

No. _____

In the Supreme Court of the United States

TARIQ ELSHABBA, ET AL.

Petitioners,

v.

JEFFERSON CAPITAL SYSTEMS, LLC, ET AL.

Respondents.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

PETITION FOR WRIT OF CERTIORARI

Yongmoon Kim
Counsel of Record
KIM LAW FIRM, LLC
411 Hackensack Ave
Ste 701
Hackensack, NJ 07601
(201) 273-7117
ykim@kimlf.com

Attorney for Petitioners

AUGUST MMXXVI

QUESTIONS PRESENTED

1. Whether the adverse judgment of a state court denying a federal statutory claim on the merits supplies Article III injury sufficient for review under 28 U. S. C. §1257(a), or whether—as *ASARCO*’s dictum would have it, and contrary to the historical understanding and practice underlying this Court’s appellate review of state-court judgments—this Court’s jurisdiction over state-court constructions of federal law runs in one direction only: reviewable when a state court vindicates a federal right, but not when it denies one.

2. Whether a debt collector violates 15 U.S.C. §1692c(b) by transmitting a consumer’s personal financial information to a third-party vendor for use in preparing, analyzing and mailing a collection letter, including whether that transmission constitutes a communication “in connection with the collection of any debt.”

PARTIES TO THE PROCEEDINGS

Petitioners, and plaintiffs-appellants below are Tariq Elshabba, Randy Hopkins, Amber Jones, LaTonya Miller, and Scott Diana.

Respondents, and defendants-appellees below are Jefferson Capital Systems, LLC, Convergent Outsourcing, Inc., American Coradius International, LLC, Americollect, Inc., and First National Collection Bureau, Inc..

Other parties are defendants below LVNV Funding, LLC, and John Does 1–10 of the respective proceedings below are not parties to the instant petition.

RELATED PROCEEDINGS

Superior Court of New Jersey, Law Division (Passaic County):

Elshabba v. Jefferson Capital Systems, LLC, No. L–1676–21 (Apr. 26, 2023) (order dismissing complaint)

Hopkins v. Convergent Outsourcing, Inc., No. L–0342–23 (May 31, 2023) (order dismissing complaint)

Superior Court of New Jersey, Law Division (Morris County):

Jones v. American Coradius International LLC, No. L–895–22 (Jun. 15 and Jul. 13, 2023) (orders entered)

Superior Court of New Jersey, Law Division (Essex County):

Miller v. Americollect, Inc., No. L–6164–21 (Jan. 18, 2024) (order dismissing second amended complaint)

Superior Court of New Jersey, Law Division (Hudson County):

Diana v. First National Collection Bureau, Inc., No. L–3014–23 (Aug. 2, 2024) (order dismissing complaint)

Superior Court of New Jersey, Appellate Division:

Elshabba v. Jefferson Capital Systems, LLC, No. A–3046–22 (May 2, 2025) (judgment entered)

Hopkins v. Convergent Outsourcing, Inc., No. A–3463–22 (May 2, 2025) (judgment entered)

Jones v. American Coradius International LLC, No. A–3946–22 (May 2, 2025) (judgment entered)

Miller v. Americollect, Inc., No. A–1826–23 (May 2, 2025) (judgment entered)

Diana v. First National Collection Bureau, Inc., No. A–0158–24 (Oct. 6, 2025) (judgment entered)

Supreme Court of New Jersey:

Elshabba v. Jefferson Capital Systems, LLC, No. 090796 (Apr. 10, 2026) (certification denied)

Hopkins v. Convergent Outsourcing, Inc., No. 090795 (Apr. 10, 2026) (certification denied)

Jones v. American Coradius International LLC,
No. 090797 (Apr. 10, 2026) (certification denied)

Miller v. Americollect, Inc., No. 090798 (Apr. 10,
2026) (certification denied)

Diana v. First National Collection Bureau, Inc.,
No. 091340 (Jun. 24, 2026) (certification denied)

Supreme Court of the United States:

Elshabba v. Jefferson Capital Systems, LLC, No.
26A1 (Jul. 8, 2026) (time to petition for writ of
certiorari extended until August 8, 2026)

Hopkins v. Convergent Outsourcing, Inc., No.
26A2 (Jul. 7, 2026) (time to petition for writ of
certiorari extended until August 8, 2026)

Jones v. American Coradius International LLC,
No. 26A3 (Jul. 6, 2026) (time to petition for writ
of certiorari extended until August 8, 2026)

Miller v. Americollect, Inc., No. 26A14 (Jul. 6,
2026) (time to petition for writ of certiorari ex-
tended until August 8, 2026)

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceedings	ii
Related Proceedings	ii
Table of Authorities.....	vii
Introduction.....	1
Opinions Below.....	3
Jurisdiction.....	3
Statutory Provisions Involved	4
Statement of the Case.....	5
I. Statutory Background	5
II. The Letter-Vendor Industry.....	5
III. Proceedings Below	7
Reasons for Granting the Petition.....	9
I. This Court has jurisdiction because the adverse state judgments supply Article III injury, and petitioners independently suffered concrete privacy injuries.	9
A. The Adverse State-Court Judgments Independently Supply Article III Injury Under <i>ASARCO</i> 's Own Logic.....	10
1. <i>ASARCO</i> 's plaintiff-defendant asymmetry is dictum and cannot be reconciled with its own reasoning.	11
2. History and constitutional structure confirm that review	

	extends to state-court denials of federal rights.	14
3.	<i>TransUnion</i> has made the consequences of the <i>ASARCO</i> dictum concrete and recurring.....	16
B.	Petitioners have Article III standing under a faithful application of <i>TransUnion</i>	19
II.	The Question is Important, Recurring, and—after <i>TransUnion</i> —Reviewable Nowhere Else.	21
A.	The question is exceptionally important because modern letter vendors process and exploit sensitive financial information at scale.....	21
B.	Only this Court can restore a uniform construction of § 1692c(b), because the federal courts that once supplied one no longer speak.	22
C.	The Question Will Recur Indefinitely, and Ordinary Percolation Cannot Resolve It.	26
III.	The Decisions Below Misconstrued Section 1692c(b).	27
A.	The statutory text prohibits the communications alleged.	27
B.	The “Primary Purpose” and “Internal Step” Limitations Adopted Below Are Atextual and Substitute Judicial Policy for Congress’s Enacted Judgment.	29

IV. This Combined Petition Is an Excellent Vehicle.....	30
Conclusion	31
Appendix	
Appendix A	
Opinion [order granting defendant’s motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, <i>Tariq Elshabba v. Jefferson Capital Systems, LLC</i> , No. A–3046–22 (May 2, 2025)	App-1
Appendix B	
Opinion [order granting defendant’s motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, <i>Randy Hopkins v. Convergent Outsourcing, Inc.</i> , No. A–3463–22 (May 2, 2025)	App-7
Appendix C	
Opinion [order granting defendant’s motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, <i>Amber Jones v. American Coradius International, LLC</i> , No. A–3946–22 (May 2, 2025)	App-15

Appendix D

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Latonya Miller v. Americollect, Inc.*,
 No. A-1826-23 (May 2, 2025) App-20

Appendix E

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Scott Diana v. First National Collection Bureau, Inc.*,
 No. A-0158-24 (Oct. 6, 2025) App-28

Appendix F

Order [defendant's motion to dismiss granted], Superior Court of New Jersey Law Division: Passaic County, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
 No. PAS-L-1676-21 (Apr. 26, 2023) App-34

Appendix G

Transcript of Motion to Dismiss (Court Decision), Superior Court of New Jersey Law Division – Civil Part: Passaic County, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
 No. PAS-L-1676-21 (Apr. 26, 2023) App-35

Appendix H

Order and Opinion [defendant's motion to dismiss granted], Superior Court of New Jersey Law Division: Passaic County, *Randy Hopkins v. Convergent Outsourcing, Inc.; and John Does 1 to 10*,

No. PAS-L-000342-23 (May 31, 2023) App-61

Appendix I

Order [defendant's motion to dismiss granted], Superior Court of New Jersey, Morris County, *Amber Jones v. American Coradius International, LLC; and John Does 1 to 10*,

No. MRS-L-000895-22 (Jul. 13, 2023) App-77

Transcript of Motion Hearing, Superior Court of New Jersey, Law Division – Civil Part: Morris County, *Amber Jones v. American Coradius International*,

No. MRS-L-895-22 (Jun. 15, 2023) App-78

Appendix J

Order and Opinion [defendant's motion to dismiss granted], Superior Court of New Jersey Law Division, Essex County, *Latonya Miller v. Americollect, Inc.; and John Does 1 to 10*,

No. ESX L-006164-21 (Jan. 18, 2024) App-81

Appendix K

Order [defendant’s motion to dismiss granted],
Superior Court of New Jersey Law Division:
Hudson County, *Scott Diana v. First National
Collection Bureau, Inc.; LVNV Funding, LLC;
and John Does 1 to 10*,
No. HUD–L–003014–23 (Aug. 2, 2024) App-119

Appendix L

Transcript of Motion Hearing, Superior Court
of New Jersey Law Division – Civil Part: Hud-
son County, *Scott Diana v. First National Col-
lection Bureau, Inc.; LVNV Funding, LLC; and
John Does 1 to 10*,
No. HUD–L–003014–23 (Aug. 2, 2024) App-121

Appendix M

Order [petition for certification denied], Su-
preme Court of New Jersey, *Tariq Elshabba v.
Jefferson Capital Systems, LLC*,
No. 090796 (Apr. 10, 2026) App-130

Appendix N

Order [petition for certification denied], Su-
preme Court of New Jersey, *Randy Hopkins v.
Convergent Outsourcing, Inc.*,
No. 090795 (Apr. 10, 2026) App-131

Appendix O

Order [petition for certification denied], Su-
preme Court of New Jersey, *Amber Jones v.
American Coradius International, LLC*,
No. 090797 (Apr. 10, 2026) App-132

Appendix P

Order [petition for certification denied], Supreme Court of New Jersey, *Latonya Miller v. Americollect, Inc.*
No. 090798 (Apr. 10, 2026) App-133

Appendix Q

Order [petition for certification denied], Supreme Court of New Jersey, *Scott Diana v. First National Collection Bureau; and LVNV Funding, LLC*,
No. 091340 (Jun. 30, 2026) App-134

Appendix R

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
No. 090796 (Aug. 29, 2025) App-135

Appendix S

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Randy Hopkins v. Convergent Outsourcing, Inc.; and John Does 1 to 10*,
No. 090795 (Aug. 29, 2025) App-139

Appendix T

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Amber Jones v. American Coradius International, LLC; and John Does 1 to 10*,
No. 090797 (Sep. 12, 2025) App-143

Appendix U

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Latonya Miller v. Americollect, Inc.; and John Does 1 to 10*, No. 090798 (Aug. 29, 2025) App-147

Appendix V

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Scott Diana v. First National Collection Bureau, Inc.; and John Does 1 to 10*, No. 091340 (Apr. 7, 2025) App-151

Appendix W

Office of the Maine Attorney General Data Breach Notification App-155

TABLE OF AUTHORITIES

Cases

<i>Allen v. Wright</i> , 468 U. S. 737 (1984).....	16
<i>ASARCO Inc. v. Kadish</i> , 490 U. S. 605 (1989).....	1–2, 9–16, 23, 30
<i>Barclift v. Keystone Credit Servs., LLC</i> , 93 F. 4th 136 (CA3 2024).....	17, 19–20, 23, 26
<i>Buckley v. Valeo</i> , 424 U. S. 1 (1976).....	22
<i>Cohens v. Virginia</i> , 6 Wheat. 264 (1821).....	2, 15
<i>Cordoba v. DIRECTV, LLC</i> , 942 F. 3d 1259 (CA11 2019)	17
<i>Corliss v. E. W. Walker Co.</i> , 64 F. 280 (CC Mass. 1894).....	19–20
<i>Devine v. Cavalry SPV I LLC</i> , 2026 LX 178774 (N. J. Super., Law Div. Mar. 13, 2026).....	24
<i>Doremus v. Board of Education</i> , 342 U. S. 429 (1952).....	11–13
<i>Garber v. Synter Res. Grp., LLC</i> , No. 2022–CP–10–04809, 2024 S. C. C. P. LEXIS 315 (C.P. Charleston Cnty. Apr. 9, 2024)	24
<i>George v. Credit Corp Solutions Inc.</i> , 2023 WL 7000964 (EDNY Aug. 24, 2023)	18

<i>Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.</i> , 545 U. S. 308 (2005).....	25
<i>Gubala v. Time Warner Cable, Inc.</i> , 846 F. 3d 909 (CA7 2017)	17
<i>Gulf Offshore Co. v. Mobil Oil Corp.</i> , 453 U. S. 473 (1981).....	16
<i>Horne v. Patton</i> , 287 So. 2d 824 (Ala. 1973)	20
<i>Hopkins v. Convergent Outsourcing, Inc.</i> , No. PAS–L–000342–23, 2023 WL 4995726 (N. J. Super., Law Div. May 31, 2023).....	24–25
<i>Hunstein v. Preferred Collection & Mgmt. Servs., Inc.</i> , 994 F. 3d 1341 (CA11 2021)	22, 27, 29
<i>Hunstein v. Preferred Collection & Mgmt. Servs., Inc.</i> , 17 F. 4th 1016 (CA11 2021).....	22–23, 28
<i>Hunstein v. Preferred Collection & Mgmt. Servs., Inc.</i> , 48 F. 4th 1236 (CA11 2022) (en banc).....	23, 26
<i>In re BPS Direct, LLC; Cabela's, LLC Wiretapping Litig.</i> , 175 F. 4th 423 (CA3 2026).....	20
<i>In re Horizon Healthcare Servs. Inc. Data Breach Litig.</i> , 846 F. 3d 625 (CA3 2017)	19
<i>In re Nickelodeon Consumer Priv. Litig.</i> , 827 F. 3d 262 (CA3 2016)	19

<i>Jackin v. Enhanced Recovery Co.</i> , 606 F. Supp. 3d 1031 (ED Wash. 2022).....	23
<i>Kamal v. J. Crew Grp., Inc.</i> , 918 F. 3d 102 (CA3 2019)	19
<i>Kansas v. Marsh</i> , 548 U. S. 163 (2006).....	25–26
<i>Khimmat v. Weltman, Weinberg & Reis Co., LPA</i> , 585 F. Supp. 3d 707 (ED Pa. 2022).....	23, 27, 29
<i>Logan v. Zimmerman Brush Co.</i> , 455 U. S. 422 (1982).....	18
<i>Lujan v. Defenders of Wildlife</i> , 504 U. S. 555 (1992).....	17
<i>Martin v. Hunter's Lessee</i> , 1 Wheat. 304 (1816).....	2, 15, 25
<i>Meginess v. Credit Control, LLC</i> , No. 2023–05425, 2025 Pa. Dist. & Cnty. Dec. LEXIS 214 (C.P. Luzerne Cnty. Aug. 18, 2025) ...	24
<i>Mullane v. Central Hanover Bank & Trust Co.</i> , 339 U. S. 306 (1950).....	18
<i>Nabozny v. Optio Sols. LLC</i> , 84 F. 4th 731 (CA7 2023).....	23
<i>Pileggi v. Wash. Newspaper Publ'g Co.</i> , 146 F. 4th 1219 (CADC 2025).....	20
<i>Prince Albert v. Strange</i> , (1849) 41 Eng. Rep. 1171.....	19
<i>Quinn v. Millsap</i> , 491 U. S. 95 (1989).....	14

<i>Rutgers v. Fogel</i> , 403 N. J. Super. 389 (App. Div. 2008).....	25
<i>Salazar v. Nat'l Basketball Ass'n</i> , 118 F. 4th 533 (CA2 2024).....	19, 21
<i>Scro v. First Nat'l Collection Bureau, Inc.</i> , No. 2023-583 C.P., 2025 Pa. Dist. & Cnty. Dec. LEXIS 215 (C.P. Susquehanna Cnty. Nov. 6, 2025).....	24
<i>Shields v. Prof'l Bureau of Collections of Md., Inc.</i> , 55 F. 4th 823 (CA10 2022).....	23
<i>Spokeo, Inc. v. Robins</i> , 578 U. S. 330 (2016).....	17
<i>Strubel v. Comenity Bank</i> , 842 F. 3d 181 (CA2 2016)	17
<i>TransUnion LLC v. Ramirez</i> , 594 U. S. 413 (2021).....	1–2, 10, 16–19, 21–23
<i>Vassiliades v. Garfinckel's, Brooks Bros.</i> , 492 A. 2d 580 (D. C. 1985).....	20
<i>Zoltan v. Credit Collection Servs.</i> , No. 036901/2021, 2023 NYLJ LEXIS 1213 (Sup. Ct. Rockland Cnty. May 4, 2023)	18, 25
Constitutional Provisions, Statutes, and Rules	
U. S. Const. Art. III	1–2, 9–13, 16–19, 21, 23, 25
15 U. S. C. § 1640	17
15 U. S. C. § 1681n	16–17
15 U. S. C. § 1692	5, 25, 28
15 U. S. C. § 1692a	4, 27–28
15 U. S. C. § 1692b	4, 28

15 U. S. C. § 1692c.....	1–5, 7–8, 19, 21–22, 24, 27–30
15 U. S. C. § 1692k	1, 16, 30
28 U. S. C. § 1257	4, 15
47 U. S. C. § 227	17
47 U. S. C. § 551	17
Judiciary Act of 1789, ch. 20, § 25, 1 Stat. 73.....	2, 14
Act of June 27, 1988, Pub. L. 100–252, § 3, 102 Stat. 662	14
S. Ct. R. 30.1.....	4
Other Authorities	
86 Fed. Reg. 5766 (Jan. 19, 2021).....	5, 21
Bennett, <i>The Paradox of Exclusive State-Court Juris-</i> <i>diction over Federal Claims</i> , 105 MINN. L. REV. 1211 (2021).....	17–18
CompuMail, <i>Meet CompuIntelligence®: Turning</i> <i>Communication Data into Actionable Intelligence</i> (July 4, 2026)	6
Flaherty & Ogren, <i>The New Standing Doctrine, Judi-</i> <i>cial Federalism, and the Problem of Forumless</i> <i>Claims</i> , 134 YALE L. J. 1008 (2025)	17
Fletcher, <i>The “Case or Controversy” Requirement in</i> <i>State Court Adjudication of Federal Questions</i> , 78 CAL. L. REV. 263 (1990).....	9, 15
Greabe, <i>ASARCO Delenda Est</i> , 128 W. VA. L. REV. 717 (2026)	9
Hall, <i>Asymmetrical Jurisdiction</i> , 58 UCLA L. REV. 1257 (2011).....	9, 15

Hoffman & Malik, <i>From Disruption to Regulation: Towards Accountable Big Tech and AI in the Digital Age</i> (HARV. KENNEDY SCH. June 9, 2025).....	22
Massey, <i>Standing in State Courts, State Law, and Federal Review</i> , 53 DUQ. L. REV. 401 (2015)	9
Office of the Me. Att’y Gen., <i>Data Breach Notice: RevSpring, Inc.</i> (Dec. 20, 2023)	6
Restatement (Second) of Torts §652B, Comment b (1977).....	20
RevSpring, <i>Digital-First Collections with Print Where It Counts</i> (Sept. 10, 2025)	6
RevSpring, <i>Performance Analytics</i>	6
S. Rep. No. 95–382 (1977)	28
The Federalist No. 80 (Alexander Hamilton).....	15
Warren & Brandeis, <i>The Right to Privacy</i> , 4 HARV. L. REV. 193 (1890)	20

INTRODUCTION

This case presents a problem that *TransUnion LLC v. Ramirez*, 594 U. S. 413 (2021), created but did not answer: who has the final word on the meaning of a federal statute when Congress created a federal right, Article III prevents the federal courts from adjudicating it, and state courts disagree about what the right means?

Section 1692c(b) of the Fair Debt Collection Practices Act (FDCPA) provides that, absent specified exceptions, “a debt collector may not communicate, in connection with the collection of any debt, with any person other than” those Congress identified. 15 U. S. C. §1692c(b). Commercial letter vendors are not among them. Before *TransUnion*, every federal court to reach the merits in published opinions held that transmitting consumer debt information to such vendors states a claim under the statute. After *TransUnion*, however, four courts of appeals held that consumers alleging those disclosures lack Article III standing. The federal courts therefore stopped deciding what §1692c(b) means.

The claims themselves did not disappear. Congress authorized consumers to sue for violations, 15 U. S. C. §1692k, and “the constraints of Article III do not apply to state courts.” *ASARCO Inc. v. Kadish*, 490 U. S. 605, 617 (1989). *TransUnion* “ensured that state courts will exercise exclusive jurisdiction over these sorts of class actions.” See *TransUnion*, 594 U. S., at 459 n. 9 (THOMAS, J., dissenting). These state courts have applied their own interpretive methodologies and come to different conclusions. Pennsylvania courts enforce §1692c(b) against letter-vendor

disclosures. Whereas, right next door, New Jersey held the same conduct lawful by adding a “primary purpose” limitation absent from the statute.

Ordinarily, this Court’s appellate jurisdiction supplies the cure. From the Judiciary Act of 1789 through *Martin v. Hunter’s Lessee* and *Cohens v. Virginia*, review of state judgments has ensured the uniform and authoritative construction of federal law. But *ASARCO* is commonly understood to introduce a peculiar asymmetry here. When a defendant who lacked Article III standing at the outset loses in state court, the adverse judgment itself creates the concrete injury necessary for this Court’s review. Yet dictum in *ASARCO* has been read to suggest that a plaintiff who properly invokes state jurisdiction, loses a federal claim on the merits, and suffers the same adverse judgment may not obtain review if the plaintiff lacked Article III injury before suit.

Applied after *TransUnion*, that asymmetry produces an extraordinary result. State courts may become the only courts permitted to adjudicate certain federal rights; yet when a state court denies such a right, its construction of federal law may be final precisely because the federal claimant was required to proceed there in the first place. A state judgment sustaining the federal claim remains reviewable by the defendant, while a judgment extinguishing the federal claim may escape federal review altogether. That is the reverse of the system Congress established in §25 of the Judiciary Act of 1789, which specifically authorized this Court to review state judgments deciding *against* asserted federal rights.

The merits independently warrant review. The federal courts that reached §1692c(b) before Article

III silenced them uniformly enforced its text. The decisions below instead created a letter-vendor exception Congress never enacted. And the question has taken on new significance because modern technology has transformed letter vendors from simple mailing intermediaries into sophisticated data-processing enterprises capable of storing, aggregating, analyzing, and exploiting consumer financial information in ways never contemplated.

This Court is now the only federal tribunal capable of resolving both problems: what §1692c(b) means, and whether a federal claimant who was permitted to litigate only in state court may obtain this Court’s review when that court denies the federal right. The petition should be granted.

OPINIONS BELOW

The Appellate Division’s opinions are reproduced in the Appendix at App. 1–33. The decisions of the trial courts in Passaic, Morris, Essex, and Hudson Counties are reproduced in the Appendix at App. 34–129. The Supreme Court of New Jersey’s orders denying of discretionary review are reported respectively at 263 N. J. 320, 334, 328, and 287, and are reproduced in the Appendix at App. 130–134.

JURISDICTION

The Appellate Division’s judgments in *Elshabba v. Jefferson Capital Systems, LLC*, *Hopkins v. Convergent Outsourcing, Inc.*, *Jones v. American Coradius International LLC*, and *Miller v. Americollect, Inc.* were entered on May 2, 2025. The Appellate Division’s judgment in *Diana v. First National Collection Bureau, Inc.* was entered on October 6, 2025. The

Supreme Court of New Jersey denied discretionary review in *Elshabba*, *Hopkins*, *Jones*, and *Miller* on April 6, 2026, and in *Diana* on June 24, 2026. Justice Alito granted extension applications in *Elshabba* on July 8, 2026, in *Hopkins* on July 7, in *Jones*, and in *Miller*, on July 6, 2026, respectively, extending the time to file in each case until Saturday, August 8, 2026. S. Ct. R. 30.1 further extends the time to petition for writ of certiorari to August 10, 2026. This Court has jurisdiction under 28 U. S. C. §1257(a). This petition seeks review of multiple judgments involving the same questions. S. Ct. R. 12.4.

STATUTORY PROVISIONS INVOLVED

Section 805(b) of the Fair Debt Collection Practices Act provides:

“Except as provided in section 1692b of this title, 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, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.” 15 U. S. C. §1692c(b).

Section 803(2) of the Act, 15 U. S. C. §1692a(2), provides:

“The term ‘communication’ means the conveying of information regarding a debt directly or indirectly to any person through any medium.” 15 U. S. C. §1692a(2).

STATEMENT OF THE CASE

I. Statutory Background

Congress enacted the FDCPA in 1977 upon findings of “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices,” which “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. §1692(a). Congress’s stated purposes were “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.” *Id.* §1692(e).

Section 1692c(b) supplies a concrete privacy rule: It provides that “a debt collector may not communicate, in connection with the collection of any debt, with any person other than” six enumerated categories: the consumer, the consumer’s attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the creditor’s attorney, and the debt collector’s own attorney.

II. The Letter-Vendor Industry

Modern debt collectors rarely print their own letters. By the Consumer Financial Protection Bureau’s (CFPB, or the Bureau) own survey, “over 85 percent of debt collectors surveyed by the Bureau reported using letter vendors.” 86 Fed. Reg. 5766, 5845, n. 446 (Jan. 19, 2021). To use a vendor, the collector must transmit to it the consumer’s identifying and financial data—name, address, account numbers, creditor, and

balance—which the vendor’s systems receive, process, and store to populate, print, mail, and track dunning letters.

Modern letter vendors have evolved beyond mere ministerial processors into data-analytics enterprises. These vendors advertise services including data cleansing, consumer segmentation, “propensity-to-pay” scoring, communication optimization, behavioral analysis, and omnichannel engagement analytics.¹

Transfer of consumer data to a vendor also creates freestanding security risks: RevSpring, the letter vendor engaged in *Hopkins* below, itself reported a security incident to the Maine Attorney General in which consumer billing statements were exposed to other, unrelated recipients.²

¹ See, e.g., RevSpring, Performance Analytics, <https://revspringinc.com/consumer-markets/analytics/> (last visited Aug. 8, 2026) (advertising “consumer behavior analysis,” “channel engagement insights,” and predictive analytics using “consumer-specific modeling and payment propensity insights”); RevSpring, Digital-First Collections with Print Where It Counts (Sep. 10, 2025), <https://revspringinc.com/resources/blog/digital-first-collections/> (advertising, specifically for collection agencies, “behavior-based messaging, engagement scoring, and channel preferences” to tailor outreach across portfolio segments); CompuMail, Meet CompuIntelligence®: Turning Communication Data into Actionable Intelligence (Jul. 4, 2026), <https://www.compumailinc.com/blog/meet-compuintelligence-turning-communication-data-into-actionable-intelligence> (describing a cloud-based platform that transforms communication and operational data into business insights and supports multi-channel-engagement strategies).

² See Office of the Me. Att’y Gen., Data Breach Notice: RevSpring, Inc. (Dec. 20, 2023), App. 155–56.

III. Proceedings Below

Petitioners Tariq Elshabba, Randy Hopkins, Amber Jones, LaTonya Miller, and Scott Diana are New Jersey consumers. Each debt was placed with or acquired by one of the respondent debt collectors, and each respondent “engaged a third-party letter vendor to draft, print, address and mail a collection letter” to the consumer. App. 2; *accord* App. 8, 16, 21, 29. To do so, each respondent transmitted the consumer’s private financial information—account number, amount claimed due, full name, and address—to the vendor without the consumer’s consent, and the vendor used that information to send dunning letters. App. 2, 8, 16, 21, 29. Petitioner Miller’s debt was medical debt; the data transmitted to the vendor identified her healthcare providers, the location and date of each health-related service, and the charge for each. App. 85–86.

Each petitioner filed a putative class action in the New Jersey Superior Court, Law Division, alleging that the respondent’s communications to its letter vendor violated §1692c(b). In each case, the trial court dismissed the complaint for failure to state a claim. No court doubted that the conduct alleged falls within the statute’s words; the courts instead excused it on purposive grounds. One court reasoned that the transmission “was, at most, a benign administrative task,” App. 50; another that the allegations “do not reflect the concerns espoused by Congress and would require an overly rigid reading of the stat[ut]e,” App. 70–71; another that although “[t]echnically, yes, there’s a violation because they sent it to the printer,” recognizing it “creates an uncritical literalism,”

App. 80; and another that the disclosure was not “intended to, or had or could have had the effect of harassing, embarrassing or humiliating the debtor,” App. 109–10.

The Appellate Division affirmed in all five cases in unpublished opinions. App. 1–33. In the first four appeals, decided together on May 2, 2025, the panel expressly held that each plaintiff “established standing to bring this suit” under New Jersey’s “liberal approach to standing,” App. 4, and then rejected the federal claim on the merits, concluding that the use of a letter vendor “was not abusive, deceptive, nor unfair” and that petitioners’ reading of § 1692c(b) was “uncritically literal,” App. 6. The panel acknowledged the federal decisions holding the opposite but “decline[d] to address the out-of-jurisdiction cases cited by plaintiff” on the ground that “decisions of the federal courts of appeals are not binding on this court.” App. 6; *accord* App. 12, 19, 25. In Diana’s appeal, decided October 6, 2025, a different panel likewise declined to address the federal authorities, App. 33, and announced a categorical limitation found nowhere in the statute: “Only communications whose primary purpose is to induce payment violate the FDCPA’s third-party communication restrictions,” so that transmitting a consumer’s data to a letter vendor is merely “an internal step to facilitate mailing the collection letter.” App. 32.

Petitioners sought certification from the Supreme Court of New Jersey, expressly preserving their federal claims. App. 135–154. Certification was denied in the first four cases on April 6, 2026, and in Diana’s case on June 24, 2026, taxing costs against each petitioner. App. 130–34.

REASONS FOR GRANTING THE PETITION

I. This Court has jurisdiction because the adverse state judgments supply Article III injury, and Petitioners independently suffered concrete privacy injuries.

This Court has jurisdiction to review these judgments. The contrary asymmetry sometimes attributed to *ASARCO*—under which an adverse state-court judgment supplies Article III injury for some litigants, but not for plaintiffs whose federal claims are rejected on the merits—is inconsistent with the logic of *ASARCO* itself and with the historical understanding of this Court’s appellate role.³ The judgments below independently supply the concrete injury necessary for review because they extinguished Petitioners’ asserted federal rights and imposed adverse legal consequences upon them. And even apart from those judgments, Petitioners suffered concrete privacy injuries sufficient under a faithful application of *TransUnion*. Either route is sufficient; together, they leave no jurisdictional gap.

³ See Hall, Asymmetrical Jurisdiction, 58 UCLA L. REV. 1257, 1278–1279 (2011) (explaining that *ASARCO*’s asymmetry “turns the rationale for Supreme Court appellate review on its head” and “denies appellate review in the very category of cases in which it is most needed”); Greabe, *ASARCO Delenda Est*, 128 W. VA. L. REV. 717, 750–752 (2026) (arguing that the *ASARCO* dictum “defies historical understandings” and is “flatly inconsistent with the reasoning underlying *ASARCO*’s conclusion” regarding Article III injury); see also Massey, Standing in State Courts, State Law, and Federal Review, 53 DUQ. L. REV. 401, 407–409 (2015); Fletcher, The “Case or Controversy” Requirement in State Court Adjudication of Federal Questions, 78 CAL. L. REV. 263, 279–283 (1990).

**A. The Adverse State-Court Judgments
Independently Supply Article III Injury
Under ASARCO's Own Logic.**

In *ASARCO*, this Court held that it could review a state judgment even though the original plaintiffs “had no standing to sue under the principles governing the federal courts,” because “the judgment of the state court cause[d] direct, specific, and concrete injury” to the petitioning parties. *ASARCO*, 490 U. S., at 623–624. State courts “are not bound by the limitations of a case or controversy . . . even when they address issues of federal law,” *id.*, at 617, and vacating their judgments for want of initial federal standing “would render nugatory the entire proceedings in the state courts” and “impose federal standing requirements on the state courts whenever they adjudicate issues of federal law,” *id.*, at 620—contrary to the settled understanding that state courts “have it within both their power and their proper role to render binding judgments on issues of federal law, subject only to review by this Court.” *Ibid.*

Every element of that logic is satisfied here—and then some. Petitioners invoked the jurisdiction of courts empowered to hear them, were heard, and lost: the judgments below denied their federal claims on the merits and extinguished them with preclusive effect. The judgments also imposed a classic pocket-book injury: the Supreme Court of New Jersey taxed costs against each petitioner. App. 130–34. Reversal by this Court would redress both. An adverse and allegedly erroneous adjudication of legal rights by a court with jurisdiction to render it is “the kind of

injury cognizable in this Court on review from the state courts.” *ASARCO*, 490 U. S., at 618.

1. *ASARCO*’s plaintiff-defendant asymmetry is dictum and cannot be reconciled with its own reasoning.

The oft-attributed asymmetry in *ASARCO* arose not from the holding necessary to the case, but from the Court’s effort to distinguish *Doremus v. Board of Education*, 342 U. S. 429 (1952). In *Doremus*, state-court plaintiffs challenged a New Jersey statute on federal constitutional grounds, lost on the merits, and sought review in this Court. Because those plaintiffs had shown no cognizable injury sufficient for Article III, this Court dismissed the appeal. *Id.*, at 434–435. *ASARCO* presented the converse procedural posture. There too, the original state-court plaintiffs could not have satisfied Article III at the outset. But they prevailed in state court, and the defendants against whom judgment was entered sought this Court’s review. *ASARCO*, 490 U. S., at 617–618.

The United States therefore argued in *ASARCO* that *Doremus* foreclosed review notwithstanding the change in which side had prevailed below. The Court rejected that argument because the state-court judgment itself had now injured the defendants. The Arizona Supreme Court’s allegedly erroneous adjudication of federal law had altered their legal position, and that adverse judgment constituted “direct, specific, and concrete injury” sufficient to support Article III jurisdiction on review. *Id.*, at 623–624. Thus, *ASARCO*’s holding was that lack of Article III standing at the commencement of state proceedings does not disable this Court from reviewing a later state

judgment when that judgment itself creates the requisite injury.

But in explaining why *Doremus* did not control, the Court went further. It observed that the *Doremus* plaintiffs had lost in the state court, whereas the *ASARCO* defendants were parties against whom judgment had been entered, and suggested that had the *ASARCO* plaintiffs lost below and sought review themselves, the case would have remained nonjusticiable. See *id.*, at 634 (REHNQUIST, C. J., concurring in part and dissenting in part). That observation was unnecessary to the judgment before the Court. No losing plaintiff was seeking review in *ASARCO*. The only question was whether the defendants who had suffered an adverse state judgment possessed Article III injury at the appellate stage. The suggestion that an identically adverse judgment would not supply injury when suffered by a plaintiff therefore was dictum—apparently included to preserve *Doremus* while explaining why *Doremus* did not dictate dismissal of the defendants’ appeal.

Once separated from that effort to distinguish *Doremus*, however, the asymmetry has no doctrinal foundation in *ASARCO*’s own reasoning. The Court did not rest jurisdiction on some special characteristic of defendants. It rested jurisdiction on the legal effect of an adverse state-court judgment. The operative injury was the “adverse . . . adjudication of legal rights” itself. *Id.*, at 618. If such an adjudication creates Article III injury because it conclusively rejects one party’s asserted legal position, the same is necessarily true when the party suffering that adjudication happens to be the plaintiff. A judgment does not become

less concrete because the federal claimant appears on the left side of the caption rather than the right.

Nor does recognizing that proposition require overruling *Doremus*, which involved plaintiffs whose asserted taxpayer grievance remained abstract throughout the litigation, and the New Jersey court itself acknowledged the substantial justiciability objection before nevertheless reaching the merits. *Doremus*, 342 U. S., at 431–432. This Court consequently regarded the state court’s constitutional ruling as effectively advisory. *Id.*, at 434. *Doremus* therefore establishes that an advisory state pronouncement cannot manufacture Article III jurisdiction in this Court. It did not decide whether a genuine adversary judgment—rendered by a state court possessing jurisdiction, conclusively rejecting an asserted federal right, and carrying ordinary preclusive and monetary consequences—creates appellate injury for the losing federal claimant.

Here, Petitioners did not obtain advisory pronouncements on abstract taxpayer grievances. The New Jersey courts held that Petitioners possessed state-law standing, adjudicated concrete claims for statutory damages between adverse private parties, rejected those federal claims on the merits, and entered judgments with preclusive effect and costs. App. 4, 130–34. Applying *ASARCO*’s judgment-injury rule to those judgments therefore does not repudiate *Doremus*. It simply declines to convert *ASARCO*’s effort to distinguish an advisory-judgment case into a categorical rule denying appellate review whenever the party injured by a genuine state-court judgment happens to be a plaintiff.

That result also accords with this Court’s broader appellate-standing cases. In *Quinn v. Millsap* (decided 16 days after *ASARCO*), for example, the Court treated an adverse state declaratory judgment as sufficient even though the judgment neither compelled nor restrained the appellants, explaining that “[w]hen a state supreme court denies the existence of a federal right and rests its decision on that basis, this Court unquestionably has jurisdiction to review the federal issue decided by the state court.” 491 U.S. 95, 104 (1989). The relevant question, then, is not which party initiated the litigation, but whether the petitioner now before this Court has suffered a concrete legal injury from the judgment under review. Petitioners plainly have.

2. History and constitutional structure confirm that review extends to state-court denials of federal rights.

History and constitutional structure confirm the answer. Section 25 of the Judiciary Act of 1789 conferred this Court’s appellate jurisdiction over state judgments *only* where the state court “decid[ed] . . . against” the federal “title, right, privilege or exemption” claimed—that is, only where the state court denied a federal right. Judiciary Act of 1789, ch. 20, §25, 1 Stat. 73, 85–87. For nearly two centuries, every successor statute preserved that focus until Congress placed all reviewable state judgments within certiorari jurisdiction in 1988. See Act of June 27, 1988, Pub. L. 100–252, §3, 102 Stat. 662 (codified at 28 U. S. C. §1257); Fletcher, n. 3, *supra*, at 281, n. 89.

That design responded to two related concerns: underenforcement and disuniformity of federal law. Hall, n. 3, *supra*, at 1263–1265. First, the Founders understood that state courts might subordinate federal rights to local interests. State judges could be “dependent for office and for salary on the will of the legislature,” *Cohens v. Virginia*, 6 Wheat. 264, 386–387 (1821), while “state attachments, state prejudices, state jealousies, and state interests” might “obstruct or control[] the regular administration of justice,” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 346–347 (1816). This Court’s review supplied the federal corrective when a state court *under-enforced* federal law by denying the right Congress or the Constitution supplied. Second, final federal-law authority dispersed among independent state judiciaries threatened incompatible constructions of the same national law, creating “truly deplorable” “public mischiefs.” *Martin*, 1 Wheat., at 347–348. Without a federal tribunal capable of settling those disagreements, federal law could mean one thing in New Jersey and another elsewhere. Such divided authority “is a hydra in government, from which nothing but contradiction and confusion can proceed.” The Federalist No. 80 (A. Hamilton).

The asymmetry attributed to *ASARCO* frustrates both purposes. It permits this Court to review a state judgment that *vindicates* a claimed federal right—the circumstance presenting the least danger of underenforcement—yet may insulate from review the judgment that *denies* it, the very circumstance for which appellate review was originally provided. And because each State remains free to resolve the same federal question differently, insulating those denials

leaves state courts as final arbiters of federal law within their respective jurisdictions. Treating an adverse state judgment as Article III injury regardless of whether the losing party was plaintiff or defendant restores the original arrangement: state courts remain free to adjudicate federal rights under their own justiciability rules, but their federal-law judgments remain subject to this Court’s uniform and authoritative review.⁴

**3. *TransUnion* has made the
consequences of the *ASARCO*
dictum concrete and recurring.**

The stakes of the question have changed since *ASARCO* was decided. Under the Madisonian compromise, Congress need not create lower federal courts at all; the constitutional plan presupposes that state courts may serve as the sole trial forums for federal claims, “subject always to review, of course, in this Court.” See *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U. S. 473, 478, n. 4 (1981). After *TransUnion*, for an expanding class of congressionally created damages claims—including claims under the FDCPA, 15 U.S.C. §1692k; the Fair Credit Reporting Act, 15 U.S.C. §1681n(a); the Telephone Consumer

⁴ Nor do the separation-of-powers concerns underlying ordinary standing doctrine counsel otherwise. Standing to sue helps preserve “the proper—and properly limited—role of the courts in a democratic society,” *Allen v. Wright*, 468 U. S. 737, 750, 752 (1984), but that rationale has little force at the appellate stage, where a state court has already exercised judicial power and entered a binding judgment. Review by this Court does not draw a matter from the political branches into the judiciary; refusing review merely leaves a state court’s construction of federal law beyond this Court’s supervisory reach.

Protection Act, 47 U.S.C. §227; the Truth in Lending Act, 15 U.S.C. §1640(a); the Cable Communications Policy Act, 47 U.S.C. §551(f); and similar statutory-damages regimes—state courts may be the only courts of first instance where the statutory violation does not produce the additional concrete injury Article III demands. See, e.g., *Barclift v. Keystone Credit Servs., LLC*, 93 F.4th 136 (CA3 2024), cert. denied, 145 S.Ct. 169 (2024) (FDCPA); *TransUnion*, 594 U.S., at 431, 436–442 (FCRA); *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1271–1277 (CA11 2019) (TCPA); *Strubel v. Comenity Bank*, 842 F.3d 181, 190–194 (CA2 2016) (TILA); *Gubala v. Time Warner Cable, Inc.*, 846 F.3d 909, 910–913 (CA7 2017) (Cable Communications Policy Act).

But the compromise’s premise fails altogether where the state courts, too, are closed. States are free to fashion their own justiciability rules, and many have voluntarily placed theirs in lockstep with Article III: twenty-two States—including the four most populous—have adopted standing rules that parrot *Lujan*, roughly half of all Americans live in such States, and state courts have already begun citing *Spokeo* and *TransUnion* to dismiss federal claims that no federal court could hear. Flaherty & Ogren, *The New Standing Doctrine, Judicial Federalism, and the Problem of Forumless Claims*, 134 YALE L.J. 1008, 1019–1022 (2025). For a plaintiff who holds a congressionally created statutory right of the kind *TransUnion* deems “inconcrete,” and who lives in a mirror State, the claim is *forumless*: federal courts lack jurisdiction, state courts refuse it by choice, and the remedy Congress enacted “might as well not exist.” Bennett, *The*

Paradox of Exclusive State-Court Jurisdiction over Federal Claims, 105 MINN. L. REV. 1211, 1239 (2021).

New York illustrates the problem starkly. In the Eastern District of New York, the court explained that, after *TransUnion*, courts in that district confronting FDCPA “mailing vendor” claims had uniformly found no Article III standing and remanded those claims to state court; indeed, the court described New York state court as the “sole forum” in which such a claim could proceed. *George v. Credit Corp Solutions Inc.*, 2023 WL 7000964, at *5–7 (EDNY Aug. 24, 2023). But *Zoltan* then demonstrates what happens when the supposed “sole forum” adopts the same federal standing restriction: the New York Supreme Court concluded that the defendant had violated the FDCPA by disclosing the plaintiff’s information to a third-party vendor, yet nevertheless dismissed the action after applying *TransUnion*’s concrete-injury requirement and finding the plaintiff lacked standing. *Zoltan v. Credit Collection Servs.*, No. 036901/2021, 2023 NYLJ LEXIS 1213, at *18–21 (Sup. Ct. Rockland Cnty. May 4, 2023).

That result cannot be reconciled with a structure whose central bargain was that state courts would stand ready to enforce federal rights precisely because inferior federal courts might not exist—and it may raise constitutional difficulties of its own, since a cause of action is a species of property, and a regime that denies its holder access to any court for its adjudication sits uneasily beside *Logan v. Zimmerman Brush Co.*, 455 U. S. 422, 428–430 (1982) and *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306 (1950). This Court should grant review and confirm that its appellate jurisdiction runs to all genuine

state-court judgments resolving questions of federal law, whichever party they aggrieve.

B. Petitioners have Article III standing under a faithful application of *TransUnion*.

Even apart from the adverse judgments, Petitioners satisfy Article III under *TransUnion*. That decision asks whether the alleged injury bears a “close relationship” to a harm traditionally recognized as actionable, not whether every element of a common-law tort is replicated. *TransUnion*, 594 U.S., at 424–425, 433–434; see also *Barclift*, 93 F.4th, at 145; *Salazar v. Nat’l Basketball Ass’n*, 118 F.4th 533, 542, n.6 (CA2 2024).

Petitioners’ injury first bears a close relationship to breach of confidence: “the unconsented, unprivileged disclosure to a third party of nonpublic information that the defendant has learned within a confidential relationship.” *Kamal v. J. Crew Grp., Inc.*, 918 F.3d 102, 114 (CA3 2019). That harm occurs when an unauthorized third party gains access to protected information, *ibid.*, and the same circuit has recognized the unlawful disclosure of legally protected information as itself a concrete injury. See *In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 274 (CA3 2016); *In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 638 (CA3 2017). Here, Respondents disclosed Petitioners’ nonpublic financial information to outside commercial entities despite the confidentiality duty imposed by § 1692c(b).⁵

⁵ Breach of confidence has substantial historical roots. See *Prince Albert v. Strange* (1849) 41 Eng. Rep. 1171, 1178; *Corliss*

The injury also closely resembles intrusion upon seclusion, which protects against unauthorized examination of private affairs and does not require publication. See Restatement (Second) of Torts §652B, Comment b (1977) (including examination of a person’s private bank account). Respondents enabled outside enterprises to receive and process Petitioners’ private financial information within their own systems. Recent appellate decisions support that technologically facilitated transmission of personal information to third-party processors can constitute the same kind of harm. See *In re BPS Direct, LLC; Cabela’s, LLC Wiretapping Litig.*, 175 F. 4th 423, 430, n. 4 (CA3 2026) (distinguishing *Barclift* because the plaintiff there did not invoke intrusion upon seclusion); *Pileggi v. Wash. Newspaper Publ’g Co.*, 146 F. 4th 1219, 1227–1229 (CADC 2025).

Finally, *Barclift* rested heavily on the premise that disclosure was made to a “single ministerial intermediary.” 93 F. 4th, at 146. That premise does not describe the conduct alleged here. Modern letter vendors market data cleansing, segmentation, behavioral analytics, payment-propensity modeling, and

v. *E. W. Walker Co.*, 64 F. 280, 281 (CC Mass. 1894); Warren & Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 207 (1890). *Barclift* merely “hesitate[d]” to recognize the analogue because the tort later fell into disuse, 93 F. 4th, at 145, n. 3; Judge Matey explained that temporary underutilization does not erase a traditionally actionable harm. *Id.*, at 157–158, n. 13 (Matey, J., dissenting). Miller’s claim presents an especially close fit because the disclosed information concerned medical debts, including provider identities, service dates and locations, and charges. See, e.g., *Horne v. Patton*, 287 So. 2d 824, 829–830 (Ala. 1973); *Vassiliades v. Garfinckel’s, Brooks Bros.*, 492 A. 2d 580, 591–592 (D. C. 1985).

multichannel optimization; they are not merely conduits that mechanically return information to the consumer. That distinction matters because courts have recognized concrete injury where the third-party recipient uses disclosed information for its own commercial purposes. See *Salazar*, 118 F. 4th, at 542–544.

Petitioners therefore suffered concrete privacy injuries at the time of disclosure. Article III jurisdiction exists on that basis independently of the judgment-injury theory discussed above.

**II. The Question is Important, Recurring,
and—after *TransUnion*—Reviewable
Nowhere Else.**

**A. The question is exceptionally
important because modern letter
vendors process and exploit sensitive
financial information at scale.**

The question presented governs a practice used in the overwhelming majority of American debt collection. More than 85 percent of debt collectors use letter vendors, 86 Fed. Reg. 5845, n. 446, and the Bureau estimates the industry contacts 49 million consumers each year, *id.*, at 5842. Every engagement of a vendor entails the very conduct at issue: the unconsented transmission of a consumer’s identity, address, account data, creditor, and balance to an outside commercial firm. Whether § 1692c(b) permits that transmission therefore determines the privacy rights of a substantial fraction of the national population, continuously.

More than just clerical information, the data transmitted identifies the creditor, it reveals where consumers spent money and, often, why—medical care,

addiction treatment, reproductive services, religious or political purchases. See *Buckley v. Valeo*, 424 U. S. 1, 66 (1976) (“[f]inancial transactions can reveal much about a person’s activities, associations, and beliefs.” (quotation omitted)). Feeding this data into AI systems to score and analyze consumers’ propensity to pay implicates privacy concerns of a kind and scale that did not previously exist.⁶

A collector that disclosed a consumer’s debt status directly to that consumer’s insurer, lender, or preferred retailers would indisputably violate §1692c(b). Routing the same data through an unregulated commercial intermediary that retains and exploits it does not change the statutory analysis—it only obscures it.

B. Only this Court can restore a uniform construction of §1692c(b), because the federal courts that once supplied one no longer speak.

Before *TransUnion*, the federal courts to reach the merits were unanimous. The Eleventh Circuit twice held that a consumer states a §1692c(b) claim by alleging that a debt collector supplied his information to a vendor that used it to generate and mail a collection letter. *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 994 F.3d 1341, 1351–1352 (CA11 2021) (*Hunstein I*); *Hunstein v. Preferred Collection & Mgmt.*

⁶ Hoffman & Malik, From Disruption to Regulation: Towards Accountable Big Tech and AI in the Digital Age 9–10, HARV. KENNEDY SCH. (June 9, 2025) (“AI systems amplify privacy risks that have long existed in the internet era,” with the difference now being “scale” because AI’s “insatiable demand for data and lack of transparency make it even harder” for people to understand or control what happens to their information.)

Servs., Inc., 17 F.4th 1016, 1032–1033, n.13 (CA11 2021) (*Hunstein II*). District courts agreed. *Khimmat v. Weltman, Weinberg & Reis Co., LPA*, 585 F. Supp. 3d 707, 710–713 (ED Pa. 2022); *Jackin v. Enhanced Recovery Co.*, 606 F. Supp. 3d 1031, 1036–1039 (ED Wash. 2022). No federal court reaching the merits has ever held otherwise in a published opinion.

Then the doors closed. Sitting en banc after *TransUnion*, the Eleventh Circuit vacated the *Hunstein* panel decisions and dismissed for lack of Article III standing, without disturbing the panels’ merits analysis. *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236 (2022) (en banc) (*Hunstein III*). The Tenth, Seventh, and Third Circuits followed, each dismissing letter-vendor claims on standing grounds without reaching the statute’s meaning. *Shields v. Prof’l Bureau of Collections of Md., Inc.*, 55 F.4th 823 (CA10 2022); *Nabozny v. Optio Sols. LLC*, 84 F.4th 731 (CA7 2023); *Barclift*, 93 F.4th 136. Federal district courts now remand these cases to state court as beyond their jurisdiction.

State courts may adjudicate the claims—“the constraints of Article III do not apply to state courts,” *ASARCO*, 490 U. S., at 617—but they cannot supply a uniform and authoritative construction of federal law. Each State employs its own interpretive conventions, its own methodological hierarchy, and its own view of the weight due statutory purpose, legislative history, and lower federal court precedent. The predictable result, in the five years since *TransUnion*, is that the same sentence of the United States Code now yields opposite outcomes across state lines:

New Jersey. In the decisions below, the courts declined to consider the federal merits decisions at all,

App. 6, 12, 19, 25, 33, and narrowed the statute by reference to congressional purpose, culminating in the Diana panel’s rule that “[o]nly communications whose primary purpose is to induce payment” are covered, App. 32. New Jersey’s own trial courts have since divided, with the Law Division enforcing the statute’s “unambiguous language” and sustaining an identical claim. *Devine v. Cavalry SPV I LLC*, 2026 LX 178774 (N.J. Super., Law Div. Mar. 13, 2026).

Pennsylvania. Next door, consumers win these very cases on the merits. *Meginess v. Credit Control, LLC*, No. 2023-05425, 2025 Pa. Dist. & Cnty. Dec. LEXIS 214, at *1–2 (C.P. Luzerne Cnty. Aug. 18, 2025) (consumer has standing under Pennsylvania’s zone-of-interests test and states a §1692c(b) claim). Indeed, in November 2025, a Pennsylvania court granted summary judgment and entered a \$1,000 statutory-damages award against respondent First National Collection Bureau, Inc.—for precisely the conduct the New Jersey courts held lawful in Diana’s case against the same defendant. *Scro v. First Nat’l Collection Bureau, Inc.*, No. 2023-583 C.P., 2025 Pa. Dist. & Cnty. Dec. LEXIS 215 (C.P. Susquehanna Cnty. Nov. 6, 2025). The identical federal statute thus imposes liability on the identical company for the identical practice on one side of the Delaware River and immunizes it on the other.

South Carolina. A South Carolina court dismissed a letter-vendor claim by expressly adopting the New Jersey trial court’s purposive reasoning in petitioner Hopkins’s own case. *Garber v. Synter Res. Grp., LLC*, No. 2022-CP-10-04809, 2024 S.C. C.P. LEXIS 315, at *4–6 (C.P. Charleston Cnty. Apr. 9, 2024) (quoting *Hopkins v. Convergent Outsourcing, Inc.*, No. PAS-L-

000342-23, 2023 WL 4995726, at *4 (N. J. Super., Law Div. May 31, 2023)).

New York. A New York court held that the defendant “violated the FDCPA by disclosing plaintiff’s information to the third-party vendor for debt collection purposes”—and then dismissed anyway, importing federal injury-in-fact requirements that do not bind New York courts. *Zoltan*, 2023 NYLJ LEXIS 1213, at *1–2. New York consumers thus hold a federal right that is conceded on the merits yet vindicable nowhere: the federal courts remand for want of jurisdiction, and the state courts then dismiss under the very federal doctrine that caused the remand.

The divergence, moreover, is methodological and not merely bottom-line: some States enforce the text; others narrow it by purpose; some apply indigenous standing rules; others voluntarily shackle themselves to Article III. Congress enacted the FDCPA against exactly this backdrop of patchwork state regulation, with the express purpose “to promote consistent State action,” 15 U.S.C. §1692(e), and, as the court below acknowledged, “Congress perceived a need for national uniformity to fulfill” the Act’s goals. App. 32 (quoting *Rutgers v. Fogel*, 403 N.J. Super. 389, 394 (App. Div. 2008)). Securing that uniformity is this Court’s distinctive office. The Framers vested this Court with appellate jurisdiction over state judgments out of “the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution.” *Martin*, 1 Wheat., at 347–348; *Grable & Sons Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308, 312 (2005) (the “hope of uniformity that a federal forum offers on federal issues”); *Kansas v.*

Marsh, 548 U.S. 163, 183 (2006) (SCALIA, J., concurring) (the Court’s “principal responsibility” on review of state judgments “is to ensure the integrity and uniformity of federal law”).

**C. The Question Will Recur Indefinitely,
and Ordinary Percolation Cannot
Resolve It.**

In the usual case, this Court may await a circuit conflict. Here, the absence of a conventional circuit split is not a reason to wait; it is the very consequence of the jurisdictional problem that makes review necessary. Four courts of appeals have held that these plaintiffs cannot be heard in federal court, so no federal court of appeals will produce a durable merits ruling while *Hunstein III* and *Barclift* govern the Article III analysis. The conflict that can develop—and has—is among state courts, whose letter-vendor decisions are frequently unpublished, non-precedential, and, absent this Court’s intervention, final. See App. 1–33 (five unpublished dispositions). Debt collectors will continue to outsource dunning; consumers will continue to sue where they can; and the standing barrier will continue to channel every such case into fifty separate interpretive regimes. The question is cleanly presented on the pleadings, uncomplicated by disputed facts, in five consolidated judgments from a single court. There will be no better vehicle, because the structural conditions that produced this one guarantee that every future vehicle will look the same.

III. The Decisions Below Misconstrued Section 1692c(b).

A. The statutory text prohibits the communications alleged.

The merits follow from a straightforward syllogism. Respondents are “debt collector[s].” 15 U.S.C. §1692a(6). Transmitting a consumer’s name, address, account number, and balance to a vendor “convey[s] . . . information regarding a debt directly or indirectly to any person through any medium,” and so is a “communication.” *Id.* §1692a(2). The transmission is made “in connection with the collection of” a debt—its sole purpose is to produce the dunning letter. A letter vendor is a “person,” and it appears nowhere among §1692c(b)’s enumerated exceptions. Section 1692c(b) therefore prohibits the communication. Every federal court to reach the question has so held, and their reasoning refutes each contrary argument accepted below.

First, §1692c(b) does not require that the communication demand payment from its recipient. The provision’s own exceptions—permitting communications with the creditor, the parties’ attorneys, and consumer reporting agencies—describe communications that never demand payment; a demand-for-payment gloss “would render superfluous the statute’s exceptions for communications with these groups” and “would read the words ‘in connection with’ out of the statute.” *Khimmat*, 585 F.Supp.3d, at 712; *accord Hunstein I*, 994 F.3d, at 1351 (such a reading would violate the “cardinal principle of statutory construction” that every word be given meaning). Worse, it would permit collectors to broadcast consumers’

private debt information to anyone at all, so long as no payment was demanded of the recipient.

Second, a vendor is not a “medium.” In §1692a(2), “medium” carries its ordinary sense of “a channel, method, or system of communication”—letters, calls, emails, texts—not a person through whom a purpose is accomplished; on the contrary reading, the consumer’s own attorney would be a “medium,” rendering §1692c(b)’s “with any person other than” clause “unintelligible.” *Hunstein II*, 17 F.4th, at 1033, n. 13. And if an “inanimate credit reporting agency is a ‘person’” under the section, “it stands to reason that an inanimate mail vendor . . . is, as well.” *Ibid*.

Third, enforcing the text is fully consonant with the Act’s purposes. Congress’s findings identify “invasions of individual privacy” as a target harm, 15 U.S.C. §1692(a), and the Senate Report describes §1692c(b) as “a general prohibition on contacting any third parties” outside the enumerated exceptions, S. Rep. No. 95–382, at 7 (1977). Concerns about family, neighbors, and employers are addressed separately, in §1692b’s location-information rules; §1692c(b) is aimed at the broader dissemination of consumers’ financial information. Applying the statute as written prevents disclosure of private, confidential information to unregulated, unidentified third parties—an outcome that is not absurd but is the point.

B. The “Primary Purpose” and “Internal Step” Limitations Adopted Below Are Atextual and Substitute Judicial Policy for Congress’s Enacted Judgment.

The court below held that “[o]nly communications whose primary purpose is to induce payment violate the FDCPA’s third-party communication restrictions,” and that transmitting consumer data to a vendor is “an internal step.” App. 32. Neither limitation appears in the statute’s text, its definitions, or its enumerated exceptions—and a communication to an outside corporation is, by definition, not “internal.” What the courts below actually did is visible on the face of their opinions: they concluded that Congress could not have meant to reach “a benign administrative task,” App. 50, and that a literal application would be “hyper-technical,” App. 80. That is a judgment about what the statute should say, not what it says. As *Khimmat* put it, “courts have to start with the presumption that Congress meant what it said,” and “if it turns out that’s not what Congress meant, then it will be up to Congress to fix it.” 585 F.Supp.3d, at 710. The Eleventh Circuit was equally direct: “our obligation is to interpret the law as written, whether or not we think the resulting consequences are particularly sensible or desirable. Needless to say, if Congress thinks that we’ve misread §1692c(b)—or even that we’ve properly read it but that it should be amended—it can say so.” *Hunstein I*, 994 F.3d, at 1352. Widespread industry reliance proves nothing either: “That this is (or may be) the first case in which a debtor has sued a debt collector for disclosing his personal information to a mail

vendor hardly proves that such disclosures are lawful.”
Ibid.

The trial courts’ related emphasis on the absence of intent to “harass[], embarrass[] or humiliat[e],” App. 109–110, is legally irrelevant. The FD CPA imposes liability without proof of intent except where a provision says otherwise, subject only to the bona fide error defense Congress itself supplied. 15 U.S.C. §1692k(a), (c). Congress made the legislative judgment that unauthorized third-party disclosure is itself the harm to be prevented; a strict-liability code of conduct leaves no room for courts to excuse violations they deem benign.

IV. This Combined Petition Is an Excellent Vehicle.

This combined petition presents both questions cleanly and, on the jurisdictional question, fits squarely within the asymmetry attributed to *ASARCO*. Petitioners properly invoked state-court jurisdiction, litigated federal statutory claims on the merits, and suffered final adverse judgments—precisely the posture in which *ASARCO*’s dictum has been understood to deny review to a losing plaintiff even though the same judgment would supply Article III injury to a losing defendant. The Court can therefore decide, without procedural complications, whether that asymmetry is actually required by Article III. At the same time, all five cases arise from the same letter-vendor practice and present the same §1692c(b) issue, allowing the Court to resolve both questions in a single, comprehensive vehicle.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

Yongmoon Kim
Counsel of Record
KIM LAW FIRM, LLC
411 Hackensack Ave
Ste 701
Hackensack, NJ 07601
(201) 273-7117
ykim@kimlf.com

AUGUST 2026

Attorney for Petitioners

APPENDIX

TABLE OF CONTENTS

Appendix A

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
No. A-3046-22 (May 2, 2025) App-1

Appendix B

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Randy Hopkins v. Convergent Outsourcing, Inc.*,
No. A-3463-22 (May 2, 2025) App-7

Appendix C

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Amber Jones v. American Coradius International, LLC*,
No. A-3946-22 (May 2, 2025) App-15

Appendix D

Opinion [order granting defendant's motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Latonya Miller v. Americollect, Inc.*,
No. A-1826-23 (May 2, 2025) App-20

App–ii

Appendix E

Opinion [order granting defendant’s motion to dismiss affirmed], Superior Court of New Jersey Appellate Division, *Scott Diana v. First National Collection Bureau, Inc.*,
No. A–0158–24 (Oct. 6, 2025) App-28

Appendix F

Order [defendant’s motion to dismiss granted], Superior Court of New Jersey Law Division: Passaic County, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
No. PAS–L–1676–21 (Apr. 26, 2023) App-34

Appendix G

Transcript of Motion to Dismiss (Court Decision), Superior Court of New Jersey Law Division – Civil Part: Passaic County, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
No. PAS–L–1676–21 (Apr. 26, 2023) App-35

Appendix H

Order and Opinion [defendant’s motion to dismiss granted], Superior Court of New Jersey Law Division: Passaic County, *Randy Hopkins v. Convergent Outsourcing, Inc.; and John Does 1 to 10*,
No. PAS–L–000342–23 (May 31, 2023) App-61

App–iii

Appendix I

Order [defendant’s motion to dismiss granted],
Superior Court of New Jersey, Morris County,
*Amber Jones v. American Coradius Interna-
tional, LLC; and John Does 1 to 10*,
No. MRS–L–000895–22 (Jul. 13, 2023) App-77

Transcript of Motion Hearing, Superior Court
of New Jersey, Law Division – Civil Part: Mor-
ris County, *Amber Jones v. American Coradius
International*,
No. MRS–L–895–22 (Jun. 15, 2023) App-78

Appendix J

Order and Opinion [defendant’s motion to dis-
miss granted], Superior Court of New Jersey
Law Division, Essex County, *Latonya Miller v.
Americollect, Inc.; and John Does 1 to 10*,
No. ESX L–006164–21 (Jan. 18, 2024) App-81

Appendix K

Order [defendant’s motion to dismiss granted],
Superior Court of New Jersey Law Division:
Hudson County, *Scott Diana v. First National
Collection Bureau, Inc.; LVNV Funding, LLC;
and John Does 1 to 10*,
No. HUD–L–003014–23 (Aug. 2, 2024) App-119

Appendix L

Transcript of Motion Hearing, Superior Court
of New Jersey Law Division – Civil Part: Hud-
son County, *Scott Diana v. First National Col-
lection Bureau, Inc.; LVNV Funding, LLC; and
John Does 1 to 10*,
No. HUD–L–003014–23 (Aug. 2, 2024) App-121

Appendix M

Order [petition for certification denied], Su-
preme Court of New Jersey, *Tariq Elshabba v.
Jefferson Capital Systems, LLC*,
No. 090796 (Apr. 10, 2026) App-130

Appendix N

Order [petition for certification denied], Su-
preme Court of New Jersey, *Randy Hopkins v.
Convergent Outsourcing, Inc.*,
No. 090795 (Apr. 10, 2026) App-131

Appendix O

Order [petition for certification denied], Su-
preme Court of New Jersey, *Amber Jones v.
American Coradius International, LLC*,
No. 090797 (Apr. 10, 2026) App-132

Appendix P

Order [petition for certification denied], Su-
preme Court of New Jersey, *Latonya Miller v.
Americollect, Inc.*,
No. 090798 (Apr. 10, 2026) App-133

App–v

Appendix Q

Order [petition for certification denied], Supreme Court of New Jersey, *Scott Diana v. First National Collection Bureau; and LVNV Funding, LLC*,
No. 091340 (Jun. 30, 2026) App-134

Appendix R

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Tariq Elshabba v. Jefferson Capital Systems, LLC*,
No. 090796 (Aug. 29, 2025) App-135

Appendix S

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Randy Hopkins v. Convergent Outsourcing, Inc.; and John Does 1 to 10*,
No. 090795 (Aug. 29, 2025) App-139

Appendix T

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Amber Jones v. American Coradius International, LLC; and John Does 1 to 10*,
No. 090797 (Sep. 12, 2025) App-143

Appendix U

Relevant Part of Petition for Certification, Supreme Court of New Jersey, *Latonya Miller v. Americollect, Inc.; and John Does 1 to 10*,
No. 090798 (Aug. 29, 2025) App-147

App-vi

Appendix V

Relevant Part of Petition for Certification, Supreme Court of New Jersey, <i>Scott Diana v. First National Collection Bureau, Inc.; and John Does 1 to 10</i> , No. 091340 (Apr. 7, 2025)	App-151
--	---------

Appendix W

Office of the Maine Attorney General Data Breach Notification	App-155
--	---------

App-1

Appendix A

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3046-22

TARIQ ELSHABBA, individually
and on behalf of all others similarly
situated,

Plaintiff-Appellant,

v.

JEFFERSON CAPITAL
SYSTEMS, LLC,

Defendant-Respondent.

Argued March 12, 2025 – Decided May 2, 2025

Before Judges Mayer and Puglisi.

On appeal from the Superior Court of New Jersey,
Law Division, Passaic County, Docket No. L-
1676-21.

Philip D. Stern argued the cause for appellant
(Kim Law Firm LLC, attorneys; Philip D. Stern
and Yongmoon Kim, on the briefs).

App-2

Aaron R. Easley argued the cause for respondent (Sessions Israel and Shartle, LLC, attorneys; Aaron R. Easley and Jay I. Brody, on the brief).

PER CURIAM

Plaintiff Tariq Elshabba, individually and on behalf of all others similarly situated, appeals from the April 26, 2023 Law Division order granting defendant Jefferson Capital Systems, LLC's motion to dismiss plaintiff's complaint for failure to state a claim. We affirm.

Plaintiff incurred a debt and the lender transmitted that debt to defendant, a debt collector. Defendant engaged a third-party letter vendor to draft, print, address and mail a collection letter to plaintiff. The letter included plaintiff's account number, the amount due to the lender and plaintiff's full name and address.

In May 2021, plaintiff filed a single-count purported class action complaint alleging violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§1692 to 1692p. Defendant, in lieu of an answer, moved to dismiss the complaint pursuant to Rule 4:6-2(e).

After hearing oral argument, Judge Bruno Mongiardo granted defendant's motion and dismissed the complaint in an April 26, 2023 order accompanied by a thorough and cogent oral decision. Quoting In re Camden County, 170 N.J. 439, 449 (2002), the judge first found plaintiff lacked standing because "there [was] not a . . . 'substantial likelihood' that . . . plaintiff will . . . 'suffer harm in the event of an unfavorable decision.'" He further determined plaintiff "[did] not have a . . . 'sufficient stake' in the litigation" nor "real adverseness with respect to the subject matter," and

App-3

therefore lacked standing to bring the action. The judge nevertheless considered the merits of plaintiff's complaint in the event we disagreed with his standing decision.

In evaluating whether plaintiff sufficiently pleaded a claim for a violation of the FDCPA, the judge noted the plain language of the FDCPA prohibits a debt collector from communicating, "in connection with the collection of a[ny] debt." 15 U.S.C. §1692c(b). After reviewing the legislative history of the FDCPA, the judge dismissed the claim, reasoning "plaintiff [did] not allege that the vendor misused the information, that the vendor disseminated the information, or even that any individual at the vendor saw the information," but rather plaintiff's conduct was "a benign administrative task" and not the "abusive, harassing, or misleading conduct" Congress intended to prevent by enacting the FDCPA. The motion judge further found "[defendant's] letter is not false, deceptive, or misleading as to the effect of a payment on the enforceability of the debt," and therefore did not violate 15 U.S.C. §§1692c, e, or f.

This appeal follows.

We review de novo an order dismissing a complaint for lack of standing. Courier-Post Newspaper v. Cnty. of Camden, 413 N.J. Super. 372, 381 (App. Div. 2010). Rule 4:26-1 provides, "[e]very action may be prosecuted in the name of the real party in interest." Standing requires that "a party must present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision." In re Camden Cnty., 170 N.J. at 449.

Because New Jersey takes “a liberal approach to standing,” id. at 448, we are persuaded plaintiff established standing to bring this suit. Plaintiff had an interest in litigating the alleged exposure of his personal data to a third party and, if successful, would have been entitled to compensatory damages, as well as attorneys’ fees and costs. 15 U. S. C. § 1692k.

In agreeing plaintiff had standing to bring this action, we next consider the motion judge’s dismissal of the complaint for failure to state a claim pursuant to Rule 4:6-2(e), which we review de novo. Baskin v. P.C. Richard & Son, LLC, 246 N. J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N. J. 91, 108 (2019)).

In considering a Rule 4:6-2(e) motion, “[a] reviewing court must examine ‘the legal sufficiency of the facts alleged on the face of the complaint,’ giving the plaintiff the benefit of ‘every reasonable inference of fact.’” Ibid. (quoting Dimitrakopoulos, 237 N. J. at 107). “The essential test [for determining the adequacy of a pleading] is simply ‘whether a cause of action is “suggested” by the facts.’” Green v. Morgan Props., 215 N.J. 431, 451-52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N. J. 739, 746 (1989)). “At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of [the] plaintiff to prove the allegation contained in the complaint.” Printing Mart-Morristown, 116 N. J. at 746.

“[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed.” Dimitrakopoulos, 237 N. J. at 107. “A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.”

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N. J. 366, 378 (1995).

On appeal, plaintiff largely reprises the same arguments raised before the motion judge: his claims should not be dismissed. We disagree, addressing plaintiff's claims in turn.

In order to establish an FDCPA claim, a plaintiff must demonstrate: (1) the plaintiff is a consumer; (2) the defendant is a debt collector; (3) the challenged practice involves an attempt to collect a "debt" as defined by the FDCPA; and (4) the defendant violated the FDCPA in attempting to collect the debt. Midland Funding LLC v. Thiel, 446 N. J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F.3d 299, 303 (3d Cir. 2014)). Here, the motion judge correctly considered legislative intent to determine whether the alleged conduct violated the FDCPA.

In examining the plain meaning of a statute, "the Legislature's intent is paramount and, generally, the statutory language is the best indicator of that intent." Hodges v. Sasil Corp., 189 N. J. 210, 223 (2007). "Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the legislation as a whole." Ibid. "Our duty is to construe and apply the statute as enacted." Di-Prospiero v. Penn, 183 N. J. 477, 492 (2005) (quoting In re Closing of Jamesburg High Sch., 83 N. J. 540, 548 (1980)).

Plaintiff alleged defendant's use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. In support of his arguments, plaintiff cites out-of-state decisions interpreting the FDCPA. We note "decisions of the federal

App-6

courts of appeals are not binding on this court,” Daniels v. Hollister Co., 440 N. J. Super. 359, 367 n. 7 (App. Div. 2015), and therefore decline to address the out-of-jurisdiction cases cited by plaintiff. See Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36-3 (2025) (“On questions of federal constitutional law and statutory law, only decisions of the United States Supreme Court are binding on the courts of this state.”).

We concur with the motion judge’s determination that defendant’s use of a letter vendor was not abusive, deceptive, nor unfair and reject plaintiff’s proposed interpretation of the FDCPA as uncritically literal. Defendant’s disclosure of debt-related information to a letter vendor was not the type of conduct Congress intended to regulate when it enacted the FDCPA. When viewing plaintiff’s complaint and affording him all reasonable inferences of fact, plaintiff did not “genuinely allege” any facts establishing defendant’s conduct violated the FDCPA.

To the extent we have not expressly addressed any of plaintiff’s remaining issues, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

App-7

Appendix B

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3463-22

RANDY HOPKINS, on behalf of
himself and those similarly situated,

Plaintiff-Appellant,

v.

CONVERGENT OUTSOURCING, INC.,

Defendant-Respondent.

Argued March 12, 2025 – Decided May 2, 2025

Before Judges Mayer and Puglisi.

On appeal from the Superior Court of New Jersey,
Law Division, Passaic County, Docket No. L-
0342-23.

Philip D. Stern argued the cause for appellant
(Kim Law Firm LLC, attorneys; Philip D. Stern
and Yongmoon Kim, on the briefs).

Aaron R. Easley argued the cause for respondent (Sessions Israel and Shartle, LLC, attorneys; Aaron R. Easley and Jay I. Brody, on the brief).

PER CURIAM

Plaintiff Randy Hopkins, on behalf of himself and those similarly situated, appeals from the May 31, 2023 Law Division order granting defendant Convergent Outsourcing, Inc.’s motion to dismiss plaintiff’s complaint for failure to state a claim. We affirm.

Plaintiff incurred a debt and the lender transmitted that debt to defendant, a debt collector. Defendant engaged a third-party letter vendor to draft, print, address and mail a collection letter to plaintiff. The letter included plaintiff’s account number, the amount due to the lender and plaintiff’s full name and address.

In February 2023, plaintiff filed a four-count purported class action complaint alleging violations of the Fair Debt Collection Practices Act (FDCPA), 15 U. S. C. §§ 1692 to 1692p; violations of the Consumer Fraud Act (CFA), N. J. S. A. 56:8–1 to –229; negligence and invasion of privacy, based on defendant’s sharing plaintiff’s personal information to a third party. Defendant, in lieu of an answer, moved to dismiss the complaint pursuant to Rule 4:6–2(e).

After hearing oral argument, Judge Darren Del Sardo granted defendant’s motion and dismissed the complaint in a May 31, 2023 order accompanied by a thorough and cogent written decision. The judge noted the plain language of the FDCPA prohibits a debt collector from communicating, “in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor,

the attorney of the creditor, or the attorney of the debt collector.” 15 U.S.C. §1692c(b). The judge found “[t]he allegations presented by plaintiff in this case do not reflect the concerns espoused by Congress and would require an overly rigid reading of the statute.” After reviewing the legislative history of the FDCPA, the judge dismissed the claim, reasoning:

Unlike the persons who could inflict harm upon plaintiff through the disclosure of plaintiff’s debt information, disclosure to a letter vendor of basic debt information does not fall within the purview of Congressional concerns. Congress intended to prevent harmful debt collection practices; disclosure of debt information to a letter vendor is not the type of disclosure contemplated by Congress. Indeed, plaintiff is unable to demonstrate what direct harm the disclosure has caused and has not shown that disclosure of information to a letter vendor for the sole purpose of mailing constitutes the type of harmful practice sought to be prevented by Congress.

Next, the judge dismissed plaintiff’s CFA claim because “‘improper disclosure’ of debtor information to a third-party letter vendor . . . alone [did not] constitute[] an unconscionable practice under the CFA or that any other alleged unconscionable practice was engaged in by defendant.” The judge further found plaintiff had not suffered an ascertainable loss.

The judge also dismissed plaintiff’s negligence claim because “plaintiff ha[d] not presented an independent basis to impose some duty upon the defendant” and plaintiff had not shown any damages resulting from defendant’s alleged negligence.

Finally, the judge dismissed plaintiff's claim of invasion of privacy because defendant

did not engage in conduct violating the FDCPA and did not have an obligation to refrain from disclosure to the mail vendor of debtor information for the purpose of mailing generation. Moreover, plaintiff's complaint is absent an allegation that defendant actually disclosed debtor information so as to publish same to a real person or disclose said information in a way that would result in publicity of private facts.

This appeal follows.

We review de novo a motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N. J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N. J. 91, 108 (2019)).

In considering a Rule 4:6-2(e) motion, "[a] reviewing court must examine 'the legal sufficiency of the facts alleged on the face of the complaint,' giving the plaintiff the benefit of 'every reasonable inference of fact.'" Ibid. (quoting Dimitrakopoulos, 237 N. J. at 107). "The essential test [for determining the adequacy of a pleading] is simply 'whether a cause of action is "suggested" by the facts.'" Green v. Morgan Props., 215 N. J. 431, 451-52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N. J. 739, 746 (1989)). "At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of [the] plaintiff to prove the allegation contained in the complaint." Printing Mart-Morristown, 116 N. J. at 746.

"[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim,

the action should be dismissed.” Dimitrakopoulos, 237 N. J. at 107. “A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N. J. 366, 378 (1995).

On appeal, plaintiff largely reprises the same arguments raised before the motion judge: his claims should not be dismissed. We disagree, addressing plaintiff’s claims in turn.

In order to establish an FDCPA claim, a plaintiff must demonstrate: (1) the plaintiff is a consumer; (2) the defendant is a debt collector; (3) the challenged practice involves an attempt to collect a “debt” as defined by the FDCPA; and (4) the defendant violated the FDCPA in attempting to collect the debt. Midland Funding LLC v. Thiel, 446 N. J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F. 3d 299, 303 (3d Cir. 2014)). Here, the trial judge correctly considered legislative intent to determine whether the alleged conduct violated the FDCPA.

In examining the plain meaning of a statute, “the Legislature’s intent is paramount and, generally, the statutory language is the best indicator of that intent.” Hodges v. Sasil Corp., 189 N. J. 210, 223 (2007). “Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the legislation as a whole.” Ibid. “Our duty is to construe and apply the statute as enacted.” DiProspero v. Penn, 183 N. J. 477, 492 (2005) (quoting In re Closing of Jamesburg High Sch., 83 N. J. 540, 548 (1980)).

Plaintiff alleged defendant's use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. In support of his arguments, plaintiff cites out-of-state decisions interpreting the FDCPA. We note "decisions of the federal courts of appeals are not binding on this court," Daniels v. Hollister Co., 440 N. J. Super. 359, 367 n. 7 (App. Div. 2015), and therefore decline to address the out-of-jurisdiction cases cited by plaintiff. See Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36-3 (2025) ("On questions of federal constitutional law and statutory law, only decisions of the United States Supreme Court are binding on the courts of this state.").

We concur with the motion judge's determination that defendant's use of a letter vendor was not abusive, deceptive, nor unfair and reject plaintiff's proposed interpretation of the FDCPA as uncritically literal. Defendant's disclosure of debt-related information to a letter vendor was not the type of conduct Congress intended to regulate when it enacted the FDCPA. When viewing plaintiff's complaint and affording him all reasonable inferences of fact, plaintiff did not "genuinely allege" any facts establishing defendant's conduct violated the FDCPA.

We next address plaintiff's CFA claim. "To prevail on a CFA claim, a plaintiff must establish three elements: '1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal relationship between the unlawful conduct and the ascertainable loss.'" Zaman v. Felton, 219 N. J. 199, 222 (2014) (quoting Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009)). Allegations that contain only "mere[] statements of a legal conclusion" cannot survive a

motion to dismiss for failure to state a claim; a complaint must be supported by “specific facts that would allow a fact-finder to draw that conclusion.” Hoffman v. Hampshire Labs, Inc., 405 N.J. Super. 105, 114 (App. Div. 2009).

We agree with the motion judge’s determination plaintiff’s complaint failed to state a claim under the CFA because there was nothing unconscionable or unlawful about defendant’s actions, and plaintiff did not demonstrate an ascertainable loss.

Turning to plaintiff’s negligence claim, a plaintiff must establish “(1) a duty of care; (2) a breach of that duty; (3) proximate cause; and (4) actual damages.” Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N.J. 569, 584 (2008)).

Here, plaintiff alleged defendant owed him a duty “to maintain the confidentiality of his private financial information.” We concur with the motion judge’s determination that the FDCPA was not intended to impose a duty barring debt collectors from disclosing certain information to letter vendors; therefore, plaintiff failed to demonstrate defendant owed him a duty. Plaintiff also failed to show he suffered any damages, which is likewise fatal to his negligence claim. Finally, we consider plaintiff’s claim of invasion of privacy. “As a tort, invasion of privacy encompasses ‘four distinct kinds of invasion of four different interests of the plaintiff.’” Villanova v. Innovative Investigations, Inc., 420 N.J. Super. 353, 360 (App. Div. 2011) (quoting Rumbauskas v. Cantor, 138 N.J. 173, 179 (1994)). Relevant here, invasion of privacy includes “making public private information about plaintiff[.]” Ibid. (quoting Rumbauskas, 138 N.J. at 180).

“[I]nvasion of privacy by unreasonable publication of private facts occurs when . . . ‘the matters revealed were actually private, that dissemination of such facts would be offensive to a reasonable person, and that there is no legitimate interest of the public in being apprised of the facts publicized.’” Romaine v. Kallinger, 109 N. J. 282, 297 (1988) (quoting Bisbee v. John C. Conover Agency, 186 N. J. Super. 335, 340 (App. Div. 1982)).

Here, plaintiff alleged defendant invaded his privacy by “unreasonable publication of private facts” containing his financial information and, as a result, defendant damaged plaintiff “by exposing [his] private information to persons who lacked any right or entitlement to know [his] private financial information.”

We agree with the motion judge’s determination the complaint failed to state a claim for invasion of privacy because there was nothing unreasonable or offensive about defendant’s conveyance of plaintiff’s information to a letter vendor for the legitimate purpose of creating a collection letter.

To the extent we have not expressly addressed any of plaintiff’s remaining issues, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11–3(e)(1)(E).

Affirmed.

App–15

Appendix C

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36–3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A–3946–22

AMBER JONES, individually
and on behalf of all others similarly
situated,

Plaintiff-Appellant,

v.

AMERICAN CORADIUS INTERNATIONAL, LLC,

Defendant-Respondent.

Argued April 9, 2025 – Decided May 2, 2025

Before Judges Mayer and Puglisi.

On appeal from the Superior Court of New Jersey,
Law Division, Morris County, Docket No. L–
0895–22.

Mark H. Jensen argued the cause for appellant
(Kim Law Firm LLC, attorneys; Philip D. Stern
and Yongmoon Kim, on the briefs).

Aaron R. Easley argued the cause for respondent (Sessions Israel & Shartle, LLC, attorneys; Aaron R. Easley and Jay I. Brody, on the brief).

PER CURIAM

Plaintiff Amber Jones, individually and on behalf of those similarly situated, appeals from the July 13, 2023 Law Division order granting defendant American Coradius International, LLC's motion to dismiss plaintiff's complaint for failure to state a claim. We affirm.

Plaintiff incurred a debt and the lender transmitted that debt to defendant, a debt collector. Defendant engaged a third-party letter vendor to draft, print, address and mail a collection letter to plaintiff. The letter included plaintiff's account number, the amount due to the lender and plaintiff's full name and address.

In May 2022, plaintiff filed a single-count purported class action complaint alleging violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 to 1692p. Defendant, in lieu of an answer, moved to dismiss the complaint pursuant to Rule 4:6-2(e).

In June 2023, after hearing oral argument, the judge granted defendant's motion and dismissed the complaint with prejudice in an oral decision.¹ A July 13, 2023 order memorialized the decision.

¹ In dismissing the complaint, the judge rejected defendant's argument plaintiff lacked standing to bring a claim for violation of the FDCPA. We decline to address defendant's appellate arguments on this issue because defendant failed to file a timely cross-appeal. See Reich v. Borough of Fort Lee Zoning Bd. of Adjustment, 414 N. J. Super. 483, 499 n. 9 (App. Div. 2010) (declining to address respondent's assertion of error because it was not properly raised by cross-appeal).

In evaluating whether plaintiff sufficiently plead a claim for a violation of the FDCPA, the judge found defendant's communication with a letter vendor

[was] not a violation that was intended within the [FDCPA]. A third[-]party vendor [was] doing something that could easily be done in house. [The letter vendor] just . . . create[d] a letter to send out. It mean[t] nothing. There cannot be a violation of the [FDCPA] because it is just a hyper technical argument, if you will.

Technically, yes, there[was] a violation because they sent it to the printer, but [did] it violate the purpose of the [FDCPA]? Clearly, it [did] not. . . . [T]o say that it does creates an uncritical literalism, which is not appropriate.

This appeal follows.

We review de novo a motion to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)).

In considering a Rule 4:6-2(e) motion, “[a] reviewing court must examine ‘the legal sufficiency of the facts alleged on the face of the complaint,’ giving the plaintiff the benefit of ‘every reasonable inference of fact.’” Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). “The essential test [for determining the adequacy of a pleading] is simply ‘whether a cause of action is “suggested” by the facts.’” Green v. Morgan Props., 215 N.J. 431, 451-52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). “At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of [the]

plaintiff to prove the allegation contained in the complaint.” Printing Mart-Morristown, 116 N. J. at 746.

“[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed.” Dimitrakopoulos, 237 N. J. at 107. “A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N. J. 366, 378 (1995).

On appeal, plaintiff largely reprises the same arguments raised before the motion judge: her claims should not be dismissed. We disagree, addressing plaintiff's claims in turn.

In order to establish an FDCPA claim, a plaintiff must demonstrate: (1) the plaintiff is a consumer; (2) the defendant is a debt collector; (3) the challenged practice involves an attempt to collect a “debt” as defined by the FDCPA; and (4) the defendant violated the FDCPA in attempting to collect the debt. Midland Funding LLC v. Thiel, 446 N. J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F. 3d 299, 303 (3d Cir. 2014)). Here, the trial judge correctly considered legislative intent to determine whether the alleged conduct violated the FDCPA.

In examining the plain meaning of a statute, “the Legislature’s intent is paramount and, generally, the statutory language is the best indicator of that intent.” Hodges v. Sasil Corp., 189 N. J. 210, 223 (2007). “Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the legislation as a whole.” Ibid. “Our duty is to construe and apply the statute as enacted.”

DiProspero v. Penn, 183 N. J. 477, 492 (2005) (quoting In re Closing of Jamesburg High Sch., 83 N. J. 540, 548 (1980)).

Plaintiff alleged defendant's use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. In support of her arguments, plaintiff cites out-of-state decisions interpreting the FDCPA. We note "decisions of the federal courts of appeals are not binding on this court," Daniels v. Hollister Co., 440 N. J. Super. 359, 367 n. 7 (App. Div. 2015), and therefore decline to address the out-of-jurisdiction cases cited by plaintiff. See Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36-3 (2025) ("On questions of federal constitutional law and statutory law, only decisions of the United States Supreme Court are binding on the courts of this state.").

We concur with the motion judge's determination that plaintiff's proposed interpretation of the FDCPA was uncritically literal. Defendant's disclosure of debt-related information to a letter vendor was not abusive, deceptive, nor unfair, and was not the type of conduct Congress intended to regulate when it enacted the FDCPA. When viewing plaintiff's complaint and affording her all reasonable inferences of fact, plaintiff did not "genuinely allege" any facts establishing defendant's conduct violated the FDCPA.

To the extent we have not expressly addressed any of plaintiff's remaining issues, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

App–20

Appendix D

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36–3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A–1826–23

LATONYA MILLER, on behalf of
herself and those similarly situated,

Plaintiff-Appellant,

v.

AMERICOLLECT, INC,

Defendant-Respondent.

Argued April 9, 2025 – Decided May 2, 2025

Before Judges Mayer and Puglisi.

On appeal from the Superior Court of New Jersey,
Law Division, Essex County, Docket No. L–6164–
21.

Mark H. Jensen argued the cause for appellant
(Kim Law Firm LLC, attorneys; Philip D. Stern
and Yongmoon Kim, on the briefs).

Han Sheng Beh argued the cause for respondent (Hinshaw & Culbertson LLP, attorneys; Han Sheng Beh, on the brief).

PER CURIAM

Plaintiff Latonya Miller, on behalf of herself and those similarly situated, appeals from the January 18, 2024 Law Division order granting defendant Ameri-collect, Inc.’s motion to dismiss plaintiff’s complaint for failure to state a claim. We affirm.

Plaintiff incurred a debt and the lender transmitted that debt to defendant, a debt collector. Defendant engaged a third-party letter vendor to draft, print, address and mail a collection letter to plaintiff. The letter included plaintiff’s account number, the amount due to the lender and plaintiff’s full name and address.

Following dismissals of her initial and first amended complaints, plaintiff filed a second amended complaint in September 2022. The four-count purported class action complaint alleged violations of the Fair Debt Collection Practices Act (FDCPA), 15 U. S. C. §§1692 to 1692p; violations of the Consumer Fraud Act (CFA), N. J. S. A. 56:8–1 to –229; negligence and invasion of privacy, based on defendant’s sharing plaintiff’s personal information to a third party. Defendant, in lieu of an answer, again moved to dismiss the complaint pursuant to Rule 4:6–2(e).

After hearing oral argument, Judge Keith E. Lynott granted defendant’s motion and dismissed the complaint with prejudice in a January 18, 2024 order accompanied by a thorough and cogent written decision. The judge noted the plain language of the FDCPA prohibits a debt collector from communicating, “in connection with the collection of any debt, with any

person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.” 15 U. S. C. §1692c(b). After reviewing the legislative history of the FDCPA, the judge dismissed the claim, reasoning:

The essential purpose of the FDCPA ... is to address and deter abusive collection practices that give rise to a risk of embarrassment or other hardship to a debtor, such as ... communications directed at a family member, friend, neighbor, or employer of the debtor. Save as necessary to protect such interests of the debtor, the FDCPA is not intended to impede or impair legitimate collection efforts of a ... debt collector.

... There are no facts presently alleged that would permit a conclusion that the alleged supplying of information by [defendant] to the letter vendor was in any way intended to, or had or could have had the effect of[] harassing, embarrassing, or humiliating [plaintiff] or was otherwise undertaken for any reason other than legitimate collection activities directed to the debtor.

The judge dismissed plaintiff’s CFA claim because “[t]here [was] no violation of the FDCPA pleaded in the [c]omplaint or [a]mended [c]omplaint that could form the basis of a claim for relief under the CFA.” He further concluded “the transmission of information to a letter vendor is ... not an unconscionable commercial practice ... under the CFA” and “[t]here [was] nothing deceptive, fraudulent, or unconscionable about either engaging a letter vendor for a legitimate purpose or transmitting to such vendor information

the latter needs to perform its function.” The judge also found plaintiff had not established an ascertainable loss.

Next, the judge dismissed plaintiff’s negligence claim, concluding “[t]o the extent the FDCPA establishes a duty of care on the part of the debt collector as to the debtor, . . . the pleading does not allege a breach of such duty inasmuch as it does not allege a violation of the [FDCPA].”

Finally, the judge dismissed plaintiff’s invasion of privacy claim because “[t]here are no allegations that [the communicated information] became a matter of public knowledge or consumption. Indeed, the [p]laintiff does not allege that anyone at the letter vendor actually read the information concerning [her] debt, much less that such individual(s) publicized the information to the general public.”

This appeal follows.

We review de novo a motion to dismiss for failure to state a claim pursuant to Rule 4:6–2(e). Baskin v. P.C. Richard & Son, LLC, 246 N. J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N. J. 91, 108 (2019)).

In considering a Rule 4:6–2(e) motion, “[a] reviewing court must examine ‘the legal sufficiency of the facts alleged on the face of the complaint,’ giving the plaintiff the benefit of ‘every reasonable inference of fact.’” Ibid. (quoting Dimitrakopoulos, 237 N. J. at 107). “The essential test [for determining the adequacy of a pleading] is simply ‘whether a cause of action is “suggested” by the facts.’” Green v. Morgan Props., 215 N. J. 431, 451–52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N. J. 739, 746 (1989)). “At this preliminary stage of the

litigation the [c]ourt is not concerned with the ability of [the] plaintiff to prove the allegation contained in the complaint.” Printing Mart-Morristown, 116 N. J. at 746.

“[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed.” Dimitrakopoulos, 237 N. J. at 107. “A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N. J. 366, 378 (1995).

On appeal, plaintiff largely reprises the same arguments raised before the motion judge: her claims should not be dismissed. We disagree, addressing plaintiff’s claims in turn.

In order to establish an FDCPA claim, a plaintiff must demonstrate: (1) the plaintiff is a consumer; (2) the defendant is a debt collector; (3) the challenged practice involves an attempt to collect a “debt” as defined by the FDCPA; and (4) the defendant violated the FDCPA in attempting to collect the debt. Midland Funding LLC v. Thiel, 446 N. J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F. 3d 299, 303 (3d Cir. 2014)). Here, the trial judge correctly considered legislative intent to determine whether the alleged conduct violated the FDCPA.

In examining the plain meaning of a statute, “the Legislature’s intent is paramount and, generally, the statutory language is the best indicator of that intent.” Hodges v. Sasil Corp., 189 N. J. 210, 223 (2007). “Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving

sense to the legislation as a whole.” Ibid. “Our duty is to construe and apply the statute as enacted.” Di-Prospero v. Penn, 183 N.J. 477, 492 (2005) (quoting In re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980)).

Plaintiff alleged defendant’s use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. In support of her arguments, plaintiff cites out-of-state decisions interpreting the FDCPA. We note “decisions of the federal courts of appeals are not binding on this court,” Daniels v. Hollister Co., 440 N.J. Super. 359, 367 n. 7 (App. Div. 2015), and therefore decline to address the out-of-jurisdiction cases cited by plaintiff. See Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36–3 (2025) (“On questions of federal constitutional law and statutory law, only decisions of the United States Supreme Court are binding on the courts of this state.”).

We concur with the motion judge’s determination that defendant’s use of a letter vendor was not abusive, deceptive, nor unfair and reject plaintiff’s proposed interpretation of the FDCPA as uncritically literal. Defendant’s disclosure of debt-related information to a letter vendor was not the type of conduct Congress intended to regulate when it enacted the FDCPA. When viewing plaintiff’s complaint and affording her all reasonable inferences of fact, plaintiff did not “genuinely allege” any facts establishing defendant’s conduct violated the FDCPA.

We next address plaintiff’s CFA claim. “To prevail on a CFA claim, a plaintiff must establish three elements: ‘1) unlawful conduct by defendant; 2) an ascertainable loss by plaintiff; and 3) a causal

relationship between the unlawful conduct and the ascertainable loss.” Zaman v. Felton, 219 N. J. 199, 222 (2014) (quoting Bosland v. Warnock Dodge, Inc., 197 N. J. 543, 557 (2009)). Allegations that contain only “mere[] statements of a legal conclusion” cannot survive a motion to dismiss for failure to state a claim; a complaint must be supported by “specific facts that would allow a fact-finder to draw that conclusion.” Hoffman v. Hampshire Labs, Inc., 405 N. J. Super. 105, 114 (App. Div. 2009).

We agree with the motion judge’s determination plaintiff’s complaint failed to state a claim under the CFA because there was nothing unconscionable or unlawful about defendant’s actions, and plaintiff did not demonstrate an ascertainable loss.

Turning to plaintiff’s negligence claim, a plaintiff must establish “(1) a duty of care; (2) a breach of that duty; (3) proximate cause; and (4) actual damages.” Townsend v. Pierre, 221 N. J. 36, 51 (2015) (quoting Polzo v. Cnty. of Essex, 196 N. J. 569, 584 (2008)).

Here, plaintiff alleged defendant owed her a duty “to maintain the confidentiality of her private healthcare and financial information.” We concur with the motion judge’s determination that the FDCPA was not intended to impose a duty barring debt collectors from disclosing certain information to letter vendors; therefore, plaintiff failed to demonstrate defendant owed her a duty. Plaintiff also failed to show she suffered any damages, which is likewise fatal to her negligence claim.

Finally, we consider plaintiff’s claim of invasion of privacy. “As a tort, invasion of privacy encompasses ‘four distinct kinds of invasion of four different interests of the plaintiff.’” Villanova v. Innovative

Investigations, Inc., 420 N. J. Super. 353, 360 (App. Div. 2011) (quoting Rumbauskas v. Cantor, 138 N. J. 173, 179 (1994)). Relevant here, invasion of privacy includes “making public private information about plaintiff[].” Ibid. (quoting Rumbauskas, 138 N. J. at 180).

“[I]nvasion of privacy by unreasonable publication of private facts occurs when . . . ‘the matters revealed were actually private, that dissemination of such facts would be offensive to a reasonable person, and that there is no legitimate interest of the public in being apprised of the facts publicized.’” Romaine v. Kallinger, 109 N. J. 282, 297 (1988) (quoting Bisbee v. John C. Conover Agency, 186 N. J. Super. 335, 340 (App. Div. 1982)).

Here, plaintiff alleged defendant invaded her privacy by “unreasonable publication of private facts” containing her financial information and, as a result, defendant damaged plaintiff “by exposing [her] private information to persons who lacked any right or entitlement to know [her] private financial information.”

We agree with the motion judge’s determination the complaint failed to state a claim for invasion of privacy because there was nothing unreasonable or offensive about defendant’s conveyance of plaintiff’s information to a letter vendor for the legitimate purpose of creating a collection letter.

To the extent we have not expressly addressed any of plaintiff’s remaining issues, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not “constitute precedent or be binding upon any court.” Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0158-24

SCOTT DIANA, on behalf of himself and those similarly situated,

Plaintiff-Appellant,

v.

FIRST NATIONAL COLLECTION BUREAU, INC.,

Defendant-Respondent,

and

LVNV FUNDING, LLC.

Defendant.

Argued September 16, 2025 – Decided October 6, 2025

Before Judges Susswein, Chase and Augostini.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L-3014-23.

Yongmoon Kim argued the cause for appellant (Kim Law Firm, LLC, attorneys; Yongmoon Kim, Mark H. Jenson, and Philip D. Stern, on the briefs).

Austin P. O'Brien (J. Robbin Law, PLLC) argued the cause for respondent.

PER CURIAM

Plaintiff Scott Diana, on behalf of himself and those similarly situated, appeals from an August 2, 2024, Law Division order granting defendant First National Collection Bureau, Inc.'s ("FNCB") motion to dismiss his complaint for failure to state a claim. We affirm.

In 2015, Credit One Bank, N.A. issued a credit card to plaintiff. He made payments for six months, then stopped, despite continuing to make purchases. The bank canceled the account and transferred all rights and interests of the debt to LVNV Funding, LLC ("LVNV").

Resurgent Capital Services, L.P, as LVNV's servicing agent assigned the account to FNCB, a Nevada corporation registered to transact business in New Jersey. FNCB then hired a third-party letter vendor to prepare and mail a collection letter to plaintiff. This letter included plaintiff's account number, the amount due, and his full name and address.

In August 2023, plaintiff filed a four-count putative class action complaint alleging: (1) violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 to 1692p; (2) violations of the Consumer Fraud Act; (3) negligence; and (4) invasion of privacy based on defendant's sharing of plaintiff's personal information with a third-party vendor it employed to mail a collection letter to plaintiff. The

parties later filed a stipulation to dismiss LVNV and the Consumer Fraud Act count.

In lieu of an answer, defendant moved to dismiss the complaint under Rule 4:6–2(e), arguing plaintiff failed to state a claim upon which relief may be granted. The court dismissed all counts, issuing an oral opinion, and entered a corresponding order.¹

This appeal follows.

I.

We review de novo a motion to dismiss for failure to state a claim pursuant to Rule 4:6–2(e). Baskin v. P.C. Richard & Son, LLC, 246 N.J. 157, 171 (2021) (citing Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019)). We evaluate only the “‘the legal sufficiency of the facts alleged on the face of the complaint,’ giving the plaintiff the benefit of ‘every reasonable inference of fact.’” Ibid. (quoting Dimitrakopoulos, 237 N.J. at 107). “The essential test [for determining the adequacy of a pleading] is simply ‘whether a cause of action is “suggested” by the facts.’” Green v. Morgan Props., 215 N.J. 431, 451–52 (2013) (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). “At this preliminary stage of the litigation the [c]ourt is not concerned with the ability of [the] plaintiffs to prove the allegation contained in the complaint.” Printing Mart-Morristown, 116 N.J. at 746. “[I]f the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed.” Dimitrakopoulos,

¹ Plaintiff does not appeal the dismissal of claims alleging negligence and invasion of privacy.

237 N.J. at 107. “A trial court’s interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.” Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

II.

On appeal, plaintiff contends that the trial court misapplied applying the FDCPA and misinterpreted congressional intent in enacting it. We disagree.

The relevant statute, 15 U.S.C. § 1692c(b), states:

Except as provided in section 1692b of this title, 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, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

To succeed on an FDCPA claim, a plaintiff must prove: “(1) [he] is a consumer, (2) the [party seeking payment] is a debt collector, (3) the . . . challenged practice involves an attempt to collect a ‘debt’ as the [FDCPA] defines it, and (4) the [collector] has violated a provision of the FDCPA in attempting to collect their debt.” Midland Funding LLC v. Thiel, 446 N.J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F.3d 299, 303 (3d Cir. 2014)).

In examining the plain meaning of a statute, “the Legislature’s intent is paramount and, generally, the statutory language is the best indicator of that intent.” Hodges v. Sasil Corp., 189 N.J. 210, 223 (2007) (citing DiProspero v. Penn, 183 N.J. 477, 492 (2005)). “Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the legislation as a whole.” Ibid. The “[c]ourt’s duty is clear: ‘construe and apply the statute as enacted.’” Ibid. (quoting In re Closing of Jamesburg High Sch., 83 N.J. 540, 548 (1980)).

“In adopting the Act, [. . .] Congress left no doubt that its purpose was to protect debtors from abuse and that Congress perceived a need for national uniformity to fulfill that goal.” Rutgers-The State Univ. v. Fogel, 403 N.J. Super. 389, 394 (App. Div. 2008). The FDCPA begins by reciting the findings made by Congress as the basis for its adoption. Congress found there to be “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a). Those unacceptable practices “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” Ibid.

The statute’s clear wording shows that the FDCPA does not apply to every communication made to a third party. Only communications whose primary purpose is to induce payment violate the FDCPA’s third-party communication restrictions. Here, FNCB’s transmission of plaintiff’s information to a letter vendor did not itself seek to collect payment. Instead, it represented an internal step to facilitate mailing the collection letter. As such, it was not violative of the FDCPA.

Plaintiff also alleges defendant's use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. In support of his arguments, plaintiff cites out-of-state decisions interpreting the FDCPA. We note "decisions of the federal courts of appeals are not binding on this court," Daniels v. Hollister Co., 440 N.J. Super. 359, 367 n.7 (App. Div. 2015), and therefore decline to address the out-of-jurisdiction cases cited by plaintiff. See Pressler & Verniero, Current N.J. Court Rules, cmt. 3.5 on R. 1:36-3 (2025) ("On questions of federal constitutional law and statutory law, only decisions of the United States Supreme Court are binding on the courts of this state.").

Plaintiff reads the FDCPA too literally. The statute does not cover FNCB's conduct here. Even affording plaintiff all reasonable inferences, his complaint fails to allege facts that could establish a violation of the FDCPA.

Because a debt collector's use of a third-party letter vendor to mail a collection notice does not constitute prohibited third-party communication under the FDCPA and because defendant did not file a cross appeal, we do not need to reach the issue of whether plaintiff had standing.

To the extent we have not expressly addressed any of plaintiff's remaining issues, it is because they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

App-34

Appendix F

[Filed: Apr. 26, 2023]

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: PASSAIC COUNTY**

TARIQ ELSHABBA, on
behalf of himself and all
others similarly situated,

Plaintiff,

-against-

JEFFERSON CAPITAL
SYSTEMS, LLC,

Defendants.

**DOCKET NO. PAS-L-
1676-21**

THE COURT, HAVING CONSIDERED the Motion to Dismiss filed by Defendant, Jefferson Capital Systems, LLC, pursuant to R. 4:6-2(a) & (e) and seeking dismissal of the Complaint filed by Plaintiff, Tariq Elshabba;

IT IS HEREBY ORDERED that the Motion is GRANTED. The Complaint filed by Plaintiff is hereby dismissed without prejudice.

Entered this 26 day of April, 2022.

/s/ Bruno Mongiardo, JSC
Bruno Mongiardo, J.S.C.

Opposed

See full opinion by the Court read into the record 4/26/23 at 9:30.

App-35

Appendix G

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
PASSAIC COUNTY
DOCKET NO. PAS-L-1676-21
APP. DIV. NO.

TARIQ ELSHABBA, on :	
behalf of himself and all :	TRANSCRIPT OF
others similarly situated, :	MOTION TO DIS-
	MISS
Plaintiff :	(COURT DECISION)
	:
vs. :	
	:
JEFFERSON CAPITAL :	
SYSTEMS, LLC, :	
	:
Defendant. _____ :	

Place: Passaic County Courthouse
(Heard Via Zoom)

Date: April 26, 2023

B E F O R E:

HONORABLE BRUNO MONGIARDO, J.S.C.

TRANSCRIPT ORDERED BY:

EUNICE JEON, ESQ. (Kim Law Firm, LLC)

APPEARANCES

PHILIP D. STERN, ESQ. (Kim Law Firm, LLC)

Attorney for the Plaintiff

AARON R. EASLEY, ESQ. (Session, Israel & Shartle, LLC)

Attorney for the Defendant

Coleen Rand, AD/T 419
RedDoor Legal Services, LLC
44 Valley Forge Road

App-36

Bordentown, N.J. 08505
(973) 985-3668
www.reddoorlegalservices.com
Audio Recorded by Salwa Laham

[Index Omitted]

(Proceedings commence at 9:28 a.m.)

THE COURT: Yes. Good morning. Do I have defense counsel/movant calling in on Jefferson Capital?

MR. EASLEY: Yes. Defense counsel here, Your Honor. How are you?

THE COURT: Good.

Okay. I have both counsel calling in.

This is the matter of Tariq Elshabba v. Jefferson Capital Systems, LLC, Docket PAS-L-1676-21. This is Judge Mongiardo.

When we heard oral argument on this matter, I had advised both counsel that I would let you know when I would be reading a decision into the record and I invited both counsel to listen in. I now have both counsel on the line.

If I can have counsel enter their appearances, please.

MR. STERN: May it please the Court, Your Honor. Good morning. Philip Stern from the Kim Law Firm on behalf of the plaintiff.

THE COURT: Good morning, Counsel.

MR. EASLEY: Aaron Easley here, Your Honor, from Sessions, Israel & Shartle, on behalf of defendant.

THE COURT: All right. Good morning.

As I indicated to you, basically, I can't send out typed decisions, so I write out my decisions and read them into the record. I'd prefer doing it some other way, but I can't. And this way, there will be a full

transcript of my decision, so that whichever side disagrees with the Court's ruling would have the opportunity to order a transcript if you seek appellate review.

Again, I don't like this procedure, quite frankly, because it does take up additional time from the Court, and sometimes it's difficult for me to read my own handwriting because I do not have the best handwriting in the world.

But in any event, I appreciate the indulgence and the patience of counsel in permitting me to go forward with this kind of a procedure.

As I indicated, this is the matter of Tariq Elshabba v. Jefferson Capital Systems, LLC, Docket PAS-L-1676-21.

Now this matter comes before the Court on the defendant's motion to dismiss. Plaintiff has filed an opposition to the motion and movant has filed a reply to the opposition.

The Court did consider all written submissions of the parties, as well as the oral arguments of counsel which took place on March 1, 2023.

During oral argument, plaintiff's counsel referred to a transcript of a motion hearing before the Honorable Esther Salas, U.S.D.J., in which Her Honor denied a motion to dismiss for failure to state a claim, where the plaintiff argued, as the plaintiff argues here, that a collection letter which asserts that there could be a, quote, "savings" for making a payment on a time-barred debt is misleading.

This Court asked counsel to submit this transcript both to the Court and his adversary. This was done on March 3rd of 2023. Defense counsel/movant responded to that communication on March 14th, 2023.

The Court has now reviewed the transcript, as well as defense counsel's response to same, and the Court will be commenting upon this later on in its decision.

The defendant, pursuant to Rule 4:6-2(a) and (e), now brings this motion to dismiss the claims asserted by the plaintiff for lack of standing and/or for failure to state a claim upon which relief may be granted.

Throughout the course of this decision, the Court will be, at times, referring to Jefferson Capital as "J Cap" or "JCS," again, for the purposes of brevity.

Now this putative class action arises from a single collection letter dated May 23rd, 2020, the "letter," sent by Defendant J Cap to the plaintiff. Plaintiff alleges that J Cap violated the Fair Debt Collection Practices Act, hereinafter "FDCPA," Title 15 U. S. C. § 1692, et seq, in two distinct ways:

Number one, J Cap violated Section 1692c(b) of the FDCPA by transmitting his name, address, status as a debtor, balance of his debt, and name of his creditor to a third-party letter vendor in order to print and send the letter.

And two, despite plaintiff's admission that the letter contained the required time-barred disclosure, J Cap violated Sections 1692d, 1692e, and 1692f of the FDCPA by attempting to collect a time-barred debt because the letter, quote:

"-- included convoluted language which could mislead the least sophisticated consumer about the effect of a payment or an agreement to pay on the statute of limitations."

As far as the procedural history of the case, Plaintiff Elshabba initiated the instant action on May 23rd, 2021 by filing a class action complaint which alleges

multiple violations of the FDCPA on behalf of himself and those similarly situated.

The action was filed in New Jersey State Court, but was timely removed to the U.S. District Court for the District of New Jersey on June 24th, 2021, based upon federal question jurisdiction.

Thereafter, the District Court of New Jersey apparently issued several opinions, concluding that the transmission of information to a letter vendor does not result in any actual injury and does not confer Article III standing. In light of these decisions, J Cap agreed to remand the case to this Court.

As far as the standing issue is concerned, plaintiff is alleging the violation of a federal law. Like the Federal Court, the New Jersey Courts require that the plaintiff have standing to invoke these judicial powers. See *New Jersey Department of Environmental Protection v. Exxon Mobil Corporation*, 453 N. J. Super. 272, at Pages 291-292 (App. Div. 2018).

Whether a party has standing is a threshold justiciability determination that must be made by the Court and that is not subject to waiver or consent. Again, see the *Exxon Mobil* case.

To have standing in New Jersey, the plaintiff must, quote:

“-- present a sufficient stake in the outcome of the litigation, a real adverseness with respect to the subject matter, and a substantial likelihood that the party will suffer harm in the event of an unfavorable decision.”

See *In Re Camden County*, 170 N. J. 439, at Page 449 (2002).

This Court concludes that the plaintiff lacks standing for the following reasons:

First, there is not a, quote, “substantial likelihood” that the plaintiff will, quote:

“-- suffer harm in the event of an unfavorable decision.”

Plaintiff does not allege that he suffered any injury whatsoever as a result of J Cap issuing -- using a letter vendor or sending a letter containing t disclosure regarding the effect of a payment on the statute of limitations. He alleges no financial, physical, or emotional injury due to J Cap’s conduct.

He does not allege the letter vendor or anyone at the vendor misused the information or transferred it to someone else. He does not even allege that any individual at the letter vendor saw his information, as opposed to the vendor assimilating the information into letters and then printing and sending the letters via automatic -- automated process.

Finally, he does not allege that he acted or did not act as a result of the statute of limitations disclosure in the letter. Thus, the plaintiff does not risk any harm from an unfavorable decision in this case.

Second of all, plaintiff does not have a, quote, “sufficient stake” in the litigation and, quote:

“-- real adverseness with respect to the subject matter.”

As a matter of constitutional law, laws passed by Congress are to be enforced by the Executive Branch. See *TransUnion, LLC v. Ramirez*, 141 S. Ct. 2190, Page 2203 (2021).

Congress has specifically tasked two federal agencies with implementing and enforcing the FDCPA: The FTC and the CFPB. Because plaintiff suffered no actual harm due to J Cap’s supposed statutory violation, his stake in the case and adverseness is, in effect,

the interest in policing J Cap's compliance with the FDCPA, generally, which is the job of the FTC and the CFPB.

Now whether a plaintiff has standing raises an issue of the Court's subject matter jurisdiction. See *Watkins v. Resorts International Hotel & Casino, Incorporated*, 124 N.J. 398 (1991).

In evaluating a motion to dismiss due to lack of standing, the same standard which applies to a Rule 462(e) motion would apply. And even though this Court finds no standing, nonetheless, the Court will analyze the Rule 462(e) motion for the sake of completeness. And again, since the standing issue is just one issue in case an appellate court decides that this Court is incorrect, insofar as a conclusion that there is no standing, the Court will continue to analyze this case under Rule 462(e).

In reviewing a motion to dismiss for failure to state a claim under Rule 462(e), the standard of review is whether the complaint fails to articulate a legal basis entitling the plaintiff to relief. It requires the Court to search the complaint in depth with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of a claim, opportunity being given to amend if necessary. See *Printing Mart-Morristown v. Sharp Electronics Corporation*, 116 N. J. 739, at Page 746 (1989).

Every reasonable inference is, therefore, accorded to plaintiff. And the motion is granted only in rare instances and ordinarily without prejudice. At this early stage of the litigation, the Court is not concerned with the ability of plaintiff to prove the allegations contained in the complaint. Again, *Printing Mart-Morristown*.

A motion to dismiss for failure to state a claim must be granted only if even a painstaking and generous reading of the allegations does not provide a legal basis for recovery. Again, see *Printing Mart- Morristown*, *supra*.

See also *Camden County Energy Recovery Associates v. New Jersey DEP*, 320 N.J. Super., Page 59, Pages 64-65 (App. Div. 1999), affirmed 170 N.J. 246 (2001).

Quote:

“If a generous reading of the allegations merely suggests a cause of action, the complaint will withstand a motion to dismiss.”

See *F.G. v. MacDonell*, 150 N.J. 550, Page 556 (1997).

New Jersey is a fact, rather than a notice pleading jurisdiction, which means that a plaintiff must allege facts to support his or her claim, rather than merely reciting the elements of a cause of action. See *Nostrame v. Santiago*, 420 N.J. Super., at Page 427, specifically Page 436 (App. Div. 2011), affirmed as modified 213 N.J. 109 (2013).

A plaintiff cannot simply assert that any essential facts that the Court may find lacking can be dredged up in discovery. See *Nostrame* at Page 436.

However, dismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted. See *Rieder v. State Department of Transportation*, 221 N.J. Super. 547 (App. Div. 1987).

The plaintiff is required to plead facts, if proven, that would establish a cause of action and entitlement to relief. See *Sickles v. Cabot Corporation*, 379 N.J. Super. 110, at Page 106 -- strike that -- 100, at Page

106, Appellate Division, certification denied 185 N.J. 297 (2005).

On a motion made pursuant to Rule 462(e), the Court's inquiry is confined to a, quote:

-- consideration of the legal sufficiency of the alleged facts apparent on the face of the challenged claim."

See Rieder, *Supra*, 221 N. J. Super. at 552.

Now, while the Court should give plaintiff the benefit of every reasonable inference of fact and read the complaint in the light most favorable to the plaintiff, the Court should also recognize that, quote:

-- pleading and reciting mere conclusions without facts in reliance on subsequent discovery do not justify a lawsuit."

See *Glass v. Suburban Restoration Company*, 317 N. J. Super. 574, at Page 582 (App. Div. 1998).

New Jersey Courts disfavor plaintiffs relying on discovery to formulate a legal theory. See *Camden County Energy Recovery Associates*, *Supra*, 320 N.J. Super. at Page 64.

The mere recitation of a claim's elements is insufficient. See *Nostrame v. Santiago*, 420 N. J. Super., *Supra*, at Page 436.

Now if the complaints no basis for relief and discovery would not provide one, then dismissal of the complaint is appropriate. See *Lembo v. Marchese*, 242 N.J. 477, at Pages 495 and 496 (2020).

Now the motion to dismiss for failure to state a claim, if addressed to the entire complaint, permits the Court, in its discretion, to dismiss only some of the counts. See *Jenkins v. Region Nine Housing*, 306 N.J. Super. 258 (App. Div. 1997), cert denied 153 N.J. 405 (1998).

As far as the legal analysis in this case is concerned, the FDCPA is a federal statute that was passed to curtail abusive, deceptive, and unfair debt collection practices. It provides extraordinary incentives to would-be plaintiffs and their attorneys to throw claims against the wall to see if one will stick. Up to \$1,000 in statutory damages, actual damages, strict liability, and shifting attorneys' fees, these are some of the incentives. See Title 15, U. S. C., Section 1692k.

As one federal court has stated, these incentives have led to FDCPA litigation becoming, quote:

-- a glorified game of gotcha with a cottage industry of plaintiffs' lawyers filing suits over fantasy harms the statute was never intended to prevent."

See *In Re FDCPA Mailing Vendor Cases*, 551 F.Supp. 3d 57, at Page 61 (E.D.N.Y. 2021).

The FDCPA cases, quote, "are of" -- strike that --

-- are often brought for the non-salutary purposes of squeezing a nuisance settlement and a pittance of attorneys' fees out of a collection company, which it will offer find cheaper to pay than to litigate."

See *Huebner v. Midland Credit Management, Incorporated* 85 F. Supp.3d 672, at Page 673 (E.D.N.Y. 2015).

Now whether the defendant's conduct complies with the FDCPA is a question of law for the Court to decide, bearing in mind the FDCPA's twin aims of protecting consumers from abusive, deceptive, unfair conduct and ensuring that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged. See *Jacobson v. Heathcare Financial Services, Incorporated*, 516 F. 3d,

Page 85, specifically at Page 90 (2d Cir. 2008). Also see Title 15, U.S.C., Section 1692e.

Now the plaintiff asserts two related, but separate theories of FDCPA liability:

One, that J Cap violated 1692c(b) by using a letter vendor in the first place;

And two, that J Cap violated 1692e because the letter, quote:

-- could mislead the least sophisticated consumer about the effect of a payment or an agreement to pay on the statute of limitations.”

When construing the FDCPA, the New Jersey Supreme Court applies the general rules of statutory constructions. Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the litigation as a whole. This Court’s duty is clear: “To construe and apply the statute as enacted,” quote/unquote. See *Hodges v. Sasil Corporation*, 189 N. J. 210, at Page 223 (2007).

The plain language of the statute is the starting point. See *Patel v. N.J. Motor Vehicle Commission*, 200 N. J. 413, at Page 418 (2009).

Courts may not rewrite a plainly written law or presume that the Legislature intended something other than what it expressed in plain words. See *In Re Plan for Abolition of the Council on Affordable Housing*, 214 N. J. 444, at Page 468 (2013).

If the language of a statute is clear, a court’s task is complete. See *O’Connell v. State*, 171 N. J. 484, at Page 488 (2002).

Now plaintiff asserts that, by transmitting data to its letter vendor, so that the vendor could print and send him a letter, J Cap violated Section 1692c(b) of the FDCPA.

Read literally and in isolation, 1692c(b) arguably supports plaintiff's theory. However, as the Court in *Miller v. Americollect, Incorporated, et al* -- Case Number ESX-L-6164-21, Law Division, 2022 -- found, this theory fails according to several principles of statutory construction.

While the unpublished decision of the Honorable Keith E. Lynott is not binding and/or precedential, this Court can look at it for guidance and persuasiveness, again, this Court recognizing that it is not a binding decision on the Court, nor can it be viewed as precedent. However, this Court finds that Judge Lynott's decision is well reasoned and persuasive.

As noted by Judge Lynott, plaintiff's letter vendor claim is an exercise in, quote, "uncritical literalism" that fails under fundamental principles of statutory construction.

Now, in construing a statute, the Court's goal is to give effect to the Legislator's intent. See *Diprospero v. Penn*, 183 N. J. 477, at Page 492 (2005).

Generally speaking, if the language of a statutory provision is, quote/unquote, "plain," courts employ the plain meaning approach. See *Hardt v. Reliance Standard Life Insurance Company*, 560 U. S. 242, at Page 251 (2010).

However, in deciding whether a particular statutory provision is, quote/unquote, "plain," courts do not view the provision, quote, "literally or in isolation." See *Pettus v. Morgenthau*, 554 F. 3d 293, at Page 297 (2d. Cir. 2009).

Instead, the plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole.

See *Robinson v. Shell Oil Company*, 519 U. S. 337, at Page 341 (1997).

Further, even where the statutory language is, quote/unquote, “plain,” courts decline to apply the plain meaning where it is either at odds with the Congress’ intent or would lead to absurd results. See *Pub. Citizen v. U.S. Department of Justice*, 491 U. S. 440, at Page 455 (1989).

Plaintiff’s theory is contrary to Congress’ intent. The Senate Report on the FDCPA lays out the type of conduct Congress was attempting to curtail through Section 1662c(b), namely, quote:

“-- disclosing a consumer’s personal affairs to friends, neighbors, or an employer.”

See Senate Report Number 95-382, at Page 2, 1977.

Now courts have repeatedly relied on Senate Reports in concluding that Congress did not intend to prohibit the use of letter vendors through Section 1662c(b) [sic]. See *Miller, Supra*, at Page 16, noting -- again, that should be 1662 -- noting that Section 1662c(b) was meant to protect consumers against the embarrassment and reputational harm from having their debts disclosed to friends, family, neighbors, et cetera, and that a consumer is threatened with no such harm by a letter vendor assimilating transmittal information into a letter that is sent to the consumer.

This Court will reference additional nonpublished decisions for guidance only, understanding that they have no binding precedential value. Again, I’ve been provided with a number of these decisions, I have the full decisions. And again, this Court recognizes they are not precedent, nor are they binding on this Court, but the Court can look at them for the question of

whether or not they make sense, as far as being persuasive.

Now see *Cavazzini v. MRS Associates, et al*, 2021 WL 5770273 at *6 (E.D.N.Y., December 6, 2021), where the Court noted that, quote:

“Congress intended to target certain especially harmful debt collection practices, not all communications by debt collectors to third parties.”

And certainly did not -- did -- and certainly not the mere transmission of data to a letter vendor. See also *Barclift v. Keystone Credit Services, Incorporated*, 2022 WL 444267, *9 (E.D. Pa. February 14, 2022), where the Court noted that Congress’ intent in including Section 1692c(b) was preventing disclosures to who know the consumer and affect his or her reputation, not companies hired to perform tasks like printing and sending a letter.

Section 1692c(b) only prohibits, quote:

-- communications in connection with the collection of a debt.”

As the Miller Court noted, the transmission of data to the vendor was not an attempt to collect the debt because the data, quote:

-- was of no moment whatsoever to the letter vendor or its personnel.”

See Miller at Page 17.

The Miller Court found that a letter vendor is more akin to a medium through which communications are effected. See Miller at Page 14.

Since the Miller decision, at least three other New Jersey State Court Judges have followed the Miller reasoning and have dismissed the plaintiff’s FDCPA third-party disclosure letter vendor claims as a matter of law:

See the December 16th, 2022 transcript of a hearing on the defendant's motions to dismiss in Jasmine Mhrez -- that's -- h-r-e-z -- v. Convergent Outsourcing, Incorporated, Case Number HUD-L-731-22. and Jasmine Mhrez v. Radius Global Solutions, and transcripts of the hearing in the defendant's motion to dismiss in Fay Ruben (phonetic) v. TransWorld Systems, Incorporated, Case Number OCN-L-2066-21, New Jersey Superior Court, January 20th, 2023.

While this Court, again, understands that these decisions are not binding precedent, J Cap's motion herein relies on the same arguments raised by the defendants in Miller, Mhrez, and Ruben. And plaintiff's arguments in opposition are identical to those raised by opposing counsel on behalf of the Miller plaintiff and ultimately rejected by the Court. This Court looks to these thorough and well reasoned decisions for guidance and finds them to be persuasive.

As the Court noted in Mhrez, at Page 12, transmitting information to a letter vendor does not implicate any of the reputational concerns that prompted Congress to include Section 1692c(b) in the FDCPA. Absent some allegation that the vendor misused or publicly disseminated the plaintiff's information or some allegation that the transmission caused the consumer reputational harm, the FDCPA letter vendor claim fails.

In short, plaintiff alleges that J Cap used a letter vendor to undertake the task of printing and sending him a collection notice, which required J Cap to send the vendor the information to be included in the letter. Critically and most importantly, plaintiff does not allege that the vendor misused the information, that the vendor disseminated the information, or even that

any individual at the vendor saw the information. This was, at most, a benign administrative task. The FDCPA, upon which plaintiff relies, is a statute designed to present -- prevent abusive, harassing, or misleading conduct. The use of the letter vendor does not involve any of that.

Next, the Court will address the content and substance of the letter itself.

Plaintiff argues that J Cap violated Sections 1692d, 1692e, and 1692f of the FDCPA by attempting to collect a time-barred debt because the letter, quote:

-- included convoluted language which could mislead the lease sophisticated consumer about the effect of a payment on an agree" -- "or an agreement to pay on the statute of limitations."

Now J Cap's letter is not false, deceptive, or misleading as to the effect of a payment on the enforceability of the debt. Section 1692e of the FDCPA prohibits debt collectors from using, quote:

-- any false, deceptive, or misleading representation or means in connection with the collection of any debt."

Courts examine this section through the lens of the, quote, "lease sophisticated debtor," which, quote:

-- preserves a quotient of reasonableness and presumes a basic level of understanding and willingness to read with care."

See *Rosenau v. Unifund Corporation*, 539 F.3d 2018 -- 218, at Page 221 (3d. Cir. 2008).

The lease sophisticated debtor standard ensures the FDCPA protects naive and astute consumers. Again, see the *Rosenau* decision.

Now attempting to collect a time-barred debt is not a per se violation of the FDCPA. The majority of

courts have held that, when the expiration of the statute of limitations does not invalidate a debt, that it merely makes it unenforceable, the FDCPA permits a debt collector to seek voluntary repayment of the time-barred debt, so long as the debt collector does not initiate or threaten legal action in connection with the debt collection efforts. See *Huertas v. Galaxy Asset Management*, 641 F.3d 28, at Pages 32-33 (3d. Cir. 2011).

Here, J Cap's letter provides the following time-barred debt disclosure to provide notice to the plaintiff that he could not be sued for the balance of the debt because the statute of limitations has passed. Specifically, the letter reads, quote:

"This information is not legal advice. The law limits how long you can be sued on a debt. Because of the age of your debt, we, Jefferson Capital Systems, LLC, cannot sue you for it. In many circumstances, you can review the debt and start the time period for the filing of a lawsuit against you if you take specific actions, such as making certain payments on the debtor or making a written promise to pay. You should determine the effect of the actions you take with respect to this debt."

In *Tatis v. Allied Interstate, LLC*, 882 F.3d 422 (3d. Cir. 2018), the Court analyzed whether offers to settle time-barred debt could mislead the least sophisticated debtor. There, the Court expressly stated, quote:

"Standing alone, settlement offers and attempts to obtain voluntary repayments of stale debt do not necessarily constitute deceptive or misleading practices."

See again the *Tatis* case at Page 430.

The Court went on to state, quote:

“-- nor do we impose any specific mandates on the language debt collectors must use, such as requiring them to explicitly disclose that the statute of limitations has run.”

Again, see the Tatis decision.

“Rather, in keeping with the text and purpose of the FDCPA, we merely reiterate that any such letters, when read in their entirety, must not deceive or mislead the least sophisticated debtor into believing he or she has a legal obligation to pay the time-barred debt.”

Again, that’s specific language from Tatis.

In analyzing this standard, the Federal Court, District of New Jersey, found in *Blair v. Federal Pac. Credit Company, LLC*, that, quote:

“Where the letter does not use the word ‘settlement,’ but instead offers an opportunity to ‘satisfy’ an account, the least sophisticated debtor would not be misled into believing that he or she had a legal obligation to pay the time-barred debt.”

563 F. Supp. 3d 347, at Page 360 (D.N.J. 2021).

Now plaintiff argues that the letter mailed to the plaintiff states that Mr. Elshabba could, quote/unquote, “resolve his debt” if he made certain payments as proposed by J Cap. J Cap’s letter, which promised, quote, “offers for savings” and a subsequent resolution of plaintiff’s alleged debt would lead the least sophisticated consumer to believe that J Cap could enforce a debt that it could not.

Further, plaintiff argues the text of the disclaimer located auspiciously after the offers for savings and resolution of the debt was not bolded, italicized, underlined, or otherwise set apart.

The same disclaimer status -- or states -- strike that.
The same disclaimer states that, quote:

“In many circumstances, you can renew the debt and start this time period for the filing of a lawsuit against you if you take specific actions.”

Now immediately preceding the disclaimer there is a sentence stating the expiration date of the offers, and that JCS is, quote, “not obligated to renew these offers.”

According to plaintiff, not only does the letter fail to fully communicate the potential consequences of making a partial payment, it encourages the reader to do so.

However, this Court finds plaintiff's argument to be unpersuasive. Plaintiff's argument is wrong because the letter expressly states that JCS will not be used - - or strike that -- will not sue to enforce the debt due to its age, instead of stating, quote:

“Certain payments or partial payments can revive the statute of limitations.”

The letter properly states, quote:

“In many circumstances, you can renew the debt and start the time period for the filing of a lawsuit against you if you take specific actions, such as making certain payment on the debt or making a written promise to pay. You should determine the effect of any actions you take with respect to this debt.”

Now an acknowledgment or promise to pay a debt will only restart the statute of limitations if it is unconditional and in a signed writing. See *Genova v. Total Card Incorporated*, 193 F. Supp. 3d 360, Pages 368-369 (D.N.J. 2016).

If a debtor were to make a partial payment on the debt, he or she would also have to make a declaration that the entire debt would also be paid to restart the statute of limitations. See *Rozario v. Administrative Recovery, LLC*, 2020 WL 4188131 (D.N.J. July 21, 2020).

Now, thus, J Cap’s time-barred debt disclosure accurately conveys that there are circumstances in which a payment or written promise to pay can renew the debt and restart the time period for the filing of a lawsuit.

Now plaintiff argues that the words “savings” and “resolve” would somehow mislead the consumer into believing that J Cap could legally enforce the debt, even though the letter contains a disclaimer expressly stating that the debt could not be enforced. The letter is clear on its face that, quote:

“The law limits how long a consumer can be used on a debt.”

And that, quote:

“Because of the age of plaintiff’s debt, J Cap cannot sue plaintiff to collect it.”

This general language sufficiently discloses the time-barred status of the debt. See *Holzman v. Malcolm S. Gerald & Associates, Incorporated*, 920 F.3d 1264 (11th Cir. 2019).

There is no formal requirement that this language be bold or set apart from the remainder of the letter. Next, plaintiff argues that the letter misleads the consumer by presenting him with enticing settlement offers and failing to properly advise of the consequences of making a payment on a debt. The letter, however, is an unequivocal statement on its face that J Cap could not sue plaintiff. So plaintiff’s interpretation

that a partial payment may lead to a lawsuit against him is unreasonable.

Now generalized disclosures are wholly appropriate when it comes to time-barred debts. Nothing in the FDCPA's statutory text requires any disclosure about time-barred debts. Courts have held that it is potentially, quote/unquote, "deceptive" not to inform a consumer that a debt is time-barred and that taking action on the debt might restart the statute of limitations, the risk being that the consumer might unwittingly start the limitation period by making payment or promising to pay. See *Pantoja v. Portfolio Recovery Associates, LLC*, 852 F.3d 679, at Page 685 (7th Cir. 2017). See also *Daugherty v. Convergent Outsourcing, Incorporated*, 836 F.3d 507, at Page 513 (5th Cir. 2016).

Now, additionally, courts have rejected the notion that a debt collector must provide specific disclosures detailing exactly what conduct will suffice to restart that limitation period under a particular state's law. See *O'Neill v. Radius Global Solutions, LLC* (phonetic), 2022 WL 4483801 (D.N.J. September 27th, 2022), at *8.

Now courts have been reluctant to require debt collectors to provide legal advice to debtors. Requiring disclosures that are tailored to the particular consumer's specific circumstances would require companies, quote, "to venture into the realm of legal advice." See *Malcolm S. Gerald & Associates, Supra*, at 1273.

Rather, informing the consumer that certain actions may restart the statute of limitations and that he, quote:

"-- should determine the effect of any actions he takes with respect to the debt."

Strikes the appropriate middle ground and is not misleading for purposes of the FDCPA. Now, as I have previously noted, at oral argument, plaintiff's counsel referred to a transcript of a motion hearing before the Honorable Esther Salas, U.S.D.J., in which Her Honor denied a motion to dismiss for failure to state a claim where the plaintiff made arguments similar to those made in the instant action.

A transcript of that motion hearing, which is In the Matter of Stromberg v. Midland Funding, LLC, et al (phonetic), Case Number 2:16-cv-9298, has been provided to the Court on March 3rd, and the Stromberg hearing took place on January 31st of 2020.

On March 14th of 2023, as previously noted, defense counsel did provide a response to plaintiff's transmission of the March 3rd, 2023 transcript.

Defense counsel argues correctly, in the opinion of this Court, that the Stromberg decision, which is not binding, is distinguishable from the instant matter for the following reasons:

First, the Elshabba letter contains a statute of limitations disclosure notifying the consumer that he has no legal obligation to pay the time-barred debt. The Stromberg letter does not.

Also, the Elshabba letter, neither threatens litigation, nor misrepresents that there was a legal right to collect on the debt. To the contrary, the consumer was unequivocally notified that he has no legal obligation to pay, which is precisely what the Court in Tatis, *Supra*, recommends.

Second, while the parties in Stromberg did argue whether use of the word "savings" in a letter to collect a time-barred debt violated the FDCPA, they also

addressed two additional challenges to the defendant's letter:

One, a use of the word "settlement" in a disclosure regarding the tax consequences of payment;

And two, use of language that they will cease contact if requested, whether the exception to advise that contact will cease or to advise, quote, "that we intend to take specific action."

Due to the complexities of these arguments and an overlapping class action and following the tax consequences language before another judge, the Court stated it was not, quote, "comfortable" granting defendant's motion to dismiss because, quote:

-- this is an area of law that is much more complex, I think, for me to make a call at this time at a motion to dismiss, as a matter of law that the letter obviously does not violate the FDCPA."

That's the specific language of Judge Salas.

Third, since a debt is not extinguished in New Jersey by the passing of the statutes of limitations, leaving a moral obligation to pay, there is a benefit if the consumer decides to satisfy the debt for one of the offers less than the total balance. While all payments would be strictly voluntary, it is not misleading to state that the consumer would save money by taking advantage of one of the offers in the letter, instead of paying the full balance.

The Court in *Huertas*, *Supra*, found that a letter seeking voluntary repayment of a time-barred debt by offering a discount of 60 percent of the amount presently owed does not violate the law. Similarly, J Cap's letter does not violate the law.

Additionally, it also should be noted by this Court that defense counsel, on March 13th of 2023 and

subsequent to oral argument, sent to the Court a March 8th, 2023 decision by the Honorable Kimberly Espinales-Maloney granting the defendant's motion to dismiss is Asmad Escobar v. Phoenix Financial Systems, LLC (phonetic0). That's a Hudson County case, HUD-L-3551-21. Judge Espinales-Maloney concluded that the conveyance of information to a third-party mail vendor does not violate the FDCPA. Plaintiff's counsel in the instant matter also represented Asmad Escobar. The Court did review that non-binding, nonprecedential decision.

Next, plaintiff's 1692d claim fails as no harassing behavior is alleged. Section 1692d prohibits a debt collector from engaging in conduct, quote:

-- the natural consequences of which is to harass, oppress, or abuse any person in connection with the collection of a debt."

The conduct plaintiff alleges must meet a threshold level in which the facts suggest a reasonable inference that he has made a plausible claim to relief under 1692d. Accordingly, a court will not permit, quote, "bizarre or idiosyncratic interpretations" of collection notices. See *Campuzano-Burgos v. Midland Credit Management*, 550 F.3d 294, at Page 298 (3d Cir. 2006).

Rather, violations of 1692d involve, quote:

-- tactics intended to embarrass, upset, or frighten a debtor."

See *Hammett v. Allianceone Receivables Management, Incorporated*, 2011 -- strike that. See *Hammett v. Allianceone Receivables Management, Incorporated* 2011 WL 3819848, at *5 (E.D. Pa. August 30th, 2011).

A debt collection letter does not constitute harassment when it does not threaten the plaintiff, contain

any offensive language, or attempt to coerce the payment of a debt in any way. See Hammett, *supra*.

Herein, the plaintiff fails to provide any support for his conclusory allegations. Nothing in the letter threatened plaintiff. The letter did not contain offensive language or attempt to coerce the payment of the debt. Rather, the letter provided options to voluntarily pay the debt.

Finally, plaintiff's Section 1692f claim fails as a matter of law because it is based on the same underlying conduct of plaintiff's 1692e claim. Because the 1692e claim fails for the reasons set forth above, the 1692f claim must also fail. See *Hoover v. Monarch Recovery Management, Incorporated*, 888 F.Supp. 2d 589, at 602 (E.D. Pa. 2012).

The conduct that is a violation of another section of the FDCPA cannot be the basis for a separate claim under 1692f. See *Turner v. Professional Recovery Service, Incorporated*, 956 F.Supp. 2d 573, at 580 (D.N.J. 2013).

For all these reasons, defendant's motion to dismiss shall be granted. However, the dismissal will be without prejudice, affording plaintiff an opportunity to amend, if possible and feasible.

Motions to dismiss with prejudice must be considered with great caution and should be granted only in the rarest of instances. See *Printing Mart- Morristown v. Sharp Electronics Corporation*, *supra*, 116 N.J. 739, at Page 771 (1989).

That is the decision of the Court. Again, either party or both parties, if they wish, are certainly free to order the transcript of the Court. But if there's going to be appellate review, the Appellate Division will have the full transcript of the Court's decision.

I know that there are other decisions, Law Division decisions, that deal specifically with this, so I am assuming that this is an issue that's going to be considered by the Appellate Division. And if that is, in fact, going to be the case, I certainly would welcome counsel to order a transcript of the Court's decision.

Again, that's the decision. It will be entered -- well, not the decision itself, but the order will be entered into the system via eCourts. And good luck to both sides.

MR. EASLEY: Your Honor, you don't have the transcript office phone number, do you?

THE COURT: No, I don't.

MR. EASLEY: Okay. I'll call.—

THE COURT: If you contact -- if you contact -- Counsel, if you contact the Civil Division, they can certainly give that to you. I don't have that available to me; if I did, I'd certainly give it to you.

MR. EASLEY: Great. Thank you, Judge.

THE COURT: Again, thank you. Good luck to both sides.

(Proceedings concluded at 10:16 a.m.)

App-61

Appendix H

[Filed: May 31, 2023]

Aaron R. Easley, Esq. (026151994)
SESSIONS, ISRAEL & SHARTLE
3 Cross Creek Drive
Flemington, NJ 08822
Tel: 908-237-1660
Fax: 877-344-0661
Email: aeasley@sessions.legal
Counsel for Defendant, Convergent Outsourcing, Inc.

Randy Hopkins, on behalf **SUPERIOR COURT OF**
of himself and those simi- **NEW JERSEY**
larly situated, **LAW DIVISION:**
PASSAIC COUNTY

Plaintiff,

-against

DOCKET NO. PAS-L-
000342-23

Convergent Outsourcing,
Inc. And JOHN DOES 1
to 10,

Defendant.

THE COURT, HAVING CONSIDERED the Motion to
Dismiss filed by Defendant, Convergent Outsourcing,
Inc., pursuant to R. 4:6-2(e) and seeking dismissal of
the Complaint filed by Plaintiff, Randy Hopkins;
IT IS on this 31st day of May, 2023;

App-62

HEREBY ORDERED that Plaintiff's Motion to Dismiss Plaintiff's Complaint is hereby GRANTED; and it is further

ORDERED that the Complaint filed by Plaintiff is hereby dismissed without prejudice; and it is further

ORDERED that a copy of this Order be served upon all parties within seven (7) days hereof.

☒ OPPOSED

/s/ Darren J. Del Sardo

HON. DARREN J. DEL SARDO, J.S.C.

SEE ATTACHED STATEMENT OF REASONS

Randy Hopkins v. Convergent Outsourcing, Inc.

Docket No. PAS-L-0342-23

Pending before the Court is Defendant, Convergent Outsourcing, Inc.'s (hereinafter "Convergent"), Motion to Dismiss Plaintiff's Complaint for Failure to State a Claim pursuant to R. 4:6-2(e). The Motion was filed on April 3, 2023. Plaintiff submitted Opposition to Defendant's Motion on April 18, 2023. Defendant filed a Reply to Plaintiff's Opposition on April 28, 2023. Oral Argument was held on May 26, 2023. After careful consideration of the foregoing, the Court relies upon the within statement of reasons in support of its decision.

Background

This action, taking the form of a putative class action suit, stems from alleged violations of the Fair Debt Collection Practices Act (hereinafter the "FDCPA") committed by Defendant Convergent. By way of background, Defendant Convergent is a third-party debt collector who is engaged in the business of collecting debts from debtors. Defendant Convergent was in the process of collecting a debt from Plaintiff which originated from an Optimum home services account when it utilized a "letter vendor" to send Plaintiff a mailing regarding the debt upon which it was seeking collection. The mailing is dated February 4, 2022 and outlines the debts allegedly owed, as well as repayment and debtor information.

Plaintiff filed the present action on February 3, 2023, on behalf of all persons residing in New Jersey whose information was disclosed by Defendant on or after February 3, 2017, alleging violations of the FDCPA in connection with the February 4, 2022

mailing and Defendant's use of a letter vendor for debt collection mailings. Plaintiff's "First Count" alleges that Defendant Convergent conveyed debtor's personal information to a third-party mail vendor without consent of Plaintiff and said disclosure was not reasonably necessary to effectuate a post-judgment remedy. Plaintiff alleges that Defendant Convergent's disclosures violated various provisions of the FDCPA. Plaintiff's Complaint further alleges violations of the Consumer Fraud Act (hereinafter the "CFA"), Negligence, and Invasion of Privacy. Plaintiff's Complaint generally centers around Defendant Convergent's disclosure of Plaintiff's personal information to the mail vendor without notice or consent of Plaintiff.

Defendants filed the present Motion to Dismiss on April 3, 2023 and addresses each cause of action presented by Plaintiff individually. First, Defendants assert that Plaintiff's claim under the CFA fail as the statute does not apply to Defendants as the CFA does not apply to downstream entities without a role in advertisement or sale, Plaintiff does not allege an ascertainable loss, and the use of a letter vendor is not fraudulent or unconscionable within the meaning of the CFA. Next, Defendants contend that Plaintiff's invasion of privacy claim fails as the transmittal of information to the letter vendor does not constitute publicity, the data transmitted with limited to private facts, and the transmittal would not be highly offensive to a reasonable person.

Thereafter, Defendants argue that Plaintiff's negligence claim fails as Defendants owed no cognizable duty to Plaintiff and no injury has been demonstrated. Finally, Defendants present that Plaintiff's claim

under the FDCPA fail as Plaintiff's theory of an alleged violation in this case is contrary to legislative intent of the statute, transmitting data to an agent or contractor is not a third-party communication under the statute, Plaintiff's theory of recovery is contrary to other portions of the FDCPA, and Plaintiff's theory goes against guidance and enforcement of the FDCPA provided by various governmental agencies.

Plaintiff filed Opposition to Defendant's Motion to Dismiss on April 18, 2023. Plaintiff rejects the reasoning presented by Defendants and first asserts that a viable cause of action has been brought under the FDCPA; notably, Plaintiff pointed to alleged violations of § 1692c(b) and § 1692d(3). Plaintiff argues that disclosure of the debtors personal/debt information to a third party letter vendor is in violation of the plain meaning of the statute. In addition, Plaintiff alleges that they stated a cause of action for invasion of privacy as the disclosure of account information to a third party has been considered a violation of the right to privacy in prior cases and the publication of same does not need to be to many people in order to be recoverable.

Plaintiff then posits that negligence can be shown through the improper keeping and disclosure of debtors personal information. Plaintiff argues that a duty exists to keep debtors records private and damages may exist in the form of nominal damages or damages for exposing Plaintiff to increased risk of harm. Finally, Plaintiff presents that the CFA covers collection efforts for a credit sale, that Plaintiff's loss took the form of needing to obtain credit monitoring and ID theft protection in relation to the disclosure, and the CFA should be broadly applied to the case at bar.

Defendants filed a Reply to Plaintiff's Opposition on April 28, 2023. Defendants largely reiterate the arguments made in their original motion and reassert that the provisions of the FDCPA presented by Plaintiff in support of their claims do not apply to the facts at bar. Moreover, Defendants reiterate their opposition to the applicability of the other causes of action stated by Plaintiff. Defendants also posit that Plaintiff is not entitled to utilize the FDCPA to create a common law duty upon which to recover upon a claim for negligence.

Standard

The Court must apply the following familiar standards:

“[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” The essential test is simply “whether a cause of action is ‘suggested’ by the facts.”

In exercising this important function, “a reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Moreover, “the [c]ourt is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint[,]” rather, “plaintiffs are entitled to every reasonable inference of fact.” As we have stressed, “[t]he examination of a complaint’s allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable

approach.” Green v. Morgan Properties, 215 N.J. 431, 451–52 (2013) (citations omitted).

In deciding a motion pursuant to R. 4:6-2(e), “[t]he motion judge must accept as true all factual assertions in the complaint . . . [and] accord to the non-moving party every reasonable inference from those facts.” Malik v. Ruttenberg, 398 N.J. Super. 489, 494 (App. Div. 2008). The judge must examine the complaint “in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Green v. Morgan Props., 215 N.J. 431, 452 (2013) (quoting Printing Mart-Morristown v. Sharp Electronics Corp., 116 N.J. 739, 746 (1989)).

On a motion to dismiss for failure to state a claim under R. 4:6-2(e), the court must only consider “the legal sufficiency of the alleged facts apparent on the face of the challenged claim.” Rieder v. Dep’t of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987) (internal quotation marks omitted). “The court may not consider anything other than whether the complaint states a cognizable cause of action.” Ibid. The court must “accept as true the facts alleged in the complaint,” Darakjian v. Hanna, 366 N.J. Super. 238, 242 (App. Div. 2004), and “search[] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989) (internal quotation marks omitted). The party opposing the motion is “entitled to every reasonable inference of fact.” Ibid.

The trial court has been instructed by the Supreme Court that Motions to dismiss should rarely be granted, and an order granting a motion to dismiss under R. 4:6-2(e) should usually be without prejudice, so that the plaintiff may have an opportunity to replead, if he can do so, to state a viable cause of action. Printing Mart-Morristown, 116 N.J. at 771-72.

Decision

In the interest of fully adjudicating the merits of Defendants' Motion to Dismiss, each claim asserted by Plaintiff shall be addressed in turn.

First Count: Fair Debt Collection Practices Act ("FDCPA")

The Fair Debt Collection Practices Act ("FDCPA") was passed by Congress in 1968 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." Hodges v. Sasil Corp., 189 N.J. 210, 222 (2007) (citing 15 U.S.C.A. § 1692(e)). The purpose of the FDCPA was largely centered on the prohibition of unfair, unconscionable, and/or deceptive means of debt collections agencies and the protection of consumers. Id.

In order to prevail in an action where a debtor alleges a violation of the FDCPA, the debtor must prove, "(1) she is a consumer, (2) the [party seeking payment] is a debt collector, (3) the . . . challenged practice involves an attempt to collect a 'debt' as the Act defines it, and (4) the [collector] has violated a provision of the FDCPA in attempting to collect the debt." Midland

Funding LLC v. Thiel, 446 N.J. Super. 537, 549 (App. Div. 2016) (citing Douglass v. Convergent Outsourcing, 765 F.3d 299, 303 (3rd Cir. 2014)).

The FDCPA delineates various practices which may expose debt collectors to liability; Plaintiff's claims in the present matter largely center on alleged violations of § 1692c(b) and §1692d(3). § 1692c(b) of the FDCPA which provides the following,

“Except as provided in section 804, 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 post-judgment 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, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.” 15 U.S.C.A. § 1692c(b).

There is significant dispute between the parties as to the meaning and application of the above statute to the disclosure of debtor information to third-party letter vendors; no binding case law exists on this topic in New Jersey. As such, the Court is left with a case requiring the interpretation of the scope of the statute in question.

When a Court is tasked with statutory interpretation, it is to give the statutory provisions their “ordinary meaning and significance” and “read them in context with related provisions so as to give sense to the legislation as a whole.” DiProspero v. Penn, 183 N.J. 477, 492 (2005). The Court will not “rewrite a

plainly-written enactment of the Legislature or presume that the Legislature intended something other than that expressed by way of the plain language.” Id. (citing O’Connell v. State, 171 N.J. 484, 488 (2002). “Our duty is to construe and apply the statute as enacted.” Ibid. Moreover, the Court will only turn to extrinsic aids, such as legislative reports, in interpretation where ambiguity in the language exists. Cherry Hill Manor Assocs. v. Faugno, 182 N.J. 64, 75 (2004).

There is no binding law in New Jersey as to whether disclosure to a letter vendor of debtor information is a prohibited communication under the Act; in order to determine if disclosure of a debtors information to a letter vendor is a violation of same, the Court must turn to the purpose and provisions of the statute as a whole for clarification.

The Court herein finds that the legislature did not intend to prohibit the use of letter vendors in the collection of debt when the FDCPA was passed. A review of the legislative history of the Act reveals that the Senate desired to prohibit the practice of disclosing consumer information to friends, neighbors, and employers and sought to dissuade the disclosure of personal affairs to third persons. See Senate Report No. 95-382 (1977). Notably, the Senate contemplated that the disclosure of a debtors information to third parties could result in serious violations of a debtors right to privacy and could result in adverse events, such as loss of employment; the Senate clearly intended to prevent such violations with the passage of the FDCPA.

The allegations presented by Plaintiff in this case do not reflect the concerns espoused by Congress and

would require an overly rigid reading of the statute. Unlike the persons who could inflict harm upon Plaintiff through the disclosure of Plaintiff's debt information, disclosure to a letter vendor of basic debt information does not fall within the purview of Congressional concerns. Congress intended to prevent harmful debt collection practices; disclosure of debt information to a letter vendor is not the type of disclosure contemplated by Congress. Indeed, Plaintiff is unable to demonstrate what direct harm the disclosure has caused and has not shown that disclosure of information to a letter vendor for the sole purpose of mailing constitutes the type of harmful practice sought to be prevented by Congress.

In the case at bar, the letter vendor was given debt information and was tasked with creating and sending letters to the debtor in connection with alleged debts. It strains credulity that this is the type of practice that Congress sought to curtail. Plaintiff has not shown how the letter vendor could inflict the type of reputational harm that Congress is seeking to prevent. As such, it is clear that the use of letter vendors for the purpose of debt mailings does not fall within the type of third-party disclosures which Congress sought to bar under the FDCPA. Therefore, the Court finds that the Plaintiff has failed to state a claim as to the First Count of the Complaint.

Second Count: Consumer Fraud Act ("CFA")

To succeed on a CFA claim, a plaintiff must demonstrate "(1) unlawful conduct by the defendants; (2) an ascertainable loss on the part of the plaintiff; and (3) a causal relationship between the defendants' unlawful conduct and the plaintiff's ascertainable loss." N.J.

Citizen Action v. Schering-Plough Corp., 367 N.J. Super. 8, 12–13 (App. Div.), certif. denied, 178 N.J. 249 (2003). “There is no precise formulation for an ‘unconscionable’ act that satisfies the statutory standard for an unlawful practice. The statute establishes ‘a broad business ethic’ applied ‘to balance the interests of the consumer public and those of the sellers.’” D’Agostino v. Maldonado, 216 N.J. 168, 184 (2013) (quoting Kugler v. Romain, 58 N.J. 522, 543–44 (1971)). However, “[a]n unconscionable practice under the CFA ‘necessarily entails a lack of good faith, fair dealing, and honesty.’” Id. at 189 (quoting Van Holt v. Liberty Mut. Fire Ins. Co., 163 F.3d 161, 168 (3d Cir. 1998)).

Generally, violations of the CFA arise under three different categories: (1) “[a]n affirmative misrepresentation, even if unaccompanied by knowledge of its falsity or an intention to deceive”; (2) “[a]n omission or failure to disclose a material fact, if accompanied by knowledge and intent”; and (3) “violations of specific regulations promulgated under the [CFA],” which are reviewed under strict liability. Monogram Credit Card Bank of Ga. v. Tennesen, 390 N.J. Super. 123, 133 (App. Div. 2007) (internal citations omitted).

Moreover, a Plaintiff must show that they incurred an ascertainable loss in connection with the CFA violation. In order to demonstrate “ascertainable loss,” a plaintiff must show “either out-of-pocket loss or . . . loss in value.” Thiedemann v. Mercedes-Benz USA, LLC, 183 N.J. 234, 248 (2005). The Supreme Court has held that “[t]he limiting nature of the requirement allows a private cause of action only to those who can demonstrate a loss attributable to conduct made unlawful by the CFA.” Id. at 246 (emphasis added) (citing Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J.

464, 473 (1988)); see also N.J.S.A. 56:8-19 (stating that “ascertainable loss” must occur “as a result” of the claimed violation); Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 560 (2009) (“[A] plaintiff who cannot prove the causal link between the asserted regulatory violation and his loss cannot find relief within the CFA.”). An “ascertainable loss” is roughly “equivalent to any lost ‘benefit of [the] bargain.’” Bosland, 197 N.J. at 558 (alteration in original) (quoting Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 11–13 (2004)).

Plaintiff has failed to state a claim under the CFA against Defendant. In order to bring a claim under the CFA, Plaintiff was required to demonstrate an unconscionable act partaken by Defendant in the collection of debts; Plaintiff has not done so. Plaintiff has alleged that Defendant engaged a letter vendor in the collection of debt, a largely widespread practice in the collection of debts, and does not state that Defendant operated with a lack of good faith, fair dealing, and honesty in the collection of debts. Plaintiff does not allege that the information regarding the debt was false or that Defendant improperly sought to collect debts that were invalid. Plaintiff’s Complaint largely revolves around the alleged “improper disclosure” of debtor information to a third party letter vendor, but this Court is unable to find that that act alone constitutes an unconscionable practice under the CFA or that any other alleged unconscionable practice was engaged in by Defendant.

Moreover, even if Defendant engaged in some unconscionable practice, Plaintiff has not stated that they sustained an ascertainable loss as required for a claim under the CFA. While Plaintiff has alleged that the disclosure of debtor information to a letter vendor

has required them to possibly purchase identity theft protection and related expenses, said losses are deficient in two major aspects. First, Plaintiff has not actually sustained any of the losses alleged, a reading of Plaintiff's Complaint demonstrates that Plaintiff is concerned about identity theft but has not actually purchased any of the protections plead. Instead, Plaintiff cites to possible future costs and has not cited any law wherein nebulous future expenses, which have yet to be sustained, constitute ascertainable losses covered under the statute. Furthermore, Plaintiff has not stated these alleged losses with specificity. A mere recitation of possible costs related to the disclosure is insufficient for a claim under the CFA, Plaintiff must show that they sustained some out-of-pocket costs, which have not been plead, or a loss of value, which is not alleged. Accordingly, Plaintiff's claim under the CFA fails.

Third Count: Negligence

"[A] negligence cause of action requires the establishment of four elements: (1) a duty of care, (2) a breach of that duty, (3) actual and proximate causation, and (4) damages." Jersey Cent. Power & Light Co. v. Melcar Util. Co., 212 N.J. 576, 594 (2013). "[W]hether a defendant owes a legal duty to another and the scope of that duty are generally questions of law for the court to decide." Robinson v. Vivirito, 217 N.J. 199, 208 (2014) (citing Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 572 (1996)).

"[N]o bright line rule . . . determines when one owes a legal duty to prevent a risk of harm to another." Wlasiuk v. McElwee, 334 N.J. Super. 661, 666 (App. Div. 2000). The imposition of a duty depends on the

interplay of many factors, including: (1) the relationship of the parties; (2) the nature of the attendant risk; (3) the opportunity and ability to exercise care; and (4) the public interest in the proposed solution. Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993) (citing Goldberg v. Housing Auth., 38 N.J. 578, 583 (1987)). “Ultimately, [New Jersey] Supreme Court cases repeatedly emphasize that the question of whether a duty exists is one of ‘fairness’ and ‘public policy.’” Wlasiuk, 334 N.J. Super. at 666–67 (quoting Hopkins, 132 N.J. at 439).

A fundamental aspect of Plaintiff’s claim of negligence requires that Plaintiff demonstrate that a duty was owed to Plaintiff by Defendant and thereafter breached by Defendant; same is not present here. As stated prior, Defendant’s disclosure of debtor information to a letter vendor did not violate a related statutory provision and Plaintiff has not presented a valid independent duty owed to them independent of such provision. As Plaintiff has not presented an independent basis to impose some duty upon the Defendant, it is unclear upon what facts Plaintiff’s cause of action for negligence may survive. In addition, it has not been alleged that Plaintiff suffered damages by way of alleged negligence, possible future damages are insufficient, Plaintiff must show that the alleged negligent conduct resulted in damages, which they have not.

Fourth Count: Invasion of Privacy

There are four general causes of action for invasion of privacy recognized in New Jersey. They are, commercial appropriation of likeness, “unreasonable intrusion upon the seclusion of another, giving unreasonable publicity to another’s private life, and

publicity that unreasonably places a person in a false light in the public eye.” Castro v. NYT Television, 370 N.J. Super. 282, 296 (App. Div. 2004). Plaintiff’s Complaint alleges that Defendant engaged in the unreasonable publication of private facts, when they were obligated not to disclose same under the FDCPA.

Plaintiff’s claim for invasion of privacy fails in two respects. First, this Court has found that Defendant did not engage in conduct violating the FDCPA and did not have an obligation to refrain from disclosure to the mail vendor of debtor information for the purpose of mailing generation. Moreover, Plaintiff’s Complaint is absent an allegation that Defendant actually disclosed debtor information so as to publish same to a real person or disclose said information in a way that would result in publicity of private facts. Plaintiff’s Complaint does not state that even one person at the Defendant company was actually exposed to debtor information or that some publication of private facts occurred to any one person. Furthermore, the Complaint fails to set forth facts to establish that the information disclosed placed Plaintiff in a false light in the public eye. In the absence of same, Plaintiff’s claim for invasion of privacy fails.

Conclusion

Accordingly, for the above reasons, Defendant’s Motion to Dismiss is **GRANTED**. Plaintiff’s Complaint is hereby dismissed without prejudice for failure to state a claim.

App-77

Appendix I

[Filed: Jul. 13, 2023]

**SUPERIOR COURT OF NEW JERSEY
MORRIS COUNTY**

AMBER JONES, individually and on behalf of those similarly situated,

Plaintiff,

**DOCKET NO. MRS-L-
000895-22**

v.

AMERICAN CORADIUS
INTERNATIONAL, LLC,
and JOHN DOES 1 to 10,

Defendants.

PROPOSED ORDER

THE COURT, HAVING CONSIDERED the Motion for Dismissal filed by Defendant, American Coradius International, LLC pursuant to R. 4:6-2(e) and seeking dismissal of the Complaint filed by Plaintiff, Amber Jones;

IT IS HEREBY ORDERED that the Motion is GRANTED. The Complaint filed by Plaintiff is hereby dismissed with prejudice.

Entered this 13th day of July, 2022.

/s/ Stephan C. Hansbury

Judge **STEPHAN C. HANSBURY, J.S.C.**
RETIRED T/A ON RECALL

Reasons on the record June 15, 2023

App-78

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
MORRIS COUNTY, NEW JERSEY
DOCKET NO. MRS-L-895-22
A.D. # _____

AMBER JONES,	)	
	)	TRANSCRIPT
Plaintiff	)	
	)	OF
vs.	)	
	)	MOTION HEARING
AMERICAN CORADIUS	)	
INTERNATIONAL,	)	
	)	
Defendant.	)	
	)	
	)	

Place: Morris County Courthouse
56 Washington Street
Morristown, NJ 07960

Date: June 15, 2023

B E F O R E:

THE HON. STEPHAN C. HANSBURY, J.S.C.

TRANSCRIPT ORDERED BY:

EUNICE JEON, Paralegal (Kim Law Firm, LLC)

APPEARANCES

MARK JENSEN, ESQ. (Kim Law Firm, LLC)

Attorney for the Plaintiff

AARON R. EASLEY, ESQ. (Session, Israel & Shartle)

Attorney for the Defendant

Transcriber, Colette Meheski
J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue

App-79

Hamilton, NJ 08619

(609) 586-2311

FAX NO. (609) 587-3599

E-mail: jjcourt@jjcourt.com

Website: www.jjcourt.com

Audio Recorded

Audio Operator, Theresa Knobloch

[Index Omitted.

Pages 23-24 of the original transcript reproduced]

THE COURT: Okay. Anything else?

MR. EASLEY: No, Your Honor.

THE COURT: Mr. Jensen?

MR. JENSEN: No, Your Honor. Thank you for your time.

THE COURT: All right. I'm going to grant the application. To me this is pretty simple as I guess the nine or ten other judges saw it. This is a -- I understand the one judge who made the decision not to dismiss because what she's really saying is if you just look at the statute, communication, period, end of story, was there communication? Yes, there was, therefore, there may be a violation.

Under 4:6-2 and the Printing Mart case, I understand her logic. However, she's ignoring -- and I don't mean to be really critical of another judge, but she's -- there is -- I love that phrase, uncritical literalism. That's exactly what this is.

This is not a violation that was intended within the Fair Debt Collection Practice Act. A third party vendor is doing something that could easily be done in house. It just simply is creating a letter to send out. It means nothing. There cannot be a violation of the

Act because it is just simply a hyper-technical argument, if you will.

Technically, yes, there's a violation because they sent it to the printer, but does it violate the purpose of the statute? Clearly, it does not. It is -- as I said, to say that it does creates an uncritical literalism, which is not appropriate.

Judges have discretion, even under 4:6-2, to look at an allegation and say, well, this -- does this make any sense? Is it consistent with the statute?

So, for all the reasons -- I do not accept necessarily the standing argument because I don't know that I agree with that, but other than that, the logic of the other judges I completely agree with. This is a hyper-critical analysis, if you will, of the statute, and, therefore, it does not constitute a violation of the statute on its face.

So, I'll grant the application to dismiss the matter.

MR. EASLEY: Thank you, Your Honor.

THE COURT: Thank you, gentlemen.

MR. JENSEN: Thank you, Your Honor. Have a good day.

* * * * *

App–81

Appendix J

[Filed: Jan. 18, 2024]

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY

LATONYA MILLER, *on
behalf of herself and
those
similarly situated,*

Plaintiff,

-against-

AMERICOLLECT,
INC.; and JOHN DOES
1 to 10,,

Defendants.

Docket No.:
ESX L–006164–21

ORDER

THIS MATTER having been opened to the Court upon the motion of Hinshaw & Culbertson LLP, attorneys for Defendant Americollect, Inc. (“Defendant”), for an Order dismissing Plaintiff Latonya Miller (“Plaintiff”)’s Second Amended Complaint in its entirety, and the Court having considered all the papers submitted in support of and in opposition to the motion, and having heard argument from counsel, and for good cause shown;

It is on this day of January 18, 2024;

1. ORDERED that Defendant Americollect, Inc.’s Motion to Dismiss is hereby GRANTED; and

2. IT IS FURTHER ORDERED that Plaintiff's Second Amended Complaint is hereby dismissed in its entirety with prejudice; and

3. IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within days of the date thereof.

/s/ Keith E. Lynott

HON. KEITH E. LYNOTT

X _____ Opposed

_____ Unopposed

Statement of Reasons

This action and motion require the Court to determine if the engagement by a debt collector of a mail or letter vendor to prepare and dispatch a letter to a debtor, using information about the debtor and the underlying debt supplied by the collector, violates federal or state statutory or common law, even in circumstances — as here — not involving alleged disclosure or misuse of the information by such vendor. The Court concludes that such conduct does not give rise to a viable claim.

In this putative Class Action brought under the Fair Debt Collection Practices Act, 15 U. S.C. Sec. 1692, et seq. (the "FDCPA"), the New Jersey Consumer Fraud Act, N.J.S.A. 56: 8-1, et seq. (the "CFA"), the Defendant Americollect, Inc. ("Americollect") moves to dismiss the Second Amended Complaint (the "SAC") of the Plaintiff Latonya Miller ("Miller"). For the reasons set forth herein, the Court grants the motion and dismisses the SAC with prejudice.

The Court previously dismissed, without prejudice, the Plaintiff's Complaint and First Amended

Complaints for reasons stated in a Statement of Reasons.¹ It afforded the Plaintiff a right to re-plead to address the deficiencies identified by the Court in the then extant pleadings. Specifically, the Court permitted leave to further amend the pleading to allege any facts concerning misuse of the information conveyed by Americollect to the so-called “letter vendor” at issue in this case.

The Plaintiff promptly submitted her SAC. The Defendant moves again to dismiss.

I

As this is a motion to dismiss, the Court draws the relevant facts from the pleading. It accepts the facts alleged as true, solely for purposes of adjudicating the motion, and confers on the Plaintiff the benefit of all reasonable inferences to be drawn from the pleaded facts. However, the Court is not required to accept legal conclusions or unsupported, conclusory factual matters.

The Court is not concerned at this juncture with the Plaintiff’s ability to prove the allegations of the pleading. Instead, it examines the pleading, through a generous and hospitable lens, to determine if one can discern the “fundament” of a cause of action from even an “obscure statement” of the claim. Printing Mart-

¹ At the time of the previous motion practice concerning the Plaintiff’s Complaint, she interposed a First Amended Complaint (primarily adding additional factual allegations concerning her bankruptcy proceedings). Although the Defendant contended the Plaintiff had acted without required leave of the Court, the Court determined to examine the motion to dismiss as to both the original and First Amended Complaints.

Morristown, Inc. v. Sharp Elecs. Corp., 116 N. J. 739, 746 (1989).

New Jersey courts rarely grant motions to dismiss and, ordinarily, do so without prejudice. However, where the pleading is palpably insufficient, the Court will grant the motion. Rieder v. State, Dep't. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). And, when the pleading party cannot allege facts that would cure a noted deficiency and state a viable claim for relief, a dismissal with prejudice will follow.

II

The Court draws the relevant facts from the SAC. It accepts the allegations of such pleading as true, solely for purposes of adjudicating this motion.

This is a putative Class Action under the FDCPA, the CFA and the common law alleging unlawful disclosure of private, personal identifying and financial information concerning the Plaintiff to a third-party without her consent. The Plaintiff Miller asserts the action on behalf of herself and those similarly situated. The Plaintiff alleges the Defendant is subject is liability under the FDCPA, as well as the CFA and common law, for undertaking prohibited communication with a third-party in connection with the collection of a debt.

The SAC alleges that Americollect is in the business of collecting debts that are past due, which debts are owed to others and incurred primarily for personal, family and household purposes. The Plaintiff asserts the relevant creditors placed the debts of the Plaintiff and proposed Class members with Americollect for the purposes of obtaining collection services pursuant to written agreements. She asserts that Americollect

uses the mails, telephone, Internet and other instruments of interstate commerce to engage in its business of debt collection.

Miller asserts that she received a letter dated August 11, 2020, that Americollect had caused to be mailed in connection with debt collection. She asserts this letter contained information concerning a debt arising from health care services provided to her (such debt is referred to in the pleading as the “Debt”). In the letter, Americollect asserted the Debt was past due.

Miller asserts that Americollect itself “did not draft, print, address or mail the 8/11/20 letter, but instead entered into one or more contracts with an unrelated firm which provides printing, addressing and mailing services, sometimes called a ‘letter vendor.’” The SAC alleges that the letter vendor is not an affiliate of Americollect itself, but a “third-party service provider.” Miller avers that Americollect “provides the third-party letter vendor with one or more forms of collection letters and periodically sends data to the third-party letter vendor containing information about each debt to be merged by the third-party letter vendor into individualized collection letters which the third-party letter vendor then prints, stuffs into mailing envelopes and mails.”

Miller asserts that, in connection with the collection of the Debt she owed, Americollect conveyed information concerning such Debt to the letter vendor. Specifically, according to the SAC, such data or information included “Americollect’s account number, the date and location of each health-related service provided by the creditor, the creditor’s full account number associated with each service; the full User ID and

password for accessing Americollect's payment portal for the Debt, the amount due, and the Plaintiff's full name and mailing address." The SAC asserts, on information and belief, that Americollect's communications to the letter vendor included "a list containing information concerning other debts which, like the Debt, the letter vendor merged with Americollect's templates."

Miller alleges that she never consented to communication of information concerning herself or her debt to any third-party. The SAC avers that Americollect "recklessly disclosed Miller's personal identifying information and private information about the Debt to a third-party without Miller's prior consent." The SAC alleges that, when the Plaintiff learned of the improper disclosure of her private information and data, she suffered stress, anxiety, and embarrassment.

The SAC asserts that the Defendant published to the letter vendor a list of debtors, including the Plaintiff, who refused to pay debts. It avers this conduct has caused the Plaintiff stress, anxiety, and embarrassment.

The SAC states that the FDCPA prohibits a debt collector from communicating with third parties without consent of the consumer, in connection with the collection of a debt, other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor and its attorney or the attorney for the debt collector. It asserts the FDCPA also prohibits the publication of a list of consumers who allegedly refused to pay debts.

The Plaintiff alleges that Americollect's communication with the third-party letter vendor violated the FDCPA as it was an impermissible communication. It

contends that Americollect engaged in similar practices when sending the same or similar collection letters to numerous other New Jersey consumers to collect a debt. The Plaintiff asserts that Americollect employs a policy or practice of communicating private and sensitive information about consumers with third parties “by using third party vendors to send written collection communications in attempts to collect consumer debts.”

The Plaintiff avers that she filed a voluntary bankruptcy proceeding on April 30, 2021. She alleges that, in connection with this bankruptcy filing, she provided “minimal information” about the Debt that is the subject of this action, consisting only of the creditor’s name, its debt collector’s addresses, the last four digits of the debt collector’s account number and the claimed balance. She contends her disclosures did not include the more detailed information that Americollect communicated to the letter vendor.

The Plaintiff alleges that, in Schedule A/B to her bankruptcy petition, she included a description of consumer claims as assets. The disclosure, according to the Plaintiff, specifically identified “potential/unknown consumer protection claims, including Fair Debt Collection Practices Act claims”

The Plaintiff asserts that she thus satisfied her obligation to notify the Bankruptcy Trustee and creditors of these assets. She contends these parties had the ability to conduct additional inquiry to determine whether to marshal such assets. She alleges Americollect had notice of the Plaintiff’s bankruptcy petition and neither it nor any other creditor objected to the Plaintiff’s disclosures.

Miller avers that the value of her assets, as set forth in the petition, was \$3795. She asseverates that the Trustee abandoned the full amount of the Plaintiff's assets, including the consumer claims. She received a discharge on July 27, 2021.

Miller has not alleged, even in the SAC, that the letter vendor misused the information about the Plaintiff or her Debt that the Defendant conveyed to it for purposes of creating and mailing the subject letter. Instead, in the SAC, Miller has added two paragraphs (specifically, Paragraphs 47 and 48) that assert that "[t]he data which Americollect provided to the third-party mail vendor had a market value." Citing to an article in the AARP Bulletin entitled "The Data Brokers" by Katherine Skiba (Vol. 63, No. 3 (April 2022)), the Plaintiff asserts that "the market value for similar personal information can range from a few dollars to one hundred dollars."

The SAC alleges that "the mail vendor can 'rent' the data to list managers who sell data from multiple sources." Miller also avers that, as the data exists on more servers, the chances for illicit hacking increase. "Hence, the unregulated dispersion of the data permits the third party mail vendors to profit from and invade the privacy of Plaintiff and the class she seeks to represent." Miller avers that neither she nor the members of the putative Class have any legal rights against mail vendors as there are "no laws regulating the mail vendor's use or disclosure of the data" conveyed by Americollect.

The Plaintiff purports to represent the putative Class of similarly-situated individuals. Such individuals are those persons residing in New Jersey whose information was disclosed by Defendant to a third-

party letter vendor on or after August 10, 2015. She claims to represent a Sub-Class of residents to whom the Defendant sent a collection letter, which letter was dated one year prior to August 10, 2015, and was sent using a third-party letter vendor.

The Plaintiff purports to state claims for relief on behalf of herself and the putative Class or Sub-Class in five separate Counts. The First Count asserts entitlement to a declaratory judgment pursuant to the Declaratory Judgment Law, N.J.S.A. 2A:16-53, and to injunctive relief.

The Plaintiff alleges the disclosure of private and sensitive information violated the CFA and the FDCPA. She alleges in the SAC that she suffered an ascertainable loss under the CFA due to “reputational harm” from the Defendant’s communications. As a result, she claims standing to seek injunctive relief under the CFA and FDCPA.

The Plaintiff demands a declaratory judgment to the effect that the Defendants violated the CFA and the FDCPA. She seeks a permanent injunction pursuant to the CFA and FDCPA prohibiting the Defendant from disclosing consumer information and “equitable notice” relief. She contends in the SAC that the unlawful conduct is ongoing. She also alleges entitlement to attorneys’ fees and costs under the CFA.

The Second Count alleges a claim for damages under the CFA. It asserts the Defendant engaged in an unconscionable business practice, deception, fraud or false promises, false pretenses or misrepresentations in connection with the sale of merchandise or the subsequent performance of the sale of merchandise. The SAC alleges the Plaintiff and proposed Class members suffered an ascertainable loss, entitling them to treble

damages under the CFA. This Count seeks treble damages and attorneys' fees and costs.

The Third Count purports to state a claim for negligence. The SAC asserts the FDCPA establishes a standard of care for the handling by debt collectors of confidential information. Miller asseverates that the Defendant did not adhere to such standard of conduct in relation to the use of private financial information as established by the FDCPA. This Count asserts that the disclosure of confidential and protected information of the Plaintiff and proposed Class members damaged them by exposing such information to persons that lacked entitlement to possess or examine such information. The Count demands compensatory damages, attorneys' fees, and costs.

The Fourth Count purports to state a claim for invasion of privacy. This Count asserts the Defendant "invaded the privacy" of the Plaintiff by unreasonable publication of private facts. The Plaintiff asserts the dissemination of private financial information would be offensive to a reasonable person and serves no legitimate public interest. The Plaintiff alleges in her SAC that she had a reasonable expectation of privacy as to such information as the Defendant was prohibited by the FDCPA from disclosing the same. She contends that she and others have found the disclosure of financial information to third parties to be highly offensive.

The Plaintiff alleges she and the proposed Class members suffered injury from the publishing of private information by exposing the same to persons who lacked any right to receive such information. The Fourth Count claims entitlement to compensatory damages, attorneys' fees and costs.

The Fifth Count pleads a claim under the FDCPA. This Count alleges the Defendant violated multiple provisions of the FDCPA rendering it liable to the Plaintiff and the proposed Class members for statutory damages, attorneys' fees and costs.

III

Americollect renews its motion to dismiss the SAC for failure to state a claim. It contends that Plaintiff has not cured the deficiencies previously identified by the Court in its previous ruling as she has not alleged any actual use of the information provided to the mail vendor by Americollect other than for purposes of preparing and mailing a letter to the Plaintiff. Instead, the SAC merely alleges the conveyance of the information has created the potential for such misuse, as the letter vendor could "rent" the data and/or its servers could be hacked.

The Defendant asserts that the Court's prior ruling is "law of the case" and there is no reason to change the outcome as none of the additional allegations interposed by Miller in the pleading amendment the Court permitted should cause the Court to conclude that she has now stated a viable claim or claims for relief. Accordingly, it contends the Court should dismiss the SAC with prejudice.

Previously, the Defendant contended the Plaintiff lacks standing to assert the claims set forth in what is now the SAC, as the Plaintiff has not suffered any injury due to the alleged disclosure of financial information concerning her debt. It asserts this is so because the Plaintiff herself disclosed substantially the same information concerning the same debt in connection with her petition in bankruptcy. As a result,

according to Americollect, the Plaintiff cannot establish a substantial likelihood of harm in the event of a favorable decision on the merits as to the alleged violation of law.

As to the claim under the FDCPA, the movant contends the Plaintiff has not suffered a cognizable injury as was recently recognized by the United States Supreme Court in TransUnion LLC v. Ramirez, 594 U. S. ___, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). The movant contends that, even though the court in that case relied on lack of standing as required by Article III of the United States Constitution, the same result should obtain here as the court determined there was an absence of harm to the plaintiff in circumstances substantially akin to those here and New Jersey courts also require a showing of harm to establish standing.

The Defendant invokes the doctrine of judicial estoppel, contending the circumstances here warrant the application of this doctrine to bar Miller's claim. Distilled to the essentials, the Defendant's position is that the Plaintiff has played fast and loose with the judicial system by adopting different positions in different courts.

The Defendant asserts the Plaintiff initially did not identify any affirmative claims against third parties in her bankruptcy petition, but instead identified potential/unknown consumer protection claims, as "other contingent and unliquidated claims" in a section of the petition reserved for counterclaims and set offs. According to Americollect, she also suggested her claims were subject to the exemption amount of \$1000. The Plaintiff ultimately received a discharge in bankruptcy based on her submission.

Americollect contends the Plaintiff has thus violated her disclosure obligations under the Bankruptcy Code and should not be rewarded for doing so. It argues the Plaintiff was manifestly aware of the debt obligation and the present claim at the time of the bankruptcy filing and elected not to disclose it. As a result of such failure of disclosure, according to Americollect, the Trustee abandoned the claim as an asset of the Estate. Americollect asserts that, in these circumstances, the Court should not permit miller to pursue the claim in this Court.

Americollect points out that the Plaintiff subsequently sought to amend her bankruptcy petition to identify five specific claims, including this one, and to remove such claims from exempt status. The court rejected the request based on the discharge, and it further determined that the Plaintiff would have to seek to re-open the preceding altogether to modify her prior disclosures.

The movant contends a claim under the CFA fails as a matter of law because (i) the alleged conduct of Americollect did not occur in connection with the sale of merchandise; and (ii) the Plaintiff did not suffer an “ascertainable loss” required by the statute to maintain an action. Americollect argues that the CFA does not apply to debt collection activities. It contends there is no factual allegation in the pleading — other than a conclusory assertion of “ascertainable loss” — concerning any loss of money or property suffered by the Plaintiff as a result of the Defendant’s conduct.

The Defendant asserts there is no allegation that the Defendant shared or published any private or confidential information of the Plaintiff. Moreover, according to Americollect, the Plaintiff herself made a

matter of public record information concerning the creditor, the account number and the amount of the debt.

Americollect asserts the claim for common law invasion of privacy fails as a matter of law as the Plaintiff has not alleged the communication of private information to the public or to so many persons that the information is substantially certain to become public knowledge. Americollect contends that the pleading alleges the dissemination of information to a single letter vendor that in turn used the information to transmit a letter to the Plaintiff herself and not to the public at large.

Americollect also asserts the claim fails as the information allegedly transmitted was not highly offensive. It contends that courts have routinely rejected the proposition that communication of non-payment of a small indebtedness constitutes publication of information that is highly offensive. And, Americollect observes, the Plaintiff herself disseminated substantially the same information to the public via her bankruptcy filing.

The Defendant seeks dismissal of the FDCPA claim as it contends the claim plainly does not meet the statutory requisites for an actionable violation of any provision of the statute. It contends the transmission of data by the Defendant to the letter vendor was not a “communication” with a “person” subject to the statute; and that even if it were a “communication”, such transmission was not a communication “in connection with the collection of a debt.” Americollect argues that that the FDCPA encompasses transmissions to a letter vendor and to conclude otherwise is at odds with the statutory purpose, legislative history, and the

Consumer Financial Protection Board's own regulatory guidance.

Americollect contends that the statutory term "medium" extends to certain people such as telephone operators and those who prepare and transmit telegrams and contends that a letter vendor is the equivalent of such a "medium." It asserts incidental contact by a debt collector with such a "medium" is not a violation of the FDCPA.

Indeed, a letter vendor, according to Americollect, receives and processes data through automated systems and such information does not even involve the viewing of the information by a person. Americollect argues that, just as the use of telegrams does not render those individuals engaged in processing such telegrams as "persons" under the statute, the circumstances here, involving the mere receipt and processing of information, likewise do not involve communication with a "person."

The Defendant contends the communication, if any, to the letter vendor was not a communication "in connection with the collection of a debt" as there was no inducement to pay involved in such communication. It asseverates that, although the letter that the letter vendor produced was issued for the purpose of collection, Americollect did not undertake the initial communication of data to the letter vendor to collect the debt. It argues there was no demand for payment involved in the communication. It asserts the letter vendor had no role in or ability to make or achieve payment or to induce the debtor to pay the debt. Nor was the communication to such vendor provided for such purpose.

Americollect contends the statutory scheme simply does not proscribe communications with a letter vendor. It points out the exception set forth in the statute at Section 1692b(c) is not exhaustive, as it does not refer explicitly to such entities as telephone/telegram operators. More fundamentally, it asserts that, as the purpose of the statute is to protect debtors from abusive debt collection tactics or practices and shield them from embarrassing disclosures to family, friends, neighbors or employers, the statutory purpose is not implicated or advanced by enforcement of the statute in relation to the conduct at issue here that does not involve any such abuse.

Americollect acknowledges a holding to the contrary in the Eleventh Circuit, Hunstein v. Preferred Collection & Management Services, 17 F. 4th 1016 (11th Cir. 2021), but points out that the court later vacated the decision in favor of an en banc review. The Court en banc ultimately dismissed the case for lack of Article III standing. Moreover, Americollect cites two authorities (albeit unpublished, non-binding) concluding that the Supreme Court's recent decision in TransUnion casts considerable doubt on the validity of a "mailing vendor" theory of liability.

Finally, the Defendant asserts there is no basis for the claims seeking declaratory relief or liability sounding in negligence. It asserts there is no separate and independent basis for a claim for declaratory relief, when the substantive claims themselves are untenable. It asserts the prayer for injunctive relief is unsustainable as the alleged conduct is wholly in the past.

It contends there can be no viable negligence claim, as there is no duty of care owed to the Plaintiff by a

debt collector. Nor, according to the movant, does the Plaintiff allege any damages resulting from the claimed negligence.

Miller contends now, as she did before, that the SAC (and its predecessor) state viable claims for relief under the FDCPA, the CFA and the common law. As to the FDCPA, Miller asserts the statute expressly bars the conveyance of information concerning her underlying debt to any third party, save as specifically excepted. She argues that, as a letter vendor is not included in the narrow exception, the transmission by Americollect to the lender vendor of information concerning her debt was a violation, giving rise to a right to recover damages, including statutory damages.

Miller avers that Congress could have included letter vendors within the ambit of the exception, whether in the original statute or by amendment, but it has not ever done so. Indeed, the Plaintiff submits that, because neither the FDCPA nor any other law directly regulates the conduct of letter vendors engaged in handling information received from a debt collector, consumers have no practicable means of recourse against a letter vendor that were to misuse private information and must instead rely on rights established by the FDCPA against debt collector.

Miller argues that this Court is obligated to apply the statutory text based on the plain meaning of the language Congress employed. She argues that resort to extrinsic aids to interpretation, such as legislative history, is only permissible when the text is ambiguous, and she asserts there is no ambiguity here. Instead, according to Miller, the text clearly prohibits the conveyance of information to third parties with limited exceptions and courts are obliged to conclude

that Congress intended the statute to operate exactly as written.

Miller contends there can be no doubt that the conveyance of information concerning her debt by Americollect to a letter vendor was a “communication” and one undertaken “in connection with collection of any debt.” She inquires as to what other end could the conveyance of such information to the letter vendor possibly have been intended other than the collection of a debt. Miller asserts that every federal court that has considered on the merits the issue of whether the conveyance by a debt collector of information about a debtor’s debt to a letter vendor is a prohibited third-party communication has found a violation based on what she asserts is a straightforward application of, and rigorous adherence to, the statutory text.

Miller asserts that the statutory prohibition of such use of a letter vendor by a debt collector does comport with the statutory purpose. She argues that a purpose of the FDCPA is to protect debtors/consumers from invasions of privacy. She contends that the statutory prohibition on transmission of private information even to a letter vendor is necessary to protect privacy interests and, in particular, the risk of enabling identity theft. Her SAC avers that information such as Americollect transmitted to the lender vendor concerning her debt has a market value, incentivizing a letter vendor to misuse the data. She contends that debtors fearing the risk of identity theft will be forced to bear the cost of available identity theft monitoring services.

Miller points out that the laws and regulations governing the use and disclosure of private medical information expressly permit disclosure to certain business

associates of hospitals and medical practices. But such business associates are bound to adhere to a comprehensive regulatory regime that establishes rules and procedures for the receipt, use and security of the information when in the possession of such associates.

Miller argues there are no comparable provisions in the FDCPA, or the regulations promulgated pursuant to the statute, pertaining to letter vendors or other business associates of debt collectors. She asserts Congress could easily have established an exception permitting use of letter vendors or other comparable services, together with rules and procedures governing these relationships. Such rules and regulations would have extended the coverage of the statute to such entities in a manner that does not exist at present.

Miller asserts that her right to pursue a claim under the CFA proceeds directly from the alleged violation of the FDCPA. She argues that such violation also constitutes an unconscionable act by the commercial debt collector that is prohibited by the CFA. The ascertainable loss includes the expenditure for monitoring services to detect identity theft resulting from the threat of misuse of private information.

The Plaintiff contends that she has also stated a viable claim for common law invasion of privacy. She argues such a claim can arise in appropriate cases from transmission of private data or information to a single entity or individual. She contends the circumstances here present such an actionable invasion of privacy.

Likewise, Miller alleges a cause of action for negligence and asserts that such cause is legally tenable. She contends that the FDCPA establishes a standard

of care for debt collectors and prohibits them from sharing information concerning a debtor with third parties, save as excepted. She asserts that Americollect's transmission of such information to a letter vendor is a breach of that duty of care. She alleges that such conduct gives rise to a common law cause of action for negligence.

IV

The Court agrees with Americollect that the SAC, even as amended, does not state a viable claim for relief under the FDCPA. As the alleged violation of the FDCPA is the essential underpinning the rest of the Complaint, the entire pleading fails insofar as it relies on such alleged violation.

The conduct at issue — the transmitting of data to a letter vendor for the purpose of preparing a letter to then be directed to the debtor herself — is simply not “communicating” proscribed by the FDCPA, nor was the communication undertaken “in connection with the collection of any debt” under any sensible interpretation of such terms as used in the statute, given its purpose and objective. The letter vendor engaged by the debt collector here is no different than the telephone/telegraph operator engaged as a “medium” for a permitted communication.

To hold otherwise is to ignore the reality that debt collectors employ letter vendors to prepare correspondence necessary for their lawful operations and, in effect, to require such debt collectors necessarily to conduct business on a fully integrated basis without need for an outside letter vendor. Indeed, at oral argument during the earlier motion practice, counsel for the Plaintiff suggested, in response to the Court's

inquiry, that this may be precisely the result contemplated by the statute. But there is simply no basis in either the letter or the intendment of the FDCPA for any such conclusion.

The FDCPA affords individuals a private right of action and civil remedy against “debt collectors” that undertake debt collection practices that are declared to be unlawful under the act. Thus, pursuant to 15 U.S.C. Sec. 1692k, a debt collector that fails to comply with any provision of the act with respect to any person is subject to civil liability for such person’s individual actual damages and/or statutory damages in an amount of up to \$1000, together with attorneys’ fees and costs. The statute provides for a cap on statutory damages that may be recovered in the context of a Class Action.

Section 1692c(b) of the FDCPA provides that a debt collector “may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney for the creditor or the attorney for the debt collector”, without prior consent of the consumer or permission of a court of competent jurisdiction (with an exception not relevant in the circumstances here). Distilled to its essentials, the SAC in this case alleges that the Defendant’s conveyances to the letter vendor of private information concerning her indebtedness or that of proposed Class violated this proscription, entitling the Plaintiff and the Class members to statutory damages and attorneys’ fees.

As Americollect correctly argues in its briefing, in interpreting a statute the Court’s obligation is to ascertain the intent of the legislative body that enacted

the statute — here, the Congress — and interpret and apply the statute in a manner as to effectuate that intent. Finkelman v. Nat’l Football League, 236 N.J. 280, 289 (2019). When the meaning of the statutory language is “plain,” courts must enforce such “plain meaning.” Id.

However, in deciding whether the text of a particular statutory provision is “plain,” courts do not view the provision “literally or in isolation.” Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009). See also Scalia, A Matter of Interpretation, 24 (1997) (noting “the good textualist is not a literalist”). Rather, “[t]he plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” Robinson v. Shell Oil Co., 519 U.S. 337, 341 (1997). This is so because, “oftentimes the ‘meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.’” King v. Burwell, 135 S. Ct. 2480, 2489 (2015). A court’s “duty, after all, is to construe statutes, not isolated provisions.” Id. at 2488. “When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no ‘rule of law’ which forbids its use, however clear the words may appear on ‘superficial examination.’” Pub. Citizen v. U.S. Dep’t of Just., 491 U.S. 440, 455 (1989). Further, even where the statutory language is “plain,” courts decline to apply the “plain” meaning where it is either at odds with Congress’s intent or would lead to absurd results. Finkelman, 236 N.J. at 289. See also Pub. Citizen, 491 U.S. at 455 (“Looking beyond the naked text for guidance is perfectly proper when the result it apparently decrees ... seems inconsistent with

Congress' intention, since the plain-meaning rule is 'rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists"). Under such circumstances, courts will decline to apply the literal interpretation of the statute and presume "the legislature intended exceptions to its language [that] would avoid results of this character." Ibid.

As this discussion makes clear, the polestar of statutory interpretation of the relevant provisions of the FDCPA as applied to the facts presented in the SAC is the legislative intent as determined by the language employed in the same. The Court is required to accord unambiguous statutory terms their plain and ordinary meaning. At the same time, it is appropriate to examine and interpret the relevant statutory terms — here, "communicate", "in connection with the collection of any debt" and "person" — in the context of the nature and purpose of the statute, considered as a whole, to accord a sensible meaning to such text.

Through 15 U.S.C. Sec. 1692(a), setting forth Congressional findings and its statement of purpose, the FDCPA states that "[t]here is abundant evidence of abusive, deceptive, and unfair debt collection practices by many debt collectors" and that "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." Congress declared its purpose in enacting the statute as follows:

It is the purpose of this title 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. Sec. 1692(c)]

Examination of the both the statutory text and legislative history reveals that the statute is manifestly intended to permit the business of legitimate debt collection, while proscribing certain activities in order to prevent and, where necessary, to sanction, abusive collection practices, tactics or techniques that subject a debtor to embarrassment or worse among family, friends, neighbors and or employees. See, e. g., S. Report. No. 95-382, reprinted in 1977 U.S.C.C.A.N. 1695, 1696.

Here, the Plaintiff's pleading alleges only that the Defendant Americollect transmitted information related to a debt — the nature of the debt, the creditor, relevant creditor account number, debt collector account number, amount owed — to a letter vendor for the purpose of creating a lawful communication to the debtor. In these circumstances, to consider such transmission to have been a regulated communication is to apply what the United States Supreme Court has called “uncritical literalism” in interpreting and applying the statute and thereby torture the meaning of the term, as used in the statute, beyond recognition. New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 656, 115 S. Ct. 1671, 1677, 131 L. Ed. 2d 695, 705 (1995).

The statute does not define “communicate” but does set forth a definition of “communication” to be the “conveying of information regarding a debt directly or

indirectly to any person through any medium.” 15 U.S.C. Sec. 1692a. To “communicat[e] regarding a debt” for purposes of the FDCPA is perforce to engage in a conveyance by which the sender intends the recipient to receive and examine the information concerning the debtor’s indebtedness for the purpose of inducing the debtor to satisfy the debt. Here, there was no such purpose, as the information communicated was of no moment whatsoever to the letter vendor or its personnel and, according to the present Complaint, was not used or employed by such vendor beyond the need to create the desired letter to the debtor.

Unlike employers, neighbors, family members or friends of the debtor, the employees of a letter vendor do not possess the ability to induce payment by inflicting reputational or other harm on a debtor simply by processing the information into a template letter intended to be sent to the debtor.²

² In TransUnion LLC v. Ramirez, 594 U. S. ___, 141 S. Ct. 2190, 210 L. Ed. 2d 568, the Supreme Court held that certain plaintiffs alleging a claim under the Fair Credit Reporting Act against a credit reporting agency lacked Article III standing to pursue such claim as they had not suffered the requisite injury having stipulated that the agency had not disseminated data as to them to third-parties. In the Supreme Court, the plaintiffs contended that the defendant had transmitted information to a letter vendor. Although rejecting the claim as not raised below, the court stated the following concerning the transmission of consumer data to a letter vendor: “Many American courts did not traditionally recognize intra-company disclosures as actionable publications for purposes of the tort of defamation. Nor have they necessarily recognized disclosures to printing vendors as actionable publications. Moreover, even the plaintiffs’ cited cases require evidence that the defendant actually “brought an idea to the perception of another,” Restatement of Torts § 559, Comment

Moreover, there is no allegation in the present pleading — after the Plaintiff was afforded opportunity to re-plead — of misuse of the data by the letter vendor, or its personnel, such as by selling or otherwise conveying the data to a third-party other than the debtor herself or even any allegation from which such harmful conduct might reasonably be inferred. The transmission of information to such employees, without more, is simply not “communicating” within the intendment of the statute and is certainly not the kind of abusive collection practice or method that the act sought to address.

Even granting the dubious proposition that the transmission of information as between Americollect and the letter vendor was an act of “communicating”, it was not communication “in connection with the collection of any debt.” This is so even according, as the Court does, a broad interpretation of the phrase “in connection with.”

The purpose of providing the information to the letter vendor was not collection, whether directly or via inducement to pay through persuasion or embarrassment. The communication made no demand for payment, nor was it intended to inform the recipient of

a, p. 140 (1938), and thus generally require evidence that the document was actually read and not merely processed, cf. Ostrowe v. Lee, 256 N. Y. 36, 38–39, 175 N. E. 505, 505–506 (1931) (Cardozo, C. J.). That evidence is lacking here. In short, the plaintiffs’ internal publication theory circumvents a fundamental requirement of an ordinary defamation claim—publication—and does not bear a sufficiently ‘close relationship’ to the traditional defamation tort to qualify for Article III standing.” Id., 141 S. Ct. at 2210, n.6, 210 L. Ed. 2d at 590, n. 6 (citations omitted).

the debtor's indebtedness for purposes of facilitating a collection. Indeed, the letter vendor had no ability, directly or indirectly, to persuade, coerce or shame the debtor into payment merely by receipt of the data concerning the debt. Instead, the debt collector transmitted the data to enable preparation of a letter to the debtor, which letter, when issued by or for the debt collector, was a communication in connection with collection. See Travelers, 524 U.S. at 656, 115 S. Ct. at 1677, 131 L. Ed. 2d at 705 ("But this still leaves us to question whether the surcharge laws have a "connection with" the ERISA plans, and here an uncritical literalism is no more help than in trying to construe "relate to." For the same reasons that infinite relations cannot be the measure of pre-emption, neither can infinite connections. We simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive").

What is more, there are no facts alleged establishing that Americollect intended a communication with a "person" when it transmitted the information via electronic means to the letter vendor. Indeed, as Americollect points out, it is unlikely that any individual at the letter vendor ever saw, let alone examined, the information concerning the debt.

Individuals working for the letter vendor(s) in issue in this case are far more akin to clerical employees of the debt collector or personnel with postal/telephone/telegram operators that happen to receive and process information conveyed by a debt collector than to an employer, neighbor, friend or family member of a debtor. In truth, given advances in technology,

letter vendors are even less likely than any such functionaries to see the debtor's data.

Such personnel are instead more realistically viewed as part and parcel of the "medium" by which a communication is ultimately undertaken, and not the intended recipients of that communication. Not only does the statutory definition of a "communication" make an express distinction between a "person" receiving a communication and/or to whom it is directed and the medium by which it is conveyed, but it explicitly recognizes that communications in aid of debt collection will be conveyed via mail, telephone, and telegram. See, e.g., 15 U.S.C. Secs. 1692(b)(5), (f)(5). Particularly given such recognition, it is difficult to conceive that anyone would posit that the transmission of information about a debtor to a postal service or telephone or telegram operator, without more, violates the proscription against third-party communications merely because an employee of such entity would perforce handle, process, or otherwise transmit the information — and the Court is unaware of any authority that so holds. Invoking the statutory civil remedies solely in relation to a conveyance of information to a letter vendor would produce an equally absurd result. It follows from this that merely transmitting or otherwise providing data to the employees of such third-party service providers, without more, cannot be a prohibited act within the compass of the statute.

The Court is mindful that the statute identifies specific individuals or entities to which a debt collector may transmit a communication without impermissibly trenching on the debtor's rights — e. g., the debtor, debtor's attorney, debt collector's attorney, certain credit reporting agencies. As noted above, Miller

asserts that to hold that a transmission to a letter vendor does not violate the statutory proscription is to create an exception not authorized by Congress and that if Congress had intended to exempt such transmissions, it would have done so.

But the individuals and entities identified in the text have a direct role in debt collection activity and are far more likely than the employee of a postal service, telephone or telegram operator or letter vendor to examine and use the information transmitted to them. That Congress determined to create an exception for transmission of information to such individuals and/or entities — no doubt in recognition of the fact that prohibiting the same would cripple legitimate debt collection activity — does not mean that Congress intended to bring far more mechanical transmissions of debtors' data to postal services, telephone/telegram companies, or letter vendors within the compass of the statute.

The essential purpose of the FDCPA, as noted, is to address and deter abusive collection practices that give rise to a risk of embarrassment or other hardship to a debtor, such as via communications directed at a family member, friend, neighbor, or employer of the debtor. Save as necessary to protect such interests of the debtor, the FDCPA is not intended to impede or impair legitimate collection efforts of a collect creditor or debt collector.

The facts alleged here simply do not implicate the purpose for which the statutory protection exists. There are no facts presently alleged that would permit a conclusion that the alleged supplying of information by the debt collector to the letter vendor was in any way intended to, or had or could have had the effect

of, harassing, embarrassing or humiliating the debtor or was otherwise undertaken for any reason other than legitimate collection activities directed to the debtor. Thus, the conduct alleged by the Plaintiff as a basis for the individual and proposed Class claims does not contravene either the express letter or intent of the FDCPA.

As Miller points out, Congress specifically identified as other statutory objectives the protection of consumers against invasion of privacy and the protection of compliant debt collectors against unfair commercial or competitive advantages achieved by those who violate the statutory requirements. But these statutory objectives are simply not implicated by the alleged misconduct in this case. The transmission of data to a letter vendor for the sole purpose of facilitating preparation of a letter with the same information to the debtor herself is not, without more, the kind of invasion of privacy the statute was intended to address. Moreover, the use of a letter vendor for such purpose is a matter of reasonable business practice that is available to all debt collectors, should they so elect, and thus is not an unlawful method of doing business that gives rise to an unfair competitive advantage to a malefactor.

Miller's reference to identity theft is also unavailing. Unlike other statutory and or regulatory regimes, the FDCPA is not aimed at preventing or dealing with the problems of identity theft. Nor are any facts alleged in the SAC to establish that any identity theft has occurred. And if such facts were extant — i, e., a misuse of Miller's data by the letter vendor or its personnel — Americollect would be liable for such violation under the FDCPA. Although letter vendors

themselves are not proper targets of claims under the statute, debt collectors that transmit data that impermissibly ends up in the hands of third parties surely are.

The Court is aware of the decision of the Eleventh Circuit in Hunstein that accepted the letter vendor theory as a basis for proceeding with a claim under the FDCPA. Hunstein, 17 F. 4th 1016. But that court subsequently vacated its opinion in favor of an en banc hearing. Hunstein, 17 F. 4th 1103 (11th Cir. 2021). Following hearing en banc, the Court of Appeals dismissed the action on grounds of lack of Article III standing. Hunstein v. Preferred Collection & Management Servs., 48 F. 4th 1236 (11th Cir. 2022). This Court is, of course, not bound by Hunstein and finds the appellate courts in this State would decide the issue differently.

Although the few federal courts that have addressed the merits of a claim under the FDCPA in a case involving the use of letter of a letter vendor have indeed held such claim may stand, other federal courts have cast considerable doubt on such claims, albeit in the context of addressing Article III standing. In addition to the footnote discussion quoted above from TransUnion, consider for example Cavazzini v. MRS. Assocs., 574 F. Supp. 3d 134 (E. D. N. Y. 2021). There, the court stated that:

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). As the Second Circuit has explained,

[t]he legislative history of the passage of the FDCPA explains that the need for the FDCPA arose because of collection abuses such as use of “obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer’s legal rights, disclosing a consumer’s personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process.”

Kropelnicki v. Siegel, 290 F.3d 118, 127 (2d Cir. 2002) (quoting S. Rep. No. 95-382, at 2 (1977)). The third-party communications listed above involve debt collectors’ reaching out to third parties—friends, neighbors, and employers—whose knowledge of the debt would likely embarrass a reasonable person. Thus, it appears Congress intended to target certain especially harmful debt collection practices—not all communications by debt collectors to third parties. This conclusion is further supported by the fact that the drafters of the FDCPA were also responding to the common-law background. The drafters explicitly countered common-law courts’ disinterest in debt-related communications to employers by specifically prohibiting certain communications to debtors’ employers. See 15 U.S.C. § 1692c(a)(3). The drafters did not, however, similarly single out stenographers or clerks, despite their frequent involvement in preparing and sending written

communications. In many ways, a mailing vendor is a modern-day stenographer or clerk, briefly viewing the information for the purpose of creating and/or processing a communication. At any rate, its delimited role is closer to that of a stenographer or clerk than that of an employer, whose knowledge of an employee's debt (and authority over the employee) could result in economic and/or reputational consequences for that employee. In sum, passing on a debtor's information to a company for the sole purpose of creating a mailing does not appear to be one of the "unfair, deceptive, or harassing behavior[s]" the FDCPA is meant to target, *Kropelnicki*, 290 F.3d at 127.

[Id. at 142–143.]

This Court finds this reasoning, albeit arising in a different procedural context, to be more persuasive than the analysis performed by those federal courts that have sustained as legally viable claims pursuant to the FDCPA in cases involving the use of a letter vendor on the basis that, in so holding, the court is hewing to the statutory text. This Court concludes that sustaining the claim of Miller as repleaded in the SAC is not consistent with either the text, properly examined, or the intendment of the statute.

The Court likewise finds the claim for invasion of privacy is legally unsustainable as presently pleaded. A claim for public disclosure of private facts requires the plaintiff to demonstrate that (i) the defendant has given publicity to matters that were actually private; (ii) dissemination of such facts would be offensive to a reasonable person; and (iii) the public has no

legitimate interest in being apprised of the facts publicized. Bisbee v. John C. Cooper Agency, Inc., 186 N. J. Super. 335, 340 (App. Div. 1982). The Restatement (Second) of Torts, Section 652D, cmt a makes clear that “[p]ublicity” means the matter is made public “by communicating it to the public at large or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.”

In the circumstances here, this cause of action thus requires an allegation that the alleged tortfeasor disclosed the private information of the Plaintiff to so many persons that it was substantially certain to become a matter of public knowledge. However, even after examining the facts alleged in the SAC in the light most favorable to the Plaintiff, the pleading avers that the Defendant communicated information concerning Miller’s indebtedness to a single entity, and thus that at most a small group of employees of the letter vendor saw the Plaintiff’s private information. There are no allegations that such information thereby became a matter of public knowledge or consumption. Indeed, the Plaintiff does not allege that anyone at the letter vendor actually read the information concerning Miller’s debt, much less that such individual(s) publicized the information to the general public.

Accordingly, even granting that minimal data concerning a relatively small consumer debt incurred by an individual, such as Americollect possessed and transmitted in relation to Miller, is the type of information to which the tort of invasion of privacy applies in the first instance, the pleading nonetheless fails to establish an actionable invasion of privacy by the Defendant. There are simply no facts alleged

establishing that such information became public by reason of Americollect's conduct. In actuality, the record reflects that if private data concerning the Plaintiff's debt is now public, it was the Plaintiff herself, and not Americollect, who placed the same in the public domain through her bankruptcy filing.

The Court further finds that the Plaintiff's claim under the CFA fails as a matter of law. To establish a CFA violation, a consumer must show (i) unlawful conduct by the defendant; (ii) and ascertainable loss by the plaintiff; and (iii) a causal connection between the unlawful conduct and the ascertainable loss. Bosland v. Warnock Dodge, Inc., 197 N. J. 543, 567 (2008). The affirmative acts declared unlawful under the CFA include deception, fraud, false pretense, false promise, misrepresentation and unconscionable commercial practices in connection with the purchase and sale of merchandise or real estate. N.J.S.A. 56: 8-2.

To the extent that the CFA claim hinges on the alleged violation of the FDCPA, the cause of action fails for the reasons already stated. There is no violation of the FDCPA pleaded in the Complaint or the Amended Complaint that could form the basis of a claim for relief under the CFA.

In any event, even presuming the act regulates the conduct of debt collectors (a highly dubious proposition), the transmission of information to a letter vendor is simply not an unconscionable commercial practice by such debt collector warranting sanction under the CFA. There is nothing deceptive, fraudulent, or unconscionable about either engaging a letter vendor for a legitimate purpose or transmitting to such vendor the information the latter needs to perform its function. As noted, there is no invasion of the debtor's

privacy from the mere transmission of data to a letter vendor, as the information remained private even after the transmission.

Moreover, the Plaintiff has failed to plead facts establishing an ascertainable loss causally linked to the transmission of information to the letter vendor. In the absence of any factual averment that employees of the letter vendor did anything other than process the information transmitted to them into a letter that was then mailed only to the debtor, the Plaintiff has not established, and cannot demonstrate, an ascertainable loss. Instead, the loss, if any, suffered by the Plaintiff is merely theoretical, as demonstrated by the Plaintiff's claim for statutory damages under the FDCPA. Even presuming there could be some ascertainable, measurable loss resulting from the type of conduct alleged, the Plaintiff did not suffer any such loss, as she herself made public essentially the same information conveyed to the letter vendor via her bankruptcy proceeding.

The amended pleading asserts that the Defendant's conduct resulted in reputational harm to the Plaintiff. However, putting aside the conclusory and unsupported nature of such allegation, the Plaintiff has not cited to any authority demonstrating that reputational harm is an "ascertainable loss" within the purview of the CFA.

More fundamentally, it is impossible to conceive that any such reputational harm could have resulted from the conduct alleged. As the Court already determined in relation to the claim for invasion of privacy, the mere transmission of information about a debtor's (alleged) outstanding consumer debt to a letter vendor for the purpose of generating a letter to the debtor

herself is, without more, not an act that could result in the information becoming a matter of public knowledge. It is therefore beyond peradventure that the mere transmission of such data to a letter vendor for such purpose could not of itself cause reputational harm.

The Court finds the theory of recovery sounding in common law negligence to be untenable as well. There is no duty of care owed by a debt collector to a debtor that provides the foundational basis for a claim sounding negligence. To the extent the FDCPA establishes a duty of care on the part of a debt collector as to the debtor, as the Amended Complaint alleges, the Court finds the pleading does not allege a breach of such duty inasmuch as it does not allege a violation of the statute as previously determined.

Because the Court has concluded that none of the substantive causes of action asserted in the Complaint or the SAC survives legal scrutiny, it also concludes there is no basis established either for a declaratory judgment or injunctive relief. These are not independent causes of action, but instead are remedies that could result from the prosecution of a viable claim. There is no such viable claim asserted here.

For these reasons, the Court dismisses the SAC. The Court previously afforded the Plaintiff a right to re-plead to address legal deficiencies in the prior pleading that it identified in connection with the prior motion practice. It concluded that the Plaintiff might be able to allege facts concerning some actual impropriety in the handling of data by the letter vendor that caused her data to be provided to other third parties or even to be publicly disseminated. However, the Plaintiff has not pleaded any such facts in the SAC

and has instead added allegations that, even when accepted as true (as the Court has done solely for purposes of adjudicating this motion), do not give rise to viable statutory or common law claims. Accordingly, the Court now dismisses the SAC with prejudice.

In the circumstances, the Court finds it is not necessary to address the other matters advanced by Americollect. For example, it need not address the claim of judicial estoppel, asserted in light of the alleged actions of the Plaintiff in connection with her bankruptcy proceeding, which appears to be the basis for much of the content of the SAC that details the nature of and basis for the Plaintiff's conduct of that proceeding.

Appendix K

SCOTT DIANA, <i>on behalf of himself and those similarly situated,</i>	Hon. ANTHONY V. D'ELIA
Plaintiff,	SUPERIOR COURT OF NEW JERSEY
v.	LAW DIVISION:HUDSON COUNTY
FIRST NATIONAL COLLECTION BUREAU, INC.; LVNV FUNDING, LLC; and JOHN DOES 1 to 10,	Civil Action Docket No.: HUD-L-003014-23
Defendants.	ORDER GRANTING FIRST NATIONAL COLLECTION BUREAU, INC.'S MOTION TO DISMISS WITH PREJUDICE

THIS MATTER, having been opened to the Court by Defendants, FIRST NATIONAL COLLECTION BUREAU, INC. ("Defendant" or "FNCB") for an Order: (1) dismissing Plaintiff's Complaint in its entirety with prejudice for lack of standing and/or (2) dismissing Plaintiff's Complaint in its entirety with prejudice for a failure to state a claim under Rule 4:6-2(e) And the Court having considered Defendant's moving papers in support thereof; and for good cause shown:

It is on this 2 day of AUGUST, 2024,

ORDERED that Defendants' Motion to Dismiss is **GRANTED** in its entirety; and it is further

**[REMAINDER OF THE PAGE
INTENTIONALLY LEFT BLANK]**

App-120

ORDERED that Defendant shall serve a copy of this Order within seven (7) days of receipt thereof on all parties of record.

This Motion was: X Opposed __ Unopposed

BY THE COURT:

/s/ Anthony V. D'Elia

ANTHONY V. D'ELIA, J.S.C.

*FOR THE REASONS PLACED ON THE RECORD
OF AUGUST 2, 2024.*

App-121

Appendix L

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
HUDSON COUNTY, NEW JERSEY
DOCKET NO. HUD-L-003014-23

SCOTT DIANA,	)	
	)	
Plaintiff	)	TRANSCRIPT OF
	)	OF
vs.	)	MOTION HEARING
FIRST NATIONAL COL-	)	
LECTION BUREAU,	)	
INC.; LVNV FUNDING,	)	
LLC; and JOHN DOES 1-	)	
10,	)	
	)	
Defendant.	)	

Place: Hudson County
(Heard Via Zoom)

Date: August 2, 2024

BEFORE:

HONORABLE ANTHONY V. D'ELIA, J.S.C.

TRANSCRIPT ORDERED BY:

EUNICE JEON, ESQ.
(Kim Law Firm, LLC)

APPEARANCES

MARK H. JENSEN, ESQ. (Kim Law Firm)
Attorney for the Plaintiff

AUSTIN P. O'BRIEN, ESQ. (J. Robbin Law)
Attorney for the Defendant

Transcriber:
Suzanne T. Johnson

App-122

PAT'S TRANSCRIPTION SERVICE
504 Forest Court
Williamstown, NJ 08094
Phone: (856) 728-3151
Email:
patstranscriptionservice@gmail.com
Digitally Recorded
Recorded by: Tina Miller

I N D E X

PROCEEDING: PAGE

ARGUMENT:

By: Mr. O'Brien [App-122]
By: Mr. Jensen [App-124]

THE COURT:

Matter dismissed [App-129]
Motion granted [App-129]

THE COURT: Next is the motion that we have scheduled for 9:00-9:30. It is motion number 24 Fin -- where did Fin go? There's Fin. Over there, Fin. You sit over there, don't you?

MR. LALOR: Yeah, I usually do.

THE COURT: Go ahead. Why are you sitting over there?

This is number -- as I said, number 24 on our list. L-3014-23. Counsel for the Plaintiff, your appearance?

MR. JENSEN: Good morning, Your Honor. Mark Jensen of the Kim Law Firm, on behalf of the Plaintiff, Scott Diana.

THE COURT: And for the Defendants?

MR. O'BRIEN: Good morning, Your Honor. Austin O'Brien with J. Robbin Law, for the Defendants, including the movant, FNCB.

THE COURT: All right. Let me hear from the Defendant. This is a motion to dismiss the complaint and let me hear your arguments in a nutshell, please?

MR. O'BRIEN: So first, Your Honor, briefly, it's respectfully submitted that Plaintiff can't meet the threshold inquiry of standing. They've been able to show no injury, they allege no injury. The only -- if there is any injury alleged, it's just merely an allegation of confusion or anxiety. But that can't (inaudible -- audio garbled) -- they can't explain how the transmission of encrypted data to a letter vendor for FNCB can explain and accurately collect a debt could possibly cause and likely to suffer confusion or anxiety. Again it's the transmission of encrypted data, it couldn't possibly cause confusion or anxiety to the Plaintiff.

As to the FDCPA claims, the entirety of the claims boil down to FNCB's use of a letter vendor in order to unlawfully collect on the debt. Just recently, in FTN (phonetic) identical counsel made identical arguments and the Essex County Superior Court, denied -- or dismissed the complaint in its entirety. And consistent with Third Circuit decisions and Appellate decisions, FNCB filed its motion but before (inaudible -- audio garbled) reply, on June 5th, the Appellate Division issued two unpublished decisions specifically rejecting the theory of liability now before the Court.

Specifically in analyzing the, what's called Hunstein theory of liability or the letter vendor theory of liability, the Court specifically said Plaintiff's complaint premised on conclusory allegations that

Defendant's use of the letter vendor to create a debt collection letter was in and of itself abusive, deceptive or unfair. And the Appellate Division then said that they can (inaudible – audio garbled) trial (inaudible – audio garbled) findings that the use of the letter vendor was not abusive, deceptive, or unfair, it was not the time to (inaudible – audio garbled) that congress was interested in preventing (inaudible – audio garbled) FDCPA.

So in short, Courts throughout the state, both state and federal, (inaudible – audio garbled) specifically rejected this theory of liability.

Likewise, in Plaintiff's opposition, they failed to distinguish the new element of (inaudible – audio garbled) which is the New Jersey holding. It specifically held that the debt collector's use of a letter vendor does not make the privacy of a debtor. It also recognized that the FDCPA does not impose a duty of care. So that an allegation of the violation of the FDCPA cannot be the basis for a negligence claim. Before — and so and in short, for these reasons the Plaintiff first last standing and secondly has failed to state claims under the FDCPA, invasion of privacy and also for negligence.

THE COURT: All right. Very quickly, Plaintiff, your response — I read everybody's brief. Your response?

MR. JENSEN: Yes, Your Honor. I understand you're very familiar with letter vendors. Just a couple of things in defendant's reply I want to address.

First, I want to address the issue of non-mutual collateral estoppel. Last year, before Judge Vanek was assigned to the Appellate Division, she decided the case In Res: First National Collection Bureau, which

is the first — it's the same Defendant that's here. So there is certainly articulable argument to be made that First National Collection Bureau is estopped from asserting this same argument because —

THE COURT: That was before — that was before the unreported June 24 decisions from the Appellate Division.

MR. JENSEN: That's correct. It was.

THE COURT: Judge — if you — if you read — if you read those — if we read those opinions and we read Judge Vanek's, Judge Vanek would have been reversed.

MR. JENSEN: I understand, Your Honor. In terms of standing, this is in our brief, but obviously we're not dealing with Article III standing. Here in New Jersey standing is a lower threshold. Here we've shown that we have earned that adversus, we have a personal stake in the — in the outcome of the controversy, and the controversy is capable of resolution. We have alleged intangible injuries in the terms of confusion, anxiety, and other emotional —

THE COURT: Based on what — and what would be — what would be the — if you had standing, what claims would you be pursuing if you had standing? If you got your — If you get your foot in the door and you've got standing, then what claims do you have — you argue that you have for the plaintiffs?

MR. JENSEN: Primarily under the FD CPA.

THE COURT: Okay. That's what I thought too. I — I appreciate your honesty. I have read the briefs. If this was pre-June of '24 — by the way, one of those cases was mine where I was affirmed in Asmad-Escobar vs. —

MR. JENSEN: Asmad-Escobar, yeah.

THE COURT: -- yeah, Phoenix. So I'm fully familiar with the facts of the unrep -- I know they're unreported.

MR. JENSEN: Okay.

THE COURT: But between an unreported decision from Judge Vanek who I love, and the unreported decisions from June of '24, I'm siding with the unreported Appellate Division opinions. And I'm adopting and incorporating the Defendant's arguments.

MR. JENSEN: Your Honor --

THE COURT: I am -- go ahead --

MR. JENSEN: I'm sorry, I just want to ask --

THE COURT: So I'm going to dismiss the FD CPA claims for that reason. And as you just admitted, primarily, if you had standard, primarily -- 90% of it, it might be more -- the claim would be predicated upon the FD CPA. So if I'm kicking them out, I don't really care about standing.

MR. JENSEN: Well, I want to talk about the FTN case, the Essex County FTN case that was cited in Defendant's reply. Because it's a case before Judge Lynott, and they said briefly it was dismissed with prejudice, and that's just not true. What happened was initially the complaint was dismissed without prejudice, and then Judge Lynott granted leave to amend the complaint based on the letter vendor's use of consumer data. And what the letter vendor there was doing was aggregating the data and then tailoring consulting services based on the data they received.

So there, similar allegations were made that, well a letter vendor never used this information. They don't know what's in it. They never look at it. And then later, we come to find out they were actually

aggregating selling data services based on this consumer data they were receiving. And there, in that case --

THE COURT: So no -- so no -- so no credit card company can send to a letter vendor, a letter trying to get them to enforce and collect on credit cards, because that would be an invasion of privacy?

MR. JENSEN: Well, I think it depends what the letter vendor does with the data, Your Honor. I mean, opposing Counsel was just arguing that it was encrypted data --

THE COURT: I don't see -- the letter vendor --

MR. JENSEN: -- and whatever use it --

THE COURT: Is the letter vendor a Defendant in this case?

MR. JENSEN: No, no. I'm getting to my -- I'm getting to the point, Your Honor. I'm sorry if I'm long winded, but the point is that there -- the argument is that this data is being sent encrypted -- there's never any review, there's no value of the data -- and the point is --

THE COURT: It's not saying encrypted. The facts that I'm giving you are -- I have a thousand dollar debt, a five hundred dollar debt. I am Bank of America. I'm a huge company and I want to use a company that collects on the debt. So they necessarily must get encrypted or not -- let's say, you know, confidentially, I send it to them confidentially --

MR. JENSEN: Right. Right.

THE COURT: -- and I give all the information for the creditors so that they can go out and collect from the creditors -- social security number, address, how much is owed, account number. You're telling me that's an invasion of privacy? By Bank of America?

MR. JENSEN: Yes, I am. And I'm also trying to —

THE COURT: I don't buy that.

MR. JENSEN: — go back to the FDCPA —

THE COURT: I don't buy the argument. Otherwise no — no — they'd all have to do their own collection work. I'm not going to accept that.

MR. JENSEN: Well, if — the only argument I was trying to make for the value of the data is it goes directly to standing, and that's what Judge Lynott said too, the value of the data.

THE COURT: Listen, standing just gets you in the door. That means —

MR. JENSEN: Right.

THE COURT: — you can start a lawsuit. That doesn't mean you have a valid claim. Any Plaintiff. All right, you got standing, you can't then proceed with a lawsuit unless you have a valid claim. I'm kicking it out under FDCPA, basically for the reasons in the June of the — June '24 Appellate Division cases.

And with regard to invasion of privacy, which I was going to get to, I find no invasion of privacy here regardless of what was communicated from the creditor to the letter vendor because by necessity it's — they're giving it for a limited basis to a contractual agent of the Bank of America under my example. In this case it would be First National — or LVNV funding, whatever it is.

And there's no — there was no publication to anybody else, to the public at large. It went from a company that's owed the money, to a letter vendor, to the creditor who didn't pay. That's not an invasion of privacy. I'm adopting the legal arguments that were

raised by the Defendant and dismissing the matter for those reasons.

Standing, again, for the record, I will not make a specific finding on standing. I think, if I had to, I would say that the record has not established an ascertainable loss sufficient to confer standing on the Plaintiff so that there is a record for the reasons expressed, I'm adopting and incorporating the Defendant's arguments. So that's cleaned up as well if it goes up to the Appellate Division so they don't remand it back to me and say, well, what do you think about standing?

To me, I don't care about standing. All right, you had a standing. You still don't have an FDCPA claim, still don't have an invasion of privacy claim, so, I don't see any claims that the Plaintiff can pursue even with standing. So for that reason, Motion granted.

MR. OBRIEN: And Your Honor, and that includes negligence claim as well, just to confirm for the record?

THE COURT: Same thing with the negligence claim. I don't see —

MR. OBRIEN: Okay.

THE COURT: — you send it out to a letter vendor. How is that negligent? That could never possibly — no rational jury could find that somebody who is owed \$500 who wants to use a collection agency, a letter vendor, would somehow be negligent in sending the information out. So, for those reasons, motion is granted.

Take it easy, everybody. Have a good weekend.

MR. JENSEN: Thank you, Your Honor. Take care.

MR. OBRIEN: Thank you, Your Honor.

(End of proceeding)

App-130

Appendix M

[Filed: Apr. 10, 2026]

Tariq Elshabba, individually and on behalf of all others similarly situated,	SUPREME COURT OF NEW JERSEY C-463 September Term 2025 090796
Plaintiff-Petitioner,	

v.

O R D E R

Jefferson Capital
Systems, LLC,
Defendant-Respondent.

A petition for certification of the judgment in A-003046-22 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 6th day of April, 2026.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

App-131

Appendix N

[Filed: Apr. 10, 2026]

Randy Hopkins, on behalf of himself and those simi- larly situated,	SUPREME COURT OF NEW JERSEY C-462 September Term 2025 090795
Plaintiff-Petitioner,	

v.

O R D E R

Convergent Outsourcing,
Inc.,
Defendant-Respondent.

A petition for certification of the judgment in A-003463-22 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 6th day of April, 2026.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

App-132

Appendix O

[Filed: Apr. 10, 2026]

Amber Jones, individually	SUPREME COURT OF
and on behalf of all others	NEW JERSEY
similarly situated,	C-464
	September Term 2025
Plaintiff-Petitioner,	090797

v.

O R D E R

American Coradius
International LLC,
Defendant-Respondent.

A petition for certification of the judgment in A-003946-22 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 6th day of April, 2026.

/s/ Heather Baker

CLERK OF THE SUPREME COURT

App-133

Appendix P

[Filed: Apr. 10, 2026]

Latonya Miller, on behalf of herself and those simi- larly situated,	SUPREME COURT OF NEW JERSEY C-465 September Term 2025 090798
Plaintiff-Petitioner,	

v.

O R D E R

Americollect, Inc.,
Defendant-Respondent.

A petition for certification of the judgment in A-001826-23 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 6th day of April, 2026.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

App-134

Appendix Q

[Filed: Jun. 30, 2026]

Scott Diana, on behalf of himself and those simi- larly situated, Plaintiff-Petitioner,	SUPREME COURT OF NEW JERSEY C-599 September Term 2025 091340
--	--

v.

O R D E R

First National Collection
Bureau,

Defendant-Respondent,

and

LVNV Funding, LLC,

Defendant

A petition for certification of the judgment in A-000158-24 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 24th day of June, 2026.

/s/ Heather Baker
CLERK OF THE SUPREME COURT

App-135

Appendix R

[Filed: Aug. 29, 2025]

SUPREME COURT OF NEW JERSEY

Docket No. 090796

TARIQ ELSHABBA,
*on behalf of himself
and those similarly sit-
uated,*

Plaintiff-Appel-
lant-Petitioner,

vs.

JEFFERSON CAPI-
TAL SYSTEMS, LLC,

Defendant-
Respondent,

Civil Action

Docket No. Below:
A-3046-22

Sat Below:
Hon. Jessica R. Mayer,
J.A.D.
Hon. Lisa A. Puglisi,
J.A.D.

Date of Appellate
Judgment:
May 2, 2025

PETITION FOR CERTIFICATION

KIM LAW FIRM LLC

Yongmoon Kim (NJ Attorney ID: 026122011)
ykim@kimlf.com

Mark Jensen (NJ Attorney ID 309612022)
mjensen@kimlf.com

411 Hackensack Avenue, Suite 701
Hackensack, New Jersey 07601
Telephone & Fax: (201) 273-7117

*Attorneys for Tariq Elshabba, Plaintiff-Appellant-
Petitioner*

[Pages 1–2 in whole,
and 3 in relevant parts reproduced.]

PRELIMINARY STATEMENT

The Supreme Court should grant certification to correct the lower courts' incorrect application of the plain language of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 to 1692p, as well as the lower courts' departure from guidance from this Court.

The FDCPA establishes a Code of Conduct for debt collectors, the breach of which risks the harms which Congress expressly intended to prevent. *See* 15 U.S.C. § 1692(a). One of those harms is "invasions of individual privacy." *Ibid.* Congress intended the FDCPA to be primarily enforced by the consumers affected by a debt collector's noncompliance. Hence, the FDCPA imposes liability against a debt collector for a single violation and, except for the few FDCPA provisions which expressly include scienter, the FDCPA imposes strict liability.

At the center of the Complaint is Petitioner Tariq Elshabba's allegation that Defendant-Respondent Jefferson Capital Systems, LLC ("JCAP") violated the provision of the FDCPA which states that "a debt collector may not communicate, in connection with the collection of any debt, with any person." 15 U.S.C. § 1692c(b). It is undisputed that none of the statute's express exceptions apply to JCAP's conduct. Instead, because JCAP outsourced a core collection function (namely, dunning alleged debtors in writing), the lower courts effectively judicially amended the FDCPA to exclude JCAP's communications to service providers who create, print, and mail collection letters.

Though there are no binding authorities on this issue. This Court has instructed that when there are no binding authorities construing a federal statute but there exists a consistent or majority view of the lower federal courts, a New Jersey court cannot construe the FDCPA as if writing on a clean slate. Instead, it must give “due respect” for how federal courts have applied the federal statute, “particularly where they are in agreement.” *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990); *Loigman v. Kings Landing Condo. Ass’n, Inc.*, 324 N.J. Super. 97, 105 n.7 (Super. Ct. 1999); *State v. Norflett*, 67 N.J. 268, 286 (1975). When analyzing the published federal cases that have reached the merits, it is clear that a litigant states a claim for violation of 15 U.S.C. § 1692c(b) when alleging unauthorized disclosures by a debt collector to a mail vendor. Our lower courts did not address the federal cases analyzing a debt collector’s transmittal of consumer information to a letter vendor, who receive and collect the consumer data, use the data to create, print, mail, and track collection letters. Thus, the lower courts deviated from the principle of “due respect” articulated by this Court.

Thus, Certification should be granted here because the lower courts’ decisions are in conflict with case law from this Court and because the issue on appeal—as to whether the unauthorized disclosure of consumer financial information to an unregulated third party for the aiding of the debt collector’s collection violates 15 U.S.C. § 1692c(b)—presents a question of general public importance which has not been but should be settled by the Court. *See R. 2:12-4.*

[Page 5 in relevant part reproduced.]

QUESTION PRESENTED

Did the courts below commit legal error by failing to give due respect to the decisions and analysis of the published federal decisions which determined that a debt collector communicating consumer information to a letter vendor is a violation of 15 U.S.C. 1692c(b)? Does a debt collector violate 15 U.S.C. 1692c(b) of the Fair Debt Collection Practices Act when it communicates consumer financial information to a letter vendor?

App-139

Appendix S

[Filed: Aug. 29, 2025]

SUPREME COURT OF NEW JERSEY

♦♦♦

Docket No. 090795

RANDY HOPKINS, *on
behalf of himself and
those similarly situated,*

Plaintiff-Appellant-
Petitioner,

vs.

CONVERGENT OUT-
SOURCING, INC.; and
JOHN DOES 1 to 10,

Defendant-
Respondents,

Civil Action

Docket No. Below:
A-3463-22

Sat Below:
Hon. Jessica R. Mayer,
J.A.D.

Hon. Lisa A. Puglisi,
J.A.D.

Date of Appellate
Judgment:
May 2, 2025

PETITION FOR CERTIFICATION

KIM LAW FIRM LLC

Yongmoon Kim (NJ Attorney ID: 026122011)

ykim@kimlf.com

Mark Jensen (NJ Attorney ID 309612022)

mjensen@kimlf.com

411 Hackensack Avenue, Suite 701

Hackensack, New Jersey 07601

Telephone & Fax: (201) 273-7117

*Attorneys for Randy Hopkins, Plaintiff-Appellant-
Petitioner*

[Pages 1–2 in whole,
and 3 in relevant parts reproduced.]

PRELIMINARY STATEMENT

The Supreme Court should grant certification to correct the lower courts' incorrect application of the plain language of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 to 1692p, as well as the lower courts' departure from guidance from this Court.

The FDCPA establishes a Code of Conduct for debt collectors, the breach of which risks the harms which Congress expressly intended to prevent. *See* 15 U.S.C. § 1692(a). One of those harms is "invasions of individual privacy." *Ibid.* Congress intended the FDCPA to be primarily enforced by the consumers affected by a debt collector's noncompliance. Hence, the FDCPA imposes liability against a debt collector for a single violation and, except for the few FDCPA provisions which expressly include scienter, the FDCPA imposes strict liability.

At the center of the Complaint is Petitioner Randy Hopkins's allegation that Defendant-Respondent Convergent Outsourcing, Inc. ("COI") violated the provision of the FDCPA which states that "a debt collector may not communicate, in connection with the collection of any debt, with any person." 15 U.S.C. § 1692c(b). It is undisputed that none of the statute's express exceptions apply to COI's conduct. Instead, because COI outsourced a core collection function (namely, dunning alleged debtors in writing), the lower courts effectively judicially amended the FDCPA to exclude COI's communications to service providers who create, print, and mail collection letters.

Though there are no binding authorities on this issue. This Court has instructed that when there are no binding authorities construing a federal statute but there exists a consistent or majority view of the lower federal courts, a New Jersey court cannot construe the FDCPA as if writing on a clean slate. Instead, it must give “due respect” for how federal courts have applied the federal statute, “particularly where they are in agreement.” *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990); *Loigman v. Kings Landing Condo. Ass’n, Inc.*, 324 N.J. Super. 97, 105 n.7 (Super. Ct. 1999); *State v. Norflett*, 67 N.J. 268, 286 (1975). When analyzing the published federal cases that have reached the merits, it is clear that a litigant states a claim for violation of 15 U.S.C. § 1692c(b) when alleging unauthorized disclosures by a debt collector to a mail vendor. Our lower courts did not address the federal cases analyzing a debt collector’s transmittal of consumer information to a letter vendor, who receive and collect the consumer data, use the data to create, print, mail, and track collection letters. Thus, the lower courts deviated from the principle of “due respect” articulated by this Court.

Thus, Certification should be granted here because the lower courts’ decisions are in conflict with case law from this Court and because the issue on appeal—as to whether the unauthorized disclosure of consumer financial information to an unregulated third party for the aiding of the debt collector’s collection violates 15 U.S.C. § 1692c(b)—presents a question of general public importance which has not been but should be settled by the Supreme Court. *See R.* 2:12-4.

App-142

[Page 6 in relevant part reproduced.]

QUESTION PRESENTED

Did the courts below commit legal error by failing to give due respect to the decisions and analysis of the published federal decisions which determined that a debt collector communicating consumer information to a letter vendor is a violation of 15 U.S.C. 1692c(b)? Does a debt collector violate 15 U.S.C. 1692c(b) of the Fair Debt Collection Practices Act when it communicates consumer financial information to a letter vendor?

App-143

Appendix T

[Filed: Sep. 12, 2025]

SUPREME COURT OF NEW JERSEY

♦♦♦

Docket No. 090797

AMBER JONES, *on behalf of herself and those similarly situated,*

Plaintiff-Appellant-Petitioner,

vs.

AMERICAN CORADIUS
INTERNATIONAL LLC;
and JOHN DOES 1 to 10,

Defendant-
Respondents,

Civil Action

Docket No. Below:
A-3946-22

Sat Below:
Hon. Jessica R. Mayer,
J.A.D.

Hon. Lisa A. Puglisi,
J.A.D.

Date of Appellate
Judgment:
May 2, 2025

PETITION FOR CERTIFICATION

KIM LAW FIRM LLC

Yongmoon Kim (NJ Attorney ID: 026122011)

ykim@kimlf.com

Mark Jensen (NJ Attorney ID 309612022)

mjensen@kimlf.com

411 Hackensack Avenue, Suite 701

Hackensack, New Jersey 07601

Telephone & Fax: (201) 273-7117

*Attorneys for Amber Jones, Plaintiff-Appellant-
Petitioner*

[Pages 1–2 in whole,
and 3 in relevant parts reproduced.]

PRELIMINARY STATEMENT

The Supreme Court should grant certification to correct the lower courts’ incorrect application of the plain language of the federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692 to 1692p, as well as the lower courts’ departure from guidance from this Court.

The FDCPA establishes a Code of Conduct for debt collectors, the breach of which risks the harms which Congress expressly intended to prevent. *See* 15 U.S.C. § 1692(a). One of those harms is “invasions of individual privacy.” *Ibid.* Congress intended the FDCPA to be primarily enforced by the consumers affected by a debt collector’s noncompliance. Hence, the FDCPA imposes liability against a debt collector for a single violation and, except for the few FDCPA provisions which expressly include scienter, the FDCPA imposes strict liability.

At the center of the Complaint is Petitioner Amber Jones’s allegation that Defendant-Respondent American Coradius International LLC (“ACI”) violated the provision of the FDCPA which states that “a debt collector may not communicate, in connection with the collection of any debt, with any person.” 15 U.S.C. § 1692c(b). It is undisputed that none of the statute’s express exceptions apply to ACI’s conduct. Instead, because ACI outsourced a core collection function (namely, dunning alleged debtors in writing), the lower courts effectively judicially amended the FDCPA to exclude ACI’s communications to service providers who create, print, and mail collection letters.

Though there are no binding authorities on this issue. This Court has instructed that when there are no binding authorities construing a federal statute but there exists a consistent or majority view of the lower federal courts, a New Jersey court cannot construe the FDCPA as if writing on a clean slate. Instead, it must give “due respect” for how federal courts have applied the federal statute, “particularly where they are in agreement.” *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990); *Loigman v. Kings Landing Condo. Ass’n, Inc.*, 324 N.J. Super. 97, 105 n.7 (Super. Ct. 1999); *State v. Norflett*, 67 N.J. 268, 286 (1975). When analyzing the published federal cases that have reached the merits, it is clear that a litigant states a claim for violation of 15 U.S.C. § 1692c(b) when alleging unauthorized disclosures by a debt collector to a mail vendor. Our lower courts did not address the federal cases analyzing a debt collector’s transmittal of consumer information to a letter vendor, who receive and collect the consumer data, use the data to create, print, mail, and track collection letters. Thus, the lower courts deviated from the principle of “due respect” articulated by this Court.

Thus, Certification should be granted here because the lower courts’ decisions are in conflict with case law from this Court and because the issue on appeal—as to whether the unauthorized disclosure of consumer financial information to an unregulated third party for the aiding of the debt collector’s collection violates 15 U.S.C. § 1692c(b)—presents a question of general public importance which has not been but should be settled by the Supreme Court. *See R.* 2:12-4.

[Pages 5–6 in relevant parts reproduced.]

QUESTION PRESENTED

Did the courts below commit legal error by failing to give due respect to the decisions and analysis of the published federal decisions which determined that a debt collector communicating consumer information to a letter vendor is a violation of 15 U.S.C. 1692c(b)? Does a debt collector violate 15 U.S.C. 1692c(b) of the Fair Debt Collection Practices Act when it communicates consumer financial information to a letter vendor?

App-147

Appendix U

[Filed: Aug. 29, 2025]

SUPREME COURT OF NEW JERSEY

♦♦♦

Docket No. 090798

LATONYA MILLER, *on
behalf of herself and those
similarly situated,*

Plaintiff-Appellant-
Petitioner,

vs.

AMERICOLLECT, INC.;
and JOHN DOES 1 to 10,

Defendant-
Respondents.

Civil Action

Docket No. Below:
A-1826-23

Sat Below:
Hon. Jessica R. Mayer,
J.A.D.

Hon. Lisa A. Puglisi,
J.A.D.

Date of Appellate
Judgment:
May 2, 2025

PETITION FOR CERTIFICATION

KIM LAW FIRM LLC

Yongmoon Kim (NJ Attorney ID: 026122011)
ykim@kimlf.com

Mark Jensen (NJ Attorney ID 309612022)
mjensen@kimlf.com

411 Hackensack Avenue, Suite 701

Hackensack, New Jersey 07601

Telephone & Fax: (201) 273-7117

*Attorneys for Latonya Miller, Plaintiff-Appellant-
Petitioner*

[Pages 1–2 in whole,
and 3 in relevant parts reproduced.]

PRELIMINARY STATEMENT

The Supreme Court should grant certification to correct the lower courts' incorrect application of the plain language of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. 1692 to 1692p, as well as the lower courts' departure from guidance from this Court.

The FDCPA establishes a Code of Conduct for debt collectors, the breach of which risks the harms which Congress expressly intended to prevent. *See* 15 U.S.C. § 1692(a). One of those harms is "invasions of individual privacy." *Ibid.* Congress intended the FDCPA to be primarily enforced by the consumers affected by a debt collector's noncompliance. Hence, the FDCPA imposes liability against a debt collector for a single violation and, except for the few FDCPA provisions which expressly include scienter, the FDCPA imposes strict liability.

At the center of the Complaint is Petitioner LaTonya Miller's allegation that Defendant-Respondent Americollect, Inc. ("Americollect") violated the provision of the FDCPA which states that "a debt collector may not communicate, in connection with the collection of any debt, with any person...." 15 U.S.C. § 1692c(b). It is undisputed that none of the statute's express exceptions apply to Americollect's conduct. Instead, because Americollect outsourced a core collection function (namely, dunning alleged debtors in writing), the lower courts effectively judicially amended the FDCPA to exclude Americollect's

communications to service providers who create, print, and mail collection letters.

Though there are no binding authorities on this issue. This Court has instructed that when there are no binding authorities construing a federal statute but there exists a consistent or majority view of the lower federal courts, a New Jersey court cannot construe the FDCPA as if writing on a clean slate. Instead, it must give “due respect” for how federal courts have applied the federal statute, “particularly where they are in agreement.” *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990); *Loigman v. Kings Landing Condo. Ass’n, Inc.*, 324 N.J. Super. 97, 105 n.7 (Super. Ct. 1999); *State v. Norflett*, 67 N.J. 268, 286 (1975). When analyzing the published federal cases that have reached the merits, it is clear that a litigant states a claim for violation of 15 U.S.C. § 1692c(b) when alleging unauthorized disclosures by a debt collector to a mail vendor. Our lower courts did not address the federal cases analyzing a debt collector’s transmittal of consumer information to a letter vendor, who receive and collect the consumer data, use the data to create, print, mail, and track collection letters. Thus, the lower courts deviated from the principle of “due respect” articulated by this Court.

Thus, Certification should be granted here because the lower courts’ decisions are in conflict with case law from this Court and because the issue on appeal—as to whether the unauthorized disclosure of consumer financial information to an unregulated third party for the aiding of the debt collector’s collection violates 15 U.S.C. § 1692c(b)—presents a question of general public importance which has not been but should be settled by the Supreme Court. *See R. 2:12-4.*

App-150

[Page 6 in relevant part reproduced.]

QUESTION PRESENTED

Did the courts below commit legal error by failing to give *due respect* to the decisions and analysis of the published federal decisions which determined that a debt collector communicating consumer information to a letter vendor is a violation of 15 U.S.C. 1692c(b)?

App-151

Appendix V

[Filed: Apr. 7, 2025]

SUPREME COURT OF NEW JERSEY

♦♦♦

Docket No. 091340

SCOTT DIANA, *on behalf of himself and those similarly situated,*

Plaintiff-Appellant-Petitioner,

vs.

FIRST NATIONAL
COLLECTION BU-
REAU, INC.; and JOHN
DOES 1 to 10,

Defendant-
Respondents.

Civil Action

Docket No. Below:
A-0158-24

Sat Below:

Hon. Ronald Susswein,
J.A.D.

Hon. Mark K. Chase,
J.A.D.

Hon. Lorraine M.
Augostini, J.A.D.

Date of Appellate
Judgment:
October 6, 2025

PETITION FOR CERTIFICATION

KIM LAW FIRM LLC

Yongmoon Kim (NJ Attorney ID: 026122011)

ykim@kimlf.com

411 Hackensack Avenue, Suite 701

Hackensack, New Jersey 07601

Telephone & Fax: (201) 273-7117

*Attorneys for Scott Diana, Plaintiff-Appellant-
Petitioner*

[Pages 1–2 in whole,
and 3 in relevant parts reproduced.]

PRELIMINARY STATEMENT

This Petition presents a question of statutory interpretation warranting this Court’s review under *Rule* 2:12-4: whether New Jersey courts may narrow a federal statute by importing a purpose-based limitation that appears nowhere in the statute’s text, structure, definitions, or enumerated exceptions.

Plaintiff Scott Diana alleges that Defendant First National Collection Bureau, Inc. (“FNCB”) disclosed his private debt information to a third-party letter vendor so the vendor could process, analyze, generate, and mail a collection letter—without Diana’s consent. Those allegations state a straightforward claim under the Fair Debt Collection Practices Act’s third-party disclosure rule. Section 1692c(b) broadly prohibits a debt collector from communicating, “in connection with the collection of any debt,” with “any person other than” a limited, expressly enumerated list. Congress likewise defined “communication” expansively to include the conveying of debt information “directly or indirectly to any person through any medium.”

The trial court dismissed under Rule 4:6-2(e), and the Appellate Division affirmed—but only after announcing a categorical limitation not found in the statute: that § 1692c(b) applies only to communications whose “primary purpose is to induce payment,” and that transmitting data to a letter vendor is merely an “internal step.” The panel asserted the statute’s “clear wording” compelled that result while faulting Plaintiff for reading the statute “too literally.”

Certification is warranted because the decision below departs from this Court's settled, text-first framework: when statutory language is clear, "the interpretive process is over." The Appellate Division identified no textual ambiguity, no structural conflict, and no absurd result. Instead, it effectively revised the statute by grafting an extra-textual "primary purpose" requirement onto an express prohibition—an approach that destabilizes statutory interpretation, invites inconsistent application, and substitutes judicial policy preferences for enacted law.

The decision also conflicts with New Jersey's obligation to give "due respect" to persuasive federal authority construing federal statutes. The federal courts addressing this issue have rejected the same "internal step," "no demand for payment," and policy-based narrowing rationales and have enforced § 1692c(b) as written, emphasizing that courts should not invent exceptions Congress did not enact. This case is an appropriate vehicle for supervisory review. It presents a question of general public importance under *Rule* 2:12-4 affecting national debt-collection practices, consumer privacy, and the integrity of New Jersey's interpretive methodology: whether courts must apply § 1692c(b) as written, or may carve out an atextual vendor exception by reference to an invented "primary purpose" limitation.

[Pages 4–5 in relevant parts reproduced.]

QUESTION PRESENTED

Whether, consistent with this Court's text-first methodology of statutory interpretation, the Fair Debt Collection Practices Act's prohibition on third-party communications, 15 U.S.C. § 1692c(b), applies

to a debt collector's disclosure of consumer debt information to a third-party letter vendor, or whether a court may exclude such disclosures by importing a purpose-based limitation—such as a requirement that the communication's "primary purpose" be to induce payment—that does not appear in the statute's text, definitions, or enumerated exceptions.

App-155

Appendix W

**OFFICE OF
THE MAINE ATTORNEY GENERAL
DATA BREACH NOTIFICATION**

Entity Information

Type of Organization: **Other Commercial**
Entity Name: **RevSpring, Inc.**
Street Address: **1131 4th Avenue S, Suite
3300**
City: **Nashville**
State: **Tennessee**
Zip Code: **37210**

Submitted By

Name: **AJ Roseberry**
Title: **Privacy Officer**
Firm Name (if different than entity): **Waystar,
Inc.**
Telephone Number: **(502) 537-0213**
Email Address: **aj.roseberry@waystar.com**
Relationship to Entity Whose Information Was Com-
promised: **Customer to
RevSpring (vendor receiv-
ing information from Way-
star)**

Breach Information

Total Number of Per-
sons Affected (including
residents): **1,706**
Total Number of Maine
Residents Affected: **3**

Consumer Reporting

Agencies Notified (if Maine

residents exceed 1,000): **N/A**Date(s) Breach Occurred: **10/24/23 to 10/26/23**Date Breach Discovered: **10/26/23**Description of the Breach: **Other — "Mismatched patient statements. No external disclosure, information was viewable only [by an]other limited set of different patients."**

Information Acquired: Name or other personal identifier in combination with:

Notification and Protection ServicesType of Notification: **Written**

Date(s) of Consumer

Notification: **12/20/23**

Copy of Notice to Affected

Maine Residents: **job43359_drop1_Symantec_JohnDoe.pdf**

Date of Any Previous (Within 12 Months) Breach Notifications:

Identity Theft Protection

Services Offered: **Yes**

Duration/Provider/De-

scription of Service: **12 months of credit monitoring**