IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

ISLA FINANCIAL SERVICES, Plaintiff, v. VIVIAN A. SABLAN, Defendant.	CIVIL ACTION NO. 96-1211 DECISION AND ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SUMMARY JUDGMENT
VIVIAN A. SABLAN, Counter-Claimant, v. ISLA FINANCIAL SERVICES, Counter-Defendant.	
VIVIAN A. SABLAN, Third Party Plaintiff, v. ANTONIO M. ATALIG and GRAND PACIFIC LIFE INSURANCE, LTD., Third Party Defendants.	

[p. 2]

I. INTRODUCTION

Vivian Sablan ("Sablan") brings this motion for partial summary judgment on the grounds that Antonio Atalig ("Atalig"), acting in his capacity as legal counsel and debt collector for Isla Financial

Services ("Isla"), improperly commenced a lawsuit against her without first complying with the Fair Debt Collection Practices Act ("FDCPA"). The court, having reviewed the briefs, exhibits, declarations, and having heard and considered the arguments of counsel, now renders its written decision.

II. FACTS

On or about July 24, 1996 Atalig sent a letter to Sablan, notifying her that she had thirty days to dispute a debt he was authorized to collect. The letter further stated that Atalig would assume the debt was valid and file a lawsuit if the debt was not disputed or payment arrangements were not made within thirty days. Jane Mack ("Mack"), acting as Sablan's attorney, sent a response to Atalig on or about August 20, 1996 disputing the debt. Without any form of further communication, Atalig commenced the lawsuit upon which this third party action is predicated. The parties have stipulated that Atalig fits the legal definition of a debt collector.

III. ISSUES

1. Whether the Superior Court as a state court of the CNMI has jurisdiction to entertain an action for damages based on an alleged violation of the FDCPA.
2. Whether commencing a lawsuit constitutes an unlawful communication because it does not state that the debt collector is attempting to collect a debt and any information obtained will be used for that purpose under FDCPA Section 1692e(11) as applied in the CNMI.
3. Whether commencing a lawsuit after a debt has been disputed without first sending verification to a debtor violates FDCPA Section 1692g(b) as applied in the CNMI.

IV. ANALYSIS

The FDCPA was enacted "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). Legislative materials highlight the need for the enaction **[p. 3]** and enforcement of the FDCPA due to long term collection abuses including but not limited to threats of violence, telephone calls at unreasonable hours, obscene language, disclosing personal information, impersonating public officials, and simulating legal process. Senate Report on the FDCPA, S.Ref. No. 382,

95th Cong., 2nd Sess. 5, reprinted in 1977 U.S.Code Cong. & Ad.News 1695.

When interpreting a statute, it is necessary to look first to the plain meaning of the language before turning to legislative history. Nansay Micronesia Corp. v. Govendo, 3 N.M.I. 12 (1992). A determination of the meaning of a statute as an expression of legislative intent rests on the clarity of the words as well as the internal cohesion of the sections. Pressley v. Capital Credit & Collection Service, 760 F.2d 922 (1985); *see* In re Estate of Rofag, 2 N.M.I. 18 (1991). Courts should avoid interpretations of a statute that defy common sense or lead to absurd results. Commonwealth Ports Auth. v. Hakubotan Saipan Enters., Inc., 2 N.M.I. 212 (1991).

The FDCPA, although a federal regulation, is applicable locally insofar as our consumer protection statute is inconsistent with any FDCPA provision. Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, 48 U.S.C. §1681, section 502(a)(2); 15 U.S.C. § 1692n, §1692a(8). The Commonwealth legislature has not provided procedures for debt collection in the CNMI. *See*, 4 CMC §5101 *et seq*. Therefore, it is necessary to apply the provisions of the FDCPA to Commonwealth debt collection activities.

Section 1692k which provides for civil liability upon any violation of the FDCPA provides:

> (d) Jurisdiction. An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

The broad wording of §1692k mandates jurisdiction for "any other court of competent jurisdiction." A state court may hear an action based entirely on federal law unless the language of the federal statute at issue expressly excludes it. Tafflin v. Levitt, 493 U.S. 455, 110 S.Ct. 792 (1990). The language of §1692k does not specifically exclude state courts from hearing claims arising under the **[p. 4]** FDCPA. Accordingly, the Superior court has jurisdiction to hear this claim.[1]

The issue of whether Atalig violated section 1692e(11) rests on whether the lawsuit summons and complaint was an acceptable follow-up notice, or, if not, effectively served to disclose that there was an

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[1]Whether the FDCPA is being applied as a federal statute or as a substitute for our nonexistent state statute, the fact that the CNMI is compelled to protect consumers at a level mandated by the federal government requires our state court to similarly apply FDCPA remedy provisions, if applicable. *See* Howlett v. Rose, 496 U.S. 356, 110 S.Ct. 2430 (1990).

attempt being made to collect the debt and that any information obtained would be used for collection purposes. Section 1692e(11) states:

> A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> > (11) Except as otherwise provided for communications to acquire location information under section 804 [15 USCS § 1692b], the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

The term "communication" is defined as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. §1692a(2). Although this definition is very broad, the ninth circuit Court of Appeals has held that a follow-up notice which merely requests the same payment as earlier requested does not violate §1692e(11). Pressley v. Capital Credit & Collection Service, 760 F.2d 922 (1985). Because Atalig sent a proper verification notice under section 1692g(a), the lawsuit summons and complaint is merely a follow-up notice which does not contain new information and is not required to reiterate the warnings of the first notice.

However, even if the term "communication" encompasses a lawsuit, Atalig has not violated §1692e because a lawsuit by its very nature notifies a consumer that the debt collector is attempting to collect a debt and that any information gained will be used in furtherance of that pursuit. The purpose of §1692e is to prevent false, deceptive, or misleading practices in debt collection. Specifically, section eleven was drafted "to prevent communications from a debt collector that appear to be official communications, rather than attempts to collect a debt." Tolentino v. Friedman, 46 F.3d 645, 650 (7th Cir. 1995). Here, Atalig commenced a lawful action by sending an official **[p. 5]** summons. On its face, a lawsuit is a clear disclosure that Atalig was attempting to collect the very same debt which was the subject of his proper verification notice. To require an attorney to add disclaimers to legal papers which speak for themselves is redundant and unnecessary.[2]

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[2]In addition, the least sophisticated debtor standard, as applied to validation notices, has required that to make a notice invalid, the language at issue must either contradict or overshadow the legally required information which is provided to protect the

Furthermore, the United States Supreme court has stated "[w}e agree...that it would be odd if the Act empowered a debt-owing consumer to stop the 'communications' inherent in an ordinary lawsuit and thereby cause an ordinary debt-collecting lawsuit to grind to a halt." Heintz v. Jenkins, 131 L.Ed.2d at 400. This comment was made in reference to section 1692(c) which deals with communications between debt collector and consumer. It is instructive to examine the word "communication" as it has been used in section 1692(c) which states:

> (A) Communication with the consumer generally. Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt...
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> (B) Communication with third parties. Except as provided in section 804 [15 USCS §1692b], without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney....
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> (C) Ceasing communication. If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except-...
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> > (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy....

Embodied in 1692c is the understanding that judicial remedies may be lawfully sought. First, in section (a), the debt collector may "communicate" with the consumer by "express permission of a court of competent jurisdiction." Further, in section (b), the FDCPA gives permission to "communicate" with a third party regarding the debt if involved in "effectuat[ing] a postjudgment judicial remedy." Lastly, in section (c), the debt collector may communicate with the debtor, even **[p. 6]** if the debtor has notified the debt collector that she refuses to pay a debt, as long as it is for the purpose of invoking a "specified remedy."

The term "specified remedy" is not defined in the FDCPA. However, the United States Supreme Court has suggested that a legal proceeding may be a specified remedy that could be legally invoked by a debt collector, with notification to a party accomplished through a summons and complaint. Heintz, 131

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consumer. Terran v. Kaplan, 109 F.3d 1428 (9th Cir. 1997); Russell v. Equifax A.R.S., 74 F.3d 30 (2nd Cir. 1996). However, even the most unsophisticated debtor understands that any information given during the course of a lawsuit will be used to collect whatever debt remains at issue.

L.Ed.2d at 400. Therefore, even if Atalig's summons and complaint may not be regarded as a follow up notice under Pressley, the lawsuit on its face served to adequately notify Sablan under §1692e that Atalig was attempting to collect the debt and that any information she gave would be used during the course of the lawsuit to collect the debt. Pressley, *supra*, 760 F.2d 922 (1985). As a result, Atalig, by serving a summons and complaint after his initial notice was properly effectuated under §1692g(a), did not violate §1692e(11) of the FDCPA.

Although Atalig properly sent a verification notice pursuant to §1692g(a) of the FDCPA, it is a violation of the FDCPA to continue collection activities without providing a written verification when a consumer disputes a debt within thirty days. Because Atalig commenced a lawsuit after the debt was disputed, Sablan argues that Atalig continued his collection activities in violation of §1692g(b). Atalig argues that the commencement of a lawsuit is not a form of debt collection.

Section 1692g(b) of the FDCPA provides:

> If the consumer notifies the debt collector in writing within the thirty-day period...that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

When a debt collector receives a request for validation, there is an option to either provide the verification or cease collection. Jang v. A.M. Miller and Associates, 122 F.3d 480 (7th Cir. 1997). A debt collector is not strictly required to provide verification. Id.

The United States Supreme Court has suggested that the FDCPA should not act to bar lawsuits, even though an attorney in the course of litigation may still be considered a debt collector bound by FDCPA provisions. Heintz v. Jenkins, 514 U.S. 291, 115 S.Ct 1489, 131 L.Ed.2d 395 (1995) Similarly, the sixth circuit has found that to prevent an attorney from lawfully commencing **[p. 7]** a court action would result in an absurd outcome. Green v. Hocking, 9 F.3d 18 (6th Cir. 1993). The FDCPA was drafted to prevent collections abuses. Once a matter is within a court's confines, the court will regulate the conduct of the parties, and, if necessary enforce its orders through Rule 11 sanctions. Green at 22. This interpretation is consistent with "...[t]he statute's apparent objective of preserving creditors' judicial

remedies." Heintz at 400.

However, case law interpreting the plain language meaning of "debt collection" to include lawsuits, as well as a general refusal to recognize supportive legislative history in the face of over broad plain language, leaves this court with no support for a finding that the proper commencement of this lawsuit does not violate §1692g(b) in the absence of a verification. Heintz v. Jenkins, 514 U.S. 291, 115 S.Ct 1489, 131 L.Ed.2d 395 (1995); Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507 (9th Cir. 1994). In Fox, the court held that any judicial proceeding that relates to a judgment constitutes a "legal action on a debt." Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507 (9th Cir. 1994).[3] The Fox decision took a marked turn away from Pressley, in that the court was not persuaded by legislative history and relied strictly on a plain meaning analysis. Id.; Pressley v. Capital Credit & Collection Service, 760 F.2d 922 (1985).

The Fox court found that a jury could reasonably find that the lawyer's filing of a writ while the debtors were current on a payment agreement could constitute an unfair or unconscionable means of collection under section 1692f. Fox v. Citicorp Credit Services, Inc., 15 F.3d 1507 (9th Cir. 1994). Clearly, a writ is a purely judicial remedy. Not only have lawyers now been held to FDCPA restrictions concerning communications within the course of litigation, but they are now being held to FDCPA restrictions concerning the pursuit of a purely judicial remedy. Id.; Heintz v. Jenkins, 514 **[p. 8]** U.S. 291, 115 S.Ct 1489 1489,131 L.Ed.2d 395 (1995).

By definition, lawsuits have been included in the activities of a "debt collector." Id. Under section 1692g(b), the FDCPA requires debt collectors to cease communications, including lawsuits, or provide verification when a consumer disputes a debt. Any distinction in application of the FDCPA to the actual commencement of a lawsuit, as opposed to the conduct pursued during a lawsuit, is artificial and cannot

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[3]Pursuant to Section 1692i which provides:

(a) Any debt collector who brings any legal action on a debt against any consumer shall–...

(2)...bring such action only in the judicial district or similar legal entity–

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action...

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors.

This is the only section of the FDCPA which specifically addresses lawsuits brought by debt collectors. 15 U.S.C. 1692 *et seq*. It purposely excludes any interpretation which might construe a lawsuit as a permitted activity under the FDCPA. 15 U.S.C. 1692(i)(b). There is no issue here regarding Atalig's compliance with 1692i.

be reconciled with the reasoning of the ninth circuit and United States Supreme Court. Atalig failed to provide verification after the debt was disputed. Therefore, by commencing a lawsuit, which is a collection activity under §1692g(b), Atalig continued to collect without sending the required verification. By failing to cease collection activity after the debt was disputed and before sending the required verification, Atalig violated 1692g(b) of the FDCPA.

Once a violation of the FDCPA is established, strict liability attaches unless the debt collector can demonstrate that the mistake was unintentional, stemming from a failure committed despite measures taken to prevent violations. Russell v. Equifax A.R.S., 74 F.3d 30 (2nd Cir. 1996); 15 U.S.C. 1692k(a), 1692k(c). Atalig has not argued that he took any measures designed to prevent such error. As a result, he is liable for his violation of 15 U.S.C. 1692g(b).

V. CONCLUSION

The court finds that Atalig has not violated FDCPA section 1692e(11). However, by commencing a lawsuit before sending Sablan a verification of the debt, he has violated section 1692g(b) of the FDCPA. The motion for partial summary judgment is granted in part and denied in part.

SO ORDERED this 27 day of November, 1998.

/s/ Edward Manibusan
EDWARD MANIBUSAN, Presiding Judge