

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LUCILLE A. REMINGTON

v.

CASE NO. 3:16 cv 865 (JAM)

FINANCIAL RECOVERY SERVICES, INC.
BRIAN C. BOWERS

PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS

Ms. Remington sued defendants based on their collection efforts. In order to meet the plausibility standard, her complaint made specific factual claims about one of the communications: a form letter which gave her three settlement options and included unnecessary, superfluous, unauthorized-by-the-creditor, but intimidating, reference to tax consequences, and suggested that the consumer expend funds to consult a legal or tax advisor regarding which of those three options she should choose, while concealing the essential information needed for such tax advice.

Plaintiff's complaint states a cause of action under the Fair Debt Collection Practices Act (FDCPA) by alleging (1) the plaintiff is the consumer who allegedly owes the debt who has been the object of efforts to collect a consumer debt; (2) the defendants are debt collectors; and (3) the defendants engaged in any act or omission in violation of the prohibitions or requirements of the law. *See Altman v. J.C. Christensen & Associates, Inc.*, 786 F.3d 191, 192, 194 (2d Cir. 2015); *Hart v. FCI Lender Services, Inc.*, 797 F.3d 219, 227-28 (2d Cir. 2015); *Riveria v. MAB Collections, Inc.*, 682 F. Supp. 174, 175-76 (W.D.N.Y. 1988).

The factual allegations meet the plausibility standard. "The plausibility standard is not akin to a probability requirement. A well pleaded complaint may proceed even if it

strikes a savvy judge that actual proof of the facts alleged is improbable, and that a recovery is very remote and unlikely.” Nielsen v. Rabin, 746 F.3d 58, 62 (2d Cir. 2014) (citations, internal quotation marks, brackets, and footnote omitted).

A TOUR OF THE FDCPA

The FDCPA is “a comprehensive and complex federal statute” “that imposes open-ended prohibitions on, *inter alia*, ‘false, deceptive,’ § 1692e, or ‘unfair’ practices, §1692f.” Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, 559 U.S. 573, 587 (2010). It is a “‘comprehensive and reticulated statutory scheme’ *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 233 (4th Cir.2007).” Russell v. Absolute Collection Services, Inc., 763 F.3d 385, 392 (4th Cir. 2014).

The FDCPA was enacted almost four decades ago because of “abundant evidence of the use of abusive, deceptive, and unfair debt collection practices” that harm the marketplace economy by “contribut[ing] to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasion of individual privacy;” Congress found that existing laws and procedures were “inadequate to protect consumers” and “means other than misrepresentation or other abusive debt collection techniques are available for the effective collection of debts.” 15 U.S.C. § 1692(b), (c). Congress encouraged consumers to bring FDCPA actions before a Federal Article III judge by eliminating any “amount in controversy” requirement. §1692k(d). Congress also fostered enforcement of the FDCPA by enacting statutory damages and mandating that the debt collector pay the consumer’s fees. 1692k(a)(3).

The FDCPA’s express purpose 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.” Kropelnicki v. Siegel, 290 F.3d 118, 127 (2d Cir. 2002). Because the FDCPA is “ ‘remedial in nature ... its terms must be construed in liberal fashion if the underlying Congressional purpose is to be effectuated.’ ” Hart v. FCI Lender Serv., Inc., 797 F.3d 219, 225 (2d Cir. 2015) (quoting Vincent v. The Money Store, 736 F.3d 88, 98 (2d Cir. 2013)). Like other federal consumer protection statutes, the FDCPA establishes a system of enforcement by private attorneys general. 15 U.S.C. § 1692k; Jacobson v. Healthcare Financial Services, 516 F.3d 85, 91 (2d Cir. 2008) (“[T]he FDCPA enlists the efforts of sophisticated consumers like Jacobson as ‘private attorneys general’ to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others”)

Section 1692e contains a non-exhaustive list of typical “false, deceptive, or misleading representations or means: “At the outset, it should be emphasized that the use of *any* false, deceptive, or misleading representation in a collection letter violates § 1692e -- regardless of whether the representation in question violates a particular subsection of that provision.” Clomon v. Jackson, 988 F.2d 1314, 1320 (2d Cir. 1993) (emphasis in original). The standard used to determine whether something is deceptive or misleading is whether the “least sophisticated consumer” could have been deceived or misled. Id. at 1318. The “least sophisticated consumer” is a naive, credulous, gullible, ignorant, unthinking, person of “below-average sophistication or intelligence” “with a rudimentary amount of information about the world and a willingness to read a collection notice with some care.” Id.

A collection letter will be considered deceptive if it “could mislead a putative-debtor as to the nature and legal status of the underlying debt, or [if it] could impede a consumer's ability to respond to or dispute collection.” Easterling v. Collecto, Inc., 692 F.3d 229, 235 (2d Cir. 2012). Likewise, a letter is deceptive or misleading if it is subject to an inaccurate yet reasonable interpretation by the least sophisticated consumer. Russell v. Equifax A.R.S., 74 F.3d 30, 36 (2d Cir. 1996).

A letter need not be abusive to violate the FDCPA. Romea v. Heiberger & Associates, 163 F.3d 111, 118 (2d Cir. 1998) (“It is the provisions of the FDCPA that by and of themselves determine what debt collection activities are improper under federal law. If the statute applies to Heiberger's letter and the letter does not comply with the FDCPA's requirements, then by definition it constitutes an improper debt collection activity under federal law.”).

PLAINTIFF SUFFERED A CONCRETE INJURY

Defendants claim that this Court lacks jurisdiction because she did not include the conclusory legal allegation “that she suffered a concrete injury,” but instead merely stated that defendants “created a false sense of urgency” that was intended to make her “nervous, worried, or upset.” ECF No. 10 at 12. Creating a false sense of urgency is one of the classic violations that the FDCPA was meant to prevent, as held by Judge Cabranes in Rosa v. Gaynor, 784 F. Supp 1, 5 (D. Conn. 1989). *See also* Peter v. GC Servs. L.P., 310 F.3d 344 (5th Cir. 2002):

Section 1692e was enacted against a backdrop of cases in which courts held that communications designed to create a false sense of urgency were deceptive. *See, e.g., Trans World Accounts, Inc. v. FTC*, 594 F.2d 212, 215 (9th Cir.1979) (deceptive to make communications appear to be a telegram which heightened sense of urgency). Post–FDCPA courts have read the language of § 1692e as encompassing this concern. *Rosa v. Gaynor*, 784 F.Supp. 1, 5 (D.Conn.1989)

(placing collection letter on attorney's letterhead deceptive where letter is not from attorney because it creates a false sense of urgency). By making the letter appear to come from the United States Department of Education, Defendants created a false sense of urgency as to the letter's contents through a practice specifically prohibited in § e(14).

Id. at 352.

Moreover, plaintiff need not plead damages. Rule 8(a)(3) merely states that a complaint must contain “a demand for relief sought.” Fed. R. Civ. P. 8(a)(3). The section does not mandate any specificity; it requires the pleader to include only the type(s) of relief claimed. 5 Charles Alan Wright et al., Federal Practice and Procedure § 1255 (3d ed. 2016) (indicating that demands for relief are not subject to the sufficiency standard of a Rule 8(a)(2) statement of the claim).

Contrary to defendants’ position at ECF No. 10 at 10-13, actual damages under 15 U.S.C. § 1692k(a)(1) are not required for constitutional standing. Miller v. Wolpoff & Abramson, L.L.P., 321 F.3d 292, 307 (2d Cir. 2003) (“the fact that plaintiff did not ever pay any attorneys' fees to NAN does not necessarily suggest that he was not injured for purposes of his FDCPA claim, if he can show that UC & S *attempted* to collect money in violation of the FDCPA.”); Jacobson v. Healthcare Fin. Servs., 516 F.3d 85, 96 (2d Cir.2008) (“[T]he FDCPA permits and encourages parties who have suffered no loss to bring civil actions for statutory violations.”); Ehrich v. I.C. Sys. Inc., 681 F. Supp. 2d 265, 269 (E.D.N.Y. 2010) (“the ‘injury in fact’ analysis is directly linked to the question of whether plaintiff has suffered a cognizable statutory injury and not whether a plaintiff has suffered actual damages”); Lemire v. Wolpoff & Abramson, L.L.P., 256 F.R.D. 321, 326 (D. Conn. 2009) (“the Second Circuit does not require the consumer to demonstrate damages in order to have an ‘injury’ that suffices to establish standing to sue under the

FDCPA”).

In Spokeo, Inc. v. Robins, 136 S. Ct. 1540, 2016 WL 2842447 (May 16, 2016), the Court remanded to the Ninth Circuit so it could consider whether the allegations of procedural violations showed a material risk of “concrete” injury. Concrete means “real,” not “abstract,” but “it is not 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.” Spokeo, 136 S. Ct. at 1549.

Spokeo recognized that Congress “may `elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law,”” citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992). Spokeo, 136 S. Ct. at 1549.

Spokeo goes on to state: “Congress is well positioned to identify intangible harms that meet minimum Article III requirements, [and] its judgment is also instructive and important.” Although “Article III standing requires a concrete injury even in the context of a statutory violation,” “the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified.” (emphasis in the original). Id.

After Spokeo, courts agree that “the Supreme Court has made clear an injury need not be tangible to be concrete.” Church v. Accretive Health, Inc., 2016 WL 3611543, at *3 (11th Cir. July 6, 2016); Dickens v. GC Servs. Ltd. P'ship, 2016 WL 3917530, at *2 (M.D. Fla. July 20, 2016) (“Congress, through the FDCPA, entitled the plaintiff to certain information, and thus an alleged invasion of this right is not hypothetical or uncertain.”); Lane v. Bayview Loan Servicing, LLC, 2016 WL 3671467, at *4 (N.D. Ill. July 11,

2016) (“Lane has alleged a sufficiently concrete injury because he alleges that Bayview denied him the right to information due to him under the FDCPA.”); McCamis v. Servis One, Inc., 2016 WL 4063403, at *2 (M.D. Fla. July 29, 2016) (“Plaintiff alleges a concrete and particularized injury in fact: Plaintiff has statutorily-created rights to be free from a debt collector's inappropriate attempts to collect a debt that he is no longer responsible for; to be free from being contacted from a debt collector who knows he is represented; and to be free from being subjected to false, deceptive, unfair, or unconscionable means to collect a debt.”); In re Robinson, 2016 WL 4069395, at *5 (Bankr. W.D. La. July 28, 2016) (“debt collector under the FDCPA may be subject to statutory damages and attorneys' fees even if no actual damages are proven.”); Irvine v. I.C. System, Inc., 2016 WL 4196812, at *3 (D. Colo. July 29, 2016) (communicating misinformation about plaintiff's debt to credit reporting agencies); Ung v. Universal Acceptance Corp., 2016 WL 4132244, at *2 (D. Minn. Aug. 3, 2016) (“[T]he receipt of unwanted phone calls constitutes a concrete injury sufficient to create standing under the TCPA.”); Daubert v. NRA Grp., LLC, 2016 WL 4245560, at *2 (M.D. Pa. Aug. 11, 2016) (account number showing on envelope: “intangible injuries can also be concrete injuries sufficient to confer standing”); Prindle v Carrington Mortgage Services, LLP, 2016 WL 4369424, at *11 (M.D. Fla. Aug. 16, 2016) (“because Prindle had a personal statutory right to be free from abusive debt-collection practices, and because she has alleged facts plausibly showing that Carrington violated that right, she ‘need not allege any additional harm.’”).

The Consumer Financial Protection Bureau agrees “that a person who has been subjected to a misrepresentation made unlawful by 15 U.S.C. § 1692e suffers a concrete

injury that satisfies Article III.” See Letter Brief submitted to the Third Circuit, attached.

Thus, defendants are mistaken that plaintiff has not alleged concrete injury by not asserting actual damages; Article III concrete injury is not the same as actual damages.

REFERENCE TO TAX CONSEQUENCES IS INTIMIDATING AND CONFUSING

Defendants claim that a “true statement, that accepting a settlement offer on a debt may result in tax consequences, is not a false statement and [is] not actionable under the FDCPA or any other law.” ECF No. 10 at 16-17. But a “literally true collection letter ... can still convey a misleading impression.” Gammon v. GC Servs. Ltd. Partnership, 27 F.3d 1254, 1258 (7th Cir. 1994). “The language in the collection letter appears to be cleverly drafted in order to insinuate what obviously cannot be stated directly. It is difficult to imagine what end GC Services intended to accomplish with its statement other than the intimidation of unsophisticated consumers with the power of having the tax collecting units of the federal and state governments in its corner....” Id.¹ See Gonzales v. Arrow Fin. Servs., LLC, 660 F.3d 1055, 1062 (9th Cir. 2011) (“[A] literally true statement can still be misleading.”); Grden v. Leikin Ingber & Winters PC, 643 F.3d 169, 172 (6th Cir. 2011) (“Truth is not always a defense under this test, since sometimes even a true statement can be misleading.”).

In order to substantiate the claim that the statement is true, defendants include pages and pages of IRS publications -- inaccessible, and no doubt incomprehensible, to

¹ Although the words of defendants' letter are true, the statute recognizes that literal truth may convey a misleading impression. Hyper-rational people can draw correct inferences if they understand the speaker's incentives. Paul Milgrom & John Roberts, *Relying on the Information of Interested Parties*, 17 Rand J.Econ. 18 (1986). Ordinary people can't. Plaintiffs may be able to show that readers have been gulled.

Gammon, 27 F.3d at 1258–59 (Easterbrook, J., concurring)

the least sophisticated consumer. “The hypothetical least sophisticated consumer does not have ‘the astuteness of a “Philadelphia lawyer” or even the sophistication of the average, everyday, common consumer’”; the standard is designed to protect “those consumers most susceptible to abusive debt collection practices.” *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010) (citations omitted).

But even defendants’ exhibit pages, and others, could also show that a consumer would incur no tax consequences, due to the financial circumstances of the least sophisticated consumer, e.g., bankruptcy, or Form 982, or insufficient income to file taxes, or already in receipt of a Form 1099-C. Because there are several exceptions and exclusions (ECF Nos. 10-1, 10-3) the incomplete reference to tax consequences was bound to be confusing as well as alarming. Defendants did not disclose what part of the balance was interest, forgiveness of which has no tax consequences. ECF Nos. 10-2, 10-4. The latter has steps 3 and 6, applicable here, but says “the rules are complex.”

Thus, the one-size-fits-all and incomplete reference to tax consequences, absent knowing that most or all consumers would be (and had not already been) exposed to tax consequences, was misleading. *Gonzales*, 660 F.3d at 1063 (“The misleading nature of the ‘if we are reporting the debt’ clause is compounded by the fact that Arrow did nothing to clarify when it could report a debt.”); *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 455 (3d Cir. 2006) (“In other words, were it proven that the CSC had reason to know that the legal action described in its letter to Brown was unlikely, its statement in the CSC Letter that it was possible could be deemed misleading.”); *Seabrook v. Onondaga Bureau of Med. Econ., Inc.*, 705 F. Supp. 81, 85 (N.D.N.Y. 1989) (letter did not accurately reflect the state of New York garnishment law at the time it was sent).

It is well known that collection agencies use sophisticated algorithms to determine how best to get a consumer to pay.² One important focus of a debt collector is to elicit a call so that the consumer can be convinced to pay the collector instead of the rent. “What do you mean, tax consequences?? Are you going to report me to the IRS? Will I be audited? Will my refund or earned income credit be intercepted? What am I supposed to tell or ask my tax advisor? What if I can’t pay? Will the IRS come after me?” Then the collector gets to explain that there will be no tax consequences if the full amount is paid. Mission accomplished. The “settlement offer” is a feint (deceptive or misleading).

The complaint alleges several possible motivations for mentioning tax consequences (=the IRS), and discovery has been interposed to see why these defendants chose to interpose that otherwise superfluous and seriously incomplete reference to tax consequences.³ Truth is not a defense, where the implications can be deceptive or misleading.

As the Supreme Court has held in the general context of consumer protection-of which the Fair Debt Collection Practices Act is a part-“it does not seem ‘unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.’ ” *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 393, 85 S.Ct. 1035, 1047, 13 L.Ed.2d 904 (1965) (quoting *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337, 340, 72 S.Ct. 329, 330-31, 96 L.Ed. 367 (1952)).

Russell v. Equifax A.R.S., 74 F.3d 30, 35 (2d Cir. 1996). “The Collection Letter's capacity to discourage debtors from fully availing themselves of their legal rights renders its misrepresentation exactly the kind of “abusive debt collection practice []” that the FDCPA was designed to target. *See* 15 U.S.C. § 1692(e).” Easterling, 692 F.3d at 229.

² <https://www.encoreccri.org/about-the-institute/>
<http://www.prorecovery.com/the-psychology-of-collections/>

³ The discovery is attached.

Other courts agree that reference to tax consequences raises a plausible claim to state an FDCPA violation. Good v. Nationwide Credit, Inc., 55 F. Supp. 3d 742, 747 (E.D. Pa. 2014) (“Clearly, the challenged statement—which fails to notify the reader that any exceptional circumstances might apply—does not simply and faithfully record the applicable law.”); Wagner v. Client Servs., Inc., 2009 WL 839073, at *4 (E.D. Pa. Mar. 26, 2009) (“By failing to attribute the nature of the debt that may be discharged to principal and non-principal amounts, Defendant has not shown that its letter is literally true.”); Foster v. Allianceone Receivables Mgmt., Inc., 2016 WL 1719824 (N.D. Ill. Apr. 28, 2016) (“It is plausible that mention of the IRS in a situation where there is no set of circumstances in which the IRS would be involved could mislead ‘a person of modest education and limited commercial savvy.’”); Velez v. Enhanced Recovery Co., LLC, 2016 WL 1730721, at *3 (E.D. Pa. May 2, 2016) (“[T]he least sophisticated debtor, given a generally applicable rule with some, but not all, of the relevant exceptions thereto, might be misled into thinking that there will be adverse tax consequences for settling a debt for less than the total amount due.”); Balon v. Enhanced Recovery Co., Inc., 2016 WL 3156064, at *6 (M.D. Pa. June 2, 2016) (finding Velez convincing).

* * *

Here, the least sophisticated consumer consulted a lawyer who was not a tax advisor, who uncovered another possible violation: defendants’ failure to disclose that accepting one or more of the settlement options could renew the statute of limitations on this old account.⁴ Such “duping” is a tactic of the debt buying industry because of the age

⁴ Plaintiff has notified defendants that she intends to show more violations “in the course of collection”: “Defendants failed to comply with the FDCPA’s prohibitions against misrepresentation; based on the letter dated May 4, 2016, defendants seem to have violated §1692g or §1692f(1) which plaintiff will attempt to confirm through discovery.” Discovery is meant to flesh out the notice-pleading complaint.

of the accounts they purchase. E.g., Langley v. Northstar Location Servs., LLC, 2016 WL 4059355, at *5 (S.D. Tex. July 28, 2016) (“it sought a nominal payment (that would restart the statute of limitations)”).

Hence the Complaint’s reference to the three options, another plausible violation.

BOWERS WAS PROPERLY INCLUDED AS A DEFENDANT

Complaint ¶ 6 alleged, “Defendant Bowers is the President of FRS who directed, operated, and controlled the policies, finances, business practices and procedures of FRS, supervised the collection of plaintiff’s account, or was personally involved therein, and approved the use of the form collection letters at issue herein.” He was plainly knowledgeable and defensive about the letters, thus ratifying them. The allegations about his direction, control, ratification, and participation are more than sufficient for jurisdictional purposes. Musso v Seiders, 194 F.R.D. 43, 46-47 (D. Conn. 1999); *See* Drennan v. Van Ru Credit Corp., 950 F. Supp. 858, 860-61 & n.7 (N.D. Ill. 1996) (principal is proper target of FDCPA complaint); Egli v. Bass, 1998 WL 560270, *2 (N.D. Ill. 1998) (principal who was responsible for devising and implementing procedures personally liable); In re National Credit Management Group, 21 F. Supp. 2d 424, 461 (D.N.J. 1998) (officers can be individually liable if they played a part in controlling, directing or formulating the policies and practices which violate the law; or have authority to control the violators and actual or constructive knowledge of the violations); Ditty v. Checkrite, Ltd, Inc., 973 F. Supp. 1320, 1336-37 (D. Utah 1997) (corporate officer who creates or authorizes an illegal collection practice is personally liable); Newman v. Checkrite California, Inc., 912 F. Supp. 1354, 1372 (E.D. Cal. 1995) (personal liability for acts in which individual directly or indirectly violated FDCPA);

Brujis v. Shaw, 876 F. Supp. 975, 980 (N.D. Ill 1995) (senior corporate officers in position to make decisions about collection practices); Teng v. Metropolitan Retail Recovery Inc., 851 F. Supp. 61, 67 (E.D.N.Y. 1994) (president and sole owner).

CONCLUSION

Plaintiff requests the Court to deny defendants' motion and to not consider any new arguments defendants may assert in violation of D. Conn. L. Civ. Rule 7(d). Cuba-Diaz v. Town of Windham, 274 F. Supp. 2d 221, 230 (D. Conn. 2003); Corpes v. Walsh Constr. Co., 130 F. Supp. 3d 638, 644 (D. Conn. 2015). Pursuant to L. Civ. R. 7(d): reply briefs "must be strictly confined to a discussion of matters raised by the responsive brief and must contain references to the pages of the responsive brief to which reply is being made."

THE PLAINTIFF

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June 3, 2016

VIA CM/ECF

Marcia M. Waldron
Clerk
U.S. Court of Appeals for the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790

Re: *Bock v. Pressler & Pressler, LLP*, No. 15-1056

Dear Ms. Waldron:

The Consumer Financial Protection Bureau (CFPB or Bureau) respectfully submits this supplemental *amicus* brief in response to the Court’s order of May 20, 2016, which requested that the parties file supplemental letter briefs addressing the applicability of *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), to this case, including the question whether Bock has established concrete harm sufficient to give him standing or whether he has established only a bare procedural violation. For the reasons set forth below, the Bureau urges the Court to conclude that Bock has suffered a concrete harm sufficient to establish Article III standing.

I. Interest of the Bureau

The Bureau has a substantial interest in plaintiffs’ standing under Article III to bring suit in federal court to assert their rights under the Fair Debt Collection Practices Act (FDCPA or Act). Although the Bureau and various other federal agencies have authority to enforce the Act, 15 U.S.C. § 1692l, Congress intended the Act to be “primarily self-enforcing,” in that “consumers who have been subjected to collection abuses will be enforcing compliance,” S. Rep. No. 95-382, at 5 (1977). An unduly narrow understanding of Article III standing would limit consumers’ ability to exercise the Act’s private right of action and thereby weaken an important supplement

to the Bureau's own enforcement efforts. The Bureau therefore has a substantial interest in the standing issue presented in this case.

II. Bock Has Article III Standing.

1. In *Spokeo*, the Supreme Court reaffirmed the well-established principle that a plaintiff invoking the jurisdiction of an Article III court must establish “injury in fact.” *Spokeo*, Slip op. at 6. In particular, “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 7 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). *Spokeo* also reaffirms the longstanding principle that the required “legally protected interest” may be an interest that Congress has granted legal protection by creating a statutory right. *See id.* at 9 (reaffirming that “Congress may ‘elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law’” (quoting *Lujan*, 504 U.S. at 578) (alteration omitted)); 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” (quotations omitted)). Nonetheless, the invasion of such a statutory right will not “automatically” satisfy the “injury-in-fact requirement”; the fact that Congress “grants a person a statutory right and purports to authorize that person to sue to vindicate that right” is not necessarily enough. *Spokeo*, Slip op. at 9. For example, a plaintiff cannot “allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III.” *Id.* at 9-10. Rather, the invasion of a statutory right must itself be “concrete and particularized” and “actual or imminent.” *Id.* at 7.

A particularized injury is one that “affect[s] the plaintiff in a personal and individual way,” *id.* at 7 (quotations omitted), while a “concrete” injury is one that is “*de facto*,” *id.* at 8. That is, to be “concrete,” the injury must “actually exist”; it must be “real,” not “abstract.” *Id.* A concrete injury need not be tangible, however. *Id.* at 8-9. An intangible injury can also be concrete. *Id.* at 9. In assessing whether an intangible injury is sufficiently “concrete,” the Court recognized that “Congress is well positioned to identify intangible harms that meet minimum Article III requirements” and, thus, that “its judgment is . . . instructive and important.” *Id.*

2. Bock has alleged, and the district court found based on the undisputed facts, that Pressler & Pressler violated the FDCPA by misrepresenting that an attorney was meaningfully involved in the debt-collection suit that the firm filed against him. Appx. 30. Bock has therefore suffered the “invasion of a legally protected interest.” The FDCPA prohibits debt collectors from “us[ing] any false, deceptive, or misleading representation or means” to collect a debt, 15 U.S.C. § 1692e, and it 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 Bock a legally protected interest in not being subjected to misleading debt-collection communications—an interest that Pressler & Pressler invaded.

There is no serious question that the invasion of this interest is both actual and particularized: The events described in the record demonstrate “actual” injury because the invasion of Bock’s legally protected interest in fact occurred. And that invasion “affect[ed] [Bock] in a personal and individual way,” *Spokeo*, Slip op. at 7, because Pressler & Pressler misrepresented *to Bock* that an attorney had been meaningfully involved in the lawsuit filed *against him*. The injury that Bock suffered is personal to him and is not a “nonjusticiable generalized grievance.” *See id.* at 8 n.7.

3. The misrepresentation directed at Bock also constitutes a “concrete” injury. In *Havens Realty Corp. v. Coleman*, the Supreme Court 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. 363, 373-74 (1982). In that case, a housing-discrimination “tester”—*i.e.*, a person 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.* at 373-74. The FHA barred misrepresentations about available housing, 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.

Havens Realty remains good law. *Spokeo* did not mention—much less limit—*Havens Realty*’s holding that a violation of a statutory right not to be the target of a misrepresentation satisfies “the Art. III requirement of injury in fact,” *Havens Realty*, 455 U.S. at 374. *See also Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000) (“This Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.”). On the contrary, *Spokeo* confirms that “Congress may ‘elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Spokeo*, Slip op. at 9 (quoting *Lujan*, 504 U.S. at 578) (alteration omitted).

As applied to this case, *Havens Realty* compels the conclusion that a person who has been subjected to a misrepresentation made unlawful by 15 U.S.C. § 1692e suffers a concrete injury that satisfies Article III. Just as the statute in *Havens Realty* created a “legal right to truthful information about available housing,” *Havens Realty*, 455 U.S. at 373, the FDCPA grants consumers a legal right to truthful information in their

dealings with debt collectors. *Havens Realty* teaches that the invasion of such a right—a right not to be “the object of a misrepresentation made unlawful under [the statute],” *id.*—suffices to support standing. And just like the invasion of that right sufficed to support standing in *Havens Realty*, so too does the invasion of the analogous right here support Bock’s standing to sue.

Congress’s judgment further confirms that the deprivation of Bock’s right not to be subject to misrepresentations constitutes concrete harm. As the Court in *Spokeo* acknowledged, “Congress is well positioned to identify intangible harms that meet minimum Article III requirements,” and its judgment about what harms meet those requirements is accordingly “instructive and important.” Slip op. at 9. Here, Congress enacted the FDCPA to ensure that “every individual, whether or not he owes the debt,” would have the “right to be treated in a reasonable and civil manner.” 123 Cong. Rec. 10241 (Apr. 4, 1977) (statement of Rep. Annunzio). To that end, the Act gives consumers various rights to be treated appropriately, including the right not to be subjected to “any false, deceptive, or misleading representation or means” in the debt-collection process. 15 U.S.C. § 1692e. This is one of the various ways in which Congress protected consumers from the “abuse by third party debt collectors” that Congress found to be “a widespread and serious national problem.” S. Rep. No. 95-382, at 2 (1977). As in *Havens Realty*, “[t]his congressional intention cannot be overlooked in determining whether [Bock has] standing to sue.” 455 U.S. at 373.

Moreover, under *Havens Realty*, Bock’s injury is “concrete” even if he has not alleged that the misrepresentation caused additional consequential harm. No such harm was alleged in *Havens Realty*. Rather, the Supreme Court upheld the tester’s Article III standing even though she “may have approached the real estate agent fully expecting that [s]he would receive false information, and without any intention of buying or renting a home.” *Havens Realty*, 455 U.S. at 374. In this case, the Bureau’s prior *amicus* brief explained how consumers generally may be affected by misrepresentations of attorney involvement. CFPB/FTC Amicus Br. 21-22 (Aug. 13, 2015). But that does not mean that an FDCPA plaintiff must allege or prove that the misrepresentation had consequential effects in his particular circumstances. As *Spokeo* recognized, “the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure,” Slip op. at 10, and “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 9 (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in judgment)). As in *Havens Realty*, Pressler & Pressler’s deprivation of Bock’s statutory right not to be subject to misrepresentations in the context of debt collection is sufficiently concrete by itself to confer Article III standing on Bock.

Finally, this Court’s order requested briefing on whether Bock had “established only a bare procedural violation” under *Spokeo*, which states that “a bare procedural violation, divorced from any concrete harm,” does not satisfy Article III’s injury-in-fact requirement. *Id.* at 9-10 (citing *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009)). 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,” 123 Cong. Rec. 10241—is not a *procedural* right for which a separate “concrete harm” must be identified. Rather, as in *Havens Realty*, an infringement of that right is itself a “specific injury” that satisfies “the Art. III requirement of injury in fact.” 455 U.S. at 374.

III. Conclusion

For these reasons, the Court should hold that Bock has Article III standing to pursue his FDCPA claims.

Sincerely,

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

LUCILLE A. REMINGTON

v.

CASE NO. 3:16 cv 865 (JAM)

FINANCIAL RECOVERY SERVICES, INC. et al.

July 18, 2016

FIRST REQUEST FOR PRODUCTION

The plaintiff requests each defendant to produce the following documents at the office of plaintiff's attorney pursuant to Fed. R. Civ. P. 26 (d) (2). Please see D. Conn. Local Rule 26 for definitions. If there are no such documents, please so state under oath. If there are such documents, please list appended documents responsive to each request. "Documents" includes electronic records and transmissions, and writings and recordings as defined in Fed. R. Evid. 1001.

1. All documents concerning the transfer of plaintiff's alleged Cavalry account, your File No. O...4 ("plaintiff's account"), to you for collection, including placement forms, applicable collection agreements, creditor directions, and settlement authorization.
2. Your account notes, call records, and other records or recordings of your communications in efforts to collect plaintiff's account, including the debtor history.
3. All documents sent by defendant to plaintiff during 2016.
4. All communications with plaintiff's creditor about plaintiff's account during 2016.
5. All other communications with regard to plaintiff's account during 2016.
6. Your procedural manuals, forms, talk-offs, software controls, and instructions

with regard to offers of settlement.

7. Your procedural manuals, forms, talk-offs, software controls, and instructions with regard to the tax consequences of offers of settlement.

8. All studies, memoranda, evaluations, statistics, creditor instructions, readability statistics, and other factors which you used in drafting and formatting the series of letters sent to plaintiff on behalf of Cavalry

9. All documents concerning your decision to include reference to tax consequences in the letter series sent to plaintiff on behalf of Cavalry.

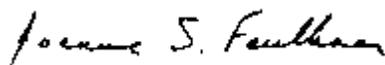
10. All documents concerning your decision to not disclose to plaintiff that partial payment would renew the statute of limitations.

11. All complaints filed against you in court in and since 2014 concerning your inclusion of reference to tax consequences in any collection letter sent to individuals.

12. All memoranda filed in court on your behalf in and since 2014 concerning your inclusion of reference to tax consequences in any collection letter sent to individuals.

13. The form of release from the creditor mentioned in your letter to plaintiff.

THE PLAINTIFF



BY ___/s/ Joanne S. Faulkner___
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Certificate of Service

I hereby certify that on August 26, 2016, a copy of within was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

_____/s/ Joanne S. Faulkner____

JOANNE S. FAULKNER ct04137