

David Schultz Analyzes in ARM Compliance Digest: Appeals Court Reverses Ruling on FCRA Damages

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In the November 20, 2023 edition of the *ARM Compliance Digest*, Hinshaw partner David Schultz discussed how the U.S. Court of Appeals for the Eleventh Circuit recently overturned a lower court's ruling regarding the Fair Credit Reporting Act requirements. The court followed several other federal appellate courts in ruling that individuals do not need to prove actual damages to recover statutory damages under the Act.

Schultz writes:

Santos v HRRG and Experian is an FCRA class action in which plaintiff and class only sought statutory damages, which is pretty typical in an FCRA class claim. The relevant damage provision provides a consumer can recover: (a) any actual damages sustained by the consumer as a result of the failure, or (b) damages of not less than \$100 and not more than \$1,000. Section 1681n(a)(1)(A).

The trial court denied class certification based on the predominance prong of R. 23. It held that in order to recover statutory damages, the class member needed some actual damages, which could not be determined on a class-wide bases. A R 23(f) appeal followed.

There are two main rulings from the 11th Circuit. It first addressed Article III standing, which this Court made more famous due to its Hunstein rulings. This time the Court held there was standing. Two of the judges were in the 11th Circuit majority *en banc* ruling in Hunstein that held there was no standing. Here, the Court said plaintiff alleged an intangible harm and such harms are concrete if they bear a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts. It then held that violating the FCRA by reporting inaccurate information about a consumer's credit has a close relationship to the harm caused by the publication of defamatory information.

The second ruling was that a consumer alleging a willful violation of the Act does not need to prove actual damages to recover the \$100 to \$1000 damages. The Court referenced similar holding from the 7th, 8th, 9th

and 10th Circuits.

The second ruling is not too controversial, but we'll see if there is an *en banc* or *certiorari* petition on the Article III issue.

[Read the full November 20, 2023 edition of the AccountsRecovery.net Compliance Digest.](#)

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