

NEW BUT NOT IMPROVED: ON PANEL REHEARING, 11TH CIRCUIT ISSUES REVISED FDCPA DECISION IN HUNSTEIN V. PREFERRED COLLECTION AND MANAGEMENT SERVICES

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Litigation and Dispute Resolution Alert

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On defendant's petition for rehearing in *Hunstein v. Preferred Collection and Management Services, Inc.*, a panel of the 11th Circuit recently issued a new, but not improved, decision involving the Fair Debt Collection Practices Act (FDCPA).¹ The *Hunstein II* decision continues to warrant attention for debt-collection businesses that outsource customer-related tasks to vendors.

In its April 2021 decision, the 11th Circuit panel ruled that a collector's transmittal of a customer's debt-related data to a third-party letter preparation vendor without authorization stated a claim under the FDCPA, 15 U.S.C. § 1692c(b).² In its superseding decision, the 11th Circuit panel examined the impact of the Supreme Court's holding in *TransUnion LLC v. Ramirez*.³ *Ramirez* addressed the basis for establishing Article III standing under a federal statutory cause of action.⁴ In *Hunstein II*, the panel ruled—by a 2-to-1 vote—that the plaintiff had pleaded a concrete injury-in-fact sufficient to satisfy Article III.⁵ According to the court, while he could not show standing through a “tangible harm” or a “risk of real harm,” the plaintiff did establish standing through an “intangible injury resulting from a statutory violation.”⁶ The court reasoned, relying on *Ramirez*, that (1) § 1692c(b) bears a close relationship to the “common-law tort of public disclosure of private facts” that courts have long recognized as sufficient to state a claim, and (2) “Congress’s judgment indicates that violations of § 1692c(b) constitute a concrete injury.”⁷ The 11th Circuit then reiterated its prior ruling, with no material changes, that plaintiff had adequately stated an FDCPA claim. In particular, the court ruled that the plaintiff’s assertion that the defendant had transmitted his medical information to a third-party vendor described a communication “in connection with the collection of any debt” within the meaning of § 1692c(b).⁸

One of the panel members, the Hon. Gerald Tjoflat, issued a sharp dissent. Judge Tjoflat’s dissent highlighted three points.⁹ First, he reasoned that the plaintiff could not establish a claim for the “tort of public disclosure of private facts” because, as pleaded, the defendant had not made a “public” disclosure of the plaintiff’s information in communicating with its vendor who prepared the defendant’s correspondence for mailing.¹⁰ Second, Judge Tjoflat emphasized that Congress’ intent with the FDCPA was to stop abusive debt collection practices and not all debt collection.¹¹ Based on the statutory scheme of the FDCPA, Congress envisioned a role for intermediaries, like mail vendors, in the debt collection process.¹² Third, Judge Tjoflat concluded that the plaintiff had failed to establish standing to support his claim because he did not allege any additional harm beyond the statutory violation in his complaint.¹³ Judge Tjoflat’s dissent may assist the defendant in petitioning the court for rehearing *en banc* and in petitioning the Supreme Court for a writ of *certiorari*. In the meantime, debt-collection businesses

may want to examine *Hunstein II* carefully to understand the potential impact of the decision on their operations.

FOOTNOTES

¹ *Hunstein v. Preferred Collection & Mgmt. Servs., Inc. (Hunstein II)*, No. 19-14434, 2021 WL 4998980, at *1 (11th Cir. Oct. 28, 2021).

² *Hunstein v. Preferred Collection & Mgmt. Servs., Inc. (Hunstein I)*, No. 19-14434, 2021 WL 1556069, at *8 (11th Cir. Apr. 21, 2021). For further background, please see the K&L Gates LLP client alert [here](#).

³ *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 210 L. Ed. 2d 568 (2021). *Ramirez* addressed the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

⁴ *Hunstein II*, 2021 WL 4998980, at *12.

⁵ *Id.* at *3. 7.

⁶ *Id.* at *7, 12.

⁷ *Id.* at *11-12.

⁸ *Id.* at 14.

⁹ *Hunstein II*, 2021 WL 4998980, at *16-24.

¹⁰ *Id.* at *21.

¹¹ *Id.* at *22-23.

¹² *Id.*

¹³ *Id.* at *24.

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