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OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT (MAY 3, 2019)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

923 F.3d 458

JAMES HUFF, Individually and
on Behalf of all Others Similarly Situated,

Plaintiff-Appellant,

v.

TELECHECK SERVICES, INC.,
TELECHECK INTERNATIONAL, INC.,
FIRST DATA CORPORATION,

Defendants-Appellees.

No. 18-5438

Appeal from the United States District Court
for the Middle District of Tennessee at Nashville.
No. 3:14-cv-01832—
Samuel H. Mays, Jr., District Judge.

Argued: December 6, 2018

Decided and Filed: May 3, 2019

Before: BATCHELDER, SUTTON, and
WHITE, Circuit Judges.

SUTTON, Circuit Judge.

This case deals with a fading technology (checks) and an evergreen imperative (Article III standing). When a customer buys something with a check, merchants often consult a check verification company to determine whether to accept the check. Invoking his rights under the Fair Credit Reporting Act, James Huff requested a copy of his file from a check verification company called TeleCheck. The report omitted that his driver's license was linked to six different bank accounts and omitted two transactions that occurred on those accounts. Huff filed this lawsuit under the Act. Because Huff has not shown that the incomplete report injured him in any way, we affirm the district court's dismissal of his case for lack of standing.

I.

When a retail consumer offers a check to a merchant, the customer usually provides a form of identification such as a driver's license. The merchant often takes the bank account number on the check and the driver's license number, called identifiers, and sends them to companies like TeleCheck. TeleCheck runs each identifier through its system. If one of the identifiers has a debt on file, TeleCheck sends the merchant a "Code 4"—what the industry calls a negative decline. If there is not a debt on file, TeleCheck examines the customer's check-writing history to determine whether to send a "Code 3"—what the industry calls a risk-based decline. If TeleCheck recommends a decline, the merchant refuses the customer's check. If there are no debts on file and the customer presents a low risk, TeleCheck approves the transaction, and the merchant accepts the check.

When a customer presents two identifiers in a transaction, TeleCheck records a link between the identifiers in its system. If in a later transaction a customer uses only one of those identifiers, TeleCheck recommends a Code 4 decline if there is a debt associated with the presented identifier *or* the linked identifier. Say a customer presents his driver's license along with a check to buy milk. That links his license number and the account number on the check in TeleCheck's system. Then the customer bounces a check on the same account. Now, when the customer tries to buy eggs with a check from a different account and presents his license, TeleCheck will see that an identifier linked to the license—the bad bank account—shows a debt, and it will issue a Code 4 decline. By contrast, linked identifiers play no role in TeleCheck's Code 3 decline recommendations.

James Huff often pays by check. Inspired by a legal services advertisement, Huff requested a copy of his file from TeleCheck under the Fair Credit Reporting Act. 15 U.S.C. § 1681g(a)(1). Huff provided TeleCheck with only a copy of his driver's license. As a result, the report contained only the 23 transactions in which he presented his license during the past year. But the report also told Huff that TeleCheck had more information. A bolded disclaimer at the bottom of the report read: "Linked Data: Your record is linked to information not included in this report, subject to identity verification prior to disclosure. Please contact TeleCheck at 1-800-366-1435 to verify Monday-Friday 830am-430pm CST." R. 78-6 at 3.

Huff did not call. He sued.

Huff's driver's license as it happens contains links to six different bank accounts: his own account, his wife's account, and four accounts that haven't been used for years. The accounts were linked because Huff had presented his license in transactions alongside checks from each of the accounts. In addition to leaving off the linked accounts, the report did not reveal two checks from those accounts over the past year that were not presented with Huff's license. One of the checks was from Huff's own account, and one was from his wife's.

TeleCheck has never told a merchant to decline one of Huff's checks due to his linked information.

After discovery, Huff moved for class certification, and TeleCheck moved for summary judgment based on lack of standing. The district court dismissed the case because Huff lacked standing to bring it.

II.

Article III of the United States Constitution limits the "judicial Power" of the federal courts to deciding "Cases" and "Controversies." U.S. Const. art. III, § 2. That limitation checks the power of the judicial branch by confining it to resolving concrete disputes, *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016), and checks the power of the legislative branch by prohibiting it from using the Judiciary as an adjunct to its own powers, *see Hagy v. Demers & Adams*, 882 F.3d 616, 623 (6th Cir. 2018). To protect the vital, but limited all the same, role of the Judiciary in our system of government, the Constitution makes standing an indispensable ingredient of a judicial dispute.

To establish standing, Huff had to show three things: (1) that he suffered an injury, (2) caused by TeleCheck, (3) that a judicial decision could redress.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992). The burden of establishing standing rests with Huff, and he must provide the allegations or evidence required at each stage of the litigation. *Id.* at 561. At summary judgment, the current stage of this litigation, Huff cannot rely on allegations alone but must set forth evidence demonstrating his standing.

This case turns on the "[f]irst and foremost" prong of that inquiry, injury in fact. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). An injury in fact must be real, not abstract, actual, not theoretical, concrete, not amorphous. *Spokeo*, 136 S. Ct. at 1548.

Before turning to Huff's efforts to satisfy this requirement, it is well to keep in mind a distinction that's easy to miss in this area. There is a difference between failing to establish the elements of a cause of action and failing to show an Article III injury. One is a failure of proof. The other is a failure of jurisdiction. Yes, there can be overlap between the two inquiries. But they are not one and the same.

Consider the distinction from this vantage point. The Fair Credit Reporting Act creates a cause of action that has three elements: (1) duty—a consumer agency must disclose "[a]ll information in the consumer's file" upon request; (2) breach of duty—any consumer agency that fails to meet this requirement is liable to the affected individual; and (3) damages—the affected individual may recover $100 to $1000 for each willful violation. 15 U.S.C. § 1681g(a)(1); *see id.* § 1681n(a)(1)(A).

In one way, Huff does not have a problem in establishing injury. In answering TeleCheck's motion for summary judgment, Huff went beyond mere allegations and tried to provide proof of each required element—including proof of a breach of duty that creates a statutory injury—of the cause of action. If he provided evidence checking each of these boxes, that indeed satisfies the requirements under the statute and indeed satisfies his burden of proof at this stage of the case when it comes to the elements of the cause of action.

But that leaves a different question: Does Congress have authority to label this violation of the statutory duty an Article III injury when it comes to Huff? After *Spokeo*, we know there is no such thing as an "anything-hurts-so-long-as-Congress-says-it-hurts theory of Article III injury." *Hagy*, 882 F.3d at 622. That requires us to assess whether enforcement of this cause of action, as invoked by Huff and as applied to Huff, exceeds Congress's power.

We see three ways in which Huff potentially could satisfy Article III with this cause of action. One, the statutory violation created an injury in fact as applied to him because it actually injured him when the violation led, say, to a check decline. Two, the statutory violation did not injure him in any traditional way, but the risk of injury was so imminent that it satisfies Article III. Three, the statutory violation did not create an injury in any traditional sense, but Congress had authority to establish the injury in view of its identification of meaningful risks of harm in this area. Each possibility deserves its turn.

1. Actual Injury as Applied to Huff?

Huff's lawsuit does not satisfy the first option. He does not allege, much less prove, harm in the flesh-and-blood or dollars-and-cents sense of the term. By way of examples: He does not claim that TeleCheck's conduct caused a declined check or a denied rental application. He does not suggest that he wasted time or suffered emotional distress while looking for his linked information. He does not contend that he would have done anything with the missing information had he received it—say, by adjusting his spending habits. All in all, Huff acknowledges that TeleCheck's incomplete report did not "have any effect on [him] whatsoever." R. 78-2 at 25.

2. Risk of Imminent Injury as Applied to Huff?

The second option does not work either. The record evidence does not show that TeleCheck created a risk that Huff would suffer a check decline—or any other harm covered by the statute—based on the checking activities of the linked accounts. Quite the opposite on this record.

A material risk of harm, it is true, may establish standing. *Spokeo*, 136 S. Ct. at 1549. But the "threatened injury must be *certainly impending* to constitute injury in fact." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quotation omitted); *see Soehlen v. Fleet Owners Ins. Fund*, 844 F.3d 576, 585 (6th Cir. 2017).

The risk that TeleCheck's incomplete disclosure would cause Huff to suffer a check decline was highly speculative. Four of the linked accounts (whose precise connection to Huff the record does not reveal) were last used between 2008 and 2010, making it a virtual certainty that no one would write a bad check on them today. One of the other linked accounts was Huff's personal account, meaning he could not blame TeleCheck's nondisclosure if he bounced a check on it. The remaining account belonged to Huff's wife. For

Huff to suffer a check decline based on her account, his wife would have to bounce a check with a TeleCheck merchant, the merchant would have to report the debt to TeleCheck, Huff's wife would have to leave the debt unresolved, and Huff would have to try to use a check at a TeleCheck merchant while presenting his driver's license. The odds of that happening are remote. The inescapable truth is that Huff has not suffered a check decline in the five years since he requested his file from TeleCheck.

The question, bear in mind, is not whether Huff faces some risk of a check decline in general but what additional risk of harm stems from TeleCheck's nondisclosure of Huff's information. *See Macy v. GC Servs. Ltd.*, 897 F.3d 747, 758 (6th Cir. 2018) (risk of harm must stem from the procedural violation). That means we have to ask about the difference between what Huff would have done with a report containing the linked information and what he did with the report he received. Huff offers no evidence that, had he received what he wanted, he would have tried to delink any accounts from his driver's license. Nor has he done so since acquiring that information. Full disclosure by TeleCheck, in short, would not have reduced the risk a merchant would decline Huff's check.

Now that Huff has all the information he wants, any remaining risk of a check decline flows from his failure to delink the accounts, not TeleCheck's failure to disclose them in the first instance. Because Huff has the power to eliminate any lingering risk of a check decline based on a wrongly linked account, his risk of harm does not amount to a concrete injury caused by TeleCheck. *See Bassett v. ABM Parking Servs., Inc.*, 883 F.3d 776, 783 (9th Cir. 2018).

Don't forget one last point. TeleCheck alleviated any risk of harm by including the linked data disclaimer. The disclaimer warned Huff that his "record is linked to information not included in this report" and instructed him to call to get his information. R. 78-6 at 3. Had he done so, Huff could have learned which accounts TeleCheck linked him to, determined if TeleCheck linked him to any accounts mistakenly, and asked TeleCheck to delete any inappropriate links. Courts assess injuries caused by the deprivation of information based not only on the information the consumer agency fails to provide but also on the information it does provide. *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 346 (4th Cir. 2017). Because TeleCheck enabled, indeed encouraged, Huff to access all the information he sought, its failure to disclose the information created only a negligible risk that Huff would suffer a check decline.

3. Statutory Violation as Intangible Injury in Fact?

In the absence of a tangible injury or material risk of harm, Huff offers a different theory of injury: a statutory violation that created a procedural or intangible injury. TeleCheck's failure to provide him with his linked accounts and the two missing transactions, he says, violated the Fair Credit Reporting Act. The Act creates a duty—that a consumer agency must disclose "[a]ll information in the consumer's file" upon request—and consequences for breaching that duty. 15 U.S.C. § 1681g(a)(1). And Huff has provided evidence of a breach of that duty. That's all it takes, as Huff sees it, to create a cognizable Article III injury.

Huff is right and wrong.

Huff is right that intangible injuries premised on statutory violations in some instances may satisfy Article III's injury-in-fact requirement. *Spokeo*, 136 S. Ct. at 1549. Historical practice and the judgment of Congress help to determine whether an intangible injury provides Article III standing. *Id.* Congress's judgment is "instructive and important," *id.*, and it has some authority "to define injuries and articulate chains of causation," *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in the judgment). When Congress confers a procedural right to protect a plaintiff's concrete interests, a violation of that right may establish the requisite injury in fact. *See Macy*, 897 F.3d at 756.

Huff is wrong that Congress's authority to create Article III injuries has no boundaries, save limits to congressional imagination or congressional self-restraint. Separation-of-powers considerations preserve an outer limit on Congress's authority. "Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo*, 136 S. Ct. at 1549; *see Lyshe v. Levy*, 854 F.3d 855, 858 (6th Cir. 2017); *Wall v. Mich. Rental*, 852 F.3d 492, 495 (6th Cir. 2017). If a claimant has not suffered a genuine harm or risk of harm, a federal court has no business entertaining his lawsuit. Congress cannot conjure standing by declaring something harmful that is not, by saying anything causes injury because the legislature says it causes injury. *Hagy*, 882 F.3d at 622. A difference remains between injury in law and injury in fact. Otherwise Congress (or a state legislature) could create injuries in law that require the federal courts to issue advisory opinions.

As is sometimes the case with tricky legal problems, the border between what Congress may do in creating cognizable intangible injuries and what it may not do remains elusive. The Maginot Line comes to mind as a metaphor for our efforts. But that's only because the federal courts have frequently allowed Congress to create intangible injuries in the first place, often for legitimate reasons. Still, the federal courts must preserve a line, some line. Else Congress becomes the author of the limitations on its own power, a problem of greater magnitude. *Cf. Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

Huff's claim falls on the wrong side of this line. A few cases help to explain why, each involving a statutory violation—and statutory injury—that did not necessarily result in standing. Start with *Spokeo v. Robins*, 136 S. Ct. 1540 (2016). In that case, the Supreme Court noted that Congress enacted the Fair Credit Reporting Act to curb the dissemination of false information. *Id.* at 1550. But it recognized that a violation of the law that results in the dissemination of an objectively false report does not necessarily cause a concrete harm if the disclosure has no consequences for the consumer. *Id.* "[A] bare procedural violation," such as the dissemination of an incorrect zip code, would not work a concrete harm for purposes of Article III. *Id.*

Hagy v. Demers & Adams respected that principle and elaborated on how it works. 882 F.3d 616 (6th Cir. 2018). A creditor sent a letter to the lawyer of two debtors and allegedly violated the Fair Debt Collection Practices Act by failing to disclose that it came from a debt collector. *Id.* at 619. Even if that action violated the Act, we held, the debtors lacked standing because they could not point to any negative consequences, whether immediately or imminently, caused by the violation. *Id.* at 622.

The Fourth Circuit looked at the problem the same way in a case arising under the Fair Credit Reporting Act, the same law at issue here. *Dreher*, 856 F.3d at 340. A consumer requested and received his file from a credit agency under § 1681g. *Id.* The report did not name the correct source of information about one of his debts, as required by the Act, listing the name of the debt's original (but not current) owner. *Id.* at 341. But the contact information in the report connected the consumer to the right creditor all the same. *Id.* Because the procedurally inadequate report did not "adversely affect[ ] [the consumer's] conduct in any way," the court found that the statutory violation did not harm the consumer's interests under the Act. *Id.* at 347.

All three cases lead to the same destination. TeleCheck's alleged statutory violation did not harm Huff's interests under the Fair Credit Reporting Act because it had no adverse consequences. In TeleCheck's system, linked accounts play a role only when one of the accounts lists an active debt. None of the six accounts linked to Huff's driver's license has ever been associated with an outstanding debt. That means the "linked data never affected, altered, or influenced a single consumer report on [Huff]." R. 81 at 4. By omitting the linked accounts and the missing transactions, TeleCheck at most prevented Huff from delinking those accounts from his driver's license. But because the undisclosed information was irrelevant to any credit assessment about Huff, delinking the accounts would not have had any effect.

Behind all of this stands an important principle. Although Congress wields broad authority to define injuries, it does not have a blank check. *Hagy*, 882 F.3d at 623. Any other conclusion would give Congress the final say over the injury-in-fact limitations in Article III, an outcome inconsistent with the architecture of the Constitution. The Framers feared an overweening Congress, "every where extending the sphere of its activity, and drawing all power into its impetuous vortex." *The Federalist* No. 48, at 241 (James Madison) (Terence Ball ed., 2003). To fend off that possibility, they erected structural safeguards throughout the National Charter. The horizontal separation of powers prevents Congress from flattening Article III's limitations by defining harmless procedural violations—or for that matter anything at all—as injuries in fact. *See Hagy*, 882 F.3d at 623.

All of this still leaves Congress with plenty of power to define and create intangible injuries. It just has to explain itself in a way it never did here. In the absence of an explanation of how a seemingly harmless procedural violation constitutes a real injury, we are left with a canyon-sized gap between Congress's authority and the problem it seeks to resolve.

Two analogies come to mind.

One comes from *United States v. Lopez*, 514 U.S. 549 (1995). The Supreme Court invalidated a federal law banning firearms within a certain distance of any school on the ground that it exceeded Congress's power "[t]o regulate Commerce . . . among the several States." U.S. Const. art. I, § 8, cl. 3; *Lopez*, 514 U.S. at 567. Among other explanations for its decision, the Court noted the lack of congressional findings explaining how the law regulated interstate commerce.

Lopez, 514 U.S. at 562-63. Congress amended the statute to include such findings, see Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 320904, 108 Stat. 1796, 2125-26 (codified as amended at 18 U.S.C. § 922(q)(1)); *Lopez*, 514 U.S. at 563 n.4, and to include an interstate-jurisdictional prerequisite for a prosecution, *see* Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, § 657, 110 Stat. 3009, 3009-369-71 (codified as amended at 18 U.S.C. § 922(q)(2)). Since then, courts have upheld the amended statute. *See, e.g.*, *United States v. Dorsey*, 418 F.3d 1038, 1046 (9th Cir. 2005); *United States v. Danks*, 221 F.3d 1037, 1039 (8th Cir. 1999) (per curiam).

The other comes from *City of Boerne v. Flores*, 521 U.S. 507 (1997). The Court invalidated the Religious Freedom Restoration Act as applied to the States because it exceeded Congress's enforcement power under Section Five of the Fourteenth Amendment. *Id.* at 536. Among other explanations for its decision, the Court noted that Congress failed to provide a legislative record documenting any pattern of religious liberty violations that would justify extending the Act's protections beyond the Court's decisions interpreting the Free Exercise Clause. *Id.* at 530-33. After the decision, Congress enacted the Religious Land Use and Institutionalized Persons Act, which cut back on the scope of the law and supplied the necessary record to support the new law. *See* 146 Cong. Rec. 16,698-700 (2000); H.R. Rep. No. 106-219, at 18-24 (1999). Subsequent challenges to the new law have been rejected. *See, e.g.*, *Guru Nanak Sikh Soc. of Yuba City v. County of Sutter*, 456 F.3d 978, 993 (9th Cir. 2006); *cf. Cutter v. Wilkinson*, 544 U.S. 709, 714 (2005).

Congressional findings are neither necessary nor sufficient in every case. Congress is not an administrative agency, bound to record the reasoning behind the statutes it enacts. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 666 (1994) (opinion of Kennedy, J.). Nor will findings invariably salvage laws at the edge of congressional power. *See United States v. Morrison*, 529 U.S. 598, 614 (2000). But in the borderlands of congressional power to define intangible injuries that satisfy Article III, a vexing area under any circumstance, guidance about the ills a statute is meant to remedy can instruct and guide.

Congress has not provided any such guidance here. Had it explained why the type of incomplete disclosure Huff received constitutes an injury in fact, our analysis might well have been different. But because Congress has not attempted to show how technical violations of the Fair Credit Reporting Act that carry no actual consequences or real risk of harm are concrete injuries, we must find that Huff has not been injured in this case.

Huff tries to counter this conclusion on two grounds. Neither one is convincing.

Huff insists that TeleCheck's failure to disclose this information injured his concrete interests under the Fair Credit Reporting Act by "robb[ing] [him] of his right to monitor his file," which prevented him from disputing the accuracy of the links. Appellant's Br. 33. Regardless of whether he presented his driver's license alongside checks from the six missing accounts, he explains, his license should not be linked to some of the accounts because they don't belong to him, and he had no way of delinking them without knowing about them.

Assume for now that TeleCheck wrongly linked Huff's accounts. The linked information nonetheless never made a difference in any credit determination, meaning its continued existence in TeleCheck's system did not harm Huff's concrete economic interests. *See Owner-Operator Indep. Drivers Ass'n v. U.S. Dep't of Transp.*, 879 F.3d 339, 345 (D.C. Cir. 2018). Confirming the point, Huff never took any action after receiving the undisclosed information, indicating he wouldn't have done anything even if he had received it earlier.

Public Citizen v. U.S. Department of Justice, 491 U.S. 440 (1989), and *FEC v. Akins*, 524 U.S. 11 (1998), do not alter this conclusion. In those cases, the Court held that a deprivation of information sufficed to provide standing because the plaintiffs would have used the information to participate in the political process. *See Akins*, 524 U.S. at 21; *Pub. Citizen*, 491 U.S. at 449. Here, in contrast, TeleCheck's incomplete report had no effect on Huff or his future conduct. *See Dreher*, 856 F.3d at 346-47. The Act never attempts to show how a technical impairment of a consumer's ability to monitor a credit report—that carries no actual consequences for the consumer—rises to the level of an Article III injury, even an Article III intangible injury. *See id.* at 347. That leaves us with a "bare procedural violation," attenuated from any real harm or imminent risk of harm, that Congress cannot convert into Article III standing. *Spokeo*, 136 S. Ct. at 1549; *Hagy*, 882 F.3d at 622.

Huff argues that *Macy v. GC Services Ltd.* shows that the risk of a check decline created by TeleCheck's nondisclosure establishes standing. 897 F.3d 747 (6th Cir. 2018). *Macy*, to start, involved a different law: the Fair Debt Collection Practices Act. 15 U.S.C. § 1692 *et seq.* Two debtors received a letter from a debt collector notifying them that their credit card accounts had been referred to the company for collection. *Macy*, 897 F.3d at 751. The letter informed the debtors that they could dispute their debt within 30 days, but it failed to say the dispute had to be "in writing." *Id.* That violated § 1692g(a), and the debtors sued. We found the debtors had standing because the debt collector's failure to include the words "in writing" created a material risk the debtors might forfeit other protections for their concrete economic interests. *Id.* at 758.

The *Macy* statute made a risk of harm far more likely than this law does. In enacting the Fair Debt Collection Practices Act, Congress sought to curb abusive debt collection activities. *Id.* at 756; *see* 15 U.S.C. § 1692(e). In finding that the nondisclosure of the "in writing" requirement posed a material risk of harm, we observed that a written dispute triggered other statutory protections, such as forcing the debt collector to verify the debt and blocking the collector from collecting the debt until completing the verification. *Macy*, 897 F.3d at 758; *see* 15 U.S.C. § 1692g(b). An oral dispute would forfeit those protections. *Macy*, 897 F.3d at 758. Because Congress tied the writing requirement to statutory protections of concrete economic interests, the failure to include the words "in writing" created a material risk of harm.

The Fair Credit Reporting Act does not contain such interlocking statutory protections. While it allows consumers to look into and correct information in their files, it does not provide a shield from imminent economic harm in the way the Fair Debt Collection Practices Act does. The Fair Credit Reporting Act's main target is the dissemination of inaccurate and harmful information, just as in *Spokeo*. *See* 136 S. Ct. at 1550. Because TeleCheck's nondisclosure never harmed Huff, and because it did not create a material risk that Huff would suffer a check decline, Huff has not suffered an injury in fact.

The difference between *Macy* and this case comes down to a difference in how Congress exercised its power. In *Macy*, Congress did not trespass on Article III because the statutory violation was closely connected to real economic harm and thus amounted to an injury in fact. In this instance, Congress crossed the line. It has not shown how a deprivation of information that neither holds consequences for the consumer nor imposes a real risk of harm creates an injury. In the absence of that showing, we have only Congress's say-so, and that does not suffice—at least so long as the federal courts preserve the Constitution's structural boundaries.

The dissent claims that we have "declare[d] the Fair Credit Reporting Act unconstitutional as exceeding Congress's power to provide a judicial remedy for statutory violations." *Infra*, at 15. That overstates. Just as no one can obtain an advisory opinion about the meaning of this law or any other, no one can enforce this law or any other without a concrete Article III injury in fact. And even in this case, our decision does not mean that TeleCheck's alleged violations must escape scrutiny. Regardless of Huff's standing, the Federal Trade Commission and other agencies have both the authority to enforce compliance with the Act and a sovereign interest in doing so. *See* 15 U.S.C. § 1681s.

That leaves a perspective that has not been raised in today's case but may deserve consideration in a future case. As Justice Thomas has pointed out, Article III standing may draw a line between private and public rights. With respect to statutes creating private rights —that create duties owed to the plaintiffs as individuals—a bare statutory violation may suffice to establish standing. But with respect to statutes creating public rights—that create duties owed to the community as a whole—a bare statutory violation may not suffice, and the plaintiff must show some individual harm beyond the violation. *See Spokeo*, 136 S. Ct. at 1551-53 (Thomas, J., concurring); *see also Frank v. Gaos*, 139 S. Ct. 1041, 1046-47 (2019) (Thomas, J., dissenting). The theory deserves further consideration at some point. It seems to respect history and cuts a path in otherwise forbidding terrain. *See* William Baude, *Standing in the Shadow of Congress*, 2016 Sup. Ct. Rev. 197, 227-31; Ann Woolhandler & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 Mich. L. Rev. 689, 693-712 (2004). But the theory also raises questions of its own in an age of statutes. Whatever is true of Congress's power to create standing by statute would seem to hold for state legislatures as well, posing another threat to Article III's limits. And even if the dichotomy between public and private rights honors original meaning, what of laws that use nominally private rights as a way of commissioning private attorneys general to enforce public regulatory schemes—a modern reality without obvious eighteenth-century heirs? What amounts to a public right and what amounts to a private right may not be easy to transpose today. Either way, clarification from Congress about whether a right was meant to protect personal or public interests would ease the judicial task. For now, under *Spokeo* and our own decisions, Huff has failed to establish injury in fact.

We affirm.

DISSENTING OPINION OF JUSTICE WHITE

HELENE N. WHITE, Circuit Judge, dissenting.

The majority declares the Fair Credit Reporting Act ("FCRA") unconstitutional as exceeding Congress's power to provide a judicial remedy for statutory violations.[1] Contrary to the majority's conclusion, Huff's injury in fact was sufficiently concrete to satisfy Article III standing requirements because (1) Congress conferred on consumers like Huff the right to request their entire file to protect their interest in having only accurate information reported about them, and (2) TeleCheck's failure to provide Huff's entire file created a material risk that inaccurate information would be reported about him and he would face a check decline. Accordingly, I respectfully dissent.

This court recently held that the violation of a procedural right granted by statute is sufficient to constitute a concrete injury in fact where (1) "Congress conferred the procedural right to protect a plaintiff's concrete interests" and (2) "the procedural violation presents a material risk of real harm to that concrete interest." *Macy v. GC Services Limited Partnership*, 897 F.3d 747, 756 (6th Cir. 2018). Both requirements are met here.

First, Congress conferred on consumers like Huff the right to obtain their full file to protect their interest in not having false credit information reported about them. In enacting the FCRA, "Congress plainly sought to curb the dissemination of false information

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[1] Although not stated, I presume this is an as-applied declaration of unconstitutionality.

by adopting procedures designed to decrease that risk." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1550 (2016). One such procedure is that "[u]pon request and identification, the reporting agency is required to divulge the information in its files concerning the interested consumer." *Hovater v. Equifax, Inc.*, 823 F.2d 413, 417 (11th Cir. 1987) (citing 15 U.S.C. § 1681g). "The purpose of the [FCRA's] disclosure requirement [in 15 U.S.C. § 1681g] is to provide the consumer with an opportunity to dispute the accuracy of information in his file." *Hauser v. Equifax, Inc.*, 602 F.2d 811, 817 (8th Cir. 1979). Once the consumer identifies the allegedly inaccurate information, the FCRA sets forth a detailed grievance procedure governing how to correct that inaccuracy. 15 U.S.C. § 1681i. In short, "[a] primary purpose[ ] of the statutory scheme provided by the disclosure in § 1681g(a)(1) is to allow consumers to identify inaccurate information in their credit files and correct this information via the grievance procedure established under § 1681i." *Gillespie v. Equifax Info. Servs., L.L.C.*, 484 F.3d 938, 941 (7th Cir. 2007). Thus, Congress conferred on consumers the procedural right to receive their file upon request to reduce the concrete risk that inaccurate information about them would be disclosed.

Second, TeleCheck's failure to provide Huff with the identifiers linked to him created a material risk of real harm. Unbeknownst to Huff, TeleCheck linked his driver's license number with bank accounts that were not his. When Huff exercised his right to receive his file, TeleCheck failed to disclose those bank accounts, and Huff therefore was unable to use the FCRA's grievance procedures to correct that information. Consequently, Huff was at risk of harm if one of those accounts developed a debt and Huff presented his driver's license while paying by check.

The majority disagrees that Huff faced a material risk of real harm, distinguishing *Macy* on the basis that unlike the protections in the Fair Debt Collection Practices Act ("FDCPA") at issue in *Macy*, the FCRA does not contain "such interlocking statutory protections." (Maj. Op. at 13.) However, the FCRA "interlocks" the consumer's right to his file with his ability to correct inaccurate information through the FCRA's provided procedure. Moreover, it makes sense that Congress would use different procedural protections given the different purposes of the FCRA and FDCPA. In other words, the method by which Congress chose to protect Huff's interests under the FCRA is a function of the harm he faced. Just as notifying a debtor of the actions required to preserve his rights minimizes the risk of abusive debt practices, enabling a consumer, well-situated to detect his own inaccurate information, to review his file minimizes the risk of the disclosure of an inaccurate credit report. By providing the incomplete file, TeleCheck deprived Huff of the information necessary to dispute the errantly linked accounts and thus created a material risk that if one of those accounts developed a debt, inaccurate information would be reported about Huff, and Huff's check would be declined. It appears that the majority's real quarrel is with *Macy* itself; the majority would prefer a rule that requires the plaintiff to show actual harm.

The cases relied on by the majority do not support the conclusion that there was no material risk of harm. *Spokeo's* example of an incorrect zip code suggests a lower bar for risk of harm than the bar set by the majority here. 136 S. Ct. at 1550. Erroneously linked identifying information presents a far greater risk of harm than an incorrect zip code. Although it is hard to imagine the risk of harm from an incorrect zip code, the risk of linking an individual to accounts not owned by him is apparent: TeleCheck effectively tied Huff's creditworthiness to another consumer's, and Huff faced the risk of TeleCheck erroneously reporting a negative credit assessment solely because of that.

Similarly, *Hagy v. Demers & Adams*, 882 F.3d 616 (6th Cir. 2018) is materially different from this case because in *Hagy*, a creditor failed to provide the required disclosure on a letter in which the creditor *discharged* a debt. 882 F.3d at 622. Thus, unlike in this case, the violation presented no risk of harm because the creditor's letter to the debtors was "good news." *Id.*

Finally, the majority's reliance on *Dreher v. Experian Information Solutions, Inc.*, 856 F.3d 337 (4th Cir. 2017) is misplaced for at least two reasons. *Dreher* applied the standard for informational injuries formulated by *Friends of Animals v. Jewell*, 828 F.3d 989 (D.C. Cir. 2016), relying on the Supreme Court's decision in *Federal Election Commission v. Akins*, 524 U.S. 11 (1998). Under that standard, a plaintiff lacks standing unless he is "'denied access to information required to be disclosed by statute, and he 'suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure.'" 856 F.3d at 345-46 (quoting *Jewell*, 828 F.3d at 992) (emphasis omitted). That standard is different from the one based on *Spokeo* articulated by *Macy* because it requires that the consumer suffer a "harm" rather than simply face the "risk" of harm. *Macy*, 897 F.3d at 756. Second, before the *Dreher* court even considered whether the violation "adversely affected" the consumer's conduct, it concluded that the harm the consumer claimed—what the court called a "customer-service" harm—"is not the type of harm Congress sought to prevent when it enacted the FCRA." 856 F.3d at 346. The court explained: "Failing to identify either a common law analogue *or a harm Congress sought to prevent*, [the consumer] is left with a statutory violation divorced from any real world effect." *Id.* (emphasis added). Here, however, Huff claims a risk of harm to a concrete interest that Congress sought to prevent—an inaccurate credit report based on bank accounts that are not his.

The majority also errs in suggesting that Congress should have "explain[ed] itself" and did not when it allowed a customer to sue after receiving an incomplete file. (Maj. Op. at 10.) As an initial matter, even if an explanation were necessary here, Congress did provide such an explanation. Rather than the "canyon-sized gap between Congress's authority and the problem it seeks to resolve" perceived by the majority (*id.*), Congress closely tied the right to disclosure of one's entire file to the legitimate purpose of preventing the report of inaccurate information to others. Congress established the disclosure requirement to enable a consumer to correct inaccurate information in his or her file, thereby reducing the risk of an inaccurate credit report. Moreover, the majority supplies little basis for faulting Congress for failing to connect the procedural violation with the risk of harm. *Spokeo* does not impose such an obligation, and the majority's only authority is its analogy to *United States v. Lopez*, 514 U.S. 549 (1995) and *City of Boerne v. Flores*, 521 U.S. 507 (1997). However, neither *Lopez* nor *City of Boerne* involved limits on Congress's power to provide a judicial remedy for statutory harms under Article III standing requirements.

For the above reasons, I respectfully dissent.

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE, NASHVILLE DIVISION (MARCH 30, 2018)

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES HUFF,

Plaintiff,

v.

TELECHECK SERVICES, INC.,
TELECHECK INTERNATIONAL, INC., and
FIRST DATA CORPORATION,

Defendants.

No. 3:14-cv-01832

Before: Samuel H. MAYS, JR.,
United States District Judge.

Plaintiff James Huff brings this action against Defendants Telecheck Services, Inc., Telecheck International, Inc., and First Data Corporation, alleging violation of Section 1681g of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§ 1681, *et seq.*

Before the Court are two motions. The first is Plaintiff's September 12, 2017 Motion for Class Certification. (ECF No. 70; *see also* ECF Nos. 71-72.) Defendants replied on October 20, 2017. (ECF No. 84.) Plaintiff replied on November 13, 2017. (ECF No. 92.) Defendants filed their sur-reply on December 7, 2017. (ECF No. 102.)

The second is Defendants' October 20, 2017 Motion for Summary Judgment. (ECF No. 77; *see also* ECF No. 78.) Plaintiff responded on November 27, 2017. (ECF No. 97.) Defendants replied on December 11, 2017. (ECF No. 103.)

For the following reasons, Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion for Class Certification is DENIED AS MOOT.

I. Background

In January 2013, Plaintiff called Defendants to request a copy of his Telecheck File Report ("TFR"), a consumer disclosure. (ECF No. 98 at 2349.)[1] Defendants instructed Plaintiff to send "a copy of [his] driver's license and a small write-out of why [he] was asking for the information." (ECF No. 78-2 at 1321.) On January 15, 2013, Plaintiff mailed a letter to Defendants requesting his TFR and providing a copy of his driver's license. (*Id.* at 1323.)

On January 29, 2013, Plaintiff received his TFR. (ECF No. 98 at 2351.) The TFR included Plaintiff's name, address, and a truncated version of his Tennessee driver's license number. (ECF No. 78-6 at 1350.) The TFR stated that neither a social security number nor a banking number was provided. (*Id.*) The TFR also

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[1] Unless otherwise noted, all pin cites for record citations are to the "PageID" page number.

stated that "[t]he contents of your TeleCheck file are based upon information that you have provided and may be limited based upon that information." (*Id.* at 1352.)

Plaintiff's TFR contained twenty-three transactions that had occurred in the twelve months prior to the date that the TFR was prepared. (ECF No. 98 at 2352.) Plaintiff's TFR did not list a transaction in Plaintiff's checking account at the Bank of Putnam County—a $16.75 transaction at K-Mart in August 2012. (*Id.* at 2354-55.) Plaintiff's TFR also did not list a transaction in Plaintiff's wife's account—a $36.21 transaction at AutoZone in November 2012. (*Id.* at 2355.)

On September 12, 2014, Plaintiff filed his Complaint against Defendants alleging violation of FCRA. (ECF No. 1.)

II. Jurisdiction

The Court has federal-question jurisdiction. Under 28 U.S.C. § 1331, U.S. district courts have original jurisdiction "of all civil actions arising under the Constitution, laws, or treaties of the United States." The Complaint asserts that Defendants violated "the FCRA, including but not limited to the provisions contained in 15 U.S.C. § 1681g(a)(1)-(4)." (*Id.* at 1.) Plaintiff's claim arises under the laws of the United States.

III. Standard of Review

Under Federal Rule of Civil Procedure 56, a court shall grant a party's motion for summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

The moving party can meet this burden by pointing out to the court that the nonmoving party, having had sufficient opportunity for discovery, has no evidence to support an essential element of its case. *See* Fed. R. Civ. P. 56(c)(1); *Asbury v. Teodosio*, 412 F. App'x 786, 791 (6th Cir. 2011) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)).

When confronted with a properly-supported motion for summary judgment, the nonmoving party must set forth specific facts showing that there is a genuine dispute for trial. *See* Fed. R. Civ. P. 56(c). "A genuine dispute exists when the plaintiff presents significant probative evidence on which a reasonable jury could return a verdict for her." *EEOC v. Ford Motor Co.*, 782 F.3d 753, 760 (6th Cir. 2015) (quotation marks omitted). The nonmoving party must do more than simply "'show that there is some metaphysical doubt as to the material facts.'" *Adcor Indus., Inc. v. Bevcorp, LLC*, 252 F. App'x 55, 61 (6th Cir. 2007) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

A party may not oppose a properly supported summary judgment motion by mere reliance on the pleadings. *See Beckett v. Ford*, 384 F. App'x 435, 443 (6th Cir. 2010) (citing *Celotex Corp.*, 477 U.S. at 324). Instead, the nonmoving party must adduce concrete evidence on which a reasonable juror could return a verdict in its favor. *Stalbosky v. Belew*, 205 F.3d 890, 895 (6th Cir. 2000); *see* Fed. R. Civ. P. 56(c)(1). The court does not have the duty to search the record for such evidence. *See* Fed. R. Civ. P. 56(c)(3); *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989).

Although summary judgment must be used carefully, it "is an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy, and inexpensive determination of every action[,] rather than a disfavored procedural shortcut." *FDIC v. Jeff Miller Stables*, 573 F.3d 289, 294 (6th Cir. 2009) (quotation marks and citations omitted).

IV. Analysis

Defendants argue that they are entitled to summary judgment because Plaintiff lacks standing. (ECF No. 78 at 1289-98.) Plaintiff responds that he has standing because Defendants' "failure to fulfil [their] legal obligation to disclose all information in [Plaintiff's] file request" violates the FCRA's purpose "to ensure accuracy in credit reporting" and "inhibit[ed] [Plaintiff's] ability to monitor [the] accuracy" of his credit report. (ECF No. 97 at 2296.) Plaintiff also argues that the missing transactions in his TFR "presented a risk that undisclosed inaccurate information would remain in his file. This is the precise risk contemplated by the FCRA." (*Id.*)

"[T]he 'irreducible constitutional minimum of [Article III] standing'" requires that "[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). Plaintiff bears the burden of demonstrating those elements "for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006).

Article III requires an injury to be "concrete," meaning that it must be "real" and not "abstract." *Spokeo*, 136 S. Ct. at 1548. "[I]ntangible injuries can

[ ] be concrete." *Id.* at 1550 (citing *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009)). To determine whether an intangible injury is sufficiently concrete, "both history and the judgment of Congress are instructive."[2] *Id.* at 1549. Although Congress may lend its judgment to courts, its power is not plenary. "*Spokeo* emphasized that Congress could not erase Article III's standing requirements by statutorily granting the right to sue." *Lyshe v. Levy*, 854 F.3d 855, 858 (6th Cir. 2017) (internal quotations and citations omitted); *see Hagy v. Demers & Adams*, No. 17-3696, 2018 WL 914953, at *4 (6th Cir. Feb. 16, 2018) ("Although Congress may 'elevate' harms that 'exist' in the real world . . . it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is.").

A plaintiff may not "allege a bare procedural violation [of a statute], divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III." *Spokeo*, 136 S. Ct. at 1549 (citing *Summers v. Earth Island Institute*, 555 U.S. 488, 496 (2009)); *see id.* at 1550 ("A violation of one of the FCRA's procedural requirements may result in no harm"). "It is difficult to imagine," for example, "how the dissemination of an incorrect zip code, without more, could work any concrete harm." *Id.* at 1550. *Spokeo* directs courts to determine "whether the particular procedural violations alleged in th[e] case entail a degree

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[2] Plaintiff does not allege that his theory of injury is grounded in history, and the Court finds no historical predicate for the injury alleged. Thus, the Court focuses only on whether Congress's creation of a statutory injury satisfies Article III's standing requirement.

of risk sufficient to meet the concreteness requirement." *Id.*

The District of Columbia Circuit and the Fourth Circuit have reasoned that a plaintiff suffers a concrete informational injury where "(1) [he] has been deprived of information that . . . a statute requires the government or a third party to disclose . . . and (2) [he] suffers, by being denied access to that information, the type of harm Congress sought to prevent by requiring disclosure." *Friends of Animals v. Jewell*, 828 F.3d 989, 992 (D.C. Cir. 2016); *see Dreher v. Experian Information Solutions, Inc.*, 856 F.3d 337, 345-46 (4th Cir. 2017) ("We find [the D.C. Circuit's] reasoning persuasive."); *see also Shoots v. iQor Holdings US Inc.*, No. 15-cv-563, 2016 WL 6090723, at *7 (D. Minn. Oct. 18, 2016) ("The D.C. Circuit has recently developed a two-part framework for assessing standing cases based on informational injury that—in this Court's view—properly summarizes the lessons from *Public Citizen, Akins*, and *Spokeo*.").

Even assuming Plaintiff was deprived of information that § 1681g requires Defendants to disclose,[3]

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[3] Plaintiff and Defendants dispute whether 15 U.S.C. § 1681g requires Defendants to disclose the allegedly missing transactions in Plaintiff's TFR. Defendants contend that "[t]he credit information of a third party is not subject to disclosure under § 1681g. . . . [t]herefore, the omission of information about [Plaintiff's] wife's account from his TFR does not constitute a violation of the FCRA." (ECF No. 78 at 1300.) Plaintiff argues that "the FCRA required that [Defendant] disclose information about [Plaintiff's] wife's identifiers linked to [Plaintiff's] driver['s] license because they were part of his file and are included in the requirement to disclose 'all information' in his file." (ECF no. 97 at 2306.)

Because Plaintiff did not suffer a concrete injury, the Court need not reach the question of whether 15 U.S.C. § 1681g requires

Plaintiff lacks standing. Plaintiff did not suffer the type of harm Congress sought to prevent by requiring disclosure. Congress enacted FCRA to ensure "'fair and accurate credit reporting'" and to provide procedures to "curb the dissemination of false information." *Spokeo*, 136 S. Ct. at 1545, 1550 (internal quotations omitted); *see Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995) (FCRA "was crafted to protect consumers from the transmission of inaccurate information about them, and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner"). Congress also sought to address "the inability at times of the consumer to know he is being damaged by an adverse credit report," the lack of "access to the information in his file," the "difficulty in correcting inaccurate information," and "getting his version of a legitimate dispute recorded in his credit file." S. Rep. No. 91–517, at 3 (1969).

Plaintiff has not shown that Congress's concerns are implicated. Plaintiff alleges that two transactions were missing from his TFR. (ECF No. 98 at 2354-55) Plaintiff concedes that the undisclosed transactions were accurate. (ECF No. 78-2 at 1326-27.) Plaintiff also concedes that the undisclosed transactions did not prevent him from obtaining credit or from renting an apartment or house and did not "have any effect on [him] whatsoever." (*Id.* at 1329.) Defendants' alleged statutory violation did not transmit any false information about Plaintiff or cause Plaintiff to be harmed by an inaccurate credit report.

Defendants to disclose the missing transactions in Plaintiff's TFR.

Plaintiff argues that "[o]ther courts have held that failure to make disclosures mandated by statute constitute concrete injury sufficient to confer standing under *Spokeo*." (ECF No. 97 at 2296.) Plaintiff cites two district court cases: *Patel v. Trans Union LLC*, No. 14-cv-00522, 2016 WL 6143191 (N.D. Cal. Oct. 21, 2016) and *Stokes v. Realpage, Inc.*, Nos. 15-1520, 15-2894, 2016 WL 6095810 (E.D. Pa. Oct. 19, 2016). Plaintiff also cites an unpublished Sixth Circuit case, *Galaria v. Nationwide Mutual Ins. Co.*, 663 F. App'x 384 (6th Cir. 2016).

In *Patel*, plaintiff brought suit under § 1681g of FCRA alleging that the defendants had "failed to send him his complete file" when plaintiff requested it. *Patel*, 2016 WL 6143191, at *1. The court held that plaintiff's claim satisfied Article III standing because the withheld information was inaccurate and caused harm to plaintiffs. *Id.* at *3-4. The court found that the withheld portion of plaintiff's consumer information report contained false information about plaintiff's criminal history. *Id.* at *3. Those "alleged inaccuracies —being wrongly branded a potential terrorist, or wrongly ascribed a criminal record—are themselves concrete harms." *Id.* at *3. The court reasoned that "a failure to disclose will seem all the more injurious where it is linked to undeniably harmful false information." *Id.* at *4.

Unlike *Patel*, there was no false or inaccurate information here. The allegedly missing information in Plaintiff's TFR did not label him a terrorist or criminal. Plaintiff acknowledges that the two missing transactions were accurate. (ECF No. 78-2 at 1326-27.) Like the dissemination of an incorrect zip code, the non-disclosure of two transactions, without more, could work no concrete harm. *See Spokeo*, 136 S. Ct. at 1550.

In *Stokes*, plaintiff alleged that defendant had violated § 1681g of FCRA by failing to provide her with an accurate copy of her consumer report. *Stokes*, 2016 WL 7197391, at *1. Plaintiff requested her report after defendant had "improperly reported to . . . a prospective landlord, that [plaintiff] was a defendant in several criminal cases, the records of which had been previously expunged." *Id.* Because of that inaccurate information, the potential landlord, and a second housing facility, denied plaintiff's housing applications. *Id.* at *1-2.

The court denied the defendant's motion to dismiss for lack of standing. *Id.* at *7. The court noted that FCRA's legislative history "emphasized that the consumer has a <u>right to know</u> when he is being turned down for credit, insurance, or employment because of adverse information in a credit report <u>and to correct</u> any erroneous information in his credit file." *Id.* at *6 (internal quotations omitted (emphasis in original)). The court reasoned that defendant's failure to provide the requested information implicated "the core of the interests Congress sought to protect" by enacting FCRA. *Id.* at *7. Plaintiff's injury was sufficiently concrete because she alleged "both the dissemination of inaccurate information about a consumer, and a failure to disclose the source of that information to the consumer." *Id.*

Unlike *Stokes*, Plaintiff was not turned down for credit, insurance, employment, or housing because of any missing information in his TFR. (ECF No. 78-2 at 1329.) Plaintiff also admits that the allegedly missing information was accurate. (*Id.* at 1326-27.) The allegedly incomplete TFR, by itself, did not implicate FCRA's concern, allowing consumers to correct erroneous information in their records, because there was no erroneous information for Plaintiff to correct.[4]

Plaintiff's reliance on *Galaria* is also misplaced. Plaintiff's alleged injury does not "entail a degree of risk sufficient to meet the concreteness requirement." *Spokeo*, 136 S. Ct. at 1550. Plaintiffs in *Galaria* brought suit under FCRA after hackers stole their personal information from defendants. The plaintiffs alleged that, as a result of the breach, they "suffered, and will continue to suffer costs—both financial and temporal—that include purchasing credit reporting services, purchasing credit monitoring and/or internet monitoring services, frequently obtaining, purchasing and reviewing credit reports, bank statements, and other similar information, instituting and/or removing credit freezes and/or closing or modifying financial accounts." *Galaria*, 663 F. App'x at 386-87. The court held that plaintiffs had satisfied the injury-in-fact requirement although the hackers had not yet used plaintiffs' information against them. *Id.* at 387-89. The injury was sufficiently concrete because the theft

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[4] The reasoning in *Stokes* is unpersuasive because the district court relied on *Church v. Accretive Health, Inc.*, 654 F. App'x. 990 (11th Cir. 2016). *Church* held that, although an alleged violation of the Fair Debt Collection Practices Act ("FDCPA") "may not have resulted in tangible economic or physical harm that courts often expect," plaintiff had alleged a concrete injury because the "injury is one that Congress has elevated to the status of a legally cognizable injury through the FDCPA." *Church*, 654 F. App'x at 995. The Sixth Circuit has "considered and rejected . . . any reliance on *Church*." *Hagy v. Demers & Adams*, No. 17-3696, 2018 WL 914953, at *4 (6th Cir. Feb. 16, 2018) (citing *Lyshe v. Levy*, 854 F.3d 855, 860-61 (6th Cir. 2017)).

of plaintiffs' information constituted "a substantial risk of harm, coupled with reasonably incurred mitigation costs." *Galaria*, 663 F. App'x at 385, 388.

Plaintiff does not face a substantial risk of harm, nor has he incurred any mitigation costs. Plaintiff admits that he has not "suffer[ed] any psychological harm" or "emotional distress" as a result of the missing information in his report. (ECF No. 78-2 at 1329.) Plaintiff also did not "lose money because of the contents of this report." (*Id.*) Indeed, the missing information had "[no] effect on [Plaintiff] whatsoever." (*Id.*) Plaintiffs' personal information in *Galaria* had "already been stolen and [was] now in the hands of ill-intentioned criminals." *Galaria*, 663 F. App'x at 388. The missing information in Plaintiff's TFR has not been stolen and has "never affected, altered, or influenced a single consumer report on Plaintiff." (ECF No. 81 at 1569.) Because the two missing transactions in Plaintiff's TFR were accurate, their communication to third parties would have conferred no harm on Plaintiff.

Having failed to identify a concrete harm or risk of harm that Congress sought to prevent by requiring disclosure, Plaintiff "is left with a statutory violation divorced from any real world effect." *Dreher*, 856 F.3d at 347. Defendants' failure to include two transactions in Plaintiff's TFR had no practical effect on Plaintiff. A statutory violation, by itself, is insufficient to confer standing. *See Hagy*, 2018 WL 914953, at *4.

Because Plaintiff has failed to demonstrate that he has suffered a concrete injury sufficient to confer Article III standing, "the court cannot proceed at all." *Ex parte McCardle*, 7 Wall. 506, 514 (1868). "[T]he only function remaining to the court is that of announcing the fact and dismissing the cause." *Id.* Defendants' Motion for Summary Judgment is GRANTED, and Plaintiff's Motion for Class Certification is DENIED AS MOOT.

V. Conclusion

For the foregoing reasons, Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Motion for Class Certification is DENIED AS MOOT.

So ordered this 30th day of March, 2018.

/s/ Samuel H. Mays, Jr.
Samuel H. Mays, Jr.
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING PETITION FOR REHEARING EN BANC (JULY 19, 2019)

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JAMES HUFF, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff-Appellant,

v.

TELECHECK SERVICES, INC.;
TELECHECK INTERNATIONAL, INC.;
FIRST DATA CORPORATION,

Defendants-Appellees.

No. 18-5438

Before: BATCHELDER, SUTTON, and
WHITE, Circuit Judges.

The court received a petition for rehearing *en banc*. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision. The petition then was circulated to the full court. Less than a majority of the judges voted in favor of rehearing *en banc*.

Therefore, the petition is denied. Judge White would grant rehearing for the reasons stated in her dissent.

Entered by Order of the Court

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

RELEVANT STATUTORY PROVISIONS

FAIR CREDIT REPORTING ACT
15 U.S.C. § 1681 *et seq.*

15 U.S.C. § 1681.
Congressional findings and statement of purpose

(a) Accuracy and fairness of credit reporting

The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

15 U.S.C. § 1681a. Definitions; Rules of Construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

[* * *]

(d) Consumer report

(1) In general

The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

[* * *]

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

[* * *]

15 U.S.C. § 1681g.
Disclosures to consumers

(a) Information on file; sources; report recipients

Every consumer reporting agency shall, upon request, and subject to section 1681h(a)(1) of this title, clearly and accurately disclose to the consumer:

(1) All information in the consumer's file at the time of the request, except that—

(A) if the consumer to whom the file relates requests that the first 5 digits of the social security number (or similar identification number) of the consumer not be included in the disclosure and the consumer reporting agency has received appropriate proof of the identity of the requester, the consumer reporting agency shall so truncate such number in such disclosure; and

(B) nothing in this paragraph shall be construed to require a consumer reporting agency to disclose to a consumer any information concerning credit scores or any other risk scores or predictors relating to the consumer.

(2) The sources of the information; except that the sources of information acquired solely

for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: Provided, that in the event an action is brought under this subchapter, such sources shall be available to the plaintiff under appropriate discovery procedures in the court in which the action is brought.

[* * *]

15 U.S.C. § 1681h.
Conditions and form of disclosure to consumers

(a) In general

(1) Proper identification.—A consumer reporting agency shall require, as a condition of making the disclosures required under section 1681g of this title, that the consumer furnish proper identification.

(2) Disclosure in writing.—Except as provided in subsection (b), the disclosures required to be made under section 1681g of this title shall be provided under that section in writing.

[* * *]

15 U.S.C. § 1681n.
Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)

(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

[* * *]

15 U.S.C. § 1681o.
Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

ORAL DEPOSITION OF STEPHEN B. MOORE— RELEVANT EXCERPTS (AUGUST 9, 2017)

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JAMES HUFF, Individually and
on Behalf of All Others Similarly Situated,

Plaintiff,

v.

TELECHECK SERVICES, INC.,
TELECHECK INTERNATIONAL, INC., and
FIRST DATA CORPORATION,

Defendants.

No. 3:14-1832

Before: MAYS, Judge.,
FRENSLEY, Magistrate Judge.

ORAL DEPOSITION of STEPHEN B. MOORE, produced as a witness at the instance of the PLAINTIFF AND THE PUTATIVE CLASS, and duly sworn, was taken in the above-styled and numbered cause on AUGUST 9, 2017, from 1:02 p.m. to 5:14 p.m., before Stephanie M. Harper, RPR, CSR in and for the State of Texas, recorded by machine shorthand, at the offices of OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C., 500 Dallas Street, Suite 3000, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto; that the deposition shall be read and signed before any notary public.

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[August 9, 2017 Transcript, p.5]

STEPHEN B. MOORE, having been first duly sworn, testified as follows:

EXAMINATION

BY MR. HOLMES:

Q. State your full name, please.

A. Stephen Benjamin Moore.

Q. Mr. Moore, my name is Martin Holmes, and I represent James Huff and the putative class in a lawsuit that has been filed against TeleCheck Services, Inc.; TeleCheck International, Inc.; and First Data Corporation.

You've been designated as what's called a corporate designee under the federal rules to testify about certain topics on behalf of the corporation.

Is that your understanding?

A. Yes, sir.

Q. And the way we're going to handle this is that I'm going to try to reference the deposition topics as we go along, and then at some point the defendants' attorney may say it's outside the scope or later has reserved the right to say it's outside the scope of the topics. And if that turns out to be the case, then the testimony would be in your individual capacity. I just thought this was the most efficient way to do it instead of saying this part of the deposition is for . . .

[. . .]

. . . from/to a consumer. And this is related to the TeleCheck file report. So, I mean, we've—we ventured off on a decline call, so let's—let's focus now on a follow-up.

So from September 2012 to the present, if a consumer called back after receiving their Tele-—the TeleCheck file report, was there a procedure in place for dealing with those calls?

A. Yes.

Q. And what was the procedure?

A. The procedure is to actually call the (800) 366-1435, which is on the actual file report that routes directly to my department. And if the consumer has a dispute or whatever have you, you know, with the TeleCheck file report they received, then that would be investigated by my team.

Q. And when you say "dispute about their TeleCheck file report," what do you mean?

A. A person—you know, they could have a debt on there that they're saying, well, you know, "That's not my debt" or they—especially in the situation of like, for instance, on Mr. Huff's file report, there's linked data, okay?

Classic example, just to give—to give you one, a person may—they may have received the TFR just like Mr. Huff did. I got a license, and I want to know what the linked data is. And just keep in mind, we didn't really receive those kinds of calls.

Usually folks were calling in because they had an issue with their file report as far as, "Could you explain to me the," you know, "a decline that's showing up," or "could you"—"I changed my name. I've got a hyphenated name now. Could you"— "could you please update the report with my name or my address."

So there was always that avenue for follow-up. But in the case of—of James Huff or—or similarly positioned consumers, they may call and—and say, "What is the linked data?" And it may just be your bank account that you verified with me on the phone now, but you didn't give it when you initially made your request.

And then, you know, you say, "Oh, yeah, that is my account. Okay. Well, then, that's—that's what that linked data was." So we could get phone calls for a myriad of reasons, but it usually wasn't the case that they were calling about the linked data.

Q. So let me—let me back up. You said a whole lot there. First, you said we really didn't receive those kinds of calls. Is it your testimony that you really didn't receive calls from people saying, "The report says my record is linked to information. What is it"?

A. Correct. I'm saying, you know, as a rule, those are not the kinds of calls we got based on follow-up of a consumer receiving a TFR.

Q. Did—September 2012 until 2-—the present, have you ever received—well, until they changed—you changed the format, did they—did you ever receive a call from someone saying, "I want to know what is linked to me, what data is linked to me"?

A. Yes.

Q. Okay?

A. Yeah.

Q. Okay. So—and I know that you're saying that as a phrase, "we really didn't receive those kinds of calls." You did receive some. They were just rare; is that—

A. Correct.

Q. —a fair statement?

A. Correct.

Q. Okay. So I want to focus in on the—the procedure that was in place if someone called with regard to linked data—

A. Okay.

Q. —okay?

So say Mr. Huff calls and—and says, "This says there's linked data to me. What is it," would TeleCheck volunteer identifiers to Mr. Huff or—or anyone else for that matter?

A. No.

Q. Would TeleCheck provide truncated identifiers in any way, saying, for example, "Do you recognize an account"—"bank account ending in-1101"?

A. More specifically what we would do in the case of James Huff, he calls in, we would ask him, "Do"—"are you associated"—"do you have a bank account?"

Q. Okay.

A. And then once we, you know, he would provide that for us, then we would pull that up in the system and actually see is the linked data that his driver's license linked to, is it that bank account that he just provided to us over the phone. And then if we could make that verification, we would disclose, "Well, here is the linked data."

Q. Okay?

A. "It was linked to that bank account that you had when you made the question, but you just didn't provide that to us."

Q. Let's—let's—let's follow up on that.

So again, as with the initial request, you would be asking for Mr. Huff or a consumer's identifiers when they call back, right?

A. Correct.

Q. And then if they affirmatively provided you with their own additional identifiers, then you would either give them the information regarding those identifiers or possibly send them an updated report?

A. Correct.

Q. Now, during the process of—of one of these phone calls, would the Resolutions Department representative pull up a screen similar to what's been made as Exhibit 3 to Mr. Wallace's deposition?

A. Correct.

Q. So—so that—so the Consumer Resolutions Department representative actually would pull up the screen to see at that point in time which identifiers were linked in the first degree and active to the driver's license number that had been provided originally?

A. Yeah, more specifically, what we would do is pull up the tracking number, pull up a TFR that the consumer, you know, received. Pull up their identifiers in that, you know, report. Pull up the—the driver's license, like in Mr. Huff's case.

And then since the report is clear that he didn't provide anything else, we would ask: "Are you associated with a bank account? Do you have a bank account?" Once he gives that, we pull it up. We'll see a screen just like we have here—like in Wallace No. 3. And then we would pull up and make that confirmation, "This information is yours already. You just didn't provide it before."

And then in the case that the linked data, you know, is not that person's, we could be dealing with a forgery, a disassociation. Then we would go down the dispute path. But we're going to confirm that person's identifiers when they're calling back in so we can make the determination what that linked data is referring to.

And then once we make that determination, find out, you know, whether we can disclose it or not if it belongs to that person or not.

Q. All right. When—when you say "go down the dispute path," that's generally if there's some type of problem, correct?

A. Right. That's—that's if the consumer is saying, "That linked data that"—"that you have my information linked to, that's not mine." That's all—that's all it takes for it to be a dispute, disputing the accuracy of the information that we're reporting. So that's why we would go down that path.

And, like I said, that could be a disassociation. That could be a forgery. That could be, you know, a number of things. I'm disputing that I don't even owe that debt. So that's—that's the difference of—of trying to figure out what that linked data is. And that's all based on our conversation with that consumer who's calling back in.

Q. I'm not—I'm not following you because the consumer—how would the consumer know which identifiers were linked to him when he was not told in the first instance by TeleCheck?

A. The consumer would know because we're asking the consumer for the information that you didn't provide. So like in Mr. Huff's case, he only provided the driver's license. So the next question that's going—that's going to be asked is, "May I have any bank accounts that you"—"that you write checks on." And then we'll pull those up in the system.

Q. And you're only going to—well, and it was TeleCheck's procedure to only give additional information base on identifiers that were affirmatively provided to TeleCheck by the consumer in the follow-up call; is that right?

MR. ESQUIVEL: Object to the form. I think it misstates what his testimony was.

Q. (BY MR. HOLMES) All right. Let me rephrase the question. And I—because you said that the—the consumer would call back, and you would ask the consumer—you would say, "Well, in your original request you only provided your driver's license number. What is your bank account number," correct?

A. Correct.

Q. What is your Social Security number, correct?

A. Correct.

Q. And if they gave TeleCheck those identifiers, then am I correct that TeleCheck would provide information limited to the identifiers provided affirmatively by the consumer?

A. We would provide information once we affirmatively, you know, confirmed that those additional identifiers were that consumer's.

Q. All right. But again, you're—you're limiting it to identifiers that are unique to the consumer, such as his driver's license number, his bank account number, his Social Security number, correct?

A. Could you rephrase the question?

Q. Okay. Well, in the—in all the—the scenarios you're giving me, aren't you asking the consumer for his or her specific identifiers, for example, his driver's license number, his bank account number, his Social Security number?

A. Correct. Only because the linked data could be the information that they hadn't provided us that is affirmatively theirs.

Q. Okay?

A. So we have to ask that to confirm what the linked data is because it's only linked data. You could be linked to three or four bank accounts that you didn't give us.

Q. Okay. That's what I—let's talk about that.

So you—the screen is up. You ask the consumer for his bank account—bank account. He gives you that. You see all these other bank accounts that he's not giving you. What was the procedure in place on dealing with that, if any, between September 2012 to the present?

A. Yeah, the procedure was to confirm the identifiers for that consumer, that they are giving us everything that they have so we can tell them affirmatively in our system, if this is your information, this is what your—the initial information we gave you is linked to.

So our whole determination is are you linked to information that's yours and you just didn't give it, or are you linked to information that really isn't yours? And that would come out because we can only start by the consumer giving us identifiers in the first place. And so that will lead us to, "Here's what your information is linked to. Can you confirm that this bank account is yours or not yours?"

Because we may have a situation where we may have a fraud, we may have a disassociation. But we have to start with processing your information because you already got a TFR and there was missing information.

So that's why the linked data could possibly be—and I go back to the point, could possibly be information that you're lim- —that is yours. You just didn't let us know that it was yours.

Q. And I'm—we're still sticking on identifiers that are linked in the first degree and active that are not affirmatively disclosed by the consumer in the follow-up call. Am I correct that TeleCheck would not provide the other linked identifiers to the consumer?

A. I—I need you to rephrase the question.

Q. Okay. You've—you've told me that if—if the consumer affirmatively provides you with additional identifiers, you will provide them with information related to those identifiers, correct?

A. Correct.

Q. Now, if they do not affirmatively give you an identifier that you see is linked to them in the first degree, would you give them any information about those identifiers?

A. And let me see if I understand your question. I'm going to try to rephrase it back to you. They call back in. They give me the additional identifiers. And then I can actually say, "Okay, well this is"—"this is the information associated with those identifiers." Is your question if I see other identifiers, am I disclosing that information?

Q. Yes, that's my question.

A. Okay. That—that depends. Because if they—we're not going to give—give a consumer any information unless they confirm that that information is theirs. If—if—if there's a debt associated with the information, per se, then we'll—we'll certainly say, "Yes, your information is linked, you know, to, you know, a debt in our system."

And we will link—we will give the debt details as far as it was on this date, on this dollar amount. Are you saying this debt is yours or not? And if the person says, "No, that's not my debt. I don't have a bank account at that particular bank" or whatever, then that's where—why I was sticking to the point that that's why we may have a dis-association.

We may have a forgery. That's why we start the dispute process. And just so you understand, anything that the consumer is stating that goes against what we have in our system as far as the accuracy of the information, that's a dispute. So if a consumer is going to say, "That information is not mine," then that's when we'll start that process.

So they didn't give me the identifier. They told me they don't understand—they don't recognize the information. They're not claiming ownership of the information. That's why if it's linked to their file, then we have to start a dispute.

And then we'll go ahead and—and go down that path, requesting a copy of the—of the check. You know, possibly calling the bank, possibly doing the bank validation to prove, you know, who is the owner of that particular account.

Q. Your example, though, is dealing with a situation where you see a debt linked to the consumer who—who calls back. Let's say there's—there's no debt linked to the consumer, but there are other identifiers linked to the consumer.

A. Okay.

Q. Would that information be provided to the consumer in a follow-up call?

A. The information that would be provided to the consumer when there is no debt information would be if they can't confirm that that particular bank account, you know, is theirs. Then we would go ahead and clean up the file and delink the information because there's no negative. It's not associated with anybody else that would cause an adverse action.

So if they're linked to other information, then we would use that information, what we got from the consumer, to clean the file up. And that means if there are three or four other bank accounts, they're not associated with debt as you said in your example, then we would go ahead and delink that information once we get confirmation from the consumer that they don't have accounts with those particular banks.

Q. Well, so my question is: What is it that you say to the consumer to—to—to come to that—that conclusion?

A. (Pauses.)

Q. You've already told me you don't—you don't say, "Do you have a bank account ending in-1876." Do you—do you give them any information about the accounts that are linked to them that are not associated with a bad debt?

A. Yes, the information we would give to them is the name of the bank. And if it's not associated with any debt and they say, "No, I've never had a bank account with that particular bank," and that bank account is not linked to any debt, there's no adverse action pending and—and we're get that information directly from the consumer, we would delink that and make sure the file is notated appropriately.

Q. Now, I think you testified you would be looking at one of the screenshots similar to what's Exhibit 3 to Mr. Wallace's depo- —deposition, correct?

A. Correct.

Q. Now, how do you—how do you ascertain the—the name of the bank from the screen?

A. You can't ascertain it from this screen that's depicted here. Within the CSR, there's a bank info tab. And you can go put in the routing number of—of that particular bank number and get the name of the bank.

Q. So you—you're saying you would go in and determine—look at the routing number and get the name of the bank to ask them if they have an account at that particular bank?

A. Correct.

MR. ESQUIVEL: Can we take a break now—

MR. HOLMES: Sure.

MR. ESQUIVEL: —or when you finish this line of questions?

MR. HOLMES: We can take—we can take a break now.

MR. ESQUIVEL: Okay. Thank you.

(Break from 3:42 p.m. to 3:54 p.m.)

Q. (BY MR. HOLMES) Looking at Topic 9: “Defendants’ policies, practices and procedures for documenting or otherwise recording their receipt of and response to consumer’s request for a file disclosure during the Recovery Period, for example, Defendants’ use of escalation forms.”

We’ve covered a—a lot of this al- —already, so I’m just—this—some of this will be just—just cleanup. Now, you’ve told me that-let’s take the first scenario, a telephone call into the call center where the consumer is requesting a file disclosure.

I think the documentation of that would be in 2012 information inputted into the Web app, and then in 2013, the creation of a Remedy ticket?

A. Yes.

Q. Okay. And would there be any other notes or documentation related to the call, other than the Web app and the Remedy ticket?

A. The details of—of the call would actually be repeated in the CSR—in the ID screen for the notes.

Q. And that would be for the entire period, September 2012 to present?

A. Correct.

Q. So the CSR documents the call in the ID screen, as well as by creating first—in the first instance in 2012, the—the Web app information, and then after that in 2013, the Remedy ticket?

A. Yes.

Q. And then the—the—the information in the Web app, would that have been sent then, pushed electronically to the Resolutions Department?

A. Yes.

Q. And then you said you had workflow that would then send that electronically to the employees in Resolutions responsible for handling the particular request?

[. . .]