# Debt Collectors Can Send the Validation Notice by Email Without Violating FDCPA

By Robert M. Horwitz

Debt collectors concerned about using email to send the validation notice now have one less thing to worry about, at least according to the Northern District of California. In dismissing a putative class action under the Fair Debt Collection Practices Act (FDCPA), the Court held that a debt collector may place the validation notice in the body of an email serving as the initial communication with the consumer without having to comply with the Electronic Signatures in Global Commerce Act (E-SIGN). *See Greene v. TrueAccord*, Case No. 19-cv-06651 (N.D. Cal. May 19, 2020). Opinion: https://3814d0aa-7c19-443f-afe0-320ab02b0fe0.usrfiles.com/ugd/3814d0_a99d2e0146a94fa38ff32598a58431b7.pdf.

The Court addressed whether 15 U.S.C. ¶ 1692g(a) of the FDCPA requires a debt collector to comply with E-SIGN when emailing the validation notice to the consumer. If E-SIGN applies, the only way to send the validation notice by email with the required consent and indicia of delivery is to comply with the consent protocol of E-SIGN, which includes providing detailed disclosures to the consumer. TrueAccord did not comply with E-SIGN when it sent the validation notice to Greene in the body of an email as part of its initial communication with Greene. Greene, in turn, filed a putative class action under the FDCPA and California's Rosenthal Act challenging the practice of sending validation notices by email without the proper consent.

The Court dismissed the lawsuit, holding that True Accord did not violate the FDCPA because its validation notice was included in its initial communication with Greene. The Court's decision was controlled by the plain language of E-SIGN and Section 1692g(a) of the FDCPA. Regarding E-SIGN, the Court ruled that it applies only to communications that a federal statute requires be provided in writing. Regarding whether Section 1692g(a) of the FDCPA required the validation notice to be provided in writing, the Court, consistent with the CFPB commentary (84 Fed. Reg. 2327, 23366 (May 21, 2019), ruled that it depends on *when* the validation notice is sent. If the validation notice is included in the initial communication to the consumer, nothing in Section 1692g(a) restricts how it can

be sent — email is fine — and E-SIGN does not apply. Sending the validation notice *after* the initial communication, however, will trigger E-SIGN because Section 1692g(a) expressly requires that "unless [the validation notice] is contained in the initial communication or the consumer has paid the debt", the debt collector "must send the consumer a written notice containing" the validation disclosures.

*Greene* confirms what many FDCPA compliance experts have been saying for years: the validation notice may be sent by email (except in New York) and a debt collector can evade E-SIGN compliance and avoid liability under Section 1692g(a) of the FDCPA by including the validation notice in the initial communication with the consumer. We'll see if Greene appeals the dismissal to the Ninth Circuit.

---

**Robert M. Horwitz**
Shareholder, Financial Services and Real Property Litigation Group member
Phone: (248) 351-7014
Fax: (248) 359-6181
rhorwitz@maddinhauser.com