Buckley Sandler LLP

InfoBytes

FINANCIAL SERVICE HEADLINES & DEADLINES FOR OUR CLIENTS AND FRIENDS

July 9, 2010

Topics In This Issue

Federal Issues

Fannie Mae Announces Changes to Servicing Guide. Fannie Mae recently announced several changes to its Servicing Guide in Announcement SVC-2010-06. The announcement requires (i) quality assurance program and training for default-related activities, (ii) written policies regarding inbound calls for customer service, collections, and foreclosure prevention, and (iii) the use of manned calls for outbound calls related to collections, workout solicitations, and follow-up (*i.e.*, automated calls are insufficient for these activities). Servicers must implement these changes no later than January 1, 2011. Before that date, servicers must use "diligent efforts" to implement the changes; Fannie Mae may also direct servicers to comply with the changes at an earlier date. The announcement also notes several revisions to the Servicing Guide that became effective as of April 28, 2010, including (i) guidelines concerning the timing and types of letters and notices that must be sent to borrowers (*e.g.*, payment reminders, foreclosure prevention solicitations, etc.), (ii) the methods and timing of the methods that servicers must use for contacting borrowers, (iii) procedures that must be followed prior to referral to foreclosure or sale of the property (*e.g.*, alerting borrowers of payment changes resulting from adjustable-rate mortgage resets), and (iv) requirements pertaining to bankruptcy proceeding issues (*e.g.*, promptly notifying Fannie Mae of borrower attempts to "cramdown" a Fannie Mae mortgage loan). For a copy of the announcement, please see here. For a copy of the revised Servicing Guide sections, please see here.

NLRB Receives Amicus Briefs Supporting the Electronic Posting of Remedial Notices. Recently, the National Labor Relations Board (NLRB) received amicus briefs in three pending unfair labor cases to resolve what legal standard, if any, should apply to the electronic posting of NLRB-ordered remedial notices. The NLRB currently orders remedial notices to be posted on physical bulletin boards at the employer's or union's office and occasionally orders these notices to be mailed to employees or union members. In its amicus brief, the NLRB's General Counsel (GC) supported the electronic posting of remedial notices if an employer or union has committed an unfair labor practice and "uses intranet/internet sites or e-mail to communicate with employees." The GC noted the

prevalence of electronic communication in the workplace and argued that the NLRB should include electronic posting within its standard notice-posting orders to ensure wide-dissemination of the notice. The AFL-CIO and the Service Employees International Union also filed amicus briefs in support of the electronic posting of remedial notices. In opposition, the U.S. Chamber of Commerce and the Texas Association of Business argued that compelling electronic posting of remedial orders should be limited to certain egregious cases involving an "extraordinary" remedy. For a copy of the NLRB's press release, please see here.

State Issues

Pennsylvania Department of Banking Announces Enforcement Action Against Mortgage Companies. The Pennsylvania Department of Banking (PA DOB) recently announced two final orders against mortgage companies for violating the Mortgage Licensing Act (MLA). On June 18, the PA DOB entered into a Consent Agreement and Order with EC Financial, LLC, which allegedly operated as a mortgage licensee without a surety bond, in violation of the MLA. The PA DOB assessed a $2,500 fine and removed a previously-imposed suspension against the company. On June 11, the PA DOB entered into a Consent Agreement and Order with Seckel Capital, LLC for collecting advance fees from consumers without maintaining a required $100,000 bond, in violation of the MLA. The company allegedly collected approximately $24,000 in advance fees for mortgage broker activities prior to closing, even though the consumers' loans did not close with them. As a result of the violation, the PA DOB fined the company $12,000 and the company must pay $8,900 in examination costs. For a copy of the orders, please see http://bit.ly/kC1JBm.

California Department of Corporations Reminds Mortgage Loan Originator Applicants of July 31 Application Deadline. On July 7, the California Department of Corporations issued a letter reminding mortgage loan originator (MLO) applicants that MLO applications must be completed and approved by July 31, 2010. MLOs that have not been approved by this date must cease MLO activities until receiving license approval. For a copy of the letter, please see here.

Courts

Washington State Supreme Court Holds HOLA Does Not Preempt Allegation of Impermissible Reconveyance Fees. On June 24, the Washington Supreme Court held that the Home Owners' Loan Act (HOLA) and Office of Thrift Supervision (OTS) regulations do not preempt a borrower's claim challenging fax and notary fees to secure the reconveyance of title when the claim is based on the terms of a deed of trust. *McCurry v. Chevy Chase Bank, F.S.B.*, No. 81896-7, 2010 WL 2521772 (Wash. June 24, 2010). In*McCurry*, the borrowers, who sued on behalf of two similarly situated classes, conveyed a deed of trust to the lender. The payoff statement included a $20 fax fee and a $2 notary fee. The borrowers argued that the deed of trust did not permit such fees, thereby resulting in the lender's unjust enrichment, and that the charging of the fees violated the Washington Consumer Protection Act (WCPA). The lender moved to dismiss on the grounds that HOLA and OTS regulations preempted state laws that dictate the type and nature of loan-related fees a lender can charge. The Washington Supreme Court, sitting en banc, noted that whether the lender was precluded from charging fax and notary fees under the terms of the deed of trust was a matter of contract law. The

court concluded that state contract law requires the parties to adhere to the terms of their contracts, and the effect this has on lending operations is "unintended, ancillary, and subordinate to the purpose of the contract law," and is therefore "incidental." As such, the court ruled in favor of the borrowers, finding that neither the WCPA nor state contract law was preempted by federal regulations. For a copy of the opinion and dissent, please see http://1.usa.gov/o3WkE6 and http://1.usa.gov/pVmumt.

California Federal Court Holds Qualified Written Request Must Identify "Servicing Error." On June 28, in an unpublished opinion, the U.S. District Court for the Eastern District of California held that a mortgage borrower's letter to her loan servicer was not a "qualified written request" (QWR) within the meaning of the Real Estate Settlement Procedures Act (RESPA) because it did not pertain to a "servicing error." *Gates v. Wachovia Mortgage*, No. 09-cv-2464, 2010 WL 2606511 (E.D. Cal. June 28, 2010). In*Gates*, the plaintiff borrower obtained a mortgage loan from the defendant's predecessor. A year later, she sent the defendant a letter (i) seeking information about who then owned the obligation, (ii) seeking a statement of payments made on the loan, and (iii) alleging that "the loan being serviced is defective." The borrower alleged that the letter constituted a QWR and that the servicer's failure to reply constituted a violation of RESPA. The court disagreed, holding that while the plaintiff's requests pertained to the loan, the letter was not a QWR because it did not identify a "servicing error" and did not put the servicer on notice of a servicing error. As a result, the court dismissed the plaintiff's RESPA claim with prejudice. For a copy of the opinion, please see here.

Oregon Federal Court Holds Claim Based on False Credit Reporting Cognizable Under FDCPA. On June 7, the U.S. District Court for the District of Oregon held that there may be a cognizable claim under the Fair Debt Collection Practices Act (FDCPA) for false credit reporting where the claim is not narrowly based on the age of the misreported debt. *Daley v. A&S Collection Associates, Inc.*, No. CV-09-946, 2010 WL 2326256 (D. Or. June 7, 2010). In this case, the plaintiff failed to complete payments on a debt incurred in 1997, but the creditor did not initiate collection through a debt collector until 2009. The debt collector subsequently reported the debt to a credit bureau as first delinquent in 2004. The plaintiff argued, among other things, that by reporting that the debt was first delinquent in 2004 and that the date of last payment was unknown, the debt collector made a false communication to the credit bureau in violation of FDCPA Section 1692(e)(8). The debt collector countered that the plaintiff's claim was, in fact, a Fair Credit Reporting Act (FCRA) claim, which the plaintiff did not have standing to bring. Specifically, the debt collector argued that while the FCRA permits collection agencies to report debts to credit bureaus only within seven years and 180 days of the date of delinquency, the FDCPA contains no provisions expressly addressing delinquency dates. Thus, the debt collector contended that if it reported a stale debt, it violated the FCRA and not the FDCPA, and its specific FCRA violation (FCRA Section 1681s-2(b)) does not provide a private right of action. The court disagreed, finding that (i) FCRA is not an exclusive remedy in cases where a debt collector furnishes false information to a credit bureau, and (ii) in any event, the plaintiff's claim was not a "FCRA claim in disguise" because it was not narrowly based on the age of the reported debt, but was more generally based on the falsity of the communication relating to it. The court also denied summary judgment to the debt collector on the plaintiff's FDCPA Section 1692(e)(10) claim under the same rationale. For a copy of the opinion, please see here.

Third Circuit Reverses District Court Order Vacating Class Action Settlement Under FACTA. On June 15, the U.S. Court of Appeals for the Third Circuit reversed a Pennsylvania district court's order vacating a class action settlement in connection with claims brought by consumers under the Fair and Accurate Credit Transactions Act (FACTA) and held that FACTA's Clarification Act did not eliminate the consumers' cause of action. *Ehrheart v. Verizon Wireless*, No. 08-4323, 2010 WL 2365867 (3rd Cir. June 15, 2010). In *Ehrheart*, a class of consumers filed suit against a service provider for printing credit card receipts that displayed the consumers' credit card expiration date, in violation of FACTA. The class of consumers complained that the seller's actions were a willful violation of the FACTA, entitling them to actual damages between $100 to $1,000 per consumer, punitive damages, and attorneys' fees. The parties entered into a settlement agreement, which was preliminarily approved by the district court under Federal Rule of Civil Procedure 23(e). Less than two months later, Congress passed the Clarification Act, which, among other things, excluded from civil liability certain instances where an individual failed to remove the expiration date of a credit card. Based on the later enactment of the law, the sellers moved the district court to vacate its order and grant judgment on the pleadings on the grounds that the consumers' claims were now moot. The district court ruled in favor of the sellers. In a split panel decision, the Third Circuit reversed the district court's decision. The court held that in vacating its order granting preliminary approval to the settlement, the district court went beyond the narrow focus of Rule 23, which required the district court to act as a fiduciary for absent class members in assessing the settlement. The Third Circuit reasoned the district court should have looked only at the settlement with eyes toward "the fairness and reasonableness of the settlement to the class." Here, the district court went beyond the prescriptions of Rule 23 and instead "intrude[d] upon the parties' bargain." The court noted that public policy reasons favored settlements of disputes rather than continued litigation, and also held that a change in the law after a settlement is reached did not provide grounds for rescission of the settlement. For a copy of the opinion, please see http://www.ca3.uscourts.gov/opinarch/084323p.pdf.

California Federal Court Holds Filing of an Action for Rescission Not Required within TILA Three-Year Statute of Repose. On June 8, the U.S. District Court for the Northern District of California held that an action for rescission under the Truth in Lending Act (TILA) requires only the notice of rescission—but not the filing of an action for rescission—within three years of the consummation of a loan. *Pearce v. Bank of Am. Home Loans*, No. C 09-3988, 2010 WL 2348637 (N.D. Cal. June 8, 2010). In*Pearce*, the plaintiff borrower sought rescission of a loan under the TILA based on the defendant lender's failure to provide her with two completed copies of the Notice of Right to Cancel. The borrower alleged that she tendered written notice of rescission to the lender, and that the lender refused to rescind the loan. As a result, the borrower filed suit seeking judicial rescission of the loan. The lender argued that, pursuant to Section 1635(f) of TILA, the court lacked subject matter jurisdiction because the borrower did not file the suit within three years of the consummation of the loan. The borrower argued that the three-year statute of repose required only tender of written demand for rescission to the creditor, not the filing of an action for rescission. Acknowledging disagreement between federal courts on this issue, the court held that written notice of rescission was required within the three year period, not the filing of a lawsuit. Notwithstanding, the court dismissed the lawsuit, holding the borrower failed to file her lawsuit within one year of the creditor's denial of rescission, as required by the one-year statute of limitations for filing a claim for damages arising from the failure to rescind. For a copy of this opinion, please see here.

Utah State Court Approves Use of E-Signatures. On June 22, the Utah Supreme Court held that electronic signatures collected for ballot petitions were acceptable signatures under the Utah Election Code and the Utah Electronic Transactions Act (UETA). *Andersen v. Bell*, No. 20100237, 2010 WL 2485545 (Utah June 22, 2010). In *Andersen*, the plaintiff, a prospective candidate for the Utah gubernatorial primary, collected electronic signatures in support of his ballot petition. The Lieutenant Governor denied the petition, reasoning that the electronic signatures did not satisfy the statutory requirements for a "signature." The court disagreed, focusing on the intent of the signor, and not the form of the signature, in holding that an electronic signature qualifies as a "signature" under the relevant provision of the Utah Election Code and that no exceptions applied to the UETA's authorization of electronic signatures. For a copy of the opinion, please see here.

Firm News

The Chambers USA 2010 edition ranks BuckleySandler as a Band 1 firm in the Financial Services Regulation: Consumer Finance (Compliance) practice area, and as a Band 2 firm in the Financial Services Regulation: Banking (Enforcement & Investigations) practice area. Chambers quotes sources as saying that BuckleySandler is "[t]he best at what they do in the country." For the full write up, please visit http://www.chambersandpartners.com/USA/Editorial/37050#org_139031.

The *National Law Journal* named Andrew Sandler a "Visionary" in its third annual Legal Times Awards. The *National Law Journal* writes that Andrew "has an impeccable sense of timing" in forming BuckleySandler LLP by combining his practice group with the former Buckley Kolar LLP in 2009. Visionaries are "attorneys whose business or legal acumen has been key to expanding their firms, improving government or advancing the law." To read the full article, please click here.

Ben Klubes will be speaking at the American Financial Services Association's (AFSA) Law Committee Meeting in Indianapolis on July 13 regarding fair lending litigation and the DOJ.

Andrew Sandler will participate in three webinars offered by the Financial Services Roundtable taking place 12:15 p.m. - 2:00 p.m. ET on July 15, July 22, and July 29. The topic is "The Restoring American Financial Stability Act of 2010: Legislative Reform Meets Regulatory Reality."

Jerry Buckley and Mark Olson will present a free A.S. Pratt audio conference, "The Financial Reform Act: What You Need to Know," on July 13 and July 15. For more information and to register, please click here.

Christopher Witeck will be speaking on the panel "Securitization and Secondary Market" at ACI's Reverse Mortgage Conference in New York on July 23.

Jonice Gray Tucker will speak on issues related to fair loan servicing at the American Bar Association's Annual Conference on August 7.

Jonice Gray Tucker will speaking at the California Mortgage Bankers Association's Servicing Conference. The topic is enforcement activity related to loan modifications and default servicing.

Andrew Sandler will be the chairperson for Banking Crisis Fallout 2010 program at PLI New York Center in New York City on November 4; the topic will be "Emerging Enforcement Trends."

An article by Jonice Gray Tucker, Ben Saul, and Lori Sommerfield, "Regulators Target Fair Servicing," appeared in*Mortgage Banking* (June 2010).

An article by Jonice Gray Tucker, Lori Sommerfield, and Thomas Dowell, "Fair-Lending Principles Must Underpin Loss Mit," appeared in *Servicing Management* (June 2010). The article is available here.

An article by Jonice Gray Tucker, Ben Saul, and Thomas Dowell, "Mortgage Servicing Under Fire," appeared in the *Review of Banking and Financial Services* (June 2010).

Jon Langlois spoke on the panel "Financial Regulatory Reform: How Will It Affect Us?" at the National Reverse Mortgage Lenders Association Policy Conference on June 7.

Andrew Sandler and Bob Cook spoke at the American Bankers Association's Regulatory Compliance Conference in San Diego, CA on June 14.

Clinton Rockwell and Joe Kolar spoke about buyback strategies at the American Mortgage Lenders Conference in Washington, DC on June 15.

Katy Ryan, Melissa Klimkiewicz, and Clinton Rockwell presented a webinar, "New Challenges - FHA Compliance and Enforcement & Multi-State Examination Process," on June 23 for West Professional Development and on June 24 for the California Mortgage Bankers Association.

Jerry Buckley presented "Coping with the Bank Regulatory Environment" at the Massachusetts Executive Officers Conference in New Castle, NH on June 25.

Mortgages

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changes resulting from adjustable-rate mortgage resets), and (iv) requirements pertaining to bankruptcy proceeding issues (*e.g.*, promptly notifying Fannie Mae of borrower attempts to "cramdown" a Fannie Mae mortgage loan). For a copy of the announcement, please see https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2010/svc1006.pdf. For a copy of the revised Servicing Guide sections, please see https://www.efanniemae.com/sf/guides/ssg/svcg/svc042810.pdf.

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Banking

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Consumer Finance

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Litigation

Washington State Supreme Court Holds HOLA Does Not Preempt Allegation of Impermissible Reconveyance Fees. On June 24, the Washington Supreme Court held that the Home Owners' Loan Act (HOLA) and Office of Thrift Supervision (OTS) regulations do not preempt a borrower's claim challenging fax and notary fees to secure the reconveyance of title when the claim is based on the terms of a deed of trust. *McCurry v. Chevy Chase Bank, F.S.B.*, No. 81896-7, 2010 WL 2521772 (Wash. June 24, 2010). In*McCurry*, the borrowers, who sued on behalf of two similarly situated classes, conveyed a deed of trust to the lender. The payoff statement included a $20 fax fee and a $2 notary fee. The borrowers argued that the deed of trust did not permit such fees, thereby resulting in the lender's unjust enrichment, and that the charging of the fees violated the Washington Consumer Protection Act (WCPA). The lender moved to dismiss on the grounds that HOLA and OTS regulations preempted state laws that dictate the type and nature of loan-related fees a lender can charge. The Washington Supreme Court, sitting en banc, noted that whether the lender was precluded from charging fax and notary fees under the terms of the deed of trust was a matter of contract law. The court concluded that state contract law requires the parties to adhere to the terms of their contracts, and the effect this has on lending operations is "unintended, ancillary, and subordinate to the purpose of the contract law," and is therefore "incidental." As such, the court ruled in favor of the borrowers, finding that neither the WCPA nor state contract law was preempted by federal regulations. For a copy of the opinion and dissent, please see http://1.usa.gov/o3WkE6 and http://1.usa.gov/pVmumt.

California Federal Court Holds Qualified Written Request Must Identify "Servicing Error." On June 28, in an unpublished opinion, the U.S. District Court for the Eastern District of California held that a mortgage borrower's letter to her loan servicer was not a "qualified written request" (QWR) within the meaning of the Real Estate Settlement Procedures Act (RESPA) because it did not pertain to a "servicing error." *Gates v. Wachovia Mortgage*, No. 09-cv-2464, 2010 WL 2606511 (E.D. Cal. June 28, 2010). In*Gates*, the plaintiff borrower obtained a mortgage loan from the defendant's predecessor. A year later, she sent the defendant a letter (i) seeking information about who then owned the obligation, (ii) seeking a statement of payments made on the loan, and (iii) alleging that "the loan being serviced is defective." The borrower alleged that the letter constituted a QWR and that the servicer's failure to reply constituted a violation of RESPA. The court disagreed, holding that while the plaintiff's requests pertained to the loan, the letter was not a QWR because it did not identify a "servicing error" and did not put the servicer on notice of a servicing error. As a result, the court dismissed the plaintiff's RESPA claim with prejudice. For a copy of the opinion, please see here.

Oregon Federal Court Holds Claim Based on False Credit Reporting Cognizable Under FDCPA. On June 7, the U.S. District Court for the District of Oregon held that there may be a cognizable claim under the Fair Debt Collection Practices Act (FDCPA) for false credit reporting where the claim is not narrowly based on the age of the misreported debt. *Daley v. A&S Collection Associates, Inc.*, No. CV-09-946, 2010 WL 2326256 (D. Or. June 7, 2010). In this case, the plaintiff failed to complete payments on a debt incurred in 1997, but the creditor did not initiate collection through a debt collector until 2009. The debt collector subsequently reported the debt to a credit bureau as first delinquent in 2004. The plaintiff argued, among other things, that by reporting that the debt was first delinquent in 2004 and that the date of last payment was unknown, the debt collector made a false communication to the credit bureau in violation of FDCPA Section 1692(e)(8). The debt collector countered that the plaintiff's claim was, in fact, a Fair Credit Reporting Act (FCRA) claim, which the plaintiff did not have standing to bring. Specifically, the debt collector argued that while the FCRA permits collection agencies to report debts to credit bureaus only within seven years and 180 days of the date of delinquency, the FDCPA contains no provisions expressly addressing delinquency dates. Thus, the debt collector contended that if it reported a stale debt, it violated the FCRA and not the FDCPA, and its specific FCRA violation (FCRA Section 1681s-2(b)) does not provide a private right of action. The court disagreed, finding that (i) FCRA is not an exclusive remedy in cases where a debt collector furnishes false information to a credit bureau, and (ii) in any event, the plaintiff's claim was not a "FCRA claim in disguise" because it was not narrowly based on the age of the reported debt, but was more generally based on the falsity of the communication relating to it. The court also denied summary judgment to the debt collector on the plaintiff's FDCPA Section 1692(e)(10) claim under the same rationale. For a copy of the opinion, please see here.

Third Circuit Reverses District Court Order Vacating Class Action Settlement Under FACTA. On June 15, the U.S. Court of Appeals for the Third Circuit reversed a Pennsylvania district court's order vacating a class action settlement in connection with claims brought by consumers under the Fair and Accurate Credit Transactions Act (FACTA) and held that FACTA's Clarification Act did not eliminate the consumers' cause of action. *Ehrheart v. Verizon Wireless*, No. 08-4323, 2010 WL 2365867 (3rd Cir. June 15, 2010). In *Ehrheart*, a class of consumers filed suit against a service provider for printing credit card receipts that displayed the consumers' credit card expiration date, in

violation of FACTA. The class of consumers complained that the seller's actions were a willful violation of the FACTA, entitling them to actual damages between $100 to $1,000 per consumer, punitive damages, and attorneys' fees. The parties entered into a settlement agreement, which was preliminarily approved by the district court under Federal Rule of Civil Procedure 23(e). Less than two months later, Congress passed the Clarification Act, which, among other things, excluded from civil liability certain instances where an individual failed to remove the expiration date of a credit card. Based on the later enactment of the law, the sellers moved the district court to vacate its order and grant judgment on the pleadings on the grounds that the consumers' claims were now moot. The district court ruled in favor of the sellers. In a split panel decision, the Third Circuit reversed the district court's decision. The court held that in vacating its order granting preliminary approval to the settlement, the district court went beyond the narrow focus of Rule 23, which required the district court to act as a fiduciary for absent class members in assessing the settlement. The Third Circuit reasoned the district court should have looked only at the settlement with eyes toward "the fairness and reasonableness of the settlement to the class." Here, the district court went beyond the prescriptions of Rule 23 and instead "intrude[d] upon the parties' bargain." The court noted that public policy reasons favored settlements of disputes rather than continued litigation, and also held that a change in the law after a settlement is reached did not provide grounds for rescission of the settlement. For a copy of the opinion, please see http://www.ca3.uscourts.gov/opinarch/084323p.pdf.

California Federal Court Holds Filing of an Action for Rescission Not Required within TILA Three-Year Statute of Repose. On June 8, the U.S. District Court for the Northern District of California held that an action for rescission under the Truth in Lending Act (TILA) requires only the notice of rescission—but not the filing of an action for rescission—within three years of the consummation of a loan. *Pearce v. Bank of Am. Home Loans*, No. C 09-3988, 2010 WL 2348637 (N.D. Cal. June 8, 2010). In*Pearce*, the plaintiff borrower sought rescission of a loan under the TILA based on the defendant lender's failure to provide her with two completed copies of the Notice of Right to Cancel. The borrower alleged that she tendered written notice of rescission to the lender, and that the lender refused to rescind the loan. As a result, the borrower filed suit seeking judicial rescission of the loan. The lender argued that, pursuant to Section 1635(f) of TILA, the court lacked subject matter jurisdiction because the borrower did not file the suit within three years of the consummation of the loan. The borrower argued that the three-year statute of repose required only tender of written demand for rescission to the creditor, not the filing of an action for rescission. Acknowledging disagreement between federal courts on this issue, the court held that written notice of rescission was required within the three year period, not the filing of a lawsuit. Notwithstanding, the court dismissed the lawsuit, holding the borrower failed to file her lawsuit within one year of the creditor's denial of rescission, as required by the one-year statute of limitations for filing a claim for damages arising from the failure to rescind. For a copy of this opinion, please see here.

Utah State Court Approves Use of E-Signatures. On June 22, the Utah Supreme Court held that electronic signatures collected for ballot petitions were acceptable signatures under the Utah Election Code and the Utah Electronic Transactions Act (UETA). *Andersen v. Bell*, No. 20100237, 2010 WL 2485545 (Utah June 22, 2010). In *Andersen*, the plaintiff, a prospective candidate for the Utah gubernatorial primary, collected electronic signatures in support of his ballot petition. The Lieutenant Governor denied the petition, reasoning that the electronic signatures did not satisfy the statutory

requirements for a "signature." The court disagreed, focusing on the intent of the signor, and not the form of the signature, in holding that an electronic signature qualifies as a "signature" under the relevant provision of the Utah Election Code and that no exceptions applied to the UETA's authorization of electronic signatures. For a copy of the opinion, please see here.

E-Financial Services

NLRB Receives Amicus Briefs Supporting the Electronic Posting of Remedial Notices. Recently, the National Labor Relations Board (NLRB) received amicus briefs in three pending unfair labor cases to resolve what legal standard, if any, should apply to the electronic posting of NLRB-ordered remedial notices. The NLRB currently orders remedial notices to be posted on physical bulletin boards at the employer's or union's office and occasionally orders these notices to be mailed to employees or union members. In its amicus brief, the NLRB's General Counsel (GC) supported the electronic posting of remedial notices if an employer or union has committed an unfair labor practice and "uses intranet/internet sites or e-mail to communicate with employees." The GC noted the prevalence of electronic communication in the workplace and argued that the NLRB should include electronic posting within its standard notice-posting orders to ensure wide-dissemination of the notice. The AFL-CIO and the Service Employees International Union also filed amicus briefs in support of the electronic posting of remedial notices. In opposition, the U.S. Chamber of Commerce and the Texas Association of Business argued that compelling electronic posting of remedial orders should be limited to certain egregious cases involving an "extraordinary" remedy. For a copy of the NLRB's press release, please see here.

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Privacy/Data Security

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delinquent in 2004 and that the date of last payment was unknown, the debt collector made a false communication to the credit bureau in violation of FDCPA Section 1692(e)(8). The debt collector countered that the plaintiff's claim was, in fact, a Fair Credit Reporting Act (FCRA) claim, which the plaintiff did not have standing to bring. Specifically, the debt collector argued that while the FCRA permits collection agencies to report debts to credit bureaus only within seven years and 180 days of the date of delinquency, the FDCPA contains no provisions expressly addressing delinquency dates. Thus, the debt collector contended that if it reported a stale debt, it violated the FCRA and not the FDCPA, and its specific FCRA violation (FCRA Section 1681s-2(b)) does not provide a private right of action. The court disagreed, finding that (i) FCRA is not an exclusive remedy in cases where a debt collector furnishes false information to a credit bureau, and (ii) in any event, the plaintiff's claim was not a "FCRA claim in disguise" because it was not narrowly based on the age of the reported debt, but was more generally based on the falsity of the communication relating to it. The court also denied summary judgment to the debt collector on the plaintiff's FDCPA Section 1692(e)(10) claim under the same rationale. For a copy of the opinion, please see here.

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Credit Cards

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