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Debt Collection under the FDCPA

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Loan Servicers Are Faced with Bringing Certain Collection Activities In-House After Recent Legal Developments Raise Specter of Personal Liability for Principals of Firms Whose Activities Constitute Debt Collection Under the Fair Debt Collection Practices Act (FDCPA)

The Issue: Attorneys and other principals of firms that operate as debt collectors for banks might be personally liable for the actions of their firms, pursuant to a recent 9th Circuit decision and anticipated scrutiny by the Consumer Financial Protection Bureau (CFPB). As a foreseeable consequence, banks might have to internalize certain collection activities that they currently delegate to their local attorneys, including foreclosure firms.

In the Ninth Circuit case, *Cruz v. Int'l Collection Corp.*, 673 F.3d 991 (9th Cir. 2012) (available **here**), a principal of a debt collection firm to which a debt had been referred signed letters that were found to violate the Fair Debt Collection Practices Act (FDCPA). The Ninth Circuit found the principal personally liable for signing collection letters that violated FDCPA §1692e (15 U.S.C. 1692e) in making false, deceptive or misleading representations by asserting liability for interest and fees barred by applicable Nevada law, and that violated FDCPA §1692c (15 U.S.C. 1692c) by post-dating receipt of the borrower's writing that he disputed and refused to pay the debt.

In addition, the CFPB has stated, pursuant to its authority under §1027(e) of the Dodd-Frank Act, that attorneys who pursue consumer debts are subject to its enforcement authority. If the attorney firm grosses over $10 million of annual revenue, the CFPB has proposed that it also be subject to periodic examinations.

Implication: The probable consequence of these developments is that many attorneys will more thoroughly scrutinize borrower files and may refuse to engage in certain collection activities that might subject them personally or their firm to civil liability, whether pursuant to private or regulatory action. Banks that prepare for this eventuality by internalizing certain collection activities currently delegated to local firms should be aware that they too might become subject to liability under the FDCPA if they use a fictitious name for collection activities that could be construed by the borrower to be a debt collector distinct from the bank.

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