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## Consumer Finance Litigation

### Ninth Circuit Case of First Impression Holds That FDCPA Notice Requirement Applies to Subsequent Collectors of Same Debt

**Action Item: The Ninth Circuit reversed the Arizona District Court's summary judgment in favor of a defendant debt collector in an action under the Fair Debt Collection Practices Act. In a case of first impression, the Ninth Circuit makes clear that the validation notice requirement of 15 U.S.C. § 1692g(a) applies to the first communication sent by any debt collector—regardless of whether it is the first or subsequent of multiple debt collectors.**

On July 20, 2016, the U.S. Court of Appeals for the Ninth Circuit, in *Hernandez v. Williams, Zinman & Parham PC*, held that if there are multiple debt collectors that try to collect on the same debt, each one must send the notice required by § 1692g(a) of the Fair Debt Collection Practices Act ("FDCPA") (15 U.S.C. § 1692g(a)). The Ninth Circuit reversed and remanded a district court decision granting summary judgment in favor of defendant Williams, Zinman & Parkham ("WZP").

Plaintiff Maria Hernandez ("Hernandez") initiated the putative class action after defaulting on a car loan. She claimed that after she stopped making payments, Thunderbird Collection Specialists, Inc. ("Thunderbird"), sent her a letter seeking to

collect the debt. Thereafter, Thunderbird retained WZP to assist with collection efforts. WZP sent its own collection letter, which Hernandez claimed violated the notice provision of the FDCPA because it failed to notify her that any dispute about the debt or any request to obtain information about the original creditor had to be in writing.

The parties filed cross-motions for summary judgment. Hernandez contended that U.S.C. § 1692g(a) imposes the requirement to send a validation notice on each and every debt collector that communicates with a consumer about a given debt. The Consumer Financial Protection Bureau and the Federal Trade Commission, as *amici curiae*, joined in this interpretation. WZP argued that it was not required to comply with the notice provision because Thunderbird's letter, sent prior to WZP's, was the "initial communication" with respect to the car loan and therefore the sole communication triggering the notice provision. The district court agreed and granted summary judgment in favor of WZP.

The sole issue on appeal was whether the phrase “the initial communication” as used in 15 U.S.C. § 1692g(a), refers only to the very first communication sent about a debt or instead to the first communication sent by *each and every debt collector that seeks to collect it.*

While acknowledging that the sentence in which the phrase “the initial communication” appears is ambiguous when read in isolation, the Court held that the notice requirement applies to each debt collector that attempts to collect a debt. The Court recognized that two other circuits declined to apply the notice requirement of § 1692g(a) to a subsequent debt collector, but explained that those circuits so held without explaining the basis for their construction of the statute.<sup>1</sup>

The Court based its decision largely on public policy grounds. Specifically, the Court noted that restricting the validation notice requirement to only the initial debt collector would produce a loophole that would, in practice, undermine consumers’ efforts to verify their debts and Congress’s mandate that collection efforts halt until verification occurs. Further, the Court noted that such a loophole would “render § 1692g almost a nullity.”

The Court went on to point out that application of the notice requirement to all debt collectors is also more in keeping with the declared purpose of the FDCPA—to protect consumers from abusive debt collection practices.

As a result of the Court’s holding, the dismissal of the putative class action was reversed and the case was remanded back to the district court for further proceedings.

The Ninth Circuit’s decision emphasizes the role of consumer protection statutes in the debt collection context. Debt collectors, including subsequent collectors and collectors who purchase debt, should familiarize themselves with this ruling and ensure that they are sending § 1692g(a) validation notices within five days of their first communication with a consumer.— © 2016, BLANK ROME LLP

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1. See *Lee v. Cohen, McNeile & Pappas, PC*, 520 F. App’x 649 (10th Cir. 2013) (unpublished); *Oppong v. First Union Mortg. Corp.*, 326 F. App’x 663 (3d Cir. 2009) (per curiam) (unpublished).

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