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Developments and Ideas For the Practice of Consumer Law

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Ninth and Fourth Circuit Decisions May Diminish Consumer Debt Dispute Rights

In *Clark v. Capital Credit & Collection Servs., Inc.*,¹ the Ninth Circuit announced it was adopting a lower, “reasonable” standard for the response required of debt collectors when a consumer timely disputes the debt in writing. The FDCPA requires the debt collector to respond by ceasing its collection of the debt until it provides a “verification” of the debt.² The court adopted a new standard for verification:

We decline to impose such a high threshold [as it had previously imposed]. Rather, we adopt as a baseline the more reasonable standard articulated by the Fourth Circuit in *Chaudhry v. Gallerizzo*, 174 F.3d 394 (4th Cir. 1999). 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.”³

The consumer in *Clark* had consistently disputed a series of medical bills first with the provider, then with the doctor that purchased the provider's practice, then with the collection agency that purchased the debt, and then with a collection lawyer for the collection agency. Health insurance had paid some of the medical bills, and she admitted to owing some, but not all, of the balance claimed. The consumer had detailed records which she presented at every step. In response, the doctor who purchased the account provided an eight-page⁴ itemization of the medical services and “information about the nature and balance of the ... bill” to the collection agency, which used it for verification of the debt

and provided it to the collection attorney who also used it for verification. The Ninth Circuit held their “... actions, then, satisfied the requirement that they confirm with their client the particular amount being claimed.”

This was not as high as the standard previously indicated by the Ninth Circuit when it approved a collection agency's verification responding to an *untimely* consumer request for verification without raising a specific dispute:

[T]he Credit Bureau, when it received the[verification] request, promptly contacted [the creditor's] office, verified the nature and balance of the outstanding bill, learned that monthly statements had been sent from [the creditor's] office to the [debtors] for over two years, and established that the balance was still unpaid. The Credit Bureau then promptly conveyed this information to the [debtors], along with an itemized statement of the account.⁵

In the Fourth Circuit *Chaudhry* decision, adopted by the *Clark* court, the collection attorney's validation response was a detailed statement of all the charges and payments to the account, but only a statement that the inspection fees had been verified. The \$8600 lawyer collection fees were verified with detailed billing statements that were redacted with a black marker to avoid disclosing confidential information under the attorney-client privilege. This was held sufficient verification. The verification would have been meaningfully improved if the collection attorney had obtained a copy of the lender's check to the inspection company. However, in unfortunate *dicta* the court stated that “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.”⁶

Did Congress Want Debt Validation To Consist of a Mere “Confirmation”?

The usual starting point for determining Congressional intent is the plain meaning of the words used by Congress.⁷ Congress used the word “verification,” which commonly means prove by evidence,⁸ when it finally enacted the FDCPA. Just prior to the FDCPA's enactment, several fair debt collection bills in the House and the Senate had used the word “certification” where the word “verification” now

¹ 460 F.3d 1162 (9th Cir. 2006).

² 15 U.S.C. § 1692g(b). See NCLC's Fair Debt Collection § 5.7.3 (5th ed. 2004).

³ *Id.* at 1174.

⁴ See *Clark v. Capital Credit & Collection Services, Inc.*, 2004 WL 1305326 (D. Or. Jan. 23, 2004).

⁵ *Mahon v. Credit Bureau of Placer County, Inc.*, 171 F.3d 1197, 1203 (9th Cir. 1999).

⁶ *Chaudhry v. Gallerizzo*, 174 F.3d 394, 406 (4th Cir. 1999).

⁷ See *Heintz v. Jenkins*, 514 U.S. 291 (1995).

⁸ “verify: 1. To prove the truth of by presentation of evidence or testimony; substantiate. 2. To determine or test the truth or accuracy of, as by comparison, investigation, or reference...” *The American Heritage Dictionary of the English Language* (4th ed. 2000).

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