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Comment of the Commercial Law League of America
Submitted to the United States Congress
On The Fair Debt Collection Practice Act

Introduction

The Commercial Law League of America (“League”), founded in 1895, is the nation’s oldest organization of attorneys and other experts in credit and finance actively engaged in the fields of commercial law, bankruptcy and reorganization. The League has long been associated with the representation of creditor interests, while seeking fair, equitable and efficient treatment of all parties in interest. The League regularly submits policy papers to Congress and has testified on numerous occasions before Congress as experts in fields related to creditor interests.

The purpose of this comment is to present amendments to the Fair Debt Collection Practices Act (“FDCPA” or “the law”) the League believes are necessary to curtail judicial and administrative expansion of the FDCPA beyond its expressed intended purpose and identify some of the consequences of the expansion described herein.

Specifically, the League is concerned with certain Federal and State Court decisions that have expanded standing, rights, and remedies to legal entities and other “persons” that the FDCPA was not designed to protect or which were already adequately protected. As a result of certain decisions, it is inevitable that future litigation will develop, because the opinions establish a framework for expansion of the FDCPA by focusing on the various uses of the term “person” in the law, and thereby allow courts to subjectively interpret the term and context of the law. Among other consequences, the League believes expansion would lead to more uncertainty in the law itself and have a chilling effect on commerce.

Thus, with this Comment, the League respectfully requests that Congress take action to amend the FDCPA by defining and adding appropriate language to the term “person” in light of the FDCPA’s stated purpose and history.



The FDCPA provides remedies to “natural persons” from the abuses of creditors and debt collectors.

The FDCPA was designed with a limited, but important purpose. The Congressional Findings and Declarations of Purpose make clear that the FDCPA was necessary to promote more consistent state action to protect consumers’ individual privacy, marriage, solvency, and employment.¹ There is no mention of legal entities or other non “natural persons” in this important portion of the FDCPA. Accordingly, the FDCPA defines the term “consumer” as any “natural person” obligated to pay any debt. However, the term “persons” or the other variations of the term are not defined in the FDCPA, despite their appearance 24 times, and those terms are now the gateway for argument, litigation and expansion of the law’s protections.

As long as “persons” remains undefined in the FDCPA, absurd and inconsistent interpretations will follow. A recent 6th Circuit Court of Appeals decision, *Anarion Invs., LLC v. Carrington Mortg. Servs, LLC*, found that legal entities are “persons” entitled to FDCPA remedies under § 1692k.² To arrive at that holding, the Court in *Anarion* sought guidance from The Dictionary Act, which establishes a presumption that, unless Congress indicates otherwise, the word “person” refers to individuals and legal entities alike when used in legislative text.³ The League disagrees with this approach for guidance, because Congress clearly “indicates otherwise” in the FDCPA’s findings and purpose by specifically identifying the personal nature of debt collection and highlighting consumers as the protected class, not legal entities. Although the facts in the *Anarion* case are unique, the decision is unprecedented. The decision unnecessarily expands FDCPA standing and protections to legal entities, because the term “persons” is not defined or interpreted in the proper context of the FDCPA.

The League agrees with the *Anarion* dissent and believes a “more logical and context appropriate interpretation” of the term “persons” under § 1692k(a) would follow the FDCPA’s stated purpose and history, and thereby protect and provide remedies to consumers who are “natural persons” from certain debt collection practices.⁴

Thus, the League proposes amendment to the FDCPA to specifically limit standing to “natural persons” under 15 U.S.C. 1692k (a), or to amend the FDCPA and specifically define the term “persons” and its variations in the FDCPA.

¹ 15 U.S.C. §1692(a)-(e).

² *Anarion Invs., LLC v. Carrington Mortg. Servs, LLC*, 794 F.3d 568 (6th Cir. 2015).

³ *Id.* at 569.

⁴ *Id.* at 571-72.



Consumer Attorneys are not “persons” that the FDCPA was designed to protect

In further support of the League’s concerns over the expansion of the FDCPA through the undefined term “persons,” another recent decision found that the FDCPA’s liability provision, § 1692k, “is in no way limited to conduct and communications directed only to consumers” and in so finding also found that consumer attorneys fell within the definition of “any person” under the Act.⁵ Indeed, the 11th Circuit Court found that if “any person is entitled to redress under the FDCPA, then all persons must be entitled to protection under it – be it the consumer...or any person who is mistreated in the connection with the collection of any debt...”⁶

Because controls and restraints already regulate the conduct of creditor’s attorneys, consumer attorneys do not need FDCPA protection through expansion or interpretation of the term “any person”. Moreover, the lack of protection to consumer attorneys under the FDCPA would not dilute the overall aim of the FDCPA, to protect “natural persons” from debtors, debt collectors, and creditors, or leave a consumer attorney without remedy through other applicable laws and regulatory bodies.

Thus, again, the League proposes amendment to the FDCPA to specifically limit standing to “natural persons” under 15 U.S.C. 1692(k)(a), or to amend the FDCPA and define the term “persons” and its variations.

Extending FDCPA rights and remedies to Legal Entities and certain other “persons” will have detrimental consequences

Without legislative action, there are many potential consequences, none of which are in line with the purpose of the FDCPA. Some of those consequences include the following:

- 1) An expansion of the FDCPA protections and remedies to business people and business debt.
- 2) New classes of protected plaintiffs filing FDCPA actions, including consumer attorneys.
- 3) Uncertainty as to the scope of the FDCPA for business people making business decisions, thereby causing a chilling effect on commerce and the extension of credit.
- 4) Confusion and blurring of professional standards of conduct and the standard by which consumers are measured – reasonably prudent business persons vs. the least sophisticated consumer.

⁵ *Miljkovic v. Shafritz & Dinkin, P.A.*, 791 F.3d 1291 (11th Cir. 2015) (citations omitted).

⁶ *Id.* at 1302.



Conclusion

The League welcomes the opportunity to discuss and analyze its positions on the FDCPA set forth herein in an effort to achieve balanced reform and clarity on behalf of consumers and the larger credit industry.

Respectfully submitted,

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