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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 ODES 1 to 10 Defendants.	Docket No.: ESX-L-6164-21 **ORDER**

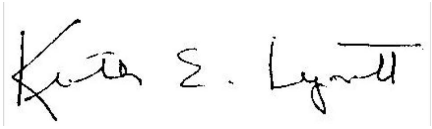
THIS MATTER having been opened to the Court upon the motion of Hinshaw & Culbertson LLP, attorneys for Defendant Americollect, Inc. ("Defendant"), for an Order dismissing Plaintiff Latonya Miller ("Plaintiff")'s Complaint in its entirety, and the Court having considered all the papers submitted in support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

It is on this 11 day of August, 2022;

1. ORDERED that Defendant Americollect, Inc.'s Motion to Dismiss is hereby GRANTED and the Complaint is dismissed without prejudice for the reasons set forth in the accompanying Statement of Reasons; and

2. IT IS FURTHER ORDERED that the Plaintiff may re-plead within 30 days of posting hereof; and

3. IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within 5 days of the date of posting hereof.



HON. KEITH E. LYNOTT

___✓___ Opposed

_____ Unopposed

Statement of Reasons

In this putative Class Action brought under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. (the "FDCPA"), the New Jersey Consumer Fraud Act, N. J. S.A. 56: 8-1, et seq., (the "CFA") and the common law, the Defendant Americollect, Inc. ("Americollect") moves to dismiss the Complaint (and Amended Complaint) of the Plaintiff Latonya Miller ("Miller"). For the reasons set forth herein, the Court grants the motion and dismisses the Complaint and Amended Complaint without prejudice to a right to re-plead within 30 days of the date of the posting of the Court's Order adjudicating this motion.

I

As this is a motion to dismiss, the Court draws the relevant facts from the pleading. Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). 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. Ibid. However, the Court is not required to accept legal conclusions or unsupported, conclusory factual matters. Delbridge v. Office of Public Defender, 238 N.J. Super. 288, 314 (1989)

The Court is not concerned at this juncture with the Plaintiff's ability to prove the allegations of the pleading. Printing Mart-Morristown, 116 N.J. at 746. Instead, the Court is required to examine the pleading through a generous and hospitable lens to determine if it is possible to discern the "fundament of a cause of action" from even an obscure statement of the claim. Ibid.

New Jersey Courts grant motions to dismiss in rare instances, and ordinarily without prejudice to the right to re-plead to address deficiencies identified during the motion practice.

Rieder v. State, Dept. of Transp., 221 N. J. Super. 547, 552 (App. Div. 1987). However, if a pleading is "palpably insufficient," the Court will grant the motion. Ibid.

II

The Court draws the relevant facts from the Complaint and Amended Complaint. It notes that, while the motion to dismiss was pending, the Plaintiff filed her Amended Complaint, a filing that the Defendant asserts was impermissible. The recitation below notes the principal differences between the initial and Amended Complaints.[1]

This is a putative Class Action under the FDCPA, alleging unlawful disclosure of private personal identifying and financial information concerning the Plaintiff to a third-party without her consent. The Plaintiff Miller asserts this action on behalf of herself and those similarly-situated. The Plaintiff alleges the Defendant is subject to 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 Complaint 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 putative Class members with Americollect for the purposes of obtaining collection services pursuant to written agreements. She asserts that Americollect uses the mail, telephone, Internet and other instrumentalities of interstate commerce to engage in its business of debt collection.

Miller asserts that she received a letter dated 8 August 11, 2020 that Americollect had caused to be mailed in connection with debt collection. She asserts this letter contained information

[1] The Court finds both the Complaint and Amended Complaint to be untenable. As a result, it is not necessary to address the issue raised by Americollect that the Court should disregard the Amended Complaint altogether.

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 alleges that she never consented to communication of information concerning herself or her Debt to any third-party. She asserts that Americollect itself "did not draft, print, address or mail the August 11, 2020 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 Complaint alleges that the letter vendor is not an affiliate of Americollect itself, but a "third-party service provider." She 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 Amended Complaint, such data or information included "Americollect's account number, the date 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 Complaint 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 Amended Complaint 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." The Amended Complaint avers that, when the Plaintiff learned of the improper disclosure of her private information and data, she suffered stress, anxiety and embarrassment.

The Complaint alleges that the FDCPA prohibits a debt collector from communicating with third-parties without the 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. 15 U.S.C. § 1692c. It asserts the FDCPA also prohibits the publication of a list of consumers who allegedly refused to pay debts. 15 U.S.C. § 1692d(3).

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 letters to numerous other New Jersey consumers and sent collection letters to such consumers in an attempt 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 Complaint asserts that the Defendant published a list of debtors, including the Plaintiff, who refused to pay debts. It avers this conduct has caused the Plaintiff stress, anxiety and embarrassment.

In the Amended Complaint, 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 a Schedule A/B to her bankruptcy petition, the Plaintiff 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 satisfied her obligations 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 alleges 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.

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 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 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 Amended Complaint 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 Amended Complaint 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. N.J.S.A. 56:8-2. The Amended Complaint 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. As amended, the Complaint 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 know the same. 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 asserts in her Amended Complaint 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 asserts 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 moves to dismiss the Complaint (and the Amended Complaint that it argues has been impermissibly interposed) for failure to state a claim. It contends the Plaintiff lacks standing to assert the claims set forth in the Complaint 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,141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). The movant contends that, even though

the court in that case denied standing, as required by Article III of the United States Constitution, as to the claims brought by Class members whose information was not disseminated, 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 in this case and New Jersey courts also require a showing of harm to establish standing.

Americollect also contends the Plaintiff is barred by reason of judicial estoppel from pursuing the claim by reason of a failure to adequately disclose the same to the bankruptcy court. As a result, the Trustee abandoned the claim as an asset of the Estate.

The Defendant asserts the Plaintiff initially did not identify any affirmative claims against third-parties, 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 acknowledged her claims were subject to the exemption amount of $1000. The Plaintiff ultimately received a discharge in bankruptcy on the basis of her submission.

According to Americollect, the Plaintiff subsequently sought to amend her bankruptcy petition to identify five specific claims, including this one, and to remove the same from exempt status. The bankruptcy 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.

The Defendant invokes the doctrine of judicial estoppel, contending the circumstances here meet the elements for the same. 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. It contends the Plaintiff has 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.

The movant contends the 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 statue in order 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, through her bankruptcy filing, 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 same 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. It contends the transmission of data by the Defendant to the letter vendor was not a "communication" with a "person" subject to the statute; that even if it were a "communication", such transmission was not a communication "in connection with the collection of a debt"; and that the FDCPA does not prohibit 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" encompasses certain people such as telephone operators or personnel of a telegram company and contends that a letter vendor (and its employees) are the equivalent of such a "medium." It asserts incidental contacts by a debt collector with such an incarnate "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, the initial communication of data to the letter

vendor was not. 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. 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 same in relation to the communications at issue here involving no such abuse. It argues that a case to the contrary in the Eleventh Circuit, Hunstein v. Preferred Collection & Management Services, 17 F. 4th 1016 (11th Cir. 2021), has been vacated in favor of an en banc review. Moreover, it cites to authorities (albeit unpublished, non-binding) concluding that the Supreme Court's recent decision in TransUnion casts considerable doubt on the validity of "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.

The Plaintiff relies principally on her Amended Complaint as the basis for her opposition. She contends the filing of the Amended Complaint mooted the then pending motion to dismiss. She argues she did not require consent or leave of Court to submit the Amended Complaint.

IV

The Court agrees with Americollect that the Complaint does not state a viable claim for relief under the FDCPA. Nor does the Amended Complaint. As the alleged violation of the FDCPA is the essential underpinning for much of the rest of the Complaint, the entire pleading fails insofar as it relies on the same.

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 not the "communicating" that is 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. The letter vendor engaged by the debt collector here is no different than the telephone/telegram operator engaged as a "medium" for an otherwise 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, 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. §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). The Complaint 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.

The polestar of statutory interpretation is the intent of the legislative body that enacted the statute – here, Congress – as determined by the language employed in the same. DiProspero v. Penn, 183 N.J. 477, 492 (2005). The Court is required to accord unambiguous statutory terms their plain and "ordinary meaning and significance." Ibid. 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 in order to accord a sensible meaning to such text. Ibid.

Through 15 U.S.C. § 1692(a), setting forth Congressional findings and its statement of legislative 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. § 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 employers. 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 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 to 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. § 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. 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 possess no ability to inflict reputational or other harm on a debtor simply by processing the information into a template letter intended to be sent to the debtor.[2] Moreover, there is no allegation in the present pleading 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 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 a prohibited communication, it was not a communication "in connection with the collection of any debt." This is so even if one accords, as the Court does, a broad interpretation to the phrase "in connection with." The purpose of providing the information

[2] In TransUnion,141 S. Ct. 2190, 210 L. Ed. 2d 568, the Supreme Court held that certain plaintiffs alleging a claim under the FDCPA against a credit reporting agency lacked Article III standing to pursue such claim as they had not suffered the requisite injury. This was so because they had stipulated that the agency had not disseminated data as to them to third-parties. Id. at 141 S. Ct. 2190, 2202, 210 L.Ed.2d 568, 581. In the Supreme Court, these plaintiffs asserted for the first time that the agency provided information concerning the debtor's debt to a letter vendor. Id., 141 S. Ct. at 2210, n.6, 210 L. Ed. 2d at 590, n. 6. 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, cmt. 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." Ibid. (emphasis added; citations omitted).

to the letter vendor was not collection. The communication made no demand for payment, nor was it intended to inform the recipient of 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.

Those 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 actually 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. §§ 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 of third-party such 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. One could argue 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 purview 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 presently alleged by the Plaintiff as a basis for the individual and proposed Class claims does not contravene either the express letter or intendment of the FDCPA.

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 has now vacated its opinion in favor of an en banc hearing. 17 F. 4th 1103 (11th Cir. 2021). This Court is, of course, not bound by Hunstein and finds the Appellate Courts in this State would decide the issue differently.

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, § 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 Complaint and Amended Complaint 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, according to the Complaint, 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 here 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 wholly 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 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 transmission of such data to a letter vendor for such purpose could 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 for 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 Amended Complaint 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 Complaint and Amended Complaint without prejudice to the right to re-plead within 30 days of posting of its Order. The case law dealing with motions to dismiss establishes that, when a court does dismiss a complaint for failure to state a claim, it must ordinarily do so without prejudice to a right to re-plead. As the Plaintiff here may be able to plead additional facts that cure the legal deficiencies identified by the Court – such as conceivably by alleging facts concerning some impropriety in the handling of data by the letter vendor that caused the same to be publicly disseminated or some factual basis for reputational harm– it will afford the Plaintiff an opportunity to re-plead.

In the circumstances, the Court finds it is not necessary to address the other matters advanced by Americollect. For example, it does not, and 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 Amended Complaint that details the nature of and basis for the Plaintiff's conduct of that proceeding.

The Court is mindful that the Plaintiff sought to respond this motion principally by interposing an Amended Complaint. Although the movant urged the Court to disregard the pleading as unauthorized by the Rules of Court – the Defendant having already filed a motion to dismiss – the Court has, as this Statement of Reasons reflects, considered the additional allegations of the Amended Complaint. As also determined herein, it finds the Amended Complaint, like its predecessor, fails to state viable claims for relief.

At the same time, the Court notes that, although the Plaintiff interposed the Amended Complaint apparently in response to the Defendant's motion, the Plaintiff did not extensively brief the issues raised by the motion. She could have done both. This was her own (or her counsel's) choice.