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No. 91393-5

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SANDRA C. THORNELL,

Respondent,

v.

SEATTLE SERVICE BUREAU, INC.,
d/b/a NATIONAL SERVICE BUREAU, INC., and
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Appellants.

**APPELLANT STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY'S STATEMENT OF
ADDITIONAL RELATED AUTHORITY**

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ORIGINAL

Pursuant to RAP 10.8, Appellant State Farm Mutual Automobile Insurance Company hereby submits a decision by the U.S. Court of Appeals for the Fifth Circuit, *Garcia v. Primary Fin. Serv.*, No. 14-10012 (May 28, 2015) (unpub. “Opin.”) (attached), as supplemental authority.

In its new ruling, the Fifth Circuit affirmed a decision cited in our opening brief, *Garcia v. Jenikins/Babb LLP*, No. 3:11-CV-371, 2013 WL 6388443 (N.D. Tex. Dec. 5, 2013). The Northern District of Texas had granted summary judgment for the defendant on a claim under the Texas Deceptive Trade Practices Act because the plaintiff, an alleged victim of unfair debt collection practices, was not injured as a “consumer.” *Id.* The Fifth Circuit has now affirmed, holding that the complaint’s allegations that the debt in question was “incurred primarily for personal, family, or household purposes” were not enough to show “consumer” status. Opin. at 2. This authority relates to an argument made at pages 19–20 and 34–38 of our opening brief and pages 24–25 of our reply.

RESPECTFULLY SUBMITTED this 5th day of June 2015.

By: Dave Gunn

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CERTIFICATE OF SERVICE

I, Valerie D. Marsh, declare as follows:

1) I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within entitled cause. I am employed by the law firm of Betts, Patterson & Mines, P.S., whose address is One Convention Place, Suite 1400, 701 Pike Street, Seattle, Washington 98101-3927.

2) By the end of the business day on June 5, 2015, I caused to be served upon counsel of record at the addresses and in the manner described below, the following documents:

- **Appellant State Farm Mutual Automobile Insurance Company's Statement of Additional Related Authority;**
- **Certificate of Service.**

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I declare under penalty of perjury under the laws of the
State of Washington that the foregoing is true and correct.

DATED this 5th day of June, 2015.

Valerie D. Marsh

Valerie D. Marsh

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 14-10012
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

May 28, 2015

Lyle W. Cayce
Clerk

ISRAEL GARCIA, JR.; MELISSA R. GARCIA,

Plaintiffs-Appellants

v.

PRIMARY FINANCIAL SERVICES; MARGARET MORRISSEY; CHRIS
GILBERT; DUSTIN T. DUDLEY, Attorney at Law,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:11-CV-3171

Before JONES, BENAVIDES, and GRAVES, Circuit Judges.

PER CURIAM:*

Israel Garcia, Jr., and Melissa R. Garcia appeal the summary judgment dismissing their third amended complaint that urged claims against Primary Financial Services, Margaret Morrissey, Chris Gilbert, and Dustin T. Dudley under the Federal Debt Collection Practices Act, the Texas Debt Collection Practices Act, and the Texas Deceptive Trade Practices Act. *See* 15 U.S.C.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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§§ 1692-1692p; TEX. FIN. CODE ANN. §§ 392.001-392.404; TEX. BUS. & COM. CODE ANN. §§ 17.41-17.50. We affirm.

The Garcias alleged that the debt that is the focus of the third amended complaint had arisen “from a transaction in which the money, property, insurance or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes.” We have decided previously that “the third amended complaint lacked any facts to suggest that the Garcias’ debt was incurred through a consumer transaction.” *Garcia v. Jenkins Babb, L.L.P.*, 569 F. App’x 274, 276 (5th Cir. 2014); see 5TH CIR. R. 47.5.4. We concluded that “the third amended complaint’s recitation of a key [statutory] phrase, without any accompanying factual content,” was merely a “threadbare recital of a cause of action.” *Garcia*, 569 F. App’x at 276 (internal quotation marks and citation omitted); see § 1692a(5). Further, we concluded that the Garcias’ state-law allegations, too, were conclusory. *Garcia*, 569 F. App’x. at 276-77. We will not reexamine those issues. See *Arizona v. California*, 460 U.S. 605, 618-19 (1983); *Loumar, Inc. v. Smith*, 698 F.2d 759, 762 (5th Cir. 1983). We review all other issues in this case de novo. See *Morris v. Equifax Info. Servs., LLC*, 457 F.3d 460, 464 (5th Cir. 2006).

In opposing summary judgment, the Garcias have presented nothing new. Their opposition is based only on a repetition of the third party complaint’s threadbare recitals and conclusory allegation that the debt in question was incurred primarily for personal, family, or household purposes. That is insufficient. See *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 884 (1990); *Clark v. America’s Favorite Chicken Co.*, 110 F.3d 295, 297 (5th Cir. 1997).

Because the Garcias sought no relief under Federal Rule of Civil Procedure 56(d), their argument concerning discovery is unavailing. See *Raby v. Livingston*, 600 F.3d 552, 561 (5th Cir. 2010); *Washington v. Allstate Ins.*

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Co., 901 F.2d 1281, 1285 (5th Cir. 1990). Also, given that judgment is proper as a matter of law under Rule 56(a) without regard to the business records and affidavit submitted with the summary judgment motion, all arguments concerning those matters are moot.

AFFIRMED.

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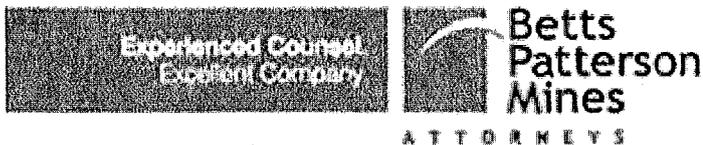
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Good afternoon.

Attached for filing with the Washington State Supreme Court is State Farm's Statement of Additional Related Authority in the above matter. If I may be of further assistance, please give me a call.

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