

California Federal Court Lets Debt-Collector Amend Answer and Assert Counterclaim for Plaintiff's Debt

Article By:

Katie L. Bailey Garayoa

Michael P. Daly

In a TCPA class action case concerning debt collection calls, the **Southern District of California** recently granted a debt-collector defendant's motion to file an amended answer and assert a counterclaim for breach of contract arising from the plaintiff's approximately **\$22,000 debt** for the purchase of a used vehicle. *See Horton v. Calvary Portfolio Servs., LLC*, No. 13-cv-0307, 2014 U.S. Dist. LEXIS 102569 (S.D. Cal. July 24, 2014).

The court analyzed whether the defendant should be granted leave to add a counterclaim under Federal Rule of Civil Procedure 15(a)(2), which favors freely granting leave whenever "justice so requires." Courts consider four factors when determining whether to allow parties to amend a pleading: (1) prejudice to the opposing party, (2) undue delay, (3) bad faith, and (4) futility. The factors are not equally weighted, but rather the most important factor is whether prejudice would result to the nonmovant as a consequence of the amendment. *See Horton*, 2014 U.S. Dist. LEXIS 102569 at *3-5.

The plaintiff argued that the motion should be denied because (a) the amendment was futile and requested in bad faith because the counterclaim would be untimely, and (b) the court did not have jurisdiction over the counterclaim. The court disagreed, finding that it was unclear from the pleadings whether the counterclaim would be untimely, the plaintiff did not argue that prejudice or undue delay would result from amendment, and the court was required to exercise jurisdiction over the counterclaim because it was compulsory. *See id.* at *5-10.

This case is a helpful reminder about the importance of identifying and asserting counterclaims in cases that challenge debt-collection efforts. Assuming that the named plaintiff proceeds with the action despite the potential liability for a debt that might otherwise have been written off, it will be interesting to see whether the court concludes that the counterclaim affects the superiority of a class action or the adequacy of the plaintiff or plaintiff's counsel, as the plaintiff is subject to a potentially distracting counterclaim and pursuing the case may expose putative class members to similar counterclaims that may exceed the value of any claim they may have.

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