

David Schultz Analyzes in ARM Compliance Digest: Judge Grants MTD in FDCPA Case Over Settlement Language, Mentions Hunstein

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In the June 1, 2021 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz reviews an Illinois FDCPA case in which defendant's motion to dismiss was granted. Defendant had been sued for allegedly violating the Fair Debt Collection Practices Act because it informed the plaintiff in two collection letters that it was not obligated to renew settlement offers that were being made and because the inclusion of the defendant's privacy notice confused and intimidated the plaintiff. The case may be the first one to be ruled on where the word *Hunstein* is muttered, albeit in a judicial footnote:

In granting a motion to dismiss with prejudice, *Giannini v United Collection Bureau, Inc.* ("UCB") contains a number of timely and, at least in part, helpful rulings.

First, the court ruled that at the motion to dismiss stage the plaintiff alleged enough to survive an Article III ("*Spokeo*") challenge. It pointed to the allegations that UCB's letters (somehow) created a false sense of urgency that led her to unsuccessfully attempt to secure funds to accept discounted offers; thus, allegedly, other debts remained in default and accrued interest, and her credit score declined due to the derogatory reporting. It would be interesting to know if plaintiff could actually prove these were caused by the alleged FDCPA violation.

Second, plaintiff received a settlement letter that used approved safe harbor language: "We are not obligated to renew this offer." Plaintiff challenged this despite the 7th Circuit Court of Appeals twice ruling that such language was sufficient, *Evory v RJM* (2007) and *Preston v Midland* (2020). Not surprisingly, the trial court dismissed this claim.

Third, and perhaps most interesting, is that the controversial *Hunstein* case came up. Plaintiff had a somewhat convoluted theory about the use of a Privacy Notice and cited *Hunstein* as supplemental authority. In a footnote, the court ruled that the citation was not helpful. It stated: "Here, there is no

allegation that UCB transmitted any of Giannini’s information unlawfully or without her consent. And contrary to Giannini’s arguments in her motion ... the privacy notice’s suggestion that sharing personal information could, in some instances, comply with the FDCPA is not false or misleading. As *Hunstein* notes, § 1692c(b) alone includes several exceptions that demonstrate some transmission can be lawful under the FDCPA.”

This last language and the use of Privacy Notices may well be helpful to the industry in these *Hunstein* cases.

[Read the full June 1, 2021 edition of the AccountsRecovery.net Compliance Digest.](#)

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David M. Schultz

Partner

📞 312-704-3527

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