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NINTH CIRCUIT DECIDES TIME-BARRED DEBT DISCLOSURE CASE

The U.S. Court of Appeals for the Ninth Circuit has issued an opinion finding that a collection letter did not violate the federal Fair Debt Collection Practices Act ("FDCPA") and the Rosenthal Fair Debt Collection Practices Act, when the letter offered to "resolve" a California debtor's past-due account without (i) stating that the debt was time-barred and (ii) that a payment could revive the statute of limitations and permit the debt collector to sue on the debt. *Woodward v. Collection Consultants of California*, No. 18-cv-05715 (9th Cir. Apr. 14, 2020).

When the lower court issued a decision in the case, the Ninth Circuit had not directly addressed whether an attempt to collect a time-barred debt violates the FDCPA by misleading consumers about the legal status of the debt. While the appeal in *Woodward* was pending, the Ninth Circuit held in another case that a debt collector is "entitled to collect a lawful, outstanding debt even if the statute of limitations has run, so long as the debt collector does not use means that are deceptive or misleading and otherwise complies with legal requirements." *Stimpson v. Midland Credit Mgmt., Inc.*, 944 F.3d 1190 (9th Cir. 2019). The *Stimpson* decision also held that nothing in the FDCPA requires a debt collector to make disclosures that partial payments on debts may revive the statute of limitations in certain states.

Applying the reasoning in *Stimpson*, the Ninth Circuit found that the collection letter in *Woodward* was not "misleading or deceptive in anyway" and complied with all legal requirements. The Ninth Circuit also noted that the applicable statute of limitations in California cannot be revived by a debtor making a payment on the time-barred debt. According to the court, this aspect of California law makes the debtor's argument that the collection letter is misleading without a disclosure regarding the revival of the debt by partial payment "less compelling."

The FDCPA and Regulation F may eventually address the issues in the aforementioned time-barred debt disclosure cases. In February, the Consumer Financial Protection Bureau ("CFPB") issued a supplemental proposal that would require debt collectors that know or should know that a debt is time-barred, when the debt collector makes an initial communication to a debtor, to include certain clear and conspicuous disclosures in the initial

communication and any validation of debt notice regarding the collector's ability to sue on the debt and revival of the collector's ability to sue by the debtor's actions. The proposed rule also addresses when the disclosures should be made if the debt collector knows or should know the debt is time barred after the initial communication with a debtor. The time-barred debt disclosures must be substantially similar to the model disclosures set forth in the supplemental proposed rule. In May 2019, the CFPB proposed a debt collection rule under the FDCPA that addresses, among other things, initiating or threatening to initiate a legal action against a debtor on a time-barred debt. □

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