

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JAMES RUSSELL GARRETT,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:15-CV-3881-RWS
SCANA ENERGY MARKETING,	:	
INC.,	:	
	:	
Defendant.	:	

ORDER

This matter is before the Court on Defendant’s Motion for Judgment on the Pleadings [Doc. No. 15].

I. Factual Background

On October 5, 2015, Plaintiff filed this putative class action in the State Court of Cobb County, Georgia [Doc. No. 1-1]. On November 6, 2015, Defendant removed the action to this Court based on federal question jurisdiction [Doc. No. 1]. Plaintiff alleges that Defendant SCANA called his cell phone and left pre-recorded messages in an attempt to collect a debt allegedly owed by one of its customers [Doc. No. 1-1, ¶ 12]. Plaintiff further alleges that he was not a SCANA customer and had not provided consent for SCANA to make the alleged calls to

him [Doc. No. 1-1, ¶¶ 14 and 29]. When he called to inquire into the calls he was receiving, he alleges that he was advised that the calls sought to reach “Anita Cooper” [Doc. No. 1-1, ¶¶ 15-16]. Plaintiff’s alleged injuries are that “[t]he telephone calls were annoying to [him], invaded [his] privacy interests, and temporarily blocked use of his cellular telephone line for other potential callers” [Doc. No. 1-1, ¶ 32]. Plaintiff seeks statutory damages of \$500 for each call in violation of the Telephone Consumer Protection Act (“TCPA”). He requests treble damages because he alleges that SCANA’s violations were “committed wrongfully and knowingly” [Doc. No. 1-1, ¶¶ 48-50].

II. Legal Standard

After the pleadings are closed but within such time as not to delay trial, a party may file a motion for judgment on the pleadings. Fed. R. Civ. P. 12(c); see Conner v. Tate, 130 F. Supp. 2d 1370, 1373 (N.D. Ga. 2001). Judgment on the pleadings is appropriate only when no issues of material fact exist, and the movant is entitled to judgment as a matter of law. Ortega v. Christian, 85 F.3d 1521, 1524 (11th Cir. 1996). A court considers only the substance of the pleadings and any judicially noticed facts, and the court accepts the facts in the complaint as true and views them in the light most favorable to the nonmoving party. Hawthorne v. Mac Adjustment, Inc., 140 F.3d 1367, 1370 (11th Cir. 1998).

III. Analysis

Defendant has moved for judgment on the pleadings because it contends that Plaintiff has failed to plead a “concrete” injury as required by Article III of the United States Constitution and the United States Supreme Court in Spokeo, Inc. v. Robins, 578 U.S. ___, 136 S. Ct. 1540, 2016 WL 2842447 (May 16, 2016). For that reason, Defendant argues that Plaintiff lacks standing and so his claims fail as a matter of law.

Article III of the United States Constitution restricts the jurisdiction of federal courts to actual “cases” and “controversies.” Article III standing requires “an injury in fact that is concrete, particularized, and actual or imminent.” City of Miami v. Bank of America Corp., 800 F.3d 1262, 1272 (11th Cir. 2015). As the Eleventh Circuit has always made clear and Spokeo reaffirmed, this is true even in the context of a federal statutory violation. Id. (addressing Article III standing in a Fair Housing Act case); Palm Beach Gold Center - Boca, Inc. v. John G. Sarris, D.D.S., P.A., 781 F.3d 1245, 1251 (11 Cir. 2015) (addressing Article III standing in a TCPA case); Spokeo, 136 S. Ct. at 1547-48.

The Court finds that Plaintiff has pled sufficient “injury” for this Court to have subject matter jurisdiction over his claim. In a recent unpublished opinion, Church v. Accretive Health, Inc. No. 15-15708, 2016 WL 3611543, at *3 (11th

Cir. July 6, 2016), the Eleventh Circuit addressed the “injury-in-fact” requirement under the Fair Debt Collection Practices Act. The panel thoroughly reviewed Spokeo and cited to Havens Realty Corp. v. Coleman, 455 U.S. 363, 373-74 (1982), for the rule that “[a]n injury-in-fact, as required by Article III, ‘may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing’” Church, 2016 WL 3611543, at *3 (citing Havens, 455 U.S. at 373). The Court notes that Plaintiff’s alleged “injury” in Church was that upon receiving a letter that did not contain certain required disclosures she “was very angry” and “cried a lot.” Church, 2016 WL 3611543, at *1. In this case, Plaintiff has alleged that he was injured by the annoyance, nuisance, and occupation of a telephone line, which is clearly an invasion of his rights protected by the TCPA. As such, the Court finds that he has standing to assert his claim and that this Court has jurisdiction.

IV. Conclusion

For the reasons stated above, Defendant’s Motion for Judgment on the Pleadings [Doc. No. 15] is DENIED.

SO ORDERED, this 10th day of August, 2016.



RICHARD W. STORY
United States District Judge