No. 19-14434

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RICHARD HUNSTEIN,

Plaintiff-Appellant,

v.

PERFERRED COLLECTION AND MANAGEMENT SERVICES, INC.,

Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida, Orlando Division
08:19-CV-00983-TPB-TGW

MOTION FOR LEAVE TO FILE *EN BANC* BRIEF OF *AMICUS CURIAE* RECEIVABLES MANAGEMENT ASSOCIATION INTERNATIONAL, INC. IN SUPPORT OF DEFENDANT-APPELLEE AND FOR AFFIRMANCE OF THE DECISION OF THE COURT BELOW

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January 18, 2022

CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for *Amicus Curiae* certifies that, in addition to those persons and entities contained in the Certificate of Interested Persons and Corporate Disclosure Statement in Appellee's brief, the following persons and entities are also interested in the outcome of this case, and, in particular, with respect to this *Amicus Curiae* brief:

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[1] *Amicus Curiae* RMAI is a non-profit corporation with no parent entity, and no publicly held company owns 10% or more of its stock.

January 18, 2022

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Pursuant to Federal Rule of Appellate Procedure 29 and Eleventh Circuit Rules 29-3 and 35-8, Receivables Management Association International, Inc. ("RMAI") hereby requests leave from this Court to file an en banc brief as *amicus curiae* in support of the Defendant-Appellee and to affirm the decision of the Court Below in the above-captioned matter.

A. The interests of *amicus curiae* RMAI—an advocate for actors in the secondary market for receivables.

RMAI, a nonprofit trade association, represents more than 570 companies that purchase or support the purchase of performing and non-performing receivables on the secondary credit market.[2] The existence of this secondary market is critical to the functioning of the primary market in which credit originators extend credit to consumers.[3] An efficient secondary market lowers the cost of credit extended to consumers and increases the availability and diversity of

[2] Pursuant to Fed. R. App. P. 29(a)(4)(E), no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[3] *See generally*, "The Value of Resale on the Receivables Secondary Market," David E. Reid, RMAI White Paper (April 2016) publicly available at https://rmaintl.org/wp-content/uploads/2019/01/RMAI-Secondary-Market-White-Paper-2016-FINAL.pdf, last accessed Jan. 18, 2022.

such credit. *See,* Note 3, *supra*. To be sure, a recent study of empirical data found that greater barriers to debt collection activities have a direct correlation to *decreases* in both consumer access to credit and financial health.[4]

RMAI members' business practices often subject them to the Fair Debt Collection Practices Act (11 U.S.C. § 1692, *et seq*.) ("FDCPA") as "debt collectors." Appellant's argument that a debt collector's every-day use of a letter vendor to send debt collection letters to customers violates the FDCPA, conflicts with established law of this Circuit, federal rules applicable to debt collector communications and decades of guidance by federal regulators. Simply put, Appellant's argument is absurd and contrary to the text of the FDCPA.

RMAI has no financial interest in the outcome of this case.

B. Why RMAI's brief is desirable and relevant.

Sending a letter appears to be an innocuous, low-cost, low-risk business function. Not so for RMAI member debt buyers and debt collectors. A written debt collection communication inadvertently directed to the wrong person not only can violate various federal and state laws, but it can also expose sensitive private

[4] Federal Reserve Bank of New York, "Access to Credit and Financial Health: Evaluating the Impact of Debt Collection," Julia Fonseca, Katherine Strair, Basit Zafar, Staff Report No. 814 (May 2017) publicly available at https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr814.pdf?la=en and last accessed Jan. 18, 2022, and archived at https://perma.cc/M49H-5DYT.

information. RMAI members engage professional letter vendors to increase the accuracy and integrity of their written communications and avoid inadvertent disclosure of sensitive information to the wrong person. Letter vendors have demonstrated a 99.99% accuracy rate in delivering mailed communications to the right person.[5] *See docket, Brief of Amici Curiae Print and Mail Vendor Coalition In Support Of Defendant/Appellee's Petition For Rehearing En Banc,* p. 2. Letter vendors also engage directly with the United States Postal Service—having U.S. Postal Inspectors onsite to monitor their mailing operations—and serve as a conduit between our members and the United States Postal Service. *Id.*, at 1-2.

RMAI's brief explores the history behind the particular harms to which § 1692c(b) is directed, how the structure of the FDCPA already authorizes debt collectors to convey information to their agents to make legitimate debt collection communications, the guidance debt collectors have received from federal regulators in using agents to make such communications, and the adoption of a federal rule incorporating a debt collector's use of a letter vendor to make a

[5] The USPS performs accuracy testing which can be requested "by submitting the mailer's address file(s) to the Postal Service for processing." *See* "99% Testing," United States Postal Service, publicly available at https://postalpro.usps.com/address-quality-solutions/99-testing, last accessed Jan. 18, 2022, and archived at https://perma.cc/29A4-BR2Y.

required written communication to a consumer. RMAI also explains why adopting Plaintiff-Appellant's reasoning poses significant harm to consumers that is contrary to the purposes of the FDCPA and common sense.

For the foregoing reasons, RMAI respectfully requests that this Court grant this motion for leave to file the accompanying brief.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit on January 18, 2022, by using the appellate CM/ECF system, and service was accomplished on all counsel of record by the appellate CM/ECF system.

I also certify that twenty (20) copies of the foregoing document were dispatched on this 18th day of January 2022, via Federal Express Overnight, to:

The Honorable David J. Smith, Clerk of Court
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This 18th day of January 2022

[1] *Amicus Curiae* RMAI is a non-profit corporation with no parent entity, and no publicly held company owns 10% or more of its stock.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUES 1

STATEMENT OF FACTS 2

STATEMENT OF INTEREST OF *AMICUS CURIAE* 3

SUMMARY OF THE ARGUMENT 4

ARGUMENT AND CITATIONS OF AUTHORITY 5

I. The Transmission of Debt Collection Communications by a Debt Collector's Agent Are Not Prohibited by Section 1692c(b) 5

II. The Use of Letter Vendors to Print and Mail Dunning Letters Is a Legitimate Practice, Sanctioned by the Principal Federal Regulators of Debt Collectors and Does Not Offend Section § 1692c(b) 7

III. A Debt Collector's Engagement of Agents to Provide Translation and Interpretation Services in Connection With Debt Collection Communications Is a Legitimate Practice That Is Not Prohibited by § 1692c(b). 10

IV. The Structure of the FDCPA Contemplates a Debt Collector's Use of Agents When Making Communications in Connection With the Collection of a Debt. 12

A. The FDCPA Permits Debt Collectors to Engage Agents to Send a Debt Collection Communication. 13

B. There Is No Material Difference Between a Debt Collection Communication Delivered Through a Telegraph Company or a Letter Vendor in the Context of § 1692c(b).....14

CONCLUSION 17

TABLE OF AUTHORITIES

CASES

***_Acosta v. Campbell_, 309 F. App'x 315 (11th Cir. 2009) 5, 7

Chevron, U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) 15

Hawthorne v. Mac Adjustment, 140 F.3d 1367 (11th Cir. 1998) 15

Hunstein v. Preferred Collection & Mgmt. Servs., Inc., 2021 U.S. App. LEXIS 32325, 29 Fla. L. Weekly Fed. C 532 (11th Cir. Fla., Oct. 28, 2021) vacated by, rehearing granted by, en banc, 2021 U.S. App. LEXIS 34202 (11th Cir. Fla., Nov. 17, 2021) (Mem.) 20

Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A., 559 U.S. 573, 130 S. Ct. 1605 (2010) 14

United States v. Kirby, 74 U.S. 482, 19 L. Ed. 278 (1868) 7

STATUTES

15 U.S.C. § 1692b.....18

15 U.S.C. § 1692b(5) 14

15 U.S.C. § 1692b(8) 14

***15 U.S.C. § 1692c(b).....passim

15 U.S.C. § 1692e(11) 13, 17

15 U.S.C. § 1692f(5).....14

15 U.S.C. § 1692f(8).....14, 18

15 U.S.C. § 1692g(a) 8, 10, 20

15 U.S.C. § 1692g(d) 13

15 U.S.C. §§ 1692, _et seq._ 3

42 U.S.C. § 12182, _et seq._.....12

Pub. L. 90–321, title VIII, § 813, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881 11

OTHER AUTHORITIES

51 Fed. Reg. 8019 (Mar. 7, 1986) 14

***53 Fed. Reg. 50097 (Dec. 13, 1988) 8, 14

84 Fed. Reg. 23274 (May 21, 2019) 9

FTC Staff Opinion, LeFevre-Zbrzeznj (Sept. 21, 1992) 11

***National Commission on Consumer Finance, Consumer Credit in the United States (Dec. 1972) 6

***S. Rep. No. 95-382 (1977) 5

RULES

Fed. R. App. P. 29(a)(4)(E) 3

Fed. R. Civ. P. 12(b)(6) 3

Rule 35-8, Eleventh Circuit Rule 4

REGULATIONS

12 C.F.R. 1006 (2021) 1, 9

***12 C.F.R. 1006.34(c)(2)(i) 9, 10

STATEMENT OF THE ISSUES

Does a consumer fail to state a claim under 15 U.S.C. § 1692c(b) by merely alleging incidental conveyances of information to a letter vendor to facilitate legitimate communications—which are compliant with FTC guidance, 12 C.F.R. 1006 (2021), and the text of the FDCPA?

STATEMENT OF FACTS

Defendant-Appellee Preferred Collection and Management Services, Inc. ("Preferred" or "Appellee") was engaged by Johns Hopkins All Children's Hospital to collect a debt allegedly owed to it from Richard Hunstein (the "Debt"), *Cplt*., ¶¶ 12-14. Preferred sent a dunning letter to Mr. Hunstein to collect the Debt (the "Letter"), but it did not print and send the Letter itself. *Cplt*., ¶¶ 15-16. Instead, it electronically sent information concerning the Debt to a "commercial mail house" (the "Letter Vendor"). *Cplt*., ¶¶ 16, 18, 20. The electronic information concerning the Debt was disclosed to the Letter Vendor. *Cplt*., ¶ 18. The Letter Vendor then used this information to print and send the Letter. *Cplt*., ¶¶ 16, 18, 20, and Exhibit B. "Mr. Hunstein never consented to having his personal and confidential information, concerning the Debt or otherwise, shared with anyone else." *Cplt*., ¶ 23.

STATEMENT OF INTEREST OF *AMICUS CURIAE* [2]

Receivables Management Association International, Inc. ("RMAI") represents over 570 companies that purchase or support the purchase of receivables on the secondary credit market, which facilitates consumers' access to credit. RMAI members' business practices often subject them to the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, *et seq.*, as "debt collectors." The decision of the Court Below, dismissing Appellant's Complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim premised on a debt collector's legitimate use of a letter vendor violated 15 U.S.C. § 1692c(b) of the FDCPA, is consistent with established law of this Circuit, the United States Supreme Court, agency guidance and agency rules. Appellant's misguided interpretation of the scope and purpose of § 1692c(b) disrupts the operations of each actor in the consumer-debt secondary market on whose behalf RMAI advocates and imposes significant harms upon consumers.

RMAI has no financial interest in this case but has an interest in the FDCPA's interpretation when it threatens legitimate practices that enhance the accuracy and integrity of consumer debt collection that benefit both consumers and

[2] Pursuant to Fed. R. App. P. 29(a)(4)(E), no counsel for a party authored this brief, in whole or in part, and no counsel, party, or person (other than *amicus curiae*, its members, or its counsel) made a monetary contribution intended to fund the preparation or submission of this brief.

industry alike. RMAI urges this Court to clarify that—consistent with this Circuit and the Supreme Court's precedent—Hunstein failed to state a claim.

RMAI files this brief pursuant to Eleventh Circuit Rule 35-8.

SUMMARY OF THE ARGUMENT

Congress's goal in enacting § 1692c(b) was to prohibit abusive third-party disclosures that serve no legitimate purpose. It did not design § 1692c(b) to restrict a debt collector's use of agents like interpreters and translators or make it difficult or impractical for debt collectors to provide accommodations, through qualified agents, to assist consumers who are visually impaired, hearing impaired or who have speech disabilities.

Hunstein's argument is premised on an interpretation of § 1692c(b) that produces an absurd result. *First,* it relies on the mistaken interpretation that the FDCPA prohibits the use of telegrams as a debt collection communication, but the text of the Act plainly states telegrams can be used for this purpose. *Second,* it ignores that the Act treats a formal legal pleading as a communication but provides no exception in § 1692c(b) for the transmittal of such pleading to a court. 15 U.S.C. § 1692c(b). *Third,* Hunstein's interpretation ignores Official Commentary by federal regulators and a federal rule which expressly authorizes the use of letter vendors when making debt collection communications to consumers. *Fourth,* no thought is given to the adverse impact his construction of § 1692c(b) would have

on consumers, particularly those who benefit from interpreters or translators because of a disability or limited English proficiency.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The Transmission of Debt Collection Communications by a Debt Collector's Agent Are Not Prohibited by Section 1692c(b).

We should interpret 15 U.S.C. § 1692c(b) as this Court has already instructed: "'a debt collector may not contact third persons such as a consumer's friends, neighbors, relatives, or employer. Such contacts are not legitimate collection practices and result in serious invasions of privacy, as well as the loss of jobs.'" *Acosta v. Campbell*, 309 F. App'x 315, 320 (11th Cir. 2009) (quoting S. Rep. No. 95-382, reprinted at 1977 U.S. Code Cong. & Admin. News 1695, 1699). Appellant agrees, citing the same Senate Report referenced in *Acosta* as evidence of the § 1692c(b)'s salutary purpose. The Senate Report directs our attention to a report to Congress concerning consumer financial services as the genesis for § 1692c(b): "In addition, this legislation adopts an extremely important protection recommended by the National Commission on Consumer Finance and already the law in 15 States: it prohibits disclosing the consumer's personal affairs to third persons." S. Rep. No. 95-382, reprinted at 1977 U.S. Code & Admin. News 1695, 1699.

The National Commission on Consumer Finance Report released to Congress in 1972 (the "NCCF Report") examined the issue of debt collector's disclosure of information to third parties and made its recommendation:

> While communication of the existence of an alleged debt to a person other than the debtor is not, strictly speaking, a creditors' remedy, the Commission considered it because of its extensive use as a collection practice. To the Commission's surprise, almost 48 percent of all creditors surveyed estimated that they contacted employers and other persons, including neighbors, from 1 to 40 percent of the time to assist in debt collection activities. *Threats to job security and application of social pressure are not proper methods to induce payment of debt*. Until such time as a debt has been reduced to judgment, it should be a private matter between the debtor and creditor. *Any communication regarding a debt to the debtor's employer or neighbors or others without the debtor's consent is an invasion of the debtor's privacy and is not a legitimate collection practice*.
>
> National Commission on Consumer Finance, Consumer Credit in the United States, p. 39 (Dec. 1972) (emphasis added).

The NCCF Report recommended Congress restrict illegitimate *communications to third parties* because they pose "threats to job security and application of social pressure" or activities that are "not a legitimate collection practice." Neither the NCCF Report nor Section 1692c(b) intended to prohibit legitimate collection practices that engaged agents who provide a service designed to deliver *the debt collector's communications to consumers.* These "proper methods" of debt collection are not prohibited. To construe § 1692c(b) otherwise is inconsistent with the structure of the FDCPA, decades of published guidance by

federal regulators, federal rules regulating debt collection practices and, ultimately, materially harmful to consumers. Legitimate collection practices do not run afoul of the FDCPA (*Acosta, supra*) and to the extent certain third parties may be engaged in these practices, they are not offensive to § 1692c(b). "All laws should receive a sensible construction" that avoids "an absurd consequence." *United States v. Kirby*, 74 U.S. 482, 486-87, 19 L. Ed. 278 (1868). Hunstein's interpretation of § 1692c(b) is a nonsensical construction that leads to an absurd result.

II. The Use of Letter Vendors to Print and Mail Dunning Letters Is a Legitimate Practice, Sanctioned by the Principal Federal Regulators of Debt Collectors and Does Not Offend Section § 1692c(b).

The Consumer Financial Protection Bureau ("CFPB") and the Federal Trade Commission ("FTC") can both enforce the FDCPA, and the CFPB also has rulemaking authority. On several occasions, the FTC has provided debt collectors guidance on the use of agents when communicating with consumers under the FDCPA. In 1988 it issued Official Staff Commentary that recognized that a telegraph clerk or a telephone operator served as an "incidental contact" when making a debt collection communication to a consumer:

> Incidental contacts with telephone operator or telegraph clerk. A debt collector may contact an employee of a telephone or telegraph company in order to contact the consumer, without violating the prohibition on communication to third parties, if the only information

> given is that necessary to enable the collector to transmit the message to, or make the contact with, the consumer.

53 Fed. Reg. 50097, 50104 (Dec. 13, 1988).

More to the point, the FDCPA requires debt collectors to provide consumers with certain information either in the initial debt collection communication or within five days of the initial debt collection communication. 15 U.S.C. § 1692g(a). The information provided to consumers reveals the consumer's status as a debtor. *Id.* The 1988 Official Staff Commentary approved a debt collector using agents for the purpose of delivering this disclosure:

> Section [1692g](a) requires a collector, within 5 days of the first communication, to provide the consumer a written notice (if not provided in that communication) containing (1) the amount of the debt and (2) the name of the creditor, along with a statement that he will (3) assume the debt's validity unless the consumer disputes it within 30 days, (4) send a verification or copy of the judgment if the consumer timely disputes the debt, and (5) identify the original creditor upon written request.
>
> 1. Who must provide notice. If the employer debt collection agency gives the required notice, employee debt collectors need not also provide it. *A debt collector's agent may give the notice, as long as it is clear that the information is being provided on behalf of the debt collector*.

53 Fed. Reg. at 50018 (emphasis added).

In 2013, the CFPB began the process of rulemaking under the FDCPA. In 2019, it released a Notice of Proposed Rulemaking which not only acknowledged debt collectors' use of letter vendors to deliver debt collection communications,

but specifically sought comment on how such third-party services can be incorporated into its final rule:

> The Bureau understands that some debt collectors use letter vendors to mail validation notices and that, in some cases, the letter vendor's mailing address may appear on validation notices in lieu of the debt collector's mailing address. The Bureau requests comment on whether proposed § 1006.34(c)(4)(iii) would be consistent with current practices related to debt collectors' use of letter vendors to mail validation notices.

84 Fed. Reg. 23274, 23347 (May 21, 2019).

The final rule, Regulation F, became effective November 30, 2021. 12 C.F.R. 1006 (2021). Along with the final rule, the CFPB also published its Official Interpretations, which were "issued under the same authorities as the corresponding provisions of Regulation F and [were] adopted in accordance with the notice-and-comment procedures of the Administrative Procedure Act (5 U.S.C. 553)." 12 C.F.R. 1006, Supplement I to Part 1006 – Official Interpretations, Introduction. In the Official Interpretations, the Bureau wrote:

> Section 1006.34(c)(2)(i) provides, in part, that validation information includes the mailing address at which the debt collector accepts disputes and requests for original-creditor information. A debt collector may disclose a vendor's mailing address, if that is an address at which the debt collector accepts disputes and requests for original-creditor information.

12 C.F.R. 1006, Supplement I to Part 1006 – Official Interpretations, Subpart B - Rules for FDCPA Debt Collectors, 34(c) Validation

> information, 34(c)(2) Information about the debt, Paragraph 34(c)(2)(i), 2 Debt collector's mailing address.

Section 1006.34(c)(2)(i) addresses the communication of the required "validation notice" described in § 1692g(a) which would include the name of the debtor and the amount of the debt, among other things. 12 C.F.R. 1006.34(c)(2)(i). And the CFPB's Official Interpretations confirm that debt collectors may deliver this communication through a letter vendor.

III. A Debt Collector's Engagement of Agents to Provide Translation and Interpretation Services in Connection With Debt Collection Communications Is a Legitimate Practice That Is Not Prohibited by § 1692c(b).

Since its enactment, debt collectors have been provided advisory opinions concerning the FDCPA's application to certain debt collection practices. Originally, these opinions were issued by the FTC. Pub. L. 90–321, title VIII, § 813, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 881. In 1992 the FTC issued an advisory opinion in response to a request for guidance "concerning whether communication of collection messages through a translator service constitutes an impermissible third-party communication under the Fair Debt Collection Practices Act." The FTC stated:

> This is in reply to your letter of August 17, 1992, concerning whether communication of collection messages through a translator service constitutes an impermissible third party communication under the Fair Debt Collection Practices Act (copy enclosed). In orally communicating with non-English

> speaking customers about their debts, you wish to use interpreters to convey the message in the appropriate language.
>
> We believe that use of such a service falls within the exception to Section 805(b) noted by the enclosed staff commentary on the Act, namely, an "incidental contact" (p. 50104, No. 3, second column) necessary to enable the collector to make contact with and transmit a dunning message to the consumer. Thus, we do not believe that use of such a service would violate Section 805(b).

FTC Staff Opinion, LeFevre-Zbrzeznj (Sept. 21, 1992).

Hunstein's reading of 1692c(b) would, in many instances, prohibit the use of qualified interpreters and translators, which would force debt collectors to choose between making an unauthorized disclosure under the FDCPA or denying an accommodation under the Americans with Disabilities Act, 42 U.S.C. § 12182, *et seq*. Similarly, Hunstein's reading of § 1692c(b) would limit a debt collector's ability to communicate with a person of limited English proficiency by using a translator or interpreter. Debt collectors can sometimes resolve this conflict by obtaining the consumer's prior and direct consent to the use of an interpreter or translator, but it is not always possible to obtain prior consent. For example, a consumer could write to a debt collector to demand that all future communication be made by mail and to inform the collector that she requires an accommodation in the form of braille translations. However, if the consumer's correspondence does not specifically consent to the use of a translation service, Hunstein's reading of §

1692c(b) would prohibit the collector who lacks the ability to produce (in-house) braille translations from meeting the accommodation.

* * *

None of these activities is abusive, and it is the prohibition against abusive conduct which is at the core of § 1692c(b). Hunstein recognizes that § 1692c(b) is intended to thwart abusive practices. *Appellant's Br*. p. 19 ("The harm to be prevented under both the common law tort and § 1692c(b) is humiliation – an injury which Congress has recognized is not a legitimate method of debt collection."). But there is a disconnect between his argument, the structure of the FDCPA, the guidance provided by federal regulators and the federal regulations governing the making of FDCPA disclosures through agents. It is not plausible how the mere transmission of information to a letter vendor leads to the humiliation that the statute is designed to protect against. Nor does his interpretation argument square with the FDCPA's treatment of communications that are accessible to the general public (the formal legal pleadings identified in 15 U.S.C. §§ 1692e(11) and 1692g(d)), but for which no express exception is found in § 1692c(b).

IV. The Structure of the FDCPA Contemplates a Debt Collector's Use of Agents When Making Communications in Connection With the Collection of a Debt.

As the Supreme Court instructs, we look to the structure of the FDCPA to interpret its provisions. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 590 n.11, 130 S. Ct. 1605, 1616 (2010) ("[O]ur conclusion also relies on common principles of statutory interpretation, as well as the [FDCPA]'s text and structure."). And when we do, the limitations on the reach of § 1692c(b)'s prohibitions are evident. We have already seen these limitations when we discussed the use of formal legal pleadings as a form of debt collection communication in Section III above. But there is still another form of communication which is much closer to the letter vendor process at issue here – the use of telegrams as a form of communication.

A. The FDCPA Permits Debt Collectors to Engage Agents to Send a Debt Collection Communication.

The FDCPA refers to the use of telegrams as a means of communicating with consumer debtors in three places: §§ 1692b(5), 1692f(5), and 1692f(8). In §§ 1692b(5) and 1692b(8) the statute addresses the use of "mails or telegram" expressing Congress's understanding that these forms of communication are interchangeable and equally available as a form of debt collection communication.

Just as is the case with "formal legal pleadings" although the Act references the use of telegrams by debt collectors, it does not except telegraph service providers in § 1692c(b). Debt collectors have followed the FTC's position that "a debt collector may contact an employee of a telephone or telegraph company in

order to contact the consumer, without violating [§ 1692c(b)], if the only information given is that necessary to enable the collector to transmit the message to, or make the contact with the consumer." 53 Fed. Reg. 50097, 50104 (Dec. 13, 1988). See also, Statements of General Policy or Interpretation Proposed Official Staff Commentary on Fair Debt Collection Practices Act, 51 Fed. Reg. 8019, 8020 (Mar. 7, 1986) ("It is staff's view that the communication is with the consumer, not the operator, and that [§ 1692c(b)] was not intended to prohibit incidental contacts with intermediaries who are assisting a debt collector to communicate with the consumer."); *see also Hawthorne v. Mac Adjustment*, 140 F.3d 1367, 1372 n.2 (11th Cir. 1998) (citing *Chevron, U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984)) ("[Though not binding,] because the FTC is entrusted with administering the FDCPA, its interpretation should be accorded considerable weight.").

B. There Is No Material Difference Between a Debt Collection Communication Delivered Through a Telegraph Company or a Letter Vendor in the Context of § 1692c(b).

There is no difference between the telegraph company and the mail vendor in the context of the role each serves in assisting a debt collector to transmit a communication to a consumer. Both receive information concerning the debtor's status as a debtor and both serve as the debt collector's agent to transmit the debt collector's communication to the consumer. Hunstein acknowledges that the

content of information communicated to a telegram recipient is revealed to the telegraph service provider. *Appellant's Br*., p. 22. But his attempt to distinguish the telegraph clerk from the mail vendor is premised on a gross misunderstanding of requirements imposed by the Act on debt collectors when they make communications to a consumer:

> In sending a telegram, the scope of the disclosure is extremely limited – information is conveyed only to two individuals – the person typing the telegram and the person who receives and delivers the telegram, and the nature of the disclosure excludes any references to debt collection.

Appellant's Br., p. 22 (emphasis in the original).

This is not accurate. As previously noted, § 1692e(11) requires a debt collector to make certain disclosures in its initial communication with the consumer, and so an initial communication delivered by telegram to a debtor must include language to this effect:

> "[T]he debt collector is attempting to collect a debt and that any information obtained will be used for that purpose. . ."

15 U.S.C. § 1692e(11).

And in every subsequent debt collection communication made by telegram to a consumer, the debt collector must state:

> "[T]he communication is from a debt collector . . ."

Id.

Again, the only form of a communication excepted from the required disclosures of § 1692e(11) is "a formal pleading made in connection with a legal action." *Id.* And so a plain reading of the FDCPA not only permits the use of a telegram as a form of debt collection communication to a consumer, but it also requires that the telegram *always disclose it is made in connection with debt collection*.

Appellant's next misstep is the assertion that "[a]ny message sent by telegram is governed by §1692b which prohibits communications that indicate a relation to debt collection." *Appellant's Br*., p. 22, n. 40. Again, not true. While § 1692b authorizes debt collectors to use telegrams to request certain information about a consumer from third parties, so long as those communications do not reveal the consumer's status as a debtor, it is not the only section governing the use of telegrams.

First, the Act defines a communication as "the conveying of information regarding a debt directly or indirectly to any person through any medium." § 1692a(2). "Any medium" obviously includes telegrams, as well as many other forms of communication such as sign language, braille, or electronic communications. Furthermore, § 1692f(8) makes express reference to a debt collector's use of telegrams in communicating with consumers, so long as the debt collector refrains from "[u]sing any language or symbol, other than the debt

collector's address, on any envelope *when communicating with a consumer by use of the mails or by telegram*." 15 U.S.C. § 1692f(8) (emphasis added).

* * *

The structure of the FDCPA allows only one conclusion – debt collectors may utilize agents to facilitate the delivery of debt collection communications to consumers. The disclosure of consumer information incidental to that process is not implicated by § 1692c(b) because they serve a legitimate purpose.

CONCLUSION

The Court Below correctly dismissed Hunstein's Complaint. The guidance provided by the FTC and the rule promulgated by the CFPB are consistent with the FDCPA's treatment of formal legal pleadings and telegrams: incidental contacts necessary to transmit a message are not communications in connection with the collection of the debt. These incidental contacts are designed to *facilitate the delivery of a communication to the consumer* and their use poses no risk of the humiliation, embarrassment or job loss identified in the NCCF Report. Instead, these incidental contacts not only allow creditors to exercise their lawful rights, but they also benefit consumers with services that enhance the accuracy and integrity of the debt collection process. We do not use the FDCPA to punish compliant, legitimate conduct that furthers the salutary purpose of the legislation.

The Court noted in its now vacated decision that Hunstein's interpretation of § 1692c(b) "may well require debt collectors (at least in the short term) to in-source many of the services that they had previously outsourced, potentially at great cost." *Hunstein v. Preferred Collection & Mgmt. Servs., Inc*., 2021 U.S. App. LEXIS 32325 at *37-*38, 29 Fla. L. Weekly Fed. C 532 (11th Cir. Fla., Oct. 28, 2021) vacated by, rehearing granted by, en banc, 2021 U.S. App. LEXIS 34202 (11th Cir. Fla., Nov. 17, 2021) (Mem.). While there is some truth to that, we have explained the many instances where consumers will bear the sting of *Hunstein*. The disruption caused by the vacated decision penalizes debt collectors for their use of legitimate agents like language and speech to braille translators. Instead of sending letters through their tried and trusted mail vendors, a debt collector can reduce "*Hunstein* risk" not only by sending letters "in-house," but also by referring unpaid debts to attorneys for collection litigation. Debt collectors can also forgo letters in their entirety and make only telephone calls to their debtors. To be sure, although letters are often used as the form of communication for the mandatory (and lengthy), disclosures of § 1692g(a), debt collectors can choose to provide the same disclosures by telephone if that form of communication is the "initial communication" with a consumer.

The storm cloud caused by the faulty reasoning of the now vacated decision, if not undone, will deter debt collectors from employing competent service providers that benefit consumers, debt collectors and creditors alike.

The decision of the Court Below dismissing the Complaint for failure to state a claim should be affirmed.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(g)(1)

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(g)(1) because this brief contains 3,926 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f), and taking into account the 6,500 word limitation of Federal Rule of Appellate Procedure 29(b)(4).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eleventh Circuit on January 18, 2022, by using the appellate CM/ECF system, and service was accomplished on all counsel of record by the appellate CM/ECF system.

I also certify that twenty (20) copies of the foregoing document were dispatched on this 18th day of January 2022, via Federal Express Overnight, to:

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