosure requirements.
  - i. Demand for payment within a time less than thirty days contradicts thirty-day validation period - *U.S. v. National Financial Services, Inc.*, 98 F.3d 131, 139 (4th Cir. 1996); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411 (E.D.Va. 1997); *Withers v. Eveland*, 988 F.Supp. 942 (E.D. Va. 1997); *Morgan v. Credit Adjustment Board, Inc.*, 999 F.Supp. 803 (E.D.Va. 1998); *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846 (W.D. Va. 1999).
  - ii. Demand for payment or action "immediately," "today," "at once," or the like similarly contradicts thirty-day validation period - *Miller v. Payco General American Credit, Inc.*, 943 F.2d 482 (4th Cir. 1991); *U.S. v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996); *Morgan v. Credit Adjustment Board*, 999 F.Supp. 803 (E.D. Va. 1998).
  - iii. Otherwise proper notice with emphasis in body of the letter to telephone the collector obscures required disclosure that an effective dispute must be in writing - *Miller v. Payco General American Credit, Inc.*, 943 F.2d 482 (4th Cir. 1991); *Withers v. Eveland*, 988 F. Supp. 942, 947 (E.D. Va. 1997).
  - iv. Contradictory messages sent in separate communications but during the validation period also violate FDCPA - *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996).
  - v. The contradictory message need not be "threatening" – *Creighton v. Emporia Credit*

*Service, Inc.*, 1992 U.S. Dist. Lexis 8556 (E.D. Va. 1997), *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996).

- vi. Overshadowing or contradiction occurs where messages "would make the least sophisticated consumer uncertain as to her rights;" *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846, 853 (W.D. Va. 1999); *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 416 (E.D.Va. 1997); or where notice can be reasonably read to have two different meanings, one of which is inaccurate - *Id.*
- vii. Language, that, while not directly contradictory to or irreconcilable with the validation notice, that could confuse the least sophisticated consumer and leave him unsure about his right to dispute the debt, violates the Act. *Talbott v. GC Services Limited Partnership*, 53 F. Supp. 2d 846 (W.D. Va. 1999).

## VI. STATUTORY REMEDIES

- A. A single violation of the Act triggers statutory liability and remedies., *Morgan v. Credit Adjustment Board, Inc.*, 999 F.Supp. 803 (E.D.Va. 1998); *Clomon v. Jackson*, 988 F.2d 1314 (2nd Cir. 1993).
- B. Up to \$1,000 in statutory damages., 15 U.S.C. Section 1692k(a)(2)(A)
  - 1. Statutory damages available even in absence of actual damages - *Baker v. G.C. Services Corp.*, 677 F.2d 775 (9th Cir. 1982); *Keele v. Wexler*, 149 F.3d 589 (7th Cir. 1998).
  - 2. Amount to be determined by the trier of fact on the basis of the frequency, persistence, and nature of the violation and whether the violation was unintentional - 15 U.S.C. Section 1692k(b)(1).
  - 3. Equitable defenses are not available - *Newman v. Checkrite California*, 912 F.Supp. 1354, n.30 (E.D.Ca. 1995).
  - 4. Strict liability statute, where degree of the defendant's culpability is relevant only in computing damages, not in determining liability - *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60 (2nd Cir. 1993); *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997).

- a. Plaintiff therefore need suffer no actual injury whatsoever to recover - *Id.*
  - b. Whether plaintiff even receives or reads an offending communication is irrelevant to liability - *Morgan v. Credit Adjustment Board, Inc.*, 999 F.Supp. 803, 805-06 (E.D.Va. 1998).
  - c. That the offending conduct is not unreasonable is not a defense - *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).
  - d. Intent is not an element of liability - *Patzka v. Viterbo College*, 917 F.Supp. 654 (W.D.Wis. 1996).
  - e. FDCPA is a remedial statute to be liberally construed, imposing strict liability excused only by the bona fide error defense - *Harrison v. NBD Inc.*, 968 F.Supp. 836 (E.D.N.Y. 1997).
  - f. Neither knowledge nor intent necessary to establish liability - *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997).
5. Fourth Circuit has exhibited a lack of judicial tolerance for failure to comply with the FDCPA. *Creighton v. Emporia Credit Service, Inc.*, 981 F.Supp. 411, 417 (E.D.Va. 1997); citing *Miller v. Payco-General American Credits, Inc.*, 943 F.2d 482 (4th Cir. 1991); *U.S. v. National Financial Services, Inc.*, 98 F.3d 131 (4th Cir. 1996).
- a. *Creighton* therefore juxtaposed debt collector's good faith efforts and its comparatively less explicit or graphic violations with Congress' goal of deterring unfair debt collection practices, and imposed \$750 in statutory damages, plus costs, expenses, and attorney's fees. *Id.*
  - b. Because the FDCPA requires the debt collector to do more than follow "the spirit of the law," the debt collector was subject to a civil penalty in an amount that will deter him from engaging in future improper collection practices; therefore, the Court awarded the maximum \$1,000 statutory damages, plus costs and attorney's fees. *Withers v. Eveland*, 988 F. Supp. 942, 947-48 (E.D. Va. 1997).

C. Actual damages. A debt collector who violates any provision of the Act is

liable for actual damages. 15 U.S.C. §1692k(a)(1). State law elements of proof for intentional or negligent infliction of emotional distress claims are not applicable to actual damages under the FDCPA. In *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182 (D.Del. 1991), the court instructed the jury:

1. First, actual damages may be awarded the plaintiff as result of the failure of defendants to comply with the Act. Actual damages not only include any out-of-pocket expenses, but also damages for personal humiliation, embarrassment, mental anguish or emotional distress.
  2. You must determine a fair and adequate award of these items through the exercise of your judgment and experience in the affairs of the world after considering all facts and circumstances presented during the trial of this case.
  3. Consumers had no out-of-pocket losses, jury awarded \$15,000 for their emotional distress, on their testimony describing suffering as a result of receiving the collection firm's three dunning letters. The court remitted to \$3,000.
- D. Award of costs and reasonable attorney's fee to prevailing plaintiff - 15 U.S.C. Section 1692k(a)(3).
1. Award is mandatory once liability is established - *Carroll v. Walpoff & Abramson*, 53 F.3d 626, 628 (4th Cir. 1995) (“...the fee award under § 1692k is mandatory in all but the most unusual circumstances...”) *Withers v. Eveland*, 997 F.Supp. 738 (E.D.Va. 1998); *Morgan v. Credit Adjustment Board*, 1998 U.S. Dist. Lexis 8135.
    - a. The Fourth Circuit, in *Barber v. Kimbrell's, Inc.*, 577 F.2d 216 (1978), *cert. denied*, 439 U.S. 934 (1978), held that, when determining the amount of attorney's fees to be awarded under the Truth in Lending Act [Title I of the Federal Consumer Credit Protection Act, Congress' plenary regulation of the national consumer credit industry, of which the FDCPA is Title VIII], district courts must consider the twelve factors specified in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (1974). *Barber* at 226.
    - b. The *Johnson* factors are:
      - (1) the time and labor required;

- (2) the novelty and difficulty of the questions;
- (3) the skill requisite to perform the legal services properly;
- (4) the preclusion of other employment by the attorney due to acceptance of the case;
- (5) the customary fee in the community;
- (6) whether the fee is fixed or contingent;
- (7) time limitations imposed by the client or the circumstances;
- (8) the amount of time involved and the results obtained;
- (9) the experience, reputation, and ability of the attorneys;
- (10) the “undesirability” of the case;
- (11) the nature and length of the professional relationship with the client; and
- (12) awards in similar cases.

c. Courts should award fees and costs to lawyers fulfilling the important public service of providing representation to consumer debtors in FDCPA cases.

“Finally, the Court is satisfied that but for the few attorneys in central Virginia like Mr. Pittman willing to take cases on behalf of clients such as Mr. Jones, an important public service would go unfulfilled. Indeed, it is not unreasonable to conclude that it would be difficult for a debtor-client such as this plaintiff to retain a private attorney to prosecute a claim because of the dearth of attorneys who appear in this and other courts willing, let alone able to pursue such matters. Mr. Pittman responded to Mr. Jones' request to enforce Mr. Jones' rights as a consumer and his efforts should therefore be recognized by an award of the

costs and fees he reasonably earned for this type of specialized representation in this marketplace.”

*Jones v. Robert Vest*, 2000 U.S. Dist. Lexis 19026, \*15 (E.D. Va. 2000)

7. Award proper in post-judgment enforcement action - *Nunez v. Interstate Corporate Systems, Inc.*, 799 P.2d 30 (Ariz. App. 1990).
8. Attorney's fees are not "costs" which shift pursuant to Rule 68 - *Marek v. Chesny*, 473 U.S. 1 (1985), Appendix to opinion of Brennan, J., dissenting, Section B(17). Where a civil rights plaintiff accepts an offer under Rule 68 that does not specify whether attorney's fees are included in the amount offered, he shall be entitled to recover his costs, including attorney's fees, limited to the costs that had accrued up to the time that the offer was made. *Said v. Virginia Commonwealth University/Medical College*, 130 F.R.D 60 (E.D. Va. 1990).
9. Jury should normally not be advised in that fees are triggered by any award under the Fifth Circuit rule - *Addison v. Braud*, 34 F.Supp.2d 407 (M.D.La. 1998).

E. Private remedy available to any aggrieved person, not limited to the consumer.

1. The Act does not only protect consumers, but is designed to discourage certain debt collection practices. *West v. Costen*, 558 F.Supp. 564 (W.D.Va. 1983).
2. Personal representative or other person who "stands in the shoes" of the consumer - *Wright v. Finance Service of Norwalk, Inc.*, 996 F.2d 820 (6th Cir. 1993), aff'd 22 F.3d 647 (1994) (en banc).

F. Right to jury trial., *Sibley v. Fulton DeKalb Collection Service*, 677 F.2d 830 (11th Cir. 1982); *Kobs v. Arrow Service Bureau*, 134 F.3d 893 (7th Cir. 1998).

G. One year statute of limitations., 15 U.S.C. Section 1692k(d). Violations barred by the statute of limitations are nonetheless admissible to show a pattern of abuse and harassment or other evidentiary purpose - *Pittman v. J.J. Mac Intyre Co.*, 969 F.Supp. 609 (D.Nev. 1997).

H. No explicit provision for injunctive relief. Declaratory judgment nevertheless is an appropriate remedy. *Gammon v. GC Services*, 162 F.R.D. 313 (N.D.Ill. 1995).

I. Collector's bona fide error defense., 15 U.S.C. Section 1692k(c).

1. Limited defense available only for violations resulting from unintentional error notwithstanding maintenance of reasonable procedures adopted to avoid the error - *Fox v. Citicorp Credit Services, Inc.*, 15 F.3d 1507 (9th Cir. 1994).
2. Mere fact that error was unintentional is insufficient - *Russell v. Equifax A.R.S.*, 74 F.3d 30 (2nd Cir. 1996).
3. Mistake as to the law is insufficient - *Baker v. GC Services Corp.*, 677 F.2d 775 (9th Cir. 1982).
4. The defense is not intended to "shield collectors from liability for systemic errors or abuses" but to protect collectors in cases of inadvertent 'clerical errors;'" therefore, where the collector "routinely applied the wrong" legal standard, "it could not have maintained procedures reasonable adapted to avoid" the violation - *Martinez v. Albuquerque Collection Services, Inc.*, 867 F. Supp. 1495 (D.N.M. 1994).
5. Fact that violation claimed to be the result of a bona fide error actually occurred is evidence of absence of required precautionary procedures to prevent the error - *Sluys v. Hand*, 831 F.Supp. 321 (S.D.N.Y. 1993).
6. "The debt collector must have in place some ongoing policy that operates to detect, correct and prevent errors. An isolated, one-time action taken to avoid violations will not suffice." - *Adams v. Law Offices of Stuckert & Yates*, 926 F.Supp. 521 (E.D. Pa. 1996).
7. Absence of adequate procedures frequently explains how the purported error occurred - *Bitah v. Global Collection Services, Inc.*, 968 F.Supp. 618 (D.N.M. 1997).

J. Availability of attorneys fees to prevailing defendant., 15 U.S.C. § 1692k(a)(3).

1. Defendant must have prevailed in all respects - *Savino v. Computer Credit, Inc.*, 164 F.3d 81 (2d Cir. 1998).
2. Filing case must be show to have been in bad faith - *Id.*
3. Even then, matter of discretion - *Perry v. Stewart Title Co.*, 756 F.2d 1197 (5th Cir. 1985).

- K. Class action remedy., 15 U.S.C. § 1692k(a)(2)(B).
1. Actual damages.
  2. Named plaintiff entitled to same statutory damages as in individual action.
  3. Class shares statutory damages of lesser of \$500,000 or 1% of collector's net worth per case - *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 (7th Cir. 1997).
- L. No defense that violation was not "abusive" - *Romea v. Heiberger & Associates*, 163 F.3d 111 (2d Cir. 1998).

## VII. PROCEDURAL ISSUES

- A. Jurisdiction and venue are proper in forum of consumer's residence, even where debt collector's contacts with jurisdiction are limited to a single letter or telephone call. *Russey v. Rankin*, 837 F.Supp. 1103 (D. N.M. 1993).
- B. FDCPA lawsuit and action to collect underlying debt are not compulsory counterclaims. *Peterson v. United Accounts, Inc.*, 638 F.2d 1134 (8th Cir. 1981). Consumer is therefore not barred from filing separate FDCPA action even when previously sued on the debt. Debt collector may not maintain collection action as counterclaim in federal court - *Kuhn v. Account Control Technology, Inc.*, 865 F.Supp. 1443 (D. Nev. 1994).
- C. Preemption of state law under Section 1692n is limited to inconsistent, less protective (to the consumer) state laws. *Sibley v. Firstcollect, Inc.*, 913 F.Supp. 469 (M.D.La. 1995) .

## **EXCERPT ON THE LEAST SOPHISTICATED CONSUMER STANDARD**

The FDCPA states that its purpose, in part, is "to eliminate abusive debt collection practices by debt collectors", 15 U.S.C. §1692(e). It is designed to protect consumers from unscrupulous collectors, whether or not there is a valid debt. *Baker v. G.C. Services Corp.*, *supra* at 777 (9th Cir. 1982). *Keele*, *supra* at 594; *Mace v. Van Ru Credit Corporation*, 109 F.3d 338, 341 (7th Cir.1997). The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt, 15 U.S.C. §§1692d, 1692e, and 1692f, and requires the debt collector to provide the consumer with his or her rights, 15 U.S.C. §1692g, under the Act.

The Fourth Circuit has held that whether a communication or other conduct violates the FDCPA is to be determined by analyzing it from the perspective of the "least sophisticated debtor." *U.S. v. National Financial Services, Inc.*, *supra* at 135-36. "The basic purpose of the least-sophisticated-consumer standard is to ensure that the FDCPA protects all consumers, the gullible as well as the shrewd." *Clomon v. Jackson*, 988 F.2d 1314, 1318 (2nd Cir. 1993). "While protecting naive consumers, the standard also prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care." *U.S. v. National Financial Services, Inc.*, *supra* at 136 (citation omitted). Also, see: *Russell v. Equifax A.R.S.*, *supra*; *Bentley v. Great Lakes Collection Bureau*, *supra*; *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168 (11th Cir. 1985); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991); *Maguire v. Citicorp Retail Services, Inc.*, 147 F.3d 232, 236 (2nd Cir. 1998); ("The (dunning) letter must be assessed in terms of 'the impression likely to be left upon the unsophisticated consumer.'") (Citation omitted); *Avila v. Rubin*, 84 F.3d 222, 226-27 (7th Cir. 1996) ("the standard is low, close to the bottom of the sophistication meter"). The debt collector may not defeat the statute's purpose by making the required disclosures in a form or within a context in which they are unlikely to be understood by the unsophisticated debtors who are the particular objects of the statute's solicitude. *Bartlett v. Heibl*, *supra*, at 500 (7th Cir.1997). An outright contradiction is not required for a violation of the FDCPA. "A letter can be confusing even to a sophisticated reader though it does not contain an outright contradiction. *Chuway v. National Action Financial Services, Inc.*, 2004 U.S. App. LEXIS 5836 (7th Cir., 2004)

"As the FDCPA is a strict liability statute, proof of one violation is sufficient to support summary judgment for the plaintiff." *Cacace v. Lucas*, *supra*, at 505 (D.Conn. 1990). See also, *Stojanovski v. Strobl and Manoogian, P.C.*, 783 F. Supp. 319, 323 (E.D. Mich. 1992); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 178-9 (W.D.N.Y. 1988). "Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages." *Russell v. Equifax A.R.S.*, *supra* at 33. Also, see: *Bentley v. Great Lakes Collection Bureau*, *supra* at 62; *Clomon v. Jackson*, *supra* at 1318. Furthermore, the question of whether the consumer owes the alleged debt has no bearing on a suit brought pursuant to the FDCPA. *McCartney v. First City Bank*, 970 F.2d 45 (5th Cir. 1992); *Baker v. G.C. Services Corp.*, *supra* at 777.

**EXCERPT ON THE INCLUSION OF UNAUTHORIZED CHARGES**

In *West v. Costen*, 558 F.Supp. 564 (1983), the United States District Court for the Western District of Virginia was faced with the question of whether dishonored check service charges that the debt collector added to the amount that he was attempting to collect resulted in a violation of 15 U.S.C. § 1692f(1). The charges were neither specifically prohibited nor specifically authorized by Virginia law. The issue was whether Virginia's silence constituted legal permission to add the charges. The court held that it did not. Noting that "permitted by law" differs from "not prohibited by law", the court ruled that permission requires an affirmative authorization, not just indulgent silence. *Id.* at 581.

In *Costen*, Judge Turk found that the service charges sought to be collected by the debt collector were not expressly authorized by the agreements creating the underlying debts. *Id.* at 581. The Court thus concluded that the debt collector's collection of the service charges would be lawful under 15 U.S.C. § 1692f(1) only if the charges were "permitted by law." The Court went on to state:

Plaintiffs argue that because no Virginia or federal statute or other law authorizes the practice, the charges cannot be said to be "permitted by law." The defendants counter this thrust by "the fact that [the practice] is not prohibited by Virginia law." ... In other words, the defendants argue that the very absence of any statutory authority concerning service charges justifies the practice because such charges are at least not prohibited by law. As defendants correctly point out, resolution of this issue depends on the interpretation of the phrase "permitted by law." In turn, interpretation of this phrase can only be done in context with the entire provision. Looking to the plain language of 1692f(1), the court interprets the section to permit the collection of a fee in addition to the principal obligation if such fee is expressly authorized by the agreement creating the debt or is otherwise permitted by state law. Thus, the agreement creating the debt need not expressly authorize the fee if state law affirmatively permits a collection fee even if not specified in the agreement. However, the agreement must expressly authorize the fee if state law permits such a fee only if specified in the agreement. And no such fee may be collected even if provided for in the agreement if state law prohibits a collection fee in addition to the principal obligation because a contract can never impose charges that are prohibited by state law. But Virginia law neither expressly permits nor expressly prohibits a third party debt collector from collecting add-on fees. Thus, if valid under state contract law, an agreement relative to such fees would be permitted because it would not be expressly prohibited by state law. But when, as here, the agreements creating the debts did not expressly authorize the fee, the question is whether Virginia's silence on this specific issue constitutes legal permission to collect the fee. The court holds that it does not. In the context of this case, the court interprets section 1692f(1) to mean that if state law does not expressly permit or prohibit a debt collector from collecting a service charge in addition to the amount of a dishonored check, then

such charge is lawful only if the agreement creating the debt expressly authorizes it. Simply stated, "permitted by law" is different from "not prohibited by law." Permission requires an affirmative authorization, not just indulgent silence. So the fact that Virginia does not expressly prohibit such charges does not mean that state law permits them in the absence of an agreement providing for such; rather, it means the contrary. Therefore, the court holds that the service charges collected by [the debt collector] were not "permitted by law" as that phrase is used in the FDCPA. *Id.* at 581 & 82.

The case *sub judice* falls squarely within the factual circumstances in *Costen*. No Virginia law expressly permits the addition of skip tracing charges to a collection account by a debt collector. The addition of skip tracing charges to the amount that the Defendants were collecting from Ms. Consumer was an unfair practice that violated the FDCPA.

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**MARY ANNE BLEVENS,**

**Plaintiff,**

**v.**

**Civil Action No. \_\_\_\_\_**

**LAW OFFICES OF SIMON LEE GREE, PLC,  
SIMON LEE GREE,  
CHERYL Z. MCPATRICK,  
and  
VINCENT L. PRICE,**

**Defendants.**

**COMPLAINT AND DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1. This is an action by a consumer seeking damages and declaratory relief for Defendants' violations of the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. §§1692 et seq., which prohibits debt collectors from engaging in abusive, deceptive, and unfair collection practices.

**JURISDICTION**

2. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and the FDCPA, 15 U.S.C. §1692k(d). Declaratory relief is available pursuant to 28 U.S.C. §§2201 and 2202.

**PARTIES**

3. Plaintiff Mary Anne Blevens, ("Sgt. Blevens") is a natural person and Sergeant in the United States Marine Corps. Sgt. Blevens is a consumer within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(3).

4. Defendant Law Offices of Simon Lee Gree, P.L.C., (the Gree law firm) is a limited liability company that regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, or which has as the principal purpose of its businesses the collection of debts, operating a collection law firm, located at 397 Little Neck Rd., Building 3300, Suite 114, Virginia Beach, Virginia 23452.

5. Defendant Andrew Gree is a lawyer licensed to practice law in the Commonwealth of Virginia. He is the Registered Agent for Defendant Law Offices of Simon Lee Gree, P.L.C.

6. Defendant Cheryl Z. McPatrick is an lawyer licensed to practice law in the Commonwealth of Virginia, and who is an employee of Defendant Law Offices of Simon Lee Gree, P.L.C.

7. Defendant Vincent L. Price is a Collection Coordinator for Defendant Law Offices of Simon Lee Gree, P.L.C.

8. Defendants regularly collect or attempt to collect debts owed or due or asserted to be owed or due another, and are each “debt collectors” within the meaning of the FDCPA, as defined at 15 U.S.C. § 1692a(6).

#### **STATEMENT OF FACTS**

9. During the summer of 2003, Sgt. Blevens was looking to trade her car in, and found a car she liked at Sweetbrier Volkswagen while searching the internet.

10. Sgt. Blevens gave Sweetbrier Volkswagen her name, telephone number and e-mail address via the internet.

11. A day or so later someone from internet sales at Sweetbrier Volkswagen

called Sgt. Blevens to set up a date and time for her to go in and talk about trading her car.

12. Sgt. Blevens told the salesman from internet sales at Sweetbrier Volkswagen what kind of car that she was interested in, and a couple of days later she went to the dealership.

13. The person she spoke to on the phone was not available, so she was referred to Brian Stagner who then became her sales person.

14. Sgt. Blevens and Brian Stagner spoke about trading her car in, and she took the car she wanted for a test drive, and took care of all other particulars of the sales process.

15. When she was asked if she was going to put any money down, Sgt. Blevens said yes, that she was going to be putting down \$1,500.00, but that she needed to go to the bank and get a cashier's check.

16. Brian Stagner returned after speaking to someone, and asked Sgt. Blevens if she could write a personal check, just so they knew that she was coming back.

17. Sgt. Blevens agreed to write a personal check, but she stressed to Mr. Stagner not to cash that check because she did not have the funds available in the account to cover it.

18. Brian Stagner told her not to worry, that once she returned with the cashier's check they would void the check that she wrote.

19. Sgt. Blevens returned the next day with the cashier's check in the amount of \$1,500.00.

20. She forgot to ask Sweetbrier Volkswagen to return the check she had

written, but Brian Stagner told her that he would void out her personal check.

21. About a month later, Sgt. Blevens got a letter in the mail saying that the check that she had written for the down payment had bounced.

22. She called the finance office and spoke to someone there who told her not to worry about that letter, that it was a misunderstanding, and that they saw that she did give them the \$1,500.00 down payment.

23. Sgt. Blevens did nothing further because she thought that it must have been a misunderstanding, until about another month later she received another letter, again saying that the check she had written had bounced.

24. Sgt. Blevens again called Sweetbrier Volkswagen's finance office and asked what was going on, that she had already spoken to someone about this, and they told her not to worry, that it was just a mistake.

25. The person on the phone apologized for the mix up and said that he would take care of it.

26. Sgt. Blevens explained to him that Sweetbrier Volkswagen wasn't even supposed to cash that check, that it was supposed to have been voided.

27. She asked him to reassure her that this wouldn't happen again and that she wasn't going to receive anything else in the mail or get anymore phone calls about this, and he said yes.

28. A couple of weeks passed after the second letter and her follow up phone calls, and then Sgt. Blevens received a February 20, 2004, dunning letter from the Gree law firm, and Vincent L. Price, Collection Coordinator, with Cheryl Z. McPatrick's name on the law firm letterhead, demanding payment within thirty days on the \$1,500.00

check, demanding “any past due interest and collection fees from your contract, plus \$25.00 return check charge,” and further threatening that a failure to pay these unspecified amounts “within thirty (30) days shall make you subject to the provisions of the Code of Virginia Section 8.01-27.1 and 8.01-27.2.” A copy of the dunning letter is attached as Exhibit A.

29. The dunning letter did not contain the thirty day validation notice required by 15 U.S.C. § 1692g.

30. The dunning letter was the first communication to Sgt. Blevens from the Gree law firm.

31. Upon information and belief, no lawyer with the Gree law firm performed a meaningful review of the alleged debt, or “account” before sending the dunning letter to Sgt. Blevens or before suing Sgt. Blevens.

32. Sgt. Blevens called the Gree law firm and spoke with Vincent Carlo. Carlo told her that they were just doing their job and that she should try going up to the dealer and talking this out before further action is taken.

32. On March 16, 2004, Sgt. Blevens went to Sweetbrier Volkswagen and asked to speak to the president of the dealership.

33. A representative of Sweetbrier Volkswagen came down, and Sgt. Blevens explained to him what was happening to her.

34. All he did was make copies of the papers Sgt. Blevens had with her and told her that he would research the situation and get back to her with a telephone call.

35. The representative of Sweetbrier Volkswagen never got back to Sgt. Blevens.

36. Sgt. Blevens telephoned Sweetbrier Volkswagen several times, left messages with the receptionist, but still never heard anything from the representative of the dealership.

37. With all that was happening, Sgt. Blevens felt that she needed to speak to a lawyer, and she went to the Naval Legal Service Office.

38. A Navy JAG lawyer, Lt. Gretchen D. Sosbee, wrote an April 22, 2004, letter, Certified Mail, Return Receipt Requested, to Vincent L. Price setting forth the facts that would demonstrate that Sweetbrier Volkswagen had no claim against Sgt. Blevens, and asking that the Gree law firm cease all collection efforts against Sgt. Blevens. A copy of Lt. Sosbee's letter is attached as Exhibit B.

39. No one responded to Lt. Sosbee's letter.

40. Defendants thereafter sued Sgt. Blevens in General District Court on the nonexistent debt. A copy of the Warrant in Debt filed by Defendants is attached as Exhibit C.

41. Defendants falsely stated in an Affidavit attached to the Warrant in Debt that Sgt. Blevens was not in the military service.

42. Sgt. Blevens had never been to court before being sued by the Defendants. Being sued was severely stressful to her, particularly when she was being sued over a nonexistent debt, and even more particularly after her Navy JAG lawyer had written a letter to the Gree law firm setting forth in clear detail what had happened and why Sgt. Blevens did not owe the alleged debt.

43. Sgt. Blevens went to Court on the Return Date on the Warrant in Debt. A Gree law firm lawyer, upon information and belief, Shari S. Patish, told her that the case was dismissed.

44. The case was dismissed on July 9, 2004.

45. The alleged debt was for personal, family, or household purposes, bringing Defendants' collection activities within the purview of the FDCPA. 15 U.S.C. § 1692a(5).

46. As a result of the acts and omissions of the Defendants, Sgt. Blevens has suffered actual damages and injury, including but not limited to, severe stress, mental anguish and suffering, emotional distress, lost time, damage to her reputation, and humiliation.

47. The foregoing acts and omissions of the Defendants constitute violations of the FDCPA, including, but not limited to, §§ 1692c(c), d, e, e(2)(A), e(3), e(10), f, f(1), g and g(2).

48. Plaintiff is entitled to declaratory relief, and to recover statutory damages, actual damages, reasonable attorney's fees, and costs.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff requests that the Court grant the following relief:

1. Enter a declaratory judgment that Defendants' practices violated the FDCPA;
2. Award Plaintiff actual damages;
3. Award Plaintiff statutory damages;
4. Award Plaintiff reasonable attorney's fees;

5. Award Plaintiff costs;
6. Such other relief as may be just and proper.

**TRIAL BY JURY IS DEMANDED**

Respectfully submitted,  
Mary Anne Blevens  
By Counsel

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Counsel for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

**GWENDOLYN A. CONSUMER,**

**Plaintiff**

**v.**

**Civil    Action    No.**

**3:99cv123**

**ROYAL FINANCIAL SERVICE, INC.,  
BUBBA RED, and  
ROBERT DARTER TWITCHIE,**

**Defendants.**

**PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS  
FOR PRODUCTION TO DEFENDANT ROYAL FINANCIAL SERVICE,  
INC.**

**INTERROGATORIES**

Plaintiff, by counsel, propounds the following interrogatories to Defendant pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure to be answered and responded to under oath within thirty (30) days of service.

"Document" means any written, recorded or graphic matter, whether produced, reproduced or stored on papers, cards, tapes, belts, or computer devices or any other medium in your possession, custody or control, or known by you to exist, and includes originals, all copies of originals, and all prior drafts. It includes all original business records, non-identical copies, computations, memoranda of oral or telephone conversations, tabulations, records of

correspondence, notes made on other documents, microfilms, etc.

A request to identify a document is a request to state as applicable:

1. The date of the document;
2. The type of document;
3. The names and present addresses of the person or persons who prepared the document and of the signers and addressers of the document;
4. The name of the employer or principal whom the signers, addressers and preparers were representing;
5. The present location of the document;
6. The name and current business and home addresses of the present custodians of the original document, and any copies of it;
7. A summary of the contents of the document; and
8. If the original document was destroyed, the date and reason for or circumstances under which it was destroyed.

These interrogatories shall be deemed continuing so as to require supplementary answers if you obtain further information between the time answers are served and the time of trial.

### **INTERROGATORIES**

1. State the name, work and home addresses and telephone numbers, and position of the person responding hereto.

**ANSWER:**

2. Identify all persons known to you who have knowledge of facts relevant to this case, including but not limited to all persons interviewed by you, by your counsel, or by any person cooperating with you in the defense of this action, and state the subject matter of testimony, giving a brief description thereof, for each person you may call as a witness in this case. If you intend to qualify any of these witnesses as experts, please so indicate, giving their areas of expertise, their credentials as experts, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds for each opinion.

**ANSWER:**

3. State the name, job title, aliases, current work and home addresses and telephone numbers, and position of each person, and identify each document referred to or consulted by you in the preparation of your Answers to these Interrogatories and your response to the Request for Production, and, as to each such person, and the persons identified in response to Interrogatories No. 1 and No. 2, please state whether each such person has

ever been convicted either of a felony, or of a misdemeanor involving moral turpitude, furnishing the nature, date, and court of any such convictions.

**ANSWER:**

4. State your full name and your business purpose, and your form of business organization (e.g. corporation, partnership, sole proprietorship, etc.).

**ANSWER:**

5. State whether there is any insurance agreement under which any person conducting an insurance business may be liable to satisfy part or all of the judgment which may be entered in this action or to indemnify or reimburse for payments made to satisfy any judgment which may be entered in this action, and identify all documents reflecting the existence of such insurance agreement.

**ANSWER:**

6. For each factual allegation contained in the Complaint which you do not unequivocally admit, state with detail and particularity the factual basis for your failure to do so, the efforts undertaken by you to ascertain the truth of said allegation, identify all documents related or relevant to said allegation or your basis for not so admitting, and identify all persons with knowledge of the fact or of your basis for not so admitting.

**ANSWER:**

7. For each affirmative defense which you have asserted or will assert to the Complaint, state with detail and particularity its factual and/or legal basis and identify all evidence on which you rely in asserting it, and identify

all documents related or relevant to it and all persons with knowledge of its factual predicate.

**ANSWER:**

8. For each person who has had any involvement in any manner in any efforts on your behalf to collect or attempt to collect any debt purportedly owing by Plaintiff, state his/her name, position, home and work addresses and telephone numbers, and the nature and purpose of his/her involvement; describe each action taken, the nature, contents and subject matter of each discussion or conversation held, and the time, place and the date of each such action or conversation; and identify all documents relevant, related to or reflecting said involvement of each such person.

**ANSWER:**

9. List and explain all abbreviations and code words, letters, numerals, or symbols regularly used by you in your records of collection activities.

**ANSWER:**

10. With regard to the debt allegedly owed by the Plaintiff, itemize the amount of each portion of the debt and the authority therefore.

**ANSWER:**

11. Describe the maintenance of all procedures utilized by you, at any time from January 1, 1994 through the present, to avoid violation of the Fair Debt Collection Practices Act, and identify all documents related in any way to such procedures and their maintenance, giving their dates of implementation and the dates of the time periods of their use, as well as all

internal and external documents regarding your compliance or noncompliance with the Fair Debt Collection Practices Act.

**ANSWER:**

12. Identify the persons or entities which are the creditor(s) regarding any debts which you have attempted to collect from Plaintiff, identify all documents related or relevant to your contractual agreement(s) or other business relationships with said persons or entities, identify each person who has had any contact or communication on your behalf with said persons or entities regarding Plaintiff or Plaintiff's purported debt, state when, how, where, and with whom said contact or communication occurred and in detail and with particularity the substance thereof, and identify all documents relevant or related thereto.

**ANSWER:**

13. Describe all collection activities which you were authorized to perform by the creditor, and identify the terms of the agreement between the creditor and you pursuant to which you sought to collect this account.

**ANSWER:**

14. To the extent not previously done, identify all documents relevant, related to, or reflecting any aspect of any efforts undertaken by you to collect any debt from Plaintiff, or to any debts purportedly owed by Plaintiff to you or to the underlying creditor.

**ANSWER:**

15. Describe your procedure and policy with respect to the maintenance, preservation, and destruction of documents, stating in your answer whether any documents or things relating to any information requested in these interrogatories, or related in any way to this lawsuit, have ever been destroyed or are no longer in your custody. For each such document, please identify the document, how, when and why each document was destroyed or otherwise left your control, the identity of any person who participated in any way in the destruction and/or action for destroying the document or to transfer it out of your control or custody; and if the document still exists, identify the person now having control or custody of the document.

**ANSWER:**

16.State whether you are or ever have been a member of the American Collectors Association and the dates of any such membership.

**ANSWER:**

17. To the extent not already done, describe in detail and with particularity the process by and circumstances under which Plaintiff's Exhibits A through U attached to the Complaint herein were generated.

**ANSWER:**

18. Identify by title, author, subject, and date any reports or memoranda of the Defendant regarding the use of the notices sent to the Plaintiff.

**ANSWER:**

19. Identify by caption, court, civil action number and result all litigation filed against you alleging violations of the Fair Debt Collection Practices Act, identifying in your response each action in which you have been alleged to have violated 15 U.S.C. §§ 1692c, c(b), d, d(2), e, e(2)(A), e(3), e(4), e(5), e(10), f, f(1), and g, and stating the court's disposition as to each allegation.

**ANSWER:**

20. Identify the publications which you have received in the past 48 months from any debt collection trade organization, and all documents which you have received during the past 48 months, addressing the issues of compliance with 15 U.S.C. §§ 1692c, c(b), d, d(2), e, e(2)(A), e(3), e(4), e(5), e(10), f, f(1), and g.

**ANSWER:**

21. Identify the lawyer or lawyers to whom you refer in your June 14, 1999 dunning letters regarding Town & Country accounts no. 15532\*1 through 15532\*7 when you state: “Because of your inability and/or apparent neglect, we have no choice but to recommend forwarding this account to our attorney for immediate suit.”

**ANSWER:**

22. State all facts which support the statement made in the June 14, 1999 dunning letters that “As you may be aware, save violent crime, credit fraud is the number one crime men and women are imprisoned for in the State of Virginia.”

**ANSWER:**

23. With respect to the June 14, 1999 dunning letters, state all facts which support the statement made in the dunning letters that “As of June 16, 1999, your new balance will be the amount as set forth in each letter,” including in your answer an itemization of how the amount of the “new balance” is arrived at, stating the factual basis for each itemized component.

**ANSWER:**

24. State all facts which support the statement made in the June 14, 1999 dunning letters that “We have tried numerous times to contact you with regard to the bad check you wrote to Town & Country.”

**ANSWER:**

**PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION OF**

**DOCUMENTS**

Pursuant to the provisions of Rules 26 and 34 of the Federal Rules of

Civil Procedure, Plaintiff, by counsel, requests that Defendant produce and permit inspection and copying of the following documents at the offices of the undersigned counsel, within thirty (30) days after service of this request:

**Documents Requested**

1. Any and all documents and things, omitting nothing therefrom, that are identified or sought to be identified in or that relate in any manner whatsoever to or are referred to in your answers to the foregoing Plaintiff's Set of First Interrogatories, indicating with respect to each document the Interrogatory to which it is responsive.

**RESPONSE:**

2. Produce copies of all agreements and any other documents exchanged between or among the attorney or attorneys you are referring to in the dunning letters when you say that "we have no choice but to recommend forwarding this account to our attorney for immediate suit."

**RESPONSE:**

3. Produce all documents and things which support the statement made in the June 14, 1999 dunning letters that “As you may be aware, save violent crime, credit fraud is the number one crime men and women are imprisoned for in the State of Virginia.”

**RESPONSE:**

QWENDOLYN A CONSUMER  
By Counsel

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