UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:21-cv-22415-JLK

ALEJANDRO C. PERAGA, on behalf of himself and others similarly situated,

Plaintiff,

v.

McMICHAEL TAYLOR GRAY, LLC,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

THIS MATTER is before the Court on Defendant's Motion to Dismiss Plaintiff's Complaint (the "Motion") (DE 7), filed on September 24, 2021. The Court has also considered Plaintiff's Response (DE 8) and Defendant's Reply (DE 9). The matter is ripe for review.

I. BACKGROUND

On July 6, 2021, Plaintiff filed his one count class action Complaint alleging a violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692c(b) ("FDCPA"). *See* Compl., DE 1. Specifically, Plaintiff alleges that Defendant (a law firm) communicated Plaintiff's personal information to a third-party mail vendor, and the vendor subsequently sent Plaintiff a printed letter in an effort to collect a debt. *Id*. Now, Defendant moves to dismiss the Complaint for failing to state a claim, insufficient pleading, and lack of standing pursuant to Fed. R. Civ. P. 12(b)(1) and (6). *See* Mot.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 8(a)(2), "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is

plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To meet this standard, a plaintiff must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. A complaint must contain "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

Federal Rule of Civil Procedure 12(b)(1) applies to challenges to a court's subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998).

Challenges to "subject matter jurisdiction under Rule 12(b)(1) of the Federal Rules of Civil Procedure may be either facial or factual." *JPMCC 2005-CIBC13 Collins Lodging, LLC v. Philips S. Beach, LLC*, 10-20636-CIV, 2010 WL 4317000, at *2 (S.D. Fla. Oct. 22, 2010) (citing *Lawrence v. Dunbar*, 919 F.2d 1525, 1528–29 (11th Cir. 1990)). Like a Rule 12(b)(6) motion, a "facial attack" on the complaint requires the court merely to examine the complaint to determine whether the plaintiff has sufficiently alleged a basis of subject matter jurisdiction, with the allegations in the complaint taken as true. *See Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir. 1980) (citing *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)).

III. DISCUSSION

Defendant argues that this Court lacks jurisdiction because Plaintiff has not alleged a concrete injury in fact. *See* Mot. Specifically, Defendant argues that sharing Plaintiff's personal information with a mail-vendor to collect a debt amounts to merely a procedural harm and "bare procedural violation[s], divorced from any concrete harm[]" do not create Article III standing. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2213 (citing *Spokeo, Inc. v. Robins*, 578 U. S. 330,

341 (2016)). Defendant further argues that to suffer a concrete injury, Plaintiff must allege a harm with "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts." *Id. at* 2204 (citations omitted). However, because Defendant claims that its communications were privileged, Plaintiff's claims are not a "traditionally" recognized harm. Mot. at 15–18.

Plaintiff argues that *Huntstein* is binding precedent and held "(1) that a violation of § 1692c(b) gives rise to a concrete injury in fact under Article III and (2) that the debt collector's transmittal of the consumer's personal information to its dunning vendor constituted a communication 'in connection with the collection of any debt' within the meaning of § 1692c(b)." *Hunstein v. Preferred Collection & Mgmt. Servs*., 994 F.3d 1341, 1345 (11th Cir. 2021). Therefore, Plaintiff states that he has standing because his Complaint alleges that "[b]y communicating regarding the Debt, including by disclosing, among other things, the existence of the Debt, the amount owed, Plaintiff's home address, and the alleged creditor, with a third-party mail vendor, Defendant violated 15 U.S.C. § 1692c(b)." Compl. ¶ 68 (citing *Hunstein*).

TransUnion discussed a violation of the Fair Credit Reporting Act, whereas plaintiffs in *Huntstein* and in the instant case allege a violation of the FDCPA. *Hunstein* is binding precedent, and as such Plaintiff's Complaint alleges a concrete injury in fact and Plaintiff has standing. *See e.g. Santiago v. Medicredit, Inc.*, No. 21-cv-61424-WPD, 2021 WL 3615705, at *1 (S.D. Fla. Aug. 12, 2021).

Defendant additionally argues that Plaintiff has failed to sufficiently allege that Defendant is a "debt collector" under the FDCPA, but only formulaically repeats the statutory definition in his Complaint. Mot. at 18–19. However, Plaintiff's Complaint alleges that Defendant is a self-described "full-service default and creditor's rights law firm" that "servic[es] clients through every

stage of the default process. . .” referencing Defendant’s website. Compl. ¶¶ 19–20. Also, Plaintiff alleges “Defendant identified itself as a debt collector in its written communication to Plaintiff” referencing a letter from Defendant to Plaintiff. *Id*. ¶ 24.

“In determining whether a plaintiff has adequately alleged that a person or business regularly engages in debt collection activities, or whether a business's principal purpose is debt collection, courts have considered whether a party has held itself out as a debt collector . . . .” *Sanz v. Fernandez*, 633 F. Supp. 2d 1356, 1361 (S.D. Fla. 2009) (citation omitted). In addition to alleging that Defendant is a “debt collector” under the definition of the FDCPA (Compl. ¶ 23), Plaintiff also alleges that Defendant held itself out as a “debt collector.” *Id.* ¶ 19, 20, 24. As such, Plaintiff sufficiently alleges that Defendant is a “debt collector.”

Accordingly, it is **ORDERED, ADJUDGED and DECREED** that:

1. Defendant’s Motion to Dismiss Plaintiff’s Complaint **(DE 7)** be, and the same hereby is, **DENIED**; and
2. Defendant is ordered to answer within **thirty (30) days** from the date of this Order.

DONE AND ORDERED in Chambers at the James Lawrence King Federal Justice Building and United States Courthouse, Miami, Florida this 25th day of October, 2021.

JAMES LAWRENCE KING
UNITED STATES DISTRICT JUDGE

cc: All counsel of record