

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

October 2, 2026

Thomas B. Plunkett, III
Clerk

No. 25-11168

TODD FRANKFORT; CURTIS GOODBAN,

Plaintiffs—Appellants,

versus

METROPOLIS TECHNOLOGIES, INCORPORATED,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2283

Before KING, SMITH, and RAMIREZ, *Circuit Judges*.

KING, *Circuit Judge*:

The Fair Debt Collection Practices Act excepts from its definition of “debt collector” “any person collecting or attempting to collect any debt owed or due . . . another” if the debt “was originated by such person.” 15 U.S.C. § 1692a(6)(F)(ii). The district court held that Appellee satisfied this statutory exception on the sole ground that Appellee originated the debts at issue. For the reasons discussed below, the district court misinterpreted the scope of § 1692a(6)(F)(ii). We affirm the district court’s dismissal of the Fair Debt Collection Practices Act claim on alternative grounds.

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I

A

This case arises from a dispute about parking fees. Appellee Metropolis Technologies, Inc., (“Metropolis”) “is a new player in the parking industry.” It takes a “technology-driven approach that incorporates [artificial intelligence] and machine learning to provide seamless parking solutions and maximize revenue for facility owners.” Metropolis parking lots do not use entry or exit gates, physical tickets, or attendants to track and charge drivers. Instead, Metropolis uses cameras to take photos of license plates when vehicles enter and exit a lot, and then calculates the parking fees owed based on the time between the entry and exit. Drivers pay the parking fees “by scanning a QR code¹ that is placed on signs posted within the garage.” Metropolis’s technology thus enables drivers to simply “drive in and drive out” its garages.

If a driver parks at a Metropolis facility but fails to pay the required fee, Metropolis mails a form, titled “Notice of Parking Violation,” (“Notice”) to the delinquent vehicle owner. The Notice demands payment for both the unpaid parking charge and a fine (“Violation Fine”) that is multiple times the parking charge.

Appellants Curtis Goodban and Todd Frankfort² both received Violation Fines after parking at Metropolis garages. Goodban parked at a “Metropolis garage” on Akard Street in Dallas, Texas, for 16 minutes and incurred a \$5 parking fee for his stay. Frankfort parked at the “Metropolis-

¹ A QR code, which stands for quick response code, is a square barcode that, when scanned with a smart device, takes the user to a website.

² An original plaintiff was Sarina Gutierrez, but Appellants state that she is no longer pursuing her claims.

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operated Texas Women’s Hospital-Fannin Street garage” in Houston, Texas, and incurred a parking fee of \$9. Both failed to pay the parking fee using the posted QR codes before exiting, and both received a Notice in the mail as a result. Goodban was fined \$75.25. Frankfort was fined \$30.25.

Appellants claim that Metropolis’s business model is intended “to manufacture and encourage an individual’s non-compliance—so Metropolis can later coerce the Violation Fine from an individual and generate higher returns for itself.” According to the complaint, Metropolis places QR codes for payment “on inconspicuous signs sparingly posted within the garage,” so that consumers “fail to pay the required parking charge.” Appellants call Metropolis’s alleged efforts to facilitate nonpayment of parking charges the “Violation Fine Scheme.”

B

Appellants filed a putative class action against Metropolis in the Northern District of Texas, alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), Texas Fair Debt Collection Practices Act (“TFDCPA”), and Texas Deceptive Trade Practices Act (“DTPA”).³ Appellants alleged that Metropolis was a “debt collector” under the FDCPA, which defines the term as “any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts,” or who “regularly collects . . . debts owed . . . another.” § 1692a(6). Appellants claimed that

³ The parties did not brief before this court or the district court whether the Violation Fine constitutes a “debt” under the FDCPA, though the complaint appears to assume that it does. During oral argument before this court, Appellants state that they consider the Violation Fine a “debt” under the FDCPA. We therefore proceed on the assumption that Violation Fines are debts, as any arguments otherwise have been waived. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

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Metropolis qualified as a debt collector because it “mails Notices through the U.S. mail[.]”

Metropolis moved to dismiss under Federal Rule of Civil Procedure 12(b)(6). Appellants opposed Metropolis’s motion and requested at the end of their opposition leave to amend the complaint in the event the court found any pleading deficiencies.

A magistrate judge entered a Report and Recommendation (R&R) that the motion to dismiss be granted. He found that Appellants failed to plausibly allege that Metropolis was a debt collector under the FDCPA for two reasons. First, the magistrate judge concluded that Metropolis did not meet the “principal purpose” definition of “debt collector” because “[t]he allegations of the complaint and the attachments to it suggest[ed] that the principal purpose of Metropolis’s business is operating parking facilities, not debt collecting.” Appellants’ conclusory allegations of the Violation Fine Scheme “do not convert Metropolis’s principal purpose from parking facility operations to the ‘creation and collection of debts.’” Second, the magistrate judge concluded that Appellants did not sufficiently allege that Metropolis collected debts on behalf of others. The magistrate judge also referenced § 1692a(6)(F)(ii)—which excludes from the definition of “debt collector” persons collecting debts originated by themselves—but did not rest his ruling on this statutory exception.

The magistrate judge also recommended that Appellants be granted leave to amend because Metropolis’s reply brief did “not argue that amendment of any of the issues they identif[ied] for dismissal would be futile; nor [did] they ask[] to dismiss the claims with prejudice as a result.”

Appellants objected to the R&R. Appellants requested that if the court adopts any portion of the R&R, it also adopt the magistrate judge’s recommendation to grant Appellants leave to amend.

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The district judge “accept[ed] to the extent addressed in and supplemented and modified by [his] order” the magistrate judge’s findings and conclusions with respect to the FDCPA claim; granted Metropolis’s motion to dismiss the FDCPA claim with prejudice; and declined to exercise supplemental jurisdiction over Appellants’ remaining state law claims. The district court explained that Appellants did not “dispute that the alleged debt sought to be collected here by [Metropolis] also originated with [Metropolis].” Appellants “fail[ed] to address the limitation in § 1692a(6)(F)(ii) that debt collectors under the statute do not include those that collect or attempt to collect debts originated by such person or entity.” The district court therefore concluded that the claim failed as a matter of law, such that amendment would be futile and dismissal with prejudice was appropriate. The district court also noted that Appellants did not explain how they would amend to cure the deficiency if given the opportunity.

Frankfort and Goodban timely appealed.

II

We review a district court’s decision on a Rule 12(b)(6) motion to dismiss *de novo*. *McKay v. LaCroix*, 117 F.4th 741, 746 (5th Cir. 2024). To avoid dismissal for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation modified). A court does not accept as true “conclusory allegations, unwarranted factual inferences, or legal conclusions.” *In re Great Lakes Dredge & Dock Co. LLC*, 624 F.3d 201, 210 (5th Cir. 2010) (citation modified).

Appellants raise two issues on appeal. First, whether the district court erred in deciding that Metropolis is not a debt collector under the FDCPA. Second, whether the district court erred in denying Appellants leave to

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amend and dismissing their complaint with prejudice. We take these issues in turn.

A

We first address Metropolis’s status under the FDCPA. The definitional section of the FDCPA provides in relevant part:

(6) The term “debt collector” means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. . . . The term does not include—

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity . . . (ii) concerns a debt which was originated by such person; [or] (iii) concerns a debt which was not in default at the time it was obtained by such person[.]

§ 1692a.⁴ The definition of “debt collector” “describes two types of debt collectors: those whose ‘principal purpose’ is debt collection and those who ‘regularly collect’ others’ debts.” *Infante v. L. Off. of Joseph Onwuteaka, P.C.*, 735 F. App’x 839, 842 (5th Cir. 2018) (quoting *Garrett v. Derbes*, 110 F.3d 317, 318 (5th Cir. 1997)). The definitional section also includes exceptions under subsection (6)(F); for purposes of this opinion, we refer to subsection (ii) as the originator exclusion and subsection (iii) as the not-in-default exclusion.

⁴ There is another category of persons who fall within the ambit of “debt collector” that is not relevant here. *See* § 1692a(6).

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1

Metropolis first argues Appellants forfeited any arguments that the originator exclusion does not apply to Metropolis because Appellants failed to raise them before the District Court.

The record is unclear whether Appellants forfeited arguments against the originator exclusion because, as discussed *infra*, the District Court neglected a precondition of the originator exclusion. Even if Appellants forfeited these arguments, the forfeiture rule “is a prudential construct that requires the exercise of discretion.” *United States v. Lincks*, 82 F.4th 325, 330 (5th Cir. 2023) (quoting *United States v. Miranda*, 248 F.3d 434, 443 (5th Cir. 2001)). And “forfeiture does not apply when the court is interpreting a statute.” *See Colony Ins. Co. v. Wright ex rel. Wrongful Death Beneficiaries*, 16 F.4th 1186, 1191–92 (5th Cir. 2021) (COSTA, J., concurring) (citing *Young v. United Parcel Serv., Inc.*, 575 U.S. 206, 227–28 (2015)). We therefore proceed to correct the lower court’s interpretation of the FDCPA’s originator exclusion.

2

To properly interpret the originator exclusion, “we begin with the text.” *Lackey v. Stinnie*, 604 U.S. 192, 199 (2025). By its plain text, the originator exclusion only applies to persons who are “collecting or attempting to collect any debt owed or due . . . another.” § 1692a(6)(F)(ii) (emphasis added). In *Henson v. Santander Consumer USA Inc.*, the Supreme Court explained that the language “owed . . . another” in the definition of “debt collector” does not include “a debt owner seeking to collect debts for itself.” 582 U.S. 79, 83 (2017). That interpretation of “owed . . . another” applies with equal force to the originator exclusion, because “[a] standard principle of statutory construction provides that identical words and phrases within the same statute should normally be given the same meaning.”

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Powerex Corp. v. Reliant Energy Servs., Inc., 551 U.S. 224, 232 (2007). In formulating the originator exclusion, “Congress recognized the distinction between a debt ‘originated by’ the collector and a debt ‘owed or due’ another.” *Henson*, 582 U.S. at 85. Therefore, the originator exclusion “cannot be read, either directly or indirectly, to apply to any person collecting or attempting to collect on a [] debt owed or due to *him*.” *Cf. Davidson v. Cap. One Bank (USA), N.A.*, 797 F.3d 1309, 1315 n.6 (11th Cir. 2015).

Given the plain text of § 1692a(6)(F)(ii) and *Henson*, we hold that for a debt collector to successfully invoke the originator exclusion, it must (1) collect debts for another *and* (2) have originated the debts.

3

The district court erred in concluding that the originator exclusion excepted Metropolis from the definition of “debt collector” before determining whether Metropolis collected Violation Fines on behalf of others. “Exceptions to statutory definitions are generally matters for affirmative defenses.” *United States v. Brannan*, 98 F.4th 636, 639 (5th Cir. 2024) (citation modified) (quoting *United States v. Beason*, 690 F.2d 439, 445 (5th Cir. 1982)). And “an affirmative defense is not something the plaintiff must anticipate and negate in her pleading” because “the burden of proving justification or exemption under a special exception to the prohibitions of a statute generally rests on one who claims its benefits.” *See Cunningham v. Cornell Univ.*, 604 U.S. 693, 701–02 (2025) (citation modified). In *Infante*, we faulted the defendant for failing to provide sufficient factual and legal support for his position that he satisfies two exceptions to the “debt collector” definition under the FDCPA. 735 F. App’x at 843. As discussed *infra*, the allegations in the complaint do not show that Metropolis collected parking debts for another. Metropolis “has only moved to dismiss under

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12(b)(6),” so “we cannot draw factual inferences in [its] favor concerning its” fulfillment of the prerequisite to the originator exclusion. *See Zyla Life Scis., LLC v. Wells Pharma of Houston, L.L.C.*, 134 F.4th 326, 331 n.2 (5th Cir. 2025). The district court therefore erred in granting Metropolis’s motion to dismiss based on the originator exclusion.⁵

4

We next consider whether Appellants have sufficiently alleged that Metropolis satisfies the definition of “debt collector” under the FDCPA. Appellants may do so by plausibly alleging either that Metropolis’s principal purpose was debt collection, or that Metropolis regularly collected debts for others. Appellants have done neither.

“[A]n entity that has the ‘collection of any debts’ as its ‘most important’ ‘aim’ is a debt collector under [the principal-purpose] definition.” *Barbato v. Greystone All., LLC*, 916 F.3d 260, 267 (3d Cir. 2019) (citing dictionary definitions of “principal” and “purpose”). Appellants themselves provide on the first page of their complaint that “Metropolis is a new player in the parking industry” that leverages modern technology to “provide seamless parking solutions.” The press release Appellants attached to their complaint also describes Metropolis’s goal as using technology to improve efficiency for parking operations. The gateless and attendant-less parking garages at issue increase efficiency by allowing customers to simply drive in and drive out. Moreover, per Appellants’ own allegations, Metropolis owns or operates parking garages, which entails more business activities than just collecting Violation Fines. Thus, “the complaint’s factual

⁵ The not-in-default exclusion, § 1692a(6)(F)(iii), also requires that Metropolis collect “debt owed . . . another.” We therefore cannot uphold the district court’s Rule 12(b)(6) dismissal on that basis either.

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matter . . . establishes only that debt collection is some part of [Metropolis's] business, which is insufficient to state a claim under the FDCPA.” *See Schlegel v. Wells Fargo Bank, NA*, 720 F.3d 1204, 1209 (9th Cir. 2013).

For the “regularly collecting for others” prong, “[a]ll that matters is whether the target of the lawsuit regularly seeks to collect debts for its own account or does so for ‘another.’” *Henson*, 582 U.S. at 83. Appellants alleged that Metropolis “partners with entities and persons that own, manage, or otherwise control parking facilities,” “maximize[s] revenue for facility owners,” and “captures revenue and reduces costs for [] private parking lots.” The complaint also incorporates a press release stating that Metropolis “captur[es] and reduc[es] costs for real estate owners,” and has brought its “checkout-free technology to its managed parking facilities, enabling top-tier real estate owners in 40+ major U.S. metropolitan centers to capture revenue from more than five million consumers[.]” Based on these pleaded facts, Appellants concluded that Metropolis assesses Violation Fines “on behalf of [] private part[ies].” Because Appellants’ factual allegations only show that Metropolis maintains partnerships with real estate owners, we need not “accept as true . . . [their] unwarranted deductions of fact” that Metropolis collects parking debts for its partners. *See Great Plains Tr. Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 313 (5th Cir. 2002). Appellants failed to plead facts that plausibly connect Metropolis’s partnerships with facility owners to its alleged debt collection on their behalf.

In sum, the district court erred in applying the originator exclusion to Metropolis. Nonetheless, Appellants do not plausibly allege that Metropolis’s principal purpose is the collection of debts, or that Metropolis regularly collects parking debts on behalf of facility owners. Therefore, based on the allegations before us, Metropolis is not a debt collector for purposes of the FDCPA.

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B

We now turn to the district court’s dismissal of Appellants’ FDCPA claim with prejudice. The district court dismissed with prejudice (and thereby implicitly denied leave to amend) because it considered Appellants’ complaint to have a “fatal and incurable flaw”—the originator exclusion—such that “any attempt at amendment would be futile and unnecessarily delay the resolution of the FDCPA claim.” The District Court also noted that Appellants never explained “how they would cure this deficiency if given the opportunity.”

Although the district court found futility based on an erroneous view of the originator exclusion, “we may nonetheless affirm the denial if the record reflects ample and obvious grounds for denying leave to amend.” *Salas v. City of Galena Park*, No. 21-20170, 2022 WL 1487024, at *6–7 (5th Cir. May 11, 2022) (unpublished) (citation modified) (considering alternative grounds for denying leave to amend after finding that “the district court committed error by applying the wrong standard”). Here, Appellants did not propose an amended complaint or “set forth with particularity the grounds for the amendment and the relief sought.” *Peña v. City of Rio Grande City*, 879 F.3d 613, 617–18 (5th Cir. 2018). Appellants cursorily requested leave to amend as an alternative at the end of their opposition to the motion to dismiss and objections to the R&R. We have repeatedly held that “a bare bones request to amend pleadings remains futile when it fails to apprise the district court of the facts that the plaintiff would plead in an amended complaint.” *Porretto v. City of Galveston Park Bd. of Trs.*, 113 F.4th 469, 491 (5th Cir. 2024) (citation modified). We therefore affirm the district court’s dismissal of the FDCPA claim with *prejudice*. See *Peykoff v. Cawley*, No. 24-10186, 2025 WL 1380070, at *8 (5th Cir. May 13, 2025) (unpublished) (“Plaintiffs’ one-sentence request [to amend], embedded in their opposition

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to the motion to dismiss, is insufficient to warrant reversal” of dismissal with *prejudice*).

III

Section 1692a(6)(F)(ii) excepts from the FDCPA’s definition of “debt collector” persons who (1) collect debts on behalf of others *and* (2) originated the debts. The district court erroneously applied this statutory exception to Metropolis before finding that Metropolis satisfied both preconditions. On alternative grounds, we AFFIRM the judgment of the district court.