

Case No. 19-14434-HH

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

RICHARD HUNSTEIN

Plaintiff-Appellant

v.

PREFERRED COLLECTION AND MANAGEMENT SERVICES, INC.

Defendant-Appellee

On Appeal from the United States District Court for the  
Middle District of Florida

Case No. 8:19-cv-00983-TPB-TGW

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APPELLEE PREFERRED COLLECTION AND MANAGEMENT SERVICES,  
INC.'S MOTION FOR A FIFTEEN (15) DAY EXTENSION OF TIME TO FILE  
ITS PETITION FOR  
REHEARING EN BANC (UP TO AND INCLUDING DECEMBER 3, 2021)  
AND MOTION TO STAY THE ISSUANCE OF THE MANDATE

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**Richard Hunstein v. Preferred Collection and Management Services, Inc. –  
Case No. 19-14434-HH**

**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT (CIP)**

Appellee, Preferred Collection and Management Services, Inc. (“Preferred”), through its undersigned counsel, and in accordance with Rule 26.1(a) of the Federal Rules of Appellate Procedure and 11<sup>th</sup> Cir. R. 26.1-2(c), herein discloses all trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, any publicly held corporation that owns 10% or more of the party’s stock, and other identifiable legal entities related to a party.

- 1. Barber, Thomas** - United States District Judge, Middle District of Florida,  
Tampa Division
- 2. Bonan, Thomas** – Appellant’s Counsel
- 3. Goldberg, Philip R.** – Principal Attorney at Seraph Legal P.A.
- 4. Hunstein, Richard** – Appellant
- 5. Kaufman Dolowich & Voluck LLP** - Firm representing Appellee
- 6. Perr, Richard J.** – Appellee’s Co-Lead Counsel
- 7. Preferred Collection and Management Services, Inc.** - Appellee
- 8. Seraph Legal, P.A.** - Firm representing Appellant

**Richard Hunstein v. Preferred Collection and Management Services, Inc. –  
Case No. 19-14434-HH**

**9. Solomon, Vigh & Springer, P.A.** - Firm representing Appellee

**10. Vigh, Robert** - Appellee's Co-Lead Counsel

In accordance with Rule 26.1(a) of the Federal Rules of Appellate Procedure and 11<sup>th</sup> Cir. R. 26.1-3(b), the undersigned further certifies that there is no publicly traded company or corporation with an interest in the outcome of this case.

4864-1006-7202, v. 1

Preferred, through its undersigned counsel, respectfully submits this Motion for a fifteen (15) day extension of time to file its Petition for Rehearing En Banc, pursuant to Rules 26(b) and 27 of the Federal Rules of Appellate Procedure and 11<sup>th</sup> Cir. R. 26-1, 27-1(a)(5), 27-1(d)(6), 35-2, making the proposed due date December 3, 2021. Preferred also respectfully submits this Motion requesting that the deadline for the Court to issue its mandate be stayed until there is a determination on Preferred's forthcoming Petition for Rehearing En Banc.

In support of this Motion, Preferred states the following:

1. On April 21, 2021, the panel issued its opinion in this matter reversing the district court judgment and remanding the matter for further proceedings.
2. On May 5, 2021, the panel issued an errata page regarding three minor grammatical corrections. (referred to as the Corrected Opinion).
3. The panel held that an alleged statutory violation of Section 1692c(b) of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"), constituted a "concrete injury" sufficient to confer Article III standing for Appellant, Richard Hunstein ("Plaintiff"). Corrected Opinion at 5-13, 23. The panel also held that Plaintiff stated a claim "because Preferred's transmittal of Hunstein's personal debt-related information to Compumail constituted a communication 'in connection with the collection of any debt' within the meaning of § 1692c(b) . . ." *Id.* at 13-23.

4. Pursuant to 11<sup>th</sup> Cir. R. 35-2, and 11<sup>th</sup> Cir. R. 40-3, the deadline for Preferred to file a petition for rehearing and a petition for rehearing en banc was May 12, 2021.

5. On May 6, 2021, the Clerk granted Preferred's request for an extension to file its petition for rehearing and rehearing en banc and the new deadline was May 25, 2021.

6. On May 25, 2021, Preferred filed its Petition for Rehearing and for Rehearing En Banc. The Clerk advised that Preferred's Petition for Rehearing and for Rehearing En Banc was deficient due to a technical issue. The Clerk permitted Preferred to file a corrected Petition for Rehearing and for Rehearing En Banc by June 1, 2021.

7. On May 26, 2021, Preferred refiled its corrected Petition for Rehearing and for Rehearing En Banc, which was docketed by this Court.

8. Seventeen (17) amicus curiae briefs were filed in support of a rehearing in June 2021 in this case.

9. On October 28, 2021, the panel issued a substituted opinion, which vacated the opinion dated April 21, 2021.

10. The panel's opinion dated October 28, 2021 did not change the holding of the Corrected Opinion.

11. Pursuant to 11<sup>th</sup> Cir. R. 35-2, and 11<sup>th</sup> Cir. R. 40-3, the deadline for Preferred to file a petition for rehearing and a petition for rehearing en banc is November 18, 2021.

12. Preferred intends to file a Petition for Rehearing En Banc.

13. As set forth above in paragraph 5, Preferred previously requested one extension of time to file its Petition for Rehearing and for Rehearing En Banc with regard to the panel's original opinion, which was granted by the Clerk.

14. This is Preferred's first request for an extension of time to file its Petition for Rehearing En Banc with regard to the panel's substituted opinion, which was issued on October 28, 2021.

15. Pursuant to Federal Rule of Appellate Procedure 26(b), "[f]or good cause, the court may extend the time prescribed by these rules or by its order to perform any act, or may permit an act to be done after that time expires." Fed. R. App. P. 26(b); 11th Cir. R. 35-2 (stating that a request should not be made "except for the most compelling reasons").

16. Preferred submits that there is good cause and compelling reasons exist for the requested extension.

17. The panel's ruling is directly inapposite of the past precedent of this Court and the full Court must hear the case in order to remedy the now intra-Circuit split created by the panel's decision.

18. Preferred respectfully requests that the deadline to file the Petition for Rehearing En Banc be extended to December 3, 2021.

19. Due to counsel's previously designated time-sensitive deadlines in other matters in the twenty-one (21) day period established by the Court to draft and file the Petition for Rehearing En Banc in this case, counsel will need additional time to devote the sufficient time necessary to ensure that the Petition for Rehearing En Banc is of the quality and character expected for a filing of this significance. The issues in this case are complex and novel, and require additional time to prepare, review, revise, and finalize a thorough Petition for Rehearing En Banc that will most effectively demonstrate that consideration by the full Court is necessary to secure and maintain uniformity of decisions in this Court.

20. Preferred is asking for an extension to December 3, 2021 so that the deadline does not overlap with the upcoming Thanksgiving holiday when additional attorneys working on this case for Preferred will be out of the office observing the holiday.

21. Given that the issues in this case are complex and novel, Preferred respectfully requests additional time to thoroughly draft, revise, and finalize its thorough Petition for Rehearing En Banc.

22. Pursuant to Federal Rule of Appellate Procedure 41(b), "[t]he court's mandate must issue 7 days after the time to file a petition for rehearing expires, or 7

days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, whichever is later. The court may shorten or extend the time by order.” Fed. R. App. P. 41(b).

23. Seven (7) days after the time for Preferred to file a petition for rehearing or rehearing en banc in response to the panel’s opinion, which was issued on October 28, 2021, is November 25, 2021.

24. Preferred respectfully requests an extension to December 3, 2021 to file its Petition for Rehearing En Banc regarding the panel’s opinion, which was issued on October 28, 2021.

25. Preferred respectfully requests that this Court stay issuing its mandate until there is a determination on Preferred’s forthcoming Petition for Rehearing En Banc.

26. Counsel for Preferred has consulted counsel for Plaintiff regarding this Motion in accordance with 11<sup>th</sup> Cir. R. 26-1 and 27-1(a)(5). Plaintiff has no opposition to Preferred’s request for an extension of time to file its Petition for Rehearing En Banc. Plaintiff opposes Preferred’s request to stay the issuance of the mandate until there is a determination on Preferred’s forthcoming Petition for Rehearing En Banc.

27. This Motion is made in good faith and not for purposes of delay.



28. There are no other pending deadlines, and no party will suffer prejudice from the extension requested.

**WHEREFORE**, Appellee, Preferred Collection and Management Services, Inc., respectfully requests that this Court issue an Order granting its Motion for a Fifteen (15) Day Extension of Time to File its Petition for Rehearing En Banc, which would set the new deadline as December 3, 2021. Appellee, Preferred Collection and Management Services also respectfully requests that this Court issue an Order staying the issuance of its mandate until there is a determination on Preferred's forthcoming Petition for Rehearing En Banc.

Respectfully Submitted:

/s/ Richard J. Perr  
Richard J. Perr, Esquire

Dated: November 9, 2021

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this Motion has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point font. I hereby certify that this complies with the word limit set forth in Fed. R. App. P. 27(d)(2)(A) as this Motion contains 1,216 words.

/s/ Richard J. Perr  
Richard J. Perr, Esquire

**CERTIFICATE OF SERVICE**

I do hereby certify that on November 9, 2021, I electronically filed the foregoing Motion For a Fifteen (15) Day Extension of Time for Appellee to File its Petition for Rehearing En Banc and Motion to Stay the Issuance of the Mandate with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will send notice of this filing to all parties indicated on the electronic filing receipt:

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/s/ Richard J. Perr

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