

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

	X	
	:	Civil Action No.: 8:16-cv-00803-JSM-TGW
RONNIE E. DICKENS, on behalf of himself	:	
and others similarly situated,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
	:	
GC SERVICES LIMITED PARTNERSHIP,	:	
	:	
Defendant.	:	
	X	

**PLAINTIFF’S OPPOSITION TO DEFENDANT’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION**

Introduction

Spurred by the Supreme Court’s recent decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), GC Services Limited Partnership (“Defendant”) moves to dismiss Ronnie E. Dickens’s (“Plaintiff”) claims under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, for lack of subject matter jurisdiction. Dkt. No. 18. But in so doing, Defendant wholly ignores the Eleventh Circuit’s decision in *Church v. Accretive Health, Inc.*, No. 15-15708, --- Fed.Appx. ---, 2016 WL 3611543 (11th Cir. July 6, 2016), which applies *Spokeo* to indistinguishable claims under the FDCPA to find that a plaintiff has Article III standing based on allegations that a debt collector failed to provide disclosures required by 15 U.S.C. § 1692g(a)—just as Defendant failed to properly do here.

Indeed, Plaintiff alleges through his class action complaint that Defendant’s initial debt collection letters violate the FDCPA in two concrete ways: (1) by failing to advise consumers that they must dispute their debts, in writing, to invoke their rights under subsection 1692g(a)(4) of the

FDCPA, and (2) by failing to advise consumers that upon their written requests, Defendant will provide them with the name and address of the original creditor, if different from the current creditor, with regard to their debts. Dkt. No. 1.¹ As the Eleventh Circuit squarely held in *Church*, Defendant's failure to provide accurate disclosures mandated by the FDCPA is sufficient to confer Article III standing under *Spokeo*.

Accordingly, this Court should deny Defendant's motion to dismiss.

Argument

I. Plaintiff has Article III standing to pursue his FDCPA claims in this Court.

A. Applying *Spokeo*, the Eleventh Circuit affirmed that a litigant in Plaintiff's position has standing.

On July 6, 2016, six days prior to the filing of Defendant's motion, the Eleventh Circuit issued its opinion in *Church*, wherein it analyzed the very question before the Court here—whether the failure of a debt collector to provide accurate disclosures required by the FDCPA in an initial debt collection letter is sufficient to confer Article III standing, even in the absence of actual damages. More specifically, the plaintiff in *Church* filed a putative class action alleging violations of the FDCPA as a result of the defendant's failure to include some of the disclosures required by 15 U.S.C. § 1692g in a debt collection letter it sent to her. *See Church*, 2016 WL 3611543, at *1. The plaintiff did not, however, allege that she suffered any actual damages from the defendant's failure to include the required disclosures. *Id.* In concluding that the plaintiff had Article III standing, the Eleventh Circuit analyzed *Spokeo*:

In *Spokeo*, the Court vacated and remanded the Ninth Circuit's opinion, instructing the Ninth Circuit to consider whether the Plaintiff's injury was sufficiently concrete to satisfy Article III's injury-in-fact requirement. 578 U.S. at ___, 136 S. Ct. at 1550. In *Spokeo*, the plaintiff alleged a violation of the Fair Credit Reporting Act

¹ Among other arguments it makes, Defendant asserts that Plaintiff does not have standing to bring a claim under 15 U.S.C. § 1692g(b). Plaintiff did not, however, bring a claim under 15 U.S.C. § 1692g(b). *See* Dkt. No. 1.

(“FCRA”). *Id.* at 1544. Reversing the district court’s dismissal for lack of standing, the Ninth Circuit noted that “the violation of a statutory right is usually a sufficient injury in fact to confer standing,” but recognized that “the Constitution limits the power of Congress to confer standing.” *Robins v. Spokeo*, 742 F.3d 409, 413 (9th Cir. 2014). The Ninth Circuit held that the plaintiff adequately alleged injury-in-fact because the plaintiff alleged the defendant “violated his statutory rights, not just the statutory rights of other people” *Id.* at 413–14. The Supreme Court, however, observed that the Ninth Circuit’s analysis reached only whether the plaintiff’s injury was particularized, not whether the injury was concrete. *Spokeo*, 578 U.S. at ___, 136 S. Ct. at 1550.

Just as the tester-plaintiff had alleged injury to her statutorily-created right to truthful housing information, so too has Church alleged injury to her statutorily-created right to information pursuant to the FDCPA. The FDCPA creates a private right of action, which Church seeks to enforce. The Act requires that debt collectors include certain disclosures in an initial communication with a debtor, or within five days of such communication. *See* 15 U.S.C. § 1692e(11); 1692g(a)(1)–(5).¹ The FDCPA authorizes an aggrieved debtor to file suit for a debt collector’s failure to comply with the Act. *See* 15 U.S.C. § 1692k(a) (“[A]ny debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person”) Thus, through the FDCPA, Congress has created a new right—the right to receive the required disclosures in communications governed by the FDCPA—and a new injury—not receiving such disclosures.

It is undisputed that the letter Accretive Health sent to Church did not contain all of the FDCPA’s required disclosures. Church has alleged that the FDCPA governs the letter at issue, and thus, alleges she had a right to receive the FDCPA-required disclosures. Thus, Church has sufficiently alleged that she has sustained a concrete—i.e., “real”—injury because she did not receive the allegedly required disclosures. The invasion of Church’s right to receive the disclosures is not hypothetical or uncertain; Church did not receive information to which she alleges she was entitled. While this injury may not have resulted in tangible economic or physical harm that courts often expect, the Supreme Court has made clear an injury need not be tangible to be concrete. *See Spokeo, Inc.*, 578 U.S. at ___, 136 S. Ct. at 1549; *Havens Realty Corp.*, 455 U.S. at 373. Rather, this injury is one that Congress has elevated to the status of a legally cognizable injury through the FDCPA. Accordingly, Church has sufficiently alleged that she suffered a concrete injury, and thus, satisfies the injury-in-fact requirement.

Id. at *2-3.

Likewise here, Defendant sent Plaintiff an initial debt collection letter that failed to provide accurate disclosures required by the FDCPA. As noted by the Eleventh Circuit, “[t]he invasion of

[Plaintiff's] right to receive the disclosures is not hypothetical or uncertain; [Plaintiff] did not receive information to which she alleges she was entitled." *Id.* at *3. While Plaintiff's injury "may not have resulted in tangible economic or physical harm that courts often expect, the Supreme Court has made clear an injury need not be tangible to be concrete," and "this injury is one that Congress has elevated to the status of a legally cognizable injury through the FDCPA. Accordingly, [Plaintiff] has sufficiently alleged that she suffered a concrete injury, and thus, satisfies the injury-in-fact requirement." *Id.* As a result, the Eleventh Circuit's decision in *Church* compels a finding that Plaintiff has standing to pursue his claims here.

B. Notwithstanding the Eleventh Circuit's pronouncement in *Church*, the only other federal courts to address Article III standing in the context of FDCPA claims after *Spokeo* affirmed that a litigant in Plaintiff's position has standing.

While the Eleventh Circuit's decision in *Church* ends the necessary analysis, it is noteworthy that the only other federal courts to address Article III standing in the context of FDCPA claims, post-*Spokeo*, have reached the same result. *See Lane v. Bayview Loan Servicing, LLC*, No. 15 C 10446, 2016 WL 3671467 (N.D. Ill. July 11, 2016); *Chapman v. Bowman, Heintz, Boscia, & Vician, P.C.*, No. 15-120, 2016 WL 3247872 (N.D. Ind. June 13, 2016); *Nyberg v. Portfolio Recovery Assocs., LLC*, No. 15-1175, 2016 WL 3176585 (D. Or. June 2, 2016).²

In applying *Spokeo* to an overshadowing claim under section 1692g(b) of the FDCPA, the Northern District of Illinois found the plaintiff to have standing to sue despite alleging no actual damages: "The concrete harm, then, is the loss of the right to verification, which is enough to satisfy the concreteness requirement of Article III standing." *Lane*, 2016 WL 3671467, at *5. That is, "because the alleged overshadowing at the very least posed a risk of depriving Lane of his right

² As it failed to do with *Church*, Defendant does not address any of these decisions in its motion.

to verification, he satisfies the concrete-harm requirement. Bayview’s standing challenge must be rejected.” *Id.*

In *Chapman*, the plaintiff alleged FDCPA violations stemming from insufficient validation notices in the defendant’s initial debt collection letters—specifically, and like here,³ violations of subsection 1692g(a)(4) for failure to include “in writing” in statutorily-mandated disclosures. 2016 WL 3247872, at *1. In connection with its consideration of a proposed class-wide settlement, the court requested the parties to address the potential impact of *Spokeo* on those proceedings. The Northern District of Indiana ultimately granted final approval to the parties’ settlement as presented, and in so doing, concluded: “Because *Spokeo* largely reiterated long-standing principles of Article III standing, and did not clearly disrupt appellate precedent holding that plaintiffs in Ms. Chapman’s position have standing to bring this type of claim under the FDCPA, the Court agrees that Ms. Chapman has standing to assert this claim.” *Id.* at *1 n.1.⁴

Accordingly, this Court should likewise conclude that Plaintiff possesses Article III standing to pursue his FDCPA claims in this Court.

C. *Spokeo* did not change the injury-in-fact requirement for Article III standing, and Defendant is wrong to suggest otherwise.

While the Eleventh Circuit’s decision in *Church* is dispositive on the question before the Court, Defendant’s misapprehension of *Spokeo* warrants a response. The issue in *Spokeo* concerned whether the named plaintiff possessed Article III standing to bring claims under the

³ Here, Plaintiff alleges nearly identical violations for failure to include “in writing” in statutorily-required validation notices. *See* Dkt. No. 1.

⁴ In *Nyberg*, the plaintiff brought suit under the FDCPA in connection with an underlying debt collection action instituted—but then abandoned—by the defendant. 2016 WL 3176585, at *1. Notably, the plaintiff had suffered no consequential damage as a result of the underlying debt collection lawsuit at the heart of his FDCPA action, as that matter had been dismissed without prejudice for lack of prosecution by the defendant. *Id.* Nevertheless, the District of Oregon found sufficient allegations of “a concrete, particularized injury” as a result of that collection action such that standing existed. *Id.* at *7.

FCRA. 136 S. Ct. at 1544. In remanding the case to the Ninth Circuit for further evaluation, the Court reiterated the well-settled test for Article III standing set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-560 (1992), and *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs. (TOC), Inc.*, 528 U.S. 167, 180-181 (2000): “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo*, 136 S. Ct. at 1548. The Court’s analysis then focused on the first element of this three-part test: the requirement of an injury in fact. *Id.* at 1549.

To be clear, in reiterating its three-part standing analysis from *Lujan* and *Friends of the Earth*, the Court chose not to pave new ground; rather, it reinforced the following: so long as a claimed injury is both concrete and particularized, a plaintiff satisfies the injury-in-fact requirement for Article III standing. *Id.* at 1548. Ultimately, the Court reversed and remanded because the Ninth Circuit had not “fully appreciate[d] the distinction between concreteness and particularization, [so] its standing analysis was incomplete.” *Id.* at 1550. Significantly, however, the Court noted, “We take no position as to whether the Ninth Circuit’s ultimate conclusion—that Robins adequately alleged an injury in fact—was correct.” *Id.* As a result, *Spokeo* does nothing to change previous Eleventh Circuit precedent, and Defendant is wrong to suggest that the Supreme Court found Mr. Robins’s standing allegations insufficient. *See* Dkt. No. 18 at 10 (wrongly contending that allegations had been “rejected by the Supreme Court in its recent decision in *Spokeo*”).

D. *Spokeo* counsels that an intangible harm—such as the invasion of a statutorily-created private right—can constitute an injury in fact, thus conferring Article III standing.

“To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 1548. “For an injury to be ‘particularized,’ it ‘must affect the

plaintiff in a personal and individual way.” *Id.* And for an injury to be “concrete,” it must be ‘*de facto*’; that is, it must actually exist.” *Id.* But as the Court clarified:

“Concrete” is not, however, necessarily synonymous with “tangible.” Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete. *See, e.g., Pleasant Grove City v. Summum*, 555 U.S. 460, 129 S. Ct. 1125, 172 L. Ed. 2d 853 (2009) (free speech); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 113 S. Ct. 2217, 124 L. Ed. 2d 472 (1993) (free exercise).

In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles. Because the doctrine of standing derives from the case-or-controversy requirement, and because that requirement in turn is grounded in historical practice, it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. *See Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 775–777, 120 S. Ct. 1858, 146 L. Ed. 2d 836 (2000). In addition, because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important. Thus, we said in *Lujan* that Congress may “elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.” 504 U.S., at 578, 112 S. Ct. 2130. Similarly, Justice Kennedy’s concurrence in that case explained that “Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.” *Id.*, at 580, 112 S. Ct. 2130 (opinion concurring in part and concurring in judgment).

Id. at 1549.

While the Court went on to note that “a bare procedural violation, divorced from any concrete harm,” would not “satisfy the injury-in-fact requirement of Article III,” it was careful to reaffirm that “the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact” *Id.* at 1549; *accord Warth v. Seldin*, 422 U.S. 490, 500 (1975) (“The actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing. . . .”) (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973)). That is, the Court explained, “a plaintiff in such a case

need not allege any *additional* harm beyond the one Congress has identified.” 136 S. Ct. at 1549 (emphasis in original).

Justice Thomas’s concurrence provides even greater clarity on this point, explaining that when Congress creates new private rights—such as those afforded by the FDCPA to prevent deception and abuse by debt collectors (*e.g.*, a consumer’s right to receive specific disclosures from a debt collector—free from confusion or overshadowing—regarding the protections afforded by federal law)—Article III standing exists once those private rights have been invaded:

When Congress creates new private causes of action to vindicate private or public rights, these Article III principles circumscribe federal courts’ power to adjudicate a suit alleging the violation of those new legal rights. Congress can create new private rights and authorize private plaintiffs to sue based simply on the violation of those private rights. *See Warth v. Seldin*, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). A plaintiff seeking to vindicate a statutorily created private right need not allege actual harm beyond the invasion of that private right. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373–374, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982) (recognizing standing for a violation of the Fair Housing Act); *Tennessee Elec. Power Co. v. TVA*, 306 U.S. 118, 137–138, 59 S. Ct. 366, 83 L. Ed. 543 (1939) (recognizing that standing can exist where “the right invaded is a legal right,—one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege”).

Spokeo, 136 S. Ct. at 1551 (Thomas, J., concurring).

Thus, for Defendant to suggest that anything more is required here, *see* Dkt. No. 18 at 5 (“For example, Plaintiff does not, because he cannot, based on the language contained in the Letter, claim he mistakenly attempted to dispute his debt by phone, thereby failing to effectively trigger GC Services’ obligation to obtain and provide verification of the debt or a copy of any judgment within the statutory 30-day period”), simply ignores Eleventh Circuit precedent and misapplies the teachings of *Spokeo*. *See* 136 S. Ct. at 1549 (“‘Concrete’ is not, however, necessarily synonymous with ‘tangible.’ Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete.”); *Church*, 2016

WL 3611543, at *3 (“While this injury may not have resulted in tangible economic or physical harm that courts often expect, the Supreme Court has made clear an injury need not be tangible to be concrete. Rather, this injury is one that Congress has elevated to the status of a legally cognizable injury through the FDCPA.”).

E. Plaintiff suffered a cognizable injury in fact when Defendant violated his statutory rights under the FDCPA.

1. Congress mandated that debt collectors use specific language in initial debt collection letters so that consumers are made aware of their rights and are protected from abusive, deceptive, and unfair debt collection practices.

To understand the nature of Plaintiff’s injuries here, the natural starting point is the creation of the statutory rights that have been violated. Congress enacted the FDCPA in 1977 to “eliminate abusive debt collection practices by debt collectors,” 15 U.S.C. § 1692(e), and in response to “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors,” which Congress found to have contributed “to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.” *Id.*, § 1692(a). As explained by the Consumer Financial Protection Bureau (“CFPB”)—the federal agency tasked with enforcing the FDCPA— “[h]armful debt collection practices remain a significant concern today. In fact, the CFPB receives more consumer complaints about debt collection practices than about any other issue.”⁵

To combat this serious problem, the FDCPA requires debt collectors like Defendant to send consumers “validation notices” containing certain information about their alleged debts and consumers’ rights in relation to those debts. 15 U.S.C. § 1692g(a). A debt collector must send this

⁵ See Brief for the CFPB as Amicus Curiae, ECF No. 14 at 2, *Hernandez v. Williams, Zinman, & Parham, P.C.*, No. 14-15672 (9th Cir. Aug. 20, 2014), available at http://www.ftc.gov/system/files/documents/amicus_briefs/hernandez-v.williams-zinman-parham-p.c./140821briefhernandez1.pdf (last visited July 14, 2016).

validation notice “[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt,” unless the required information was “contained in the initial communication or the consumer has paid the debt.” *Id.* As noted by the CFPB and the Federal Trade Commission, “this validation requirement was a ‘significant feature’ of the law that aimed to ‘eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid.’” *Hernandez*, No. 14-15672, ECF No. 14 at 5.

Among other things, and pertinent to Plaintiff’s claims here, this mandatory validation notice must inform the consumer that the debt collector will obtain and mail to him verification of the debt if he disputes the debt *in writing* within 30 days of receiving the notice, 15 U.S.C. § 1692g(a)(4), and must advise the consumer that upon his *written* request within 30 days after receipt of the notice, the debt collector will provide the name and address of the original creditor, if different from the current creditor. 15 U.S.C. § 1692g(a)(5). Significantly, if the consumer disputes the debt, or makes such a request for the name of the original creditor, orally rather than in writing, the debt collector is under *no obligation* to respond, and the consumer has thereby waived the important protections afforded by subsection 1692g(b)—which requires the debt collector to cease collection of the debt until it properly responds to the consumer’s *written* inquiry. *See Osborn v. Ekpsz, LLC*, 821 F. Supp. 2d 859, 869 (S.D. Tex. 2011) (“Section 1692g(b) provides that if the consumer notifies the collector of a dispute in writing within the 30-day period, the collector must cease collection activities until he obtains the verification or information required by subsections 1692g(a)(4) and (a)(5). But if the consumer disputes the debt orally rather than in writing, the consumer loses the protections afforded by § 1692g(b); the debt collector is under no obligation to cease all collection efforts and obtain verification of the debt.”).

The requirements that Congress mandated through its enactment of subsection 1692g are not trivial in nature. Rather, as numerous district courts have explained, a “risk of real harm,” *Spokeo*, 136 S. Ct. at 1550, arises when a debt collector fails to comply with the FDCPA’s notice provisions. *See, e.g., Bicking v. Law Offices of Rubenstein & Cogan*, 783 F. Supp. 2d 841, 845 (E.D. Va. 2011) (“Where the debt collector fails to advise that the debtor’s requests under subsections (a)(4) and (a)(5) must be in writing, the least sophisticated consumer is not simply uncertain of her rights under the statute, she is completely unaware of them.”).

2. By sending an initial collection letter to Plaintiff that materially misstated his rights under the FDCPA and omitted material language required by statute, Defendant caused Plaintiff to suffer the invasion of a legally protected interest.

On December 24, 2015, Defendant sent Plaintiff an initial written communication in connection with the collection of a consumer debt that misstated Plaintiff’s rights in two important ways. *See* Dkt. No. 1. First, the letter provided that if Plaintiff disputed all or any portion of his debt within 30 days of receiving the letter, Defendant would obtain verification of the debt from the creditor and send it to Plaintiff. Dkt. No. 1-1. Second, the letter provided that upon Plaintiff’s request within 30 days, Defendant would provide Plaintiff with the name of the original creditor associated with the alleged debt, if different from the current creditor. *See id.* But absent from these disclosures—and in contravention of the FDCPA—were notices advising Plaintiff to take either action through a writing. *See id.* As described above, these omissions are material, as they fail to make Plaintiff aware of certain rights under federal law, and thus would allow—even encourage—consumers like Plaintiff to forego their statutory rights under 15 U.S.C. § 1692g(b) by failing to dispute the debt or request verification in writing.

Significant then, is that the FDCPA requires strict compliance with its validation notice requirements, 15 U.S.C. §1692g, and authorizes a consumer to recover actual and statutory

damages from “any debt collector who fails to comply with” that provision “with respect to” the consumer, *id.*, § 1692k(a). Together, these provisions grant consumers like Plaintiff legally protected interests in receiving accurate information regarding their rights as the target of a debt collector, and in not being subjected to misleading debt collection communications—interests that Defendant invaded.

In other words, Plaintiff suffered injury to his statutorily-created right to clear and accurate disclosures of his rights under the federal debt collection laws. This alone is enough to satisfy Article III standing under Supreme Court and Eleventh Circuit precedent. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-74 (1982) (holding that the deprivation of a right not to be “the object of a misrepresentation made unlawful under” a federal statute satisfied Article III’s “injury in fact” requirement.); *Church*, 2016 WL 3611543, at *3 (“Thus, through the FDCPA, Congress has created a new right—the right to receive the required disclosures in communications governed by the FDCPA—and a new injury—not receiving such disclosures.”).

3. The invasion of the legally protected interest suffered by Plaintiff is both “concrete and particularized” and “actual or imminent, not conjectural or hypothetical”— it is not a “bare procedural violation.”

Further, the invasion of this legally protected interest is both particularized and concrete, and actual or imminent. That is, the invasion of Plaintiff’s rights was actual and particular to him in that Defendant sent the misleading debt collection letter directly to him, *see* Dkt. No. 1-1, and affected Plaintiff in a personal and individual way, *Spokeo*, 136 S. Ct. at 1548, because it misstated his rights regarding how to dispute the debt and to request verification of the original creditor of his alleged debt. Accordingly, the injury that Plaintiff suffered is personal to him, and not simply a “nonjusticiable generalized grievance.” *Spokeo*, 136 S. Ct. at 1548, n.7.

The misrepresentations that Defendant made to Plaintiff also constitute a “concrete” injury under *Spokeo* and prior Supreme Court precedent. To be sure, the Court confirmed in *Spokeo* that

informational injury—being denied access to information to which an individual is entitled by statute—is a concrete injury under Article III. *See id.* at 1549-50. And, as the Court made clear, the denial of that information is, on its own, sufficiently concrete; “a plaintiff in such a case need not allege any additional harm beyond the one Congress has identified.” *Id.* at 1549; *see also Church*, 2016 WL 3611543, at *3 (“It is undisputed that the letter Accretive Health sent to Church did not contain all of the FDCPA’s required disclosures. Church has alleged that the FDCPA governs the letter at issue, and thus, alleges she had a right to receive the FDCPA-required disclosures. Thus, Church has sufficiently alleged that she has sustained a concrete—i.e., “real”—injury because she did not receive the allegedly required disclosures.”).

In support of this principle, the Court reaffirmed its past precedent, citing *Public Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 449 (1989), which held that the plaintiff had standing to challenge the Justice Department’s failure to provide access to information, the disclosure of which was required by the Federal Advisory Committee Act. The inability to obtain such information, the Court explained, “constitutes a sufficiently distinct injury to provide standing to sue.” *Id.* at 449. Likewise, the Court referenced *Fed. Election Comm’n v. Akins*, 524 U.S. 11 (1998), for a similar point, “confirming that a group of voters’ ‘inability to obtain information’ that Congress had decided to make public is a sufficient injury in fact to satisfy Article III.” *Spokeo*, 136 S. Ct. at 1549-50 (citing *Akins*, 524 U.S. at 20-25).

And perhaps most instructive is the Court’s decision in *Havens Realty Corp.*, where it held that the deprivation of a right not to be “the object of a misrepresentation made unlawful under” the Fair Housing Act (“FHA”) satisfied Article III’s “injury in fact” requirement. 455 U.S. at 373-74. There, a housing-discrimination “tester”—one who, “without an intent to rent or purchase a home or apartment, pose[d] as [a] renter[] or purchaser[] for the purpose of collecting evidence of

unlawful steering practices”—brought suit against a realty company that had falsely informed her that no housing was available. *Id.* The FHA barred such misrepresentations, thus creating a “legal right to truthful information about available housing.” *Id.* at 373 (citing 42 U.S.C. § 3604(d)). The Court concluded that “the Art. III requirement of injury in fact is satisfied” because the tester “allege[d] injury to her statutorily created right to truthful housing information.” *Id.* at 374; *see also Ctr. for Biological Diversity, Inc. v. BP Am. Prod. Co.*, 704 F.3d 413, 429-31 (5th Cir. 2013) (organizational plaintiff sufficiently alleged a concrete informational injury that Emergency Planning and Community Right-to-Know Act was designed to redress, as required for standing).

Of course, the same is true here with regard to debt collection disclosures. As Congress found in enacting the FDCPA:

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

15 U.S.C. § 1692(a)-(b).

So, just as the statute in *Havens Realty* created a “legal right to truthful information about available housing,” 455 U.S. at 373, the FDCPA grants consumers a legal right to accurate—and not misleading—disclosures concerning their rights when being sent an initial written communication from a debt collector. As set forth above, the express purpose behind these disclosure requirements is to protect consumers from the parade of horrors that prompted Congress to enact the FDCPA in the first place.

But that does not mean that an FDCPA plaintiff must also allege, or prove, that the misrepresentation had such consequential effects in his particular circumstances. Rather, the invasion of a right not to be “the object of a misrepresentation made unlawful under [the statute],”

suffices to support standing. *Id.*; see also *Church*, 2016 WL 3611543, at *3 (“The invasion of Church’s right to receive the disclosures is not hypothetical or uncertain; Church did not receive information to which she alleges she was entitled. While this injury may not have resulted in tangible economic or physical harm that courts often expect, the Supreme Court has made clear an injury need not be tangible to be concrete.”). And just like the invasion of rights to accurate information sufficed to support standing in *Public Citizen*, *Akins*, *Havens Realty*, and *Church*, so too does the invasion of the same right here support Plaintiff’s standing to sue under the FDCPA.

The Supreme Court recently reaffirmed that “the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure,” *Spokeo*, 136 S. Ct. at 1549, and that “Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.” *Id.* (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in judgment)). As in *Havens Realty*, Defendant’s deprivation of Plaintiff’s statutory right not to be subject to misrepresentations in the context of Defendant’s debt collection efforts is sufficiently concrete by itself to confer standing on Plaintiff.

There can be no doubt, therefore, that the abusive debt collection practices that Congress sought to curb by requiring debt collectors to accurately inform consumers of their rights under the statute resulted in real, concrete harm here. That is, Defendant’s failure to comply with congressionally-mandated disclosure requirements resulted in real harm to Plaintiff, who was thereby deprived of important consumer protections. See *Church*, 2016 WL 3611543, at *3; see also *Thorne v. Accounts Receivable Mgmt., Inc.*, No. 11-22290, 2012 WL 3108662, at *6 (S.D. Fla. July 24, 2012) (“The FDCPA, expressly designed to protect consumers against unscrupulous debt collection practices, defines a legally protected interest of consumers against such practices,

and a violation of the FDCPA's provisions invades that interest. Thus, Thorne has more than a mere financial stake in this litigation; she claims a distinct and palpable injury-in-fact based on her receipt of a message that violated her legally-protected interest under the FDCPA.”⁶

Importantly, and completely overlooked by Defendant in its briefing, the violation of the statutory right to be free from misleading debt collection practices—part of the overarching “right to be treated in a reasonable and civil manner,” *see Bass v. Stolper, Koritzinsky, Brewster & Neider, S.C.*, 111 F.3d 1322, 1324 (7th Cir. 1997)—is not a “bare procedural violation.” Rather, as in *Havens Realty*, it is a substantive right the infringement of which is itself a “specific injury” that satisfies “the Art. III requirement of injury in fact.” 455 U.S. at 374. Thus, as the Eleventh Circuit recently noted in *Church*:

In *Spokeo*, the Court stated that a Plaintiff ‘cannot satisfy the demands of Article III by alleging a bare procedural violation.’ *Spokeo*, 136 S. Ct. at 1550. This statement is inapplicable to the allegations at hand, because Church has not alleged a procedural violation. Rather, Congress provided Church with a substantive right to receive certain disclosures and Church has alleged that Accretive Health violated that substantive right.

Church, 2016 WL 3611543, at *3, n.2.

F. Defendant’s contention that it would have honored oral requests—despite not being required under the FDCPA to do so—does not change the analysis, as the Eleventh Circuit previously held.

Finally, Defendant contends that because it allegedly affords consumers more rights than the law allows, Plaintiff could not have suffered an injury-in-fact. *See* Dkt. No. 18 at 5-9. But as set forth herein, Defendant’s failure to provide the disclosures to Plaintiff mandated by Congress

⁶ Moreover, when Plaintiff received the deficient letter, the corresponding violation of his statutory rights by Defendant created the risk of real harm identified by Congress in enacting the FDCPA—that Plaintiff would be confused or misled as to his rights under federal law as the target of a debt collector. *See Goswami v. Am. Collections Enter., Inc.*, 377 F.3d 488, 495 (5th Cir. 2004) (“[W]e must assume that the plaintiff-debtor is neither shrewd nor experienced in dealing with creditors.”). This, alone, is enough to confer Article III standing. *See Spokeo*, 136 S. Ct. at 1548 (“This does not mean, however, that the risk of real harm cannot satisfy the requirement of concreteness.”).

is enough to satisfy Article III, regardless of subsequent acts Defendant contends it would have taken. And even assuming *arguendo* that Defendant *does* provide consumers with these benefits, the salient point, in any event, is that Defendant would not be *required* under the FDCPA to do so, and thus a consumer would have no recourse should Defendant fail to honor its word. Nor would most consumers even know that Defendant was failing to honor its representations here if it, in fact, did not accept oral disputes of debts and oral requests for creditor information in any particular circumstance.

For these very reasons, and in another controlling decision omitted from Defendant's motion, the Eleventh Circuit rejected the exact argument made by Defendant here:

The Collectors next argue that by omitting the “in writing” requirement they were simply waiving that requirement and agreeing to permit Bishop to dispute her debt either orally or in writing. They assert that such a waiver protects consumers and thus actually *advances* the purpose of the FDCPA. In particular, they suggest that debt collectors who waive the “in writing” requirement (by omitting it from the notice of debt) are protecting consumers by accepting a less demanding means of dispute than they are otherwise entitled to require. Thus, the Collectors argue, omission of the “in writing” requirement does not violate § 1692g.

We reject the notion that § 1692g gives debt collectors discretion to omit the “in writing” requirement or cure improper notice by claiming waiver. The statute is clear. The debt collector “shall” notify the consumer of her right to dispute the debt in writing. 15 U.S.C. § 1692g(a). Likewise, the consumer has a right to verification only if she disputes the debt in writing. *Id.* § 1692g(b); *see also Hooks v. Forman, Holt, Eliades & Ravin, LLC*, 717 F.3d 282, 286 (2d Cir. 2013) (“[C]onsumers [must] take the extra step of putting a dispute in writing before claiming the more burdensome set of rights defined in § 1692g(a)(4), (a)(5) and (b).”); *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142, 146 (3d Cir. 2013) (“[A] dispute of a debt must be in writing in order to be effective....”); *Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078, 1081 (9th Cir. 2005) (explaining that a consumer can trigger the right to verification “only through written dispute”). Nothing in the statute suggests that debt collectors have discretion to relax these requirements.

In any event, the FDCPA already specifies a remedy for violations of § 1692g. Section 1692k imposes civil liability on “any debt collector who fails to comply with any provision” of the FDCPA. 15 U.S.C. § 1692k(a). The term “any provision” clearly includes § 1692g; there is nothing elsewhere in the statute to suggest an exemption. This Court will not judicially fashion a “waiver remedy” for violations

of § 1692g when the FDCPA identifies civil liability as the remedy for noncompliance.

Bishop v. Ross Earle & Bonan, P.A., 817 F.3d 1268, 1273-74 (11th Cir. 2016); *see also, e.g., Bicking*, 783 F. Supp. 2d at 845 (“Nor does it matter whether Defendants would have honored an oral request. A debt collector’s statutory duty to verify the debt does not arise unless and until the debtor disputes the debt in writing.”); *Osborn*, 821 F. Supp. 2d at 869 (“The defendant’s argument that its collection letter afforded the plaintiffs additional rights assumes that the defendant would have been legally obligated to provide the plaintiffs the information required by subsections 1692g(a)(4) and (a)(5) in response to oral requests. This assumption is incorrect.”).

Conclusion

As the Eleventh Circuit squarely held last week in *Church*, a claimant in Plaintiff’s position has Article III standing. As a result, this Court should deny Defendant’s motion to dismiss.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on July 14, 2016, I filed the foregoing document with the clerk using the Court's CM/ECF system which caused notice to Defendant's counsel of record:

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