

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 21-61002-CIV-SMITH

GERALD DURLING, on behalf of himself
and others similarly situated,

Plaintiff,

v.

CREDIT CORP SOLUTIONS, INC.,

Defendant.

ORDER DENYING MOTION FOR STAY

This cause is before the Court on Defendant Credit Corp Solutions, Inc.’s Motion to Stay Litigation [DE 10], Plaintiff’s Response [DE 11], Defendant’s Amended Reply [DE 15], and Plaintiff’s Sur-Reply [22].¹ Defendant seeks to stay this case pending the Eleventh Circuit’s determination of a motion for rehearing en banc in *Hunstein v. Preferred Collection & Management Services, Inc.*, Case No. 19-14434, because Plaintiff’s claim is based on the holding in *Hunstein*. Plaintiff opposes the stay.

First, the Court notes that *Hunstein*, 994 F.3d 1341 (11th Cir. 2021), is a published opinion. Pursuant to Eleventh Circuit Internal Operating Procedure – Circuit Rule 36, “[u]nder the law of this circuit, published opinions are binding precedent. The issuance or non-issuance of the mandate does not affect the result.” Thus, the pending motion for rehearing en banc does not affect the precedential value of *Hunstein*, which is the law of this circuit.

¹ The Court granted Plaintiff leave to file a sur-reply.

Further, the Supreme Court has stated that a party seeking “a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else. Only in rare circumstances will a litigant in one cause be compelled to stand aside while a litigant in another settles the rule of law that will define the rights of both.” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). Defendant has not made out a clear case of hardship or inequity. While Defendant has argued that a stay would conserve resources and a decision in *Hunstein* might streamline the issues, neither of these considerations show any hardship or inequity. Additionally, a stay may prejudice Plaintiff as witness’ memories fade, documents are lost, and Defendant’s allegedly illegal conduct continues. Thus, Defendant has not met its burden of establishing that a stay is appropriate under these circumstances.

Defendant additionally argues that it is likely that the stay would not be “immoderate or indefinite” because the Eleventh Circuit is likely to resolve the motion for rehearing in an expeditious manner. However, if the Eleventh Circuit grants the motion for rehearing, Defendant would likely seek to extend the stay until after the en banc decision issued. Thus, the stay could last a year or more. Accordingly, it is

ORDERED that Defendant Credit Corp Solutions, Inc.’s Motion to Stay Litigation [DE 10] is **DENIED**.

DONE and ORDERED in Fort Lauderdale, Florida this 8th day of July, 2021.


RODNEY SMITH
UNITED STATES DISTRICT JUDGE

cc: All counsel of record