

United States District Court
Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL NOKCHAN,
Plaintiff,
v.
LYFT, INC.,
Defendant.

Case No. 15-cv-03008-JCS

**ORDER GRANTING MOTION TO
DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION AND
DISMISSING CASE WITHOUT
PREJUDICE**

Re: Dkt. No. 31

I. INTRODUCTION

Plaintiff Michael Nokchan brings this putative class action under the Fair Credit Reporting Act (“FCRA”) and California state law against Defendant Lyft, Inc. (“Lyft”). Lyft brings a Motion to Dismiss For Lack of Subject Matter Jurisdiction (“Motion”) under Rule 12(b)(1) of the Federal Rules of Civil Procedure, asserting that Nokchan lacks standing under Article III of the U.S. Constitution, citing the Supreme Court’s decision in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) (“*Spokeo*”). For the reasons stated below, the Motion is GRANTED.¹

II. BACKGROUND

A. The Complaint

Nokchan alleges that he was employed by Lyft as an hourly, non-exempt employee working in the State of California.² Complaint ¶ 5. According to Nokchan, when he applied for employment with Lyft, he was required to “fill out and sign a document requiring background

¹ The parties have consented to the jurisdiction of a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c).

² Lyft contends its relationship with Nokchan is not, in fact, an employer-employee relationship but acknowledges that this dispute is not relevant to the question of whether the Court has subject matter jurisdiction over Plaintiffs’ claims.

1 check.” *Id.* ¶ 27. He alleges that the disclosures required under the FCRA were embedded in the
2 document, which contained “extraneous information,” and therefore, that Lyft failed to comply
3 with the FCRA and other State laws. *Id.* ¶ 28. He further alleges that Lyft failed to inform him at
4 the time of the disclosures that he had a right to request a summary of his rights under the FCRA.
5 *Id.* ¶ 34. Nokchan alleges that Lyft procured his credit and background reports based on these
6 inadequate disclosures and that in doing so, it injured him by violating his privacy and statutory
7 rights under the FCRA and state law. *Id.* ¶¶ 36, 56, 70. Nokchan alleges that the putative class
8 members were similarly injured. *Id.*

9 Nokchan asserts four claims in his Complaint: 1) violation of Section 1681b(b)(2) of the
10 FCRA based on alleged failure to provide clear and unambiguous disclosures in a stand-alone
11 document (Claim One); 2) violation of Sections 1681d(a)(1) and 1681g(c) of the FCRA based on
12 alleged failure to provide a proper summary of rights notice (Claim Two); 3) violation of Section
13 1786.16(a)(2)(B) of California’s Investigative Consumer Reporting Agencies Act (“ICRAA”)
14 based on failure to provide clear and unambiguous disclosures in a stand-alone document (Claim
15 Three); and 4) violation of section 1785.20.5(a) of California’s Consumer Credit Reporting
16 Agencies Act (“CRAA”) based on the allegation that the authorization form failed to “identify the
17 source of any credit report” and “the specific basis” for use of that report (Claim Four).

18 **B. The Motion**

19 In the Motion, Lyft contends Plaintiff has alleged only bare statutory violations and no
20 injury in fact and therefore, under *Spokeo*, that he lacks standing under Article III of the U.S.
21 Constitution to proceed on his claims in federal court. Motion at 6. To demonstrate injury in fact,
22 Lyft asserts, Nokchan must allege facts showing that his injury was not only particularized but
23 also “concrete and real, and not abstract.” *Id.* According to Lyft, Nokchan has failed to meet this
24 requirement as to all of his claims. *Id.* at 7.

25 First, as to Claims One and Three, Lyft argues that Nokchan has failed to demonstrate any
26 concrete harm that resulted from its alleged failure to provide disclosures in a stand-alone
27 document, pointing to the fact that the allegations in the complaint make clear that Nokchan
28 authorized Lyft to conduct a background check by signing the required form. *Id.* In support of its

1 position, Lyft cites to *Smith v. Ohio State Univ.*, 2016 WL 3182675, at *1 (S.D. Ohio June 8,
2 2016), a post-*Spokeo* case that Lyft contends is closely on point.

3 Second, with respect Lyft’s failure to provide Nokchan with a summary of rights (Claim
4 Two), Lyft contends Nokchan fails to allege that this alleged violation “affected him in *any* way,
5 much less caused him concrete harm.” *Id.* at 8 (emphasis in original).

6 Third, with respect to Lyft’s alleged failure to comply with California’s CCRAA by giving
7 him notice of the source of and use for any credit report obtained by Lyft (Claim Four), Lyft
8 contends that Nokchan has similarly failed to allege any concrete injury that resulted from this
9 alleged violation. *Id.* at 8.

10 Lyft argues further that to the extent that Nokchan attempts to establish an injury in fact by
11 referring to his “privacy,” that attempt fails because “this vague incantation is just a restatement of
12 his statutory claims.” *Id.* According to Lyft, the court in *Smith* expressly rejected a similar
13 attempt to establish standing based on alleged violation of the plaintiff’s privacy rights, as have
14 other courts as well. *Id.* at 8-9 (citing *Smith v. Ohio State Univ.*, 2016 WL 3182675, at *4 ;
15 *Gubala v. Time Warner Cable, Inc.*, 2016 WL 3390415, at *1, *4 (E.D. Wis. June 17, 2016); *Khan*
16 *v. Children’s Nat’l Health Sys.*, 2016 WL 2946165, at *1, 6 (D. Md. May 19, 2016)).

17 **III. ANALYSIS**

18 **A. Legal Standard under Rule 12(b)(1)**

19 Pursuant to Rule 12(b)(1), a party may seek dismissal of an action for lack of subject
20 matter jurisdiction. Under Article III of the U.S. Constitution, the Court has subject matter
21 jurisdiction only if the party bringing the action has standing, an inquiry which addresses whether
22 the plaintiff is the proper party to bring the matter to the court for adjudication. *Chandler v. State*
23 *Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010) (citing Erwin Chemerinsky,
24 Federal Jurisdiction § 2.3.1, at 57 (5th ed.2007)). When a defendant moves to dismiss under Rule
25 12(b)(1) of the Federal Rules of Civil Procedure, the plaintiff, as the party seeking to invoke the
26 court’s jurisdiction by filing the complaint, bears the burden of establishing subject matter
27 jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994). A
28 defendant may attack the court’s jurisdiction as it appears on the face of the complaint or by

1 presenting affidavits and other evidence. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000).
2 For a facial attack, the court must “accept all allegations in the complaint as true and construe
3 them in the light most favorable to the plaintiff[.]” *Id.*

4 **B. Legal Standards Governing Article III Standing**

5 “[T]he irreducible constitutional minimum of [Article III] standing” contains three
6 elements, namely, “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly
7 traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a
8 favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v.*
9 *Def. of Wildlife*, 504 U.S. 555, 560 (1992)). The dispute here relates to the “injury in fact”
10 requirement, which the Court has described as the “[f]irst and foremost’ of standing’s three
11 elements.” *Id.* (quoting *Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 103 (1998)).

12 “To establish injury in fact, a plaintiff must show that he or she suffered ‘an invasion of a legally
13 protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or
14 hypothetical.’” *Id.* at 1548 (quoting *Lujan*, 504 U.S. at 560).

15 In *Spokeo*, the Court emphasized that concreteness and particularization are separate
16 requirements. “For an injury to be ‘particularized,’ it ‘must affect the plaintiff in a personal and
17 individual way.’” *Id.* at 1548 (quoting *Lujan*, 504 U.S. at 560 n. 1). Even where this requirement
18 is met, however, the injury-in-fact requirement will not be satisfied unless the injury is also
19 concrete. *Id.* “A ‘concrete’ injury must be ‘*de facto*’; that is, it must actually exist.” *Id.* (citing
20 *Black’s Law Dictionary* 479 (9th ed. 2009)). An injury may be “concrete” even if it is intangible,
21 the *Spokeo* Court explained, and “in determining whether an intangible harm constitutes injury in
22 fact, both history and the judgment of Congress play important roles.” *Id.* at 1549. With respect
23 to history, the Court said, “it is instructive to consider whether an alleged intangible harm has a
24 close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit
25 in English or American courts.” *Id.* (citing *Vermont Agency of Natural Resources v. United States*
26 *ex rel. Stevens*, 529 U.S. 765, 775-777 (2000)). The judgment of Congress is also “instructive and
27 important” because “Congress is well positioned to identify intangible harms that meet minimum
28 Article III requirements.” *Id.* Thus, “Congress has the power to define injuries and articulate

1 chains of causation that will give rise to a case or controversy where none existed before.” *Id.*
2 (quoting *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring)).

3 Nonetheless, “Congress’ role in identifying and elevating intangible harms does not mean
4 that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a
5 person a statutory right and purports to authorize that person to sue to vindicate that right.” *Id.* at
6 1549. Thus, while a procedural violation “can be sufficient in some circumstances to constitute
7 injury in fact,” for example, where there is a “risk of real harm,” a “bare procedural violation,
8 divorced from any concrete harm” does not “satisfy the injury-in-fact requirement of Article III.”
9 *Id.* (emphasis added).

10 The Court in *Spokeo* addressed the injury-in-fact requirement in the context of an alleged
11 FCRA statutory violation. The plaintiff, Robins, alleged that Spokeo, a “people search engine,”
12 had violated Section 1681 of the FCRA by providing inaccurate information about him in a
13 generated credit report. *Id.* at 1544. The Ninth Circuit held that Robins had adequately alleged an
14 injury in fact because he had alleged a “particularized” injury, namely, violation of his statutory
15 rights under the FCRA, but the Court found that the Ninth Circuit’s analysis was incomplete
16 because it had failed to consider whether that injury satisfied the “concreteness” requirement. *Id.*
17 at 1545, 1548. The Court remanded the case for consideration of whether Robins had met that
18 requirement, taking “no position as to whether the Ninth Circuit’s ultimate conclusion—that
19 Robins adequately alleged an injury in fact—was correct.” *Id.* at 1550. While the Court did not
20 reach the question of whether the plaintiff’s allegations were sufficient to demonstrate a concrete
21 injury, it offered examples of FCRA violations that likely would *not* satisfy the concreteness
22 requirement, opining as follows:

23 On the one hand, Congress plainly sought to curb the dissemination
24 of false information by adopting procedures designed to decrease
25 that risk. On the other hand, Robins cannot satisfy the demands of
26 Article III by alleging a bare procedural violation. A violation of
27 one of the FCRA’s procedural requirements may result in no harm.
28 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. In addition,
not all inaccuracies cause harm or present any material risk of harm.
An example that comes readily to mind is an incorrect zip code. It is
difficult to imagine how the dissemination of an incorrect zip code,

without more, could work any concrete harm.

Id. at 1550.³

C. Discussion

Under *Spokeo*, a plaintiff who seeks to assert a claim under the FCRA is required to allege facts showing a concrete injury. While procedural violations that have resulted in real harm – or even a risk of real harm – may be sufficient to meet this requirement, Plaintiff in this case has alleged no such injury. He has not alleged that he suffered any real harm as a result of the fact that he did not receive required disclosures in a separate document or that he did not receive a summary of his rights under the FCRA. In particular, he does not alleged that as a result of Lyft’s failure to provide the disclosures in a separate document or to notify him of his right to receive a summary of his legal rights he was confused about his rights or that he would not have consented to the background checks had he understood his rights.⁴ Nor does he allege that he was harmed by the background check in any way. Rather, based on the allegations in the complaint, Nokchan was hired by Lyft after he successfully completed its background investigation and he continues to work for Lyft. Under these circumstances, the Court can find no real harm, or a threat of such harm, that gives Nokchan standing under Article III to pursue his claims in federal court. Rather, the facts alleged in this case appear to be similar to the example offered in *Spokeo*, where the Court opined that failure to provide the required notice to users of the consumer information provided would not be sufficient to meet Article III’s injury-in-fact requirement.

The Court’s conclusion is consistent with at least two other recent district court decisions. First, in *Smith v. The Ohio State University*, the court found that the plaintiff lacked Article III standing where the plaintiff, like Nokchan, alleged that the document that she signed giving

³ In her dissent, Justice Ginsburg, joined by Justice Sotomayor, agreed with the general principals articulated by the majority but found “no utility in returning [the] case to the Ninth Circuit” because she believed Robins’ allegations “carr[ied] him across the threshold.” *Id.* at 1555. In particular, “[f]ar from the incorrect zip code, Robins complain[ed] of misinformation about his education, family situation, and economic status, inaccurate representations that could affect his fortune in the job market.” *Id.* at 1556.

⁴ At oral argument, Plaintiff’s counsel stipulated that he had no information one way or the other as to whether Plaintiff might have acted differently had Lyft made the required disclosures in the required format.

1 consent to a background check as part of the defendant’s hiring process did not meet the
2 requirements of the FCRA because extraneous information, along with required disclosures, was
3 contained in the document. 2016 WL 3182675, at * 1. The plaintiff was ultimately hired, but she
4 alleged that her “privacy and statutory rights” were violated. *Id.* The court disagreed, finding that
5 under *Spokeo*, there was no injury in fact and that the plaintiff had alleged only a bare procedural
6 violation.⁵ *Id.* at *4.

7 Similarly, in *Larroque v. First Advantage LNS Screening Solutions, Inc.*, Judge Corley, of
8 this Court, found that the plaintiff lacked Article III standing to assert a claim under the FCRA
9 against a company (Pacific) that had provided background information to a potential employer
10 where it was undisputed that the employer disclosed to the plaintiff in writing that it was going to
11 conduct a background check, she provided written authorization for the employer to obtain a
12 background report, that the report did not contain any adverse information about her, and she was
13 ultimately hired by that employer. 2016 WL 4577257, at *4-5. The plaintiff alleged that Pacific
14 had violated the FCRA by providing the potential employer with a background report without first
15 verifying that the employer had complied with the disclosure and authorization requirements of
16 the FCRA. *Id.* at *1.

17 Like Plaintiff here, the plaintiff in *Larroque* alleged that her privacy rights had been
18 violated, borrowing heavily from a decision by the United States District Court for the Eastern
19 District of Virginia, *Thomas v. FTS USA, LLC*, No. 13-cv-825, 2016 WL 365878 (E.D. Va. June
20 30, 2016). *See* Opposition at 13 (citing *Thomas* for the proposition that the FCRA creates
21 “substantive informational and privacy rights, not mere procedural rights”). The court rejected the
22 plaintiff’s assertion that her privacy rights had been violated and distinguished *Thomas*, reasoning
23 as follows:

24 _____
25 ⁵ Plaintiff argues that *Smith* was wrongly decided and therefore should not be followed because
26 the court based its conclusion on the plaintiff’s admission that she did not suffer a “concrete
27 consequential damage.” Opposition at 12 (quoting *Smith*, 2016 WL 3182675, at *4). According
28 to Plaintiff, the *Smith* court implicitly held that “informational injury or intrusion upon privacy is
not sufficient without a showing of tangible injury or actual damages,” a holding that is
inconsistent with *Spokeo*. The Court finds no such holding in *Smith*. Rather, the court in that
case, like this Court, found that the alleged injury to privacy was not sufficiently concrete to
satisfy the requirements of *Spokeo*, as discussed further below.

1 In *Thomas*, the plaintiff alleged that his former employer
 2 procured his and other class members' consumer reports without
 3 first providing the required written disclosure or obtaining the
 4 consumers' written consent, as required by FCRA § 1681b(b)(2).
 5 [2016 WL 365878,] at *1. The plaintiff later learned that his
 6 employer had received his consumer report when he was denied
 7 continued employment based upon information contained in the
 8 report—which included numerous felony convictions that were
 9 incorrectly attributed to him. *Id.* at *3. The court certified a class of
 10 all persons in the United States who had applied for employment
 11 with the defendants (1) where the defendants failed to provide
 12 written disclosure to the applicant that they intended to obtain a
 13 consumer report for employment purposes, as required by 15 U.S.C.
 14 § 1681b(b)(2)(A)(i), and (2) where the defendants failed to obtain
 15 proper written consent from the applicant, as required by 15 U.S.C.
 16 § 1681b(b)(2)(A)(ii). *Id.* at *1. After *Spokeo* was issued, the
 17 defendants argued that the plaintiff and other class members lacked
 18 standing because they had not alleged a concrete injury. *Id.* at *2.
 19 The court, however, rejected this argument, holding that the
 20 “unauthorized disclosure [of] personal information constitutes an
 21 invasion of the statutory of right to privacy and a concrete injury
 22 sufficient to confer Article III standing.” *Id.* at *11.

13 Here, there was no “unauthorized disclosure” of Plaintiff’s
 14 information as in *Thomas*—to the contrary, before Pacific obtained
 15 her credit report from Defendant, she expressly consented in writing
 16 to “the release of a credit report and/or investigative consumer report
 17 concerning me by a credit reporting agency [*i.e.* Defendant]” and
 18 authorized Pacific’s use of her reports as part of its evaluation of her
 19 employment application. (Dkt. No. 36 at 4-5 (Ex. 1).) Plaintiff
 20 therefore agreed to the release of her private information,
 21 eliminating any argument that her privacy was somehow invaded.
 22 Indeed, because of her provided consent, Plaintiff does not, and
 23 cannot, allege the same statutory violations that the court in *Thomas*
 24 found constituted an invasion of the plaintiff’s right to privacy;
 25 whereas the court found that “the rights created by § 1681b(b)(2) are
 26 substantive rights,” 2016 WL 3653878, at *11, Plaintiff here alleges
 27 only that Defendant did not comply with the procedural
 28 requirements of Section 1681b(b)(1).

21 2016 WL 4577257, at *4–5 (N.D. Cal. Sept. 2, 2016). The Court finds that the reasoning in
 22 *Larroque* is persuasive and for the same reasons expressed in that case rejects Plaintiff’s assertion
 23 that he has established standing on the basis that he alleges violations of his privacy rights.

24 At oral argument, Plaintiff argued that invasion of privacy is an injury that traditionally has
 25 been recognized and that he has established such an injury for the purposes of Article III standing
 26 based on his allegation that the authorization he gave Lyft to obtain his personal information was
 27 not *proper*. Plaintiff was not, however, able to cite any authority in support of this proposition and
 28 the Court has not found any. It is true that under common law a consent to disclosure obtained by

1 fraud or deceit may result in an invasion of privacy. *See, e.g.*, Restatement (Second) of Torts §
2 652B (1977) (invasion of privacy occurs where an individual is “compel[ed] . . . by a forged court
3 order to permit an inspection of his personal documents”). But no such conduct is alleged here.

4 The Court also rejects Plaintiff’s argument that he has alleged an “informational injury”
5 that is sufficiently concrete to meet the requirements of *Spokeo*. In *Spokeo*, the Court “implicitly
6 recognized” that certain types of “informational” injuries are “sufficient to support Article III
7 standing.” *Larson v. Trans Union, LLC*, No. 12-CV-05726-WHO, 2016 WL 4367253, at *3 (N.D.
8 Cal. Aug. 11, 2016) (citing *Spokeo*, 136 S. Ct. 1549-50). In particular, the Court stated that “the
9 violation of a procedural right granted by statute can be sufficient in some circumstances to
10 constitute injury in fact. In other words, a plaintiff in such a case need not allege any additional
11 harm beyond the one Congress has identified.” *Id.* at 1549-50 (citing *Federal Election Comm’n v.*
12 *Akins*, 524 U.S. 11, 20–25 (1998); *Public Citizen v. Department of Justice*, 491 U.S. 440, 449
13 (1989). The Court described the holding in *Akins* as “confirming that a group of voters’ ‘inability
14 to obtain information’ that Congress had decided to make public is a sufficient injury in fact to
15 satisfy Article III.” *Id.* According to the Court, *Public Citizen* held that “two advocacy
16 organizations’ failure to obtain information subject to disclosure under the Federal Advisory
17 Committee Act ‘constitutes a sufficiently distinct injury to provide standing to sue.’” *Id.*

18 The case law is not consistent with respect to how broadly to read the language in *Spokeo*
19 with respect to informational injury. The Eleventh Circuit adopted a broad reading of this
20 language in *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 WL 3611543 (11th Cir. July 6,
21 2016). In that case, the plaintiff received a letter from defendant, on behalf of a hospital, stating
22 that she owed a debt to the hospital. *Id.* at 1. The letter did not include certain disclosures that are
23 required under the FDCPA. *Id.* Although the plaintiff did not allege that she had suffered actual
24 damages as a result of the failure to include these disclosures, she did allege that she “was very
25 angry” and “cried a lot” when she received the letter. *Id.* The court addressed whether these
26 allegations were sufficient to demonstrate a concrete injury under *Spokeo* and found that they were
27 because “[t]he invasion of Church’s right to receive the disclosures is not hypothetical or
28 uncertain: Church did not receive information to which she alleges she was entitled.” *Id.* at *3.

1 In reaching this conclusion, the *Church* court likened the facts of the case to those in
2 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). *Havens* was cited by Justice Thomas
3 in his concurrence in *Spokeo* to illustrate the point that “[a] plaintiff seeking to vindicate a
4 statutorily created private right need not allege actual harm beyond the invasion of that private
5 right.” *Spokeo*, 136 S. Ct. at 1553 (Thomas, J., concurring). In *Havens*, the Court found that a
6 black “tester” who was given false information about the availability of housing based on her race
7 had standing to assert a claim under Section 804(d) of the Fair Housing Act, reasoning as follows:

8 A tester who has been the object of a misrepresentation made
9 unlawful under § 804(d) has suffered injury in precisely the form the
10 statute was intended to guard against, and therefore has standing to
11 maintain a claim for damages under the Act’s provisions. That the
12 tester may have approached the real estate agent fully expecting that
he would receive false information, and without any intention of
buying or renting a home, does not negate the simple fact of injury
within the meaning of § 804(d).

13 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373–74 (1982). The *Church* court concluded that
14 the failure to include the required disclosures in the letter that was sent to the plaintiff in that case
15 was comparable: “Just as the tester-plaintiff had alleged injury to her statutorily-created right to
16 truthful housing information, so too has Church alleged injury to her statutorily created right to
17 information pursuant to the FDCPA.” 2016 WL 3611543, at *3.

18 A federal district court in New York rejected the reasoning of the Eleventh Circuit in
19 *Church*, however, in *Dolan v. Select Portfolio Servicing*, No. 03-CV-3285 PKC AKT, 2016 WL
20 4099109 (E.D.N.Y. Aug. 2, 2016). In that case, the plaintiff asserted claims under the Real Estate
21 Settlement Procedures Act (“RESPA”), 12 U.S.C. § 2605, based on allegations that the defendant,
22 a loan servicer, had not provided the plaintiff with information about the servicing of his loan that
23 RESPA requires be disclosed in so-called “Hello/Goodbye” letters notifying a borrower of a
24 change in the loan servicer. *Id.* at *6. The plaintiff conceded he had suffered no actual damages
25 as a result of the failure to send the letter with these disclosures. *Id.* The court addressed whether
26 this violation was a “bare procedural violation” under *Spokeo* or instead, the sort of statutory
27 violation that is sufficient to establish Article III standing on its own, examining the two cases
28 cited in *Spokeo* as examples of the latter, *FEC v. Akins* (“*Akins*”), 524 U.S. 11 (1998), and *Public*

1 *Citizen v. U.S. Dep't of Justice* (“*Public Citizen*”), 491 U.S. 440 (1989)).

2 In *Akins*, the Court held that a group of voters had standing to challenge a determination by
3 the Federal Election Commission (FEC) that the American Israel Public Affairs Committee
4 (“AIPAC”) was not a “political committee” as defined by the Federal Election Campaign Act of
5 1971 (“FECA”), 86 Stat. 11, as amended, 2 U.S.C. § 431(4). 524 U.S. at 14. As a result of the
6 FEC’s determination, AIPAC was not required to make disclosures regarding its “membership,
7 contributions, and expenditures that FECA would otherwise require.” *Id.* at 13. The Court found
8 that the plaintiffs had standing under Article III, reasoning as follows:

9 The “injury in fact” that respondents have suffered consists of their
10 inability to obtain information—lists of AIPAC donors (who are,
11 according to AIPAC, its members), and campaign-related
12 contributions and expenditures—that, on respondents’ view of the
13 law, the statute requires that AIPAC make public. There is no reason
14 to doubt their claim that the information would help them (and
15 others to whom they would communicate it) to evaluate candidates
16 for public office, especially candidates who received assistance from
17 AIPAC, and to evaluate the role that AIPAC’s financial assistance
18 might play in a specific election. Respondents’ injury consequently
19 seems concrete and particular. Indeed, this Court has previously held
20 that a plaintiff suffers an “injury in fact” when the plaintiff fails to
21 obtain information which must be publicly disclosed pursuant to a
22 statute. *Public Citizen v. Department of Justice*, 491 U.S. 440, 449,
23 109 S.Ct. 2558, 2564, 105 L.Ed.2d 377 (1989) (failure to obtain
24 information subject to disclosure under Federal Advisory Committee
25 Act “constitutes a sufficiently distinct injury to provide standing to
26 sue”).

19 *Id.* at 21.

20 In *Public Citizen*, the plaintiffs, Washington Legal Foundation and Public Citizen,
21 challenged the United States Department of Justice’s use of confidential reports prepared by the
22 American Bar Association’s Standing Committee on Federal Judiciary (“ABA Committee”) to
23 evaluate nominees for judgeships. 491 U.S. at 443. The plaintiffs asserted that the ABA
24 Committee was an “advisory committee” under the Federal Advisory Committee Act (“FACA”)
25 and therefore was required to make its minutes, records, and reports public. *Id.* at 447–48. The
26 Court found that the plaintiffs had standing under Article III because they sought “access to the
27 ABA Committee’s meetings and records in order to monitor its workings and participate more
28 effectively in the judicial selection process” and had been denied that information. *Id.* at 449. The

1 Court held that “[a]s when an agency denies requests for information under the Freedom of
2 Information Act, refusal to permit appellants to scrutinize the ABA Committee’s activities to the
3 extent FACA allows constitutes a sufficiently distinct injury to provide standing to sue.” *Id.*

4 The court in *Dolan* found significant that “both *Akins* and *Public Citizen* involved
5 statutory rights intended to protect and promote public interests that, by their nature, are intangible
6 and diffuse, and would be rendered wholly unenforceable were intangible injury, or bare
7 procedural violations, categorically insufficient to confer standing.” 2016 WL 4099109, at *4.
8 The court found that another section of RESPA that was *not* asserted in *Dolan* – Section 2607,
9 which prohibits “any fee, kickback, or thing of value” in exchange for a referral “incident to or a
10 part of a real estate settlement service involving a federally related mortgage loan,” was aimed at
11 addressing a similar public interest and could give rise to standing based only on a statutory
12 violation. *Id.* at *4-5. On the other hand, the court concluded, the provision that the plaintiff in
13 *Dolan* alleged was violated, Section 2605, which required that certain information be disclosed to
14 buyers when their loans changed servicers, did “not implicate the type of diffuse, intangible injury
15 at issue in *Akins* and *Public Citizen*, but rather [sought] to redress actual damages caused by the
16 failure of one private party, *i.e.*, a loan servicer, to provide specific information to another private
17 party, *i.e.*, a borrower.” *Id.* at *5. Consequently, the court held, a plaintiff alleging a violation of
18 Section 2605 required more than a mere violation to establish Article III standing. *Id.*

19 In a footnote, the *Dolan* court rejected the Eleventh Circuit’s decision in *Young*, stating as
20 follows:

21 The Court is aware of the Eleventh Circuit’s recent decision in
22 *Church v. Accretive Health, Inc.*, No. 15-15708, 2016 U.S. App.
23 LEXIS 12414 (11th Cir. July 6, 2016), in which the Eleventh Circuit
24 concluded that a plaintiff had standing to assert claims under the
25 Fair Debt Collection Practices Act (“FDCPA”) simply by alleging
26 that she had not received all information to which she was entitled
27 under the statute, even in the absence of any allegations of “tangible
28 economic or physical harm.” *Id.* at *10–11. The Eleventh Circuit
reasoned that “the Supreme Court has made clear [that] an injury
need not be tangible to be concrete,” and that the injury of not
receiving a disclosure to which someone is entitled was “one that
Congress has elevated to the status of a legally cognizable injury
through the FDCPA.” *Id.* at 11 & n.2 (holding that this was not a
“procedural violation,” but the violation of a “substantive right to
receive certain disclosures”). The Court is not bound by this
decision, and respectfully disagrees with it, based on this Court’s

1 conclusion that the cases cited in *Spokeo* as examples of intangible
 2 harm sufficient to confer standing, *i.e.*, *Akins* and *Public Citizen*,
 3 involved interests of much greater and broader significance to the
 4 public than those at issue in *Church* and, more relevantly, under
 5 Section 2605 of RESPA. In short, the Court rejects the view that
 6 *Spokeo* established the proposition that every statutory violation of
 an “informational” right “automatically” gives rise to standing. See
Spokeo, 136 S. Ct. at 1549 (holding that plaintiff alleging FCRA
 violation “could not ... allege a bare procedural violation, divorced
 from any concrete harm, and satisfy the injury-in-fact requirement
 of Article III”).

7 *Id.* at *6 n. 7.

8 Turning once again to the alleged violations of the FCRA in this case, the Court notes that
 9 *prior to Spokeo*, courts had held that failure to provide disclosures that are required under the
 10 FCRA amounted to an informational injury that gave rise to Article III standing. For example, in
 11 *Manuel v. Wells Fargo Bank, Nat. Ass’n*, the court expressly held that a plaintiff who alleged he
 12 did not receive the required FCRA disclosures in a separate document, in violation of 15 U.S.C. §
 13 1681b(b)(2)(A), was “clearly alleging an informational injury—while he did receive a type of
 14 information, it was not the type of information that he was entitled to under the FCRA.” 123 F.
 15 Supp. 3d 810, 817 (E.D. Va. 2015). In particular, the court held, “[t]he allegations that Defendant
 16 failed to provide [the] information [required under the FCRA], or that they provided the
 17 information after it was required are sufficient to posit ‘an invasion of a legally protected interest
 18 which is (a) accurate and particularized and (b) actual or imminent, not conjectural or
 19 hypothetical.’” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. at 560–61). The undersigned
 20 concludes that in the wake of *Spokeo*, *Manuel* cannot be read to stand for the broad proposition
 21 that violation of a disclosure requirement under the FCRA, by itself, is sufficient to confer Article
 22 III standing on a plaintiff.⁶

23 The Court also agrees with the *Dolan* court that *Church* appears to be inconsistent with
 24 *Spokeo* to the extent that the cases cited in *Spokeo* (*Akins* and *Public Citizen*) implicated interests

26 _____
 27 ⁶ Notably, while the court’s discussion of standing in *Manuel* focuses entirely on the fact of the
 28 statutory violation to establish injury-in fact, the plaintiff had, in fact, been denied employment
 based on information obtained by the employer in the consumer reports at issue in that case.
 Therefore, the *holding* of *Manuel* appears to be consistent with *Spokeo* even if some of the court’s
 reasoning appears to be inconsistent with *Spokeo*.

United States District Court
Northern District of California

1 of broad significance to the public, whereas the alleged failure to disclose at issue in *Church* did
2 not. Further, the undersigned does not agree with the *Church* court that the failure to include
3 certain disclosures in the letter at issue in that case resulted in an injury that was comparable to the
4 injury in *Havens*, where the plaintiffs were subject to discriminatory conduct that was part of a
5 practice by the defendants of steering racial minorities away from certain neighborhoods. 455
6 U.S. at 376. Therefore, the Court declines to adopt the Eleventh Circuit’s broad reading of
7 *Spokeo* and does not follow *Church* here.

8 In sum, the Court concludes that under *Spokeo* and the specific facts of this case, Plaintiff
9 has failed to establish that he has met Article III’s injury-in-fact requirement.

10 **IV. CONCLUSION**

11 For the reasons stated above, the Motion is GRANTED. Accordingly, the Complaint is
12 dismissed without prejudice to refiling this action in state court.⁷

13 **IT IS SO ORDERED.**

14 Dated: October 5, 2016

15 
16 _____
17 JOSEPH C. SPERO
18 Chief Magistrate Judge

19
20
21
22
23
24
25
26
27

28 ⁷ The parties agree that where a federal court lacks subject matter jurisdiction over an action due to lack of Article III standing, dismissal without prejudice is appropriate.