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this casebook contains a selection of u s court of appeals decisions that analyze interpret and apply provisions of the fair debt collection practices act volume 2 of the casebook covers the sixth through the eleventh circuit court of appeals congress enacted the fdcpa in 1977 to eliminate abusive debt collection practices by debt collectors to insure that those debt collectors who refrain

from using abusive debt collection practices are not competitively disadvantaged and to promote consistent state action to protect consumers against debt collection abuses 15 u s c 1692 e the fdcpa prohibits debt collectors from collecting any amount including any interest fee charge or expense incidental to the principal obligation unless such amount is expressly authorized by the agreement creating the debt or permitted by law id 1692f 1 debt collectors are strictly liable for fdcpa violations donohue v quick collect inc 592 f 3d 1027 1030 9th cir 2010 and a debt collector who violates the fdcpa is liable for actual damages attorney s fees and costs and additional damages not to exceed 1 000 per violation 15 u s c 1692k the fdcpa is broadly remedial and should be liberally construed in favor of consumers mcadory v m n s assocs llc 952 f 3d 1089 1092 9th cir 2020 to avoid liability debt collectors may raise the limited affirmative defense that their conduct was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error 15 u s c 1692k c the burden is on the debt collector to prove this defense by a preponderance of the evidence id mcollough v johnson rodenburg lauinger llc 637 f 3d 939 948 9th cir 2011 the bona fide error defense requires a showing that the debt collector 1 violated the fdcpa unintentionally 2 the violation resulted from a bona fide error and 3 the debt collector maintained procedures reasonably adapted to avoid the violation id urbina v national business factors inc 9th cir 2020

this casebook contains a selection of u s court of appeals decisions that analyze discuss and interpret provisions of the fair debt collection practices act volume 1 of the casebook covers the district of columbia circuit and the first through the fifth circuit court of appeals attempting to collect on a time barred debt does not per se violate the fdcpa manuel 956 f 3d at 829 see also mahmoud v de moss owners ass n inc 865 f 3d 322 333 5th cir 2017 holding it was not a violation of the fdcpa to collect a partially time barred debt when only a small portion was subject to the statute of limitations holzman v malcolm s gerald assocs inc 920 f 3d 1264 1273 74 11th cir 2019 c ourts generally have recognized that the fdcpa does not impose a bright line rule prohibiting debt collectors from attempting to collect on time barred debt but a debt collector can run afoul of the fdcpa by threatening judicial action while completely failing to mention that a limitations period might affect judicial enforceability manuel 956 f 3d at 831 emphasizing that

disclosure of a potential limitations problem might give a consumer at least some inkling that the debt might be too old to be legally enforceable as we have explained when a collection letter creates confusion about a creditor's right to sue that is illegal the fdcpa singles out as unlawful the false representation of the character amount or legal status of any debt whether a debt is legally enforceable is a central fact about the character and legal status of that debt a misrepresentation about the limitations period amounts to a straightforward violation of 1692e 2 a daugherty v convergent outsourcing inc 836 f 3d 507 512 5th cir 2016 quotation omitted

this casebook contains a selection of u s court of appeals decisions that analyze interpret and apply provisions of the fair debt collection practices act the selection of decisions spans from 2014 to the date of publication the fdcpa regulates the conduct of debt collectors defined to include any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts or who regularly collects or attempts to collect directly or indirectly debts owed or due or asserted to be owed or due another id 1692a 6 among other things the fdcpa prohibits debt collectors from using any false deceptive or misleading representation or means in connection with the collection of any debt and from using unfair or unconscionable means to collect or attempt to collect any debt id 1692e 1692f the statute provides a non exhaustive list of conduct that is deceptive or unfair e g falsely implying that the debt collector is affiliated with the united states id 1692e 1 debt collectors who violate the fdcpa are liable for actual damages statutory damages of up to 1 000 and attorney's fees and costs see id 1692k a in re dubois 834 f 3d 522 4th cir 2016 the definition of debt collector which is contained in 1692a 6 is comprised of two parts the first part defines the classes of persons that are included within the term debt collector while the second part defines those classes of persons that are excluded from the definition of debt collector the first part defining those who are included provides in relevant part the term debt collector means any person 1 who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts or 2 who regularly collects or attempts to collect directly or indirectly debts owed or due or asserted to be owed or due another notwithstanding the exclusion provided by clause f of the last sentence

of this paragraph the term includes any creditor 3 who in the process of collecting his own debts uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts 15 u s c 1692a 6 emphasis added stated more simply this provision defines a debt collector as 1 a person whose principal purpose is to collect debts 2 a person who regularly collects debts owed to another or 3 a person who collects its own debts using a name other than its own as if it were a debt collector henson v santander consumer usa inc 817 f 3d 131 4th cir 2016 the second part of 1692a 6 defines the classes of persons that are excluded from the definition of debt collector so that a person who meets one of the definitions of debt collector contained in the first part of 1692a 6 will not qualify as such if it falls within one of the exclusions

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