



## FDCPA: Split among the Circuits as to the Validation of Debts and Disputes



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*readers who missed it.*

There is a split of authority among the circuits as to whether or not a debtor must articulate a dispute in writing, under the validation of debts section of the Fair Debt Collection Practices Act (FDCPA), specifically 15 USC 1692g(a)(3). This is certainly a topic for servicers to monitor because of the strict liability penalties imposed by the FDCPA.

15 USC 1692g states:

- (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 the 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.

**Third Circuit** — In 1991, the Third Circuit (comprised of Delaware, New Jersey, Pennsylvania, and the Virgin Islands) issued a decision that a consumer debtor must voice a dispute in writing that contests the validity of the debt, *Graziano v. Harrison*, 950 F.2d 107 (3d Cir. 1991). The *Graziano* opinion states: "that reading 1692g(a)(3) not to impose a writing requirement would result in an incoherent system in light of the explicit writing requirements stated in sections 1692g(a)(4)-(5) and 1692g(b)." *Id.* The court also concluded that written statements create a record of the dispute.

**Ninth Circuit** — Several years later, in 2005, the Ninth Circuit (comprised of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Northern Mariana Islands) issued an opinion regarding 15 USC 1692g(a)(3) that the dispute need not be expressed in writing. *Camacho v. Bridgeport Financial, Inc.*, 430 F.3d 1078 (9th Cir. 2005).

The court recited four main reasons in its decision: (1) there are explicit contrasting writing requirements in the statute; (2) the statute provides for other protections in an instance of dispute that only depend on a dispute, and not whether there was a prior writing; (3) the legislative purpose of allowing debtors to challenge the initial communication is furthered by permitting oral objections; and (4) from a reading of the statute, to conclude that some rights are triggered by oral disputes while others require a written statement, would not mislead consumers.

**Second Circuit** — In May 2013, the Second Circuit (comprised of Connecticut, New York, and Vermont) decided a case, also based on 15 USC 1692g, with similar facts to the two cases referenced above. The Second Circuit decision agreed with the reasoning of the Ninth Circuit, holding that a dispute brought under 15 USC 1692g(a)(3) need not be in writing. Stating in relevant part, "the right to dispute a debt is the most fundamental of those set forth in 1692g(a) and it was reasonable to ensure that it could be exercised by consumer debtors who may have some difficulty with making a timely written challenge." *Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282 (2d Cir. 2013).

### Conclusion

Consumer disputes are becoming increasingly common and, although the cases cited here pertain to a very specific portion of the FDCPA, it is a part of the FDCPA that should never be ignored. Most importantly, because of the current split among the circuits, these decisions should be watched closely in all jurisdictions. ■