

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

R.M. GALICIA, INC. d/b/a
PROGRESSIVE MANAGEMENT SYSTEMS

1521 W Cameron Ave.
West Covina, CA 91790

Plaintiff,

Case No. 24-cv-3149

v.

CONSUMER FINANCIAL PROTECTION
BUREAU and ROHIT CHOPRA, in his official
capacity as Director of the Consumer Financial
Protection Bureau,

1700 G Street N.W.
Washington, DC 20552

Defendants.

COMPLAINT

Plaintiff, R.M. Galicia, Inc., doing business as Progressive Management Systems (“PMS”), through undersigned counsel, hereby brings this action for equitable relief against Defendants, the Consumer Financial Protection Bureau (“CFPB”), and Rohit Chopra, in his official capacity as Director of the CFPB, and alleges:

INTRODUCTION

1. The CFPB is an agency with “vast authority.” *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2210 (2020). Considering the CFPB’s “vast authority,” ensuring the agency does not ignore existing legal constraints is critical.

2. On October 1, 2024, the CFPB issued an “Advisory Opinion” that, *inter alia*, creates a new substantive obligation and requirement for debt collectors to substantiate medical

debt prior to collection. (hereinafter, the “New Substantiation Rule”). *See* 89 Fed. Reg. 80715, 80721-22.

3. The New Substantiation Rule is void because it was issued without complying with the procedural requirements to undergo a notice and comment period as required by the Administrative Procedure Act (“APA”). 5 U.S.C. § 533.

4. While PMS fully supports the fair and reasonable enforcement of laws to protect consumers against unfair debt collection practices, when enacting the New Substantiation Rule without following the due process requirements of the APA, the CFPB acted without authority and created significant uncertainty in the medical debt collection field.

JURISDICTION AND VENUE

5. The Court has subject-matter jurisdiction because this case arises under the U.S. Constitution and laws of the United States. 28 U.S.C. § 1331; 5 U.S.C. § 706.

6. This Court is authorized to award the relief requested under 5 U.S.C. § 706 and 28 U.S.C. § 1361.

7. Venue is proper in this District because Defendants reside here. 28 U.S.C. § 1391(e)(1).

PARTIES

8. Plaintiff PMS is a 100% employee-owned debt collector that engages in the collection of medical debt. PMS is regulated by the CFPB. PMS will be substantively and substantially affected by the New Substantiation Rule. On the effective date of the New Substantiation Rule, PMS will be forced to comply with the New Substantiation Rule when collecting medical debt or face the risk of regulatory enforcement by the CFPB and private actions filed by individuals based on the CFPB’s New Substantiation Rule.

9. Defendant CFPB is an agency of the United States of America. 12 U.S.C. § 5491(a).

10. Defendant Rohit Chopra is the Director of the CFPB. Director Chopra is sued in his official capacity.

FACTUAL ALLEGATIONS

A. Federal Rulemaking Must Comply with the Administrative Procedures Act.

11. The APA broadly waives sovereign immunity of the United States and its federal agencies by allowing parties who are adversely affected or aggrieved by an agency action to seek judicial review. 5 U.S.C. §§ 702, 704.

12. Under the APA, an agency action must be vacated if it is issued “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D).

13. Unless covered by an exception, all agency rules must go through the APA’s notice-and-rulemaking procedure. 5 U.S.C. § 533. A “rule” is an “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy,” including “the approval or prescription . . . of valuations, costs, or accounting, or practices bearing on any of the foregoing.” 5 U.S.C. § 551(4). The definition covers “virtually every statement an agency can make.” *Avoyelles Sportsmen’s League, Inc. v. Marsh*, 715 F.2d 897, 908 (5th Cir. 1983).

14. The APA distinguishes between “legislative rules” and “interpretive rules.” 5 U.S.C. § 533(b)(A). Legislative rules are subject to the APA’s notice-and-comment requirement. 5 U.S.C. § 533(b)(3)(A).

15. In determining whether a rule is legislative or interpretive, the agency’s label is not dispositive. *Stuttering Found. of America v. Springer*, 498 F. Supp. 2d 208, 211 (D.C. Cir. 2007).

Rather, any rule that operates as a “substantive agency regulation[]” is deemed legislative. *Chrysler Corp. v. Brown*, 441 U.S. 218, 313-15 (1979). Legislative rules are those that “grant rights, impose obligations, or produce other significant effects on private interests.” *Id.* at 302. In contrast, a rule is interpretive if it “spells out a duty that is fairly encompassed within the [statute or] regulation that the interpretation purports to construe.” *Air Trasp. Ass’n of Am. v. FAA*, 291 F.3d 49, 55-56 (D.C. Cir. 2002).

16. To determine whether a rule is legislative or interpretive, the court considers “(1) whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule.” *Am. Mining Cong. v. MSHA*, 995 F.2d 1106, 1112 (D.C. Cir. 1993). “If the answer to any of these questions is affirmative, we have a legislative, not an interpretive rule.” *Id.*

17. When engaged in notice-and-comment rulemaking, the CFPB must comply with the Small Business Regulatory Enforcement Fairness Act, which requires it to convene a Small Business Review Panel so that it can consult with representatives of small entities likely to be affected by regulations it is considering proposing and requesting feedback on the likely impact of the rule on small entities. 5 U.S.C. § 609(b), (d). The CFPB must also consult with other agencies, consider the costs and benefits of the proposed rule, publish the proposed rule providing the public adequate notice of what the agency intends to do, provide the public with the opportunity to comment on the proposed rule, consider those public comments, and publish a final rule not less than 30 days before its effective date. 5 U.S.C. § 553; 12 U.S.C. § 5512(b)(1).

18. The APA's notice-and-comment process provides a crucial and necessary safeguard against the consequences of an unchecked federal administrative state.

B. The CFPB Has Broad, But Not Unfettered, Authority to Regulate Medical Debt Collectors.

19. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). In Dodd-Frank, Congress established the CFPB as an independent agency to "implement and . . . enforce Federal consumer financial law." 12 U.S.C. § 5511(a). The CFPB's discrete purpose is to "ensure that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive." 12 U.S.C. § 5511(a).

20. In creating the CFPB, Congress transferred administration of 18 existing federal statutes to the CFPB, including the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, which was enacted in 1977 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 activities." 15 U.S.C. § 1692a(e).

21. Congress granted the CFPB authority to "conduct investigations, issue subpoenas and civil investigative demands, initiate administrative adjudications, and prosecute civil actions in federal court." *Seila Law*, 140 S. Ct. at 2193. Through those processes, the CFPB may seek penalties including restitution, rescission of contracts, disgorgement, and injunctive relief. 12 U.S.C. § 5565.

22. Congress also granted the CFPB authority to "require reports and conduct examinations on a periodic basis" of certain entities, including Plaintiff, in order to "assess[] compliance with the requirements of Federal consumer financial law," and "obtain information

about the activities and compliance systems or procedures” of the regulated entity. 12 U.S.C. §§ 5514-15.

23. Congress authorized the CFPB to “prescribe rules applicable to a covered person or service provider identifying as unlawful, unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for the consumer financial product or service, or the offering of a consumer financial product or service.” 12 U.S.C. § 5531(b). Congress also authorized the CFPB to prescribe rules implementing the FDCPA, which it has done through, *inter alia*, Regulation F. *See* 12 C.F.R. Part 1006.

24. PMS is regulated by the CFPB under these statutes and enforcement processes.

C. The New Substantiation Rule Violates the APA.

25. On October 1, 2024, the CFPB issued the New Substantiation Rule that creates new substantive obligations and requirements on debt collectors collecting medical debt.

26. The New Substantiation Rule takes effect December 3, 2024.

27. However, instead of exercising its formal rulemaking authority under the APA to enact a new legislative rule, the CFPB simply issued the New Substantiation Rule without notice and the opportunity for public and industry comment.

28. The CFPB states that the Advisory Opinion containing the New Substantiation Rule is an interpretive rule rather than a substantive change in the law. *See* 89 Fed. Reg. 90723. This is wrong. The New Substantiation Rule imposes significant and substantive new requirements on medical debt collectors and is, therefore, a legislative rule that violates the APA because the CFPB failed to comply with the notice-and-comment period requirement.

29. Specifically, the New Substantiation Rule states that a medical debt collector violates the FDCPA if it fails to substantiate the debt prior to making a collection attempt, *i.e.*,

review account-level documents and agreements and make an independent legal determination that the debt is valid prior to collection—even if the debt is valid and the balance is accurate. *See* 89 Fed. Reg. 80716, 80721-22.

30. The New Substantiation Rule requires “[d]ebt collectors [] have a reasonable basis for asserting that the debts they collect are valid and the amounts correct. Debt collectors may be able to satisfy this requirement by obtaining appropriate information to substantiate those assertions, consistent with patients’ privacy. This information could include payment records (including from insurance); records of a hospital’s compliance with any applicable financial assistance policy; copies of executed contracts or, in the absence of express contracts, documentation that the creditor can make a prima facie claim for an alleged amount under State law (e.g., “reasonable” or “market rates”). 89 Fed. Reg. 80716.

31. The New Substantiation Rule provides that “[c]ollecting or attempting to collect medical debts without substantiation violates [the FDCPA] section 807(2)(A).” 89 Fed. Reg. 80722.

32. However, under existing and long-established law, a debt collector does not violate the FDPCA by attempting to collect a debt without first substantiating it.

33. It is well-settled that the FDCPA does not require a debt collector to independently investigate each account prior to collection.¹ Should a consumer establish that the debt is not due

¹ *See, e.g., Owen v. I.C. Sys., Inc.*, 629 F.3d 1263, 1276-77 (11th Cir. 2011) (“we agree with ICS that the FDCPA does not require debt collectors to independently investigate and verify the validity of a debt to qualify for the bona fide error defense”); *Clark v. Capital Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1173-74 (9th Cir. 2006) (“Within reasonable limits, [Defendants] were entitled to rely on their client’s statements to verify the debt. Moreover, the FDCPA did not impose upon them any duty to investigate independently the claims presented”) (internal citations omitted); *Jenkins v. Heintz*, 124 F.3d 824, 834 (7th Cir. 1997) (holding that a debt collector has no obligation to conduct an independent debt validity investigation); *Smith v. Transworld Systems, Inc.*, 953 F.2d 1025, 1032 (6th Cir. 1992) (debt collectors are entitled to rely on the information they receive from

the creditor); *Huebner v. Midland Credit Mgmt., Inc.*, 2016 WL 3172789, *6 (E.D. N.Y. June 6, 2016), *aff'd*, 897 F.3d 42 (2d Cir. 2018) (debt collector “had no obligation to independently investigate the debt prior to beginning collection”); *McStay v. IC Sys., Inc.*, 174 F.Supp.2d 42, 47 (S.D. N.Y. 2001), *aff'd*, 308 F.3d 188 (2d Cir. 2002) (“A debt collector must be able to rely on representations from his client as to the amount of the debt. The FDCPA does not require debt collectors to conduct independent investigations of the information provided by clients when collecting a debt”); *Wittenberg v. Wells Fargo Bank, N.A.*, 852 F. Supp. 2d 731, 754 (N.D. W.Va. 2012), *aff'd sub nom. Wittenberg v. First Indep. Mortg. Co.*, 599 F. App’x 463 (4th Cir. 2013) (“this Court joined several courts in holding that the FDCPA did not require a debt collector to investigate the validity of the debt it has been asked by a creditor to collect”); *Rowland v. Transworld Sys., Inc.*, 2024 WL 4364952, *12 (E.D. Va. Sept. 30, 2024) (“the FDCPA does not require a debt collector to engage in an independent investigation of the debt referred for collection”); *Valdes v. Accts. Receivable Res., Inc.*, 544 F. Supp. 3d 1313, 1320 (S.D. Fla. 2021) (“the FDCPA does not require debt collectors to independently investigate and verify the validity of a debt to qualify for the bona fide error defense”) (internal citation omitted); *Rivera v. I.C. Sys., Inc.*, 2020 WL 13694122, *4 (E.D. N.Y. May 12, 2020) (debt collector was under no requirement to verify the debt prior to receiving plaintiff’s dispute); *Maitland v. Spectrum*, 2018 WL 6444923, *2 (M.D. Fla. Oct. 18, 2018) (“the FDCPA does not require CPA to independently investigate the merits of Maitland’s debt”); *Cornette v. I.C. Sys., Inc.*, 280 F. Supp. 3d 1362, 1369-70 (S.D. Fla. 2017) (“Nowhere in the FDCPA does the statute specifically require a debt collector to validate a debt prior to seeking collection of such debt”); *Grant-Fletcher v. McMullen & Drury, P.A.*, 964 F. Supp. 2d 514, 529 (D. Md. 2013) (“the debt collector is entitled to rely on its client’s representation that the debt is valid, and is not obliged to engage in an independent investigation of the debt”); *McDermott v. Marcus, Errico, Emmer & Brooks, P.C.*, 911 F. Supp. 2d 1, 30 (D. Mass. 2012), *amended in part*, 969 F. Supp. 2d 74 (D. Mass. 2013), *aff'd in part, rev'd in part on other grounds and remanded*, 775 F.3d 109 (1st Cir. 2014) (“The FDCPA does not require a debt collector to independently investigate the merit of the debt and a debt collector can rely on its clients’ representations regarding the validity of the debt”) (internal citation omitted); *Jacques v. Solomon & Solomon P.C.*, 886 F. Supp. 2d 429, 433 (D. Del. 2012) (“The FDCPA does not require a debt collector to engage in an independent investigation of the debt referred for collection”); *Long v. McMullen, Drury & Pinder, P.A.*, 2011 WL 4458849, *6 (D. Md. Sept. 23, 2011) (“Defendant was not required to undertake an independent investigation of the debt referred for collection”); *Poulin v. The Thomas Agency*, 760 F. Supp. 2d 151, 160-61 (D. Me. 2011) (“numerous courts have held to the contrary that the FDCPA does not require a debt collector to independently investigate the merit of the debt and that a debt collector can rely on its clients’ representations regarding the validity of the debt”) (collecting cases); *Yentin v. Michaels, Louis & Assocs., Inc.*, 2011 WL 4104675, *9 (E.D. Pa. Sept. 15, 2011) (concluding that no provision of the FDCPA “impos[es] upon a debt collector any duty to ‘investigate’ debts that it seeks to collect—either before collection activities begin or after a consumer disputes a debt”); *Sayed v. Wolpoff & Abramson, LLP*, 733 F. Supp. 2d 635, 646-47 (D. Md. 2010) (debt collector “was not required to engage in an independent investigation of the debt referred for collection”); *Richeson v. Javitch, Block & Rathbone, LLP*, 576 F. Supp. 2d 861, 867 (N.D. Ohio 2008) (“The Sixth Circuit has recognized that the FDCPA does not require an independent investigation of the debt referred for collection. Thus, Plaintiff’s claim under § 1692e(10) cannot be sustained by the mere allegation that JBR ‘should have known’ that the debt resulted from identity theft because JBR was not required to investigate the underlying

and owing, or that the amount sought is incorrect, the debt collector may be liable for an FDCPA violation, subject only to the defense that the error was a bona fide error notwithstanding the debt collector's processes and procedures reasonably adapted to avoid such an error.

34. Most notably, in enacting Regulation F, the CFPB explicitly declined to include a rule that debt collectors are obligated to substantiate a debt prior to collection, finding that such a rule was “not advisable” without the “benefit of public notice and comment.” *See* 85 Fed. Reg. 76857 fn.27 (“The Bureau received feedback asking the Bureau to include in the final rule certain interventions that the Bureau did not pose; many such comments addressed debt collectors’ obligation to substantiate debts. The Bureau concludes that it is *not advisable* to finalize such interventions *without the benefit of public notice and comment* and therefore does not address such comments further in the Notice.”) (emphasis added).

35. Further, the FDCPA and Regulation F require a debt collector to provide verification of the debt to the consumer or cease collection if the consumer disputes the debt in writing within 30 days after receiving the debt collector’s initial written notice. *See* 15 U.S.C. § 1692g; 12 C.F.R. § 1006.34. Existing law under the FDPCA is clear that a debt collector has the

merits of the debt before sending the Validation Notice”) (internal quotation omitted); *Elane v. Revenue Maximization Group*, 233 F.Supp.2d 496, 500 (E.D. N.Y. 2002) (noting that defendant was entitled to rely on its client's representation that the debt was valid); *Shapiro v. Haenn*, 222 F.Supp.2d 29, 44 (D. Me. 2002) (“[D]ebt collectors may rely on the information their clients provide, and the FDCPA does not require them to conduct their own investigation into the amount or validity of the underlying loan”) (citations omitted); *Moya v. Hocking*, 10 F. Supp. 2d 847, 852 (W.D. Mich. 1998) (“Plaintiffs’ suggestion that a debt collector should be required to investigate every single account . . . is contrary to the FDCPA . . . which allow a debt collector who has adopted reasonable procedures to prevent FDCPA violations to rely upon third party-supplied information”); *Jenkins v. Union Corp.*, 999 F. Supp. 1120, 1140-41 (N.D. Ill. 1998) (“a debt collector has the right to rely on information provided by the client-creditor, and has no obligation to undertake an independent debt validity investigation”); *Ducrest v. Alco Collections, Inc.*, 931 F. Supp. 459, 462 (M.D. La. 1996) (“The FDCPA does not require an independent investigation of the information provided by clients when a debt collector tries to collect a debt, nor does it require the debt collector to dispute the creditor's construction of a contract”).

option of either providing the consumer validation of the debt or ceasing collection. *Id.* Requiring pre-collection investigation conflicts with the plain language of the FDPCA and would render the validation process provided by § 1692g(a) superfluous. *See, e.g., Azar v. Hayter*, 874 F. Supp. 1314 (N.D. Fla. 1995) (“No provision of the FDCPA has been found which would require a debt collector independently to investigate the merit of the debt, *except to obtain verification[.]*”) (emphasis added).

36. The New Substantiation Rule is substantive and a material change in the law because it will require medical debt collectors to review account-level documentation *prior* to making an initial collection attempt on a medical debt.

37. The requirement that medical debt collectors substantiate the debt prior to making a collection attempt did *not* exist prior to the New Substantiation Rule.

38. Because it creates new obligations and requirements on medical debt collectors, the New Substantiation Rule is a legislative rule and the CFPB was required to comply with the APA’s notice-and-comment process.

39. The CFPB did not comply with the APA’s notice-and-comment process when issuing the New Substantiation Rule. The CFPB did not consult with small entities to determine if the New Substantiation Rule would adversely impact them. The CFPB did not consult with other agencies or analyze the potential costs and benefits of the New Substantiation Rule. The CFPB did not consider public comments before issuing the New Substantiation Rule.

40. Because the CFPB did not go through the notice-and-comment procedures to promulgate the New Substantiation Rule, the rule must be set aside. 5 U.S.C. § 706(2)(D).

CLAIM FOR RELIEF

Count I

**Violation of the APA's Notice and Comment Requirement
5 U.S.C. § 553**

41. PMS incorporates by reference the prior allegations.
42. The New Substantiation Rule is a legislative rule subject to the APA's notice-and-comment requirement.
43. The CFPB did not comply with the APA's notice-and-comment requirement when issuing the New Substantiation Rule.
44. Because the New Substantiation Rule violates the APA, the rule is invalid and should be set aside.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, R.M. Galicia, Inc., doing business as Progressive Management Systems, asks this Court to enter judgement in its favor and provide the following relief:

- a. A declaration that the New Substantiation Rule is invalid because the CFPB issued the rule without the proper notice-and-comment period and rulemaking process;
- b. An injunction setting aside the New Substantiation Rule;
- c. All recoverable attorneys' fees and costs incurred in relation to this case; and
- d. All other relief to which Plaintiff is entitled that the Court deems just and proper.



Aaron R. Easley, Esq. (450292)
Sessions, Israel & Sharple, LLC
3 Cross Creek Drive
Flemington, NJ 08822-4938
telephone No.: (908) 237-1660
Facsimile No.: (877) 334-0661
Email: aeasley@sessions.legal
Attorneys for Plaintiff