**Daily Decision** for publication on: Tue., August 23, 2022. Thumbs Up

**Title:** *Jaber v. Complete Payment Recovery Servs:* Court Remanded FDCPA Action But Denied Consumer’s Request for Fees

**Description:** A debtor's fear that a mailing vendor might disclose the debtor's information to additional third parties is speculative and thereby presents an insufficient risk of future harm to establish standing.

**Tags:** FDCPA, New York, 2nd Circuit, Article III Standing, Concrete Injury, Hunstein, Letter Vendor, Removal and Remand

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*Jaber v. Complete Payment Recovery Servs., Inc*., No. 22-CV-02689 (HG), 2022 WL 3543500 (E.D.N.Y. Aug. 18, 2022)

*By Betsy Clarke—Compliance Attorney*

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**Background:**

A consumer sued a collection agency for violating the Fair Debt Collection Practices Act when it sent him identical collection letters labeled “FIRST NOTICE”, allegedly a false, deceptive, or misleading representation. The consumer also alleged that the agency’s use of a third-party letter vendor to prepare and send the letters shared his personal information, in violation of the FDCPA.

The agency removed the action and the consumer moved to remand, arguing his FDCPA claims did not satisfy the Article III standing requirement. The consumer also sought fees and costs for the expense of litigating the removal/remand issue.

**Decision:**

**Standing and Jurisdiction**

Congress intended to restrict federal court jurisdiction and federal courts construe the removal statute narrowly. When a party seeks to base federal jurisdiction on a defendant's alleged violation of statutory requirements, the party seeking federal jurisdiction must demonstrate a “concrete harm” with “a close historical or common-law analogue for their asserted injury.” *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 2204–05 (2021). Congress cannot “enact an injury into existence” simply by passing a statute that affords an otherwise “uninjured plaintiff” the right to sue for statutory damages. *Id*. at 2205–06.

The agency asserted that its alleged disclosure of the consumer’s personal information to a third-party vendor was sufficiently similar to the “disclosure of private information,” which *TransUnion* identified as a type of harm “traditionally recognized as providing a basis for lawsuits in American courts.”

The court disagreed, noting that the “mailing vendor theory” raised in *Hunstein* has been rejected in this district multiple times*.* Moreover, the agency neither distinguished those cases nor identified other cases suggesting that standing exists under these circumstances.

Accordingly, the Court held a debt collector's disclosure to its mailing vendor of a debtor's personal information does not trigger the concrete harm necessary to establish standing, on these bases:

1. *TransUnion* explained that a credit reporting agency's similar disclosure of information to its printing vendors did not rise to the level of defamation.
2. A debt collector's sharing of such information does not constitute the tort of invasion of privacy because the fact that the debtor has failed to pay “a relatively de minimis debt” would not be considered “highly offensive to a reasonable person.”
3. A debtor's fear that a mailing vendor might disclose the debtor's information to additional third parties is speculative and thereby presents an insufficient risk of future harm to establish standing.

Regarding the consumer’s receipt of duplicate letters, even if the consumer had alleged that the letters confused him personally, this would not confer standing because (a) he did not allege he relied on it to his detriment, and (b) the state of confusion is not itself an injury for purposes of Article III.

Accordingly, the court held the consumer lacked standing to assert his claims and directed the clerk to remand the case.

**Request for Fees**

Absent unusual circumstances, courts may award attorney's fees under § 1447(c) only where the removing party lacked an objectively reasonable basis for seeking removal. Because the Supreme Court's decision in *TransUnion* was less than a year old when the agency removed this case, and the decision's impact on the standing jurisprudence in the Second Circuit is still evolving, the court held it would not penalize the agency for not having been aware of the complexity of the law in this area and so denied the consumer’s request for fees.

**ACA’s Take:**

Before removing a legal action involving FDCPA claims to federal court, it is crucial for members to consult with legal counsel to determine whether case law in that circuit supports removal on the facts at issue.

**Attorneys for Plaintiff:**

David M. Barshay, Barshay, Rizzo & Lopez, PLLC, Melville, New York.

**Attorneys for Defendants:**

Stephen Jay Steinlight, Troutman Pepper Hamilton Sanders LLP, New York, New York.

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