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EDPA STRIKES CLASS CLAIMS FILED UNDER TELEPHONE CONSUMER PROTECTION ACT AND FAIR DEBT COLLECTION PRACTICES ACT

In *Sandra Zarichny v. Complete Payment Recovery Services, Inc. et al.* (Case 2:14-cv-03197-SD), Judge Stewart Dalzell agreed with defendants and dismissed the bulk of plaintiff's allegations, essentially eviscerating the plaintiff's case by removing all claims against Fidelity National Information Services (FIS), and striking the plaintiff's class action claims under the Telephone Consumer Protection Act (TCPA) and the Fair Debt Collection Practices Act (FDCPA).

Zarichny alleged that she rented college textbooks and began receiving a series of calls on her cell phone that were recorded messages from Complete Payment Recovery Services (CPRS), which is a wholly owned subsidiary of FIS. The calls were allegedly to collect overdue amounts on two textbooks she had rented but not returned. Zarichny asserted she returned the books and did not owe any money. She sought to bring a nationwide class action on behalf of those similarly situated who allegedly received calls on their cell phones from the defendants without prior express consent.

The plaintiff alleged violations of the TCPA and FDCPA, asserting that FIS, acting as debt collector, provided her with no information about the alleged debt, placed calls to her through CPRS at unusual and inconvenient times, and did so repeatedly and continuously with the intention of harassing her. Zarichny is employed as an administrative assistant by plaintiff's counsel and held that position at the time of the alleged wrongful calls.

Most significantly, Judge Dalzell struck the plaintiff's class action allegations against CPRS under both the TCPA and FDCPA without requiring the parties to go through a full-blown class certification process. The Court agreed with defendants that the plaintiff improperly proposed two "fail-safe" classes – meaning ones whose members are defined by the defendant's liability – making it impossible to ascertain their membership without first engaging in an extensive fact-finding mission.

Fox Rothschild represented FIS and CPRS in this matter.

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