

Majority Opinion >

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON

ROD PERRY, Plaintiff, v. COLUMBIA RECOVERY GROUP, LLC, Defendant.

CASE NO. C16-0191JLR

October 19, 2016, Filed October 19, 2016, Decided

For Rod Perry, on behalf of himself and others similarly situated, Plaintiff: Joseph M Panvini, THOMPSON CONSUMER LAW GROUP, PLLC, MESA, AZ.

For Columbia Recovery Group LLC, Defendant: Jeffrey I Hasson, DAVENPORT & HASSON, PORTLAND, OR.

JAMES L. ROBART, United States District Judge.

JAMES L. ROBART

ORDER GRANTING MOTION TO DISMISS WITH LEAVE TO AMEND

I. INTRODUCTION

Before the court is Defendant Columbia Recovery Group, LLC's ("Columbia") [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) motion to dismiss. (Mot. (Dkt. # 10).) The court has reviewed the motion, all of the parties' submissions related to the motion, Plaintiff Rod Perry's complaint (Compl. (Dkt. # 1)), other relevant portions of the record, and the applicable law. Being fully advised,¹ the court GRANTS Columbia's motion and dismisses Mr. Perry's complaint without prejudice and with leave to file an amended complaint within 14 days of the filing date of this order.

II. BACKGROUND

On February 29, 2016, Mr. Perry filed a putative class action complaint alleging that Columbia violated certain provisions of the Fair Debt Collection Practices Act ("FDCPA"), [15 U.S.C. § 1692](#), *et seq.* (See generally Compl.) In his complaint, Mr. Perry alleges that he leased an apartment at the Knolls Apartment Complex at Inglewood Hills Apartments ("the Knolls"). (*Id.* ¶¶ 20, 22, Ex. A at 1.) He alleges that upon terminating his lease, he reached an agreement with the Knolls regarding the amount of his move-out expenses. (*Id.* ¶ 23.) He asserts that, despite cashing his check for the agreed upon amount, the Knolls transferred a debt to Columbia for collection. (*Id.* ¶ 24, Ex. A at 1.)

Mr. Perry further alleges that Columbia sent him a letter dated February 18, 2015, in connection with the collection of \$477.55 that he allegedly owes to Knolls. (*Id.* ¶¶ 25-26, Ex. A (attaching a copy of the February 18, 2015, letter).)

Mr. Perry maintains that the February 18, 2015, letter was Columbia's initial communication with him and that the letter purports to provide certain disclosures required under the FDCPA in [15 U.S.C. § 1692g\(a\)](#). (*Id.* ¶¶ 27-28.)

Columbia's letter to Mr. Perry states:

Unless you notify this office within thirty days of receiving this notice that you dispute the validity of this debt, or any portion thereof, this office will assume this debt is valid. If a written dispute is received within thirty days this office will obtain verification of the debt and forward the proof of your liability to you. We will also provide to you the name and address of the original creditor if different from the current creditor if a written request is received within thirty days.

(Compl. Ex. A at 1.) Mr. Perry alleges that by stating that his written dispute of the debt "must be *received* within thirty days of the initial communication, rather than *sent* within that time period, [Columbia] overshadowed the notice required by the FDCPA in [15 U.S.C. § 1692g\(a\)\(4\)](#) by making it appear that [he] had less time in which to submit a dispute than he actually had." (*Id.* ¶ 29 (italics in original).) In addition, Mr. Perry alleges that Columbia made "an improper statement" [*2] regarding the timeframe in which a consumer may act under [15 U.S.C. § 1692g\(a\)](#) when Columbia stated that it would provide him with "the name and address of the original creditor if different from the current creditor if a written request is *received* within thirty days." (Compl. ¶ 30 (italics in original).)

Mr. Perry does not allege that he sent a written dispute of the debt to Columbia at any time or that Columbia failed to respond to a written dispute of the debt. (*See generally id.*) Mr. Perry does not assert that he would have sent a written dispute of the debt to Columbia if it had not been for the alleged errors in Columbia's letter or that the letter confused him. (*See generally id.*) Although Mr. Perry alleges that he "reached an agreement with Knolls regarding the amount of [his] move-out expenses" and that Knolls cashed his check "for the balance [Knolls] agreed he owed" (*id.* ¶ 23), he does not allege that his "move-out expenses" form the basis of the debt referenced in Columbia's letter (*see generally id.*). Indeed, Mr. Perry never specifically alleges that he disputes the debt that is the subject of Columbia's letter. (*See generally id.*)

In his complaint, Mr. Perry seeks an award of "actual damages" under the FDCPA. (*Id.* at 9 (Prayer for Relief ¶ c) (citing [15 U.S.C. § 1692k\(a\)\(1\)](#))). He also seeks statutory damages under the FDCPA "not exceeding \$1,000." (*Id.* (Prayer for Relief ¶ d) (citing [15 U.S.C. § 1692k\(a\)\(2\)\(B\)\(i\)](#))). However, in the computation of damages contained in his [Federal Rule of Civil Procedure 26](#) disclosure statement,² Mr. Perry only claims "statutory damages recoverable under the [FDCPA] pursuant to [15 U.S.C. § 1692k\(a\)\(2\)\(B\)](#) in the amount of \$1,000.00." (Hansen Decl. (Dkt. # 11) Ex. A (Dkt. # 11-1) at 2.) In response to Columbia's motion, Mr. Perry does assert any damages other than the statutory damages he describes in his Rule 26 disclosure statement.³ (*See generally* Resp.)

III. ANALYSIS

Columbia asserts that the court lacks subject matter jurisdiction over Mr. Perry's FDCPA claims because Mr. Perry has failed to establish the constitutional minimum for Article III standing under *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016), *as revised* (May 24, 2016). Specifically, Columbia argues that Mr. Perry fails to satisfy the injury-in-fact requirement of Article III standing because his allegations and claim for statutory damages constitute nothing more than a "bare procedural violation" of the FDCPA "divorced from any concrete harm." *Spokeo*, 136 S. Ct. at 1549.

Mr. Perry counters that Columbia misunderstands *Spokeo*. (*See generally* Resp.) Mr. Perry contends that *Spokeo* merely clarifies that courts must separately analyze the "concrete" and "particularized" aspects of the injury-in-fact element of Article III standing. (*See id.*) He asserts that *Spokeo* did not "overrule four decades of FDCPA case law" or "fundamentally change how our consumer protection laws are enforced." (*Id.* at 7 (bolding omitted).) Rather, Mr. Perry emphasizes, the Supreme Court in *Spokeo* was careful to reaffirm that intangible harm, such as "informational injuries" like his, are sufficient to create an injury in fact. (*Id.* at 12-13.) Mr. Perry argues that because he received Columbia's letter, which contained alleged violations of the FDCPA, the court should deny Columbia's motion. (*See id.* at 1, 15.)

The court now considers [*3] Columbia's motion to dismiss Mr. Perry's complaint.

A. Standards

A motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#) tests the subject matter jurisdiction of the court. See [Fed. R. Civ. P. 12\(b\)\(1\)](#). If a plaintiff lacks Article III standing to bring a suit, the federal court lacks subject matter jurisdiction and the suit must be dismissed under [Rule 12\(b\)\(1\)](#). *Cetacean Cmty. v. Bush*, [386 F.3d 1169](#), [1174](#) (9th Cir. 2004); [Fed. R. Civ. P. 12\(b\)\(1\)](#). The party invoking federal jurisdiction bears the burden of establishing standing. *Lujan v. Defs. of Wildlife*, [504 U.S. 555](#), [561](#), [112 S. Ct. 2130](#), [119 L. Ed. 2d 351](#) (1992).

"A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Safe Air for Everyone v. Meyer*, [373 F.3d 1035](#), [1039](#) (9th Cir. 2004) (citation omitted); see *Wolfe v. Strankman*, [392 F.3d 358](#), [362](#) (9th Cir. 2004) ("[I]n reviewing a Rule 12(b)(1) motion to dismiss for lack of jurisdiction, we take the allegations in the plaintiff's complaint as true."). The Ninth Circuit explains that at the pleading stage,

[t]o invoke a federal court's subject-matter jurisdiction, a plaintiff needs to provide only "a short and plain statement of the grounds for the court's jurisdiction." [Fed. R. Civ. P. 8\(a\)\(1\)](#). The plaintiff must allege facts, not mere legal conclusions, in compliance with the pleading standards established by *Bell Atlantic Corp. v. Twombly*, [550 U.S. 544](#), [127 S. Ct. 1955](#), 167 L. Ed. 2d 929 . . . (2007), and *Ashcroft v. Iqbal*, [556 U.S. 662](#), [129 S. Ct. 1937](#), 173 L. Ed. 2d 868 . . . (2009).

Leite v. Crane Co., [749 F.3d 1117](#), [1121](#) (9th Cir. 2014). In contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Safe Air for Everyone*, [373 F.3d at 1039](#). When standing is factually attacked, the court may hear evidence before ruling on the issue. *St. Clair v. City of Chico*, [880 F.2d 199](#), [200-02](#) (9th Cir. 1989). Additionally, when considering constitutional standing under either a facial or factual attack, courts may "allow or . . . require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing." *Maya v. Centex Corp.*, [658 F.3d 1060](#), [1068](#) (9th Cir. 2011).

Here, Columbia challenges the court's jurisdiction from both a facial and factual standpoint. Columbia challenges the allegations in Mr. Perry's complaint in one respect only—the nature of Mr. Perry's claimed damages. In his complaint, Mr. Perry seeks an award of "actual damages, pursuant to [15 U.S.C. § 1692k\(a\)\(1\)](#)." (Compl. at 9 (Prayer for Relief ¶ c).) As noted above, however, Columbia submits a copy of Mr. Perry's Rule 26 disclosure statement with its motion to demonstrate that Mr. Perry, in fact, seeks only statutory damages. (Hansen Decl. Ex. A at 2.) Thus, the court considers Columbia's motion, at least with respect to the nature of Mr. Perry's damages, as a factual attack. Few procedural limitations exist in a factual challenge to a complaint's jurisdictional allegations. *St. Clair*, [880 F.2d at 200-02](#). For instance, the court may permit discovery before allowing the plaintiff to demonstrate the requisite jurisdictional facts. *Id.* Here, however, Mr. Perry has not requested any discovery in response to Columbia's motion. (See generally Resp.) Further, Mr. Perry has not challenged Columbia's assertion that he seeks only statutory damages. (See generally [*4] *id.*)

B. Article III Standing

The standing doctrine serves to ensure that the authority of federal courts extends only to "cases" and "controversies" as mandated by Article III of the United States Constitution. [U.S. Const. art. III](#), [§ 2](#); *Spokeo*, [136 S. Ct. at 1547](#). Standing is a "threshold question" that a litigant invoking federal jurisdiction must demonstrate before the court may hear the case. *Warth v. Seldin*, [422 U.S. 490](#), [498](#), [95 S. Ct. 2197](#), [45 L. Ed. 2d 343](#) (1975). The "irreducible constitutional minimum of standing" contains three elements: (1) an "injury in fact" (2) that is "fairly traceable to the challenged action of the defendant" and (3) "likely" to be "redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, [504 U.S. 555](#), [561](#), [112 S. Ct. 2130](#), [119 L. Ed. 2d 351](#) (1992) (alternations, internal quotation marks, and internal citations omitted).

Columbia's motion focuses on the first element of standing—injury in fact. (See Mot. at 4 ("In this case, [Mr. Perry] fails to satisfy the standing requirement of Article III since there is no injury-in-fact to [Mr. Perry] or to any other class member.")) To demonstrate an injury in fact, Mr. Perry must show "an invasion of a legally protected interest" that is both "concrete and particularized" as well as "actual or imminent, not conjectural or hypothetical." *Lujan*, [504 U.S. at 560](#) (internal quotation marks omitted). The injury "must be concrete in both a qualitative and temporal sense." *Whitmore v. Arkansas*, [495 U.S. 149](#), [155](#), [110 S. Ct. 1717](#), [109 L. Ed. 2d 135](#) (1990). The injury must be "distinct and palpable, as opposed to merely abstract." *Id.* (alterations, internal quotation marks, and internal citations omitted). "[T]he injury in fact' test requires more than an injury to a cognizable interest. It requires that the party seeking review be himself among the injured." *Sierra Club v. Morton*, [405 U.S. 727](#), [734-35](#), [92 S. Ct. 1361](#), [31 L. Ed. 2d 636](#) (1972).

1. *Spokeo*

The Supreme Court recently revisited the principles of standing and the injury-in-fact element in *Spokeo*, and this opinion is at the heart of Columbia's motion. *Spokeo* involved a class action lawsuit under the Fair Credit Reporting Act ("FCRA"), [15 U.S.C. § 1681e](#), which imposes various procedural requirements on consumer reporting agencies to ensure credit reporting is fair and accurate. [136 S. Ct. at 1545](#). In *Spokeo*, the defendant company compiled profiles of individuals from information in online databases and then provided the profiles to its users through its website. [Id. at 1546](#). The profiles could include the individual's address, phone number, marital status, approximate age, occupation, hobbies, finances, shopping habits, and musical preferences. [Id.](#) The plaintiff sued the defendant company for violating the FCRA's procedural requirements by allegedly providing incorrect information about the plaintiff to the company's users. [Id. at 1545-46](#). The district court found that the plaintiff failed to allege an injury in fact and dismissed the complaint for lack of standing. [Id. at 1546](#). The Ninth Circuit reversed the district court and held that the plaintiff's injury "satisfied the injury-in-fact requirement of Article III" because the defendant "violated [the plaintiff's] statutory rights, not just the statutory rights of other people." [Id.](#)

The Supreme Court reversed the Ninth Circuit because the Ninth Circuit's injury-in-fact analysis focused exclusively on whether [*5] the plaintiff's injury was particularized. [Id. at 1550](#). The Supreme Court emphasized that to satisfy the injury-in-fact element of Article III standing, the plaintiff's injury must be both particularized and concrete. See [Id.](#) The Court, therefore, remanded the case to the Ninth Circuit so that it could complete its standing analysis and consider the concreteness of the plaintiff's injury. [Id.](#)

In remanding, the Supreme Court emphasized that to be concrete an injury "must be 'de facto'; that is, it must actually exist." [Id. at 1548](#). However, the Supreme Court also explained that "concrete" does not necessarily mean "tangible." [Id. at 1549](#). An intangible harm, such as the loss of one's right to free speech or to religious practice, can constitute a concrete injury. [Id.](#) (citing *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)). Both history and the judgment of Congress play important roles in determining whether an intangible harm constitutes an injury in fact. [Id.](#) Courts should 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." [Id.](#) Further, "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important." [Id.](#) Indeed, "Congress may 'elevat[e] to the status of legally cognizable injuries, de facto injuries that were previously inadequate in law.'" [Id.](#) (alterations in original) (quoting *Lujan*, [504 U.S. at 578](#)). However, a plaintiff does not "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." [Id.](#) "Article III standing requires a concrete injury even in the context of a statutory violation." [Id.](#) A plaintiff may not "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." [Id.](#)

Further, in certain circumstances, "the risk of real harm" is enough to satisfy the concreteness requirement. [Id.](#) For example, the Supreme Court noted that harms associated with certain torts can be difficult to prove or measure. [Id.](#) (citing libel and slander as examples). Thus, the Court acknowledged that in some circumstances the violation of a procedural right granted by a statute could be sufficient to constitute an injury in fact, and in such cases, the plaintiff

need not allege any additional harm beyond the harm Congress had identified. [Id. at 1549-50](#). In so ruling, the Supreme Court cited two prior cases involving informational injuries. [Id.](#) (citing *Fed. Election Comm'n v. Akins*, [524 U.S. 11](#), [20-25](#), [118 S. Ct. 1777](#), [141 L. Ed. 2d 10](#) (1998) (confirming that a group of voters' "inability to obtain information" that Congress had decided to make public was a sufficient injury in fact to satisfy Article III); *Pub. Citizen v. Dep't of Justice*, [491 U.S. 440](#), [449](#), [109 S. Ct. 2558](#), [105 L. Ed. 2d 377](#) (1989) (holding that two advocacy organizations' failure to obtain information subject to disclosure under the Federal Advisory Committee Act "constitutes [*6] a sufficiently distinct injury to provide standing to sue")).

Based on these guiding principles, the *Spokeo* Court distilled two concepts from the FRCA case before it. First, Congress "sought to curb the dissemination of false information by adopting procedures designed to decrease that risk." [Id.](#) at 1550. Second, the plaintiff could not "satisfy the demands of Article III by alleging a bare procedural violation." [Id.](#) The Supreme Court concluded that a violation of FRCA could result in no harm at all—if, for example, despite a failure to provide the required notice under the statute, the information provided was entirely accurate, or the inaccuracy was so immaterial that it caused no harm or material risk of harm. [Id.](#) Based on the foregoing insights, the Supreme Court vacated and remanded the case to the Ninth Circuit so that it could complete its standing analysis and, in particular, consider the concreteness of the plaintiff's alleged harm. [Id.](#)

2. Mr. Perry's FDCPA Claims

With the *Spokeo* analytical framework firmly in mind, the court must determine whether the alleged FDCPA violations in Mr. Perry's complaint satisfy the concreteness requirement of the injury-in-fact component of Article III standing. Mr. Perry alleges that the letter he received from Columbia violated certain disclosure requirements of the FDCPA. (See Compl. ¶¶ 29-30, 52-54.) The purpose of the FDCPA is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." [15 U.S.C. § 1692\(e\)](#). The FDCPA fulfills this purpose in part by requiring a debt collector to provide the consumer with written notice of the consumer's rights to dispute and seek verification of an alleged debt and to obtain the name and address of the original creditor within 30 days after receiving notice of the debt from a debt collector. [Id. §§ 1692g\(a\)\(4\) -\(5\)](#), [1692g\(b\)](#). If a consumer exercises these rights, the debt collector must "cease collection of the debt" until the debt collector provides verification of the debt or the name and address of the original creditor. [Id. § 1692g\(b\)](#). Debt collectors must inform consumers of these rights in a written notification "[w]ithin five days after the initial communication with a consumer in connection with the collection of any debt." [Id. § 1692g\(a\)](#). Furthermore, "[a]ny collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor." [Id. § 1692g\(b\)](#).

Mr. Perry alleges that Columbia violated the FDCPA by stating in its February 18, 2015, letter that Mr. Perry was required to send a written dispute of the debt or request for the name and address of the original creditor "such that it would be received by [Columbia] within 30 days of [Mr. Perry's] receipt of [Columbia's] letter." (Compl. ¶ 54.) Mr. Perry contends that Columbia's letter [*7] improperly shortens the period in which he may dispute his debt or send a request for information and is inconsistent with his rights under the FDCPA, "which allow the consumer thirty [30] days in which to initiate the dispute or send the request." (*Id.*)

Under *Spokeo*, a violation of the FDCPA does not automatically constitute an injury in fact. [136 S. Ct. at 1549](#) ("Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right."). "[A] bare procedural violation [of a statute] divorced from any concrete harm" cannot confer Article III standing. [Id.](#) For example, the *Spokeo* Court stated that even if a consumer reporting agency violated the FCRA by "fail[ing] to provide the required notice to a user of the agency's consumer information," no concrete harm would result if that information was in fact accurate. [Id. at 1550](#). The Court also remarked that "[i]t is difficult to imagine how dissemination of an incorrect zip code, without more, could work any concrete harm." [Id.](#) (footnote omitted). Thus, under *Spokeo*, not all failures to give statutorily mandated notice or accurate information "cause harm or present any material risk of harm." [Id.](#)

Mr. Perry contends that the letter he received from Columbia did not properly inform him of his right to dispute the debt or to request the name and address of the original debtor because the letter improperly shortened the time in which he could send a written dispute of the debt or request for information. (Compl. ¶¶ 29-30, 54.) However, although Mr. Perry alleges that he "reached an agreement with Knolls regarding the amount of [his] move-out expenses" (*id.* ¶ 23), he does not allege that these move-out expenses are the basis for the debt identified in Columbia's letter or any other facts asserting that the debt was erroneous (*see generally id.*) Furthermore, Mr. Perry does not allege that he ever attempted or even intended to dispute the debt cited in Columbia's letter. (*See generally id.*) He also never alleges that he attempted or intended to request the name and address of the original creditor. (*See generally id.*) Finally, he does not allege that Columbia failed to provide any of the statutorily required information concerning his debt in response to a written dispute or request. (*See generally id.*) In other words, the court cannot reasonably infer from Mr. Perry's allegations that he suffered the type of harm the disclosure requirements of [15 U.S.C. § 1692g](#) were designed to prevent. This is similar to the Supreme Court's illustration in *Spokeo* of a bare statutory violation that would not amount to a concrete injury. *See* [136 S. Ct. at 1550](#) ("A violation of one of the FCRA's procedural requirements may result in no harm. For example, even if a consumer reporting agency fails to provide the required notice to a user of the agency's consumer information, that information regardless may be entirely accurate.").

Although Mr. Perry does not allege that he experienced the type of harm the FDCPA [*8] disclosure requirements are designed to prevent as a result of his receipt of Columbia's letter, "the risk of real harm [can also] satisfy the requirement of concreteness." *Spokeo*, [136 S. Ct. at 1549](#) (italics added). Certainly, "[i]f a consumer contends that alleged debt is incorrect, or merely wishes to verify the debt, then a deficient disclosure of their [sic] FDCPA rights could create a risk of real harm because a consumer could inadvertently forfeit their right to validate the debt." *Jackson v. Abendroth & Russell, P.C.*, __ F. Supp. 3d __, 2016 U.S. Dist. LEXIS 125986, [[2016 BL 305149](#)], 2016 WL 4942074, at *6 (S.D. Iowa Sept. 12, 2016) (citing *Reiss v. Messerli & Kramer, P.A.*, No. 11-2307, 2011 U.S. Dist. LEXIS 130621, [[2011 BL 290217](#)], 2011 WL 5506290, at *4 (N.D. Minn. Nov. 10, 2011) (finding a consumer intending to dispute his debt was misled by a letter demanding immediate payment before the 30-day validation window, which "suggested that [the consumer] was out of time and no longer had the option to dispute his debt.")). However, Mr. Perry's receipt of Columbia's allegedly deficient letter did not create the "risk of real harm" that he would be confused or misled as to his rights under federal law as the target of a debt collector because, as indicated above, he did not allege that the debt was incorrect or that he ever intended to dispute the debt or to request the name or address of the original creditor. (*See generally* Compl.)

In addition, however, the *Spokeo* Court also recognized that an intangible harm can constitute an injury in fact. [136 S. Ct. at 1549](#). "In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Id.* "[I]t 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." *Id.* The judgment of Congress is "also instructive and important" because "Congress may 'elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.'" *Id.* (alteration in original) (quoting *Lujan*, [504 U.S. at 578](#)). Accordingly, some procedural violations of statutes are, on their own, sufficient to constitute an injury in fact. [Id. at 1549-50](#). In such circumstances, "a plaintiff . . . need not allege any additional harm beyond the one Congress has identified." [Id. at 1549](#).

The *Spokeo* Court cited two cases as examples of when a statutory procedural violation alone constitutes an intangible but nevertheless concrete injury: *Federal Election Commission v. Akins*, [524 U.S. 11](#), [118 S. Ct. 1777](#), [141 L. Ed. 2d 10](#) (1998), and *Public Citizen v. Department of Justice*, [491 U.S. 440](#), [109 S. Ct. 2558](#), [105 L. Ed. 2d 377](#) (1989). *Spokeo*, [136 S.Ct. at 1549-50](#). The *Akins* Court addressed whether an organization had to publicly disclose certain information under the Federal Election Campaign Act. [524 U.S. at 13-14](#). The *Akins* Court noted the purpose of the Act is "to remedy any actual or perceived corruption of the political process" by, among other means, "impos[ing] extensive recordkeeping and disclosure requirements upon groups that fall within the Act's definition of a 'political committee.'" [Id. at 14](#). The *Akins* Court found the plaintiff voters' "inability to obtain information" about the organization's donors was a concrete and particular injury in fact. [Id. at 21](#). [*9] In *Public Citizen*, various public

interest groups sued the Department of Justice under the Federal Advisory Committee Act for failing to disclose the names of potential federal judicial nominees. [491 U.S. at 447](#) . In rejecting a challenge for lack of standing, the *Public Citizen* Court concluded that the "refusal to permit [the plaintiffs] to scrutinize the ABA Committee's activities to the extent [the Federal Advisory Committee Act] allows constitutes a sufficiently distinct injury to provide standing to sue." [Id. at 449](#) .

Mr. Perry argues that the injuries he suffered by being denied information under the FDCPA are analogous to the injuries in *Akins* and *Public Citizen*. (See Resp. at 12-13.) Mr. Perry argues that, under *Spokeo*, "when a statute requires information to be disclosed, plaintiffs need show nothing more than that they were denied the information to which they were entitled," and they need not show "that the absence of the information resulted in some additional, consequential harm flowing from the statutory violation itself." (*Id.* at 13.) He contends that this principle "applies equally to [his] claim under the FDCPA." (*Id.*) Thus, Mr. Perry argues that a violation of the FDCPA's disclosure requirements alone is an intangible harm sufficient to confer Article III standing. (See *id.*)

However, the Supreme Court found Article III standing in *Akins* and *Public Citizen* because the respective procedural violations were tied to concrete harms and not merely because the plaintiffs were denied access to information. In *Akins*, the failure to obtain information prevented the plaintiffs from "evaluat[ing] candidates for public office . . . [and] the role that [an organization]'s financial assistance might play in a specific election." [524 U.S. at 21](#) . In *Public Citizen*, the failure to obtain information prevented the plaintiffs from "seek[ing] access to the ABA Committee's meetings and records in order to monitor its workings and participate more effectively in the judicial selection process." [491 U.S. at 449](#) . Each injury represented the very harm that the respective statutes were designed to prevent. See *Akins*, [524 U.S. at 14](#) ("[T]he [Federal Election Campaign Act] seeks to remedy any actual or perceived corruption of the political process."); *Public Citizen*, [491 U.S. at 446](#) ("[O]ne purpose [of the Federal Advisory Committee Act] was to ensure . . . that Congress and the public remain apprised of [new advisory committees] existence, activities, and cost."). For this reason, the plaintiffs in *Akins* and *Public Citizen* did not have to "allege any *additional* harm beyond the one Congress . . . identified." *Spokeo*, [136 S. Ct. at 1549](#) (italics in original). Contrary to Mr. Perry's contention, the procedural violations in *Akins* and *Public Citizen* were not concrete because the cases involved denying access to statutorily mandated information. Indeed, the *Spokeo* Court expressly rejected Mr. Perry's position when it stated that the failure to provide a statutorily required notice "may result in no harm." [Id. at 1550](#) .

The FDCPA's purpose is "to eliminate abusive debt collection practices by debt collectors." [15 U.S.C. § 1692\(e\)](#) . "The statute seeks 'to protect consumers from a host of unfair, [*10] harassing, and deceptive debt collection practices.'" *Jackson*, 2016 U.S. Dist. LEXIS 125986 , [\[2016 BL 305149\]](#), 2016 WL 4942074 , at *9 (quoting S. Rep. No. 95-382, at 1 (1977), as reprinted in 1977 U.S.C.C.A.N. 1695). [Section 1692k](#) creates civil liability for "any debt collector who fails to comply with any provision of this subchapter with respect to any person." [15 U.S.C. § 1692k](#) . "Congress plainly intended to elevate violations of the FDCPA 'to the status of legally cognizable injuries.'" *Jackson*, 2016 U.S. Dist. LEXIS 125986 , [\[2016 BL 305149\]](#), 2016 WL 4942074 , at *9 (quoting *Lujan*, [504 U.S. at 578](#)). Further, "the harms resulting from abusive debt collection practices are closely related to harms that traditionally provided a basis for relief in American and English courts, such as fraud." *Id.* (citing *S. Dev. Co. v. Silva*, [125 U.S. 247](#) , [250](#) , [8 S. Ct. 881](#) , [31 L. Ed. 678](#) (1888) (defining the legal elements of a civil fraud); *Pasley v. Freeman* (1789) 100 Eng. Rep. 450 (K.B.) 450 ("A false affirmation, made by the defendant with the intent to defraud the plaintiff, whereby the plaintiff receives damage, is the ground of an action upon the case in the nature of deceit."); [Restatement \(Second\) of Torts § 525](#) (1977) (discussing fraudulent misrepresentation)). Thus, under the FDCPA, consumers have a substantive right to be free from debt collector abuse, and the statute mandates various procedures to accomplish this goal and decrease the risk of harm related to these practices. *Id.* In general, each of these procedures helps to prevent abusive practices, but "this does not mean their violation automatically amounts to the injury identified by Congress in the statute." *Id.* ; *Spokeo*, [136 S. Ct. at 1550](#) ("A violation of one of [a federal statute's] procedural requirements may result in no harm.").

Mr. Perry alleges that Columbia violated 15 U.S.C § 1692g. (Compl. ¶¶ 29-30, 52-54.) The purpose of this provision is to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid." *Jackson*, 2016 U.S. Dist. LEXIS 125986 , [\[2016 BL 305149\]](#), 2016 WL 4942074 , at

*10 (citing S. Rep. No. 95-382, at 4). To prevent this, the provision provides consumers with the right to dispute the debt and obtain the name and address of the original creditor. [15 U.S.C. §§ 1692g\(a\)](#), (b). A debt collector must provide the consumer written notice of these rights within five days after its initial communication with the consumer. *Id.* § 1692g(a). In addition, the written notice cannot "overshadow or be inconsistent with [these required disclosures]." *Id.* § 1692g(b). These requirements are procedural rights designed to decrease the risk of injury identified by Congress in the FDCPA—abusive debt collection practices. *Jackson, 2016 U.S. Dist. LEXIS 125986*, [[2016 BL 305149](#)], 2016 WL 4942074, at *10. "Although violating these procedural rights may result in the harm identified by Congress, it does not result in such an injury on its own, unlike the procedural violations in *Akins and Public Citizen*. See *id.* Based on the foregoing analysis, the court finds that the bare procedural violations of sections [1692g\(a\)](#) and [\(b\)](#) of the FDCPA alleged by Mr. Perry do not amount to a concrete injury. Accordingly, as presently alleged, Mr. Perry lacks standing to assert his claims, and the court therefore lacks subject matter jurisdiction.⁴

For these reasons, the court GRANTS Columbia's motion to dismiss and dismisses Mr. Perry's complaint without prejudice and with leave to amend. As indicated above, Mr. Perry's failure [*11] to allege a concrete injury may reflect a mere pleading defect rather than a fundamental problem with his claim. Accordingly, the court permits Mr. Perry the opportunity to amend his complaint to allege Article III standing consistent with the Supreme Court's ruling in *Spokeo* and this court's application of that ruling to his claims. See *Maya, 658 F.3d at 1069* (affirming a Rule 12(b)(1) dismissal for lack of standing, but permitting leave to amend on remand "because plaintiffs may be able to establish by amendment that they have standing to pursue their claims"). Mr. Perry must file his amended complaint within 14 days of the filing date of this order. If Mr. Perry fails to file an amended complaint within that timeframe or fails to adequately allege Article III standing in his amended complaint, the court will dismiss his complaint without further leave to amend.

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS Columbia's motion to dismiss (Dkt. # 10). The court DISMISSES Mr. Perry's complaint without prejudice and with leave to amend. Mr. Perry must file his amended complaint that adequately alleges Article III standing within 14 days of the filing date of this order or the court will dismiss his complaint without further leave to amend.

Dated this 19th day of October, 2016.

/s/ James L. Robart

JAMES L. ROBART

United States District Judge

fn 1

Only Columbia requested oral argument on this motion. (See Mot. at 1; Resp. (Dkt. # 14) at 1.) The court denies Columbia's request because the court does not find that oral argument would be helpful to its disposition of the issues presented. See [Local Rules W.D. Wash. LCR 7\(b\)\(4\)](#) ("Unless otherwise ordered by the court, all motions will be decided by the court without oral argument.").

fn 2

Pursuant to [Rule 26\(a\)\(1\)\(A\)\(iii\)](#), a party's initial disclosures must contain a "computation of each category of damages claimed by the disclosing party . . . including materials bearing on the nature and extent of injuries suffered." [Fed. R. Civ. P. 26\(a\)\(1\)\(A\)\(iii\)](#). [Rule 37\(c\)\(1\)](#) further provides that "[i]f a party fails to provide information . . . or identify a witness as required by [Rule 26\(a\)](#) . . . , the party is not allowed to use that information . . . to supply evidence on a motion . . . unless that failure was substantially justified or is harmless." [Fed. R. Civ. P. 37\(c\)\(1\)](#).

In response to Columbia's motion, Mr. Perry has not argued that he seeks anything other than the statutory damages described in his Rule 26 disclosures. (*See generally* Resp.)

fn 3

In his Rule 26 computation of damages, Mr. Perry also claims certain damages on behalf of the purported class. Specifically, he claims "such additional amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of \$500,000 or 1 per centum of the net worth of Defendant." (Hansen Decl. Ex. A at 2.) Although Mr. Perry "reserves the right to disclose any additional damages suffered throughout the continuing course of discovery," he has not requested any discovery in response to Columbia's motion. (*See generally* Resp.)

fn 4

In a recent unpublished decision, the Eleventh Circuit concluded that a violation of the FDCPA's disclosure requirements results in injury to a consumer's "right to information" under the Act. *Church v. Accretive Health, Inc.*, ___ F. App'x ___, [2016 BL 215860], 2016 U.S. App. LEXIS 12414, [2016 BL 215860], 2016 WL 3611543, at *3 (11th Cir. July 6, 2016) (per curiam) ("[T]hrough the FDCPA, Congress has created a new right—the right to receive the required financial disclosures in communications governed by the FDCPA—and a new injury—not receiving such disclosures."). The court respectfully does not share the *Church* panel's expansive reading of *Spokeo*. See *Nokchan v. Lyft, Inc.*, No. 15-CV-03008-JCS, 2016 U.S. Dist. LEXIS 138582, [2016 BL 333590], 2016 WL 5815287, at *8 (N.D. Cal. Oct. 5, 2016) (quoting *Dolan v. Select Portfolio Servicing*, No. 03-CV-3285 PKC AKT, [2016 BL 249628], 2016 U.S. Dist. LEXIS 101201, [2016 BL 249628], 2016 WL 4099109, at *6 (E.D.N.Y. Aug. 2, 2016)) ("The Court is not bound by [the *Church*] decision, and respectfully disagrees with it, based on this Court's conclusion that the cases cited in *Spokeo* as examples of intangible harm sufficient to confer standing, i.e., *Akins* and *Public Citizen*, involved interests of much greater and broader significance to the public than those at issue in *Church*.").

Although the bare procedural violations of the FDCPA in sections 1692g(a) and (b), as alleged here, do not amount to a concrete injury, violations of other FDCPA provisions may be sufficient on their own to constitute an Article III injury in fact. See, e.g., *Linehan v. Allianceone Receivables Mgmt., Inc.*, No. C15-1012-JCC, 2016 U.S. Dist. LEXIS 124276, [2016 BL 298610], 2016 WL 4765839, at *8 (W.D. Wash. Sept. 13, 2016) (ruling that the plaintiff's allegations that the defendant violated the venue provision of the FDCPA, 15 U.S.C. § 1692i(a)(2), articulated a concrete harm sufficient to satisfy the *Spokeo* standard for Article III standing). Thus, the court's holding is limited to the facts alleged in this case and the disclosure requirements of Section 1692g of the FDCPA.

General Information

Judge(s)	JAMES L. ROBART
Related Docket(s)	2:16-cv-00191 (W.D. Wash.);
Topic(s)	Torts; Civil Procedure; Consumer Law
Industries	Apartment Leasing
Date Filed	2016-10-19 00:00:00
Parties	ROD PERRY, Plaintiff, v. COLUMBIA RECOVERY GROUP, LLC, Defendant.
Court	United States District Court for the Western District of Washington