Updates
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Eleventh Circuit FDCPA Decision Could Dramatically Affect Mortgage Servicers' Operations

The U.S. Court of Appeals for the Eleventh Circuit recently upheld a lower court's decision in *Hunstein v. Preferred Collection and Management Services, Inc.*, 994 F.3d 1341 (11th. Cir. 2021). They affirmed that a debt collector's communication of a consumer's personal information to a third-party print vendor violated the Fair Debt Collection Practices Act's prohibition on third-party communications in connection with debt collection under 15 U.S.C. § 1692c(b).

Hunstein will likely require major operational changes for many loan servicers. At a minimum, loan servicers who qualify as a "debt collector" under the FDCPA should rethink how to utilize third-party vendors for such basic operations as printing and higher functions such as loss mitigation. Although it is theoretically possible to continue using such vendors without communicating the personal information of the consumer, the efficiencies of using such vendors will be diminished. The short-term solution to avoid exposure under *Hunstein* will likely entail bringing such services in-house—a major shift in industry practices. In the meantime, class action litigation has already been brought against loan servicers based on *Hunstein*, and servicers should be prepared to defend such cases.

The plaintiff in *Hunstein* alleged that Preferred Collection transmitted his personal information— including his name, the balance of the debt, that the debt stemmed from his son's medical treatment, and his son's name—to a print vendor to generate and mail a dunning letter. The district court dismissed the case, holding that Preferred Collection's communication with its print vendor did not trigger FDCPA liability because it was not "in connection with the collection of any debt."

Applying "an atextual reading" of "in connection with the collection of any debt" in § 1692c(b) of the FDCPA, the Eleventh Circuit found that "in connection with" is "invariably a vague, loose connective" phrase. The court found that "connection" is broadly defined to mean "relationship or association" and "in connection with" to broadly mean "with reference to [or] concerning," and further noted that § 1692c(b) differed from other sections of the FDCPA.

The court found that § 1692c(b) lacked the series of exceptions found in other areas of the FDCPA and concluded that its atextual reading of the statute would not render meaningless other aspects of the provision. The court concluded that in the context of § 1692c(b), the phrase "in connection with the collection of any debt" has a "discernible ordinary meaning that obviates the need for resort to extratextual 'factors.'" The court rejected Preferred Collection's reliance on the multifactor test.

The *Hunstein* decision is consistent with *Facebook v. Duguid*, 141 S. Ct. 1163 (2021), where Justice Sotomayor relied on a similar strict textual interpretation to interpret the definition of an "autodialer" under the Telephone Consumer Protection Act (TCPA).

A petition for rehearing in *Hunstein* was filed on May 25, 2021. We will continue to follow *Hunstein* and provide further analysis on any developments.

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