

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARYANN SIVONGXAY,

Plaintiff-Appellant,

v.

MEDCAH, INC.,

Defendant-Appellee.

No. 17-17400

D.C. No.

1:16-cv-00415-DKW-KSC

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
Derrick Kahala Watson, District Judge, Presiding

Argued and Submitted February 11, 2019
Honolulu, Hawaii

Before: TALLMAN, BYBEE, and N.R. SMITH, Circuit Judges.

Maryann Sivongxay brought suit against collection agency, Medcah, Inc., alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692e and 1692f, and Hawaii’s Unfair or Deceptive Acts and Practices

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Act (“UDAPA”), Haw. Rev. Stat. §§ 443B-18 and 443B-19. The district court granted summary judgment to Medcah on all of Sivongxay’s claims. We affirm.

1. The district court did not err in granting summary judgment to Medcah on Sivongxay’s interest collection claims. For a debt collector to collect interest, the amount collected must be “expressly authorized by the agreement creating the debt or permitted by law.” 15 U.S.C. § 1692f(1); *see also* Haw. Rev. Stat. § 443B-19(4). Under Hawaii law, “[w]hen there is no express written contract fixing a different rate of interest, interest shall be allowed at the rate of ten per cent a year” Haw. Rev. Stat. § 478-2.

Medcah imposed ten percent interest on all of Sivongxay’s debts. Four of Sivongxay’s creditors had agreements that expressly authorized the collection of interest on past due accounts, but the agreements either did not provide an interest rate or provided one above Hawaii’s statutory rate. These underlying agreements entitled Medcah to collect interest, and section 478-2 provided the statutory interest rate. The fifth creditor’s agreement was silent with respect to interest, but Medcah was entitled to the collection of interest at a rate of ten percent per year by section 478-2. *See Kalawaia v. AIG Hawai’i Ins. Co.*, 977 P.2d 175, 183 n.13 (Haw. 1999) (recognizing that lessor was “statutorily entitled to interest” under what is now Haw. Rev. Stat. § 478-2); *see also Diaz v. Kubler Corp.*, 785 F.3d

1326, 1330 (9th Cir. 2015) (stating that a debt collector need not be “entitled *by judgment* to a type of relief in order for that relief to be ‘permitted by law’ within the meaning of 15 U.S.C. § 1692f(1)”). Because Medcah’s collection of interest was authorized by the underlying agreements or permitted by law, the collection of interest was not a violation of the FDCPA or UDAPA.

2. The district court did not err in granting summary judgment to Medcah on Sivongxay’s claims that Medcah engaged in false or deceptive debt collection practices by attempting to collect interest on Sivongxay’s debts but reporting only the principal amounts owed to consumer reporting agency Experian. Sivongxay concedes that Medcah accurately reported the principal balances owed to Experian. Sivongxay has provided no precedent requiring Medcah to report both principal and interest to Experian, nor has she alleged that Medcah improperly represented the reported amount due as consisting of both principal and interest. Additionally, Sivongxay has provided no support for her assertion that a debt collector is strictly liable for misleading a consumer when its demand letters (which are not false or misleading) do not exactly match an independent consumer credit reporting agency’s report of the debt (which is based on a debt collector’s accurate reporting of the principal amount due).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding 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 filed 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 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

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 -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party 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 the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court 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 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(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).
- 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.

(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 (9th Cir. R. 40-1; 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.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se 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, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

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 Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

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

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature **Date**

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Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)	<input style="width: 50px; height: 20px;" type="text"/>	<input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>	\$ <input style="width: 50px; height: 20px;" type="text"/>
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