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News

David Schultz Analyzes in ARM Compliance Digest: Judge Certifies Class Against Defaulted Defendant in FDCPA Case

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In the November 7, 2022 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discusses lessons offered by a Mississippi District Court judge's decision to certify a class action in a Fair Debt Collection Practices Act case in which the plaintiff had already obtained a default judgment against the defendant, after the defendant allegedly sent letters to the plaintiff that did not have the proper disclosures on them:

McAllister v Lake City Credit is a messy case in multiple ways. First, the complaint alleged that two letters regarding a payment plan failed to comply with 1692g. It seems unlikely that they were initial communications or that 1692g applied.

Second, the defendant was served but failed to appear. A default was entered against it. Perhaps the defendant thought that would be a quick way to end the case. Unfortunately, it was not.

Third, the case was pled as a class action. After the default, the court considered the motion to certify. It started about by saying that it still has to do a rigorous analysis of Rule 23's elements even if there is a default. It then went through the Rule's elements. However, instead of doing a rigorous analysis, it accepted the conclusory allegations in the motion. There does not appear to be any evidence on numerosity or superiority, for instance.

Fourth, the opinion ends with the court asking plaintiff to submit a memo on how class notice will be given. That's a pretty good question, especially since it is not clear anyone else is in the class.

This case pretty well demonstrates the risks associated with default judgments.

Read the full November 7, 2022 edition of the AccountsRecovery.net Compliance Digest.

"Judge Certifies Class Against Defaulted Defendant in FDCPA Case," *ARM Compliance Digest*, November 7, 2022.

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