

The Supreme Court - March 20, 2019

The Supreme Court of the United States issued two decisions this morning:

Frank v. Gaos, No. 17-961: Respondent Paloma Gaos and two other named plaintiffs brought a class action against Google. According to the complaint, Google's transmission of users' search terms in referrer headers to the server that hosted the selected webpage violated the Stored Communications Act, 18 U.S.C. §2701 et seq. That Act prohibits "knowingly divulge[ing] to any person or entity the contents of a communication while in electronic storage by that service," §2702(a)(1), and also includes a private right action. After Google's pre-*Spokeo* standing challenges were rejected, Google entered into a class-wide settlement, where all of the funds would go to *cy pres* recipients, administrative costs, the named plaintiffs, and class counsel, and none would go to the absent class members. The District Court approved the settlement over objections by certain absent class members (the petitioners before the Supreme Court) to the *cy pres* relief. The Ninth Circuit affirmed. Today, in a *per curiam* decision, the Court vacated and remanded. The Court did not address the question as to whether *cy pres* settlements satisfy the requirement under Rule 23(e)(2) that class settlements be "fair, reasonable, and adequate." Instead, the Court agreed with the Solicitor General's position in an amicus brief that the lower courts should first address the named plaintiffs' standing in light of *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016), in which the Court held that "Article III standing requires a concrete injury even in the context of a statutory violation."

The Court's decision is available [here](#).

Obduskey v. McCarthy v. Holthus LLP, No. 17-1307: The Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692 et seq., imposes a number of requirements upon "debt collector[s]." This includes prohibiting debt collectors from using or threatening violence, §1692d, making false, deceptive, or misleading representations, §1692e, and as relevant here, requiring that if a consumer disputes the amount of a debt, that debt collectors "cease collection" until they obtain verification of the debt and mail it

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to the debtor, §1692g(b). All of those requirements apply to those who fall under the general definition of a “debt collector” under the statute. §1692a(6). The Act also says, however, that “for the purposes of 1692f(6),” which has very limited prohibitions, “[the] term [debt collector] also includes any person . . . in any business the principle purpose of which is the enforcement of security interests.” *Id.* This last definition includes businesses engaged in nothing more than nonjudicial foreclosure proceedings. The question posed by this case was whether a “debt collector” in only nonjudicial foreclosure proceedings was only subject to the narrow requirements of §1692f(6), or was also subject to the numerous other requirements detailed in the Act. Here, the District Court dismissed a homeowner’s FDCPA suit against a law firm carrying out nonjudicial foreclosure proceedings on the basis it was not a “debt collector” under the broader requirements under the Act. The Tenth Circuit affirmed. The Court today also affirmed, holding that but for §1692f(6), those who engage in only nonjudicial foreclosure proceedings are not debt collectors within the meaning of the Act.

The Court's decision is available [here](#).