APPENDIX

TABLE OF APPENDICES

Appendix A

Supreme Court of the State of New York
Appellate Division, First Judicial Department

Singh, J.P., González, Scarpulla, Higgitt, Rosado, JJ.

Index No. 152520/21
Case No. 2023-02167

ABRAHAM WINTER,
Plaintiff-Appellant,

-against-

LABORATORY CORPORATION OF AMERICA,
Defendant-Respondent,

LCA COLLECTIONS,
Defendant.

Abraham Winter, appellant pro se.

Epstein Becker & Green, P.C., New York (Jennifer M. Horowitz of counsel), for respondent.

Order, Supreme Court, New York County (David B. Cohen, J.), entered on or about March 20, 2023, which granted defendant Laboratory Corporation of America (LabCorp)'s motion to dismiss the complaint for failure to

state a cause of action, unanimously affirmed, without costs.

The court properly dismissed plaintiff's Fair Debt Collection Practices Act, 15 USC § 1692 et seq. (FDCPA), claim. Defendant showed that its principal purpose is not the collection of debts and that it was seeking to collect a claimed debt owed to it by plaintiff for lab work. Thus, defendant's business does not make it a debt collector as defined in the FDCPA (see 15 USC § 1692a [6]; Tepper v Amos Fin., LLC, 898 F3d 364, 366 [3d Cir 2018]; see also Pirelli v OCWEN Loan Servicing, LLC, 129 AD3d 689, 693 [2d Dept 2015] ["The FDCPA does not apply to a creditor . . . that seeks to enforce a debt owed directly to it"]).

Neither is defendant a "creditor who . . . uses any name other than his own which would indicate that a third person is collecting or attempting to collect [its own] debts" (15 USC § 1692a [6]). A creditor becomes such a debt collector "when the 'least sophisticated consumer' would believe a third party was involved in collecting a debt" (Pinson v JPMorgan Chase Bank, N.A., 942 F3d 1200, 1209 [11th Cir 2019]; see generally Maguire v Citicorp Retail Servs., Inc., 147 F3d 232, 235-236 [2d Cir 1998]). The least sophisticated consumer is "neither irrational nor a dolt," and the FCDPA "does not aid plaintiffs whose claims are based on bizarre or idiosyncratic interpretations of collection notices" (Ellis v Solomon & Solomon, P.C., 591 F3d 130, 135 [2d Cir 2010] [internal quotation marks omitted], cert denied 560 US 926 [2010]). The LCA Collections letter plaintiff received indicated that LCA Collections was a division of defendant Laboratory Corporation of America; it included the same information

as the invoices about how to pay the bill online, by mail, and by phone;, and the final notice plainly stated that the claim would be sent to an outside collection agency if the invoice
was not paid (see Rivero v Lab. Corp. of Am., US Dist Ct, ED NY, 13-CV-4793 (ENV)(LB), Feb. 24, 2015, Vitaliano, D.J., slip op. at 9-11; Mahan v Lab. Corp. of Am., 2011 WL 836674, *2, 2011 US Dist LEXIS 24324, *5-6 [SD Ala Mar. 9, 2011, No. 10CV20253 (KD/M)]; Obando v Lab. Corp. of Am., 2010 WL 8510159, 2010 US Dist LEXIS 141979 [SD Fla May 4, 2010, No. 10CV20253 (FM)]; see also Pinson, 942 F3d at 1210-1211).

The court also properly dismissed plaintiff's defamation claim. Plaintiff did not allege special damages or state a claim for defamation per se based on injury to his professional reputation (see Liberman v Gelstein, 80 NY2d 429, 436 [1992]). Plaintiff failed to allege that the supposedly defamatory statements – namely, that plaintiff owed defendant less than $50.00 –related to a "matter of significance and importance" in his unidentified profession (id.; see Savitt v Cantor, 189 AD3d 468, 468 [1st Dept 2020];
161 Ludlow Food, LLC v L.E.S. Dwellers, Inc., 176 AD3d 434, 435 [1st Dept 2019]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 19, 2024

s/Susanna M Rojas

Susanna Molina Rojas
Clerk of the Court

Appendix B

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID B. COHEN
PART 58

INDEX NO.152520/2021
MOTION DATE 01/21/2022
MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

ABRAHAM WINTER,
Plaintiff,
-v-
LABORATORY CORPORATION OF AMERICA, LCA COLLECTIONS,
Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 were read on this motion to/for DISMISSAL.

Defendants Laboratory Corporation of America (LabCorp) and LCA Collections (LCA) (collectively, LabCorp) bring this pre-answer motion, pursuant to CPLR 3211(a)(7), to dismiss the amended complaint for failure to state a cause of action. Plaintiff, appearing pro se, opposes.

Procedural History

The Original Complaint and The First Motion to Dismiss

By summons and complaint dated March 12, 2021, plaintiff asserted three causes of action: defamation, defamation per se, and one labeled "Fair Debt Collection Practices" (FDCPA) (NYSCEF Doc. No. [Doc] 1). Defendants moved pre-answer to dismiss plaintiff's complaint for failure to state a cause of action (Docs 31 – 35), and plaintiff, in response, filed an amended complaint on November 13, 2021 (Doc 36). Defendants accordingly withdrew their first dismissal motion,[1] and now move to dismiss the amended complaint.

The Amended Complaint

In his amended complaint, plaintiff asserts two causes of action, one for defamation per se and one for a violation of the FDCPA, and he states therein that he is withdrawing his regular defamation claim (id. ¶ ¶ 10 &11). Plaintiff alleges as follows: LCA is "a self-styled 'in house division' of Laboratory Corporation of America" (id. ¶ 4). "On various dates between August 2020 and January 2021, defendant [s] sent to plaintiff various invoices and collection notices related to two invoices, #56120212 and #75961425, in the amounts of $38.85 and $8.03" (id. ¶ 13). Plaintiff "never ordered or authorized these charges" (id.).

The amended complaint alleges that several letters were sent to plaintiff on "LabCorp letterhead (8/3, two on 9/7, 10/12)" and "[l]ater letters used a bright red" LCA Corp

1 By decision and order dated December 2, 2021, the court noted that the first dismissal motion was withdrawn and granted LabCorp's letter application seeking additional time to answer or otherwise move with respect to the amended complaint through and including December 21, 2021 (Doc 39).

stationery, and subsequent letters sent to him bore a "bright red" LCA "caption (starting 9/28 for the $38.85 service, and on 11/2 for the $8.03 invoice" (id. ¶ 14). On or about November 3, 2020, plaintiff disputed the invoices on LabCorp's website (id. ¶ 15).

In response to one of the disputed invoices, LabCorp emailed him "an order form with plaintiff's name, but plaintiff's signature area is empty," and plaintiff asserts that he "did not send LabCorp this order form" (id. ¶ 16). To date, he contends, LabCorp "has not produced a signed contract, order form, or any record that shows plaintiff gave affirmative consent to these services or prices, or even knew of them" (id. ¶ 17).

Plaintiff then sent LabCorp, by certified mail "delivered on 12/31," a "demand letter asking them to cease collections activity on these invoices," and LabCorp did not respond (id. ¶ 18), and instead "escalated collection activity after receipt of the demand letter, sending a 'final' notice,'" dated January 21, 2021, for the invoice seeking $8.03, "wherein it threatened to send the debt to other collections agencies and 'the credit bureaus'" (id. ¶ 19).

"On 3/8, defendant sent the $8.03 bill to Credit Collection Services, or 'CCS', a debt collector. (Per plaintiff's phone call with CSS)" (id. ¶ 20), and, "[o]n 4/5, defendant sent the $38.85 bill to CSS (per phone call)" (id. ¶ 21). "CCS sent a collection letter dated 4/7 to plaintiff for $46.88, the sum of the two debts" (id. ¶ 23).

"On 4/26, plaintiff sent CSS a letter asking them to pause collection" (id. ¶ 24). "On 4/30, both accounts at CSS were closed. It's not clear why. CCS refused to release copies of [its] records by phone or email, and has not yet responded to a fax" (id. ¶ 25).

For his first cause of action for defamation per se, plaintiff's allegations include citations to caselaw addressing elements of a defamation claim and his assertions as to why he has made out such a claim (id. ¶¶ 26-31). For example, in Paragraph 27 he alleges:

> "False statement. LabCorp said that I owed them money, but there is no debt here. I didn't sign a contract with LabCorp. LabCorp has not been able to produce a signed contract, and to my knowledge has not claimed in any document on this case that a contract exists" (id.).

In Paragraph 28, he alleges:

> "Published to a third party. Two separate statements, on 3/8 and 4/5, per (20) and (21) above" (id.).

In Paragraph 30, he alleges:

> "Per Se. Allegations of unpaid debts are obviously harmful to one's reputation. '[A] statement that impugns the basic integrity or creditworthiness of a business' constitutes slander per se, per Esposito v. Info. Tech. Corp., 19 CV 2025 (VB) (S.D.N.Y. July 8, 2019). 'Words are libelous if they affect a person in his profession, trade, or business by imputing to him any kind of fraud, dishonesty, misconduct, incapacity, unfitness or want of any necessary qualification in the exercise thereof'. Celle v. Filipino Reporter Enterprises, 209 F.3d 163 (2d Cir 2000)."

The amended complaint does not identify, or contain a factual allegation regarding, plaintiff's profession, trade or business, or the effect of the defamatory statement on plaintiff's trade, business or profession, nor does it plead special damages.

For his second cause of action, plaintiff's allegations similarly include and interweave selected citations from caselaw and statutory language with his assertions as to why he has stated such a claim (id. ¶¶ 32-35), including: "LabCorp is a debt collector per 15 U.S.C. Section 1692a (6)" (id. ¶ 32); "in this case LabCorp sent letters as LCA Collections" (id.); and LabCorp used a false name, which is intentionally misleading and could be misleading to the least sophisticated consumer. Plaintiff further alleges that: in "this case, the existence of the debt is false and defendant misrepresented that" (id. ¶ 33); the debt's falsity does not exclude a FDCPA claim; and the FDCPA forbids collection unless the amount is expressly authorized by the agreement that created the debt and here defendant "has failed to produce such an agreement" despite his demands (id. ¶ 35).

Plaintiff also asserts, under the heading of irreparable injury, that "[c]ontinued collection activity by defendant will damage plaintiff's reputation and credit score" (id. ¶ 36), and "[a] pattern of false collection around medical services chills plaintiff's access to health care, creating a risk to life" (id. ¶ 37).

Plaintiff seeks injunctive and declaratory relief, but no money damages, including: (1) a "permanent injunction requiring defendant[s] to cease collections on the false invoices, as required in 15 U.S.C. Section 1692e" (id. at 6);

(2) a court order that defendant[s] "produce a truthful affidavit stating the contractual basis of the named invoices, or the lack thereof" (id.); (3) a court order that defendant[s] "contact all parties to whom it reported the debt, and notify
such parties that the debt never existed, and provide evidence to plaintiff that this has been done" (id.); (4) that "the court permit plaintiff to engage in post-judgment discovery to ensure compliance with the granted injunctions" (id.); (5) a "declaration that the named invoices do not meet the express authorization standard in 15 U.S.C. Section 1692f(1) (id.); (6) a "declaration that if defendant refers these debts to a collector without informing them of the lack of a record of a signed contract, and the collector suffers damage, defendant will have defrauded that third party" (id. at 7); and, that the "court grant plaintiff such other relief, including costs, as is just and equitable" (id.).

ANALYSIS

CPLR 3211(a)(7)

On a motion to dismiss pursuant to CPLR 3211(a)(7), the court determines whether the pleading states a cause of action and "[t]he motion must be denied if from the pleadings' four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law" (511 W. 232nd Owners Corp. v Jennifer Realty Co., 98 NY2d 144, 151-152 [2002] [internal quotation marks and citations omitted]). "Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss" (EBC 1, Inc. v Goldman, Sachs & Co., 5 NY3d 11, 19 [2005]). The court liberally construes the complaint (Leon v Martinez, 84 NY2d 83, 87 [1994]), and "take[s] the allegations of the

complaint as true and provide[s] the benefit of every possible inference" (EBC 1, Inc., 5 NY3d at 19 [internal citation omitted]).

"At the same time, however, allegations consisting of bare legal conclusions . . . are not entitled to any such consideration" (Connaughton v Chipotle Mexican Grill, Inc., 29 NY3d 137, 141 [2017] [internal quotation marks and citation omitted]. "Dismissal of the complaint is warranted if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery" (id. at 142 [internal citations omitted]).

While plaintiff is self-represented, a "pro se litigant acquires no greater rights than those of any other litigant and cannot use such status to deprive defendant of the same rights as other defendants" (Brooks v Inn at Saratoga Assn., 188 AD2d 921 [1st Dept 1992]).

Defamation per se claim

1. Applicable law

Applying these principles, it must first be determined whether or not a defamation per se cause of action is stated, notwithstanding the failure to plead special damages, based on plaintiff's allegation that the defamatory statement(s) tended to injure him in his trade, business or profession. Defendants contend that the amended complaint fails to state a cause of action under this exception, which plaintiff denies.

Defamation arises from "the making of a false statement which tends to expose the plaintiff to public contempt, ridicule, aversion or disgrace, or induce an evil opinion of him in the minds of right-thinking persons, and to deprive him of their friendly intercourse in society"

(Dillon v City of New York, 261 AD2d 34, 37-38 [1st Dept 1999] [internal quotation marks and citations omitted]). The elements of defamation "are a false statement, published without privilege or authorization to a third party, constituting fault as judged by, at a minimum, a negligence standard, and, it must either cause special harm or constitute defamation per se" (id. at 38 [internal citation omitted]).

Defamation as a rule is not actionable unless the plaintiff has suffered, and properly pleads, special damages (see Liberman v Gelstein, 80 NY2d 429, 434 [1992]). "Special damages contemplate the loss of something having economic or pecuniary value" (id. at 434-435 [internal quotation marks and citation omitted]), and they are insufficiently pleaded where the complaint fails to sufficiently specify, identify and itemize alleged losses, lost income, or damages (see Drug Research Corp. v Curtis Publ. Co., 7 NY2d 435, 440-441 [1960]; Akpinar v Moran, 83
AD3d 458, 459 [1st Dept 2011]).

While a cause of action for defamation per se may be asserted without a claim of special damages (Liberman, 80 NY2d at 434), a plaintiff must allege, in addition to the other elements of a defamation claim, that the claim falls within one of the established exceptions to the rule requiring special damages (id.), including, as pertinent here, that the defamatory statement tends to injure him or her in his or her trade, business or profession (id. at 435 [internal citations omitted]).

The trade, business or profession exception is "limited to defamation of a kind incompatible with the proper conduct of the business, trade, profession or office

itself" (id. at 436 (internal quotation marks and citation omitted]). The defamatory "statement must be made with reference to a matter of significance and importance for that purpose, rather than a more general reflection upon the plaintiff's character or qualities" (id. [internal quotation marks and citation omitted]), and statements that are not related to a plaintiff's status in his trade, business or profession do not qualify (id.)

A motion to dismiss a complaint alleging defamation per se is properly granted where "none of the allegedly defamatory statements made by defendants" accuses the plaintiff of "ineptitude in her profession, and the complaint does not allege how, if at all, her professional reputation was damaged by the offending statements" (Savitt v Cantor, 189 AD3d 468, 468 [1st Dept 2020] [internal citation omitted]. In Ferguson v Sherman Sq. Reality Corp., 30 AD3d 288, 289 (1st Dept 2006), the First Department dismissed the defamation per se cause of action where a "fair reading of the offending statements" fails to "permit a finding that plaintiffs were accused of ineptitude in their professions or that their reputations in those professions . . . were damaged."

2. Analysis

In opposition to defendants' arguments, plaintiff does not argue that he pleaded special damages in his amended complaint, nor does he seek leave to file a second amended complaint. Rather, plaintiff contends that he sufficiently pleaded in paragraph 30 of his amended complaint that the alleged defamatory statement(s) injured him in his profession, trade or occupation, and therefore he need not plead special damages.

However, paragraph 30 of the amended complaint contains no facts related to plaintiff's profession, occupation or trade, nor allegations as to how his professional reputation in that unidentified business, trade or profession was affected or injured by the alleged defamatory statement(s). Rather, paragraph 30 consists of bare legal conclusions or citations which are insufficient, and the same is true of earlier paragraphs in the complaint.

To the extent plaintiff relies on a statement he made in a document he labels "Affidavit in Opposition" (Doc 46), such reliance is misplaced, as the document is not in affidavit form and is unsworn before a notary public. Moreover, the statement suffers from the same deficiencies as plaintiff's amended complaint.

Only in his opposing memorandum of law (NYSCEF 47) does plaintiff provide certain factual assertions. To the extent that factual assertions made only in a memorandum of law and unsupported by a verified complaint or affidavit may be considered, plaintiff contends that:

> "I formed an LLC in December 2019 via Stripe Atlas to start a business. It's a sole proprietor LLC; for now, I am in the business. Its reputation and mine are difficult to separate. I have taken long sabbaticals from paid work in 2020 and, starting now, in 2022, to achieve this goal. Experts on business strategy talk about the importance of cost of capital in the success of a business. Worse credit = more expensive capital. But credit isn't only important if you're starting a business. Credit lets us live indoors and pay for school."

(Id).

However, these allegations do not contain the required detail – while plaintiff asserts that he formed an unnamed LLC, of which he is the sole proprietor, he provides no details of his profession, occupation or trade, nor does he state the manner in which the alleged defamatory statement(s) affected or damaged his business, trade or profession.

Additionally, plaintiff has failed to plead how the alleged defamatory statement that plaintiff has an unpaid debt is incompatible with the LLC's non- identified trade, business, office or profession, and/or how the alleged defamatory statement(s) related to a matter of significance or importance to plaintiff's (unspecified) business, trade or profession, or plaintiff's status therein. Most importantly, plaintiff fails to allege or establish that the statement(s) accused him of ineptitude in his profession or that his professional reputation was damaged. At most, plaintiff alleges that the statement(s) may affect his ability to obtain credit for his personal and professional lives.

To the extent that plaintiff also asserts that he has stated a cause of action despite failing to properly plead special damages because the alleged defamatory statement(s) charges plaintiff with a serious crime, no such crime is alleged here (see Liberman, 80 NY2d at 435).

Therefore, as plaintiff failed to plead special damages or demonstrate that he satisfies an exception to such pleading, defendant's motion to dismiss the defamation per se claim for failure to state a cause of action is granted.

FDCPA claim

1. Contentions

Defendants contend that the amended complaint does not allege the necessary facts to state a cause of action, as the FDCPA does not bar LabCorp, a creditor, from collecting its own debts, nor does it bar LCA, LabCorp's in-house collection unit, from collecting LabCorp's debts. Moreover, neither LabCorp nor LCA acted as debt collectors as defined in the FDCPA, and courts have consistently dismissed FDCPA claims against LabCorp as it is not a debt collector,
including when it bills patients through LCA.

In opposition, plaintiff makes various arguments in his opposing memorandum of law, and also relies on new factual allegations in his memorandum, his "affidavit," and new marked-up documents he submits. He contends that while the FDCPA "excludes first party creditors" from the definition of a debt collector (id., second unnumbered page),

> "it contains an exception that transforms you into a debt collector if you use a name other than your own. There also is an exception to this exception, drawn not from the statute but from the FTC's comments in the Federal Register, which allows creditors to use the name of an in-house division 'if the creditor's correspondence is clearly labeled as being from the 'collection unit of the (creditor's name),' since the creditor is not using a 'name other than their own' in that instance. The case law that grew up around the 'exception to the exception' focuses on acronyms, the definition of 'clearly labeled', whether a name is in common use, and an 'unsophisticated consumer test."

(id.).

Plaintiff asserts that defendants' "sample" letter attached as exhibit C "is not the same format as the letters [he] received, and the conclusions drawn from it are likely wrong" (id. at third unnumbered page). He contends that "You may note several differences from" the three "actual collection letters" he attaches as exhibits and defendants' "sample letter" (id), as follows:

> "a) There is a watermark pattern instead of a solid background (Exhibit E zooms in on the watermark).
>
> b) The 'In-House Division of Laboratory Corporation of America' subheading has been lightened from black to grey. The letter strokes of this subheading are finer than the watermark pattern. The subheading is the only lightweight font on the page" (id).

He asserts that the differences he identifies are "relevant" as "53 Fed Reg., and the cases that cite it, cares about whether the affiliation is 'clearly labeled" and "LabCorp seems to have changed the labeling to be less clear (underlining omitted)" (id.). Plaintiff argues the "change invalidates" the decisions cited by defendants, and "raises the question of why LabCorp changed the format, and why defense submitted an inaccurate format as evidence" (id.)

Plaintiff further maintains that LabCorp has not proven that it is a creditor, and that "'LCA Collections' is not a name under which it normally transacts business, nor a commonly used acronym" (id. at fourth unnumbered

page). He asserts that from "an inspection of LabCorp's invoice," he "count[s]" that the name "LabCorp":

> "appear[s] three times, including once as a giant logo, 'labcorp.com' appear[s] three times, 'Laboratory Corporation of America Holdings' appear[s] once near the bottom, 'Laboratory Corporation of America' appear[s] zero times by itself, and the phrase "Laboratory Bill" appear[s] in large font at the top to further confuse matters" (id.).

He therefore concludes that "'LCA' is not obviously an acronym for 'Laboratory Corporation of America Holdings'. It is certainly not an acronym for 'LabCorp', which is the loudest brand" (id.). Plaintiff also asserts that LabCorp is not a name that has been used from the inception of the credit relation "because there is no credit relation" (id.).

With respect to the "unsophisticated consumer test" (id., eighth unnumbered page), he asserts that "the format changes LabCorp made to their 'In-House Division' subheader didn't just make the caption harder to read or notice; these changes made it harder to literally see, by using a relatively smaller font size and reducing the contrast with the background" (id.) He contends that: "numerous accessibility standards stress font size and contrast (id.), and "If the unsophisticated consumer also has bad vision, LabCorp's changes to the collection letter format are toxic," as the "'in-house division' caption is literally camouflaged" (id. eighth and ninth unnumbered pages).

In reply, defendants argue that plaintiff's opposition contains no facts or law to support his FDCPA cause of action, and that their caselaw demonstrates that LabCorp

was not transformed into a debt collector by referencing LCA in some of its invoices. In plaintiff's attempts to distinguish those cases, defendants contend, he "relies on distinctions without real differences" between the communications defendants sent to plaintiff as attached to LabCorp's moving affirmation [Doc 41], those attached to plaintiff's opposing papers, and those relied upon in the cases. They assert that "[i]f anything, minor changes to LabCorp's invoices over the years have made it even clearer that all of its communications are from LabCorp itself" (Doc 59, at 3), and observe that "three separate district courts [have determined] that using 'LCA Collections' would not dupe an 'unsophisticated consumer' into believing that a third-party was collecting a debt for LabCorp" (id.).

Defendants also argue that under FDCPA's definitions of "creditor," and "debt," which are inextricably intertwined, LabCorp is a creditor; a debt includes "any obligation or alleged obligation" (15 USC § 1692a [(5]), and the definition of creditor includes "to whom a debt is owed (id. § 1692a [4]).

2. Analysis

Pursuant to the definitions set forth therein, the FDCPA generally, and specifically here, does not apply to the attempts of LabCorp, a creditor, to enforce a debt owed directly to it (15 USC § 1692a(4), (5), and (6); see Pirrelli v Ocwen Loan Servicing, LLC, 129 AD3d 689, 693 [2d Dept 2015]).

Plaintiff fails to state a claim that LabCorp is a "debt collector" covered under the FDCPA, that LCA is not plainly and clearly identified as LabCorp's in- house collection unit, and that any of FDCPA's exceptions are applicable here (15 USC § 1692 et seq.; Rivero v Laboratory Corporation of

America, et al., 13 CV 4793 [Dist Ct, ED NY, Feb. 14, 2015]); Mahan v Laboratory Corp. of Am., 2011 WL 836674, at *2 [SD Ala, 2011]); Obando v Laboratory Corp. of Am., No. 10-20253, 2010 WL 8510159 [SD FLA, 2010]).

To the extent that plaintiff states a claim, in light of defendants' showing that the FDCPA does not apply to them, plaintiff fails to controvert it. As determined in Rivero:

> The past due notices put in issue by Rivero, which he attached to his complaint, are clearly marked "LCA COLLECTIONS." "LCA," it cannot reasonably be disputed, is an acronym for Laboratory Corporation of America. (Compl., Exs. A, B). Directly underneath this legend is printed "A Division of Laboratory Corporation of America." The imprint is conspicuous, though in slightly smaller font than the legend bearing the acronym. (Id.). The notices unequivocally reference, more significantly, LabCorp's billing website, www.labcorp.com/billing, and, most tellingly, direct debtors to make payment to "Laboratory Corporation of America." (Id.). The notices also clearly state that, if payment is not made, the sender of the notices will then forward the debt to an outside collection agency. These plain words on the face of the notices illuminate, even for the least sophisticated debtor, that the notices were sent by a creditor, and not a third-party collection agency.

The same is true here, notwithstanding the differences in the invoices as alleged by plaintiff – right underneath the LCA Collections' letterhead, it states "An

In-House Division of Laboratory Corporation of America" (NYSCEF 54); the letter directs the reader to submit payment via "labcorp.com/billing" or to make a check or money order payable to "Laboratory Corporation of America," and further states that "At this time your account has not been placed with a Third Party Collection Company" (NYSCEF 48). Thus, the invoices both clearly communicate that the creditor is LabCorp and that they were not sent by a third-party collection agency.

Plaintiff submits no authority to support his arguments related to the differences in invoices, and thus fails to sufficiently state that defendants violated the FDCPA.

Conclusion

Accordingly, it is

ORDERED that defendants' motion to dismiss the amended complaint is granted, and the amended complaint is dismissed in its entirety, and the action is dismissed; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly.

DATE 3/13/2023

s/David Cohen
DAVID B. COHEN, J.S.C.

[x] CASE DISPOSED
[x] GRANTED

Appendix C

State of New York
Court of Appeals

Decided and Entered on the
nineteenth day of December, 2024

Present, Hon. Rowan D. Wilson, Chief Judge, presiding.

Mo. No. 2024-613

Abraham Winter,
Appellant,
v.
Laboratory Corporation of America,
Respondent,
et al.,
Defendant.

Appellant having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, that the motion is denied with one hundred dollars costs and necessary reproduction disbursements.

s/H Davis
Heather Davis
Clerk of the Court

Appendix D

RELEVANT STATUTORY PROVISIONS

15 U.S. Code § 1692a(4)

The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

15 U.S. Code § 1692a(5)

The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

15 U.S. Code § 1692a(6)

The term "debt collector" means 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. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor 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. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(Subheadings (C) through (F) are omitted from this Appendix).