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FDCPA Update: How Often Can Your ARM Firm Call Debtors?

A hot legal issue faced by an increasing number of Accounts Receivable Management (ARM) firms pertains to "excessive call volume" violations under section 1692d(5) of the Fair Debt Collection Practices Act (FDCPA). With over 50% of recent FDCPA suits involving allegations of excessive call volume, based on current estimates, there's no question that firms need to implement policies and procedures to ensure compliance. After all, how can you get a debtor to pay his or her debt if you can't get them on the phone? Given the importance of this topic to our clients and the industry as a whole, we recently spoke with Tomio Narita, attorney at Simmonds & Narita LLP, a law firm that specializes in litigation for FDCPA cases, and he provided us with a great deal of insight.

How many call attempts are too many? And when does diligently trying to contact a debtor cross the line into what the law considers harassment? According to Narita, there are no precise guidelines regarding how many times a collector can attempt to call a consumer, and decisions of district courts have brought varying results. The good news for collectors, however, is that recent court cases have rejected FDCPA claims that are based solely upon counting up the number of call attempts made by the collector. The courts seem to understand that collectors often must make multiple attempts before they can make contact with the debtor, and that multiple call attempts reflect an attempt to reach the debtor to initiate a dialogue, not necessarily an intent to annoy or harass them. Courts consider a number of factors to determine whether harassment has occurred. Some key factors that they assess include:

- Did the collector continue to call after the debtor asked them to stop?
- Did the collector call back immediately after the debtor hung up?
- Were multiple calls made to the debtor on the same day?
- Did the collector make multiple calls to the debtor's family, friends, or co-workers?
- Did the collector call at odd hours or when the consumer stated it would be inconvenient?

> "When deciding if a collector has committed a violation, courts consider the volume, pattern, frequency, and persistence of the calls."
> *- Tomio Narita, attorney at Simmonds & Narita LLP*

Narita told us that to establish a violation of FDCPA section 1692d(5), the consumer must show that the calls were made "repeatedly or continuously" and with the intent to annoy, abuse, or harass. There is no well-defined rule for the permissible number of calls a collector can place in a day, week, month or year before violating section 1692d(5). When deciding if a collector has committed a violation, courts consider the volume, pattern, frequency, and persistence of the calls.

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FDCPA Update: How Often Can Your ARM Firm Call Debtors? (cont.)

Mr. Narita further said that recent decisions by district courts reflect an encouraging trend for collectors. For example, a district court in Florida granted summary judgment for a collector who called the plaintiff (a non-debtor) fifty-seven times, including seven times in a single day. Despite the relatively high number of calls, there was no evidence that the collector had repeatedly placed calls after being asked to cease communication, or had called back on the same day after leaving a message. The court said the ARM firm placed the calls with the intent of reaching the debtor, not to harass. Numerous other recent "high call volume" cases have been decided in favor of the ARM firm where no intent to harass was found.

Overall, recent case law appears highly positive for collectors, as many courts have taken a holistic, analytical approach to section 1692d(5) claims, rather than simply counting up the number of call attempts. So with all that said, what does this mean for you and your ARM firm? Here are some key takeaways:

- The number of calls made is not determinative, but also not irrelevant, therefore ARM firms should set appropriate limitations on the amount, pattern, and timing of calls
- When engaging in a dialing campaign, stick to preset calling limits
- Firms should be particularly sensitive and aware of calls to debtors' families, neighbors, other 3rd parties, and their places of employment – courts particularly frown upon these types of calls
- Institute robust procedures for recording and reacting when a debtor asks your firm to stop calling, as any additional calls could be a factor proving harassment

If firms institute proper calling policies, effective procedures to promptly respond to requests to stop calling, and place sensible limits on attempts to reach debtors, they will likely stay on the right side of the law.

Please note that we are not attorneys, and nothing in this article should be construed as or relied upon as legal advice. If you need legal advice or are faced with litigation, contact the appropriate legal counsel.

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