

FILED

NOT FOR PUBLICATION

DEC 29 2008

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

GIANNI VAN, on behalf of himself and
all others similarly situated,

Plaintiff - Appellant,

v.

GRANT & WEBER,

Defendant - Appellee.

No. 07-56122

D.C. No. CV-06-06361-AHM

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Argued and Submitted November 20, 2008
Pasadena, California

Before: RYMER and M. SMITH, Circuit Judges, and KORMAN,** District Judge.

Gianni Van, a debtor, appeals from an order of the district court granting the motion for summary judgment filed by the defendant, Grant & Weber, a debt

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The Honorable Edward R. Korman, Senior United States District Judge for the Eastern District of New York, sitting by designation.

collector. The complaint, which alleged violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692–1692p, arose out of a collection letter Grant & Weber sent to Van, stating: “The Rosenthal Act, California Civil Code Section 1788.21, also requires that you notify your creditor of your change of name, address, or employment for any existing consumer credit.” Van argues that this statement is misleading because California Civil Code § 1788.21(b) requires such notification only in the event the creditor clearly discloses that requirement in writing in the original agreement. Consequently, Van argues that the allegedly misleading statement violated several provisions of the FDCPA. We affirm.

Grant & Weber’s letter did not misstate California Civil Code § 1788.21. Under California law, with respect to “any consumer credit *existing* or requested to be extended,” a debtor “shall within a reasonable time notify the creditor . . . of any change in [the debtor’s] name, address, or employment,” Cal. Civ. Code § 1788.21(a) (emphasis added), but “only if and after the creditor clearly and conspicuously in writing discloses such responsibility,” Cal. Civ. Code § 1788.21(b). On its face, the requirement to notify creditors of specified changes applies to previously-existing credit, as is the situation in the case at issue. The law contains no requirement that the notification be in the original agreement extending credit, and we decline to interpret the statute to include such language. *See Doe v. City of Los Angeles*, 169 P.3d 559,

567 (Cal. 2007) (holding courts construing California statutes “may not broaden or narrow the scope of the provision by reading into it language that does not appear in it or reading out of it language that does.”).

Moreover, because the letter did no more than explain the obligations California Civil Code § 1788.21(a) imposed upon Van, without misconstruing the meaning of the section, Grant & Weber did not use any “false, deceptive, or misleading representation[s],” 15 U.S.C. § 1692e, or any “unfair or unconscionable means to collect . . . any debt,” 15 U.S.C. § 1692f. Nor did the letter violate 15 U.S.C. § 1692g, prohibiting creditors from communicating with debtors in a way that “overshadows” or is “inconsistent” with a debtor’s right to dispute a debt. 15 U.S.C. § 1692g.

There is likewise no merit to Van’s preemption argument. The FDCPA preempts state laws “with respect to debt collection practices . . . only to the extent of [their] inconsistency” with the FDCPA. 15 U.S.C. § 1692n. There is no inconsistency here. Requiring debtors to provide new contact information, while warning debtors that the information will be used for purposes of debt collection, does not conflict with the FDCPA, *see* 15 U.S.C. § 1692e(11).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit
Office of the Clerk
95 Seventh Street; San Francisco, California 94103

General Information
Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the file stamp date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1, 2)

- The mandate will issue seven (7) calendar days after the expiration of the time for filing a petition for rehearing or seven (7) calendar days from the denial of a petition for rehearing, unless the court directs otherwise. If a stay of mandate is sought, an original and four (4) copies of the motion must be filed. The mandate is sent only to the district court or agency, we do not provide a copy to the parties.

Publication of Unpublished Disposition (9th Cir. R. 40-2)

- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency, or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to 4)

(1) A. Purpose (Panel Rehearing):

- A petition for panel rehearing should only be made to direct the Court's attention to one or more of the following situations:
 - ▶ A material point of fact or law overlooked in the decision;
 - ▶ A change in the law which occurred after the case was submitted and which appears to have been overlooked by the panel;
 - ▶ An apparent conflict with another decision of the court which was not addressed in the opinion.
- Petitions which merely reargue the case should not be filed.

B. Purpose (Rehearing En Banc)

- Parties should seek en banc rehearing only if one or more of the following grounds exist:
 - ▶ Consideration by the full court is necessary to secure or maintain uniformity of its decisions; or
 - ▶ The proceeding involves a question of exceptional importance; or
 - ▶ The opinion directly conflicts with an existing opinion by another court of appeals and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- ▶ A petition for rehearing may be filed within fourteen (14) days from entry of judgment. Fed. R. App. P. 40 (1)
- ▶ If the United States or an agency or officer thereof is a party in a civil appeal, the time for filing a petition for rehearing is 45 days from entry of judgment. Fed. R. App. P. 40 (1)
- ▶ If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- ▶ *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- ▶ *See 9th Cir. R. 40-2* (motion to publish unpublished disposition)

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies

- The format is governed by 9th Cir. R. 40-1 and Fed. R. App. P. 32(c)(2).
- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If an unrepresented litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.
- The petition or answer must be accompanied by a certificate of compliance found at Form 11.

- If a petition for panel rehearing does not include a petition for rehearing en banc, the movant shall file an original and 3 copies.
- If the petition for panel rehearing includes a petition for rehearing en banc, the movant shall file an original and 50 copies.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The bill of costs must be filed within 14 days after entry of judgment.
- See attached form for additional information.

Attorney's Fees

- Circuit Rule 39-1 describes the content and due dates for attorney fee applications.
- Any relevant forms are available on our website www.ca9.uscourts.gov or by telephoning 415 355-7806.

Petition for Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourtus.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please notify **in writing within 10 days**:
 - ▶ West Publishing Company; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Kathy Blesener, Senior Editor), and
 - ▶ Clerk, U.S. Court of Appeals; PO Box 193939; San Francisco, CA 94119-3939 (Attn: Opinions Clerk).

Form 10. Bill of Costs (Rev. 1-1-05)

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

Note: If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and Circuit Rule 39-1 when preparing your bill of costs.

_____ v. _____

CA No. _____

The Clerk is requested to tax the following costs against: _____

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, Circuit Rule 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk				
	No. of Docs.*	Pages per Doc.	Cost per Page **	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page	TOTAL COST	
Excerpt of Record									
Appellant's Brief									
Appellee's Brief									
Appellant's Reply Brief									
Other									
TOTAL				\$	TOTAL				\$

Form 10. Bill of Costs - Continued

Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys fees **cannot** be requested on this form.

* If more than 7 excerpts or 20 briefs are requested, a statement explaining the excess number must be submitted.

** Costs per page may not exceed .10 or actual cost, whichever is less. Circuit Rule 39-1.

I, _____, swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature: _____

Date: _____

Name of Counsel (printed or typed): _____

Attorney for: _____

Date: _____ Costs are taxed in the amount of \$ _____

Clerk of Court

By: _____, Deputy Clerk