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David Schultz Analyzes in ARM Compliance Digest: Judge Denies MTD in FDCPA, TCPA Class Action Over Orally Made Cease Request

In The News | 1 min read

Dec 22, 2021

In the December 20, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz reports on a case in which a judge in Florida denied a defendant's motion to dismiss a class-action after it was sued for violating the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, and the Florida Consumer Collection Practices Act for making calls to the plaintiff's cell phone and leaving voicemails using pre-recorded messages after the plaintiff had asked for the calls to stop:

Nieves v Preferred represents a fairly common consumer TCPA complaint since the Supreme Court narrowly interpreted ATDS in *Diguid v Facebook*. The plaintiff did not pursue an ATDS claim. Instead, he claimed pre-recorded calls were left without consent. In the past year, we are seeing fewer ATDS claims but many more pre-recorded message cases. Based on the same facts, plaintiff alleged an FDCPA claim and a copycat count under the state equivalent – Florida Consumer Collection Practices Act. Again, it is not unusual to see this combination of claims based on the same factual allegations.

Two odd parts of the case are how the parties chose to litigate these facts. First, plaintiff is trying to make a class action out of the TCPA claim. However, the debt is for medical services and the lack of consent was based on an alleged oral revocation. Medical debt often comes with a phone number provided by the patient and oral revocation makes it hard to identify a class of similar people. Second, defendant tried to knock out all three claims with a Rule 12 motion to dismiss. It wasn't too difficult for the court to determine that the allegations were sufficient to survive at the motion to dismiss stage. We'll have to see how this one plays out.

Read the full November 22, 2021 edition of the AccountsRecovery.net Compliance Digest.

"Judge Denies MTD in FDCPA, TCPA Class Action Over Orally Made Cease Request," was published by *ARM Compliance Digest*, December 20, 2021.

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David M. Schultz

Partner

312-704-3527

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