
E-MAIL MEMORANDUM

PERSONAL & CONFIDENTIAL

TO: SFNI Clients and “Friends” of the Firm
FROM: David Israel
DATE: January 19, 2016
RE: Compliance Bulletin - § 1692d(5) - Case Review: Excessive Calls – Violations/No Violations

We attempt to identify all reported decisions per the FDCPA, § 1692d(5), for debt collectors that “call too much.”

There is no “clear-cut” formula for a § 1692d(5) violation; instead, case law has developed based upon the pattern of calls. In summary, the greater the number of calls in the shortest amount of time, the greater the likelihood that a violation will be found. Cases are sorted by the federal circuit courts of appeal and by violations found and violations not found.

THIS MEMORANDUM IS *NOT* LEGAL ADVICE, BUT A SUMMARY OF REPORTED DECISIONS TO ALLOW DEBT COLLECTORS TO CONSIDER THEIR CALLING AND DIALER PATTERNS. Questions should be directed to counsel, as facts and circumstances affect potential liability.

We have also included a short summary of applicable state laws restricting consumer calls. Cases added since our last month’s summary are noted in bold.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

1st Circuit:

Lakeway Two Suite 200 3850 North Causeway Boulevard Metairie, Louisiana 70002-7227

(504) 828-3700 (504) 828-3737 F www.sessions-law.com

CALIFORNIA ■ COLORADO ■ FLORIDA ■ GEORGIA ■ ILLINOIS ■ LOUISIANA ■ NEW JERSEY ■ NEW YORK ■ OHIO ■ TEXAS

- A. *Davis v. Diversified Consultants, Inc.*, 2014 WL 2944864, 8 (D. Mass. 2014) – The plaintiff alleged that the collector called 60 times, including 3-4 calls on multiple days, for 3.5 months after the plaintiff advised the

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

collector it had the wrong number. The Court ruled that a reasonable jury could find a violation of 1692d(5) based on the allegations.

- B. *Hockenhull v. Law Office Howard Lee Schiff, P.C.* 2012 WL 6525504, 3 (D.R.I. 2012) – The plaintiff alleged that the collector called 2-3 times per day and called approximately 100 times in 7 months. The Court denied the collector's motion for judgment on the pleadings because there was a question of fact regarding the volume and timing of the calls.
- C. *Gilroy v. Ameriquist Mortgage Co.*, 2009 WL 1704255 (D.N.H. 2009) – The plaintiff alleged that the collector called 468 times in 1 year (as many as 3 times per night up to 3 nights per week). The Court “conservatively estimated” that the collector made 200 calls in 1 year and found that this was a violation of the New Hampshire law governing harassing calls. **Note:** The Court used the FDCPA and federal case law to interpret NH state law, but found no FDCPA violation because the plaintiff pled the claim only under state law.

2nd Circuit:

- A. *Ghawi v. Law Offices of Howard Lee Schiff, P.C.*, 2014 WL 6885141, *2 (D. Conn. 2014) – The plaintiff alleged that the collector left 29 voicemails and called countless times through a period of 1 year after plaintiff requested the collector validate the debt and cease calling. The court ruled that the plaintiff presented sufficient facts to survive a motion to dismiss the plaintiff's claims.
- B. *Mitchell v. Ne. Collection Bureau*, 2015 WL 114123, *1 (W.D.N.Y. 2015) – The Plaintiff alleged collectors called both to her home phone and cell phone twice within 40 minutes, totaling 4 calls in 40 minutes. The court ruled that the plaintiff alleged sufficient facts to establish the defendant's liability under the FDCPA, granting a default judgment in favor of the plaintiff.

- C. *Mills v. ACS Recovery, Inc.*, 2014 WL 916674, 1 (W.D.N.Y. 2014) – The plaintiff alleged that the collector contacted him at home and work more than 20 times after he advised the collector that he was not the debtor and that the debtor did not live with him. The Court granted the plaintiff's motion for default.
- D. *Fuentes v. Audubon Finan. Bureau, LLC*, 2013 WL 4780119, 1-2 (W.D.N.Y. 2013) – The plaintiff alleged that the collector repeatedly called his cell up to 3 times per day several days in a row. The Court granted the plaintiff's motion for default.
- E. *May v. Asset Acceptance LLC*, 2013 WL 1337173, 6 (W.D.N.Y. 2013) – The plaintiff alleged that the collector called numerous times, ignored a cease calls request, and called back within minutes after hanging up. The Court denied the collector's motion for summary judgment.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- F. *Sussman v. I.C. Sys., Inc.*, 2013 WL 842598, 6-7 (S.D.N.Y. 2013) – The plaintiff alleged that the collector called over 50 times in 3 months, ignored a written cease calls request, and hung up when the plaintiff answered the calls. The Court denied the collector's motion to dismiss.
- G. *Hance v. Premier Recovery Group, Inc.*, 2013 WL 85068, 1 (W.D.N.Y. 2013) – The plaintiff alleged that the collector repeatedly called the plaintiff at home and work for over a year. The plaintiff also specifically alleged that the collector ignored cease calls requests, called more than 4 times per day, and placed more than 20 calls per month. The Court granted the plaintiff's motion for default judgment.
- H. *Mira v. Maximum Recovery*, 2012 WL 4511623, 3 (E.D.N.Y. 2012) - The plaintiff alleged that the collector "made telephone calls and left 3 harassing, confusing, misleading, and deceptive messages" over approximately 2 months. The Court granted the plaintiff's motion for default judgment and ruled that the complaint adequately established that the collector violated 1692d(5)-(6).

- I. *Morant v. Miracle Finan., Inc.*, 2012 WL 4174893, 2 (E.D.N.Y. 2012) – The plaintiff alleged that the collector called “several times” after she advised the collector during “several” conversations that the debtor could not be reached at that number. The Court denied the collector’s motion and noted that other Courts have found similar allegations sufficient to survive a motion to dismiss.
- J. *Doyle v. Midland Credit Mgt., Inc.*, 2012 WL 1666397, 3-4 (E.D.N.Y. 2012) – The plaintiff alleged that the collector called his cell phone 22-28 times over several months regarding a debt for someone else, even after the plaintiff advised several representatives that the collector was calling the wrong number. The Court denied the collector’s motion to dismiss.
- K. *Moore v. Firstsource Advt.’g, LLC*, 2011 WL 4345703, 14-15 (W.D.N.Y. 2011) – The plaintiff alleged that she received 90 auto-dialer calls in 4 months, often received multiple calls per day, and continued to receive calls after a verbal cease calls request. The collector defended that it

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- placed a maximum of 58 calls in 14 months. The Court denied the collector’s motion and noted that the record did not reveal how many calls were placed before or after the alleged verbal cease calls request, nor did the record clarify the frequency and pattern of the calls.
- L. *Moltz v. Firstsource Advt.’g, LLC*, 2011 WL 3360010, 3 (W.D.N.Y. 2011) – The plaintiff received approximately 30 calls over 6 months, 25 of which were after a verbal cease calls request. The plaintiff also alleged that the collector called back 2 minutes after the cease calls request. The Court denied the collector’s motion and ruled that although the number of calls did not violate § 1692d as a matter of law, the jury must determine the motivation behind the call that was 2 minutes after the cease calls request.
 - M. *Kavalin v. Global Credit & Collection Corp.*, 2011 WL 1260210, 4-5 (W.D.N.Y. 2011) – The plaintiff alleged that the collector left “scores” of harassing messages on her answering machine and provided 4 examples of the alleged messages. The Court denied the collector’s motion and ruled that “harassment or annoyance in violation of these provisions is one of fact for the jury, to be determined in light of any evidence revealed during

discovery regarding the volume, frequency, pattern, or substance of the phone calls.”

- N. *Strom v. National Enterprise Sys., Inc.*, 2011 WL 1233118, 8-10 (W.D.N.Y. 2011) – The collector placed numerous calls after the plaintiff notified the collector that she was disabled and requested that the collector cease calls. The collector did not cease calls until the plaintiff hired an attorney and admitted that it placed 25 calls and left 17 messages in 6 weeks, a majority of which were placed after a cease calls request. The Court denied the collector’s motion and ruled that the evidence revealed that the collector acted with an intent to annoy, abuse, or harass.
- O. *Taylor v. Morgan Stone & Assocs., LLC*, 2010 WL 1816675, 1-2 (W.D.N.Y. 2010) – The plaintiff alleged that the collector called her cell 5-6 times per day for over 2 months. The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- P. *Annis v. Eastern Asset Mgt., LLC*, 2010 WL 1035273, 1, 3 (W.D.N.Y. 2010) – The plaintiff alleged that the collector called almost every day for 4 months. The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.
- Q. *Atchoo v. Redline Recovery Servs., LLC*, 2010 WL 1416738, 1 (W.D.N.Y. 2010) – The collector moved to dismiss the Complaint because the plaintiff failed to specify the number of calls placed. The Court denied the collector’s motion because the Court found no authority indicating that a plaintiff must allege that a collector made a certain number of calls to state a claim under the FDCPA.
- R. *Bank v. Pentagroup Fin., LLC*, 2009 WL 1606420, 5 (E.D.N.Y. 2009) – The plaintiff alleged that he received 30 calls in 1 year. The Court denied the collector’s motion to dismiss and ruled that a “debt collection program that negligently misplaces numerous calls to a single wrong number could plausibly have the natural consequence of harassment or abuse.”
- S. *Prewitt v. Wolpoff & Abramson, LLP*, 2007 WL 841778, 1 (W.D.N.Y. 2007) – The plaintiff alleged that the collector called 4 times per day for 3 months.

The collector defended that it placed approximately 1 call per day for 6 months but did admit that “on most days,” it made 1-2 calls and that on 2 occasions, called 3 times in 1 day. The Court found that there were disputed facts and that excessive calls could have been made.

- T. *Harrison v. Federal Pac. Credit Co., LLC*, 2006 WL 276605, 5 (W.D.N.Y. 2006) – The plaintiff alleged that the collector called him at work once a week for 15 months and continued to call after he verbally disputed the debt. The Court denied the collector’s motion because there was no case law to support the collector’s request to dismiss the claim.
- U. *Chiverton v. Federal Fin. Group, Inc.*, 399 F. Supp. 2d 96, 101 (D. Conn. 2005) – Terminating a call and calling right back is an FDCPA violation.
- V. *Teng v. Metropolitan Retail Recovery Inc.*, 851 F. Supp. 61, 67 (E.D.N.Y. 1994) – 5 calls within 4 ½ hours is an FDCPA violation.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

3rd Circuit:

- A. *Hamburger v. Northland Grp., Inc.*, 2015 WL 631066, 7 (M.D. Pa. 2015) – The plaintiffs alleged that the collector called 7 or 8 times after plaintiffs requested the calls stop. The court denied the collector’s motion for summary judgment, finding that “while the number and frequency of the calls [were] low” there was still a triable issue of fact under § 1692d(5).
- B. *Rush v. Portfolio Recovery Assocs., LLC*, 2013 WL 5645770, 11-12 (D. N.J. 2013) – The plaintiff alleged that the collector placed harassing calls for 5 months. It is undisputed that that all of the calls were unanswered. The record revealed that the collector placed 39 calls in 1 year and only a handful was placed during the 5 months at issue. The plaintiff disputed the number, frequency, and timing of the calls. The Court denied the collector’s motion and ruled that the plaintiff’s allegation that some calls were not included in the call record was enough to merit a genuine dispute of fact.
- C. *Forrest v. Genpact Servs., LLC*, 2013 WL 4516479, 3 (M.D. Pa. 2013) -The plaintiff alleged that the collector placed over 225 autodialer calls in 54 days. The collector defended that a high number of calls, when the debtor fails to

respond or answer, is not an FDCPA violation. The Court could not infer that the plaintiff never answered or responded to any of the calls and ruled that the Complaint pled a cause of action.

- D. *Corson v. Accounts Receivable Mgt., Inc.*, 2013 WL 4047577, 6 (D.N.J. 2013) – The plaintiff alleged that the collector called every day for 2 months and ignored numerous cease calls requests while collecting a debt for someone else. The Court denied the collector's judgment on the pleadings.
- E. *Kromelbein v. Envision Payment*, 2013 WL 3947109, 4-6 (M.D. Pa. 2013) – The plaintiff alleged that the collector called 45 times in 2 months, called multiple times per day, called again after he had spoken with a representative earlier the same day, and frequently hung up right before he answered. The collector defended that it only called 14 times in 2 months, that the company's policy required collectors to hang up after the fourth ring, and that the plaintiff failed to establish that the collector intended to harass, oppress, or abuse. The Court denied the collector's motion and ruled that although the plaintiff only provided conclusory evidence of intent, this issue was a jury question.
- F. *Turner v. Professional Recovery Servs., Inc.*, 2013 WL 3441100, 3-5 (D.N.J. 2013) – The plaintiff alleged that the collector called more than 133 times in 5 months, called at inconvenient times, called 2-3 times per day, and told the

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

plaintiff that she would continue to receive calls until the debt was paid. The Court denied the collector's motion and ruled that a reasonable jury could determine that the volume and pattern of the calls demonstrated an intent to annoy, abuse, or harass. The Court specifically noted that the record revealed that the collector called the plaintiff's home and cell number at least 133 times in 5 months, placed multiple calls per day, called 2 time within a matter of minutes on numerous occasions, and continued to call for several months after the plaintiff said that she was not working and could not pay the debt.

- G. *Nyce v. Sterling Credit Corp.*, 2013 WL 1388051, 4 (E.D. Pa. 2013) – The plaintiff placed a total of 22 calls in 8 months, 9 of which were over 52 days and 13 over 18 days. In some instances, the collector placed multiple calls per day (11 calls were placed over 4 days) and called back after the plaintiff hung up. The Court denied the collector's motion and ruled that a reasonable jury could infer an intent to annoy, abuse, or harass.

- H. *Hoover v. Monarch Recovery Mgt., Inc.*, 2012 WL 3638680, 6-7 (E.D. Pa. 2012) – The plaintiff alleged that the collector called 110 times in 11 weeks (more than 10 calls per week). The collector did not cite any case law wherein courts have precluded a case with such a high call volume from proceeding to discovery. The Court denied the collector's motion for judgment on the pleadings and noted that judges in the same district have allowed plaintiffs to conduct discovery if the plaintiff only alleged a significant number of calls and did not provide facts to support the collector's intent.
- I. *Beckworth v. Law Office of Thomas Landis, LLC*, 2012 WL 6371899, 5 (E.D. Pa. 2012) – The plaintiff alleged that that collector placed multiple calls to her and her mother which included threats of seizure and garnishment. The Court ruled that the plaintiff stated a claim pursuant to § 1692d because the collector did not challenge the sufficiency of the plaintiff's claims concerning the alleged harassing, oppressive or abusive conduct.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- J. *Carr v. NCO Financial Sys., Inc.*, 2011 WL 6371899, 2-3 (E.D. Pa. 2011) – The plaintiff alleged that the collector placed “constant and continuous” calls “once every two, three, four, or five days” for 30 days and identified 9 calls by date and time. The Court denied the collector's motion and ruled that “absent controlling case law finding that this call volume definitively does not violate § 1692d(5),” the plaintiff stated a claim.
- K. *Adamick v. Credit Control Servs. Inc.*, 2011 WL 6793976, 1-3 (W.D. Tex. 2011) – A jury found that the collector violated § 1692d(5) and awarded the plaintiff \$300 in damages. The collector called the plaintiff at least 134 times in 45 days, but defended that the intent to harass cannot be inferred solely from the volume of calls. The Court denied the collector's motion and noted that a representative called while the plaintiff was speaking with another representative on a different line; resumed calling 2 days after a verbal cease calls request; and, that a representative inferred the collector would continue calling until the collector received a payment.

- L. *Stuart v. AR Resources, Inc.*, 2011 WL 904167, 3 (E.D. Pa. 2011) – The plaintiff alleged that the collector placed repeated calls and refused to honor
- M. cease calls requests. The Court ruled that the allegations suggested a pattern of harassing behavior.
- N. *Shand-Pistilli v. Professional Account Servs., Inc.*, 2010 WL 2978029, 5 (E.D. Pa. 2010) – The plaintiff alleged that the collector caused her phone to “ring repeatedly or continuously with the intent to harass, annoy, or abuse the plaintiff” and ignored her cease calls requests. The Court denied the collector’s motion to dismiss and ruled that the Court could infer that the calls were made with the intent to annoy, abuse, or harass.
- O. *Regan v. Law Offices of Edwin A. Abrahamsen & Assocs.*, 2009 WL 4396299, 5-6 (E.D. Pa. 2009) – The plaintiff alleged that the collector repeatedly called her and her parents even though she was represented by counsel and submitting payments. The collector called the plaintiff regarding 2 accounts on 5 separate days within a 3-week period. The Court denied the plaintiff’s motion because “there was some uncertainty as to the precise pattern of calls.”

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

4th Circuit:

- A. *Lipscomb v. Aargon Agency, Inc.*, 2014 WL 5782040, 3 (D. Md. 2014) – The plaintiff alleged the collector called 20-25 times despite telling the collector to stop calling on 3 occasions. The Court denied the collector’s motion for summary judgment, finding there was a genuine issue of material fact concerning the number and timing of the collector’s calls, which could support an FDCPA violation.
- B. *Finney v. MIG Capital Mgt., Inc.*, 2014 WL 1276159, 12 (S.D. W.Va. 2014) – The plaintiff alleged that the collector called approximately 33 times in 3 months after the collector received a written cease communication request. The Court granted the plaintiff’s motion for default judgment and noted that although the call volume alone may not be a 1692d(5) violation, because calls were placed after a cease communication request suggested otherwise.
- C. *Dorris v. Accounts Receivable Mgt., Inc.*, 2013 WL 1209629, 6-7 (D. Md. 2013) – The plaintiff alleged that the collector called 5 times in 1 day and

specifically stated that the collector called “multiple times, about a minute apart.” The plaintiff also alleged that the collector placed 2 “harassing and abusive” calls to the plaintiff’s mother in 1 day, the second of which was after a cease calls request. The Court denied the plaintiff’s motion for summary judgment because there was a discrepancy in the record regarding the number of calls.

- D. *Harmon v. Virtuoso Sourcing Group, LLC*, 2012 WL 4018504, 3-4 (S.D. W.Va. 2012) – The plaintiff alleged that the collector placed 20 calls in 2 weeks (2-3 per day). This included 5 calls after the plaintiff advised the collector that he could not pay and requested that the collector cease calls. The Court granted the plaintiff’s motion for default.
- E. *Roots v. American Marine Liquidators, Inc.*, 2012 WL 3136462, 1-2 (D.S.C. 2012) – The plaintiff alleged that the collector called his home number early in the morning and repeatedly called him at work for 2 months and ignored his cease calls requests. The Court granted the plaintiff’s motion for a default.
- F. *Valentine v. Brock & Scott, PLLC*, 2010 WL 1727681, 4 (D.S.C. 2010) – The plaintiff alleged that the collector called 11 times in 19 days, 2 of which were on the same day. The Court denied the collector’s motion and ruled that the plaintiff stated a claim for relief.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- G. *Keller v. American Express Travel & Calvary*, 2009 WL 1473500, 1-2 (D. Md. 2009) – The plaintiff alleged that the collector called an unlisted number 25 times in 3 months. The Court denied the collector’s motion.
- H. *Akalwadi v. Risk Mgmt. Alternatives, Inc.*, 336 F. Supp. 2d 492, 505-506 (D. Md. 2004) – The collector called every day for 2 months and called
- I. 3 times within 5 hours on 1 day. The Court denied the collector’s motion for summary judgment.

- A. *Enis v. Bank of America, N.A.*, 2013 WL 1721961, 5-6 (N.D. Tex. 2013) – The plaintiff alleged that the collector placed repeated calls (110 calls in 21 months, 31 of which were answered), ignored cease calls requests, and called as late as 11:00 p.m. The plaintiff specifically alleged that the collector violated the section of the Texas Debt Collection Practices Act (“TDCPA”) which prohibits a collector from intentionally harassing a consumer with repeated or continuous calls; however, the Court looked to cases interpreting section 1692d(5) of the FDCPA due to the lack of cases addressing what constitutes an intent to harass pursuant to the cited provision of the TDCPA. The Court denied the collector’s motion and ruled that the evidence was sufficient to enable a reasonable jury to find that the calls were made with the intent to harass. The Court noted, however, that it was a “close one” because the plaintiff failed to specify how many calls were late at night, how many times the collector called each day, and did not specify whether the collector’s tone or comments were harassing or offensive.
- B. *Spencer v. Receivables Performance Mgt., LLC*, 2013 WL 797335, 2-3 (S.D. Tex. 2013) – The collector called 19 times in 26 days. The plaintiff alleged that he advised the collector at least 8 times that the collector was calling the wrong number, but each time the collector responded by raising his voice and becoming aggressive. The collector defended that the collector spoke with the plaintiff one time and honored the plaintiff’s cease calls request. The Court denied the collector’s motion because there was a genuine dispute of material fact regarding how many conversations took place, whether the collector was rude and aggressive, and whether the collector ignored a cease calls request.
- C. *Rivera v. Louisiana Recovery Servs., Inc.*, 2012 WL 540355, 2 (M.D. La. 2012) – The plaintiff alleged that the collector repeatedly called his home number every day up to 3 times per day. The Court denied the collector’s motion and ruled that the plaintiff’s “well pleaded facts are entitled to the presumption of truth.”
- D. *Smith v. Procollect, Inc.*, 2011 WL 1375667, 5-6 (E.D. Tex. 2011) – The plaintiff alleged that the collector called up to 6 times per day from 8:05 a.m. until 8:55 p.m. The account notes revealed that there were no calls after 6 p.m. and no more than 2 calls per day over an 8 month period. The Court denied the collector’s motion.

- E. Young v. Asset Acceptance, LLC*, 2011 WL 1766058, 3 (N.D. Tex. 2011) – The plaintiff alleged that the collector called up to 3 times per day as many as 5 days per week and ignored his cease calls request. The call log revealed that the collector called 33 times in 73 days, including 3 calls per day on at least 2 occasions. The Court denied the collector’s motion.
- F. Deas v. American Recovery Sys., Inc.*, 2009 WL 3514560, 1-2 (N.D. Miss. 2009) – The plaintiff alleged that despite his cease calls requests, the collector continued to place “dozens” of calls for a few months. The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.

6th Circuit:

- A. Forgues v. Select Portfolio Servicing*, 2015 WL 8272596, 5 (N.D. Ohio Dec. 8, 2015)– The plaintiff alleged that the collector called plaintiff “numerous times” for no purpose or intent other than to annoy, abuse, or harass. The Court denied the collector’s motion to dismiss finding the allegation of “numerous” calls was sufficient to state a claim for relief that is plausible on its face.
- B. Lashbrook v. Portfolio Recovery Assocs., LLC*, 2013 WL 4604281, 6-7 (E.D. Mich. 2013) – The plaintiff alleged that the collector placed over 100 calls in 1 year and called up to 3 times per day. The plaintiff also alleged that she spoke with the collector approximately 120 times in 1 year (once every 3 days), but the collector defended that they spoke only 3 times. The Court denied the collector’s motion for summary judgment with respect to the plaintiff’s “multiple calls” allegation.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- C. Mastalski v. Mercantile Adjust. Bureau, LLC*, 2012 WL 3683537, 3 (N.D. Ohio 2012) – The plaintiff alleged that the collector continued calling every day after the plaintiff requested verbally and in writing to cease calls because he did not know the debtor. The Court denied the collector’s motion to

dismiss and ruled that a reasonable juror could conclude that calls placed after learning that the collector was calling the wrong number were made with the intent to annoy or harass.

- D. *Roth v. NCC Recovery, Inc.*, 2012 WL 2995456, 4 (N.D. Ohio 2012) – The collector placed 50 calls in 8 months and called twice in the same day on 2 occasions to collect a debt for the plaintiff's deceased father. The plaintiff alleged that she spoke with the collector several times, the collector left messages on her voicemail, and the collector continued to call after she advised the collector that the creditor was covering the balance. The Court denied the collector's motion for summary judgment because it could not excuse the high call volume on the theory that the collector had difficulty reaching the consumer.
- E. *Bridge v. Ocwen Fed. Bank*, 681 F.3d 355, 363 (6th Cir. 2012) – The plaintiffs alleged that the collector "targeted their personal telephone lines with the intent to annoy, abuse, or harass" and specifically alleged that the collector made "endless collection calls" despite cease communication requests. The Sixth Circuit reversed the dismissal of the plaintiff's Complaint and ruled that the allegations, which must be taken as true, are more than sufficient to state a plausible claim for relief.
- F. *Russell v. Goldman Roth Acquisitions, LLC*, 2012 WL 762906, 8 (W.D. Mich. 2012) - The plaintiff alleged that the collector called her several times and also called a few third parties 1-2 times each over a 5 month period. The collector's notes revealed what appeared to be a "significant number of other calls." The Court denied the collector's motion.
- G. *Frees v. Pioneer Credit Recovery, Inc.*, 2012 WL 600785, 4 (S.D. Ohio 2012) – The collector called more than 77 times in 8 months. The Court denied the collector's motion for summary judgment because it was unclear whether the collector made contact with the plaintiff or left any messages.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- H. *Hicks v. America's Recovery Solutions, LLC*, 2011 WL 4540755, 6 (N.D. Ohio 2011) – The plaintiffs alleged that they received "daily calls for two weeks, often twice per day." The collector called 21 times in 3 months and called twice in the same day on one occasion. The Court denied the collector's motion and ruled that the number of calls is not dispositive and that the nature,

extent, and context of the calls are important. The Court determined that while the evidence was not “particularly strong,” a reasonable jury could find the requisite intent to harass or annoy.

- I. *Gross v. Nationwide Credit, Inc.*, 2011 WL 379167, 1, 3 (S.D. Ohio 2011) – The plaintiff alleged that the collector called multiple times per day for 2 months. The Court denied the collector’s motion to dismiss and ruled that “whether particular acts of Defendant in relation to Plaintiff constitute violations of the Act requires factual support not present, or required, at this stage in the litigation.”
- J. *Brown v. Hosto & Buchan, PLLC*, 2010 WL 4352932, 4-5 (W.D. Tenn. 2010) – The plaintiff alleged that the collector called 17 times in 1 month and also called the plaintiff’s cell using an auto-dialer at least once. The Court denied the collector’s motion to dismiss and ruled that “the frequency of the collector’s calls to the plaintiff’s telephone and the manner in which the collector called the plaintiff’s cellular telephone using an automatic telephone dialing system could plausibly cause an unsophisticated consumer to feel harassed, oppressed, or abused.”
- K. *Charbonneau v. Mary Jane Elliott, P.C. & Asset Acceptance, L.L.C.*, 2009 WL 817925, 7 (E.D. Mich. 2009) – The Court denied the collector’s motion and ruled that calling nearly every day for 4 months may be an FDCPA violation.
- L. *Lovelace v. Stephens & Michaels Assocs., Inc.*, 2007 WL 3333019, 7 (E.D. Mich. 2007) - The Court denied the collector’s motion and ruled that terminating a call and calling right back may be an FDCPA violation.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

7th Circuit:

- A. *Heffron v. Green Tree Servicing, LLC*, 2016 WL 47915, 1 (N.D. Ill. 2016)
 - The plaintiff alleged the collector called him continuously and up to

10/day for almost a year. The court ruled that the plaintiff alleged sufficient facts to survive a motion to dismiss the plaintiff's claims.

- B. *Swearingen v. Portfolio Recovery Assocs., LLC*, 2012 WL 4354748, 4 (N.D. Ill. 2012) – The plaintiff alleged the collector called plaintiff "numerous times" for no purpose or intent other than to annoy, abuse, or harass. Against the rulings in many other cases, the court denied the collector's motion to dismiss finding the allegation of "numerous" calls was sufficient to state a claim.
- C. *Kube v. Creditor Collection Bureau, Inc.*, 2012 WL 3848300, 2-3 (N.D. Ill. 2012) – The collector called the plaintiff 98 times in almost 9 months. In addition, the plaintiff alleged that he verbally requested that the collector cease calls approximately 6 times. The Court denied the collector's motion for summary judgment.
- D. *Hendricks v. CBE Group, Inc.*, 2012 WL 1191861, 3-4 (N.D. Ill. 2012) – The plaintiff alleged that the collector called 159 times in 2 months. The plaintiff specifically alleged that the collector called 3 times per day, called at improper times, and called in a "quick succession." The Court denied the collector's motion and ruled that a reasonable juror could find that the collector called with the intent to annoy, abuse, or harass.
- E. *Morgan v. Mirand Response Sys.*, 2012 WL 555511, 2 (C.D. Ill. 2012) – The plaintiff alleged that the collector "constantly and continuously" called 2-3 times per day. The Court denied the collector's motion to dismiss and noted that even if 2-3 calls per day is not harassment, there are other factors to consider, such as what was said by the collector's representatives and how long during a 6 month period the collector was calling.
- F. *Smith v. Northstar Location Servs., L.L.C.*, 2011 WL 2580623, 2 (C.D. Ill. 2011) – The plaintiff alleged that he continued to receive harassing and abusive calls after he advised the collector that he did not know the debtor. The Court denied the collector's motion and ruled that the allegations, when read in the light most favorable to the plaintiff, indicated that there were repeated calls.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- G. *Bartuch v. DNI Recovery*, 2011 WL 689583, 1-2 (N.D. Ill. 2011) – The plaintiff alleged that the collector ignored her cease calls request to her work number. The Court granted the plaintiff's motion and confirmed that the unanswered complaint showed an FDCPA violation.
- H. *Bassett v. I.C. Sys., Inc.*, 2010 WL 2179175, 4 (N.D. Ill. 2010) - The Court denied the collector's motion for summary judgment because it was undisputed that the collector called 31 times in 12 days.
- I. *Majeski v. I.C. Sys., Inc.*, 2010 WL 145861, 2-4 (N.D. Ill. 2010) – The plaintiff alleged that the collector called 67 times in 6 months. The collector called at least 27 times in February and 20 times in May. While the decision did not provide the specifics, the collector called multiple times per day and left messages every 2-5 hours. The Court ruled that “the astonishingly high frequency of calls placed by the defendant during February and May could easily be interpreted as indicative of Defendant's intent to harass by a reasonable juror.”
- J. *Wisniewski v. Asset Acceptance Capital Corp.*, 2009 WL 212155, 1-3 (N.D. Ill. 2009) – The plaintiff alleged “persistent” calls for 5 months in 1 year and “weekly” calls for 3 months the following year. The Court denied the collector's motion to dismiss.
- K. *Bennett v. Arrow Fin. Servs. LLC*, 2003 WL 1563710, 1 (N.D. Ill. 2003) – The plaintiff alleged that the collector called more than 5 times in 1 day. The Court denied the collector's motion to dismiss.

8th Circuit:

- A. *Hanks v. Valarity, LLC*, 2015 WL 1886960, 4 (E.D. Mo. 2015) – The plaintiff alleged that the collector called him numerous times following his request that the calls stop. He further alleged that the collector made a callous remark when plaintiff stated that the debt belonged to his deceased ex-girlfriend. The court denied the collector's motion to dismiss the claim, finding that the allegations were sufficient to state a § 1692d(5) claim.
- B. *Buchholz v. Valarity, LLC*, 2014 WL 2882504, 4 (E.D. Mo. 2014) – The plaintiff alleged that the collector called his cell 233 times with up to 3 calls per day for over 1 year. The plaintiff also alleged that 210 of the calls were

after the plaintiff's second cease calls request. The Court denied the collector's motion and ruled that a jury should determine whether the calls violated the FDCPA.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- C. *Sojka v. Takhar Collection*, 2013 WL 466287, 1-2 (E.D. Mo. 2013) – The plaintiff alleged that the collector continued to place 2 calls per day for 4 months after the plaintiff notified the collector that it was calling the wrong number. The Court granted the plaintiff's motion and confirmed that the unanswered complaint showed an FDCPA violation.
- D. *Pratt v. CMRE Finan. Servs., Inc.*, 2012 WL 86957, 3-4 (E.D. Mo. 2012) – The plaintiff alleged that the collector placed an unreasonable number of calls and called after he advised the collector that it was calling the wrong number. The Court denied the collector's motion and ruled that the plaintiff's inability to recall dates and times of the calls did not preclude a finding of liability and may be relevant to the plaintiff's credibility, a factor which the Court could not consider at the summary judgment stage.
- E. *Morrow v. Weinerman & Assocs., LLC*, 2011 WL 4472651, 5 (D. Minn. 2011) – The plaintiffs alleged that the collector placed numerous calls and caused the phone to ring repeatedly. The Court denied the plaintiffs' motion for summary judgment.
- F. *Williams-Platt v. Bureau of Collection Recovery, Inc.*, 2011 WL 2633821, 2-3 (D. Minn. 2011) – The plaintiff alleged that the collector called 83 times in 47 days and ignored 2 verbal cease calls requests. The collector's records revealed that the collector called 4 times per day on 14 days and 3 times per day on 9 days. The Court denied the collector's motion to dismiss.
- G. *Bingham v. Collection Bureau, Inc.* 505 F. Supp. 864, 873 (D.N.D. 1981) – Terminating a call and calling right back is an FDCPA violation.

9th Circuit:

- A. *Toth v. Stephens & Michaels Associates, Inc.*, 2014 WL 5687418, 3 (D. Nev. 2014) – The plaintiff alleged 15 calls in 33 days, with 8 calls over a 2 day period. The court held that a reasonable person could conclude that 8 calls

over 2 days have the natural effect of harassing, oppressing, or abusing a debtor.

- B. *Masuda v. Citibank, N.A.*, 2014 WL 1759580, 2-3 (N.D. Cal. 2014) – The plaintiff alleged that the collector called his cell over 300 times, nearly every day for 8 months (including many days with up to 6 calls per day), and ignored multiple cease calls requests. The Court denied the collector’s motion and ruled the plaintiff had standing to bring a claim.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- C. *Bennett v. Portfolio Recovery Assocs., LLC*, 2013 WL 6320851, 2-3 (C.D. Cal. 2013) – The plaintiff alleged that the collector called 113 times in 8 months. The collector called twice/day on 20 occasions and 3 times/day on 8 occasions. The Court denied the collector’s motion and ruled that the volume and pattern of calls was sufficient to raise a genuine dispute of material fact.
- D. *Green v. Creditor Iustus Remedium, LLP*, 2013 WL 6000967, 2-3 (E.D. Cal. 2013) – The plaintiff alleged that the collector called almost every day for approximately 2 months and ignored a cease calls request to the plaintiff’s work number. The Court denied the collector’s motion and ruled that the allegations were sufficient to state a claim.
- E. *Huizar v. Mandarich Law Group, LLP, et al.*, 2013 WL 4209050, 3 (C.D. Cal. 2013) – The plaintiffs alleged that the collector placed frequent calls, sometimes multiple times per day. The Court denied the collector’s motion and ruled that if the conduct is proven, the calls could have harassed, opposed, or abused the plaintiffs.
- F. *Neu v. Genpact Servs., LLC*, 2013 WL 1773822, 4 (S.D. Cal. 2013) – The collector placed 150 calls in 51 days to 2 numbers (79 calls to the home and 71 calls to the cell) and also placed 6 calls in one day. The Court denied the collector’s motion and ruled that aside from the sheer volume of calls, a reasonable trier of fact could find that placing 6 calls in one day was sufficient to find that he collector had the “intent to annoy, abuse, or harass.”
- G. *Jensen v. Omni Credit Servs. of Florida, Inc.*, 2013 WL 1183317, 1 (D. Or. 2013) – The plaintiff alleged that the collector “caused his telephone to ring repeatedly or continuously with intent to harass, annoy, or abuse, including

calling Plaintiff repeatedly” regarding a debt for someone else. The plaintiff also alleged that the collector continued to “harass him with further calls” after notifying the collector that the number did not belong to the debtor. The Court granted the plaintiff’s motion for a default judgment because the plaintiff adequately alleged an FDCPA violation.

- H. *Crockett v. Curtis & Assocs.*, 2013 WL 1010492, 2 (N.D. Cal. 2013) – The plaintiff alleged that “at various times,” the collector placed at least 22 calls

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

in an attempt to contact some else with the intent to harass. The Court denied the collector’s motion and ruled that “no bright-line rule guides courts in determining which conduct fails to establish harassment as a matter of law, but courts have found call volumes similar to the 22 at issue here to state a claim for relief” under section 1692d(5).

- I. *Kleiman v. Equitable Ascent, et al.*, 2013 WL 49754, 3 (C.D. Cal. 2013) – The plaintiff alleged that the collector called numerous times and often called twice within 24 hours. The collector defended that the plaintiff did not name the individuals who placed the calls and failed to allege specific dates. The Court denied the collector’s motion and ruled that the plaintiff’s failure to identify “the who, what, where, when, and how of the allegedly harassing phone calls” did not provide a reason to dismiss the claim.
- J. *Garcia v. Resurgent Capital Servs., LP, et al.*, 2012 WL 1144239, 4 (N.D. Cal. 2012) - The collector called 40-50 times in 3 months. The Court denied the collector’s motion and ruled that the intent to harass may be inferred from the call volume.
- K. *Stirling v. Genpact Servs., LLC*, 2012 WL 952310, 4-5 (C.D. Cal. 2012) – The collector called 649 times in 4 months. The Court denied the collector’s motion and ruled that a reasonable trier of fact may find that the number of calls placed is sufficient to find liability.
- L. *Bohannon-Hungston v. Brachfeld Law Group, APC*, 2011 WL 6211756, 6 (E.D. Cal. 2011) – The plaintiff alleged that the collector called persistently after the plaintiff’s cease calls requests and sometimes called multiple times per day. The Court denied the collector’s motion and ruled that the plaintiff

presented enough evidence to demonstrate a dispute as to whether the collector violated § 1692d.

M. *Probasco v. IQ Data Int'l, et al.*, 2011 WL 1807429, 3-4 (E.D. Cal. 2011) - The plaintiff alleged that the collector “caused a phone to ring repeatedly and engaged the plaintiff in telephone conversations, with the intent to annoy and harass and communicated with the plaintiff with such frequency as to be considered harassment.” The Court denied the collector’s motion

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

and ruled that the plaintiff’s claim, though abbreviated, provided sufficient details to state a claim.

N. *Rucker v. Nationwide Credit, Inc.*, 2011 WL 25300, 2 (E.D. Cal. 2011) - The plaintiff alleged that the collector called 80 times in 1 year, 11 of which “connected” (including multiple calls per day). The Court denied the collector’s motion for summary judgment.

O. *Langdon v. Credit Mgmt., LP*, 2010 WL 3341860, 2 (N.D. Cal 2010) – The plaintiff alleged that the collector “constantly and continuously placed collection calls” and often called more than once per day. The Court denied the collector’s motion to dismiss and ruled that 2 or more calls per day “certainly may constitute harassment or annoyance.”

P. *McKibben v. Collection Prof. Servs.*, 2010 WL 2025319, 4 (E.D. Cal. 2010) - The plaintiff alleged that the collector called “constantly and continuously.” The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.

Q. *Krapf v. Nationwide Credit Inc.*, 2010 WL 2025323, 2-4 (C.D. Cal. 2010) – The plaintiff alleged that the collector called 4-8 times per day for 1.5 months and provided evidence that revealed that he had 6 missed calls in 1 day, some of which were 3 minutes apart. The Court denied the collector’s motion and ruled that based on the plaintiff’s testimony, the collector’s records, and the plaintiff’s evidence, the jury could find that the collector called the plaintiff an average of 6 times per day for 1.5 months.

- R. *Hartung v. John Anderson, et al.*, 2009 WL 1876690, 1-6 (E.D. Cal. 2009) - The plaintiff alleged that the collector “called and/or sent text messages to the plaintiff several times per day in a harassing manner” for 1 week. The Court found that the “repeated telephone calls” constituted an FDCPA violation.
- S. *Renteria v. Nationwide Credit, Inc.*, 2009 WL 2754988, 2-3 (S.D. Cal. 2009) - The plaintiff alleged that the collector called “constantly and continuously.” The Court denied the collector’s motion and ruled that the plaintiff plead sufficient facts to support his FDCPA claim.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- T. *Shields v. Receivable Mgmt. Servs.*, 2009 WL 2497400, 1-2 (D. Ariz. 2009) – The plaintiff alleged that the collector called an average of 4 times per day. The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.
- U. *Puttner v. Debt Consultants of America, et al.*, 2009 WL 1604570, 3-4 (S.D. Cal. 2009) – The plaintiff alleged that the collector called with such frequency and persistence to constitute harassment. The collector defended that the Complaint did not reveal the number of calls placed and over what period of time. The Court viewed the allegations in the light most favorable to the plaintiffs and denied the collector’s motion.
- V. *Fausto, et al. v. Credigy Servs. Corp.*, 598 F. Supp. 2d 1049, 1056 (N.D. Cal. 2009) – The plaintiff alleged that the collector called their home number over 90 times in 15 months. The Court denied the collector’s motion.
- W. *Kerwin v. Remittance Assist. Corp.*, 559 F. Supp. 2d 1117, 1124 (D. Nev. 2008) – The plaintiffs alleged that they continued to receive harassing calls after notifying the collector verbally and in writing that the debtors could not be reached at their number. The Court denied the collector’s motion and ruled that there was a genuine issue as to whether the collectors repeated phone calls constituted intentional abuse under 1692d(5).
- X. *Sanchez v. Client Servs., Inc.*, 520 F. Supp. 2d 1149 (N.D. Cal. 2007) - Calling the consumer at work approximately 54 times and leaving messages approximately 25 times over a 6 month period is an FDCPA violation. In particular, there were 17 calls in 1 month and 6 calls in 1 day.

Y. *Joseph v. J.J. Mac Intyre Cos., L.L.C.*, 281 F. Supp. 2d 1156, 1164 (N.D. Cal. 2003) – The plaintiff alleged calls at odd hours as often as 3 times per day for 1.5 years. There were roughly 75 calls to the home number within the statutory period. The Court found that there was an issue of material fact.

Z. *Clark v. Quick Collect, Inc.*, 2005 WL 1586862, 4 (D. Or. 2005); *See also Gill v. Kostroff*, 82 F.Supp.2d 1354, 1360 (M.D. Fla. 2000) – The call logs revealed 5 calls in 19 days for 1 debt and 8 calls in 21 days for another debt.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

Most of the calls regarding each debt were placed at separate times. The Court denied the collector's motion and ruled that whether the call volume was reasonable was a fact question.

AA. *Kuhn v. Account Control Tech., Inc.* 865 F. Supp. 1443, 1453 (D. Nev. 1994) - 6 calls in 24 minutes is an FDCPA violation.

10th Circuit:

A. *Little v. Portfolio Recovery Assocs., LLC*, 2014 WL 1400660, 4 (D. Kan. 2014) - The plaintiff alleged that the collector called multiple times per day and continued to call after the plaintiff advised the collector that she could not pay. The Court ruled that the complaint need not provide “detailed factual allegations” and denied the collector's motion because the claim was plausible.

B. *Brown v. Global Check Processing*, 2014 WL 1882759, 2 (D. Colo. 2014) - The plaintiff alleged that the collector called “many times” in a harassing manner. The Court granted the plaintiff's motion for default.

C. *Moody v. FMS, Inc.*, 2014 WL 334801, 3-4 (D. Colo. 2014) – The plaintiff alleged that the collector placed repeated harassing calls to his home number for 2 months and that representatives threatened him. The collector defended that no representatives spoke with the plaintiff. The Court denied the collector's motion and ruled that there was a genuine dispute of fact.

D. *Seifried v. Portfolio Recovery Assocs., LLC*, 2013 WL 6185478, 3-4 (E.D. Oklah. 2013) – The plaintiff alleged that the collector attempted to place 63 calls over 4 months, with between 33 and 51 calls that were actually

connected. The Court denied the collector's motion and ruled that a rational juror could infer that the collection efforts violated 1692d(5).

- E. *Peterson-Hooks v. First Integral Recovery, LLC*, 2013 WL 2295449, 3 (D. Colo. 2013) - The plaintiff alleged that the collector called up to 5 times per day and 20 times in a month. The Court granted the plaintiff's motion and confirmed that the unanswered complaint showed an FDCPA violation.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- F. *Webb v. Premiere Credit of North America*, 2012 WL 2359434, 2-3 (D. Kan. 2012) – The plaintiff alleged that there were multiple occasions when the collector called 6 times per day on continuous days. The collector defended that the plaintiff's allegations lacked "crucial" information regarding dates and times of the calls. The Court denied the collector's motion and ruled that the alleged conduct "raises the reasonable inference of a 1692d(5) violation because 6 calls per day may well indicate an intent to annoy, abuse, or harass."
- G. *Kittle v. Accredited Collection Agency, Inc.*, 2010 WL 2650479, 1 (D. Colo. 2010) – The plaintiff alleged that the collector repeatedly called for 2 months. The Court granted the plaintiff's motion and confirmed that the unanswered complaint showed an FDCPA violation.

11th Circuit:

- A. *McBeth v. Credit Prot. Ass'n, L.P.*, 2015 WL 4429324, 6 (M.D. Fla. 2015) – The plaintiff alleged that the collector called repeatedly for 8 months, up to 5 times per day, after she advised the collector that it had the wrong number and requested the calls cease. The court denied the collector's motion for summary judgment, finding that these allegations supported a § 1692d(5) claim.
- B. *Davis v. NCO Fin. Sys., Inc.*, 2014 WL 4954705, 1-4 (M.D. Fla. 2014) – The plaintiff alleged that the collector called plaintiff's business telephone often and left approximately one voicemail message per day. The court denied the collector's motion for judgment on the pleadings, holding that plaintiff brought a viable claim under the FDCPA.

- C. *Abdullah v. Ocwen Loan Servicing, Inc.*, 2014 WL 4851760, 2-5 (M.D. Ga. 2014) – The plaintiff alleged (1) that the collector called her over 60 times between February and September, 2012, (2) most of the calls came after 1 written cease demand and several verbal cease demands, and (3) the collector called on a Sunday on 2 occasions. The Court held that the facts, if taken in the light most favorable to plaintiff, supported a § 1692d claim based on 97 calls over 8 months, including calls on Sunday, and most calls coming after written and oral cease demands.
- D. *Barnes v. Seterus, Inc.*, 2013 WL 6834720, 2 (S.D. Fla. 2013) – The plaintiff alleged that the collector called twice/day for at least 15 days after the collector received the plaintiff's written cease calls request. The Court denied the collector's motion to dismiss and ruled that considering the frequency of the calls after the plaintiff's cease calls request, the plaintiff made a plausible claim that the collector intended to harass the plaintiff.
- E. *Dunning v. Portfolio Recovery Assocs., LLC*, 2012 WL 5463294, 4-5 (S.D. Fla. 2012) – The collector placed between 50 and 100 calls in 2011 and no more than 20 calls in 2012. The plaintiff alleged that the collector called up to 4 times per day, called from various numbers, and placed more than 18 calls after the plaintiff's verbal cease communication request. The collector defended that there was no record that the collector spoke with the plaintiff. The Court denied the collector's motion and ruled that there was a material fact regarding whether the collector spoke with the plaintiff, what the collector's representatives may have said to the plaintiff, and whether the collector placed calls after a cease communication request.
- F. *Elliot v. GC Services, LP*, 2011 WL 5975671, 2-3 (M.D. Fla. 2011) – The plaintiff alleged that there were "several times" when he received more than 1 call per day, some calls were 2-3 hours apart, and sometimes there were 2-

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

3 calls per day. The collector admitted to calling 41 times in 2 months and claimed that 36 of the calls were unanswered, that the collector left 12 voicemail messages, and that the collector called 2 times in a single day one time. The Court denied the collector's motion because there was a genuine issue of material fact.

- G. *Holland v. Bureau of Collection Recovery*, 2011 WL 3489111, 3-4 (M.D. Fla. 2011) – The plaintiff alleged that she received 30 calls in 2 months (including multiple calls per day) and that she advised the collector 15 times that she did not owe the account and requested that the collector cease communication. The Court denied the collector’s motion for summary judgment and ruled that whether the nature and frequency of the calls constituted harassment is a question of fact for the jury.
- H. *Dokumaci v. MAF Collection Servs.*, 2011 WL 833988, 3 (M.D. Fla. 2011) – The plaintiff alleged that she received 6-7 “back-to-back” calls every Saturday and Sunday for 4-5 weeks. The Court denied the collector’s motion because the records contained conflicting evidence regarding the volume, frequency, and pattern of calls.
- I. *Ortega v. Collectors Training Instit. of Illinois, Inc.*, 2011 WL 241948, 1,9 (S.D. Fla. 2011) – The plaintiff alleged “telephonic harassment and abuse by excessive calling.” The Court denied the collector’s motion for summary judgment.
- J. *Kelemen v. Professional Collection Sys.*, 2011 WL 31396, 2-4 (M.D. Fla. 2011) – The plaintiff alleged that the collector called 3-4 times per day. The Court denied the collector’s motion because the record contained conflicting information regarding the frequency and pattern of calls.
- K. *Sampson v. Brewer, Michaels & Kane, LLC*, 2010 WL 2432084, 1 (M.D. Fla. 2010) - The plaintiff alleged that the collector “constantly and continuously places calls.” The Court granted the plaintiff’s motion and confirmed that the unanswered complaint showed an FDCPA violation.
- L. *Myrick v. Distribution and Acquisition Network*, 2010 WL 2179112, 3 (M.D. Fla. 2010) – The plaintiff alleged that the collector “caused the

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

telephone to ring repeatedly and continuously with the intent to annoy, abuse, and/or harass him.” The Court granted the plaintiff’s motion because the “bare-boned” allegations mirrored the statutory language and set forth an adequate legal basis for entering a default judgment.

- M. *Winberry v. United Collection Bureau, Inc.*, 2010 WL 1037174 (M.D. Ala. 2010) – The plaintiffs alleged that they received 33 calls in 1 month. The Court denied the collector's motion and ruled that a genuine issue of material fact existed as to whether this was abuse or harassment.
- N. *Brandt v. I.C. System, Inc.*, 2010 WL 582051, 2 (M.D. Fla. 2010) – The plaintiff alleged that he received “constant and numerous” calls on his cell for 5 months and received 101 calls after he advised the collector that the debt was paid. The Court denied the collector's motion to dismiss.
- O. *Nicholas v. Nationwide Credit, Inc.*, 2010 WL 503071, 5 (S.D. Fla. 2010) – The plaintiff alleged that she received 58 messages in 82 days. The plaintiff's log revealed that the collector did not leave more than 2 messages in one day and when 2 messages were left, one message was on her home number and the other on her cell. The Court refused to dismiss the case.
- P. *Casey v. I.C. Systems, Inc.*, 2010 WL 415310, 2 (M.D. Fla. 2010) – The plaintiff alleged that the collector called at least 171 times in 6 months. The Court denied the plaintiff's motion because the phone records did not conclusively establish the number of calls that were placed.
- Q. *Segal v. National Action Fin. Servs., Inc.*, 2006 WL 449176, 1 (M.D. Fla. 2006). – The plaintiff alleged 2 calls per week in the complaint, 2-5 calls per week (sometimes 1 call per day) in the deposition, and 3 calls per day in the affidavit. The Court ruled that there was an issue of material fact.
- R. *Dowling v. I.C. Sys., Inc., et al.*, 2005 WL 2675010, 2-4 (M.D. Fla. 2005). – The plaintiff alleged calls every day (sometimes up to 3 calls per day) for 3 months. The Court denied the collector's motion.

§ 1692d(5) POSSIBLE VIOLATIONS FOUND

- S. *McGrady v. Nissan Motor Acceptance Corp. and Nationwide Credit, Inc.*, 40 F. Supp. 2d 1323, 1335-1336 ((M.D. Ala. 1998) – The plaintiff alleged that the collector called her “numerous times” over a 3-month period. The Court denied the collector's motion for summary judgment.

District of Columbia:

- A. *Mazza v. Verizon Washington DC, Inc.*, 2012 WL 1058214, 6 (D.D.C. 2012)
– The plaintiff alleged repeated calls for 1 year after the plaintiff provided proof of payment. The Court denied the collector’s motion to dismiss and ruled that when “construed liberally,” the allegations stated a claim.

No § 1692d(5) VIOLATIONS FOUND

1st Circuit:

- A. *Forcier v. Creditors Specialty Serv., Inc.*, 2014 WL 6473043, 3 (D. N.H. 2014) – Plaintiff alleged that the collector called “twice a day on several occasions.” The Court granted the collector’s motion to dismiss, holding that

plaintiff's allegation did not provide enough detail as to frequency, pattern, and nature of the calls to state a claim upon which relief could be granted.

2nd Circuit:

- A. *In re Residential Capital, LLC*, 2015 WL 4366306, 15 (Bankr. S.D. N.Y. 2015) – The plaintiff alleged that the collector called 2-3 times per day and sometimes several days in a row. The court sustained the collector's objection to the plaintiff's claim, reasoning that the allegations failed to support a § 1692d claim because the collectors were returning calls the plaintiff initiated.
- B. *Kenny v. Mercantile Adjustment Bureau, LLC*, 2013 WL 1855782, 3 (W.D. N.Y. 2013) – The plaintiff alleged that the collector placed repeated calls and ignored cease calls requests. The collector placed 14 calls over 5 months regarding 10 medical accounts for the plaintiff's brother-in-law. The plaintiff allowed his brother-in-law to give the hospital the plaintiff's cell as a contact number. The Court granted the collector's motion for summary judgment and ruled that "no inference of intent to annoy, abuse, or harass can reasonably be drawn in these circumstances." The Court noted that when the plaintiff advised the collector that the debtor could not be reached at his number, the collector ceased calls relating to that specific account. The Court also noted that while the collector's internal controls could be improved, the collector's failure to remove the plaintiff's number each time that a new account was placed was, "at most, negligence."
- C. *Nigro v. Mercantile Adjustment Bureau, LLC*, 2013 WL 951497, 2-3 (W.D.N.Y. 2013) – The collector called 72 times in 9 months, the plaintiff never requested that the collector cease calls, and the collector did not call at improper times. In addition, the collector only called more than once per day when there was no answer and no message left after the first call. The Court granted the collector's motion for summary judgment and ruled that the collector's intent was to "establish contact with the plaintiff, rather than an intent to harass."
- D. *Conover v. BYL Collections Servs., LLC*, 2012 WL 4363740, 6 (W.D.N.Y. 2012) - The call log revealed that the collector placed no more than 27 calls in 3 months. The plaintiff alleged that he requested that the collector cease calls during 2 conversations, but the call log did not substantiate this

allegation. The Court granted the collector's motion and ruled that as a matter of law, 27 calls in 3 months is not harassment.

No § 1692d(5) VIOLATIONS FOUND

- E. *Hinderliter v. Diversified Consultants, Inc.*, 2012 WL 3888148, 3-4 (N.D.N.Y. 2012) - The plaintiffs alleged that the collector placed 36 calls in 2.5 months after the plaintiff advised the collector that it would be a few months before they could pay and disputed the balance. The plaintiffs did not request that the collector cease calls and did not answer any calls after the conversation wherein the plaintiffs advised the collector they could not pay. The collector did not call at improper times; never placed more than 2 calls per day; only called 2 times in one day on 3 occasions; did not call back after hanging up; did not leave threatening messages; and did not call third parties. The Court granted the collector's motion and ruled that the collector did not place the unanswered calls with the intent to annoy, abuse, or harass.
- F. *Chavious v. CBE Group, Inc.*, 2012 WL 113509, 2-3 (E.D.N.Y. 2012) – The collector called 36 times in 2 months. All of the calls were at reasonable times; no calls were immediately followed by another call; and, the collector did not ignore any cease calls requests. The Court granted the collector's motion for summary judgment and ruled that the volume and pattern of calls was consistent with other cases where courts have dismissed the cases.
- G. *Starkey v. Firstsource Advantage, LLC*, 2010 WL 2541756, 5 (W.D.N.Y. 2010) - The Court granted the collector's motion for summary judgment and ruled that between 6 and 14 auto dialer calls within 2 months is not a *per se* violation of the FDCPA.
- H. *Fashakin v. Nextel Commc'ns., et al.*, 2009 WL 790350, 6-7 (E.D.N.Y. 2009) – The collector called the plaintiff's office 6 times in 1 week. The Court granted the collector's motion for summary judgment.

3rd Circuit:

- A. *Lightfoot v. Healthcare Revenue Recovery Grp., LLC*, 2015 WL 1103441, 3 (D. N.J. 2015) – The plaintiff alleged that the collector called him 2 times in 4 months. The court granted the collector's motion to dismiss plaintiff's § 1692d claim, finding that the plaintiff did not allege enough calls to state a viable claim.
- B. *Johns v. Northland Grp., Inc.*, 2014 WL 7404131, **8-9 (E.D. Pa. 2014) – The plaintiff alleged that the collector called her "numerous" times, called friends and family, and improperly sought information regarding the debt. The court determined that these allegations failed to provide sufficient facts to support an FDCPA claim.
- C. *Zarichny v. Complete Payment Recovery Servs., Inc.*, 2015 WL 249853, *8 (E.D. Pa. 2015) – The plaintiff alleged that "at the very least" she received 11 calls over a 6-month period, and sought to add to this number through discovery. The court ruled that a claim of 11 calls over 6 months does not meet the threshold for excessive calls, dismissing the claim.
- D. *Woodward v. Pressler & Pressler, LLP*, 2014 WL 809003, 7-8 (D.N.J. 2014) – The plaintiff alleged that he received harassing and annoying calls all times of the day (including early in the morning and late at night) as often as twice per day and 20 times per month. The collector placed 18 calls in 2 years, never called more than 3 times per month,

No § 1692d(5) VIOLATIONS FOUND

and did not call more than once every 6 days. The Court dismissed the case.

- E. *Tamayo v. American Coradius Int.'l, LLC*, 2011 WL 6887869, 3 (D.N.J. 2011) – The plaintiff alleged that the collector "repeatedly made harassing calls." The Court granted the collector's motion because the conclusory assertions failed to meet the pleading requirements and did not provide fair notice regarding the nature of the claim.

4th Circuit:

- A. *Woods v. Oxford Law, LLC*, 2015 WL 778778, 7 (S.D. W.Va. 2015) – The plaintiffs alleged that the collector placed "numerous" calls after receiving instruction to correspond with the plaintiffs only in writing. The court

dismissed the claim, finding that it could not find a violation of § 1692d(5) without any indication as to the frequency or pattern of calls.

- B. *Bourne v. Mapother & Mapother, P.S.C., et. al.*, 2014 WL 555130, 4-5 (S.D. W.Va. 2014) – The plaintiff alleged that the collector placed numerous calls for 8 months after the collector was notified the plaintiff was represented by an attorney. The collector placed 27 calls in 8 months, did not leave any messages, and had no direct contact with the plaintiff. The Court dismissed the case.
- C. *Quander v. Hillcrest, Davidson, & Assocs., LLC*, 2012 WL 6727141, 3 (D. Md. 2012) – The plaintiff alleged that the collector engaged in “harassment and abusive tactics” by calling up to 2 times per day. The plaintiff admitted that she did not always answer the calls and did not allege that the calls were made at unreasonable times or in an unreasonable manner. The Court granted the collector’s motion to dismiss and ruled that the Complaint only contained “threadbare recitals of the elements of the cause of action, supported by mere conclusory statements.”
- D. *Zervos v. Ocwen Loan Serv., LLC*, 2012 WL 1107689, 3 (D. Md. 2012) - The plaintiff alleged that the collector violated § 1692d(5) by contacting the plaintiff at home, via letters and personal appearances, repeatedly and continuously with the intent to annoy, abuse, and harass. The Court granted the collector’s motion to dismiss because the plaintiff failed to specifically allege that “telephone communications” violated § 1692d(5).
- E. *Katz v. Capital One Bank & Allied Interstate, Inc.*, 2010 WL 1039850, 3 (E.D. Va. 2010) – The plaintiff alleged that the calls were “willful, malicious, harassing, and vengeful.” The collector called no more than 2

No § 1692d(5) VIOLATIONS FOUND

times in one day and called twice within 3 hours on one day and twice within 4 hours on another. The Court granted the collector’s motion for summary judgment and ruled that “without any indicia of an unacceptable pattern of calls,” this was not harassment.

5th Circuit:

- A. *Douglas v. Select Portfolio Servicing, Inc.*, 2015 WL 1064623, 5 (S.D. Tex. 2015) – The plaintiff alleged that the collector called him regarding collection of a debt and the calls “were annoying and harassing” to plaintiff and his family. The court dismissed plaintiff’s claim on the pleadings, finding that merely stating calls are “harassing” is not enough to state a claim under § 1692d(5).
- B. *Miller v. Cain*, 2015 WL 222434, *5 (W.D. La. 2015) – The plaintiff alleged 1 unanswered call to his cell phone during the work day. The court ruled that a single unanswered call, whether or not plaintiff was at his place of employment at the time, is legally insufficient to state a claim for relief under § 1692d(5).
- C. *Clayton v. Asset Plus Companies, LP*, 2014 WL 6388430, 3 (S.D. Tex. 2014) – The plaintiff alleged 5 calls in more than 2 months. The court found that this was not enough to survive summary judgment where there was no evidence that the calls were intimidating or made at unreasonable hours.
- D. *Dominguez v. Receivables Perf., Mgt.*, 2014 WL 212123, 2-3 (W.D. Tex. 2014) - The plaintiff alleged that the collector placed 3-5 robocalls per day early in the morning morning after advising the collector that they had the wrong number. The parties presented “verified” and “unverified” records to prove the number of calls placed. Although the “unverified” records revealed numerous calls, the “verified” record revealed 2 calls placed in the middle of the day over a 4 day period. The Court noted that the plaintiff failed to provide evidence to support their claim and ruled that the collector did not harass the plaintiff.
- E. *Karp v. Financial Recovery Svcs., Inc.*, 2013 WL 6734110, 6-8 (W.D. Tex. 2013) – The plaintiff alleged that the collector continued to call her work number after a cease calls request. It was undisputed that the collector called 6 times in 2 weeks, but only spoke with the plaintiff twice. The Court granted the collector’s motion and ruled that 6 calls to the plaintiff’s work number in 2 weeks, even if viewed in the light most favorable to the plaintiff, did not raise a genuine issue of material fact.
- F. *Bell v. CSD Collection Specialists*, 2013 WL 311841, 3 (M.D. La 2013) – The collector placed 5 calls in 4 days (2 calls on one day) over a period of 13 days. The Court granted the collector’s motion for summary judgment.

G. *Lee v. Credit Mgt., LP*, 2011 WL 7029668, 6-7 (S.D. Tex. 2011) – The plaintiff alleged that the collector engaged him in repeated phone conversations. The collector called a handful of times, did not place more than 1 call per day, and the representatives were never rude or threatening. The Court granted the collector's motion and ruled that there was no evidence to reflect that the collector called with an intent to annoy, abuse, or harass.

No § 1692d(5) VIOLATIONS FOUND

H. *Coleman v. Credit Mgt., LP*, 2011 WL 5248219, 3-4 (N.D. Tex. 2011) – The plaintiff alleged that the collector called 14 times in over 2 months, 3 of which were after 9 p.m. The Court granted the collector's motion for summary judgment and ruled that there was an average of one call every 5 days, a number that is not abusive as a matter of law. The Court also noted that the mistake regarding the time zone of the number coupled with the fact that the collector ceased calls once it learned that it was calling the wrong number negated any intent to harass.

I. *Clingaman v. Certegy Payment Recovery Servs.*, 2011 WL 2078629, 2 (S.D. Tex. 2011) – The plaintiff alleged that the collector placed harassing calls regarding an account in his wife's name. The call log revealed that the collector called 55 times in 3.5 months. The Court granted the collector's motion because the evidence did not raise a genuine issue of fact as to whether the collector called the wife with the intent to harass. The Court noted that no more than 4 calls were placed in one day (which occurred only twice) and that the phone number belonged to the plaintiff's wife.

J. *McVey v. Bay Area Credit Serv.*, 2010 WL 2927388, 2-3 (N.D. Tex. 2010) – The plaintiff alleged that the collector “constantly and continuously placed collection calls” and “often called multiple times per week.” The Court granted the collector's motion and ruled that the plaintiff failed to allege any instances of communication that allegedly violated the FDCPA.

K. *Guajardo v. GC Servs., LP*, 2009 WL 3715603, 1,3 (S.D. Tex. 2009) – The plaintiff alleged that the collector placed threatening and harassing calls to her work number. The collector's records reflected that the collector called 17 times in 2.5 months and spoke with the plaintiff 4 times. The Court denied the plaintiff's motion for summary judgment.

6th Circuit:

- A. *Peak v. Prof'l Credit Serv.*, 2015 WL 7862774, 6 (D. Or. Dec. 2, 2015) – The plaintiff alleged the collector's 3 phone calls and 2 voicemails over a 1 month period constituted harassment. The court granted defendant's motion finding such minimal conduct over a 1 month period did not constitute a violation.
- B. *Litt v. Portfolio Recovery Associates LLC*, 2015 WL 7351781, 13 (E.D. Mich. 2015)- The plaintiff alleged an FDCPA violation when the collector called the plaintiff's parents 213 times over a 4 year period. The court granted the collector's motion finding that the number of calls and time did not justify a trial without further evidence of oppressive or abusive behavior.
- C. *Sledge v. Law Offices of Buffaloe & Associates, PLC*, 2015 WL 3407231, 4-5 (W.D. Tenn. 2015) – The plaintiff alleged that the collector called consistently, even after telling the collector that he did not owe the money and asked the collector to stop calling. The court dismissed the claims, finding that 32 calls over 127 days, with no more than 1 call per day, were not enough to show intent to harass even though many calls came after verbal cease requests. The court reasoned that, per the FDCPA, debt collectors are only required to honor a written cease request and there was no evidence of oppressive or abusive conduct.
- D. *Eckel v. L.J. Ross Associates, Inc.*, 2015 WL 1637456, 3-5 (E.D. Mich. 2015) – The plaintiff alleged that the collector called once after the collector received a power of attorney letter that was unclear as to whether the consumer was represented by counsel for the subject debt. The court granted the collector's motion for summary judgment and dismissed the claim, finding that the plaintiff failed to show the collector intended to annoy, abuse, or harass him.
- E. *Serra v. Mary Jane Elliot, P.C.*, 2014 WL 1608665, 2 (E.D. Mich. 2014) - The plaintiff alleged that the collector called 7 times, 6 of which occurred over 4 months. The Court ruled that the plaintiff failed to

NO § 1692d(5) VIOLATIONS FOUND

meet her burden or showing the collector violated 1692d(5) because the volume of calls does not suggest an intent to harass.

- F. *Newtwn v. Portfolio Recovery Assocs., LLC*, 2014 WL 340414, 5 (S.D. Ohio) – The plaintiff alleged that the collector placed excessive calls and continued to call after he advised the collector that he disputed the debt and would not pay. The collector called 18 times in 4 months, never called twice in the same day, did not call at any inconvenient times or places, and did not ignore a cease calls request. The Court dismissed the case.
- G. *Bancroft v. AFNI Inc.*, 2013 WL 3791465, 3-4 (N.D. Ohio 2013) – The plaintiff alleged that she received daily and continuous calls from 3 different collection agencies. The number provided as the phone number where the plaintiff was receiving calls belonged to one of the other agencies. The Court granted the collector's motion because the plaintiff failed to provide call logs or dates that the calls took place, was uncertain regarding how many conversations occurred, could not provide specific facts about the context of the calls, provided the phone number for another agency, and never sent a cease and desist letter. The Court noted that there was nothing in the record demonstrating abusive language, phone calls to the plaintiff's work, calling back after the plaintiff hung up, or calling family members.
- H. *Miller v. Prompt Recovery Services, Inc.*, 2013 WL 3200659, 5-6 (N.D. Ohio 2013) – The plaintiff alleged that the collector placed between 27 and 32 calls in 4 months at "various times." The plaintiff also alleged that she received "daily calls" and multiple calls in one day on more than one occasion. The Court granted the collector's motion and ruled that up to 32 calls in 4 months including multiple calls per day does not alone create an issue of fact.
- I. *Tye v. LJ Ross Assocs.*, 2013 WL 424765, 4-5 (E.D. Mich. 2013) – The plaintiff alleged that the collector called "multiple times" for 3 months (up to 4 calls per day) and ignored cease calls requests. The collector admitted to calling 37 times in 3 months and proved that the collector never placed more than 2 calls in one day. The Court granted the collector's motion for summary judgment and ruled that the plaintiff failed to present credible

No § 1692d(5) VIOLATIONS FOUND

evidence which revealed that the collector called 4 times in one day or that the calls were placed with the intent to harass.

- J. *Gnesin v. American Profit Recovery*, 2012 WL 5844686, 2-3 (E.D. Mich. 2012) – The plaintiff alleged that the collector called only one time but would not stop talking and “refused to amicably terminate the call” after the plaintiff advised the collector multiple times that she was unable to speak. The Court granted the collector’s motion and ruled that none of the allegations suggested that the call was intended to annoy, abuse, or harass, the conversation did not amount to oppressive or abusive conduct under the FDCPA, and the plaintiff failed to allege intent.
- K. *Dudis v. Mary Jane M. Elliot, P.C.*, 2012 WL 3150821, 4 (E.D. Mich. 2012) – The plaintiff alleged that the collector placed 3-4 calls in 1 month after the collector received a cease and desist letter. The cease and desist letter did not provide enough information for the collector to identify the phone number to cease calls. In addition, the plaintiff did not offer any evidence to reflect that conversations took place during the calls or that the calls were placed with the intent to annoy, abuse, or harass. The Court granted the collector’s motion for summary judgment.
- L. *Durthaler v. Accounts Receivable Mgt., Inc.*, 2012 WL 1202027, 4-6 (S.D. Ohio 2012) – The collector called 2 of the plaintiff’s numbers a total of 30 times in 73 days and called the plaintiff’s roommate 2 times (one time was after the collector was advised the number did not belong to the plaintiff). The Court granted the collector’s motion and ruled that the calls were not continuous or repeated and there were no circumstances indicating the nature or context of the calls was harassing.
- M. *Tarrant v. Northland Group, Inc.*, 2012 WL 140431, 5-6 (M.D. Tenn. 2012) – The collector called 39 times in 4 months; the plaintiff never requested that the collector cease calls; only 2 calls resulted in conversations with the plaintiff; and, the collector did not leave any messages. The Court granted the collector’s motion and ruled that aside from alleging the frequency of the calls, the plaintiff failed to present evidence that raised an inference of an intent to harass.

No § 1692d(5) VIOLATIONS FOUND

- N. *Smith v. Accounts Research, Inc.*, 2012 WL 289835, 7-8 (E.D. Tenn. 2012) – The plaintiffs alleged that the collector called their home and cell numbers 4 times over several months. The Court granted the collector's motion for summary judgment because the calls were not placed on a continuous basis with excessive frequency. The Court also noted that even if a call is unwelcome, it is not an FDCPA violation.
- O. *Fry, et al. v. Berks Credit & Collections, Inc.*, 2011 WL 6057781, 1-4 (N.D. Ohio 2011) – The collector called 69 times in 2 months. Specifically, there were 19 days with 3 calls, 5 days with 2 calls, 5 days with 1 call, and 24 days when the collector did not call. The Court granted the collector's motion and ruled that no reasonable juror would find that the calls showed an intent to annoy, abuse, or harass because there were no more than 3 calls per day; the calls never immediately followed each other; the plaintiff never asked the collector to cease calls; there were 24 days with no calls; and, there was contact only one time.
- P. *Daniel v. West Asset Mgt., Inc.*, 2011 WL 5142980, 4 (E.D. Mich. 2011) – The plaintiff alleged that the collector “continually called and annoyed Plaintiff in violation of the FDCPA” but did not offer any evidence beyond the number of calls to support this claim. The collector admitted to calling 67 times in 6 months. The Court granted the collector's motion and ruled that that plaintiff failed to provide evidence to show that the calls were harassing, oppressive, or abusive.
- Q. *Watson v. NCC Recovery, Inc.*, 2011 WL 3322844, 4 (N.D. Ohio 2011) – The plaintiff alleged that the collector violated § 1692d(5) by placing 2 calls 20 days apart. The Court granted the collector's motion for summary judgment because courts have required a greater volume of calls to constitute a violation.
- R. *Wilson v. Merchants & Medical Credit Corp., Inc.*, 2010 WL 3488617, 3-4 (E.D. Mich. 2010) – The plaintiff alleged in the deposition that she received 10 calls per day for 3 months and alleged in the Complaint that she received harassing calls for 1 month. The Court granted the collector's motion because that plaintiff's allegations were not credible and the plaintiff failed to present evidence to support the allegation of repeated calls for 1 month.

No § 1692d(5) VIOLATIONS FOUND

- S. *Pugliese v. Professional Recovery Serv., Inc.*, 2010 WL 2632562, 9-10 (E.D. Mich. 2010) – The plaintiff alleged that the collector called his home and cell numbers 350 times in 8 months. The Court granted the collector's motion and ruled that "despite the Plaintiffs' extensive evidence documenting the number of calls made, there is no evidence to demonstrate that the Defendants acted intentionally to annoy, harass, or abuse them."
- T. *Saltzman v. I.C. Sys., Inc.*, 2009 WL 3190359, 6-7 (E.D. Mich. 2009) – The collector placed 20 unsuccessful calls and 2 successful calls within 1 month. The Court granted the collector's motion and ruled that the "Plaintiff has not pointed to any evidence in the record regarding the amount, frequency, pattern or content of the Defendant's calls which would suggest anything other than a legitimate, albeit persistent, effort to reach her."
- U. *Wolfe v. GC Servs. Ltd. Partnership-Delaware*, 2009 WL 230637, 12 (E.D. Mich. 2009) – The collector called 25 times in 4 months with no more than 3 calls in 1 day. The Court granted the collector's motion for summary judgment.
- V. *Martin v. Select Portfolio Serving Holding Corp., et al.*, 2008 WL 618788, 6 (S.D. Ohio 2008) – The plaintiff alleged hundreds of calls for 2 years. The Court found that there was insufficient evidence to prove an FDCPA violation because the collector did not initiate more than 2 calls per day and did not call every day.
- W. *Crain v. Pinnacle Fin. Group of MN, Inc.*, 2007 WL 3408540, 5 (E.D. Mich. 2007) – The plaintiff alleged that the collector violated § 1692d(5) because the collector ignored her cease calls requests. The Court granted the collector's motion and ruled that although repetitive calling could be inferred, there was nothing in the record to suggest that the collector intended to annoy, abuse, or harass the plaintiff.

7th Circuit:

- A. *Dore v. Five Lakes Agency, Inc.*, 2015 WL 4113203, 5-7 (N.D. Ill. 2015) – The plaintiff alleged that the collector harassed her by calling 51 times over nearly 2 and a half years. The court granted the collector's motion and reasoned that 51 calls over 2.5 years did not constitute harassment without any evidence that the calls were hostile or vexatious.

- B. *Williams v. Web Equity Holdings, LLC*, 2014 WL 3845952, 3-4 (E.D. Mich. 2014) – The plaintiff alleged 5 calls in a month. The Court held that 5 calls in a one-month period fails to state a § 1692d claim as a matter of law.
- C. *Abrams v. Miramed Revenue Group, LLC*, 2013 WL 1319385, 6 (S.D. Ind. 2013) – The collector called 11 times in 39 days, never placed more than 1 call per day, and had no contact with the plaintiff (3 calls were unanswered).

No § 1692d(5) VIOLATIONS FOUND

and the collector left messages on 8 calls). The Court granted the collector's motion for summary judgment and ruled that the plaintiff failed to identify any evidence regarding the amount, frequency, pattern, or content of the calls that suggested anything other than a legitimate, but persistent, effort to reach the debtor.

- D. *Allen v. Bank of America, N.A., et al.*, 2012 WL 5412654, 7-9 (N.D. Ill. 2012) - The plaintiff alleged that the collector called "several" times in 4-5 months. The Court granted the collector's motion to dismiss and noted that the plaintiff did not allege that she received multiple calls within a short time and that "several" calls is not "repeated or continuous" within the meaning of 1692d(5).
- E. *Holliday v. Virtuoso Sourcing Group, LLC*, 2011 WL 5375062, 2 (S.D. Ill. 2011) – The plaintiff alleged that the collector called at least 2 times per day but failed to provide facts relating to the circumstances of the calls. The Court granted the collector's motion and ruled that the plaintiff's allegations did not suggest the calls were intended to harass, oppress, or abuse.

8th Circuit:

- A. *Higgs v. Diversified Consultants, Inc.*, 2014 WL 1374055, 3-4 (W.D. Mo. 2014) – The plaintiff claimed that the collector called 36 times in 16 days after the plaintiff advised the collector that he could not pay. The plaintiff did not specifically request that the collector cease calls and that the collector called an average of 2.25 times per day, did not call more than 4 times in one day, and did not call at inconvenient times. The Court dismissed the case.

- B. *Erickson v. Performant Recovery, Inc.*, 2013 WL 3223367, 3 (D. Minn. 2013) – The plaintiff alleged that the collector called his home and cell “repeatedly or continuously with the intent to annoy, abuse, or harass.” The plaintiff did not provide any evidence regarding the collector’s attempt to contact him. The Court granted the collector’s motion because the Complaint only included “threadbare recitals of the elements of the cause of action, supported by mere conclusory statements.”

No § 1692d(5) VIOLATIONS FOUND

- C. *Moore v. CCB Credit Servs., Inc.*, 2013 WL 211048, 4 (E.D. Mo. 2013) – The collector called the plaintiff’s cell 65 times in 5 months (sometimes up to 3 times per day). The Court granted the collector’s motion for summary judgment because the plaintiff failed to offer evidence which indicated the calls were made with the intent to harass and ruled that “making legitimate, persistent efforts to contact a debtor does not violate the FDCPA.”
- D. *Caw v. Portfolio Recovery Assocs., LLC*, 2013 WL 30567, 1,3 (W.D. Mo. 2013) – The collector placed 100 calls over 10 years, 30-35 of which were in the last year. The plaintiff specifically alleged that the collector placed 27 calls in 3 months and 2 calls in 1 day on 4 occasions. The record revealed that the calls were over 7 hours apart when more than 1 call was placed per day, no calls were before 8:00am or after 9:00pm, the collector never called right back after hanging up, and the plaintiff refused to discuss the account with the collector. The Court granted the collector’s motion for summary judgment because the record lacked evidence which revealed egregious conduct other than daily calls.
- E. *Rollins v. Portfolio Recovery Assocs., LLC*, 2012 WL 6051999, 4 (W.D. Mo. 2012) – The collector placed 45 calls over 6 months, 36 of which went through to the plaintiff. The plaintiff answered 7 of the calls, all of which the plaintiff terminated before the collector could discuss the debt. The collector called 2 times in one day on 2 occasions (which were placed at least 2 hours apart) and did not call at improper times. The Court granted the collector’s motion because the record lacked any indicia of the type of conduct which gives rise to a triable fact under 1692d(5).
- F. *Pace v. Portfolio Recovery Assocs., LLC*, 2012 WL 2398024, 2 (W.D. Mo. 2012) – The plaintiff alleged that the collector called repeatedly with the intent

to annoy, abuse, and harass. The plaintiff failed to present any evidence regarding the number of calls or the lapse of time between the calls. The Court granted the collector's motion for summary judgment and noted that rather than employing a bright line rule, courts consider whether the nature of the calls (including the frequency, substance, or the place to which they are made) provides grounds to infer a collector's intent to harass.

No § 1692d(5) VIOLATIONS FOUND

- G. *Vanhorn v. Genpact Servs., LLC*, 2011 WL 4565477, 4 (W.D. Mo. 2011) – The collector called 114 times in 4 months. Specifically, the collector called almost daily, called more than once per day on 14 days, called 6 times within 24 hours, and called 4 times within 3 hours. Surprisingly, the Court granted the collector's motion because the plaintiff failed to present evidence which revealed that the collector intended to annoy, abuse, or harass the plaintiff.
- H. *Erickson v. Messerli & Kramer, P.A.*, 2011 WL 1869044, 7 (D. Minn. 2011) – The plaintiff alleged that the collector violated § 1692d(5) by calling after a verbal cease calls request. The Court ruled that there was no violation because the plaintiff's cease calls request was not in writing.
- I. *Bingham v. Collection Bureau, Inc.*, 505 F. Supp. 864, 873 (D.N.D. 1981) – 14 calls in a few weeks with calls for 4 days in a row and then 4 days of no calls is not an FDCPA violation.

9th Circuit:

- A. *Chyba v. First Finan. Asset Mgt., Inc., A.K.A. FFAM*, 2013 WL 6880237, 4-5 (S.D. Cal. 2013) – The plaintiff alleged that the collector placed at least 4 calls in 2 weeks and left 4 prerecorded messages. The calls were not during any unreasonable hours. The Court granted the collector's motion for summary judgment and ruled that the collector's only intent was to reach the plaintiff and there was no evidence to support an intent to harass, abuse, or annoy.
- B. *Sepehry v. Department Stores Nat.'l Bank, et. al.*, 2013 WL 6574774, 11 (N.D. Cal. 2013) – The plaintiff alleged that the collector placed harassing calls, but failed to allege specific facts regarding frequency. The Court granted the collector's motion to dismiss and ruled that the plaintiff must

amend the claim to allege plausible facts that the calls were harassing, oppressive, or abusive by their frequency, timing, or content.

- C. *Lopez v. Professional Collection Consultants*, 2013 WL 708701, 3 (C.D. Cal. 2013) – The plaintiff alleged that the collector placed up to 3 calls, 5 times per week for over 1 year and ignored several cease calls requests. It

NO § 1692d(5) VIOLATIONS FOUND

was undisputed that the collector placed at least 12 calls in 1 year. The plaintiff did not provide evidence which suggested that the collector called back after hanging up, called at odd hours, called the plaintiff at work, or called multiple times per day. The Court granted the collector's motion for summary judgment and ruled that the number of calls alone does not create a triable issue of material fact.

- D. *Beard v. Sentry Credit, Inc.*, 2012 WL 3778880, 5-6 (E.D. Cal. 2012) – The plaintiff alleged that the collector called multiple times per day for several months and ignored a verbal cease calls request. The collector's call log revealed that the collector called 13 times in 2 months, 12 of which were unanswered. The Court noted that the plaintiff's deposition lacked details on the pattern and number of calls and was "inconsistent, self-contradicting, and speculative." The Court also noted that the plaintiff's cease calls request did not obligate the collector to cease calls because it was not in writing. The Court granted the collector's motion for summary judgment because the evidence failed to raise triable facts as to whether the collector violated the FDCPA.

- E. *Davis v. Pioneer Credit Recovery, Inc.*, 2012 WL 10376, 4-5 (C.D. Cal. 2012) – The plaintiff alleged that the collector violated § 1692d(5) by causing the phone to ring repeatedly with the intent to annoy and harass. The collector's call log revealed that the collector called 27 times in 232 days, never called back after hanging up, had no contact with the plaintiff, and did not ignore the plaintiff's written cease and desist request. The Court granted the collector's motion because there was no evidence that the collector caused the phone to ring repeatedly or engaged the plaintiff in conversations with the intent to annoy and harass.

- F. *Jones v. Rash Curtis & Assocs.*, 2011 WL 2050195, 3 (N.D. Cal. 2011) – The collector placed approximately 179 calls in 1 year. The collector did not

ignore any cease calls requests; call immediately after the plaintiff hung up; use unprofessional or misleading language; call at improper times; or call at an inconvenient place. The Court granted the collector's motion for summary judgment and ruled that "beside the frequency of the calls, there was nothing in the record to sustain a claim for intentional harassment."

No § 1692d(5) VIOLATIONS FOUND

- G. *Lopez v. Professional Collection Consultants*, 2011 WL 4964886, 2-3 (C.D. Cal. 2011) – The plaintiff alleged that the collector placed up to 3 calls 5 times per week and ignored the plaintiff's cease calls request but did not provide any dates. The Court granted the collector's motion and ruled that the Courts have "required greater factual particularity regarding the dates and contents of alleged communications" when asserting FDCPA claims. The Court also noted that the plaintiff did not plead facts which revealed the calls were harassing, failed to allege facts regarding the contents of the calls, and did not provide a period of time for the calls to prove that the activity was harassing, oppressive, or abusive.
- H. *Branco v. Credit Collection Servs., Inc.*, 2011 WL 3684503, 6-7 (E.D. Cal. 2011) – The plaintiff alleged that the collector called 14 times in 4 months. The record revealed that the collector called approximately once every 7 days and never spoke with anyone. The Court granted the collector's motion because the plaintiff failed to present evidence that the collector called his work number, called at odd hours, called continuously, or provided any misleading information.
- I. *Parker v. Barclays Bank Delaware*, 2011 WL 2709407, 2-3 (E.D. Wash 2011) – The plaintiff alleged that the collector violated § 1692d(5) by continuously calling with the intent to harass and annoy. The Court granted the collector's motion and ruled that the plaintiff's allegations were insufficient to allow the Court to infer that the collector was liable for the misconduct alleged.
- J. *Fenn v. CIR, Law Offices*, 2011 WL 2621002, 4 (E.D. Cal. 2011) – The plaintiff alleged that the collector called every day from "about mid 2010 through late 2010" with the intent to harass. The Court granted the collector's motion and ruled that the facts presented were "vague allegations" that were insufficient to allege the violations because they failed to provide adequate information.

- K. *Blaxill v. Arrow Finan. Servs., LLC.*, 2011 WL 1299350, 4 (N.D. Cal. 2011) – The plaintiff alleged that the collector violated § 1692d(5) by “causing her phone to ring repeatedly and engaging her in phone conversations with the intent to annoy and harass her.” The Court granted the collector’s motion

NO § 1692d(5) VIOLATIONS FOUND

because the complaint only contained “threadbare recitals of the elements of a cause of action.” The Court specifically noted that the plaintiff failed to provide the date and contents of any calls and did not specify any facts which indicated the collector knew the plaintiff’s employer prohibited calls at work.

- L. *Fenn v. CIR, Law Offices*, 2011 WL 850131, 2-3 (E.D. Cal. 2011) - The plaintiff alleged that the collector called numerous times per day. The Court granted the collector’s motion and ruled that the plaintiff’s Complaint “merely asserts a list of legal conclusions that the Defendant ‘violated’ several provisions of the FDCPA” and does not “plead sufficient facts to support the legal conclusions.”

- M. *Lourdes Jiminez v. Accounts Receivable Mgt., Inc.*, 2010 WL 5829206, 4-5 (C.D. Cal. 2010) - The plaintiff alleged that the collector called 69 times in 115 days. The Court granted the collector’s motion for summary judgment and ruled that there is “no evidence of an unacceptable pattern of calls.” The Court specifically noted that the collector attempted to contact the plaintiff once on most days, there were no calls on many days, and there was only one day with 3 calls.

- N. *Clemente v. IC Sys., Inc.*, 2010 WL 3855522, 2 (E.D. Cal. 2010) – The plaintiff alleged that the collector called continuously. The collector defended that the Complaint was defective because the plaintiff failed to plead the time, date, or number of the calls. The Court granted the collector’s motion and ruled that “the plaintiff has done no more than plead the elements of the statute, which is insufficient to state a plausible claim for relief.”

- O. *Arteaga v. Asset Acceptance, LLC.*, 2010 WL 3310259, 5-7 (E.D. Cal. 2010) – The plaintiff alleged that the collector called “daily” or “nearly daily” for 6 months. The Court granted the collector’s motion and ruled that the plaintiff “failed to cite a single case in which ‘daily’ or ‘nearly daily’ calls alone raise an issue of fact.” The Court specifically noted that the plaintiff did not provide

evidence which proved the collector called back after she hung up, called multiple times per day, called her work number, family, or friends, called at odd hours, or called after a cease calls request.

- P. *Johnson v. National Recovery Group*, 2010 WL 1992636, 3 (E.D. Cal. 2010) – The plaintiff alleged that the collector “constantly and continuously” called demanding payment. The Court denied the plaintiff’s motion for default judgment because the complaint did not state a claim for relief. Specifically, the Court ruled that the plaintiff failed to identify the number of calls placed, when the calls were made, and over what period of time.
- Q. *Grismore v. United Recovery Sys., L.P.*, 2006 WL 2246359, 6 (D. Ariz. 2006) – The collector called 19 times in 3 months. The Court found that there was no issue of material fact and dismissed the case.
- R. *Gorman v. Wolpoff & Abramson, LLP*, 435 F. Supp. 2d 1004, 1012 (N.D. Cal 2006) - The collector placed approximately 24 calls to the plaintiff’s home and work number in 6 weeks. The Court granted the collector’s motion for summary judgment because there was no evidence to reflect that the collector called the same number more than twice in one day, ignored a cease calls request, or called at improper times.

10th Circuit:

- A. *Harris v. Stellar Recovery*, 2015 WL 4041719, 6 (D. Utah 2015) – The plaintiff alleged that the collector called him repeatedly despite the plaintiff advising of a wrong number and asking the collector to stop. The collector ceased calling plaintiff’s phone number, but continued to call a phone number that forwarded the calls to plaintiff. The court granted the collector’s motion, finding that the calls after the plaintiff’s cease request were not intended to harass because the collector was unaware that the calls were being forwarded to the plaintiff’s phone.
- B. *Little v. Portfolio Recovery Associates, LLC*, 2015 WL 72774, *2 (D. Kan. 2015) – Plaintiff alleged that the collector violated the FDCPA by placing 10 calls over 50 days where plaintiff stated in some of the calls that she could not pay *that day*. The court determined that allegations of 10 calls in 50 days, with no more than 2 calls per day, and no back-to-back calls, did not state a

claim under § 1692d(5) where the plaintiff neither told the collector to stop calling nor told the collector that she could not ever pay the debt.

- C. *Cokeley v. Midland Credit Mgmt., Inc.*, 2014 WL 5341919, 4-5 (D. Kan. 2014) – The plaintiff alleged that the collector violated the FDCPA by placing 2 calls in 20 days. The court granted the collector’s motion for summary judgment on the grounds that 2 calls in 20 days is not continuous or repeated calling.
- D. *Martinez v. Johnson*, 2013 WL 1031363, 11 (D. Utah 2013) – The collector placed less than 10 calls in over 2 months and never called more than once per day. The Court granted the collector’s motion for summary judgment.
- E. *Webb v. Premiere Credit of North America*, 2012 WL 5199754, 2-3 (D. Kan. 2012) – The plaintiff alleged that the collector placed 150 calls in 7 months which often occurred on continuous days with up to 6 calls per day. The Court granted the collector’s motion and noted that a high volume of calls without other egregious conduct does not constitute an issue of fact regarding intent under 1692d(5).
- F. *Webb v. Convergent Outsourcing, Inc. d/b/a ER Solutions, Inc.*, 2012 WL 162394, 2 (D. Kan. 2012) – The plaintiff alleged that the collector violated § 1692d(5) by “causing the telephone to ring continuously with the intent to annoy, abuse, and harass” and did not include any specific facts regarding the calls. The Court granted the collector’s motion because the plaintiff did not provide enough facts to state a claim and ruled that the “conclusory allegations simply do not take the Complaint out of the speculative realm.”

No § 1692d(5) VIOLATIONS FOUND

- G. *Lynch v. Nelson Watson & Assocs., LLC*, 2011 WL 2472588, 2-3 (D. Kan. 2011) – The collector’s record revealed that the collector called 56 times in over 3 months (41 calls to the home number and 15 calls to another number that was later disconnected). The Court granted the collector’s motion and found that there was “no evidence of an unacceptable pattern of calls” and that the record was “lacking any indicia of the type of egregious conduct raising issues of triable fact when coupled with a high call volume.”
- H. *Carman v. CBE Group, Inc.*, 2011 WL 1102842, 6-7 (D. Kan. 2011) - The collector placed 149 calls in 2 months (up to 4 calls per day to the home

number and up to 3 calls per day to the work number) and spoke with the plaintiff only once. The Court granted the collector's motion and found that "there is no evidence of an unacceptable pattern of calls. The recording is lacking of an indicia of the type of egregious conduct raising issues of triable fact when coupled with a high call volume." The Court further noted that although the number of calls was high, "they are unaccompanied by any other egregious conduct to evince an intent to annoy, abuse, or harass."

- I. *Udell v. Kansas Counselors, Inc.*, 313 F. Supp. 2d. 1135 (D. Kan. 2004) – 4 calls in 7 days without leaving a message is not an FDCPA violation.

11th Circuit:

- A. *Isaac v. RMB Inc.*, 2015 WL 1189225, 1 (11th Cir. 2015) – The plaintiffs alleged that the collector called them 19 times over 17 days, including 5 calls in 1 day, where a third-party debtor had instructed the collector to call the plaintiffs about the debt. The plaintiffs alleged the calls were intended to harass them because the collector (1) called them despite receiving a cease and desist letter, and (2) hung up on plaintiffs when they answered the calls. The court did not find that the calls were intended to harass plaintiffs because (1) the collector did not process the cease and desist letter because its employees designated to handle such letters were coincidentally on leave at the time, and (2) the hang-up calls were due to the call system interpreting plaintiffs' voices to be an answering machine. The 11th Circuit affirmed the dismissal.
- B. *Hinkle v. Midland Credit Mgmt., Inc.*, 2015 WL 74267, *6 (S.D. Ga. 2015) – The plaintiff alleged that the collector called 5 times over 4 months, after the plaintiff verbally disputed the debt. The court found that without any evidence of harassing conduct, this pattern did not create a triable issue of fact for a potential violation of § 1692d(5).
- C. *Isaac v. RMB, Inc.*, 2014 WL 1278096, 7 (N.D. Ala. 2014) - The plaintiffs alleged that the collector called 21 times in 29 days. The collector did not call more than 2 times in one day except on 2 occasions; however, the Court noted that this was only because the earlier call was unanswered. The Court dismissed the case and ruled that this volume of calls "standing by itself and without more" failed to show the requisite intent to annoy or harass.

- D. *Stinson v. Receivables Mgt. Bureau, Inc.*, 2013 WL 1278966, 5-6 (N.D. Ala. 2013) – The collector called approximately 100 times in 7 months and left between 34 and 37 messages for someone else. The plaintiff did not speak with the collector, never informed the collector that they were calling the wrong number, and never requested that the collector cease calls. In addition, there were no calls at inappropriate times, no evidence of multiple

No § 1692d(5) VIOLATIONS FOUND

calls per day, and nothing to reflect the collector used offensive language. The Court granted the collector's motion and ruled that a claim based solely on the number of calls is insufficient to raise a cause of action because courts in the same circuit have found that a plaintiff must show that the collector engaged in other inappropriate conduct.

- E. *Valle v. National Recovery Agency*, 2012 WL 1831156, 1-2 (M.D. Fla. 2012) – The collector called the plaintiff's home and work numbers 82 times in 252 days. The collector never called the same number more than once per day; never left a voice message; did not call at odd hours; never contacted third parties; and stopped calling after speaking with the plaintiff for the first time. The Court granted the collector's motion for summary judgment because there was no evidence of harassing, oppressive, or abusive conduct.

- F. *Druschel v. CCB Credit Servs., Inc.*, 2011 WL 2681637, 4-6 (M.D. Fla. 2011) – The plaintiff alleged that the collector called his cell 14 times in 3 weeks (with no more than one call per day). The plaintiff also alleged that he continued to receive calls every day after he advised the collector that he could not pay. The Court granted the collector's motion and ruled that the "limited number of calls, with no more than one per day, directed toward determining how the plaintiff would repay the debt and unaccompanied by any other aggravating conduct is not the type of conduct proscribed by 1692d and 1692d(5)." The Court also noted that there was no evidence that the plaintiff requested that the collector cease calls.

- G. *Beeders v. Gulf Coast Collection Bureau*, 2011 WL 2682984, 1, 3 (M.D. Fla. 2011) – The collector called the plaintiff 40 times in 5 months with no more than 1 call per day and no more than 1 call every 2 days. The Court ruled there was no § 1692d(5) violation without evidence demonstrating a significantly larger volume and frequency of calls.

- H. *Waite v. Financial Recovery Servs., Inc.*, 2010 WL 5209350, 3 (M.D. Fla. 2010) - The plaintiff alleged that she received 132 calls in 9 months. The call log revealed that the collector called no more than 4 times in 1 day (which only occurred 3 times in 9 months), did not call at inconvenient times, left no more than 6 messages, and never called back on the same day after leaving a message. The Court granted the collector's motion because

No § 1692d(5) VIOLATIONS FOUND

there was no evidence that the calls were intended to annoy, abuse, or harass.

- I. *Mammen v. Bronson & Migliaccio, LLP*, 715 F. Supp.2d 1210, 1218 (M.D. Fla. 2009) – The plaintiffs alleged that they received 16 calls in 2 years. The Court granted the collector's motion for summary judgment and ruled that this did not “constitute conduct the natural consequence of which is to harass.”
- J. *Sclafani v. BC Servs., Inc.*, 2010 WL 4116471, 4-5 (S.D. Fla. 2010) - The plaintiff alleged that the collector left 7 voicemail messages over 6 months. The plaintiff also alleged that the collector left additional messages on other occasions but failed to provide evidence to substantiate this claim. The Court ruled that there was no § 1692d(5) violation because there was no evidence that the plaintiff asked the collector to cease calls and the calls were placed at intervals of more than 2 weeks apart.
- K. *Meadows v. Franklin Collection Serv., Inc.*, 2010 WL 2605048, 4-5 (N.D. Ala. 2010) – The plaintiff alleged that the collector called 300 times for 2.5 years (occasionally placing 2-3 calls per day). The Court granted the collector's motion for summary judgment and ruled that “a handful of calls a week, particularly when the vast majority of the calls go unanswered” is not an FDCPA violation.
- L. *Tucker v. CBE Group, Inc.*, 2010 WL 1849034, 3 (M.D. Fla. 2010) – The plaintiff alleged that the collector placed harassing calls to his number regarding a debt for his daughter. The collector's records reflect that the collector called 57 times in the relevant time period, but did not place more than 7 calls on any given day. There was no evidence indicating that the collector was notified it could not reach the plaintiff's daughter at that number or that the plaintiff requested that the collector cease calls. The Court granted the collector's motion for summary judgment and ruled that while the number of calls does seem “somewhat high,” the collector left a total of 6 messages,

made no more than 7 calls in a single day, and did not call back the same day after leaving a message.

No § 1692d(5) VIOLATIONS FOUND

- M. *Shuler v. Ingram & Assocs.*, 2010 WL 1838626, 5 (N.D. Ala. 2010), *affm.’d by Shuler v. Ingram & Assocs.*, 2011 WL 4495624 (11th Cir. 2011) – The collectors called the plaintiff 5 times in 17 days, never called repeatedly at the same location, and only made contact with the plaintiff once. The Court granted the collector’s motion for summary judgment.
- N. *Amaya v. Pollack & Rosen, P.A.*, 2010 WL 724451, 4 (S.D. Fla. 2010) – The plaintiff alleged that the collector violated § 1692d(5) by “causing the telephone to ring repeatedly and continuously with the intent to annoy, abuse, and/or harass the Plaintiff.” The Court granted the collector’s motion and ruled that the allegations were “threadbare recitals” and “conclusory statements” that failed to support an FDCPA claim.
- O. *Rodriguez v. Florida First Finan. Group, Inc.*, 2009 WL 535980, 5 (M.D. Fla. 2009) – The plaintiff alleged that the collector called 4-5 times in a row. The Court ruled that the calls were not of such a frequency to constitute harassment and noted that the plaintiff initiated many of the calls.

STATE LAWS MORE RESTRICTIVE THAN THE FDCPA

1. **Arizona** – May only call POE when “reasonable efforts at home have failed.”
2. **Arkansas** – May only call POE after the collector has made a good faith attempt to contact the consumer at his/her residence by mail and phone, or if mail was returned or calls were not answered.
3. **California** – May contact the consumer’s employer only if the communication is necessary to the collection of the debt, or if the debtor or his/her attorney has consented in writing. A communication is considered necessary if it is to verify the consumer’s employment, to locate the consumer, to effect a post-judgment garnishment, or to discover the existence of medical insurance (in cases of medical debt). Any such communication must be made in writing, unless no response is given within 15 days, and only as many times as is necessary to collect the debt. However, an employer may be contacted orally 1 time to verify the consumer’s employment before written communication is required.
4. **District of Columbia** – No contact or threat of contact to the POE before a final judgment against the consumer is obtained.
5. **Florida** – Cannot communicate or threaten to communicate with a debtor's employer before obtaining a final judgment against the debtor, unless the debtor gives permission in writing to contact his or her employer or acknowledges in writing the existence of the debt after the debt has been placed for collection. However, this does not prohibit a person from telling the debtor that his or her employer will be contacted if a final judgment is obtained.
6. **Iowa** – May only call the POE 1 time in 30 days if the purpose of the call is to verify employment.
7. **Massachusetts** – No more than 2 calls within 7 days to consumer’s residence; no more than 2 calls within 30 days to locations other than the consumer’s residence. No more than one communication to a third party to obtain location information unless additional contact is requested by such person or unless the collector reasonably believes that the earlier response was erroneous or

incomplete and the person now has correct or complete information. However, in no event shall the contact exceed 3 per such person in any 12-month period for each debt.

8. **New Hampshire** – No more than 1 call per month to the POE unless the consumer authorizes more in writing; however, a collector may only call the POE if unable to contact at the residence.
9. **New York City (5 Burroughs)** – No more than 2 calls within 7 days. Note that this calculation does not include a communication between a consumer and the debt collector which is in response to an oral or written communication from the consumer, or returned unopened mail, or a message left with a party other than the responsible consumer (as long as the collector only leaves a name and number and requests that the responsible consumer return the call), or any communication required by law.
10. **Oregon** – No more than 1 call to the POE per week; however, a collector may not call the POE unless the collector has already made a good faith attempt to contact the consumer at home during the day or in the evening from 6-9 p.m.
11. **Washington** – No more than 3 calls per week to any number; no more than 1 call per week to the POE.