

---

---

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**



Docket No. A-002258-24

KATIA ETIENNE, on behalf of : **CIVIL ACTION**  
herself and those similarly situated, :  
 :  
 :  
 Plaintiff-Appellant, : ON APPEAL FROM THE FINAL  
 : JUDGMENT OF THE SUPERIOR  
 : COURT OF NEW JERSEY LAW  
 v. : DIVISION, ESSEX COUNTY  
 :  
 :  
 RESURGENT CAPITAL SERVICES : Trial Court Docket No.  
 L.P.; CACH, LLC; : ESX-L-5557-21  
 and JOHN DOES 1 to 10, :  
 :  
 :  
 Defendants-Respondents. : **Sat Below:**  
 : **HON. MAYRA V. TARANTINO, J.S.C.**  
 :  
 :  
 : **DATE: August 22, 2025**

---

---

**BRIEF ON BEHALF OF PLAINTIFF-APPELLANT**

---

KIM LAW FIRM LLC  
Yongmoon Kim (NJ Attorney ID 026122011)  
ykim@kimlf.com  
Mark Jensen (NJ Attorney ID 309612022)  
mjensen@kimlf.com  
411 Hackensack Avenue, Suite 701  
Hackensack, New Jersey 07601  
Tel. & Fax: (201) 273-7117

Attorneys for Katia Etienne, Plaintiff-Appellant

**TABLE OF CONTENTS**

---

TABLE OF AUTHORITIES ..... ii

TABLE OF JUDGMENTS, ORDERS AND RULINGS ..... vi

PRELIMINARY STATEMENT ..... 1

PROCEDURAL HISTORY ..... 3

STATEMENT OF FACTS ..... 3

LEGAL ARGUMENT ..... 5

    The Standard of Review (Raised Below: T1) ..... 5

    POINT I.    The Merits of Plaintiff’s Claim Under the Federal  
                FDCPA Should Be Construed Consistently with How  
                Lower Federal Courts Have Construed the Merits of  
                Similar Claims. (Not Addressed Below) ..... 5

    POINT II.   Determining Congress’s Intent in Light of the Federal  
                Courts’ Interpretation of §1692c(b) as Applied to Debt  
                Collectors’ Use of Mail Vendors. (Not Addressed  
                Below). ..... 7

    POINT III.  Putting the FDCPA in Context (Addressed Below:T1) ..... 15

        A. FDCPA’s Purpose and Structure ..... 15

        B. Elements of an FDCPA Cause of Action ..... 17

        C. The Bar Against Third-Party Communications ..... 19

    POINT IV.  The FDCPA’S Legislative History and Agency  
                Interpretations are Consistent with the Federal Courts’  
                Decisions. (Not Addressed Below) ..... 21

CONCLUSION ..... 22

## TABLE OF AUTHORITIES

---

### Cases

<i>Action All. of Senior Citizens v. Sullivan</i> , 930 F.2d 77 (D.C. Cir. 1991) .....	11
<i>Allen ex rel. Martin v. LaSalle Bank, N.A.</i> , 629 F.3d 364 (3d Cir. 2011) .....	18
<i>Baskin v. P.C. Richard &amp; Son, LLC</i> , 246 N.J. 157 (2021) .....	5
<i>Bentley v. Great Lakes Collection Bureau</i> , 6 F.3d 60 (2d Cir. 1993) .....	18
<i>Christianson v. Colt Indus. Operating Corp.</i> , 870 F.2d 1292 (7th Cir. 1989) .....	11
<i>Comm’r v. Brown</i> , 380 U.S. 563 (1965) .....	7
<i>Cty. of L.A. v. Davis</i> , 440 U.S. 625 (1979) (Powell, J., dissenting) .....	12
<i>Dewey v. R.J. Reynolds Tobacco Co.</i> , 121 N.J. 69 (1990).....	1, 6
<i>Di Cristofaro v. Laurel Grove Mem’l Park</i> , 43 N.J. Super. 244 (App. Div. 1957).....	5
<i>Douglass v. Convergent Outsourcing</i> , 765 F.3d 299 (3d Cir. 2014) .....	19
<i>Exxon Mobil Corp. v. Allapattah Services, Inc.</i> , 545 U.S. 546 (2005) .....	8
<i>FTC v. Shaffner</i> , 626 F.2d 32 (7th Cir. 1980) .....	18
<i>Hodges v. Sasil Corp.</i> , 189 N.J. 210 (2007).....	7, 15

<i>Hunstein v. Preferred Collection &amp; Mgmt. Servs.</i> , 17 F.4th 1016 (11th Cir. 2021) .....	9, 10, 12, 14
<i>Hunstein v. Preferred Collection &amp; Mgmt. Servs.</i> , 17 F.4th 1103 (11th Cir. 2021) .....	10
<i>Hunstein v. Preferred Collection &amp; Mgmt. Servs.</i> , 48 F.4th 1236 (11th Cir. 2022) .....	11
<i>Hunstein v. Preferred Collection &amp; Mgmt. Servs.</i> , 994 F.3d 1341 (11th Cir. 2021).....	passim
<i>Jackin v. Enhanced Recovery Co., LLC</i> , 606 F. Supp. 3d 1031 (E.D. Wash. 2022) .....	13, 14
<i>Jacobson v. Healthcare Fin. Servs.</i> , 516 F.3d 85 (2d Cir. 2008) .....	17
<i>Jerman v. Carlisle, McNellie, Rini, Kramer &amp; Ulrich LPA</i> , 559 U.S. 573 (2010) .....	22
<i>Johnson v. Roselle EZ Quick LLC</i> , 226 N.J. 370 (2016) .....	7
<i>Khimmat v. Weltman, Weinberg &amp; Reis Co, LPA</i> , 585 F. Supp. 3d 707 (E.D. Pa. 2022).....	12, 13, 14, 22
<i>Lembo v. Marchese</i> , 242 N.J. 477 (2020) .....	5
<i>Loigman v. Kings Landing Condo. Ass’n, Inc.</i> , 324 N.J. Super. 97 (Ch. Div. 1999).....	6
<i>McMahon v. LVNV Funding, LLC</i> , 807 F.3d 872 (7th Cir. 2015) .....	18
<i>Midland Funding LLC v. Thiel</i> , 446 N.J. Super. 537 (App. Div. 2016).....	18
<i>Pace v. Hamilton Cove</i> , 258 N.J. 82 (2024).....	5

<i>Printing Mart-Morristown v. Sharp Elecs. Corp.</i> , 116 N.J. 739 (1989).....	5
<i>Rutgers-The State Univ. v. Fogel</i> , 403 N.J. Super. 389 (App. Div. 2008).....	15
<i>State v. Courtney</i> , 243 N.J. 77 (2020).....	7, 8
<i>Taylor v. Perrin, Landry, deLaunay &amp; Durand</i> , 103 F.3d 1232 (5th Cir. 1997) (single violation) .....	18
<i>United States ex rel. Espinoza v. Fairman</i> , 813 F.2d 117 (7th Cir. 1987) .....	11
<i>United States v. Adewani</i> , 467 F.3d 1340 (D.C. Cir. 2006) .....	11
<b>Statutes</b>	
15 U.S.C. § 1692(a).....	15
15 U.S.C. § 1692(b).....	16
15 U.S.C. § 1692(c).....	16
15 U.S.C. § 1692(e).....	16
15 U.S.C. § 1692b .....	17
15 U.S.C. § 1692c .....	17
15 U.S.C. § 1692c(b).....	passim
15 U.S.C. § 1692d .....	17
15 U.S.C. § 1692e .....	17
15 U.S.C. § 1692f.....	17
15 U.S.C. § 1692k .....	1
15 U.S.C. § 1692k(a).....	18, 19
15 U.S.C. § 1692k(b).....	19

42 U.S.C. § 17934 ..... 20

**Other Authorities**

45 C.F.R. § 164.502(a) ..... 21

45 C.F.R. § 164.502(e)(1)(i) ..... 21

45 C.F.R. § 164.502(e)(2) ..... 21

**TABLE OF JUDGMENTS, ORDERS AND RULINGS**

---

Order Granting Defendants’ Motion to Dismiss the Amended Complaint  
filed June 14, 2024.....Pa20

Order Granting Defendants’ Motion to Dismiss the First Amended  
Complaint filed February 14, 2025.....Pa71

## **PRELIMINARY STATEMENT**

---

This case asks the Court to apply the plain meaning of the statutory text of a federal remedial consumer protection statute. Doing so means concluding that Defendants Resurgent Capital Services L.P. (“Resurgent”) and CACH, LLC (“CACH”) violated Plaintiff Katia Etienne’s statutorily protected rights under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692-1692p.

Other than a few narrow exceptions, the FDCPA prohibits a debt collector from communicating with any person in connection with the collection of a debt. 15 U.S.C. § 1692c(b). Here, debt collectors Resurgent and CACH communicated with a person who does not fall within any exception. Therefore, Plaintiff sued to obtain the individual and class relief authorized by the FDCPA. *See* 15 U.S.C. § 1692k.

There are no precedents binding on this Court which would dictate how to apply the FDCPA to the alleged facts here. But, to ensure judicial comity and national uniformity in the interpretation of federal law, and to avoid forum shopping, the New Jersey Supreme Court requires our courts to give due respect to how the lower federal courts have interpreted and applied the statute. *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69 (1990).

Those federal court authorities recognize that the FDCPA is not

concerned with how a third-party might use the information—it prohibits the sharing of the information with all third parties regardless of whether the information will be used for noble or nefarious purposes. Hence the use of communicated information is irrelevant to Defendants’ liability.

Every published federal case deciding a motion to dismiss on the merits based on substantially similar factual allegations—*i.e.*, a debt collector who conveyed information about debts to a mail vendor—denied the motion, finding that § 1692c(b) means what it says and, therefore, those allegations state a claim upon which relief can be granted.

What happened to the unlawfully communicated information may be relevant to the quantum of damages, but is not dispositive of Plaintiff’s claims under the FDCPA. Here, Plaintiff alleges that Defendants conveyed information about a debt to an unknown third-party who used it to create, print, and mail Defendants’ collection letters. Whatever else the third party did with that information remains to be discovered.

Plaintiff asks this Court to follow the lead of the federal courts which addressed the merits of the claim and concluded that a debt collector’s conveyance of information about a debt to a third-party mail vendor violates § 1692c(b), and reverse the lower court’s Orders of dismissal.

## **PROCEDURAL HISTORY**

---

Plaintiff initiated this action by filing her Class Action Complaint on July 15, 2021. (Pa1).

On August 9, 2021, Defendants removed the action to the federal district court for the District of New Jersey. (Trans ID: LCV20211849340).

After the federal court found that it lacked subject matter jurisdiction, the action was remanded on or about September 14, 2022. (Trans ID: LCV20223389176).

On November 11, 2022, Defendants moved to dismiss the Complaint. (Pa18).

On June 14, 2024, the lower court granted Defendants' Motion and dismissed the Complaint. (Pa20).

Plaintiff filed her First Amended Complaint ("FAC") on July 15, 2024. (Pa47).

On August 19, 2024, Defendants moved to dismiss the FAC. (Pa67).

On February 14, 2024, the lower court entered an Order granting Defendants' Motion to Dismiss the FAC. (Pa71).

Plaintiff timely filed her Notice of Appeal on March 31, 2025. (Pa72).

## **STATEMENT OF FACTS**

---

Plaintiff Katia Etienne is a natural person who resides in New Jersey.

FAC ¶¶ 10-11.

Defendants are debt collectors conducting business in New Jersey. *Id.* at ¶¶ 13-14 (Pa5).

In an attempt to collect an alleged consumer debt on behalf of CAC, Resurgent caused a collection letter<sup>1</sup> to be sent to Plaintiff. FAC ¶¶ 24-31.

Defendants did not draft, print, address, or mail the collection letter to Plaintiff. *Id.* at ¶¶ 34-35. Instead, Defendants contracted with a mail vendor and transmitted Plaintiff's protected financial information without her prior consent so that the mail vendor could then print and mail the collection letter to Plaintiff. *Ibid.* Defendants unlawfully disclosed information about Plaintiff's alleged debt, including, *inter alia*, Plaintiff's name, birthdate, current address, the account number associated with the alleged debt, and the alleged balance due. *Id.* at ¶ 46.

The data which Defendants provided to the third-party mail vendor has a market value—the mail vendor can sell or “rent” the data to list managers who sell data aggregated from multiple sources. In addition, as the number of servers upon which the data exists increases, the risk that the data will be hacked increases. *Id.* at ¶¶ 47-57.

---

<sup>1</sup> Annexed to the FAC as Exhibit B (Pa66).

## LEGAL ARGUMENT

---

### The Standard of Review (Raised Below: T1)

This appeal seeks review of the lower court’s grant of Defendants’ Motion under R. 4:6-2(e) to dismiss the FAC for failure to state a claim upon which relief can be granted. This Court’s review is *de novo*, “affording no deference to the trial court’s determination.” *Pace v. Hamilton Cove*, 258 N.J. 82, 95-96 (2024) (citing *Baskin v. P.C. Richard & Son, LLC*, 246 N.J. 157, 171 (2021)). A court must assume the facts asserted in the complaint are true, *Lembo v. Marchese*, 242 N.J. 477, 481 (2020), and the “plaintiff is entitled to the benefit of every reasonable inference as we ‘search[ ] the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.’” *Ibid.* (quoting *Printing Mart-Morristown v. Sharp Elecs. Corp.*, 116 N.J. 739, 746 (1989) quoting *Di Cristofaro v. Laurel Grove Mem’l Park*, 43 N.J. Super. 244, 252 (App. Div. 1957)).

### **POINT I. The Merits of Plaintiff’s Claim Under the Federal FDCPA Should Be Construed Consistently with How Lower Federal Courts Have Construed the Merits of Similar Claims. (Not Addressed Below)**

Under the principle of *stare decisis*, a court must follow binding precedents. Unfortunately, there are no binding precedents which resolve whether a debt collector’s conveyance of information about a debt to a third-

party mail vendor violates § 1692c(b). Indeed, there are only a handful or so of published opinions from the Courts of the State of New Jersey applying the FDCPA and roughly the same number from the U.S. Supreme Court—but none address § 1692c(b).

The absence of binding precedent does not mean that a New Jersey court writes on a clean slate when there is non-binding authority from the lower federal courts.

In *Dewey, supra*, the New Jersey Supreme Court instructed that, when construing federal statutes in the absence of binding precedent, judicial comity requires giving “due respect” for the decisions of the lower federal courts—particularly when the federal courts are in agreement. Doing so helps “ensure uniformity” and “discourages forum shopping.” *Dewey*, 121 N.J. at 80.

*Loigman v. Kings Landing Condo. Ass’n, Inc.*, 324 N.J. Super. 97 (Ch. Div. 1999) is an example of applying *Dewey* to the interpretation of the FDCPA. *Loigman* explained that “a state court placed in the position of ascertaining the content of federal law should look for the view taken by a majority of the lower federal courts.” *Loigman*, at 105 n.7. Consequently, in *Loigman*, the court rejected the minority view of the Third Circuit Court of Appeals notwithstanding that the Third Circuit encompasses New Jersey.

At the very least, *Dewey* requires consideration of the reasoning of the

decisions from the lower federal courts. And, if a New Jersey court chooses not to follow the view of those federal courts, it should articulate why it rejected that view—but it cannot ignore those federal court decisions.

**POINT II. Determining Congress’s Intent in Light of the Federal Courts’ Interpretation of §1692c(b) as Applied to Debt Collectors’ Use of Mail Vendors. (Not Addressed Below).**

Our Supreme Court has applied the general rules of statutory construction to the FDCPA:

When interpreting a statute, the Legislature’s intent is paramount and, generally, the statutory language is the best indicator of that intent. Statutory words are ascribed their ordinary meaning and are read in context with related provisions, giving sense to the legislation as a whole. This Court’s duty is clear: construe and apply the statute as enacted.

*Hodges v. Sasil Corp.*, 189 N.J. 210, 223 (2007) (internal cites and quotation marks omitted). Thus, “[i]f the plain language leads to a clear and unambiguous result, then our interpretative process is over.” *State v. Courtney*, 243 N.J. 77, 86 (2020) (quoting *Johnson v. Roselle EZ Quick LLC*, 226 N.J. 370, 386 (2016)); see also *Comm’r v. Brown*, 380 U.S. 563, 571 (1965) (applying the same principle to interpreting federal statutes). A court can consider “extrinsic evidence, including legislative history, committee reports, and contemporaneous construction” only after deciding that the statutory words are ambiguous or that the plain reading of the statute leads to an absurd

result by frustrating the statute's purpose. *Courtney*, 243 N.J. at 86; *see also Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 568-69 (2005) (addressing the limitations on the use of legislative history).

Here, the statute is 15 U.S.C. § 1692c(b), which states:

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, **a debt collector may not communicate, in connection with the collection of any debt, with any person** other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector. [Emphasis added.]

*Ibid.* (emphasis added). The focus here is on the bolded text because there is no contention that a debt collector's communication with a mail vendor falls within a statutory exception or is made to one of the authorized recipients.

Every federal court to consider whether a communication with a mail vendor violates § 1692c(b) finds the ordinary meaning of those statutory words are unambiguous and concludes that such a communication violates that provision without leading to an absurd result by frustrating the FDCPA's purposes.

In *Hunstein v. Preferred Collection & Mgmt. Servs.*, 994 F.3d 1341 (11th Cir. 2021) (*Hunstein I*) and *Hunstein v. Preferred Collection & Mgmt.*

*Servs.*, 17 F.4th 1016 (11th Cir. 2021) (*Hunstein II*), the court concluded that the consumer stated a claim for violation of § 1692c(b) when alleging the debt collector supplied information to a mail vendor used to generate, print, and mail a collection letter.

Germane to the trial court's Orders of dismissal here, the Eleventh Circuit's decisions focused on whether the debt collector's communication to the mail vendor was "in connection with the collection of any debt." After concluding that such a communication is facially made in connection with the collection of a debt, the court addressed the debt collector's argument to the contrary.

The court rejected the argument that, to be in connection with the collection of a debt, the communication must include a demand for payment. The court observed that, if a payment demand were necessary, then much of the section's exceptions would be superfluous which would violate a "cardinal principle of statutory construction" to give meaning to every word. *Hunstein I*, 994 F.3d at 1351.

The court also rejected the argument that the practice of using mail vendors is widespread and has not previously been questioned. "That this is (or may be) the first case in which a debtor has sued a debt collector for disclosing his personal information to a mail vendor hardly proves that such disclosures

are lawful.” *Hunstein I*, 994 F.3d at 1352. The Eleventh Circuit also commented on the potential impact of its decision.

We recognize, as well, that those costs may not purchase much in the way of “real” consumer privacy, as we doubt that the Compumails of the world routinely read, care about, or abuse the information that debt collectors transmit to them. Even so, our obligation is to interpret the law as written, whether or not we think the resulting consequences are particularly sensible or desirable. Needless to say, if Congress thinks that we've misread § 1692c(b)—or even that we've properly read it but that it should be amended—it can say so.

*Hunstein I*, 994 F.3d at 1352. Before turning to the other published federal decisions, we address that both decisions were vacated for reasons having nothing to do with whether alleging that a debt collector conveyed information about a debt to a mail vendor states a claim for the violation of § 1692c(b).

Addressing the threshold question of its jurisdiction, *Hunstein I* first concluded the plaintiff had standing such that the action was a case-or-controversy over which a federal court could have subject matter jurisdiction.

*Hunstein II* vacated *Hunstein I* to consider the jurisdictional question following a recent U.S. Supreme Court decision on standing. After concluding that the plaintiff had standing, *Hunstein II* repeated verbatim its decision in *Hunstein I* as to the sufficiency of the complaint to state a claim. Subsequently, *Hunstein II* was vacated for rehearing *en banc*. *Hunstein v. Preferred Collection & Mgmt. Servs.*, 17 F.4th 1103 (11th Cir. 2021). The Eleventh

Circuit's *en banc* decision concluded there was no subject matter jurisdiction without undermining the panel decisions that the complaint stated a claim for violation of § 1692c(b). *Hunstein v. Preferred Collection & Mgmt. Servs.*, 48 F.4th 1236 (11th Cir. 2022).

Where a decision is vacated on other grounds, its undisturbed decision remains as precedential authority. *See Christianson v. Colt Indus. Operating Corp.*, 870 F.2d 1292, 1298 (7th Cir. 1989) (“the Supreme Court vacated the Federal Circuit’s decision on the ground that it was inappropriate for the Federal Circuit, in the interests of justice, to decide the merits of a case over which it did not have jurisdiction. Nevertheless, there is no indication that the Supreme Court found any error in the Federal Circuit’s decision. Thus, although vacated, the decision stands as the most comprehensive source of guidance available on the patent law questions at issue in this case.”), *Action All. of Senior Citizens v. Sullivan*, 930 F.2d 77, 83 (D.C. Cir. 1991) (“Although the Supreme Court vacated our prior opinion, [...] it expressed no opinion on the merit of these holdings. They therefore continue to have precedential weight, and in the absence of contrary authority, we do not disturb them.”), *United States v. Adewani*, 467 F.3d 1340, 1342 (D.C. Cir. 2006), and *United States ex rel. Espinoza v. Fairman*, 813 F.2d 117, 125 n.7 (7th Cir. 1987); *see also Cty. of L.A. v. Davis*, 440 U.S. 625, 646 n.10 (1979) (Powell, J.,

dissenting). Thus, although *Hunstein I* and *II* are not binding, they remain as precedential authority with respect to the sufficiency of the mail vendor claim.

Turning to the other lower federal court decisions, *Khimmat v. Weltman, Weinberg & Reis Co, LPA*, 585 F. Supp. 3d 707 (E.D. Pa. 2022) enforced the FDCPA's plain meaning.

When it comes to statutes, one hopes Congress channels Dr. Seuss: "I meant what I said and I said what I meant." Unfortunately, the Mad Hatter teaches that meaning what you say and saying what you mean are "not the same thing a bit." And sometimes, a statute might say something that Congress did not necessarily mean. But courts have to start with the presumption that Congress meant what it said. So when a statute says something, a court must give effect to that enactment. And if it turns out that's not what Congress meant, then it will be up to Congress to fix it.

At bottom, this dispute is about whether Congress meant what it said in the Fair Debt Collection Practices Act. It used language that, on its face, bars debt collectors from communicating information about debtors to letter vendors. Defendant [...] argues that Congress could not have meant what it said and asks the Court to interpret the statute in the way that [Defendant] thinks Congress must have meant. But the Court must assume that Congress meant what it said, and it will enforce the statute that way.

*Khimmat* at 710 (internal citations omitted). *Khimmat* also addressed the argument that a debt collector's transmittal of consumer information to its letter vendor for the purposes of printing and mailing collection letters is not a communication in connection with the collection of a debt. *Khimmat's*

reasoning, like *Hunstein*'s, conflicts with the trial court's reasoning in that both cases acknowledged that a communication made in connection with the collection of a debt is not limited to those communications that are sent solely to induce payment; the statute is not to be interpreted as regulating only 'communications to collect a debt.'

Given both the statutory structure and the Third Circuit's holding in *Simon*, the Court rejects Weltman's invitation to adopt interpretations at odds with the statutory language. First, Weltman argues that only a communication that seeks to motivate a consumer to pay a debt is a communication in connection with a debt. Section 1692c(b) says otherwise, though. It contemplates communications with a creditor or the creditor's attorney, a consumer reporting agency, and the debt collector's attorney. Communications with those groups will not demand payment or motivate a consumer to pay a debt. Instead, they are communications that have a connection to the debt. Weltman's proposed interpretation would render superfluous the statute's exceptions for communications with these groups. In addition, Weltman's proposed interpretation would read the words "in connection with" out of the statute and limit the statute's reach to communications to "collect any debt." Those are not the words Congress used, though, and the Court must assume "in connection with" adds some meaning beyond just the actual collection activity.

*Khimmat*, 585 F. Supp. 3d at 712-13. Similarly, the court in *Jackin v.*

*Enhanced Recovery Co., LLC*, 606 F. Supp. 3d 1031 (E.D. Wash. 2022) also concluded the communication with a mail vendor violates the FDCPA. As

*Hunstein I* and *II* had done, *Jackin* at 1039:

recognize[d] the economic burden that its holding may have on Defendant, as Defendant can no longer legally outsource its collection efforts to commercial mail vendors in the same manner. But the Court must take Congress at its word, which here bars Defendant's outsourcing practice. The statute explicitly provides for several disclosure exemptions, but mail vendors are not included in those exemption [sic].

We are aware of at least one unpublished federal court decision<sup>2</sup> addressing the same issue and it is in accord with *Hunstein I* and *II*, *Khimmat*, and *Jackin*. We have found no contrary unpublished federal decisions, but Plaintiff does not rely on unpublished decisions. *Cf. R. 1:36-3*.

Here, the lower court never acknowledged any federal court decisions and did not address the reasoning in those decisions. Instead, the lower court improperly limited the scope of § 1692c(b) to include only those communications that induce payment and exclude communications *in connection with* the collection of a debt, as well as improperly narrowed the espoused purpose of the FDCPA to that of “avoid[ing] embarrassment of the debtor.” T1 12:21-22. However, disclosure of a consumer debtor's information to a person outside the exceptions enumerated by § 1692c(b) *is an abusive practice as defined by the FDCPA*. Acts outside the code of conduct

---

<sup>2</sup> *Ali v. Credit Corp. Sols., Inc.*, No. 21-cv-5790, 2022 U.S. Dist. LEXIS 59126, 2022 WL 986166 (N.D. Ill. Mar. 30, 2022).

established by the FDCPA are the practices that the FDCPA was enacted meant to curb. Thus, the trial court's Orders of dismissal should be reversed.

**POINT III. Putting the FDCPA in Context (Addressed Below:T1)**

When interpreting a specific section of a statute, a court considers the provision in the context of the overall statute. *Hodges*, 189 N.J. at 223. The plain meaning of § 1692c(b) as interpreted by the federal courts is consistent with the FDCPA's regulation of the debt collection industry.

**A. FDCPA's Purpose and Structure**

“In adopting the Act, [...] Congress left no doubt that its purpose was to protect debtors from abuse and that Congress perceived a need for national uniformity to fulfill that goal.” *Rutgers-The State Univ. v. Fogel*, 403 N.J. Super. 389, 394 (App. Div. 2008).

The FDCPA begins by reciting the findings made by Congress as the basis for its adoption. Congress found there to be “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors.” 15 U.S.C. § 1692(a)<sup>3</sup>. Those unacceptable practices “contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Ibid*.

---

<sup>3</sup> Note that 15 U.S.C. § 1692(a), the first paragraph in § 1692, is different from 15 U.S.C. § 1692a.

At the same time, “[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers.” 15 U.S.C. § 1692(b).

Congress also found that “[m]eans other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.” 15 U.S.C. § 1692(c).

After making those findings, Congress expressed three distinct purposes for adopting the FDCPA. The first purpose is “to eliminate abusive debt collection practices by debt collectors.” 15 U.S.C. § 1692(e).

The second purpose is “to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged.” 15 U.S.C. § 1692(e). Thus, Congress believed that enforcing the FDCPA would prevent law-abiding collectors from feeling the need to engage in prohibited practices to remain competitive.

The third purpose, which is not involved here, is “to promote consistent State action to protect consumers against debt collection abuses.” § 1692(e).

The federal courts’ construction of § 1692c(b) protects against invasions of individual privacy, prevents collection practices which places consumer privacy at risk, and ensures that those debt collectors who refrain from using mail vendors are not competitively disadvantaged. Hence, there is no legitimate argument that the federal courts’ interpretation is inconsistent with the FDCPA

overall scheme, frustrates the FDCPA's purposes, or yields an absurd result.

Structurally, the FDCPA imposes a Code of Conduct which, among other things, requires debt collectors to treat consumers respectfully (by prohibiting harassing, oppressive, and abusive conduct), honestly (by banning "any false, deceptive, or misleading representation or means"), and fairly (by prohibiting the use of "unfair or unconscionable means"). 15 U.S.C. § 1692d, § 1692e, and § 1692f.

In 15 U.S.C. § 1692b, which is not specifically relevant to Plaintiff's claims but helps explain the statutory structure, the Act restricts communications with those who might have contact information (called "location information") about a consumer.

In addition to prohibiting third-party communications, 15 U.S.C. § 1692c addresses debt collectors' communications with the consumer during certain hours, at work, and when represented by counsel, and also provides how a consumer can require a debt collector to cease further communications.

#### **B. Elements of an FDCPA Cause of Action**

Under 15 U.S.C. § 1692k, the FDCPA "grants a private right of action to a consumer who receives a communication that violates the Act." *Jacobson v. Healthcare Fin. Servs.*, 516 F.3d 85, 91 (2d Cir. 2008). Indeed, "Congress intended the Act to be enforced primarily by consumers." *FTC v. Shaffner*, 626

F.2d 32, 35 (7th Cir. 1980).

The FDCPA is a strict liability statute which provides for damages and attorney's fees upon the showing of just one violation. *McMahon v. LVNV Funding, LLC*, 807 F.3d 872, 876 (7th Cir. 2015) (strict liability); *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 368 (3d Cir. 2011) (strict liability citing, in footnote 7, supporting authorities from the Second, Ninth, and Eleventh Circuits as well as the Seventh); *Taylor v. Perrin, Landry, deLaunay & Durand*, 103 F.3d 1232, 1238 (5th Cir. 1997) (single violation); *Bentley v. Great Lakes Collection Bureau*, 6 F.3d 60, 62-3 (2d Cir. 1993) (single violation).

At 15 U.S.C. § 1692k(a), the FDCPA mandates a debt collector's liability for any actual damages, limited statutory damages, and attorney's fees to a "person" when the debt collector violates "any provision [...] with respect to that person." Consequently, courts have generally enumerated four elements:

- (1) [the plaintiff] is a consumer,
- (2) the [defendant] is a debt collector,
- (3) the...challenged practice involves an attempt to collect a "debt" as the Act defines it, and
- (4) the [defendant] has violated a provision of the FDCPA in attempting to collect the debt.

*Midland Funding LLC v. Thiel*, 446 N.J. Super. 537, 549 (App. Div. 2016)

(quoting *Douglass v. Convergent Outsourcing*, 765 F.3d 299, 303 (3d Cir. 2014)). The first three elements determine whether the FDCPA applies to the debt collector's conduct and the last element determines whether that conduct violates the consumer's statutory rights.

Here, Defendants have not challenged that they are debt collectors, that Plaintiff is a consumer, or that Defendants' conduct involves an attempt to collect a covered debt. Instead, the dispute is over the fourth element: whether Defendants violated a provision of the FDCPA.

As for damages, Plaintiff seeks statutory damages which are limited to a maximum of \$1,000 for the Plaintiff and 1% of Defendants' net worth for the class. § 1692k(a). Plaintiff's damages are based on consideration of three factors which are "the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional." 15 U.S.C. § 1692k(b). The putative class's damages involve consideration of those three factors as well as "the resources of the debt collector, [and] the number of persons adversely affected." *Ibid.* Additional factors may be considered. *Ibid.*

### **C. The Bar Against Third-Party Communications.**

Under § 1692c(b), a debt collector is barred from virtually all third-party communications. The disclosure of confidential financial and personal

information is an invasion of one's personal privacy and poses the risk of further disclosure or publication.

Nothing in the FDCPA constrains the breadth of the prohibition against third-party communications except for the expressed exceptions. And none of those exceptions allow for communications with mail vendors. To the contrary, Congress articulated that it was highly concerned with the "invasions of individual privacy" arising from abusive debt collection practices. *See* 15 U.S.C. § 1692(a). As a result of these concerns, Congress provided limits on the use of a consumer's information and protections from its misuse. Thus, in § 1692c(b), Congress did indeed identify, with particularity, whom debt collectors may disclose consumer information—and no one else.

Congress did not express or imply that a debt collector could communicate with others when a debt collector believed that doing so would make the collection of debts cheaper or more efficient. Hence, § 1692c(b) flatly prohibits all third-party communications regardless of the reason unless one of the exceptions applies or the communication is to one of the few authorizes recipients. There is no exception for benign communications or for communications to third parties who promise to keep the information a secret. And Congress knows how to regulate permissible third-party communications of confidential information. For example, in 42 U.S.C. § 17934, Congress

statutorily required business associates of health care providers to comply with existing regulations governing the use and disclosure of protected health information (PHI) per 45 C.F.R. § 164.502(e)(2). HIPAA's Privacy Rule bars a health care provider from disclosing PHI except as permitted or required by law and one permitted exception is providing PHI to the provider's business associate. 45 C.F.R. § 164.502(a); 45 C.F.R. § 164.502(e)(1)(i). The provider must obtain "satisfactory assurance that the business associate will appropriately safeguard the information." 45 C.F.R. § 164.502(e)(1)(i). Satisfactory assurances "must be documented through a written contract...that meets the applicable requirements of § 164.504(e)." 45 C.F.R. § 164.502(e)(2). The required contractual terms under § 164.504(e) include: establishing the business associate's permitted and required uses and disclosure of PHI; prohibiting the business associate from any other use or disclosure; and requiring the business associate to use appropriate safeguards, report breaches, and make its books and records available to the Secretary of HHS for the purpose of determining the covered entity's compliance.

**POINT IV. The FDCPA'S Legislative History and Agency Interpretations are Consistent with the Federal Courts' Decisions. (Not Addressed Below)**

It is sufficient at this stage to make preliminary observations. As a threshold matter, "[l]egislative history, after all, almost always has something

for everyone!” *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 609 (2010) (Scalia, J. concurring).

First, to the extent the FDCPA’s expressed restrictions on debt collectors’ use of telegrams and telephone calls implies the use of those services subject to otherwise complying with the FDCPA, those do not imply allowing the use of mail vendors. Moreover, *Khimmat*, 585 F. Supp. 3d at 715, explained how mail vendors are different from phone and telegram operators.

Second, the legislative history and agency commentary on communications with a consumer’s family, neighbors, friends, and employers has nothing to do with the general proscription against third-party communications under § 1692c(b). Instead, that extrinsic material concerns a different section of the FDCPA, § 1692b, which regulates a debt collector’s communications with those who might have contact information for the consumers. Hence, that legislative history cannot be used to limit the scope of § 1692c(b). Indeed, doing so would render most of the statutory wording superfluous. Thus, Defendants’ communications with its letter vendor violated the plain language of 1692c(b) and the lower court’s Orders of dismissal should be reversed.

## **CONCLUSION**

---

For the foregoing reasons, Plaintiff Katia Etienne respectfully requests

the Court reverse the Orders dismissing the Complaint and First Amended Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Mark Jensen

Dated: July 24, 2024

Mark Jensen  
Yongmoon Kim  
KIM LAW FIRM LLC  
411 Hackensack Ave, Suite 701  
Hackensack, New Jersey 07601  
Tel. & Fax: (201) 273-7117  
*Attorneys for Plaintiff-Appellant*

**Superior Court of New Jersey**  
**Appellate Division**

KATIA ETIENNE, on behalf of herself  
and those similarly situated,

*Plaintiff-Appellant,*

-against-

RESURGENT CAPITAL SERVICES  
L.P., CACH, LLC and JOHN DOES  
1 to 10,

*Defendants -Respondents.*

SUPERIOR COURT OF  
NEW JERSEY APPELLATE  
DIVISION

DOCKET NO. A-002258-24

CIVIL ACTION

On Appeal from the Final  
Judgment of The Superior Court  
of New Jersey Law  
Division, Essex County,  
Dated February 14, 2025

Sat Below:

Hon. Mayra V. Tarantino, J.S.C.  
Trial Court Docket No. ESX-L-5557-21

**BRIEF FOR DEFENDANTS-RESPONDENTS**

J ROBBIN LAW  
*Attorneys for Defendants-Respondents*  
200 Business Park Drive, Suite 103  
Armonk, New York 10504  
(914) 685-5017  
jacquelyn.dicicco@jrobbinlaw.com

*Of Counsel and on the Brief:*  
JACQUELYN A. DICICCO  
(031032010)

**TABLE OF CONTENTS**

PRELIMINARY STATEMENT..... 1

PROCEDURAL HISTORY..... 3

STATEMENT OF FACTS ..... 5

I. The Debt ..... 5

II. The Notice Sent by Respondent..... 6

LEGAL ARGUMENT..... 7

I. APPELLANT’S APPEAL OF THE JUNE 14, 2024 ORDER IS TIME-BARRED ..... 7

II. THE LOWER COURT CORRECTLY HELD, CONSISTENT WITH THE PRIOR RULINGS OF THE APPELLATE DIVISION, THAT APPELLANT’S FAC FAILS TO STATE A CLAIM ..... 9

A. Respondent’s Use of a Letter Vendor Is Not a Violative Third-Party Communication to Collect a Debt under the FDCPA.....10

B. The Plain Language of the FDCPA Confirms the Lower Court Holding.....23

III. THOUGH THE LOWER COURT DID NOT REACH THE ISSUE OF STANDING, THE RECORD DEMONSTRATES THAT APPELLANT LACKS STANDING TO MAINTAIN THIS ACTION ..... 28

IV. APPELLANT WAIVED ALL REMAINING ARGUMENTS ..... 33

CONCLUSION..... 35

**TABLE OF AUTHORITIES**

**Cases**

*Allen v. Wright*,  
468 U.S. 737 (1984) ..... 29

*Amato v. Subaru of Am., Inc.*,  
2019 U.S. Dist. LEXIS 209659 (D.N.J. Dec. 5, 2019)..... 10

*Asmad-Escobar v. Phx. Fin. Servs. LLC*,  
2024 N.J. Super. Unpub. LEXIS 1044 (N.J. Super. Ct. App. Div. June 5,  
2024) ..... *passim*

*Barclift v. Keystone Credit Servs., LLC*,  
2024 93 F.4th 136 (3d Cir. 2024)..... *passim*

*Bassett v. Credit Bureau Services, Inc.*,  
F.4th 1132 (8th Cir. 2023)..... 32

*Ciccone v. Cavalry Portfolio Servs., LLC*,  
2021 U.S. Dist. LEXIS 228037 (E.D.N.Y. Nov. 29, 2021)..... 30

*Coalition for the Env't v. Volpe*,  
504 F.2d 156 (8th Cir.1974) ..... 29

*Coleman v. United States*,  
2017 U.S. Dist. LEXIS 93737, 2017 WL 2636045 (D.N.J.  
June 16, 2017) ..... 10

*Diana v. FNCB*,  
HUD-L-003014-23 (N.J. Super. Ct. L. Div. Hudson Cnty.  
Aug. 2, 2024) ..... 20

*Diana v. First Nat'l Collection Bureau, Inc.*,  
2025 N.J. Super. Unpub. LEXIS 1880 (N.J. Super. Ct. App. Div. Oct. 6  
2025) ..... *passim*

*Elshabba v. Jefferson Cap. Sys., LLC*,  
2025 N.J. Super. Unpub. LEXIS 725 (N.J. Super. Ct. App. Div. May 2,  
2025) ..... *passim*

*Gburek v. Litton Loan Servicing LP*,  
614 F.3d 380 (7th Cir. 2010) ..... 24

*Ginocchio v. Resurgent Receivables, LLC*,  
Docket No. 2024-407 S C (N.Y. Sup. Ct. App. Div. 9<sup>th</sup>/10<sup>th</sup> Dist. Aug. 13  
2025)..... 19

*Gonzales v. Receivables Performance Mgmt., LLC*,  
2022 U.S. Dist. LEXIS 192056, 2022 WL 16751307 (M.D. Fla. Oct. 20,  
2022)..... 31

*Goodson v. Bank of Am., N.A.*,  
600 Fed. Appx. 422 (6th Cir. 2015)..... 16

*Grden v. Lelkin Ingber & Winters PC*,  
643 F.3d 169 (6th Cir. 2011) .....16, 24

*Green v. Forster and Garbus*,  
2023 N.Y. Misc. LEXIS 1565 (N.Y. Sup. Ct. Suffolk Cnty.  
Jan 9, 2023)..... 30

*Gregory v. Nationstar Mortg., LLC*,  
2014 U.S. Dist. LEXIS 64138, 2014 WL 1875167 (D.N.J. May 8,  
2014)..... 25

*Guarini v. N.Y.*,  
215 N.J. Super. 426 (N.J. Super. Ct. Ch. Div. Hudon Cty. 1986) ..... 29

*Guzman v. M. Teixeira International, Inc.*,  
476 N.J. Super. 64 (N.J. Super. Ct. App. Div. 2023) ..... 9

*Hannah Valent v. EOS CCA*,  
Docket No. 2383CV00535 (Commonwealth MA, Plymouth Cnty. Nov.  
7, 2024) ..... 19

*Hopkins v. Convergent Outsourcing, Inc.*,  
2025 N.J. Super. Unpub. LEXIS 731 (N.J. Super. Ct. App. Div. May 2,  
2025)..... *passim*

*Hunstein v. Preferred Collection and Mgmt. Services Inc.*,  
994 F.3d 1341 (11th Cir. 2021)..... *passim*

*In Re FDCPA Mailing Vendor Cases*,  
 2021 U.S. Dist. LEXIS 139848, 2021 WL 3160794 (E.D.N.Y. July 23,  
 2021) ..... 17, 18, 31

*In re Hill*,  
 241 N.J. Super. 367, 575 A.2d 42 (N.J. Super. Ct. App. Div. 1990) ..... 8

*Jackson v. I.C. Sys.*,  
 2023 U.S. Dist. LEXIS 5173, 2023 WL 157517 (D.N.J. 2023)..... 31

*Jones v. Am. Coradius Int’l LLC*,  
 2025 N.J. Super. Unpub. LEXIS 728 (N.J. Super. Ct. App. Div. May 2,  
 2025) ..... *passim*

*Kieffer v. High Points Ins. Co.*,  
 422 N.J. Super. 38 (N.J. Super. Ct. App. Div. 2011) ..... 10

*Latonya Miller v. Americollect, Inc.*,  
 Docket No. ESX-L-006164-21 (N.J. Super. Ct. L. Div. Essex Cnty. Jan.  
 18, 2024) ..... 20

*Leon v. Rite Aid Corp.*,  
 340 N.J. Super. 462 (N.J. Super. Ct. App. Div. 2001) ..... 10

*LeSpes v. Monarch Recovery Mgmt., Inc.*,  
 2023 U.S. Dist. LEXIS 108451 (D.N.J. Apr. 14, 2023) ..... 31

*Mhrez v. Convergent Outsourcing, Inc.*,  
 2024 N.J. Super. Unpub. LEXIS 1040 (N.J. Super. Ct. App. Div. June 5,  
 2024) ..... *passim*

*Moore v. Merchs. & Med. Credit Corp.*,  
 2023 U.S. Dist. LEXIS 170842 (M.D. Pa. Sept. 25, 2023) ..... 31

*N.O.C., Inc. v. Schaefer*,  
 197 N.J. Super. 249, 484 A.2d 729 (1984) ..... 26

*NCP Litigation Trust v. KPMG*,  
 399 N.J. Super. 606 (N.J Super. Ct. Essex Cnty. 2007) .....29, 30

*Nyanjom v. NPAS Solutions, LLC*,  
 2022 U.S. Dist. LEXIS 9894, 2022 WL 168222 (D. Kan. Jan. 19,  
 2022) ..... 33

*Patty Scro v. First National Collection Bureau, Inc. and LVNV Funding, LLC*,  
 No. 2023-582 C.P. (Ct. of Common Pleas, Susquehanna Cty. Apr. 29,  
 2024).....30, 32

*Pitts v. Bayview Loan Servicing, LLC*,  
 2018 U.S. Dist. LEXIS 35250, 2018 WL 1151711 (D.N.J. Mar. 5,  
 2018)..... 25

*Printing Mart-Morristown v. Sharp Electronics Corp.*,  
 116 N.J. 739 (1989)..... 9

*Quaglia v. NSI93, LLC*,  
 2021 U.S. Dist. LEXIS 254290 (N.D. Ill. Oct. 12, 2021) ..... 26

*Ricci v. Ricci*,  
 448 N.J. Super. 546, 154 A.3d 215 (N.J. Super. Ct. App. Div. 2017) ..... 7

*Schedit v. DRS Tech, Inc.*,  
 424 N.J. Super. 188 (N.J. Super. Ct. App. Div. 2012) ..... 10

*Sherman v. British Leyland Motors*,  
 601 F.2d 429 (9th Cir. 1979) ..... 29

*Shields v. Professional Bureau of Collections of Maryland, Inc.*,  
 55 F.4th 823 (10th Cir. 2022)..... 32

*Shirazi v. Roach & Murtha Atty’s at Law*,  
 2023 N.Y. Misc. LEXIS 1508 (N.Y. Sup. Ct. Nassau Cnty. April 3,  
 2023)..... 30

*Simon v. FIA Card Servs., N.A.*,  
 732 F.3d 259 (3d Cir. 2013) .....15, 16, 24

*Simpkins v. Saiani*,  
 356 N.J. Super. 26 (N.J. Super. Ct. App. Div. 2022) ..... 24

*Sklodowsky v. Lushis*,  
 417 N.J. Super. 648 (N.J. Super. Ct. App. Div. 2011) ..... 33

*Stallworth v. Terrill Outsourcing Grp., LLC*,  
 2023 Ill Cir Lexis 3 (Cir. Ct. Cook Cnty Ill. Mar. 15, 2023) .....21, 24, 26

*State v. Butler*,  
89 N.J. 220, 445 A.2d 399 (N.J. Super. Ct. App. Div. 1982)..... 24

*State v. W.C.*,  
468 N.J. Super. 324 (N.J. Super. Ct. App. Div. 2021) .....33, 34

*Stella v. Dean Witter Reynolds, Inc.*,  
214 N.J. Super. 55 (N.J. Super. Ct. App. Div. 1990) ..... 30

*Sun v. Wal-Mart Stores*,  
2021 N.J. Super. Unpub. LEXIS 2987, 2021 WL 5860863 (N.J. Super.  
Ct. App. Div. Dec. 10, 2021) ..... 7

*TransUnion LLC v. Ramirez*,  
141 S. Ct. 2190 (2021) ..... *passim*

*Triffin v. Somerset Valley Bank*,  
343 N.J. Super. 73 (N.J. Super. Ct. App. Div. 2001) ..... 29

*Vilinsky v. Phelan Hallinan & Diamond, P.C.*,  
2015 U.S. Dist. LEXIS 77575, 2015 WL 3767494 (D.N.J.  
June 16, 2015) ..... 24

*Warth v. Seldin*,  
422 U.S. 490 (1975) ..... 29

*Watkins v. Resorts Int’l Hotel & Casino*,  
124 N.J. 398 (1991)..... 28

*Zoltan v. Credit Collection Servs.*,  
2023 NYLJ LEXIS 1213 (N.Y. Sup. Ct. Rockland Cnty. May 4,  
2023) .....31, 32

**Statutes**

15 U.S.C. § 1692 ..... 1

23 N.Y.C.R.R. § 1.4 ..... 6, 28

N.J.S.A. 56:8 ..... 9

Rule 2:4 ..... 4, 7, 8, 9

Rule 2:5 ..... 7, 8  
Rule 4:6 .....9, 10, 12

**PRELIMINARY STATEMENT**

Appellant, Katia Etienne, on behalf of herself and those similarly situated (“Appellant”), seeks to reverse the Order of the Superior Court of New Jersey, Law Division, Essex County (“Lower Court”), dated February 14, 2025, which properly granted Defendants-Respondents, Resurgent Capital Services, L.P. (“Resurgent”) and CACH, LLC (“CACH”) (together, “Respondents”), motion to dismiss Appellant’s First Amended Complaint (“FAC”).

Identical to the original Complaint, the FAC attempts to manufacture claims against Respondents under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”) based on the unsubstantiated allegation that Respondents violated the FDCPA simply by using a third-party vendor to mail Appellant a statutorily required notice. But the use of a third-party letter vendor has been uniformly approved by this Court, most recently on October 6, 2025 in *Diana v. First Nat’l Collection Bureau, Inc.*, 2025 N.J. Super. Unpub. LEXIS 1880 (N.J. Super. Ct. App. Div. Oct. 6, 2025). *See also Jones v. Am. Coradius Int’l LLC*, 2025 N.J. Super. Unpub. LEXIS 728 (N.J. Super. Ct. App. Div. May 2, 2025); *Hopkins v. Convergent Outsourcing, Inc.*, 2025 N.J. Super. Unpub. LEXIS 731 (N.J. Super. Ct. App. Div. May 2, 2025); *Elshabba v. Jefferson Cap. Sys., LLC*, 2025 N.J. Super. Unpub. LEXIS 725 (N.J. Super. Ct. App. Div. May 2, 2025); *Asmad-Escobar v. Phx. Fin. Servs. LLC*, 2024 N.J. Super. Unpub.

LEXIS 1044 (N.J. Super. Ct. App. Div. June 5, 2024); *Mhrez v. Convergent Outsourcing, Inc.*, 2024 N.J. Super. Unpub. LEXIS 1040 (N.J. Super. Ct. App. Div. June 5, 2024). Thus, Appellant not only blatantly ignores these decisions but is asking this Court to ignore its prior holdings on the identical issue.

Regardless, in unison with this Court's prior holdings, almost every federal and state court that has reviewed the use of a letter vendor has determined that the mere use of a letter vendor is not violative of the FDCPA. Specifically, the transmission of information from a debt collector to its vendor is not a "communication" covered by, or otherwise in violation of, the FDCPA, and, thus, a plaintiff is not damaged by the same. Within the FAC, Appellant relies on the now vacated Eleventh Circuit's decision in *Hunstein v. Preferred Collection and Mgmt. Services Inc.*, 994 F.3d 1341, 1347-1349 (11th Cir. 2021). Not only is *Hunstein* not binding on this Court, but it is also neither applicable nor persuasive, as it was overturned and rejected almost unanimously, especially within this Circuit. See *Barclift v. Keystone Credit Servs., LLC*, 2024 93 F.4th 136, 146 (3d Cir. 2024) (unlike *Hunstein*, holding "[l]ike our sister circuits, we conclude that the harm from disclosures that remain functionally internal are not closely related to those stemming from public ones").

Thus, the Lower Court twice correctly determined that Appellant's claims must be dismissed.

## PROCEDURAL HISTORY

On July 15, 2021, Appellant initiated the current action by filing a Summons and Complaint in the Lower Court under Docket Number ESX-L-5557-21 (“Action”). (Pa<sup>1</sup>1-Pa17; Pa67-Pa70, ¶ 3).

On November 11, 2022, Respondents moved to dismiss the Complaint (“Respondents MTD the Original Complaint”). (Pa67-Pa70, ¶ 4). On December 6, 2022, Appellant opposed Respondents’ MTD the Original Complaint. (Pa67-Pa70, ¶ 5). On December 12, 2022, Respondents replied in further support of Respondents’ MTD the Original Complaint. (Pa67-Pa70, ¶ 6). On February 17, 2023, the Lower Court held oral argument on Respondents’ MTD the Original Complaint. (Pa67-Pa70, ¶ 7).

By Order dated June 14, 2024, the Lower Court granted Respondents Motion to Dismiss the Original Complaint and dismissed the Complaint without prejudice “to a right to re-plead to address the pleading deficiency . . .” (Pa20-Pa46; Pa67-Pa70, ¶ 16). Specifically, it permitted Appellant to amend the pleadings to address the deficiencies within the original Complaint as it pertains to the handling of Appellant’s data by a third-party letter vendor. (Pa20-Pa46).

---

<sup>1</sup> Pa. Refers to Plaintiff-Appellant’s Amended Appendix filed with the Court on September 12, 2025 at E1720878-09122025.

Appellant failed to appeal the Order dated June 14, 2024 within the time-frame required to do so pursuant to *Rule 2:4-1(a)*.

On July 15, 2024, Appellant filed the FAC. (Pa47-Pa66; Pa67-Pa70, ¶ 17). Respondents' deadline to respond to the FAC was extended through August 19, 2024. (Pa67-Pa70, ¶ 18). On August 19, 2024, Respondents moved to dismiss the FAC ("Respondent's MTD the FAC"). (Pa67-Pa70). On October 15, 2024, Appellant opposed Respondents' MTD the FAC. On October 31, 2024, Respondents replied in further support of its MTD the FAC.

On February 14, 2025, the Lower Court held oral argument on Respondents' MTD the FAC. (T<sup>2</sup>, *generally*). During argument, the Lower Court noted:

I looked at the original complaint and then I looked at the amended complaint to see what [w]as new, and how the new paragraphs that were added to the amended complaint address all of the issues that the Court found lacking in the original complaint so as to bring this case under the Fair Debt Collection Practices Act. And I must say [] none of the new allegations that you've included in the complaints really change anything from the Court's decision – the Court's – I'm gonna say, the June 13<sup>th</sup> decision and statement of reasons.

---

<sup>2</sup> T refers to the Transcript of the oral argument on Respondents' MTD the FAC before the Honorable Mayra V. Tarantino, J.S.C. of the Lower Court on February 14, 2025 and filed by the Court on April 7, 2025.

(T7-6-25; T8-1-2). In reviewing the Lower Court’s June 14, 2024 Order dismissing the original Complaint, the Lower Court incorporated by reference the statement of reasons in that Order and hold that “[Appellant] did not fix the issues that were noted by Judge Lynott with the additional paragraphs that are included in the amended complaint.” (T19-16-19). By Order dated February 14, 2025, the Lower Court granted Respondents’ MTD the FAC (“Dismissal Order”). (Pa71).

On March 31, 2025, Appellant filed a Notice of Appeal, seeking to reverse the Dismissal Order of the Lower Court correctly granting Respondents’ MTD the FAC. (Pa72-Pa75; E1689046-03312025).

On August 22, 2025, 389 days beyond its deadline to do so, Appellant filed an Amended Notice of Appeal, now seeking to untimely appeal the June 14, 2024 Order dismissing the original Complaint. (Pa77; E1717014-08222025). On that same date, August 22, 2025, Appellant perfected its appeal. (E1717020-08222025).

Respondent now timely submits its Respondent’s Brief and Respondent’s Appendix.

## **STATEMENT OF FACTS**

### **I. The Debt**

On December 11, 2012, Appellant obtained a credit card from Capital One, N.A. (“Capital One”) bearing account number \*\*\*\*\*2799

(“Account”). Thereafter, Appellant used the Account to make purchases and made at least one payment on November 13, 2013, on the Account. Following the November 13, 2013 payment, Appellant ceased making further payments and defaulted on the Account by failing to pay amounts owed as they became due. (Pa47-Pa66, ¶ 27). All rights held by Capital One to the Account were thereafter sold to CACH c/o Resurgent. (Pa47-Pa66, ¶ 28). Plaintiff neither disputes the debt, nor that she defaulted. (Pa47-Pa66, *generally*).

## **II. The Notice Sent by Respondent**

Resurgent, as the master servicing agent for CACH, subsequently placed the Account with Resurgent for servicing. Per the FAC, on or about July 16, 2020, Resurgent, on behalf of CACH, sent a notice dated that day to Appellant in response to Appellant’s inquiry and dispute of the Debt in compliance with NYDFS pursuant to 23 N.Y.C.R.R. § 1.4<sup>3</sup> (“Notice”). (Pa66). The Notice states,

---

<sup>3</sup> 23 N.Y.C.R.R. § 1.4 requires a debt collector to communicate with a consumer in writing: “[i]f a consumer disputes, orally or in writing, the validity of a charged-off debt or the right of the debt collector to collect on a charged-off debt, the debt collector must inform the consumer that the consumer may request substantiation of the debt, unless the debt collector has already provided the consumer the information required in this section. 23 N.Y.C.R.R. § 1.4 (a). In addition, “[a] debt collector must provide the consumer written substantiation of a charged-off debt within 60 days of receiving a request for substantiation of the debt and must cease collection of the debt until written substantiation has been provided to the consumer. A debt collector must substantiate a charged-off debt pursuant to this section only once during the period that the debt collector owns or has the right to collect the debt.” 23 N.Y.C.R.R. § 1.4 (b).

“[y]ou are receiving this notice as a result of your recent dispute regarding the above-referenced account. New York state regulations require us to inform you that you have the right to request substantiation of this debt.” *Id.* Appellant alleges that the Notice “was mailed using a third-party letter vendor.” ((Pa47-Pa66, ¶ 34).

## LEGAL ARGUMENT

### **I. APPELLANT’S APPEAL OF THE JUNE 14, 2024 ORDER IS TIME-BARRLED**

Appellant’s Appeal of the June 14, 2024 Order is untimely.

The time to take an appeal of a final judgment, or order, is governed by *Rule 2:4*. *Rule 2:4-1(a)* mandates that “[a]ppeals from final judgments of courts . . . shall be taken within 45 days of their entry.” The time to take an appeal of an interlocutory order is governed by *Rule 2:5-6(a)*. *Rule 2:5-6(a)* mandates that when appealing an interlocutory order, the Appellant is required to file a motion for leave to appeal “within 20 days after the date of service of such order”.

When an “appeal is untimely, the Appellate Division [lacks] jurisdiction to decide the merits.” *Ricci v. Ricci*, 448 N.J. Super. 546, 565, 154 A.3d 215 (N.J. Super. Ct. App. Div. 2017); *see also Sun v. Wal-Mart Stores*, 2021 N.J. Super. Unpub. LEXIS 2987, at \*9, 2021 WL 5860863 (N.J. Super. Ct. App. Div.

Dec. 10, 2021) at Ra<sup>4</sup>1-Ra<sup>6</sup>; (holding a party's failure to move for leave to file its appeal out of time, requires the court to dismiss the appeal as untimely because the court lacks jurisdiction to entertain it). This rule stems from the fact that "it is of the utmost importance that at some point judgments become final and litigations come to an end." *In re Hill*, 241 N.J. Super. 367, 371, 575 A.2d 42 (N.J. Super. Ct. App. Div. 1990).

Appellant's Notice of Appeal is untimely under both *Rules*. First, under *Rule 2:4-1(a)*, the deadline to file a Notice of Appeal of the June 14, 2024 Order expired forty-five (45) days later - on July 29, 2024. *See Rule 2:4-1(a)*. Appellant failed to file an Amended Notice of Appeal to include the June 14, 2024 Order until August 22, 2025 – three hundred eighty-nine (389) days beyond her required deadline to do so. Second, under *Rule 2:5-6(a)*, Appellant was required to move for leave to appeal twenty (20) days later – on July 5, 2024. *See Rule 2:5-6(a)*. Appellant failed to file a motion for leave to appeal, but, instead, filed an Amended Notice of Appeal to include the June 14, 2024 Order on August 22, 2025 – four hundred thirteen (413) days beyond her required deadline to do so.<sup>5</sup>

---

<sup>4</sup> Ra Refers to Defendants-Respondents' Appendix filed with the Court simultaneously with the instant Brief.

<sup>5</sup> Notably, Appellant filed the Amended Notice of Appeal to include the June 14, 2024 Order on August 22, 2025 (Pa77; E1717014-08222025), the same date Appellant perfected her Appeal on August 22, 2025 (E1717020-08222025). Thus,

Even if Appellant sought an extension of time pursuant to *Rule 2:4-1*, that request is similarly barred as untimely because Appellant failed to timely file a Notice of Appeal. *See Rule 2:4-4*. Thus, Appellant’s appeal of the June 14, 2024 Order must be dismissed.

**II. THE LOWER COURT CORRECTLY HELD, CONSISTENT WITH THE PRIOR RULINGS OF THE APPELLATE DIVISION, THAT APPELLANT’S FAC FAILS TO STATE A CLAIM**

The Lower Court correctly held Appellant’s Complaint and the FAC both fail to plead a claim and that the deficiencies noted by the Lower Court regarding the original Complaint were not remediated by the FAC.<sup>6</sup>

*Rule 4:6-2(e)* provides that a defendant may make a motion for judgment on the pleadings for a plaintiff’s “failure to state a claim upon which relief can be granted.” *See Rule 4:6-2(3)*. “This Rule tests ‘the legal sufficiency of the facts alleged on the face of the complaint.’” *Guzman v. M. Teixeira International, Inc.*, 476 N.J. Super. 64, 69 (N.J. Super. Ct. App. Div. 2023) (quoting *Printing Mart-Morristown v. Sharp Electronics Corp.*, 116 N.J. 739, 746 (1989)). “To defeat

---

due to the time constraint to respond to the Appellant’s Brief, Appellant includes the relief for dismissal of the Appeal within the instant Brief.

<sup>6</sup> Appellant alleged violation of the FDCPA and also alleged invasion of privacy, negligence, and violation of the New Jersey Consumer Fraud Act, *N.J.S.A. 56:8, et seq.* (“NJCFA”). But, Appellant has abandoned these arguments on appeal and, instead, focuses solely on the FDCPA. *See Point IV, infra*. Thus, Respondents will focus the instant Brief solely on the FDCPA.

a *Rule* 4:6-2(e) motion, a plaintiff [. . .] need[s] [to] establish the complaint contains ‘allegations which, if proven, would constitute a valid cause of action.’” *Id.* (quoting *Kieffer v. High Points Ins. Co.*, 422 N.J. Super. 38, 42 (N.J. Super. Ct. App. Div. 2011) (quoting *Leon v. Rite Aid Corp.*, 340 N.J. Super. 462, 472 (N.J. Super. Ct. App. Div. 2001))).

**A. Respondent’s Use of a Letter Vendor Is Not a Violative Third-Party Communication to Collect a Debt under the FDCPA**

Like the original Complaint, the FAC alleges nothing more than a blanket assertion, based on information and belief, that Respondents violated the FDCPA through disclosing information to a third-party letter vendor. (*Compare* Pa1-Pa17 to Pa47-Pa66). The Lower Court twice recognized that this bare conclusory allegation is insufficient to sustain a claim. *See* Pa20-Pa46, *generally*, and T, *generally*; *see also* *Schedit v. DRS Tech, Inc.*, 424 N.J. Super. 188, 193 (N.J. Super. Ct. App. Div. 2012) (“nonetheless, we recognize that, in conducting our review, the essential facts supporting plaintiff’s cause of action must be presented in order for the claim to survive; conclusory allegations are insufficient in that regard.”); *Amato v. Subaru of Am., Inc.*, 2019 U.S. Dist. LEXIS 209659, at \*25 (D.N.J. Dec. 5, 2019) (conclusory allegations are insufficient to state a claim); *Coleman v. United States*, 2017 U.S. Dist. LEXIS 93737, at \*21, 2017 WL 2636045 (D.N.J. June 16, 2017) (conclusory allegations are insufficient to state a claim and, thus, the claims must be dismissed).

Notwithstanding the pleading deficiency in both the original Complaint and FAC, the Court also held Appellant could not state a claim. (Pa71; T, *generally*). This holding is directly on point with this Court's prior holdings that the use of a letter vendor is not a violation of the FDCPA. Specifically, this Court issued its most recent decisions on October 6, 2025, May 2, 2025 and on June 5, 2024, affirming the grant of dismissal of complaints brought under Appellant's **identical** FDCPA letter vendor liability theory. See *Diana*<sup>7</sup>, 2025 N.J. Super. Unpub. LEXIS 1880; *Jones*<sup>8</sup>, 2025 N.J. Super. Unpub. LEXIS 728<sup>9</sup>; *Hopkins*, 2025 N.J. Super. Unpub. LEXIS 731<sup>10</sup>; *Elshabba*, 2025 N.J. Super. Unpub. LEXIS 726<sup>11</sup>; *Asmad-Escobar*, 2024 N.J. Super. Unpub. LEXIS 1044<sup>12</sup>; *Mhrez*, 2024 N.J. Super. Unpub. LEXIS 1040<sup>13</sup>. In these cases, this Court held there is no claim under a disclosure of information to mail vendor theory. Counsel has reviewed and has found no New

---

<sup>7</sup> (Ra90-Ra92).

<sup>8</sup> Appellant's counsel here was also the plaintiff-appellant's counsel in *Jones*, *Hopkins*, *Elshabba*, and *Asmad-Escobar* and thus is well versed in this Court's holdings regarding this legal issue and these fact patterns.

<sup>9</sup> (Ra81-Ra84).

<sup>10</sup> (Ra77-Ra81).

<sup>11</sup> (Ra74-Ra76).

<sup>12</sup> (Ra48-Ra51).

<sup>13</sup> (Ra52-Ra54).

Jersey Appellate cases that are inconsistent with this Court’s holdings in *Diana*<sup>14</sup>, *Jones*<sup>15</sup>, *Hopkins*<sup>16</sup>, *Elshabba*<sup>17</sup>, *Asmad-Escobar*<sup>18</sup> or *Mhrez*<sup>19</sup>.

In *Diana*, the plaintiff brought an action alleging violations of, *inter alia*, the FDCPA when defendant utilized the services of a third-party letter vendor to mail a letter to plaintiff. 2025 N.J. Super. Unpub. LEXIS 1880, at \*2<sup>20</sup>. This Court held “a debt collector’s use of a third-party letter vendor to mail a collection notice does not constitute prohibited third-party communication under the FDCPA . . .” *Id.* at \*7.

Likewise, in *Asmad-Escobar*, the plaintiff brought causes of action under, *inter alia*, the FDCPA based on the defendants’ use of a letter vendor. *Asmad-Escobar*, 2024 N.J. Super. Unpub. LEXIS 1044, at \*1-2<sup>21</sup>. There, in analyzing the complaint under *Rule* 4:6-2(e), the Appellate Division specifically rejected the reliance on the *Hunstein*<sup>22</sup> theory of liability and affirmed the trial court’s dismissal of the complaint as follows:

---

<sup>14</sup> (Ra90-Ra92).

<sup>15</sup> (Ra81-Ra84).

<sup>16</sup> (Ra77-Ra80).

<sup>17</sup> (Ra74-Ra76).

<sup>18</sup> (Ra48-Ra51).

<sup>19</sup> (Ra52-Ra54).

<sup>20</sup> (Ra90-Ra92).

<sup>21</sup> (Ra48-Ra51).

<sup>22</sup> Initially, a panel of the Eleventh Circuit requested supplemental briefing on the issue of standing, following which it agreed with the district court’s decision that *Hunstein* had standing and reversed the dismissal for failure to state a

Plaintiff's complaint is premised on a conclusory allegation that defendants' use of a letter vendor to create a debt collection letter was, in and of itself, abusive, deceptive or unfair. We concur with the trial judge's findings that the use of a letter vendor was not abusive, deceptive, or unfair and was not the type of conduct that Congress was interested in preventing when it enacted the FDCPA. When viewing plaintiff's complaint and providing him every reasonable inference of fact, because plaintiff was unable to "genuinely allege" any facts about Phoenix's conduct that violated the FDCPA, we determine the trial court properly dismissed his complaint.

*Id.*, at \*6-7.

In *Mhrez*, this Court reviewed a trial court's dismissal of an amended complaint which alleged the "defendant 'employed the use of a third-party vendor . . . to send a letter to [p]laintiff seeking to collect the alleged debt.'" *Mhrez*, 2024 N.J. Super. Unpub. LEXIS 1040, at \*7<sup>23</sup>. "The complaint claimed '[p]laintiff's information has been exposed to a third party that understands the data received and applies its quality control procedures' to the data, 'employees of [the vendor] have the ability to access [p]laintiff's personal and protected data' and, because the vendor's employees 'provide the letter to the United States Post Office for mailing,' they 'have either explicit or implicit knowledge of the fact that [p]laintiff is an

---

claim. *See Hunstein*, 994 F.3d 1341, 1345-1352 (11th Cir. 2021). However, after the Supreme Court issued its decision in *TransUnion*, the panel vacated its opinion but subsequently issued a new one that maintained the same outcome. *See* 17 F.4th 1103 (11th Cir. 2021). The Eleventh Circuit then decided to review the case *en banc*, ultimately vacating and remanding the decision. *See* 48 F.4th at 1236.

<sup>23</sup> (Ra52-Ra54).

alleged debtor.” *Id.* The Appellate Division agreed with the trial court by finding that the plaintiff’s allegations that the use of a letter vendor created a substantial risk of harm were abstract and, more importantly, that “[e]ven when providing every favorable inference to the allegations in plaintiff’s complaint, nothing in it alleged defendant’s conduct was abusive, deceptive or unfair, which is the harm Congress intended to prevent.” *Id.*

In *Jones, Hopkins, and Elshabba*, plaintiff alleged defendant’s use of a letter vendor to create a debt collection letter violated the FDCPA. *Jones*, 2025 N.J. Super. Unpub. LEXIS 728, at \*4<sup>24</sup>; *Hopkins*, 2025 N.J. Super. Unpub. LEXIS 731, at \*5<sup>25</sup>; *Elshabba*, 2025 N.J. Super. Unpub. LEXIS 726, at \*5<sup>26</sup>. In all these cases, this Court held the exact same holding:

[w]e concur with the motion judge’s determination that plaintiff’s proposed interpretation of the FDCPA was uncritically literal. Defendant’s disclosure of debt-related information to a letter vendor was not abusive, deceptive, nor unfair, and was not the type of conduct Congress intended to regulate when it enacted the FDCPA. When viewing plaintiff’s complaint and affording her [him] all reasonable inferences of fact, plaintiff did not ‘genuinely allege’ any facts establishing defendant’s conduct violating the FDCPA.

---

<sup>24</sup> (Ra81-Ra84).

<sup>25</sup> (Ra77-Ra80).

<sup>26</sup> (Ra74-Ra76).

*Jones*, 2025 N.J. Super. Unpub. LEXIS 728, at \*4-5<sup>27</sup>; *Hopkins*, 2025 N.J. Super. Unpub. LEXIS 731, at \*6<sup>28</sup>; *Elshabba*, 2025 N.J. Super. Unpub. LEXIS 726, at \*6<sup>29</sup>.

Despite this Court’s prior consistent holdings, Appellant continues to rely on the Eleventh Circuit’s decision in *Hunstein*, which this court has already directly rejected. *See* Appellant’s Brief, *generally*. Regardless, *Hunstein* is inapplicable here, as the *Hunstein* court vacated its prior decision in favor of an *en banc* review and ultimately dismissing the case for lack of standing because of Appellant not having suffered an injury. 17 F.4th 1016 (11th Cir. 2021).

Not only is the Eleventh Circuit decision in *Hunstein* not binding on this Court and inapplicable to the facts as alleged in the FAC, but the Third Circuit’s *Barclift* decision demonstrates a direct rejection of *Hunstein*. *See Barclift*, 93 F.4th at 146 (unlike *Hunstein*, “[l]ike our sister circuits, we conclude that the harm from disclosures that remain functionally internal are not closely related to those stemming from public ones”); *see also Simon v. FIA Card Servs., N.A.*, 732 F.3d 259, 265 (3d Cir. 2013).

Specifically, in determining what communication qualifies as a violative communication, the Third Circuit relying on the Sixth Circuit’s definition of “in connection” whereas *Hunstein*, rejected the identical cases, and instead specifically

---

<sup>27</sup> (Ra81-Ra84).

<sup>28</sup> (Ra77-Ra80).

<sup>29</sup> (Ra74-Ra76).

held that “the harm from disclosures that remain functionally internal are not closely related to those stemming from public ones.” *Barclift*, 93 F.4th at 146; compare *Simon*, 732 F.3d at 265 (approving of *Grden v. Lelkin Ingber & Winters PC*, 643 F.3d 169, 173 (6th Cir. 2011)) with *Hunstein*, 994 F.3d 1341, 1347-1349 (11th Cir. 2021) (disagreeing with *Goodson v. Bank of Am., N.A.*, 600 Fed. Appx. 422 (6th Cir. 2015) (approving of and reinforcing the *Grden* holding). And “[w]hen the communication of personal information only occurs between a debt collector and an intermediary tasked with contacting the consumer, the consumer has not suffered the kind of privacy harm traditionally associated with public disclosure.” *Barclift*, 93 F.4th at 146. As a result, the Third Circuit’s definition is different than the *Hunstein* court’s definition of communication, and it is respectfully submitted that the Third Circuit’s definition should be applied by this Court, such that the conveyance of personal information from a debt collector and an intermediary tasked with contacting the consumer is not a “communication” violate of the FDCPA.

And the holding of the *Barclift* court is consistent with other criticisms of the original *Hunstein* holding. For example, in *TransUnion LLC v. Ramirez*, debtors sued a credit reporting agency claiming that the credit reporting agency provided misleading information on their credit reports to third-party businesses. 141 S. Ct. 2190, 2197 (2021). One group of the debtors had information that was for third-party businesses and the other group of debtors had information that was not yet

provided to third-party businesses. *Id.* In its analysis, the Supreme Court held that mere disclosures of personal information to printing vendors are not “actionable publications,” within the purview of the FDCPA. 141 S. Ct. at 2210, n.6 (2021).

Specifically, *TransUnion* held:

. . . the plaintiffs also argue that TransUnion ‘published’ the class members’ information internally—for example, to employees within TransUnion and to the vendors that printed and sent the mailings that the class members received. That new argument is . . . unavailing. Many American courts did not traditionally recognize intra-company disclosures as actionable publications for purposes of the tort of defamation. **Nor have they necessarily recognized disclosures to printing vendors as actionable publications.**

*Id.* (emphasis added) (internal citations omitted). In reaching this conclusion, *TransUnion* got to the root of “publication” and held that a communication within the company or to a third-party printer did not constitute a “publication.” *Id.* Thus, the use of a third-party vendor in the ordinary course of business for the publication of a letter or notice would not constitute a publication in terms of an invasion of privacy.

Likewise, in analyzing *Hunstein*’s reach after the *TransUnion* decision, the Eastern District of New York similarly held the debtor failed to state a claim for violation of the FDPCA based on the “mailing-vendor” theory. *In Re FDPCA Mailing Vendor Cases*, 2021 U.S. Dist. LEXIS 139848, 2021 WL 3160794 (E.D.N.Y. July 23, 2021). The court held, “the Supreme Court’s decision in

*TransUnion* casts significant doubt on the continued viability of *Hunstein*.” *In re FDCPA Mailing Vendor Cases*, 2021 U.S. Dist. LEXIS 139848, at \*15. And the Third Circuit in *Barclift* is yet more evidence of the lack of viability of Appellant’s reliance on *Hunstein*. *See Barclift*, 93 F.4th at 146.

Regardless, in *Hunstein*, the Court only held the plaintiff had Article III standing to assert a federal claim that the defendant’s transmittal of the debtor’s personal identifying debt-related information to a mailing vendor constitutes a violation of the FDCPA. 994 F.3d at 1347-1349. The Court did not hold that sending the information violated the FDCPA. *See id.*<sup>30</sup>

---

<sup>30</sup> Further, in *Hunstein*, the parties stipulated that the transmittal of the debtor’s information to the letter vendor was a “communication” as defined by the FDCPA and thus the Eleventh Circuit did not consider or analyze whether the transmission to a third-party vendor was, in fact, a communication in violation of the FDCPA. 994 F.3d at 1349 (“the parties also agree that Preferred’s transmittal of *Hunstein*’s personal information to Compumail constitutes a ‘communication’ within the meaning of the statute.”). By conceding that the defendant’s transmittal of information to the letter vendor was a “communication,” the *Hunstein* parties functionally conceded that such transmittal constituted “public disclosure of private facts” sufficient for the Eleventh Circuit to analogize the debtor’s alleged statutory violation to common law invasion of privacy and to determine there was standing. *Hunstein*, 994 F.3d at 1347-48. But the Eleventh Circuit did not hold there was an actual violation.

Here, no different than *Diana*<sup>31</sup>, *Jones*<sup>32</sup>, *Hopkins*<sup>33</sup>, *Elshabba*<sup>34</sup>, *Asmad-Escobar*<sup>35</sup> or *Mhrez*, which Appellant does not even attempt to distinguish, the disclosure of the information necessary to send the Notice to the alleged vendor was not a violative communication. This Court’s holding is consistent with sister states that have reviewed these same allegations, including New York and Massachusetts. *See, e.g., Ginocchio v. Resurgent Receivables, LLC*, Docket No. 2024-407 S C (N.Y. Sup. Ct. App. Div. 9<sup>th</sup>/10<sup>th</sup> Dist. Aug. 13 2025)<sup>36</sup> (“[w]e agree with those courts that have concluded that ‘[u]sing a mailing vendor to contact a consumer in a legitimate attempt to collect a debt is not a practice the [FDCPA] was meant to prohibit.”); *Hannah Valent v. EOS CCA*, Docket No. 2383CV00535 (Commonwealth MA, Plymouth Cnty. Nov. 7, 2024)<sup>37</sup> (“[t]his Court is persuaded by those decisions that conclude that a debt collector does not violate the Act by transmitting data to a letter vendor for the purpose of preparing a collection letter to be mailed to the debtor herself.”).

All of these cases have held that the alleged transmission from Respondent to the letter vendor was not itself a communication to seek collection of a payment

---

<sup>31</sup> (Ra90-Ra92).

<sup>32</sup> (Ra81-Ra84).

<sup>33</sup> (Ra77-Ra80).

<sup>34</sup> (Ra74-Ra76).

<sup>35</sup> (Ra48-Ra51).

<sup>36</sup> (Ra85-Ra89).

<sup>37</sup> (Ra65-Ra73).

from Appellant. (Pa66). *See* Point II(B), *infra*. So, while it is arguable whether the Notice itself was to collect payment from Appellant (*see* Point II(B), *infra*), the communication at issue is the conveyance of information from Respondent to the alleged letter vendor, which is *not* a communication to induce payment. Thus, the transmittal of information to a third-party letter vendor is not a “communication” in violation of the FDCPA and, the FAC must be dismissed on this basis alone. To hold otherwise would require this court to reject its holdings in *Diana*<sup>38</sup>, *Jones*<sup>39</sup>, *Hopkins*<sup>40</sup>, *Elshabba*<sup>41</sup>, *Asmad-Escobar*<sup>42</sup> and *Mhrez*<sup>43</sup>. This does not make sense.<sup>44</sup>

Other New Jersey state courts have uniformly concurred with the finding that the conveyance of information to a letter vendor does not constitute a “communication” as defined by the FDCPA. *See, e.g., Latonya Miller v. Americollect, Inc.*, Docket No. ESX-L-006164-21 (N.J. Super. Ct. L. Div. Essex Cnty. Jan. 18, 2024)<sup>45</sup>; *Diana v. FNCB*, HUD-L-003014-23 (N.J. Super. Ct. L.

---

<sup>38</sup> (Ra90-Ra92).

<sup>39</sup> (Ra81-Ra84).

<sup>40</sup> (Ra77-Ra80).

<sup>41</sup> (Ra74-Ra76).

<sup>42</sup> (Ra48-Ra51).

<sup>43</sup> (Ra52-Ra54).

<sup>44</sup> Counsel for Respondent has reviewed and not found any New Jersey cases either published or unpublished that are contrary to these five (5) cases.

<sup>45</sup> (Ra7-Ra39).

Div. Hudson Cnty. Aug. 2, 2024)<sup>46</sup> (Adopting reasons of *Asmad-Escobar* and *Mhrez*).

In *Miller v. Americollect*, the Essex County Superior Court noted as follows:

The conduct at issue – the transmitting of data to a letter vendor for the purpose of preparing a letter to then be directed to the debtor herself - is simply not “communicating” proscribed by the FDCPA, nor was the communication undertaken “in connection with the collection of any debt” under any sensible interpretation of such terms as used in the statute, given its purpose and objective. The letter vendor engaged by the debt collector here is no different than the telephone/telegraph operator engaged as a “medium” for a permitted communication.

*See id.*, p. 19<sup>47</sup>. The *Miller* Court rightly looked directly to the intent of the FDCPA in that “[t]o hold otherwise is to ignore the reality that debt collectors employ letter vendors to prepare correspondence necessary for their lawful operations and, in effect, to require such debt collectors necessarily to conduct business on a fully integrated basis without need for an outside letter vendor.” *Id.*<sup>48</sup>; *see also Stallworth v. Terrill Outsourcing Grp., LLC*, 2023 Ill Cir Lexis 3 (Cir. Ct. Cook Cnty Ill. Mar. 15, 2023) (holding communication with a letter vendor is not made in connection with the collection of a debt). Thus, the conveyance of information from a debt

---

<sup>46</sup> (Ra55-Ra64).

<sup>47</sup> (Ra7-Ra39).

<sup>48</sup> (Ra7-Ra39).

collector to its third-party letter vendor is not a “communication” under the FDCPA and indeed is necessary for a debt collector’s lawful operation.

Falling directly in line with the holdings of this Court in *Diana*<sup>49</sup>, *Jones*<sup>50</sup>, *Hopkins*<sup>51</sup>, *Elshabba*<sup>52</sup>, *Mhrez*<sup>53</sup> and *Asmad-Esocobar*<sup>54</sup>, in dismissing the original Complaint, the Lower Court correctly recognized the transmission of information to a letter vendor is not a communication made in connection with the collection of a debt and held:

The conduct at issue – the transmitting of data to a letter vendor for the purpose of preparing a letter to then be directed to the debtor herself - is simply not “communicat[ing]” proscribed by the FDCPA, nor was the communication undertaken “in connection with the collection of any debt” under any sensible interpretation of such terms as used in the statute. The letter vendor engaged by the debt collector here is no different than the telephone/telegram operator engaged as a “medium” for an otherwise permitted communication.

To hold otherwise is to ignore the reality that debt collectors employ letter vendors to prepare correspondence necessary for their lawful operations and, in effect, to require such debt collectors necessarily to conduct business on a fully integrated basis without need for an outside letter vendor. There is simply no basis in either the letter or the intendment of the FDCPA for any such conclusion.

---

<sup>49</sup> (Ra90-Ra92).

<sup>50</sup> (Ra81-Ra84).

<sup>51</sup> (Ra77-Ra80).

<sup>52</sup> (Ra74-Ra76).

<sup>53</sup> (Ra52-Ra54).

<sup>54</sup> (Ra48-Ra51).

(Pa20-Pa46). And in further evaluating any potential harm that could arise from the use of a letter vendor, the Lower Court also noted that, “[u]nlike employers, neighbors, family members or friends of the debtor, the employees of a letter vendor possess no ability to inflict reputational or other harm on a debtor simply by processing the information into a template letter intended to be sent to the debtor.” *Id.* (citing *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021)).

On February 14, 2025, the Lower Court incorporated the reasoning of the Lower Court in the June 14, 2024 Order and held that the FAC failed to set forth a violation of the FDCPA by the transmission of the Notice to the letter-vendor. (T, *generally*).

Thus, in holding identical to the uniform decisions of this Court, the Lower Court correctly held that the transmittal of information to a third-party letter vendor is not a “communication” in violation of the FDCPA and correctly dismissed the FAC.

**B. The Plain Language of the FDCPA Confirms the Lower Court Holding**

Notwithstanding, the clear caselaw in favor of the Lower Court’s holding, the clear wording of the statute shows that the FDCPA does not apply to every

communication made to a third party.<sup>55</sup> Most federal circuits have determined that for a “communication” to be in connection with the collection of a debt, an animating purpose of the communication must be to induce payment by the debtor. *See Simon*, 732 F.3d at 266-267; *see also Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 385 (7th Cir. 2010) (noting a communication need not make an explicit demand for payment in order to fall under the scope of the FDCPA); *Grden*, 643 F.3d at 173 (“[A] letter that is not itself a collection attempt, but that aims to make . . . such an attempt more likely to succeed, is one that has the requisite connection.”); *see also Stallworth*, 2023 Ill Cir Lexis 3 (holding “it is clear that Defendants' communication to the letter vendor was not made in connection with the collection of a debt.”). The District of New Jersey has followed this precedent and held that where a disclosure or notice to a debtor does not make an explicit demand for payment or induces payment, it is not a “communication” in violation of the FDCPA. *See Vilinsky v. Phelan Hallinan & Diamond, P.C.*, 2015 U.S. Dist. LEXIS 77575, at \*9, 2015 WL 3767494 (D.N.J. June 16, 2015) (“Because the notice did not make an explicit demand for payment or suggest the underlying purpose of ‘inducing

---

<sup>55</sup> Because the wording of the statute is clear, the court need not consider any legislative history. *See State v. Butler*, 89 N.J. 220, 226, 445 A.2d 399 (N.J. Super. Ct. App. Div. 1982) (“If the statute is clear and unambiguous on its face and admits of only one interpretation, we need delve no deeper than the act's literal terms to divine the Legislature's intent.”); *see also Simpkins v. Saiani*, 356 N.J. Super. 26, 30-31 (N.J. Super. Ct. App. Div. 2022) (citing *Butler*, *supra*).

payment,’ it falls outside of the scope of ‘communication’ under the FDCPA as interpreted by the Third Circuit.”); *see also Gregory v. Nationstar Mortg., LLC*, 2014 U.S. Dist. LEXIS 64138, at \*10-11, 2014 WL 1875167 (D.N.J. May 8, 2014) (holding the letter was not a “communication” because the letter’s purpose was to convey information and not to induce payment); *Pitts v. Bayview Loan Servicing, LLC*, 2018 U.S. Dist. LEXIS 35250, at \* 7, 2018 WL 1151711 (D.N.J. Mar. 5, 2018) (where letters are sent pursuant to a Court Rule, and, absent an explicit demand for payment or suggestion that the notice is to “induce payment,” the notice falls outside the scope of “communication” under the FDCPA). Simply because the Notice came from a debt collector does not make the Notice an actionable communication. *See, e.g., Gregory*, 2014 U.S. Dist. LEXIS 64138, at \*8 (holding not every communication sent by a debt collector to a debtor is an actionable communication bringing it in the purview of the FDCPA).

The FDCPA was made to protect debtors from abusive debt collection practices, and the use of a letter vendor does not invade a debtor’s privacy, which appears to be the abuse sought to be avoided by Appellant. *Asmad-Escobar*, 2024 N.J. Super. Unpub. Lexis 1044, at \*6<sup>56</sup>. Indeed, “[t]he right of privacy encompasses the right to be protected from a wrongful intrusion which would

---

<sup>56</sup> (Ra48-Ra51).

outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities.” *N.O.C., Inc. v. Schaefer*, 197 N.J. Super. 249, 254, 484 A.2d 729 (1984). Yet, as the Lower Court rightly noted, it is unclear how the mere transmission of accurate data to a letter vendor constitutes an invasion of privacy in any manner. *See* T10-10-14 (“[T]here was no publication to anybody else, to the public at large. It went from a company that’s owed the money, to a letter vendor, to the creditor who didn’t pay. That’s not an invasion of privacy.”).

Nowhere in the statute is there a prohibition on the use of a letter vendor to accurately collect on a debt, and that is because it is not a harm meant to be protected by the FDCPA. *See, e.g., Stallworth*, 2023 Ill. Cir. 3, at \*11-12 (“these types of communications do not fall within the purpose or legislative history of the FDCPA.”) (citing 15 U.S.C. 1692 (e) (the purpose of the FDCPA is “to eliminate *abusive* debt collection practices . . .” (emphasis added)); S. Rep. 95-382, 2, 1977 U.S.C.C.A.N. 1695, 1696 (explaining that the FDCPA arose from the need to protect consumers from various collection abuses such as “disclosing a consumer's personal affairs to friends, neighbors, or an employer”)); *Quaglia v. NSI93, LLC*, 2021 U.S. Dist. LEXIS 254290, 6-7 (N.D. Ill. Oct. 12, 2021) (“[I]t is difficult to imagine Congress intended for the FDCPA to extend so far as to prevent debt collectors from enlisting the assistance of mailing vendors to perform ministerial duties, such as printing and stuffing the debt collectors’ letters, in

executing the task entrusted to them by the creditors . . . such a scenario runs afoul of the FDCPA's intended purpose to prevent debt collectors from utilizing truly offensive means to collect a debt"); 85 Fed. Reg. 76734, 76738 (Nov. 30, 2020), 86 Fed. Reg. 5766, 5845 n. 446 (Jan. 19, 2021) (to be codified at 12 C.F.R. § 1006) (Consumer Financial Protection Bureau Rules and Regulations which contemplate the use of letter vendors by debt collectors); *Trans Union LLC v. Ramirez*, 141 S. Ct. 2190, 2210 fn.6, 210 L. Ed. 2d 568 (indicating that American courts typically do not recognize disclosures to printing vendors as actionable)).

This Court noted that the FDCPA does not apply to every communication. In *Diana*<sup>57</sup>, this Court held

The statute's clear wording shows that the FDCPA does not apply to every communication made to a third party. Only communications whose primary purpose is to induce payment violate the FDCPA's third-party communication restrictions. Here, FNCB's transmission of plaintiff's information to a letter vendor did not itself seek to collect payment. Instead, it represented an internal step to facilitate mailing the collection letter. As such, it was not violative of the FDCPA.

2025 N.J. Super. Unpub. LEXIS, at \*5.

Here, the Respondent sent the statutorily required Notice under NYDFS regulations in response to Appellant's inquiry and dispute of the debt. *See* 23

---

<sup>57</sup> (Ra90-Ra92).

N.Y.C.R.R. § 1.4.<sup>58</sup> The Notice states, “You are receiving this notice as a result of your recent dispute regarding the above-referenced account. **New York state regulations require us** to inform you that you have the right to request substantiation of this debt.” (Pa66) (emphasis added). Nowhere does the Notice demand payment, seek resolution of the debt, or even reference payment options. *Id.* Rather, it was sent purely for informational purposes only explicitly stating: “this notice is for information purposes only, and **is not an attempt to collect the debt.**” *Id.* (emphasis added). Thus, the Notice is not a communication to collect the debt in violation of the FDCPA.

**III. THOUGH THE LOWER COURT DID NOT REACH THE ISSUE OF STANDING, THE RECORD DEMONSTRATES THAT APPELLANT LACKS STANDING TO MAINTAIN THIS ACTION**

“Standing is such a threshold issue. It neither depends on nor determines the merits of a plaintiff's claim.” *Watkins v. Resorts Int’l Hotel & Casino*, 124 N.J. 398,

---

<sup>58</sup> 23 N.Y.C.R.R. § 1.4 requires a debt collector to communicate with a consumer in writing: “[i]f a consumer disputes, orally or in writing, the validity of a charged-off debt or the right of the debt collector to collect on a charged-off debt, the debt collector must inform the consumer that the consumer may request substantiation of the debt, unless the debt collector has already provided the consumer the information required in this section. 23 N.Y.C.R.R. § 1.4 (a). In addition, “[a] debt collector must provide the consumer written substantiation of a charged-off debt within 60 days of receiving a request for substantiation of the debt and must cease collection of the debt until written substantiation has been provided to the consumer. A debt collector must substantiate a charged-off debt pursuant to this section only once during the period that the debt collector owns or has the right to collect the debt.” 23 N.Y.C.R.R. § 1.4 (b).

417-18 (1991) (citing *Allen v. Wright*, 468 U.S. 737, 750-51 (1984) (““In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.””) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)); citing *Coalition for the Env't v. Volpe*, 504 F.2d 156, 168 (8th Cir.1974) (standing “is a threshold inquiry” that “eschews evaluation of the merits”))). “Standing, like jurisdiction, involves a threshold determination of the court's power to hear the case.” *Id.* at 418 (citing *Sherman v. British Leyland Motors*, 601 F.2d 429, 439-40 (9th Cir. 1979) (standing issue is “akin to that of jurisdiction”); *see also NCP Litigation Trust v. KPMG*, 399 N.J. Super. 606, 618 (N.J. Super. Ct. Essex Cnty. 2007) (“Whether a party has standing to bring an action is a threshold inquiry under New Jersey law”) (citing *Triffin v. Somerset Valley Bank*, 343 N.J. Super. 73, 80 (N.J. Super. Ct. App. Div. 2001))).

“Standing involves ‘limits on the exercise of [ . . . ] jurisdiction.’” *Id.* (quoting *Wright*, 468 U.S. at 751; citing *Guarini v. N.Y.*, 215 N.J. Super. 426, 443 (N.J. Super. Ct. Ch. Div. Hudson Cnty. 1986), *aff'd*, 215 N.J. Super. 293 (App.Div.1986), *cert. denied*, 107 N.J. 77, *cert. denied*, 484 U.S. 817 (1987); R. Williams, *The New Jersey State Constitution: A Reference Guide* 95 (1990) (New Jersey courts impose standing requirement “before litigants may invoke the judicial power of the courts”)). To have standing to maintain an action, the plaintiff must be “[a] party who has suffered harm because of the defendant’s conduct.” *NCP*

*Litigation Trust*, 399 N.J. Super. at 618 (citing *Stella v. Dean Witter Reynolds, Inc.*, 214 N.J. Super. 55 (App. Div. 1990)).

To date, though New Jersey state courts have not specifically addressed whether the injuries like the ones alleged here by Appellant under the FDCPA confer standing, the District of New Jersey, other federal courts, and states' courts have uniformly held that plaintiffs like Appellant here lack standing to bring a claim because Courts allegations such as the ones now made in Appellant's FAC fails to state injuries sufficient for standing. *See, e.g., Scro v. FNCFB*, No 2023-584 (Common Pleas, Susquehanna Cty. PA Apr. 29, 2024)<sup>59</sup> (holding under PA law, plaintiff was not aggrieved and thus lacked standing due to defendants' use of a letter vendor); *Shirazi v. Roach & Murtha Atty's at Law*, 2023 N.Y. Misc. LEXIS 1508 (N.Y. Sup. Ct. Nassau Cnty. April 3, 2023) (holding plaintiff lacked standing to pursue a FDCPA claim because she suffered no injury-in fact); *Green v. Forster and Garbus*, 2023 N.Y. Misc. LEXIS 1565 (N.Y. Sup. Ct. Suffolk Cnty. Jan 9, 2023) (holding mere allegation of a violation of the FDCPA without more is insufficient to establish standing under New York law); *Ciccone v. Cavalry Portfolio Servs., LLC*, 2021 U.S. Dist. LEXIS 228037, at \*10 (E.D.N.Y. Nov. 29, 2021) (dismissing Plaintiff's mail vendor cause of action because "it is 'difficult to suggest' that the type of information Defendants communicated to their third-party vendors, such as

---

<sup>59</sup> (Ra40-Ra47).

Plaintiff's name and address; Plaintiff's status as a debtor; or the precise amount of the alleged debt, 'would be highly offensive to a reasonable person.'") (quoting *In re FDCPA Mailing Vendor Cases*, 2021 U.S. Dist. LEXIS 139848, at \*6); *Moore v. Merchs. & Med. Credit Corp.*, 2023 U.S. Dist. LEXIS 170842, at \*9-10 (M.D. Pa. Sept. 25, 2023) (dismissing Complaint for lack of standing). Indeed, no different than all the other cases before, Appellant's FAC fails to allege any concrete injury arising out of the use of a letter vendor. (Pa47-66).

In *LeSpes v. Monarch Recovery Mgmt., Inc.*, the District of New Jersey specifically held that "the allegations in the [letter vendor] complaint insufficient to establish that plaintiff suffered a concrete injury in fact akin to public disclosure of private facts necessary to confer standing to bring the claim in federal court." 2023 U.S. Dist. LEXIS 108451, at \*10-11 (D.N.J. Apr. 14, 2023); see *Jackson v. I.C. Sys.*, 2023 U.S. Dist. LEXIS 5173, 2023 WL 157517, at \*3-4 (D.N.J. 2023) (finding no standing to sue under the FDCPA where debt collector conveys "confidential information and status as a debtor to a third-party vendor who mailed" a dunning letter).

In *Zoltan v. Credit Collection Servs.*, a New York state court dismissed the plaintiff's Complaint on standing grounds holding:

it is now established that a federal statutory right can only provide a remedy if the violation resulted in a harm that shares a common law counterpart. In the present case, [the plaintiff] claims an injury due to the "disclosure of his

information to a third-party, a personal violation that allows redress by the statute." [...] However, this assertion is vaguely articulated and fails to meet the heightened standing requirements...

2023 NYLJ LEXIS 1213, at \*20-21 (N.Y. Sup. Ct. Rockland Cnty. May 4, 2023).

Thus, the *Zoltan* court determined as a matter of law that the plaintiff lacked standing to pursue the action. *See id.*, at \*21.

In *Patty Scro v. First National Collection Bureau, Inc. and LVNV Funding, LLC*, the Court of Common Pleas of Susquehanna County, Pennsylvania, held the plaintiff's allegation that the defendants used a third-party letter vendor failed to demonstrate that plaintiff had been aggrieved by FNCB's conduct such that she lacked standing to bring and maintain the action under the FDCPA. *See Patty Scro v. First National Collection Bureau, Inc. and LVNV Funding, LLC*, No. 2023-582 C.P. (Ct. of Common Pleas, Susquehanna Cty. Apr. 29, 2024)<sup>60</sup> (citing *Bassett v. Credit Bureau Services, Inc.*, F.4th 1132, 1137 (8th Cir. 2023) (finding that merely receiving a debt collection letter "without a concrete injury in fact" was insufficient to confer standing); *Shields v. Professional Bureau of Collections of Maryland, Inc.*, 55 F.4th 823, 829 (10th Cir. 2022) (finding no standing to sue where litigant suffered "no concrete tangible or intangible harms" from debt collector's use of a third-party vendor to prepare dunning letters); *Gonzales v. Receivables Performance Mgmt.*,

---

<sup>60</sup> (Ra40-Ra47).

*LLC*, 2022 U.S. Dist. LEXIS 192056, 2022 WL 16751307, at \*2 (M.D. Fla. Oct. 20, 2022) (finding plaintiff lacked standing where the only alleged FDCPA violation resulted from the use of a “third-party vendor to send out debt collection letters”); *Nyanjom v. NPAS Solutions, LLC*, 2022 U.S. Dist. LEXIS 9894, 2022 WL 168222, at \*6 (D. Kan. Jan. 19, 2022) (holding allegations that a debt collector used a third-party vendor to create a dunning letter “failed to establish a concrete and particularized injury-in-fact sufficient to establish Article III standing”).

Here, too, Appellant fails to allege any injury arising out of his letter vendor theory of liability. (Pa47-Pa66). Thus, the Lower Court could have dismissed the FAC on the basis that Appellant lacks standing.

#### **IV. APPELLANT WAIVED ALL REMAINING ARGUMENTS**

“[I]ssues not briefed on appeal [are] deemed waived.” *Sklodowsky v. Lushis*, 417 N.J. Super. 648, 657 (N.J. Super. Ct. App. Div. 2011); *see also State v. W.C.*, 468 N.J. Super. 324, 340-41 (N.J. Super. Ct. App Div. 2021) (“The parties have not presented any arguments concerning such issues, and we limit our decision only to the arguments presented and addressed by the parties.”)

Here, Appellant does not raise or address his claims for invasion of privacy, negligence, and violation of the NJCFA, which were similarly dismissed by the Lower Court and, as such, they have been waived.

Respondents, therefore, do not address those claims herein as the Court necessarily will limit its decision to the FDCPA claim. *See W.C., supra*. Notwithstanding, for the reasons stated in *Jones*<sup>61</sup>, *Hopkins*<sup>62</sup>, *Elshabba*<sup>63</sup>, *Asmad-Escobar*<sup>64</sup> and *Mhrez*<sup>65</sup>, “there was nothing unreasonable or offensive about [Respondent’s] conveyance of plaintiff’s information to a letter vendor for the legitimate purpose of creating a collections letter.” *Asmad-Escobar*, 2024 N.J. Super. Unpub. Lexis 1044, at \*9<sup>66</sup>.

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]**

---

<sup>61</sup> (Ra81-Ra84).

<sup>62</sup> (Ra77-Ra80).

<sup>63</sup> (Ra74-Ra76).

<sup>64</sup> (Ra48-Ra51).

<sup>65</sup> (Ra52-Ra54).

<sup>66</sup> (Ra48-Ra51).

**CONCLUSION**

For all the foregoing reasons, Respondents respectfully request that this honorable Court affirm the Lower Court's grant of Respondent's Motion to Dismiss the FAC for failure to state a claim or, alternatively, on a finding that Appellant lacks standing.

Dated: October 15, 2025

Respectfully submitted,

*/s/ Jacquelyn A. DiCicco, Esq.*

Jacquelyn A. DiCicco, Esq.

NJ Bar. No. 031032010

**J. ROBBIN LAW**

200 Business Park Drive, Suite 103

Armonk, New York 10504

[Jacquelyn.dicicco@jrobbinlaw.com](mailto:Jacquelyn.dicicco@jrobbinlaw.com)

(914) 685-5017

*Attorney(s) for Respondents*

---

---

**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION**



Docket No. A-002258-24

KATIA ETIENNE, on behalf of : **CIVIL ACTION**  
herself and those similarly situated, :  
 :  
 :  
 Plaintiff-Appellant, : ON APPEAL FROM THE FINAL  
 : JUDGMENT OF THE SUPERIOR  
 : COURT OF NEW JERSEY LAW  
 v. : DIVISION, ESSEX COUNTY  
 :  
 :  
 RESURGENT CAPITAL SERVICES : Trial Court Docket No.  
 L.P.; CACH, LLC; : ESX-L-5557-21  
 and JOHN DOES 1 to 10, :  
 :  
 :  
 Defendants-Respondents. : **Sat Below:**  
 : **HON. MAYRA V. TARANTINO, J.S.C.**  
 :  
 :  
 : **DATE: August 22, 2025**

---

---

**REPLY BRIEF ON BEHALF OF PLAINTIFF-APPELLANT**

---

---

KIM LAW FIRM LLC  
Yongmoon Kim (NJ Attorney ID 026122011)  
ykim@kimlf.com  
411 Hackensack Avenue, Suite 701  
Hackensack, New Jersey 07601  
Tel. & Fax: (201) 273-7117

*Attorneys for Katia Etienne, Plaintiff-Appellant*

**TABLE OF CONTENTS**

---

PRELIMINARY STATEMENT..... 1

LEGAL ARGUMENT ..... 2

    POINT I.    THERE IS NO BINDING AUTHORITY, AND THE  
                  PERSUASIVE AUTHORITY THAT EXISTS FAVORS  
                  APPELLANT..... 2

        A. This Court Should Follow *Devine* Because It Is Consistent with  
           the Weight of Persuasive Authority on an Issue of Federal Law ..... 5

    POINT II.  RESPONDENTS' STATUTORY ARGUMENT  
                  INVERTS THE STRUCTURE OF § 1692c(b) AND  
                  RELIES ON THE WRONG PROVISION ENTIRELY ..... 6

        A. Respondent Inverts The Structure of § 1692c(b). ..... 6

        B. The "Induce Payment" Standard Comes from § 1692e, Not §  
           1692c(b), and the Two Provisions Are Structurally Distinct..... 7

    POINT III. THIS COURT IS NOT BOUND BY ARTICLE III'S  
                  STANDING REQUIREMENTS ..... 8

    POINT IV.  THE PRIVACY STAKES CONFIRM WHY § 1692C(B)  
                  MUST BE ENFORCED AS WRITTEN ..... 11

CONCLUSION ..... 15

**TABLE OF AUTHORITIES**

---

**Cases**

*ASARCO Inc. v. Kadish*,  
490 U.S. 605 (1989) ..... 9

*Barclift v. Keystone Credit Servs., LLC*,  
93 F.4th 136 (3d Cir. 2024) ..... 6

*Baskin v. P.C. Richard & Son, LLC*,  
246 N.J. 157 (2021) ..... 10

*Devine v. Cavalry SPV I, LLC*,  
2026 LX 178774 (Law Div. Monmouth Cnty. Mar. 13, 2026) ..... 3, 4, 6

*DiProspero v. Penn*,  
183 N.J. 477, 874 A.2d 1039 (2005) ..... 3

*Frugis v. Bracigliano*,  
177 N.J. 250 (2003) ..... 4

*Hardt v. Reliance Standard Life Ins. Co.*,  
560 U.S. 242, 130 S. Ct. 2149, 176 L. Ed. 2d 998 (2010) ..... 3

*Hunstein v. Preferred Collection & Mgmt. Servs.*,  
994 F.3d 1341 (11th Cir. 2021) ..... 7

*In re DiGuglielmo*,  
252 N.J. 350 (2022) ..... 4

*L.W. v. Toms River Reg'l Schs. Bd. of Educ.*,  
189 N.J. 381 (2007) ..... 4

*Loigman v. Kings Landing Condo. Ass'n, Inc.*,  
324 N.J. Super. 97 (Ch. Div. 1999) ..... 5

*Mhrez v. First Nat'l Collection Bureau, Inc., HUD-L-2314-22*,  
2023 LX 43183 (Law Div. Hudson Cnty, June 9, 2023) ..... 2

*Mhrez v. First Nat'l Collection Bureau, Inc., No. A-0325-24*,  
2025 LX 410367 (App. Div. Nov. 3, 2025) ..... 2

*NCP Litigation Trust v. KPMG*,  
399 N.J. Super. 606 ..... 9

*New Jersey Coal. of Auto. Retailers, Inc. v. Ford Motor Co.*,  
261 N.J. 348 (2025) ..... 10

*O'Connell v. State*,  
171 N.J. 484 (2002) ..... 4

*State v. McAllister*,  
184 N.J. 17 (2005) ..... 12

*TransUnion LLC v. Ramirez*,  
594 U.S. 413 (2021) ..... 9

*Under Dewey v. R.J. Reynolds Tobacco Co.*,  
121 N.J. 69 (1990) ..... 5

**Statutes**

15 U.S.C. § 1692C .....*passim*

15 U.S.C. § 1692e ..... 7, 8

15 U.S.C. § 1692k ..... 10

**Other Authorities**

N.J. Const. art. VI, § III, ¶ 2 9

**Rules**

R. 1:36-3 ..... 2

## PRELIMINARY STATEMENT

---

This appeal presents a straightforward question of statutory interpretation. Section 1692c(b) prohibits a debt collector from communicating, in connection with the collection of a debt, with “any person” other than those Congress specifically exempted. Respondents disclosed Appellant’s debt information to a third-party letter vendor. Because a letter vendor is not among the statute’s exceptions, the First Amended Complaint states a claim.

Respondents’ contrary position depends on reading into § 1692c(b) an atextual limitation that appears nowhere in the statute: that the communication must itself be calculated to induce payment. But Congress did not write § 1692c(b) that way. It used broad language, then supplied specific exceptions. Courts may not narrow that prohibition by importing a payment-inducement test drawn from a different provision of the FDCPA.

The authorities Respondents cite do not require a different result. Their New Jersey cases are unpublished and nonbinding. Their federal cases largely concern federal Article III standing, which does not govern New Jersey courts. And the most persuasive merits decisions to address this issue—including a recent New Jersey trial court decision—recognize that § 1692c(b) means what it says.

## LEGAL ARGUMENT

---

### **POINT I. THERE IS NO BINDING AUTHORITY, AND THE PERSUASIVE AUTHORITY THAT EXISTS FAVORS APPELLANT**

Respondents begin by asserting that this Court’s prior decisions have “uniformly” resolved the letter-vendor issue against plaintiffs like Appellant. But none of the cases they cite are binding. Their string citation—*Diana, Jones, Hopkins, Elshabba, Asmad-Escobar, and Mhrez*—consists entirely of unpublished Appellate Division opinions, which “shall [not] constitute precedent or be binding upon any court.” *R.* 1:36-3. This Court is therefore free to decide the question anew. Respondents' argument thus reduces to this: a series of non-binding decisions all went one way, so this Court should follow. But that is precisely contrary to *R.* 1:36-3.

Additionally, Respondents’ claim is not true. In *Mhrez v. First Nat'l Collection Bureau, Inc.*, HUD-L-2314-22, 2023 LX 43183, at \*6-7 (Law Div. Hudson Cnty, June 9, 2023) (Pra30),<sup>1 2</sup> Judge Vanek, before being assigned the Appellate Division, held:

The court finds that the plain language of the governing statute is clear that transmission of a communication other than

---

<sup>1</sup> “Pra” refers to Plaintiff’s Reply Appendix

<sup>2</sup> After Judge Vanek was assigned to the Appellate Division, the trial court dismissed the case and the dismissal was affirmed in *Mhrez v. First Nat'l Collection Bureau, Inc.*, No. A-0325-24, 2025 LX 410367 (App. Div. Nov. 3, 2025).

through the methods allowable under the statute, which does not include a letter vendor, is a violation. *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 251, 130 S. Ct. 2149, 176 L. Ed. 2d 998 (2010). This court finds that by applying the plain language of the statute and not implying exceptions which have not been set forth by Congress, the language of the statute does advance the broad statutory purpose of protecting consumers from dissemination of their personal information to third parties in connection with the collection of a debt. *DiProspero v. Penn*, 183 N.J. 477, 492, 874 A.2d 1039 (2005).

More recently, in *Devine v. Cavalry SPV I, LLC*, 2026 LX 178774 (Law Div. Monmouth Cnty. Mar. 13, 2026) (Pral), a New Jersey court denied dismissal and held that a debt collector's transmission of consumer data to a third-party letter vendor violates the plain language of 15 U.S.C. § 1692c(b).

These are, like the decisions Respondents cite, unpublished and non-binding. But that cuts both ways. If the prior Appellate Division opinions do not bind this Court, neither do the trial courts in *Mhrez* and *Devine*. The field is open. The question this Court must answer is not which line of authority is longer—it is which reasoning is more faithful to the law. And on that score, the trial court's decision in *Mhrez* and *Devine* are far more persuasive.

They begin with the text, where this Court should begin as well. Section 1692c(b) "first prohibits all communication regarding the debt to 'any person,' only to then carve out a narrow subset of exceptions to the general rule."

*Devine*, 2026 LX 178774, at \*4. A letter vendor is not one of them.

Respondents do not contend otherwise. Their position instead depends on

reading an unenumerated exception into the statute by inference. That is incompatible with settled New Jersey interpretive principles. Under settled New Jersey interpretive methodology, courts "begin with the statute's plain language — our polestar in discerning the Legislature's intent." *L.W. v. Toms River Reg'l Schs. Bd. of Educ.*, 189 N.J. 381, 400 (2007). "If the language is plain and clearly reveals the statute's meaning, the Court's sole function is to enforce the statute according to its terms." *Frugis v. Bracigliano*, 177 N.J. 250, 280 (2003). A court should not "rewrite a plainly-written enactment of the Legislature nor presume that the Legislature intended something other than that expressed by way of the plain language." *O'Connell v. State*, 171 N.J. 484, 488 (2002). Because the statutory text admits of only one reading—letter vendors are not among the enumerated exceptions—the analysis ends there.

Respondents' own brief confirms the point. In a footnote, they state: "Because the wording of the statute is clear, the court need not consider any legislative history." (Rb24 n.55.) If the text is clear, then it must be enforced as written. *In re DiGuglielmo*, 252 N.J. 350, 360 (2022) ("If the language is clear, the court's job is complete.") (quotation omitted). Congress selected a narrow set of exceptions to an otherwise categorical prohibition. It could have exempted letter vendors, contractors, or agents. It did not. That omission matters. *See Devine*, 2026 LX 178774, at \*7 (Pra5) ("Section 1692c(b)'s

silence regarding letter vendors is quite loud.").

*Devine* also rejected the same arguments Respondents press here: that disclosure to a letter vendor is merely ministerial or de minimis, that § 1692c(b) reaches only communications whose primary purpose is to induce payment, and that legislative history justifies reading atextual limits into the statute. *See id.* at \*8-\*16. Each of those arguments fails for the same reason: none appears in the statutory text.

**A. This Court Should Follow *Devine* Because It Is Consistent with the Weight of Persuasive Authority on an Issue of Federal Law**

Where binding precedent is absent, this Court must determine which body of persuasive authority to follow. The answer here is clear. Under *Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990), judicial comity requires that New Jersey courts give "due respect" to lower federal court decisions when construing federal statutes, particularly where those courts are in agreement. *Loigman v. Kings Landing Condo. Ass'n, Inc.*, 324 N.J. Super. 97, 105 n.7 (Ch. Div. 1999) ("[A] state court placed in the position of ascertaining the content of federal law should look for the view taken by a majority of the lower federal courts.").

When the Court takes stock of the persuasive landscape applying *Dewey*, Appellant's position is supported by every published federal decision to have reached the merits and by two New Jersey trial court decisions. Together, these

include a federal circuit court of appeals decision and two published federal district court decisions, all in unison on an issue of federal statutory interpretation. In contrast, none of the unpublished opinions Respondents rely on engaged with the reasoning of those federal decisions. *Devine* did and it came to a different conclusion. The federal decisions Respondents cite addressed only Article III standing.<sup>3</sup> *See Devine*, 2026 LX 178774, \*11-12.

**POINT II. RESPONDENTS' STATUTORY ARGUMENT INVERTS THE STRUCTURE OF § 1692c(b) AND RELIES ON THE WRONG PROVISION ENTIRELY**

**A. Respondent Inverts The Structure of § 1692c(b).**

Respondents argue that "[n]owhere in the statute is there a prohibition on the use of a letter vendor." (Rb27.) This inverts the provision's structure in a fundamental way. Section 1692c(b) does not enumerate prohibited communications and ask whether letter vendors fit the list. It begins with a comprehensive, categorical prohibition: a debt collector "*may not* communicate, in connection with the collection of any debt, with *any person*"—full stop—subject only to the six enumerated exceptions that follow.

---

<sup>3</sup> Respondents characterize *Barclift* as a "direct rejection" of *Hunstein* within this Circuit. (Rb2, Rb15.) That is an overstatement on multiple levels. *Barclift* addressed one question only: whether the plaintiff alleged a constitutional concrete injury sufficient for federal Article III standing. *Barclift v. Keystone Credit Servs., LLC*, 93 F.4th 136, 140 (3d Cir. 2024). The Third Circuit expressly did not reach the merits of the § 1692c(b) claim—it dismissed for lack of subject matter jurisdiction before getting there.

See §1692c(b). The question is not whether letter vendors are expressly prohibited. The question is whether they are expressly *permitted*. They are not.

**B. The "Induce Payment" Standard Comes from § 1692e, Not § 1692c(b), and the Two Provisions Are Structurally Distinct**

The entire "induce payment" framework Respondents urge is borrowed wholesale from cases construing § 1692e of the FDCPA. The cases Respondent cites arise under § 1692e, addressing communications *directed at the consumer*. They do not construe § 1692c(b), and none of them addressed communications with third parties who are not being asked to pay anything.

This is not a fine distinction. The Eleventh Circuit in *Hunstein I* identified two structural reasons why the "induce payment" gloss cannot be imported from § 1692e into § 1692c(b), neither of which Respondents address.

First, the provisions differ *linguistically* in a way that makes the transfer of doctrine impossible. Section 1692e contains no enumerated exceptions. Section 1692c(b) contains six. That structural difference matters enormously. As *Hunstein I* explained: if "in connection with the collection of any debt" in § 1692c(b) means only communications that induce payment, then four of the six enumerated exceptions—communications with consumer reporting agencies, the creditor, the creditor's attorney, and the debt collector's own attorney—would be entirely superfluous, because none of those communications ever demand payment from the consumer. *Hunstein v. Preferred Collection &*

*Mgmt. Servs.*, 994 F.3d 1341, 1350-51 (11th Cir. 2021). The statute's own structure compels the conclusion that the phrase “in connection with the collection of any debt” in Section 1692c(b) “must mean something more than a mere demand for payment. Otherwise, Congress's enumerated exceptions would be redundant.” *Id.* at 1350.

Second, the provisions differ *operationally*. Section 1692e governs communications with the *consumer*—the party who might be induced to pay. Section 1692c(b) governs communications with *third parties*—parties who will never be asked to pay the debt and to whom a payment demand would be nonsensical. As *Hunstein I* observed, the factor used in § 1692e cases—whether the communication threatened consequences should the debtor fail to pay—“makes little sense for a debt collector to [apply in] a communication that is not sent to the debtor himself.” *Id.* at 1351. The “induce payment” test was developed for a provision that regulates what a debt collector says *to a consumer*. It has no logical application to what a debt collector transmits *to a vendor*.

### **POINT III. THIS COURT IS NOT BOUND BY ARTICLE III'S STANDING REQUIREMENTS**

Respondents’ reliance on federal Article III standing doctrine is misplaced because Article III does not govern the jurisdiction of New Jersey

courts. The Supreme Court has made that distinction explicit: "the constraints of Article III do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). Article III limits the judicial power of the federal courts. It does not limit the adjudicatory authority of New Jersey courts, which are courts of general jurisdiction. *See* N.J. Const. art. VI, § III, ¶ 2. New Jersey courts therefore may adjudicate federal statutory claims even where a federal court might conclude that the plaintiff cannot satisfy Article III's concreteness requirement.

As Justice Thomas observed in dissent in *TransUnion LLC v. Ramirez*, 594 U.S. 413, 459 n.9 (2021), the majority's Article III ruling "might actually be a pyrrhic victory" for defendants because, under *ASARCO*, state courts "are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law," and thus may become "the *sole forum*" for such actions. *Id.* (quoting *ASARCO*, 490 U.S. at 617). That is precisely why federal standing cases do not resolve this appeal.

New Jersey standing requires that a party have "suffered harm because of the defendant's conduct." *NCP Litigation Trust v. KPMG*, 399 N.J. Super. 606, 618 (Essex Cnty. 2007). And the Legislature—including Congress acting

within its enumerated powers—may define the class of persons entitled to bring suit for injuries cognizable under a statute. *New Jersey Coal. of Auto. Retailers, Inc. v. Ford Motor Co.*, 261 N.J. 348, 361 (2025) ("Indeed, the Legislature is within its power to define — and, thus, limit — the class of persons entitled to bring suit under an act for injuries cognizable under that act."). Congress did precisely that in § 1692k, creating a private right of action for any person against whom the FDCPA is violated. Appellant is that person; she is a consumer whose protected financial information was transmitted without her consent to an unauthorized third party in connection with the collection of her alleged debt. That is a cognizable statutory injury under NJ law.

*Baskin v. P.C. Richard & Son, LLC*, 246 N.J. 157 (2021), confirms that New Jersey permits consumer-protection suits based on intangible, risk-based statutory injuries. *See id.* at 163 ("Although plaintiffs did not suffer identity theft, fraud, or third-party disclosure as a result of the information on the receipts, they allege that defendants' noncompliance with FACTA has placed them at an increased risk of harm and seek statutory damages."). If the increased risk of identity theft from a printed receipt sufficed there, Appellant's allegation of actual disclosure of her private debt information to an outside commercial vendor suffices here. *See also id.* at 165 n.1 (recognizing

that Plaintiff's case was brought in New Jersey state court after federal dismissal on Article III grounds).

**POINT IV. THE PRIVACY STAKES CONFIRM WHY § 1692C(B) MUST BE ENFORCED AS WRITTEN**

The routine, unconsented transmission of consumers' private financial information to outside commercial data processors implicates serious privacy interests. Respondents portray letter vendors as benign intermediaries performing rote administrative tasks. But that description does not survive contact with how modern vendors actually operate. Industry leaders like RevSpring do not simply print and mail letters. They market "Enhanced Data Cleansing" and "propensity to pay analysis," feeding consumer debt information into systems that analyze behavioral patterns, financial stress indicators, and payment history to optimize collection strategies. (See Pra12-Pra21). These are not passive conduits. They are commercial data processors that access, handle, retain, and exploit sensitive consumer financial information as part of their business model.

Nor are the risks theoretical. RevSpring suffered a significant 2023 data breach, documented in a report submitted to the Maine Attorney General, exposing precisely the sort of consumer financial information debt collectors transmit to vendors. (Pra28-Pra29). CompuMail, another national mailing

service, likewise disclaims liability in its terms of service for unauthorized access resulting from compromised credentials and for consequential damages arising from data breaches. (Pra22-Pra25). Once consumer data is transmitted to a vendor, the debt collector loses control of it entirely. It enters external systems where it can be stored indefinitely, aggregated with data from millions of other consumers, analyzed algorithmically, and leaked—as the RevSpring breach demonstrates. In the age of AI, the privacy stakes of every unauthorized transmission are materially higher than Congress could have anticipated in 1977—which is itself a reason to apply the statute's broad language broadly, not to narrow it.

Financial data is not merely administrative. It is the kind of data from which powerful inferences can be drawn about a person's life, habits, needs, and vulnerabilities. The New Jersey Supreme Court has recognized that bank records reveal “many aspects of [a person's] personal affairs, opinions, habits and associations,” and that “the totality of bank records provides a virtual current biography.” *State v. McAllister*, 184 N.J. 17, 31 (2005). That was over 20 years ago; now, with AI systems capable of aggregating consumer data and generating predictive judgments about pricing, behavior, and treatment in

future transactions, the privacy stakes are even greater.<sup>4</sup>

Debt information can be similarly revealing. The identity of a creditor, the existence of delinquency, the amount owed, and the status of an account may disclose medical treatment, family circumstances, religious commitments, political activity, or other intensely private matters. A debt tied to a medical provider, fertility clinic, addiction-treatment center, religious bookstore, political organization, firearm retailer, or mental-health practice is not just a number on a spreadsheet; it may reveal some of the most private details of a consumer's life.

Respondents' rule would create a massive loophole. These vendors may not themselves qualify as "debt collectors" and thus may not be subject to the FDCPA's restrictions at all. Yet under Respondents' theory, debt collectors may freely place consumers' debt information into the hands of such outside entities so long as the disclosure is framed as part of a mailing workflow. Once there, the information can be retained, aggregated, cross-referenced, and used in ways the FDCPA would forbid the debt collector to undertake directly. In

---

<sup>4</sup> Jane S. Hoffman & Irum J. Malik, *From Disruption to Regulation: Towards Accountable Big Tech and AI in the Digital Age* 9-10, Harv. Kennedy Sch. (June 9, 2025) ("AI systems amplify privacy risks that have long existed in the internet era," with the difference now being "scale" because AI's "insatiable demand for data and lack of transparency make it even harder" for people to understand or control what happens to their information.).

practical effect, that would allow debt collectors to accomplish indirectly what Congress forbade them to do directly: place private debt information into the hands of unregulated third parties outside the statute's narrow exceptions. Section 1692c(b) should not be interpreted to create an outsourcing loophole large enough to swallow the rule.

That danger is not limited to embarrassment or abstract discomfort. The FTC's 2025 surveillance-pricing study found that firms use personal information, including behavioral and transactional data, to segment consumers and offer different prices for the same goods and services.<sup>5</sup> A debt collector that transmits a consumer's account status and outstanding balance to an outside vendor is, in practical effect, injecting that consumer's financial distress into a broader commercial data ecosystem. The indirection does not change the privacy invasion; it merely obscures it. New Jerseyans—and the American public more broadly—never consented in their constitutions to a

---

<sup>5</sup> FTC, *Issue Spotlight: The Rise of Surveillance Pricing* 1 (Jan. 17, 2025) (describing firms that “advertise their use of AI and other technologies along with historical and real-time consumer information to target prices for customers”); FTC Press Release, *FTC Surveillance Pricing Study Indicates Wide Range of Personal Data Used to Set Individualized Consumer Prices* (Jan. 17, 2025) (explaining that tracked behaviors “from mouse movements on a webpage to the type of products that consumers leave unpurchased in an online shopping cart” can be used to tailor pricing), available at: [ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer](https://www.ftc.gov/news-events/news/press-releases/2025/01/ftc-surveillance-pricing-study-indicates-wide-range-personal-data-used-set-individualized-consumer)

corporate form of “Big Brother,” where private companies may collect, analyze, and exploit intimate personal data simply because technology now permits it. And in the debt-collection context, *Congress affirmatively rejected that model*. It forbade debt collectors from disclosing debt information to third parties outside the statute’s narrow exceptions. 15 U.S.C. § 1692c(b). That judgment should be enforced as written, not diluted to accommodate a profitable commercial practice that magnifies the very privacy invasion Congress sought to prevent.

## **CONCLUSION**

---

For the foregoing reasons, Plaintiff Katia Etienne respectfully requests the Court reverse the Orders dismissing the Complaint and First Amended Complaint for failure to state a claim upon which relief can be granted.

Respectfully submitted,

/s/ Yongmoon Kim

Yongmoon Kim

KIM LAW FIRM LLC

411 Hackensack Ave, Suite 701

Hackensack, New Jersey 07601

Tel. & Fax: (201) 273-7117

*Attorneys for Plaintiff-Appellant*

Dated: April 10, 2026