APPENDICES

APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THOMAS ROBINS, individually and on behalf of all others similarly situated, *Plaintiff–Appellant*, v. SPOKEO, INC., a California corporation, *Defendant–Appellee.*	No. 11-56843 D.C. No. 2:10-cv-5306-ODW-AGR OPINION

On Remand from the
Supreme Court of the United States

Argued and Submitted December 13, 2016
San Francisco, California

Filed August 15, 2017

Before: Diarmuid F. O'Scannlain, Susan P. Graber, and Carlos T. Bea, Circuit Judges.

Opinion by Judge O'Scannlain

OPINION

O'SCANNLAIN, Circuit Judge:

On remand from the Supreme Court, we must determine whether an alleged violation of a consumer's rights under the Fair Credit Reporting Act constitutes a harm sufficiently *concrete* to satisfy the injury-in-fact requirement of Article III of the United States Constitution.

I

A

Spokeo, Inc., operates a website by the same name that compiles consumer data and builds individual consumer-information profiles. At no cost, consumers can use spokeo.com to view a report containing an array of details about a person's life, such as the person's age, contact information, marital status, occupation, hobbies, economic health, and wealth. More detailed information is available for users who pay subscription fees. Spokeo markets its services to businesses, claiming that its reports provide a good way to learn more about prospective business associates and employees.

At some point, Thomas Robins became aware that Spokeo had published an allegedly inaccurate report about him on its website. Robins then sued Spokeo for willful violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq*. FCRA imposes a number of procedural requirements on consumer reporting agencies to regulate their crea-

tion and use of consumer reports.[1] The statute gives consumers affected by a violation of such requirements a right to sue the responsible party, including the right to sue (and to recover statutory damages) for willful violations even if the consumer cannot show that the violation caused him to sustain any actual damages. *See id*. §§ 1681n, 1681o.

Robins's suit alleged that Spokeo willfully violated various procedural requirements under FCRA, including that Spokeo failed to "follow reasonable procedures to assure maximum possible accuracy" of the information in his consumer report. *Id*. § 1681e(b). He alleged that, as a result, Spokeo published a report which falsely stated his age, marital status, wealth, education level, and profession, and which included a photo of a different person. Robins alleged that such errors harmed his employment prospects at a time when he was out of work and that he continues to be unemployed and suffers emotional distress as a consequence.

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[1] "Consumer reports"—also commonly referred to as credit reports—are any communications of information by a consumer reporting agency that bear on issues such as a consumer's credit-worthiness, character, or general reputation, and which are used or expected to be used in establishing the consumer's eligibility for credit, insurance, employment, and other similar purposes. 15 U.S.C. § 1681a(d)(1).

"Consumer reporting agencies" are entities that regularly assemble or evaluate consumer information "for the purpose of furnishing consumer reports to third parties." *Id*. § 1681a(f). Although Spokeo has questioned whether it qualifies as a consumer reporting agency under the statute, we assume that it does for purposes of this appeal. *See Spokeo, Inc. v. Robins* (*Spokeo II*), 136 S. Ct. 1540, 1546 n.4 (2016).

B

The district court dismissed Robins's First Amended Complaint, upon its determination that he lacked standing to sue under Article III of the United States Constitution. Specifically, the district court concluded that Robins alleged only a bare violation of the statute and did not adequately plead that such violation caused him to suffer an actual injury-in-fact.

Robins appealed to this court, and we reversed. *Robins v. Spokeo, Inc.* (*Spokeo I*), 742 F.3d 409, 414 (9th Cir. 2014). We held that Robins's allegations established a sufficient injury-in-fact—that is, that he allegedly suffered a concrete and particularized injury—because Robins alleged that Spokeo violated specifically *his* statutory rights, which Congress established to protect against individual rather than collective harms. *Id.* at 413. Likewise, we concluded that the alleged harm to Robins's statutory rights was certainly "caused" by Spokeo's alleged violations of FCRA and that FCRA's statutory damages could redress such injury. *Id.* at 414. We ordered the case to be remanded to the district court for further proceedings.

C

On certiorari, the Supreme Court vacated our opinion, and held that our standing analysis was incomplete. *See Spokeo, Inc. v. Robins* (*Spokeo II*), 136 S. Ct. 1540 (2016). The Supreme Court noted that although our analysis properly addressed whether the injury alleged by Robins was *particularized* as to him, we did not devote appropriate attention to whether the alleged injury is sufficiently *concrete* as well. *Id.* at 1548. The Court emphasized that particu-

larity and concreteness are two separate inquiries, and it vacated our opinion and remanded the case with instructions to consider specifically whether Robins's alleged injuries "meet the concreteness requirement" imposed by Article III. *Id.* at 1550. The Court did not call into question our conclusions on any of the other elements of standing.

D

On remand to this court, and after further briefing and oral argument, the question before us is whether Robins has sufficiently pled a concrete injury under the *Spokeo II* rubric.

II

Robins argues that Spokeo's alleged violation of FCRA—specifically its failure reasonably to ensure the accuracy of his consumer report—is, alone, enough to establish a concrete injury. Robins contends that he has no need to allege any additional harm caused by that statutory violation because FCRA exists specifically to protect consumers' concrete interest in credit-reporting accuracy. Thus, Robins argues, so long as Spokeo's alleged FCRA violations harm this real-world and congressionally recognized interest, he has standing to sue.

A

Robins's argument requires us to consider, following the Supreme Court's guidance in *Spokeo II*, the extent to which violation of a statutory right can itself establish an injury sufficiently concrete for the purposes of Article III standing.

1

Robins is certainly correct that FCRA purportedly allows him to sue for willful violations without showing that he suffered any additional harm as a result. *See* 15 U.S.C. § 1681n. But the mere fact that Congress said a consumer like Robins may bring such a suit does not mean that a federal court necessarily has the power to hear it.

In *Spokeo II*, the Supreme Court made clear that a plaintiff does not "automatically satisf[y] the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." 136 S. Ct. at 1549. Even then, "Article III standing requires a concrete injury." *Id*. To establish such an injury, the plaintiff must allege a statutory violation that caused him to suffer some harm that "actually exist[s]" in the world; there must be an injury that is "real" and not "abstract" or merely "procedural." *Id*. at 1548-49 (internal quotation marks omitted). In other words, even when a statute has allegedly been violated, Article III requires such violation to have caused some real—as opposed to purely legal—harm to the plaintiff.

2

The Court emphasized, however, that congressional judgment still plays an important role in the concreteness inquiry, especially in cases—like this one—in which the plaintiff alleges that he suffered an *intangible* harm. Although they are often harder to recognize, intangible injuries—for example, restrictions on First Amendment freedoms or harm to one's reputation—may be sufficient for Article III standing. *See id*. at 1549. And in this somewhat

murky area, Congress's judgment as to what amounts to a real, concrete injury is instructive. The Court explained, "In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles." *Id.* Indeed, "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is . . . instructive and important." *Id.* "Congress may 'elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.'" *Id.* (alteration omitted) (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 578 (1992)). And "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." *Id.* (internal quotation marks omitted). In some areas—like libel and slander per se—the common law has permitted recovery by victims even where their injuries are "difficult to prove or measure," and Congress may likewise enact procedural rights to guard against a "risk of real harm," the violation of which may "be sufficient in some circumstances to constitute injury in fact." *Id.*

3

Accordingly, while Robins may not show an injury-in-fact merely by pointing to a statutory cause of action, the Supreme Court also recognized that *some* statutory violations, alone, do establish concrete harm. As the Second Circuit has summarized, *Spokeo II* "instruct[s] that an alleged procedural violation [of a statute] can by itself manifest concrete injury where Congress conferred the procedural right to protect a plaintiff's concrete interests and where the procedural violation presents 'a risk of real harm' to that concrete interest." *Strubel v. Comenity Bank*,

842 F.3d 181, 190 (2d Cir. 2016) (quoting *Spokeo II*, 136 S. Ct. at 1549). Other circuits—and our own—have suggested similar interpretations of standing in this context. *See, e.g.*, *Dreher v. Experian Info. Sols., Inc.*, 856 F.3d 337, 346 (4th Cir. 2017) (concrete harm may be shown by FCRA violation that causes the plaintiff to "suffer[] . . . the type of harm Congress sought to prevent when it enacted the FCRA"); *Lyshe v. Levy*, 854 F.3d 855, 859 (6th Cir. 2017) ("*Spokeo* [*II*] allows for a bare procedural violation to create a concrete harm . . . [based on] the failure to comply with a statutory procedure that was designed to protect against the harm the statute was enacted to prevent."); *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017) (recognizing standing where alleged statutory violations "present[ed] the precise harm and infringe[d] the same privacy interests Congress sought to protect in enacting the [Telephone Consumer Protection Act]"). And we now agree that the Second Circuit's formulation in *Strubel* best elucidates the concreteness standards articulated by the Supreme Court in *Spokeo II*.

B

In evaluating Robins's claim of harm, we thus ask: (1) whether the statutory provisions at issue were established to protect his concrete interests (as opposed to purely procedural rights), and if so, (2) whether the specific procedural violations alleged in this case actually harm, or present a material risk of harm to, such interests.

1

As to the first question, we agree with Robins that Congress established the FCRA provisions at issue to protect consumers' concrete interests. We have

previously observed that FCRA "was crafted to protect consumers from the transmission of inaccurate information about them" in consumer reports. *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995); *see also Spokeo II*, 136 S. Ct. at 1550 (Congress enacted FCRA to "curb the dissemination of false information"); S. Rep. No. 91-517, at 1 (1969) ("The purpose of the fair credit reporting bill is to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information in a credit report."). Put differently, FCRA aims "to ensure fair and accurate credit reporting" and to "protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007); *see* 15 U.S.C. § 1681; *Van Patten*, 847 F.3d at 1042. "To achieve this end," FCRA imposes on consumer-reporting agencies "a host of [procedural] requirements concerning the creation and use of consumer reports" and, as mentioned, allows individuals to sue those which are non-compliant. *Spokeo II*, 136 S. Ct. at 1545. Relevant to Robins's claims, § 1681e(b) of the statute specifically requires reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" of the information contained in an individual's consumer report. 15 U.S.C. § 1681e(b).

a

We have little difficulty concluding that these interests protected by FCRA's procedural requirements are "real," rather than purely legal creations. To begin, the Supreme Court seems to have assumed that, at least in general, the dissemination of false information in consumer reports *can* itself constitute a concrete harm. *See Spokeo II*, 136 S. Ct. at 1550. Moreover, given the ubiquity and importance of consumer reports in modern life—in employment deci-

sions, in loan applications, in home purchases, and much more—the real-world implications of material inaccuracies in those reports seem patent on their face. Indeed, the legislative record includes pages of discussion of how such inaccuracies may harm consumers in light of the increasing importance of consumer reporting nearly fifty years ago. *See*, *e.g.*, 116 Cong. Rec. 35,941 (1970) (statement of Sen. Proxmire); *id.* at 36,570 (statement of Rep. Sullivan); *id.* at 36,574 (statement of Rep. Wylie); 115 Cong. Rec. 2410-15 (1969); *see also Dalton v. Capital Associated Indus., Inc.*, 257 F.3d 409, 414 (4th Cir. 2001) ("Employers [in 1970] were placing increasing reliance on consumer reporting agencies to obtain information on the backgrounds of prospective employees. Congress found that in too many instances agencies were reporting inaccurate information that was adversely affecting the ability of individuals to obtain employment."). In this context, it makes sense that Congress might choose to protect against such harms without requiring any additional showing of injury. The threat to a consumer's livelihood is caused by the very existence of inaccurate information in his credit report and the likelihood that such information will be important to one of the many entities who make use of such reports. Congress could have seen fit to guard against that threat (and, for example, against the uncertainty and stress it could cause to the consumer's life), especially in light of the difficulty the consumer might have in learning exactly who has accessed (or who will access) his credit report.

b

As other courts have observed, the interests that FCRA protects also resemble other reputational and

privacy interests that have long been protected in the law. *See*, *e.g.*, *In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 638-40 (3d Cir. 2017) (comparing FCRA's privacy protections to common law protections for "a person's right to prevent the dissemination of private information"); *Gambles v. Sterling Infosystems, Inc.*, No. 15 Civ. 9746, — F. Supp. 3d — , 2017 WL 589130, at *8 (S.D.N.Y. Feb. 13, 2017) (discussing the "significant history . . . of lawsuits based on (1) the unauthorized disclosure of a person's private information, and (2) the disclosure of adverse information claimed to have been misleading or false"). For example, the common law provided remedies for a variety of defamatory statements, including those which falsely attributed characteristics "incompatible with the proper exercise of [an individual's] lawful business, trade, profession, or office." Restatement (First) of Torts § 570 (1938). The first Restatement of Torts explained that the publication of such a libel was "actionable per se, that is irrespective of whether any special harm has been caused to the plaintiff's reputation or otherwise," because the "publication is itself an injury." *Id.* § 569 cmt. c. As is true with respect to FCRA, the "social value of this rule" was to prevent the false publication from causing further harm by allowing the "defamed person to expose the groundless character of a defamatory rumor before harm to the reputation has resulted therefrom." *Id.* § 569 cmt. b. Just as Congress's judgment about an intangible harm is important to our concreteness analysis, so is the fact that the interest Congress identified is similar to others that traditionally have been protected. *See Spokeo II*, 136 S. Ct. at 1549; *Van Patten*, 847 F.3d at 1042-43.

We recognize, of course, that there are differences between the harms that FCRA protects against and those at issue in common-law causes of action like defamation or libel per se. As Spokeo points out, those common-law claims required the disclosure of false information that would be harmful to one's reputation, while FCRA protects against the disclosure of merely inaccurate information, without requiring a showing of reputational harm. But the Supreme Court observed that "it is instructive to consider whether an alleged intangible harm *has a close relationship* to a harm that has traditionally been regarded as providing a basis for a lawsuit," not that Congress may recognize a de facto intangible harm only when its statute exactly tracks the common law. *Spokeo II*, 136 S. Ct. at 1549 (emphasis added); *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998) (judicial power extends to "cases and controversies *of the sort* traditionally amenable to, and resolved by, the judicial process" (emphasis added)). Even if there are differences between FCRA's cause of action and those recognized at common law, the relevant point is that Congress has chosen to protect against a harm that is at least closely similar *in kind* to others that have traditionally served as the basis for lawsuit. *See In re Horizon Healthcare*, 846 F.3d at 638-41. Courts have long entertained causes of action to vindicate intangible harms caused by certain untruthful disclosures about individuals, and we respect Congress's judgment that a similar harm would result from inaccurate credit reporting. *See generally Van Patten*, 847 F.3d at 1043 ("We defer in part to Congress's judgment [as to an intangible harm].").

In short, guided by both Congress's judgment and historical practice, we conclude that the FCRA

procedures at issue in this case were crafted to protect consumers' (like Robins's) concrete interest in accurate credit reporting about themselves. *Cf. Dreher*, 856 F.3d at 346 (FCRA violations that undermine "the fairness or accuracy" of an individual's credit report are concrete harms (internal quotation marks and alterations omitted)); *In re Horizon Healthcare.*, 846 F.3d at 638-41 (unauthorized disclosure in violation of FCRA's privacy protections is a concrete harm).

2

Second, we must determine whether Robins has alleged FCRA violations that actually harm, or at least that actually create a "material risk of harm" to, this concrete interest. *See Spokeo II*, 136 S. Ct. at 1550; *Strubel*, 842 F.3d at 190. Robins must allege more than a bare procedural violation of the statute that is "divorced from" the real harms that FCRA is designed to prevent. *Spokeo II*, 136 S. Ct. at 1549; *Van Patten*, 847 F.3d at 1042.

This second requirement makes clear that, in many instances, a plaintiff will not be able to show a concrete injury simply by alleging that a consumer-reporting agency failed to comply with one of FCRA's procedures. For example, a reporting agency's failure to follow certain FCRA requirements may not result in the creation or dissemination of an inaccurate consumer report. *See Spokeo II*, 136 S. Ct. at 1550. In such a case, the statute would have been violated, but that violation alone would not materially affect the consumer's protected interests in accurate credit reporting.

But Robins argues that Spokeo's alleged violation of § 1681e(b) is enough to show harm to the statute's

underlying concrete interests because his claim turns on whether Spokeo properly ensured the accuracy of his consumer report, and to prevail Robins will have to show that Spokeo did prepare a report that contained inaccurate information about him.[2] *See* 15 U.S.C. § 1681e(b); *Guimond*, 45 F.3d at 1333. Moreover, Robins has alleged not only that Spokeo prepared such a report, but also that it then published the report on the Internet.[3] His claim thus clearly implicates, at least in some way, Robins's concrete interests in truthful credit reporting. *See also Spokeo II*, 136 S. Ct. at 1553-54 (Thomas, J., concurring) (unlike other FCRA procedural requirements, § 1681e(b) potentially creates a private duty to protect an individual's personal information).

Nevertheless, Robins is not correct that any FCRA violation premised on *some* inaccurate disclosure of his information is sufficient. In *Spokeo II*, the Supreme Court explicitly rejected the notion that every minor inaccuracy reported in violation of FCRA

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[2] Robins's complaint also alleged violations of other FCRA provisions, which do *not* turn on any alleged reporting inaccuracy—and which would thus present great difficulty for his standing argument. But, following remand from the Supreme Court, Robins now insists that these "inartfully styled . . . 'claims'" are not alleged as independent grounds for relief but instead serve as "merely examples of Spokeo's willful failure to use reasonable procedures and to assure maximum possible accuracy in its published reports." Robins now states that he has alleged only "a single claim for relief under Section 1681e(b)." We therefore do not consider the extent to which Robins would have standing to pursue claims for relief based on these other violations, given our understanding that he no longer attempts to do so.

[3] We do not consider whether a plaintiff would allege a concrete harm if he alleged only that a materially inaccurate report about him was *prepared* but never *published*.

will "cause [real] harm or present any material risk of [real] harm." *Id.* at 1550 (majority opinion). The Court gave the example of an incorrectly reported zip code, opining, "It is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm." *Id.* The Court left open the question of what other sorts of information would "merit similar treatment." *Id.* at 1550 n.8.

Thus, *Spokeo II* requires some examination of the *nature* of the specific alleged reporting inaccuracies to ensure that they raise a real risk of harm to the concrete interests that FCRA protects. *See Strubel*, 842 F.3d at 190 ("[E]ven where Congress has accorded procedural rights to protect a concrete interest, a plaintiff may fail to demonstrate concrete injury where violation of the procedure at issue presents no material risk of harm to that underlying interest."). Put slightly differently, the Court suggested that even if Congress determined that inaccurate credit reporting generally causes real harm to consumers, it cannot be the case that every trivial or meaningless inaccuracy does so. *See id.* Unfortunately, the Court gave little guidance as to what varieties of misinformation should fall into the harmless category, beyond the example of an erroneous zip code.

We need not conduct a searching review for where that line should be drawn in this case, however, because it is clear to us that Robins's allegations relate facts that are substantially more likely to harm his concrete interests than the Supreme Court's example of an incorrect zip code. Robins specifically alleged that Spokeo falsely reported that he is married with children, that he is in his 50s, that he is employed in a professional or technical field, that he has a graduate degree, and that his wealth

level is higher than it is. It does not take much imagination to understand how inaccurate reports on such a broad range of material facts about Robins's life could be deemed a real harm. For example, Robins alleged that he is out of work and looking for a job, but that Spokeo's inaccurate reports have "caused actual harm to [his] employment prospects" by misrepresenting facts that would be relevant to employers, and that he suffers from "anxiety, stress, concern, and/or worry about his diminished employment prospects" as a result. We acknowledge that the alleged misrepresentations could seem worse—for example, Spokeo could have reported that Robins had *less* education or money than he has. But we agree with Robins that information of this sort (age, marital status, educational background, and employment history) is the type that may be important to employers or others making use of a consumer report. Ensuring the accuracy of this sort of information thus seems directly and substantially related to FCRA's goals.

Further, determining whether any given inaccuracy in a credit report would help or harm an individual (or perhaps both) is not always easily done. For example, in support of Robins, the Consumer Financial Protection Bureau has argued that even seemingly flattering inaccuracies can hurt an individual's employment prospects as they may cause a prospective employer to question the applicant's truthfulness or to determine that he is overqualified for the position sought. Even if their likelihood actually to harm Robins's job search could be debated, the inaccuracies alleged in this case do not strike us as the sort of "mere technical violation[s]" which are too insignificant to present a sincere risk of harm to the real-world interests that Congress chose to protect

with FCRA. *In re Horizon Healthcare*, 846 F.3d at 638; *see also Spokeo II*, 136 S. Ct. at 1556 (Ginsburg, J., dissenting) (describing Robins's allegations as "[f]ar from an incorrect zip code"). Robins's complaint thus sufficiently alleges that he suffered a concrete injury.[4] *See In re Horizon Healthcare*, 846 F.3d at 638-41; *Strubel*, 842 F.3d at 190.

C

Finally, we reject Spokeo's suggestion that Robins's allegations of harm are too speculative to establish a concrete injury. Relying on *Clapper v. Amnesty International USA*, 133 S. Ct. 1138, 1143 (2013), Spokeo argues that Robins has failed to allege how the "seemingly flattering but inaccurate information" published about him would "expose Robins to any injury that was 'certainly impending.'" Spokeo argues that, at best, Robins has asserted that such inaccuracies *might* hurt his employment prospects, but not that they present a material or impending risk of doing so.

Spokeo's reliance on *Clapper* is misplaced. In *Clapper*, the plaintiffs sought to establish standing on the basis of harm they would supposedly suffer from *threatened conduct* that had not happened yet but which they believed was reasonably likely to oc-

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[4] We caution that our conclusion on Robins's allegations does not mean that *every* inaccuracy in these categories of information (age, marital status, economic standing, etc.) will necessarily establish concrete injury under FCRA. There may be times that a violation leads to a seemingly trivial inaccuracy in such information (for example, misreporting a person's age by a day or a person's wealth by a dollar). We express no opinion on the circumstances in which alleged inaccuracies of this nature would or would not cause a concrete harm.

cur—specifically on their belief that "some of the people with whom they exchange[d] . . . information [were] *likely* targets of surveillance" under a federal statute. *Id.* at 1145 (emphasis added). The plaintiffs sought to strike down the statute authorizing such surveillance in order to remove the threat that their communications would eventually be intercepted. *Id.* at 1145-46. The question for the Court was how certain such *predicted* surveillance needed to be in order to create an injury in fact. In such a case, the Supreme Court explained that a plaintiff cannot show injury-in-fact unless the "threatened injury [is] *certainly impending*" as opposed to merely speculative. *Id.* at 1147-48 (emphasis added) (internal quotation marks omitted).

Here, by contrast, both the challenged conduct and the attendant injury have already occurred. As alleged in the complaint, Spokeo has indeed published a materially inaccurate consumer report about Robins. And, as we have discussed, the alleged intangible injury caused by that inaccurate report has also occurred. We have explained why, in the context of FCRA, this alleged intangible injury is itself sufficiently concrete. It is of no consequence how likely Robins is to suffer *additional* concrete harm as well (such as the loss of a specific job opportunity). *See Spokeo II*, 136 S. Ct. at 1549; *Strubel*, 842 F.3d at 190.

Clapper's discussion of what must be shown to establish standing based on anticipated conduct or an anticipated injury is therefore beside the point. *Clapper* did not address the concreteness of intangible injuries like the one Robins asserts, and the Court in *Spokeo II* did not suggest that Congress's ability to recognize such injuries turns on whether

they would also result in additional future injuries that would satisfy *Clapper*. Many previous Supreme Court cases recognize that such statutorily recognized harms alone may confer standing (without additional resulting harm), none of which the Court purported to doubt or to overrule in *Spokeo II*. *See*, *e.g.*, *Spokeo II*, 136 S. Ct. at 1553 (Thomas, J., concurring) (collecting cases); *id.* at 1554-55 (Ginsburg, J., dissenting) (same).

In short, we need not—and we do not—decide whether Robins's allegations of additional harm to his job opportunities would satisfy the demands of *Clapper*.

III

We are satisfied that Robins has alleged injuries that are sufficiently concrete for the purposes of Article III. As noted, we previously determined that the alleged injuries were also sufficiently particularized to Robins and that they were caused by Spokeo's alleged FCRA violations and are redressable in court. *See Spokeo I*, 742 F.3d at 412-14. The Supreme Court did not question those prior conclusions, and we do not revisit them now. Robins has therefore adequately alleged the elements necessary for standing.

REVERSED AND REMANDED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THOMAS ROBINS, individually and on behalf of all others similarly situated, *Plaintiff–Appellant*, v. SPOKEO, INC., a California corporation, *Defendant–Appellee*.	No. 11-56843 D.C. No. 2:10-cv-5306-ODW-AGR

Appeal from the United States District Court
For the Central District of California
Otis D. Wright, II, District Judge, Presiding

Argued and Submitted
November 6, 2013—Pasadena, California

Filed February 4, 2014

Before: Diarmuid F. O'Scannlain, Susan P. Graber, and Carlos T. Bea, Circuit Judges

OPINION

O'SCANNLAIN, Circuit Judge:

We must decide whether an individual has Article III standing to sue a website's operator under the Fair Credit Reporting Act for publishing inaccurate personal information about himself.

I

Spokeo, Inc. operates a website that provides users

with information about other individuals, including contact data, marital status, age, occupation, economic health, and wealth level. Thomas Robins sued Spokeo for willful violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.,* related to its website. Although he asserted that Spokeo's website contained false information about him, Robins's allegations of injury were sparse. Spokeo moved to dismiss Robins's original complaint for lack of subject-matter jurisdiction on the ground that Robins lacked standing sufficient under Article III of the United States Constitution.

On January 27, 2011, the district court ruled that Robins had failed to allege an injury in fact because he had not alleged "any actual or imminent harm." The court characterized Robins's allegations as simply "that he has been unsuccessful in seeking employment, and that he is concerned that the inaccuracies in his report will affect his ability to obtain credit, employment, insurance, and the like." The district court noted that "[a]llegations of possible future injury do not satisfy the [standing] requirements of Art. III" and dismissed the complaint without prejudice.

Robins thereafter filed his First Amended Complaint (FAC). Similar to the original complaint, the FAC alleged willful violations of the FCRA. For example, the website allegedly described Robins as holding a graduate degree and as wealthy, both of which are alleged to be untrue. Robins, who is unemployed, described the misinformation as "caus[ing] actual harm to [his] employment prospects." Remaining unemployed has cost Robins money as well as caused "anxiety, stress, concern, and/or worry about his dimin-

ished employment prospects."

Again, Spokeo moved to dismiss for lack of subject-matter jurisdiction on the ground that Robins lacked standing under Article III. On May 11, the district court denied the motion and concluded that Robins had alleged a sufficient injury in fact, namely Spokeo's "marketing of inaccurate consumer reporting information about" Robins. The court also ruled that the injury was traceable to Spokeo's alleged violations of the FCRA and that the injury was redressable through a favorable court decision.

On September 19, after Spokeo moved to certify an interlocutory appeal, the district court reconsidered its previous ruling on standing. It then ruled, contrary to its May 11 order, that Robins failed to plead an injury in fact and that any injuries pled were not traceable to Spokeo's alleged violations, dismissing the action. Robins timely appealed.

II

On appeal, Robins first argues that the law-of-the-case doctrine prohibited the district court from revisiting its own May 11 decision. In *United States v. Smith,* however, we held that the law-of-the-case doctrine does not apply "to circumstances where a district court seeks to reconsider an order over which it has not been divested of jurisdiction." 389 F.3d 944, 949 (9th Cir.2004) (per curiam) (describing the doctrine as "wholly inapposite"). In this case, the district court was not divested of jurisdiction prior to its September 19 order.

Although *United States v. Alexander* held that the law-of-the-case doctrine precluded a district court from reconsidering an evidentiary issue after a mis-

trial, 106 F.3d 874, 876–77 (9th Cir.1997), we distinguished *Alexander* in *Smith* and do so again here. The rule from *Alexander* applies only to cases in which a submission to the jury separates the two decisions. *See Smith,* 389 F.3d at 949–50 (distinguishing *Alexander* on the ground that the district court in that case had reconsidered its decision only after submitting the case to a jury).

Here, because the district court had neither been divested of jurisdiction nor submitted this case to the jury, it was free to reconsider its own prior ruling. The law-of-the-case doctrine did not limit the district court.

III

Robins next argues that the FAC sufficiently alleges Article III standing and that the May 11 ruling was correct.[1] The FAC indeed alleges violations of various statutory provisions. *See* 15 U.S.C. § 1681b(b)(1) (listing the circumstances in which consumer reporting agencies (CRAs) may provide "consumer reports for employment purposes"); *id.* § 1681 e(b) (requiring CRAs to "follow reasonable procedures to assure maximum possible accuracy of" consumer reports);

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[1] Spokeo briefly responds that the FAC "pleads no facts from which an inference of willfulness might be drawn." We disagree. "[W]illful [ ]" violations within the meaning of 15 U.S.C. § 1681n include violations in "reckless disregard of statutory duty." *Safeco Ins. Co. of Am. v. Burr,* 551 U.S. 47, 57, 127 S.Ct. 2201, 167 L.Ed.2d 1045 (2007). The facts that Robins pled make it plausible that Spokeo acted in reckless disregard of duties created by the FCRA. Robins pled, among other things, that Spokeo knew about inaccuracies in its reports and marketed its reports for purposes covered by the FCRA despite disclaiming any such uses.

id. § 1681e(d) (requiring CRAs to issue notices to providers and users of information); *id.* § 1681j(a) (requiring CRAs to post toll-free telephone numbers to allow consumers to request consumer reports). Robins contends that because these provisions are enforceable through a private cause of action, *see id.* § 1681n, they create statutory rights that he has standing to vindicate in court. *See Warth v. Seldin,* 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) ("The actual or threatened injury required by Art[icle] III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." (internal quotation marks omitted)).

The district court properly recognized that it would not have subject-matter jurisdiction if Robins did not have standing. *See DaimlerChrysler Corp. v. Cuno,* 547 U.S. 332, 341–42, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006). The district court also correctly identified the three components of standing: (1) the plaintiff "has suffered an 'injury in fact' that is (a) concrete and partlarized and (b) actual or imminent, not conjectural or hypothetical"; (2) "the injury is fairly traceable to the challenged action of the defendant"; and (3) "it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.,* 528 U.S. 167, 180–81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). Although more may be required at later stages of the litigation, on a motion to dismiss, "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).

A

In standing cases that analyze statutory rights, our precedent establishes two propositions. First, Congress's creation of a private cause of action to enforce a statutory provision implies that Congress intended the enforceable provision to create a statutory right. *See Fulfillment Servs. Inc. v. United Parcel Serv., Inc.,* 528 F.3d 614, 619 (9th Cir.2008). Second, the violation of a statutory right is usually a sufficient injury in fact to confer standing. *See Edwards v. First Am. Corp.,* 610 F.3d 514, 517 (9th Cir.2010) ("Essentially, the standing question in such cases is whether the constitutional or statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief."); *Fulfillment Servs.,* 528 F.3d at 619 (same).

Spokeo contends, however, that Robins cannot sue under the FCRA without showing actual harm. But the statutory cause of action does not require a showing of actual harm when a plaintiff sues for willful violations. 15 U.S.C. § 1681n(a) ("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 ... damages of not less than $100 and not more than $1,000...."); *see also Beaudry v. TeleCheck Servs., Inc.,* 579 F.3d 702, 705–07 (6th Cir.2009) (ruling that the FCRA "permits a recovery when there are no identifiable or measurable actual damages"); *Murray v. GMAC Mortg. Corp.,* 434 F.3d 948, 952–53 (7th Cir.2006) (ruling that the FCRA "provide[s] for

modest damages without proof of injury").[2]

The scope of the cause of action determines the scope of the implied statutory right. *See Edwards,* 610 F.3d at 517 ("Because the statutory text does not limit liability to instances in which a plaintiff is overcharged, we hold that Plaintiff has established an injury sufficient to satisfy Article III."). When, as here, the statutory cause of action does not require proof of actual damages, a plaintiff can suffer a violation of the statutory right without suffering actual damages.

B

Of course, the Constitution limits the power of Congress to confer standing. *See Lujan,* 504 U.S. at 577, 112 S.Ct. 2130 (refusing "[t]o permit Congress to convert the undifferentiated public interest in executive officers' compliance with the law into an 'individual right' vindicable in the courts"); *id.* at 580, 112 S.Ct. 2130 (Kennedy, J., concurring in part and concurring in the judgment) ("The Court's holding that there is an outer limit to the power of Congress to confer rights of action is a direct and necessary consequence of the case and controversy limitations

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[2] Spokeo urges that such interpretation of the FCRA "would raise serious constitutional issues," suggesting that we should adopt the contrary reading, which the Eighth Circuit has described as "reasonable." *See Dowell v. Wells Fargo Bank, NA,* 517 F.3d 1024, 1026 (8th Cir.2008) (per curiam) (noting that one "reasonable reading of the [FCRA] could still require proof of actual damages but simply substitute statutory rather than actual damages for the purpose of calculating the damage award"). We are not persuaded. As we explain below, our reading of the FCRA does not raise difficult constitutional questions. That our sister circuit has described Spokeo's reading as "reasonable," without actually ruling on the best interpretation of the statutory text, is of little consequence here.

found in Article III."). This constitutional limit, however, does not prohibit Congress from "elevating to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." *Id.* at 578, 112 S.Ct. 2130 (majority opinion).

The issue before us is whether violations of statutory rights created by the FCRA are "concrete, *de facto* injuries" that Congress can so elevate. We are not the first Court of Appeals to face this question. In *Beaudry,* the Sixth Circuit considered whether an FCRA plaintiff suing under 15 U.S.C. § 1681n had sufficiently alleged an injury in fact by alleging a violation of the FCRA. 579 F.3d at 707. The court identified two constitutional limitations on congressional power to confer standing. First, a plaintiff "must be 'among the injured,' in the sense that she alleges the defendants violated *her* statutory rights." *Id.* Second, the statutory right at issue must protect against "individual, rather than collective, harm." *Id.* The *Beaudry* court held that the plaintiff satisfied both of these requirements. *Id.*

Robins is in the same position. First, he alleges that Spokeo violated *his* statutory rights, not just the statutory rights of other people, so he is "among the injured." Second, the interests protected by the statutory rights at issue are sufficiently concrete and particularized that Congress can elevate them. *Lujan,* 504 U.S. at 578, 112 S.Ct. 2130. Like "an individual's personal interest in living in a racially integrated community" or "a company's interest in marketing its product free from competition," Robins's personal interests in the handling of his credit information are individualized rather than collective. *Id.* (describing two "concrete, *de facto* injuries" that

Congress could "elevat[e] to the status of legally cognizable injuries"). Therefore, alleged violations of Robins's statutory rights are sufficient to satisfy the injury-in-fact requirement of Article III.

C

In addition to injury in fact, of course, standing requires causation and redressability. *See Laidlaw,* 528 U.S. at 180–81, 120 S.Ct. 693. Where statutory rights are asserted, however, our cases have described the standing inquiry as boiling down to "essentially" the injury-in-fact prong. *See Edwards,* 610 F.3d at 517; *Fulfillment Servs.,* 528 F.3d at 618–19. When the injury in fact is the violation of a statutory right that we inferred from the existence of a private cause of action, causation and redressability will usually be satisfied. First, there is little doubt that a defendant's alleged violation of a statutory provision "caused" the violation of a right created by that provision. Second, statutes like the FCRA frequently provide for monetary damages, which redress the violation of statutory rights. *See Jewel v. Nat'l Sec. Agency,* 673 F.3d 902, 912 (9th Cir.2011) (ruling that there was "no real question about redressability" when a plaintiff sought "an injunction and damages, either of which is an available remedy"). Therefore, Robins has adequately pled causation and redressability in this case.[3]

IV

For the foregoing reasons, Robins adequately alleges

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[3] Because we determine that Robins has standing by virtue of the alleged violations of his statutory rights, we do not decide whether harm to his employment prospects or related anxiety could be sufficient injuries in fact.

Article III standing.[4]

REVERSED AND REMANDED.

[4] Because standing is the only question before us, we do not intimate any opinion on the merits of this case. We do not decide, for example, whether Spokeo qualifies as a consumer reporting agency or whether Spokeo actually violated the FCRA.

APPENDIX C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA.
CIVIL MINUTES – GENERAL

Case No. CV10-05306 ODW (AGRx)

Date January 27, 2011

Title *Thomas Robins v. Spokeo, Inc.*

Present: The Honorable Otis D. Wright, II,
United States District Judge

Raymond Neal	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Not Present

Attorneys Present for Defendant(s):

Not Present

Proceedings (In Chambers): Order GRANTING Defendant's Motion to Dismiss Plaintiffs' Complaint [22] (Filed 11/03/10)

I. INTRODUCTION

Currently before this Court is Defendant, Spokeo, Inc.'s ("Defendant"), Motion to Dismiss Plaintiff Thomas Robin's ("Plaintiff") Complaint pursuant to Fed.R.Civ.P. 12(b)(6). (Dkt.# 22.) On January 10, 2011, Plaintiff filed an Opposition (Dkt.# 30), to which Defendant responded on January 20, 2011 (Dkt. # 31). Having carefully considered the papers filed in support of and in opposition to the instant

Motion, the Court deems the matter appropriate for decision without oral argument. *See* Fed.R.Civ.P. 78; L.R. 7–15. For the following reasons, Defendant's Motion is **GRANTED.**

II. FACTUAL BACKGROUND

Plaintiff alleges that Defendant operates its website, Spokeo.com, in violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681.[1] (Compl.¶¶ 1, 2.) Specifically, Plaintiff claims that reports generated by Spokeo.com contain inaccurate consumer information that is marketed to entities performing background checks. (Compl. ¶¶ 13, 17.) As a result of Defendant's FCRA violations, Plaintiff is concerned that his ability to obtain credit, employment, insurance and the like will be adversely affected. (Compl. ¶¶ 23, 24.)

In response, Defendant argues that it is not a consumer reporting agency under the FCRA, and thereby cannot be sued for alleged FCRA violations. (Mot. at 8.) Moreover, Defendant argues that even if it could be sued under the FCRA, Plaintiff does not have standing to bring such a claim. (Mot. at 17.) Defendant now brings the instant Motion to Dismiss the Complaint in its entirety for failure to state a claim upon which relief can be granted, Fed.R.Civ.P. 12(b)(6), and lack of subject matter jurisdiction because Plaintiff lacks standing, Fed.R.Civ.P. 12(b)(1).

III. DISCUSSION

In order for this Court to have subject matter juris-

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[1] Plaintiff's causes of action are for: violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681(b); 1681(e); 1681(j); and violation of Cal. Bus. & Prof.Code § 17200, *et seq*.

diction over the merits of Plaintiff's claims, Plaintiff must have established the requisite standing to sue. *See Whitmore v. Arkansas,* 495 U.S. 149, 154, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990). Thus, as an initial matter, this Court will address Defendant's argument that Plaintiff does not have standing.

A plaintiff has standing where (1) the plaintiff has suffered an injury in fact; (2) there is a causal connection between the injury and the conduct complained of; and (3) it is likely that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). In the instant matter, Defendant contends that Plaintiff does not have standing because he has not alleged that he has in fact suffered any injury due to Spokeo's alleged conduct. (Mot. at 18.) The Court agrees.

Plaintiff argues that he has met the requirements of standing simply by alleging that Defendant is in violation of a statute that grants individuals a private right of action. (Opp. at 14.) However, even when asserting a statutory violation, the plaintiff must allege "the Article III minima of injury-in-fact." *Gomez v. Alexian Bros. Hosp. of San Jose,* 698 F.2d 1019, 1020–21 (9th Cir.1983). An "injury in fact," for the purposes of standing, must be actual or imminent and not conjectural or hypothetical. *Whitmore v. Arkansas,* 495 U.S. 149, 155, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990) (quoting *Los Angeles v. Lyons,* 461 U.S. 95, 102, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983)). At this point, Plaintiff has not suffered an injury in fact because Plaintiff has failed to allege that Defendant has caused him any actual or imminent harm. Plaintiff only expresses that he has been un-

successful in seeking employment, and that he is "concerned that the inaccuracies [in] his report *will affect* his ability to obtain credit, employment, insurance, and the like." (Compl. ¶¶ 23, 24) (emphasis added.) The Supreme Court has "said many times before" that [a]llegations of possible future injury do not satisfy the [standing] requirements of Art. III." *Whitmore,* 495 U.S. at 158. Thus, Plaintiff's concern that he *will be* adversely affected by Defendant's website in the future, is an insufficient injury to confer standing.

Because Plaintiff does not have standing to bring his claims before this Court, no subject matter jurisdiction exists and, at this time, the Court will not address the merits of Plaintiff's claims. *See id.* at 154. This case is hereby **DISMISSED WITHOUT PREJUDICE.**

IV. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED.** Plaintiff shall have twenty (20) days from the date of this Order to amend his Complaint to meet the standing requirements. If Plaintiff fails to do so, all claims will be dismissed with prejudice.

IT IS SO ORDERED.

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA.
CIVIL MINUTES – GENERAL

Case No. CV10-05306 ODW (AGRx)

Date May 11, 2011

Title *Thomas Robins v. Spokeo, Inc.*

Present: The Honorable Otis D. Wright, II, United States District Judge

Raymond Neal	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Not Present

Attorneys Present for Defendant(s):

Not Present

Proceedings (In Chambers): Order GRANTING in part and DENYING in part Defendant's Motion to Dismiss Plaintiffs' First Amended Complaint [42]

I. INTRODUCTION

Currently before this Court is Defendant, Spokeo, Inc.'s ("Defendant"), Motion to Dismiss Plaintiff, Thomas Robin's ("Plaintiff"), First Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (Dkt. # 45.) Having carefully considered the papers filed in support of and in opposition to the instant Motion, the Court deems the

matter appropriate for decision without oral argument. *See* Fed.R.Civ.P. 78; L.R. 7–15. For the following reasons, Defendant's Motion is **GRANTED in part** and **DENIED in part.**

II. FACTUAL BACKGROUND

On January 27, 2011, this Court dismissed Plaintiff's Complaint for lack of standing and gave Plaintiff twenty days to amend his Complaint to meet the standing requirements.[1] (Dkt.# 35.) On February 16, 2011, Plaintiff filed a First Amended Complaint ("FAC"). (Dkt.# 36.) In his FAC, Plaintiff alleges that Defendant operates its website, Spokeo.com, in violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681.[2] (FAC ¶¶ 1, 2.) Specifically, Plaintiff claims that reports generated by Spokeo.com contain inaccurate consumer information that is marketed to entities performing background checks, including "HR professionals and potential employers[.]" (FAC ¶¶ 13–15, 22, 29.) As a result of Defendant's FCRA violations, Plaintiff alleges that Defendant has caused him "actual and/or imminent harm by creating, displaying, and marketing inaccurate consumer reporting information about Plaintiff." (FAC ¶ 35.)

In response, Defendant avers that it cannot be sued for alleged FCRA violations because it is not a consumer reporting agency. (Memorandum in Support of Motion ("Memo"), Dkt. # 46, at 2.) Defendant now

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[1] Specifically, Plaintiff's Complaint was dismissed on the basis that he did not sufficiently allege an injury in fact to confer Article III standing.

[2] Plaintiff's causes of action are for: violations of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681(b); 1681(e); 1681(j); and violation of Cal. Bus. & Prof.Code § 17200, *et seq*.

brings the instant Motion to Dismiss Plaintiff's FAC in its entirety for failure to state a claim upon which relief can be granted, Federal Rule of Civil Procedure 12(b)(6), and lack of subject matter jurisdiction, Federal Rule of Civil Procedure 12(b) (1).

III. LEGAL STANDARD

A. Subject Matter Jurisdiction

In order for this Court to have subject matter jurisdiction over the merits of Plaintiff's claims, Plaintiff must establish the requisite standing to sue. *See Whitmore v. Arkansas,* 495 U.S. 149, 154, 110 S.Ct. 1717, 109 L.Ed.2d 135 (1990). A plaintiff has Article III standing to sue where the plaintiff alleges facts showing that "(1) it has suffered an 'injury in fact' ... (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely ... that the injury will be redressed by a favorable decision." *Friends of the Earth v. Laidlaw Envtl. Servs. (TOC), Inc.,* 528 U.S. 167, 180–81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000). "The litigant must clearly and specifically set forth facts to satisfy these Art. III standing requirements." *Whitmore,* 495 U.S. at 155–56.

B. Failure to State a Claim

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court must construe "[a]ll factual allegations set forth in the complaint ... as true and ... in the light most favorable to [the plaintiff]." *See Lee v. City of L.A.,* 250 F.3d 668, 688 (9th Cir.2001) (citing *Epstein v. Washington Energy Co.,* 83 F.3d 1136, 1140 (9th Cir. 1996)). "To survive a [12(b)(6)] motion to dismiss ... a complaint generally must satisfy only the minimal notice pleading re-

quirements of Rule 8(a) (2)." *Porter v. Jones,* 319 F.3d 483, 494 (9th Cir.2003). Rule 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a)(2). For a complaint to sufficiently state a claim, its "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Mere "labels and conclusions" or a "formulaic recitation of the elements of a cause of action will not do." *Id.* Rather, to overcome a 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* ––– U.S. ––––, ––––, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009) (internal quotation marks omitted).

IV. DISCUSSION

As an initial matter, Defendant moves to dismiss Plaintiff's FAC pursuant to Federal Rule of Civil Procedure 12(b)(1) asserting that this Court does not have subject matter jurisdiction to consider Plaintiff's claims. (Memo at 1.) The Court disagrees. In light of Plaintiff's FAC, the Court finds that Plaintiff has alleged sufficient facts to confer Article III standing. Specifically, Plaintiff has alleged an injury in fact—the "marketing of inaccurate consumer reporting information about Plaintiff"—that is fairly traceable to Defendant's conduct—alleged FCRA violations-and that is likely to be redressed by a favorable decision from this Court. (FAC ¶¶ 1, 35, 65) *See Friends of the Earth,* 528 U.S. at 180–81. Accordingly, Plaintiff has established the requisite standing to sue and the Court has subject matter jurisdiction over Plaintiff's claims.

Alternatively, Defendant moves to dismiss Plaintiff's FAC pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, asserting that: (1) Defendant is not a consumer reporting agency under the FCRA, (2) Defendant "is immune from the alleged liability under the Communications Decency Act ("CDA") [,]" and (3) "Plaintiff's claim under California's Unfair Competition Law, Cal. Bus. & Prof.Code § 17200 *et seq*. ("UCL") fails both because it depends entirely on the failed FCRA claims and because Plaintiff does not and cannot allege that he lost money or property because of [Defendant's] alleged conduct[.]" (Memo at 2.) The Court considers each argument below.

A. Defendant's argument that it is not a consumer reporting agency

Under the FCRA, a consumer reporting agency is:

> any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

15 U.S.C. § 1681a(f). Defendant avers that Plaintiff fails to state a claim against it under the FCRA because Defendant is not a "consumer reporting agency." (Memo at 12.) Specifically, Defendant contends

that it does not regularly engage in providing consumer credit information for the purpose of furnishing consumer reports. (*Id.*) Conversely, Plaintiff alleges that "Defendant falls within the scope of FCRA because [Defendant] ... collects and creates [consumer] information for the purpose of furnishing it to paid subscribers who regularly provide monetary fees in exchange for Spokeo's reports, which contain data and evaluations regarding consumers' economic wealth and creditworthiness." (Opp. at 14; FAC ¶¶ 18–19, 26, 29.)

To overcome a 12(b)(6) motion to dismiss, a complaint must only "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Iqbal,* 129 S.Ct. at 1949. Accordingly, Plaintiff need not at this stage prove that Defendant is in fact a "consumer reporting agency." Plaintiff's allegations that Defendant regularly accepts money in exchange for reports that "contain data and evaluations regarding consumers' economic wealth and creditworthiness" (FAC ¶¶ 18–19, 26, 29) are sufficient to support a plausible inference that Defendant's conduct falls within the scope of the FCRA.[3] Thus, Plaintiff has alleged sufficient facts to

[3] Defendant further contends that its reports cannot constitute "consumer reports" because the FCRA requires that such reports are "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[any unauthorized FCRA purpose,]" 15 U.S.C. § 1681a(d)(1), and disclaimers on Defendant's website specifically provide that the information "cannot be used for FCRA purposes." (Memo at 13–15.) The Court, however, finds that this argument fails for the same reasons as the previous argument. Plaintiff's allegations that Defendant expects its reports to be used for unauthorized FCRA purposes because De-

survive Defendant's Motion on this ground.

B. Defendant's argument that it is immune under the CDA

The CDA states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c). This provision "immunizes providers of interactive computer services against liability for content created by third parties[.]" *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC,* 521 F.3d 1157, 1162 (9th Cir.2008). Defendant asserts that it is immune under the CDA because it is an "interactive computer service" that "passively displays content that is created entirely by third parties." (Memo at 19.) Plaintiff, however, alleges that CDA immunity does not apply to Defendant because unlike information content providers that simply reorganize information obtained from other content providers, "Defendant develops original content based on information obtained from a variety of sources and posts it online[.]" (Opp. at 21; FAC ¶¶ 12–13.) Accordingly, application of the immunity is not clear at this time and the Court declines to dismiss the Complaint on this basis.

C. Plaintiff's UCL Claim

California's UCL defines unfair competition as "any

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fendant's reports contain information traditionally associated with "consumer reports" and Defendant markets such reports to "HR professionals and potential employers" (Opp. at 16–17; FAC ¶ ¶ 26–29) are sufficient to support a plausible inference that Defendant's reports are "consumer reports" within the scope of the FCRA.

unlawful, unfair or fraudulent business act or practice[.]" Cal. Bus. & Prof.Code § 17200. The UCL grants a private right of action to any "person who has suffered injury in fact and has lost money or property as a result of the unfair competition." Cal. Bus. & Prof.Code § 17204. Defendant avers that Plaintiff does not have standing under the UCL because "he does not plead any factual basis for [the] conclusion" that he has "lost money" as a result of Defendant's conduct. (Memo at 22.) Plaintiff, however, alleges that Defendant's conduct has caused actual harm to [his] employment prospects." (FAC ¶ 35.) As a result, Plaintiff contends that he has "suffered economic injury in the form of lost income during his period of unemployment." (Opp. at 23; FAC ¶ 36.) The Court agrees with Defendant.

Plaintiff's conclusory allegations that Defendant's conduct has harmed his employment prospects are insufficient. While, at this stage the Court is required to accept allegations contained in the Complaint as true, mere labels and conclusions will not do. *See Lee v. City of L.A.,* 250 F.3d at 688; *Twombly,* 550 U.S. at 555. Accordingly, Plaintiff has not provided sufficient facts to "raise a right to relief above the speculative level," *See Twombly,* at 555, and Plaintiff's UCL claim is hereby **DISMISSED WITH PREJUDICE.**

V. CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss is **GRANTED in part** and **DENIED in part.** Defendant's Motion is GRANTED with respect to Plaintiff's UCL claim and DENIED as to Plaintiff's claims arising under the FCRA.

IT IS SO ORDERED.

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA.
CIVIL MINUTES – GENERAL

Case No. CV10-05306 ODW (AGRx)

Date September 19, 2011

Title *Thomas Robins v. Spokeo, Inc.*

Present: The Honorable Otis D. Wright, II,
United States District Judge

Sheila English	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Not Present

Attorneys Present for Defendant(s):

Not Present

Proceedings (In Chambers): Order Correcting Prior Ruling [52] and Finding Moot Motion for Certification. [57]

Upon further review, the Court finds it necessary to strike the standing discussion from its May 11, 2011 Order. (Docket No. 52.) In its stead, the Court reinstates the January 27, 2011 Order, which found that Plaintiff fails to establish standing. (*See* Docket No. 35.) Among other things, the alleged harm to Plaintiff's employment prospects is speculative, attenuated and implausible. Mere violation of the Fair Credit Reporting Act does not confer Article III standing, moreover, where no injury in fact is properly pled.

Otherwise, federal courts will be inundated by web surfers' endless complaints. Plaintiff also fails to allege facts sufficient to trace his alleged harm to Spokeo's alleged violations. In short, Plaintiff fails to establish his standing before this Court. This action is therefore **DISMISSED.** Spokeo's motion for certification of appeal is **MOOT.**

SO ORDERED.

APPENDIX F

Fair Credit Reporting Act,
15 U.S.C. § 1681 *et seq.*

15 U.S.C. § 1681a. Definitions; rules of construction

* * *

(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.

* * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means

or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * *

15 U.S.C. § 1681e. Compliance procedures

(b) Accuracy of report

Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

* * *

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

(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 ac-

tion 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.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful noncompliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

15 U.S.C. § 1681*o*. 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.