

# Special Alert: Supreme Court Holds that a Person May Collect Defaulted Debts Purchased for Its Own Account Without Triggering the FDCPA

On June 12, the United States Supreme Court issued a [ruling](#) in *Henson v. Santander Consumer USA Inc.*,<sup>1</sup> affirming the Fourth Circuit's [holding](#) that the Fair Debt Collection Practices Act's ("FDCPA" or the "Act") definition of the term "debt collector" does not necessarily apply to a company collecting debts in default that it purchased for its own account.

## The Henson Case

The FDCPA defines the term "debt collector" as those who regularly seek to collect debts "owed...another." Like the Fourth Circuit, the Supreme Court reasoned that the FDCPA's definition focuses attention on "third party collection agents working for a debt owner — not on a debt owner seeking to collect debts for itself" and thus, in the context of the facts presented, the purchaser of the debts at issue did not qualify as a debt collector under the FDCPA.<sup>2</sup>

In reaching this conclusion, the Court rejected each of the petitioner's arguments, which were based on the grammar used in the FDCPA, the structure of the Act, and petitioner's interpretation of legislative intent. In particular, the Court rejected the petitioner's argument that the exclusion from the term "debt collector" for debts not in default at the time the debt was obtained (*see* 15 U.S.C. § 1692a(6)(F)(iii)) meant that the FDCPA should apply to persons obtaining debt after default. The Court found that "it doesn't necessarily follow that the definition must include anyone who regularly collects debts acquired after default."<sup>3</sup> Furthermore, while evaluating the petitioners' legislative intent arguments, the Court did acknowledge that it would "have no difficulty imagining, for example, a statute that applies the Act's demands to anyone collecting any debts." It stated, however, that the judiciary's only role is to interpret such statutes, not amend them.<sup>4</sup>

Notwithstanding the holding of the Court, it is important to note two questions that the Court expressly did not address: (i) whether the FDCPA applies to a purchaser "because it regularly acts as a third party collection agent for debts owed to others" in addition to collecting purchased debt, and (ii) the

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<sup>1</sup> No. 16-cv-0349, 2017 WL 2507342, (June 12, 2017).

<sup>2</sup> 2017 WL 2507342, at \*3.

<sup>3</sup> 2017 WL 2507342, at \*6.

<sup>4</sup> 2017 WL 2507342, at \*7.

application of the phrase “in any business the principal purpose of which is the collection of any debts” that also appears in the FDCPA’s definition of “debt collector.”<sup>5</sup> These two reservations ultimately could be material for certain purchasers.

### **Implications**

*Henson* is noteworthy because it resolves a split among circuits regarding the FDCPA’s reach and, in doing so, effectively rejects previous positions taken by the FTC and other regulators asserting that the FDCPA applies to parties that acquire some accounts after default, but also engage in activities other than debt collection as a primary business.<sup>6</sup> Additionally, *Henson* may simplify transactions involving purchases of consumer financial assets where the majority of the portfolio is current, but some accounts may be in default.

The ruling, however, is limited to the FDCPA’s definition of debt collector and, thus, does not necessarily impact regulation of the collection practices of creditors and debt purchasers under state debt collection laws, which can be broader than the FDCPA.

If you have questions about the ruling or other related issues, visit our [Debt Collection & Buying](#) practice page for more information, or contact a Buckley Sandler attorney with whom you have worked in the past.

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<sup>5</sup> 2017 WL 2507342, at \*3.

<sup>6</sup> See *Think your company’s not covered by the FDCPA? You may want to think again.*, (FTC Dec. 2015), available at <https://www.ftc.gov/news-events/blogs/business-blog/2015/12/think-your-companys-not-covered-fdcpa-you-may-want-think> (last visited June 12, 2017).