

Real Property, Financial Services, & Title Insurance Update: Week Ending November 27, 2020

November 27, 2020

Financial Services Update

- **TCPA / Existence of Arbitration Agreement / Browsewrap Agreement:** Consumer was not bound to arbitration provision and class action waiver in browsewrap agreement where there was no evidence of affirmative assent to terms and conditions - [Shultz v. TTAC Publishing, LLC](#), No. 4:20-cv-04375 (N.D. Cal. Oct. 26, 2020) (denying motion to compel arbitration)
- **FCRA / Standing:** Consumer's bare procedural allegations of FCRA violation failed to confer Article III standing where consumer failed to allege that she or any prospective class member would choose differently if they had been given appropriate disclosure - [Lambert v. CalPortland Co.](#), No. 5:20-cv-02065 (C.D. Cal. Nov. 19, 2020) (granting motion for remand)
- **FDCPA:** Debtor may bring FDCPA claims where debt at issue was fully satisfied through a Chapter 13 plan before discharge was entered because whether an unfair debt collection practice occurred does not depend on issuance or enforcement of discharge order - [Manikan v. Peters & Freedman, LLP](#), No. 19-55393 (9th Cir. Nov. 25, 2020) (reversing summary judgment)
- **FCRA / Charged Off Account:** Bank entitled to summary judgment based on consumer's claim that reporting accounts with the full balance written off, yet still owed, and failing to mark the account as disputed violated the FCRA; reporting was accurate and there is no private cause of action for failing to mark an account as disputed, nor was there a meritorious or bona fide dispute - [Ostreicher v. Chase Bank USA, N.A.](#), No. 7:19-cv-08175 (S.D.N.Y. Nov. 19, 2020) (granting summary judgment for bank)

Title Insurance Update

- **Continuation of Coverage:** Title insurer has no duty to defend against adverse title claims where the insureds have transferred their interests via quitclaim deed to an LLC, despite the fact that the insureds were the sole members of that LLC, since the insureds did not retain an estate or interest in the land therefore terminating the policy pursuant to Condition 2; the insured's attempt to rescind the quitclaim deed did not undo the effect of the initial quitclaim deed or reinstate the policy -[Pak v. First Am. Title Ins. Co.](#), No. B297647 (Cal. App. Nov. 24, 2020) (affirmed)

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