Just a couple weeks ago, we reported on another case from the Eastern District that dismissed a FDCPA case for lack of standing post-TransUnion LLC v. Ramirez, 141 S. Ct. 2190 (2021). Another recent decision from the same court (different judge) shows, yet again, that Ramirez has teeth. In Grauman, No. 20-cv-3152 (ENV) (AKT), 2021 U.S. Dist. LEXIS 142845 (E.D.N.Y. July 16, 2021), the court dismissed a FCRA case for lack of standing, finding that a lowered credit score, by itself, isn’t a concrete harm under Article III.

The plaintiff in this case (Grauman) was a customer at Wells Fargo, which deferred
Grauman’s loan payments for a few months in 2020 as a form of relief from the COVID-19 pandemic. Despite the suspension of payments, plaintiff alleges that he made his mortgage payments in a timely manner, and that Wells Fargo had promised it would not report missed payments to the credit bureaus during this time anyway. The gravamen of Grauman’s grievance, though, was that his mortgage suspension was erroneously reported to the credit bureaus, and that his credit score dropped 16 points and didn’t bounce back even when the suspension notation had been removed from his account. He brought a class action against a credit reporting agency and its vendor, claiming that their reporting of the mortgage loan suspension and the resulting credit score drop constituted a negligent and willful violation of FCRA’s requirement that credit reporting agencies employ reasonable procedures to ensure the accuracy of consumer reports.

The court granted the defendants’ motion to dismiss, finding that the plaintiff’s lowered credit score wasn’t a concrete harm, and the plaintiff thus lacked standing to bring a FCRA claim. In dismissing the case, the court recognized that pre-Ramirez, “many courts had held that a drop in a plaintiff’s credit score was a sufficiently concrete injury in fact under Spokeo, capable of causing real-world harms such as the denial of credit.” But following Ramirez, the court noted, “that holding is no longer tenable.” Unless a plaintiff alleges some “other injury resembling a historically recognized harm,” a reduced credit score isn’t enough to get you into federal court. This makes sense—Ramirez explicitly held that in cases seeking damages, “the mere risk of future harm, standing alone, cannot qualify as a concrete harm.” And isn’t that quintessentially what a lowered credit score is—just a risk of a future harm?

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