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IN THE SUPREME COURT **SUPREME COURT COPY**

OF THE STATE OF CALIFORNIA

Robert A. Brown and Susana Brown, et al. )  
*Plaintiffs and Appellants,* )

v. )

Stewart Mortensen, etc. )

*Defendant and Respondent.* )

SUPREME COURT  
**FILED**

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Frederick K. Onirich Clerk

Deputy

After A Decision By The Court of Appeal, Second Appellate District, Division  
One, Case No. B199793, from the Superior Court of California  
For the County of Los Angeles, The Honorable Anthony J. Mohr, Judge Presiding  
Los Angeles Superior Court Case No. BC 289546

**Respondent Stewart Mortensen's Answer to  
Appellants' Petition for Review**

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**TO THE HONORABLE JUSTICES OF THE SUPREME COURT  
OF THE STATE OF CALIFORNIA**

**I.**

**INTRODUCTION**

Appellants' Petition for Review seeks for this Court to review a decision holding that Appellants' Third and Fourth Causes of Action alleging Respondent violated the California *Confidential Medical Information Act* ("CMIA") (*Cal. Civ. Code* §56 *et seq.* ) by reporting alleged inaccurate information to the credit bureaus [hereinafter the "CMIA claims"], are preempted pursuant to Section 15 U.S.C. 1681t(b)(1)(F) of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* ("FCRA").

As acknowledged by Appellants' own Petition, it is well settled that Section 1681t(b)(1)(F) preempts claims relating to the furnishing of inaccurate information (Petition, pg. 6-7.) However, Appellants' Petition now asks the Supreme Court to consider the hypothetical question that if Appellants had alleged that their CMIA claims were based on the reporting of accurate information to the credit reporting agencies, would such claims still be preempted. In an attempt to create

an “important question of law” in their Petition, Appellants completely omit any mention of the fact that the Court of Appeal clearly recognized that Appellants’ CMIA claims in their Fourth Amended Complaint alleged that Respondent furnished *inaccurate and incomplete information* to the credit reporting agencies, as shown below.

Appellants and Plaintiffs Robert A. Brown, Susana Brown and their children, KI and KA, allegedly incurred bills for dental services provided by Dr. Rolf Reinholds. Subsequently, the bills were assigned for collection to Respondent/Defendant Stewart Mortensen (“Respondent”). Appellants filed suit against Respondent and other defendants, claiming Respondent wrongly disclosed Appellants KI and KA’s confidential medical information to the credit reporting bureaus in pursuit of a false debt alleged to be owed by Appellant Robert Brown. [Court Transcript (“CT”) 000624] Appellants also asserted that Respondent reported the allegedly false debt to the credit reporting bureaus. [CT 000617]

Respondent was successful in demurring to causes of action in the original complaint and four subsequent amended complaints. The demurrer to the Fourth Amended Complaint was sustained as to the

Third and Fourth causes of action, the only causes of action at issue on appeal and in Appellants' Petition.

The Court of Appeal's opinion upheld the sustaining of the demurrer to the CMIA claims, holding that Section 1681t(b)(1)(F) of the FCRA preempted Appellants' Third and Fourth Causes of Action alleging violations of the CMIA. The Court of Appeal took note that Appellants repeatedly stated in their CMIA claims that Respondent furnished "inaccurate and incomplete" information to the credit bureaus. (Court's Opinion, attached to Petition, pgs. 3, 8)

In light of the foregoing, Appellants' Petition does *not* assert an important question of law and it is unsupported by the facts. There is no need to address whether a hypothetical CMIA claim based on allegations that accurate information was furnished to the credit bureaus is preempted by the FCRA, because Appellants' CMIA claims as plead in their Fourth Amended Complaint only allege that Respondent furnished *incomplete and inaccurate* information to the credit bureaus. For this reason, Appellants' Petition should be denied.

## II.

### LEGAL DISCUSSION

#### A. There Are No Grounds For Supreme Court Review

Appellants assert that review should be granted pursuant to Rule 8.500(b)(1), California Rule of Court, to settle an important question of law. (Appellant's Petition, pg. 2) However, there is no question of law to settle. Both Appellants and Respondent agree that the FCRA preempts conduct relating to the furnishing of inaccurate and incomplete information to the credit reporting bureaus. (Petition, pgs. 6-7) The Court of Appeal held that Appellants' CMIA claims asserted that Respondent allegedly reported "*inaccurate and incomplete*" information to the credit reporting bureaus (Opinion, pgs. 3, 8), and held that such claims were preempted by the FCRA.

As shown below, the Court of Appeal's decision was in line with clearly established law, and there is no reason to address a hypothetical scenario not presented by Appellants' Fourth Amended Complaint—i.e., that if Appellants had alleged a CMIA claim based on accurate information reported by Respondent to the credit bureaus, would such CMIA claims would be preempted by the FCRA.



**B. The Court of Appeal's Decision, Does Not, Contrary to Appellants' Assertion, Establish a New Legal Principle**

The Court of Appeal preempted Appellants' Third and Fourth Causes of Action under the CMIA pursuant to Section 1681t(b)(1)(F) of the FCRA. Appellants argue that the Court of Appeal's ruling was invalid because 1681t(b)(1)(F) allegedly only preempts conduct relating to the furnishing of "inaccurate" information to credit bureaus (Petition, pgs.6- 7), whereas Appellants claim that liability under the CMIA is not dependent on whether the medical information allegedly reported was accurate, and therefore not preempted.

Section 1681t(b)(1)(F) provides in pertinent part:

"(b) General exceptions. No requirement or prohibition may be imposed **under the laws of any State--**

(1) with respect to any subject matter **regulated under--**

**(F) section 623 [15 USCS § 1681s-2]**, relating to the responsibilities of persons who furnish information to consumer reporting agencies, except that this paragraph shall not apply. . . ."

15 U.S.C. 1681t(b)(1)(F)(emphasis added).

Appellants assert that Section 1681s-2 only relates to the duties of furnishers with respect to the accuracy of reported information, and therefore, Section 1681t(b)(1)(F) only preempts state law causes of action relating to the accuracy of information reported to the credit bureaus.

Based on the foregoing, Appellants argue that their case presents an “important” issue of whether the FCRA preempts a CMIA claim that does not relate to the furnishing of inaccurate information to the credit bureaus. (Petition, pg. 3)

However, this Court does not need to decide this issue, because the Court of Appeal has already held that Appellants’ Third and Fourth Causes of Action concern allegations that Respondent reported *inaccurate and incomplete information* to the credit reporting agencies (Opinion, pgs. 3, 8). Therefore, as per Appellants’ *own* arguments in their Petition (Petition, pg. 6-7), such allegations are clearly within the purview of conduct that is preempted by Section 1681t(b)(1)(F), and therefore the Court of Appeal’s decision was proper, as shown below.

///

///

1. **The FCRA Preempts State Statutory Causes of Action  
Such as Those Stated In Appellants' Fourth Amended  
Complaint**

The Court of Appeal's decision recognized the significant authority holding the broad reach of Section 1681t(b)(1)(F) preemption. As noted by the Court of Appeal, "[W]hile furnishers may be liable to private litigants under 15 U.S.C. § 1681s-2(b) based on the information they provide to credit agencies, [citation], *it appears that Congress intended the FCRA to be the sole remedy against these furnishers.*" (Court's Opinion, pg. 9, emphasis added, citing *Howard v. Blue Ridge Bank*, 371 F. Supp.2d 1139, 1143 (N.D. Cal. 2005)).

The Court of Appeal also acknowledged that the Northern District of California in *Howard* noted that "Congress intended the FCRA to preempt state laws regarding the duties of furnishers and the remedies available against them, rather than allowing different liabilities for furnishers depending on the state of suit." (*Id.* at p. 1144, cited in Court's Opinion at pg. 9.)

Further supporting preemption, the Court of Appeal noted that "To allow causes of action under state statutes that do not specifically

refer to credit reporting, but to bar those that do, would defy the Congressional rationale for the elimination of state causes of action.” (Opinion at pg. 8, citing *Jaramillo v. Experian Information Solutions, Inc.* (E.D.Pa. 2001) 155 F.Supp.2d 356, 362 [finding FCRA preempts state Unfair Trade Practices and Consumer Protection Law].)

The Court of Appeal cited other decisions in the Ninth Circuit whereby the FCRA preempted other state statutory claims under *Business & Professions Code* Section 17200, the Rosenthal California Fair Debt Collection Practices Act (“Rosenthal Act”) (*Civ. Code* § 1788 *et seq.*), and the Consumer Legal Remedies Act (*Civ. Code* § 1750 *et seq.*). (Opinion, pgs. 8-9, citing *Pirouzian v. SLM Corp.* (S.D.Cal. 2005) 396 F.Supp.2d 1124, 1130 (holding that FCRA preempted the Rosenthal Act); *Roybal v. Equifax* (E.D.Cal. 2005) 405 F.Supp.2d 1177 (holding that FCRA preempted Section 17200, Rosenthal Act and Consumer Legal Remedies Act claims). *See also Davis v. Md. Bank, N.A.*, 2002 U.S. Dist. LEXIS 26468 (N.D. Cal. June 18, 2002) (“the FCRA preempts both state statutory and common law causes of action which fall within the conduct proscribed under section 1681s-2(1)”).

Finally, the Court of Appeal acknowledged a recent decision by Division Seven of the Second Appellate District which held that a plaintiff's state common law causes of action for slander, libel, intentional and negligent interference with prospective economic advantage, intentional and negligent infliction of emotional distress, based on the furnishing of information to the credit bureaus, were preempted by the FCRA. (Opinion, pg. 10, citing *Sanai v. Saltz* (2009) 170 Cal. App. 4<sup>th</sup> 746, 773 (holding "1681t(b)(1)(F) 'totally preempts' all state common law tort claims against furnishers of credit information arising from conduct regulated by 15 U.S.C. § 1681s-2". )

2. **Appellants' CMIA Claims Were Based on Respondent Purportedly Reporting Inaccurate and Incomplete Information to the Credit Reporting Bureaus**

Appellants' Fourth Amended Complaint states that the information allegedly reported by Respondent was "inaccurate and incomplete." [(FAC, ¶39), CT 000617] The Court of Appeal noted that the reported information at issue in this case was alleged to be inaccurate and incomplete, stating in pertinent part:

"Soon after [Respondent's] conversation with

[Appellant Brown], and continuing for a period of approximately two years, [Respondent] used and disclosed the dental charts, including the confidential medical information contained in them, to three consumer credit reporting agencies . . . Mr. Brown also wrote to the credit reporting agencies, explaining that the information they had received was *inaccurate and incomplete.*”

(Opinion, pg. 3)(emphasis added).

After purportedly reporting this “inaccurate and incomplete” information, Appellants claimed that Respondent was asked to verify the information it had reported to the credit reporting agencies. The Court of Appeal noted the following:

“[T]he credit reporting agencies contacted [Respondent] for verification of [Appellant’s] alleged debt. [Respondent] then provided to the credit reporting agencies [Appellant] Mr. Brown’s dental history and payments to the dentists for the past 10 years. [Appellant] Mr. Brown claimed that detailed history was not only unnecessary to the alleged debt collection, **but was also inaccurate.**”

(Opinion, pg. 3)(emphasis added).

The Court of Appeal clearly seized on the fact that Appellants' CMIA causes of action were based on the reporting of *inaccurate and incomplete* information to the credit reporting bureaus, and therefore these causes of action were properly preempted.

3. **Appellants' Petition Ignores the Fact That FCRA Preemption is Based on the Substance of Appellants' Allegations, Not the Form**

In a desperate attempt to save their CMIA claims, Appellants assert that because a hypothetical claim under the CMIA might only involve the reporting of accurate and complete information, the Court of Appeal's decision in this case was improper. However, this reasoning fails.

The Court of Appeal held that Appellants alleged that Respondent improperly furnished "inaccurate and incomplete information" to the credit reporting bureaus in their CMIA claims. The Court of Appeal correctly held that Appellants' CMIA claims were preempted by Section 1681t(b)(1)(F), which preempts conduct relating to the furnishing of such information to the credit bureaus

Appellants have cited no authority for the proposition that FCRA preemption under Section 1681t(b)(1)(F) does not follow the substance of the claim. In fact it is the opposite—regardless of the name assigned to the cause of action, if it relates to the furnishing of inaccurate information to the credit bureaus, it is preempted by the FCRA. *See, e.g., Howard, supra* (court rejected the plaintiff’s argument that the FCRA did not preempt his *Business & Professions Code* Section 17200 claim because section 17200 is not inconsistent with the FCRA, but merely provides an additional state remedy for the conduct giving rise to the FCRA claim); *Roybal, supra* (preempting Rosenthal Act, CLRA and Section 17200 claims); *Sanai, supra* (preempting state law claims for slander, libel, intentional and negligent interference with prospective economic advantage, intentional and negligent infliction of emotional distress, under Section 1681t(b)(1)(F)).

Reinforcing the above, the Court of Appeal stated in pertinent part:

“In light of these cases and our reading of section 1681t(b)(1)(F), we conclude the FCRA preempts the Browns’ third and fourth causes of action. Although the



CMIA does not regulate consumer reporting, **when CMIA claims such as those at issue here relate to the subject matter regulated under section 1681s-2 . . . those claims are preempted by the FCRA. (15 U.S.C. § 1681t(b)(1)(F).)**”  
(Opinion, pgs. 10-11)(emphasis added).

The conduct alleged in Appellants’ CMIA claims in their Fourth Amended Complaint—the furnishing of inaccurate and incomplete information to the credit reporting bureaus—is conduct that is directly addressed by the FCRA. Therefore it is preempted as a matter of law.

### III.

### CONCLUSION

For the foregoing reasons, Appellants’ Petition should be denied.

DATED: March 24, 2010

Respectfully submitted,

CARLSON & MESSER LLP

By:



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Stephen A. Watkins  
Attorneys for Respondent

**CERTIFICATE OF WORD LENGTH (CRC 8.504(d)(1))**

I, Stephen A. Watkins, certify that the foregoing Respondent's Answer to Petition consists of 2,334 words, not including the Proof of Service. The word count was determined through the Properties function of WordPerfect, which was used to generate this brief.



---

Stephen A. Watkins

**DECLARATION OF SERVICE**

I, the undersigned, hereby declare under penalty of perjury, that the following is true and correct:

I am over eighteen years of age, and not a party to the within cause. I am a resident of the County of Los Angeles, State of California. My business address is 5959 W. Century Blvd, Ste. 1214, Los Angeles, California 90045.

I sent the **ANSWER TO APPELLANTS' PETITION FOR REVIEW** on all interested parties in this action: as follows: Either via next-day delivery via Federal Express or by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail in the city of Los Angeles, California, addressed to the offices or residences as follows:

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Executed on March 30, 2010, at Los Angeles, California

  
\_\_\_\_\_  
Brian Miller

