

## H.2.2 Sample Proposed Jury Instructions

These sample jury instructions are intended for demonstration, and must be adapted by a legal professional to meet the facts, actual needs, and requirements of each case, as well as local practice. The jury instructions are also available online as companion material to this treatise. Consumer law pleadings on this and other topics can be found in National Consumer Law Center, *Consumer Law Pleadings* (Online with Index Guide).

UNITED STATES DISTRICT COURT  
FOR THE [district name] DISTRICT OF [state name]

[plaintiff][name of plaintiff]  
Plaintiff,

[v.]

[defendant][name of defendant]  
Defendant.

[number] Civil Action No. [number]

### PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

Plaintiff requests that the following proposed Jury Instructions be read to the jury.

[attorney's name]  
[firm name]  
[street address]  
[city, state zip]  
[telephone number]

Attorney for Plaintiff

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Nature of the Action and Legal Definitions)

Plaintiff brings this action against Defendant based on 15 U.S.C. § 1692, et seq., commonly known as the Fair Debt Collection Practices Act, which for convenience, I will refer to as the "Act."

The Act originally enacted by Congress became effective on March 20, 1978, and was again amended and broadened in 1986 and amended several times since. In passing this Act, Congress stated its purpose was "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 practices.” To this end, the Act expressly prohibits debt collectors from engaging in numerous specific acts or practices and also mandatorily requires debt collectors in attempting to collect consumer debts for others to affirmatively perform specific acts.

The Act defines a “debt collector” to include any person who uses any instrumentality of interstate commerce, the mails in any business, the principle purpose of which business is the collection of any debt, directly or indirectly, owed, due, or asserted to be owed or due to another. The Act also defines a “debt collector” to include any person who regularly collects a debt owed to another. Defendant is a “debt collector” within the meaning of the Act.

The Act defines “debt” to mean any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family or household purposes, whether or not such obligations have been reduced to judgment. The obligation which Plaintiff is alleged to owe is a “debt” within the meaning of the Act.

The Act defines “consumer” as any person obligated or allegedly obligated to pay any debt. Plaintiff is a “consumer” within the meaning of the Act.

15 U.S.C. § 1692a.

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Obligation to Pay the Debt Does Not Affect Liability Under FDCPA)

Whether or not the Plaintiff owes the debt alleged to be due to [creditor] is not a factor in this proceeding. Even if the Plaintiff does owe this obligation, Defendant must comply in all respects with the Fair Debt Collection Practices Act. Therefore, you may not consider whether or not the Plaintiff is indebted to [creditor] when determining whether Defendant violated the Fair Debt Collection Practices Act.

*Baker v. G.C. Services Corp.*, 677 F.2d 775, 777 (9th Cir. 1982).

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Plaintiff’s Contentions)

Plaintiff contends that the Defendant violated the Act in the following seven particulars:

First, Defendant failed to provide the proper validation notice within five days of its initial communication with the Plaintiff in violation of 15 U.S.C. § 1692g(a);

Second, Defendant failed to include the debt collection warning (“this is an attempt to collect a debt and any information obtained will be used for that purpose”) as required by 15 U.S.C. § 1692e(11) in the initial communication to the Plaintiff; and

Third, Defendant communicated with the Plaintiff after the Defendant knew that the Plaintiff was represented by an attorney in violation of 15 U.S.C. § 1692c(a)(2);

Fourth, Defendant threatened to take action that could not legally be taken or that was not intended to be taken in violation of 15 U.S.C. § 1692e(5);

Fifth, Defendant has falsely represented the character, amount or legal status of the debt in its communications to the Plaintiff in violation of 15 U.S.C. § 1692e(2)(A);

Sixth, Defendant has sought to collect an amount that is not authorized by the agreement creating the debt or permitted by law in violation of 15 U.S.C. § 1692f(1); and

Seventh, Defendant has used false representations and deceptive means to collect or attempt to collect the debt allegedly owed by the Plaintiff in violation of 15 U.S.C. § 1692e(10).

[Add or substitute other alleged violations as appropriate to the litigation.]

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [*number*]  
(Validation of Debt)

The Fair Debt Collection Practices Act requires the debt collector to notify the consumer and provide certain information as follows:

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing--

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (1) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

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15 U.S.C. § 1692g.  
*Baker v. G.C. Services Corp.*, 677 F.2d 775 (9th Cir. 1982).

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(The Validation Notice Must Be Effectively Conveyed)

The Act is not satisfied merely by inclusion of the required notice; the notice Congress required must be conveyed effectively to the debtor. It must be large enough to be easily read and sufficiently prominent to be noticed--even by the least sophisticated debtor.

*United States v. National Financial Services, Inc.*, 98 F.3d 131, 139 (4th Cir. 1996); *Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir. 1996); *Swanson v. Southern Oregon Credit Service, Inc.*, 869 F.2d 1222, 1225 (9th Cir. 1988); *Miller v. Payco-General American Credit, Inc.*, 943 F.2d 482, 484 (4th Cir. 1991).

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Debt Collection Warning)

The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

15 U.S.C. § 1692e(11).

*Edwards v. Niagara Credit Solutions, Inc.*, 584 F.3d 1350 (11th Cir. 2009); *Tolentino v. Friedman*, 46 F.3d 645 (7th Cir. 1995); *Dutton v. Wolpoff & Abramson*, 5 F.3d 649 (3d Cir. 1993); *Frey v. Gangwish*, 970 F.2d 1516 (6th Cir. 1992); *Carroll v. Wolpoff & Abramson*, 961 F.2d 459 (4th Cir. 1992); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22 (2d Cir. 1989); *Seabrook v. Onondaga Bureau of Medical Economics, Inc.*, 705 F. Supp. 81 (N.D.N.Y. 1989).

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Communication with Consumer Represented by an Attorney)

The Fair Debt Collection Practices Act states that a debt collector may not communicate with a consumer in connection with the collection of any debt if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address.

15 U.S.C. § 1692c(a)(2).  
*Dowling v. Litton Loan Serv., L.P.*, 2006 WL 3498292 (S.D. Ohio Dec. 1, 2006); *Harvey v. United Adjusters*, 509 F. Supp. 1218 (D. Or. 1981); *Johnson v. Statewide Collections, Inc.*, 778 P.2d 93 (Wyo. 1989).

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Threats to Take Action Which Cannot Legally Be Taken or That Is Not Intended to Be Taken)

The Fair Debt Collection Practices Act states:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

15 U.S.C. § 1692e(5). Where the clear import of the collection letter is that the Defendant has already taken action or is about to do so and that such action can only be averted by payment of the debt, the debt collector's failure to take the threatened action violates the Act. Whether the debt collector's threatened action is such a violation, must be determined from the perspective of the least sophisticated consumer or debtor, which I will later explain.

*Wilhelm v. Credico, Inc.*, 519 F.3d 416 (8th Cir. 2008); *Brown v. Card Serv. Ctr.*, 464 F.3d 450 (3d Cir. 2006); *United States v. Nat'l Fin. Servs., Inc.*, 98 F.3d 131 (4th Cir. 1996); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22, 25–26 (2d Cir. 1989); *Crossley v. Lieberman*, 868 F.2d 566, 571 (3d Cir. 1989); *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1227–1228 (9th Cir. 1988).

PLAINTIFF'S PROPOSED JURY INSTRUCTION

NUMBER [number]

(The False Representation of the Character, Amount, or Legal Status of the Debt)

The Fair Debt Collection Practices Act provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of--(A) the character, amount, or legal status of any debt;. . .

15 U.S.C. § 1692e. Falsely stating the amount of the debt violates this section. In determining whether the Act has been violated, you are to analyze the allegation from the viewpoint of the least sophisticated consumer or debtor, which I will explain to you.

*Hepsen v. Resurgent Capital Servs., L.P.*, 2010 WL 2490734 (11th Cir. June 17, 2010); *Reichert v. Nat'l Credit Sys.*, 531 F.3d 1002 (9th Cir. 2008); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162 (9th Cir. 2006); *Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004); *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872 (7th Cir. 2000), *rehearing en banc denied*, 2000 U.S. App. LEXIS 18232 (7th Cir. July 26, 2000); *Cacace v. Lucas*, 775 F. Supp. 502 (D. Conn. 1990); *West v. Costen*, 558 F. Supp. 564 (W.D. Va. 1983).<sup>1</sup>

PLAINTIFF'S PROPOSED JURY INSTRUCTION

NUMBER [number]

(Collection of an Amount Not Authorized by Contract or Law)

The Fair Debt Collection Practices Act states:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

15 U.S.C. § 1692f. The debt collector's imposition of a service charge which is not authorized by the contract creating the debt or by law violates this section.

*Shula v. Lawent*, 359 F.3d 489 (7th Cir. 2004); *Johnson v. Riddle*, 305 F.3d 1107 (10th Cir. 2002); *Duffy v. Landberg*, 215 F.3d 871 (8th Cir.), *rehearing denied*, 2000 U.S. App. LEXIS 16039 (8th Cir. July 10, 2000); *Pollice v. National Tax Funding, L.P.*, 225 F.3d 379 (3d Cir. 2000); *West v. Costen*, 558 F. Supp. 564 (W.D. Va. 1983).

PLAINTIFF'S PROPOSED JURY INSTRUCTION

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<sup>1</sup> See § 5.2.1, *supra*.

NUMBER [number]  
(Using False or Deceptive Means to Collect a Debt)

The Fair Debt Collection Practices Act provides:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

15 U.S.C. § 1692e. Where the Defendant’s letter states that some type of action has already been or is about to be initiated and can be averted only by payment, when such action has not been undertaken, is a violation of this section. In determining whether this section has been violated, you are to apply the least sophisticated consumer standard which I shall explain to you.

*Ruth v. Triumph P’ships*, 577 F.3d 790 (7th Cir. 2009); *Muha v. Encore Receivable Mgmt., Inc.*, 558 F.3d 623 (7th Cir. 2009); *Brown v. Card Serv. Ctr.*, 464 F.3d 450 (3d Cir. 2006); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22, 25–26 (2d Cir. 1989); *Crossley v. Lieberman*, 868 F.2d 566, 571 (3d Cir. 1989); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1177–1178 (11th Cir. 1985).

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]

(Violations of the Act Are Measured by the “Least Sophisticated Debtor” Standard)

In determining whether the Defendant violated the Fair Debt Collection Practices Act you are to apply the “least sophisticated debtor” standard. This law was not made for the protection of experts, but for the public--that vast multitude which includes the ignorant, the unthinking and the credulous, and the fact that a false or misleading statement may be obviously false or misleading to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. Thus, in reaching your determination of whether Defendant’s communications are false or deceptive you must view them through the eyes of the “least sophisticated debtor.”

*Rosenau v. Unifund Corp.*, 539 F.3d 218, 221 (3d Cir. 2008); *Kistner v. Law Offices of Michael P. Margelefsky, L.L.C.*, 518 F.3d 433 (6th Cir. 2008); *Brown v. Card Serv. Ctr.*, 464 F.3d 450 (3d Cir. 2006); *Schweizer v. Trans Union Corp.*, 136 F.3d 233 (2d Cir. 1998); *Swanson v. Southern Oregon Credit Service*, 869 F.2d 1222, 1225–1227 (9th Cir. 1988); *Jeter v. Credit Bureau, Inc.*, 760 F.2d 1168, 1172–1175 (11th Cir. 1985); *Graziano v. Harrison*, 950 F.2d 107, 111 (3d Cir. 1991) (In the Seventh Circuit, the “unsophisticated consumer” standard should be substituted for the “least sophisticated consumer” standard. See § 5.2.1, *supra*.)

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]

(Bona Fide Error Defense)

The debt collector is not liable for violation of the Fair Debt Collection Practices Act if it shows a preponderance of the evidence that (1) it did not intend to violate the Act and (2) the violation “resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.”<sup>2</sup>

15 U.S.C. § 1692k(c).

*McCullough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939, 948 (9th Cir. 2011); *Owen v. I.C. Sys., Inc.*, 2011 WL 43525 (11th Cir. Jan. 7, 2011); *Hepsen v. Resurgent Capital Servs., L.P.*, 2010 WL 2490734 (11th Cir. June 17, 2010); *Edwards v. Niagara Credit Solutions, Inc.*, 584 F.3d 1350 (11th Cir. 2009); *Ruth v. Triumph P’ships*, 577 F.3d 790 (7th Cir. 2009); *Hartman v. Great Seneca Fin. Corp.*, 569 F.3d 606 (6th Cir. 2009); *Seeger v. AFNI, Inc.*, 548 F.3d 1107 (7th Cir. 2008); *Reichert v. Nat’l Credit Sys, Inc.*, 531 F.3d 1002 (9th Cir. 2008); *Johnson v. Riddle*, 305 F.3d 1107 (10th Cir. 2002); *Smith v. Transworld Systems, Inc.*, 953 F.2d 1025 (6th Cir. 1992); *Pipiles v. Credit Bureau, Inc.*, 886 F.2d 22, 27 (2d Cir. 1989); *Baker v. G.C. Services Corp.*, 677 F.2d 775, 779 (9th Cir. 1982).

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Actual Damages)

I turn now to the law of damages applicable to this case if you reach that phase.

The Act specifically permits damages to be awarded against a debt collector who violates the Act.

First, actual damages may be awarded the Plaintiff as a result of the failure of Defendant to comply with the Act. Actual damages not only include any out-of-pocket expenses but also damages for personal humiliation, embarrassment, mental anguish, and emotional distress.

There is no fixed standard or measure in the case of intangible items such as humiliation, embarrassment, mental anguish and emotional distress. You must determine a fair and adequate award of these items through the exercise of your judgment and experience in the affairs of the world after considering all the facts and circumstances presented during the trial of this case.

*McCullough v. Johnson, Rodenburg & Lauinger, L.L.C.*, 637 F.3d 939, 957 (9th Cir. 2011); *Smith v. Law Office of Mitchell N. Kay*, 124 B.R. 182, 185 (D. Del. 1990); *In re Maxwell*, 281 B.R. 101 (Bankr. D. Ma. 2002); *In re Littles*, 75 B.R. 241, 242 (Bankr. E.D. Pa. 1987).

PLAINTIFF’S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Statutory Damages)<sup>3</sup>

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<sup>2</sup> Some courts have indicated that the defense may be used for at least some legal errors. See § 7.2, *supra*.

<sup>3</sup> Some courts limit the award of statutory damages in an amount up to \$1000 *per case, per plaintiff*, etc. Check the case law in your jurisdiction. See § 6.4.8, *supra*.



In addition to actual damages, and regardless of whether actual damages are awarded, the jury may award statutory damages in an amount not to exceed \$1,000.00 for each person affected by the violation of the Act. In determining the amount of statutory damages to be awarded, whether \$1.00 or up to and including \$1,000.00 for each person, the Act provides that the jury shall consider among other relevant factors, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which noncompliance was intentional.

15 U.S.C. § 1692k(b)(1).

*Kobs v. Arrow Service Bureau, Inc.*, 134 F.3d 893 (7th Cir. 1998); *Robertson v. Horton Bros. Recovery, Inc.*, 2007 WL 2009703 (D. Del. 2007); *Boyce v. Attorney's Dispatch Serv.*, 1999 U.S. Dist. LEXIS 1124 (S.D. Ohio Feb. 2, 1999); *Carn v. Med. Data Sys.*, 2007 Bankr. LEXIS 1334 (Bankr. M.D. Ala. Apr. 5, 2007); *In re Cambron*, 2007 WL 1076685 (Bankr. M.D. Ala. Apr. 5, 2007); *In re Littles*, 75 B.R. 241, 242 (Bankr. E.D. Pa. 1987).

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Unanimous Verdict)

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to it. Your verdict must be unanimous.

It is your duty, as jurors, to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberation, do not hesitate to re-examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, or for the purpose of returning a verdict.

Remember at all times that you are not partisans. You are judges--judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

PLAINTIFF'S PROPOSED JURY INSTRUCTION  
NUMBER [number]  
(Verdict Return After Deliberations--Verdict Summary Sheets)

In a few moments, the jury will be removed to the jury room for its deliberations, which by custom of this Court shall be presided over by Juror Number One as your foreperson.

A verdict summary sheet has been prepared for your convenience to record your unanimous verdicts. You will take this form to the jury room, and after reaching unanimous agreement on the verdicts to be rendered and the amount, if any, of damages to be awarded with

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respect to Plaintiff's claim, you will have your foreperson complete the answers to the questions posed on the form in the manner thereon indicated.

After you have completely filled in the answers to the questions in the manner indicated on the verdict sheet, you will return with it to the courtroom for delivery to the Clerk.