

Important Notification (not legal advice)

New limitation on “permissible purpose” and use of Credit Reports for collections of delinquent child support, judgments, fines, liens and medical debts.

Towards the end of 2007, a Federal court issued rulings in an important new case, which limits “permissible purpose” and use of consumer reports for the collection of an account under the Fair Credit Reporting Act (“FCRA”).¹

What is important about this new case, is that the court pointed out that certain definitions of key words were added to the FCRA as part of the Fair and Accurate Credit Transactions Act of 2003 (“FACTA”). In particular, the word “credit”² was defined. In turn, the court has now advocated in this new case, that the practical application of the new definition is that a “collection of an account” is a permissible purpose to obtain a consumer report ***only when the collection is in connection with a credit transaction, “voluntarily”³ entered into by the consumer, where the consumer receives money or something and in turn agrees to pay or repay over time.***

In making its decision, the court has specifically rejected prior case law and Federal Trade Commission (“FTC”) guidance that a judgment creditor has permissible purpose, noting that those prior decisions pre-dated the FACTA and were “no longer persuasive.”⁴ This new case holds that a delinquent child support obligation, municipal fines arising from parking tickets and a statutory debt resulting from the towing and impound of an illegally parked vehicle, do not arise from a “credit transaction.” As a result, the court found that collection of those accounts was not a valid “permissible purpose” as defined in the FCRA, to obtain a consumer report.

Accordingly, effective immediately and until notified otherwise,⁵ each Accounts Receivable customer that performs third-party collections (including medical debt collections, as such arguably do not typically involve the extension of credit by doctors) must adhere to and remain in compliance with this new interpretation, which shall amend and be incorporated into your Accounts Receivable agreement. ***This means that you may obtain consumer credit reports through Accounts Receivable for collection purposes only when collecting on an obligation from some type of contractual agreement with the consumer rising to the level of a credit transaction under the law or where you have the written authorization of the debtor to obtain their consumer report or a court order authorizing a consumer reporting agency to provide a consumer report.***

Although the collections permissible purpose was the only permissible purpose before the court and the court did not address whether the legitimate business need permissible purpose or any other FCRA permissible purpose might facilitate access to consumer reports for debt collection purposes not otherwise covered by § 603(a)(3)(A) in light of the court’s ruling⁶ and although the court also declined to address whether the defendants “pre-FACTA conduct may subject it to penalties under a post-FACTA reading of the FCRA,”⁷ ***if you use Equifax, Experian or TransUnion consumer credit reports through Accounts Receivable or otherwise in connection with the collection of an account, you are advised to promptly review the new case law with your attorney and/or compliance advisor.***

¹ *Marin F. Pintos v Pacific Creditors Association, et. al.*, F.3d., 2007 WL 2743502 (9th Cir. 2007).

² § 603(r)(5) incorporates the Equal Credit Opportunity Act definition of “credit” by reference: “the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.” 15 U.S.C. § 1691a(d).

³ *Pintos*, 2007 U.S. App. LEXIS 22519 at p.3.

⁴ *Pintos*, at p.4, n. 4 and accompanying text.

⁵ The Plaintiff’s in *Pintos* have asked the appeal panel for reconsideration.

⁶ *Pintos*, at p.4, n. 5

⁷ *Id.*