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ELEVENTH CIRCUIT WEEDS OUT PLAINTIFFS WHO "MANUFACTURE" ARTICLE III STANDING WITH SELF-INFLICTED HARM

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On July 18, 2025, the Eleventh Circuit rejected the notion that plaintiffs can "manufacture" Article III standing by identifying "self-inflicted harm" such as "expenditure of money and wasted time to correct an otherwise harmless statutory violation." In *Nelson v. Experian Information Solutions Inc.*, No. 24-10147, 2025 WL 2016752, at *1 (11th Cir. Jul. 18, 2025), the Eleventh Circuit harmonized principles from the Supreme Court's prior rulings in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016) and *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) (see our prior client alert here) and held that a plaintiff "cannot manufacture standing by spending time and money to rectify an otherwise harmless statutory violation" that has not "otherwise affected a plaintiff." This significant ruling provides a construct under which defendants may successfully challenge a plaintiff's standing based on implausible, incorrect, or made-up damages.

ARTICLE III STANDING UNDER SPOKEO AND RAMIREZ

Article III standing requires (1) an injury-in-fact, (2) fairly traceable to the challenged conduct, (3) that is likely to be redressed by a favorable judgment. At issue in *Spokeo* was whether the Fair Credit Reporting Act (FCRA) plaintiff had suffered an injury-in-fact sufficient to confer standing. The Supreme Court instructed that Congress cannot create Article III standing by inserting a private right of action into a federal statute, such as the FCRA. Rather, the injury-in-fact requirement required the plaintiff's injury be both concrete and particularized, and that these requirements are to be evaluated separately, even when the plaintiff asserts a statutory violation. The Supreme Court further clarified that concrete injuries can be tangible or intangible, but that, when the injury is intangible, the mere fact that Congress codified a cause of action does not confer Article III standing. To confer standing, the intangible injury must be real and have a close relationship to traditional, common law harms. Importantly, a party cannot "cannot satisfy the demands of Article III by alleging a bare procedural violation" and "[a] violation of one of the FCRA's procedural requirements may result in no harm."

Five years later, in *Ramirez*, the Supreme Court revisited the issue of Article III standing in the FCRA context and expanded on *Spokeo* by instructing that "an injury in law is not an injury in fact.". The Court explained that "[f]or standing purposes . . . an important difference exists between (i) a plaintiff's statutory cause of action to sue a defendant over the defendant's violation of federal law, and (ii) a plaintiff's suffering concrete harm because of the defendant's violation of federal law." This means that "[o]nly those plaintiffs who have been *concretely* harmed by a defendant's statutory violation may sue that private defendant over a violation in federal court." In other words, even if a defendant's conduct violates a statute, the statutory violation alone does not rise to the level of a "concrete injury" for purposes of a plaintiff's Article III standing unless the violation caused the plaintiff to suffer a real-world injury.

LOST TIME AS A CONCRETE HARM?

Following *Spokeo* and *Ramirez*, a district and circuit court split formed as to whether a plaintiff's alleged wasted or lost time as a result of the defendant's conduct constituted a concrete harm for purposes of Article III standing. Certain courts held that lost time was not a concrete harm sufficient to establish Article III standing, while others, like the Eleventh Circuit, held that a plaintiff's lost time could be a concrete harm that meets the standing requirements in certain circumstances, such as when that time was expended in conjunction with other alleged harms, and standing was not based solely on time expanded. *See, e.g., Pedro v. Equifax, Inc.*, 868 F.3d 1275, 1279 (11th Cir. 2017) ("Pedro also alleged a concrete injury because she alleged that she lost time . . . attempting to resolve the credit inaccuracies."); *Pinson v. JPMorgan Chase Bank, N.A.,* 942 F.3d 1200, 1205 (11th Cir. 2019) (plaintiff "alleged actual, concrete, and particularized injuries: that he lost time . . . .").

NELSON BACKGROUND

The *Nelson* case arose in conjunction with a credit report that the plaintiff obtained from Experian. Experian did not publish the report to any third-parties. When the plaintiff received the Experian report, she found errors, including the spelling of her name, wrong addresses, and an inaccurate social security number. To correct these errors, the plaintiff allegedly sent three dispute letters to Experian. The plaintiff ultimately sued Experian, claiming that its report and failure to reasonably investigate her disputes violated Section 1681i of the FCRA.

Following removal, the district court raised the issue of Article III standing *sua sponte*, but denied the defendant's motion for judgment on the pleadings and found that the plaintiff had pled a concrete harm by paying out of pocket expenses and spending time to correct the information in Experian's report. The district court later granted summary judgment in favor of Experian, which the plaintiff appealed.

THE APPEAL

On appeal, the Eleventh Circuit disagreed that the plaintiff had established standing by pointing to lost time and expenditures related to a credit report that was never published to third parties. Relying on *Spokeo* and *Ramirez*, the Eleventh Circuit held that a plaintiff cannot rely on a "self-imposed" or "self-inflicted" injury to meet the standing requirements when "the statutory violation was not itself an injury for standing purposes." A plaintiff's injury ***does not*** constitute a concrete harm for standing purposes if he or she does not "identif[y] any way in which [the defendant's] alleged statutory violation affected her apart from her voluntary efforts to remedy it." Stated differently, "[a] plaintiff's efforts to 'force' a defendant to do something [] does not establish standing unless the defendant's failure to act has caused or is likely to cause an injury."

The Eleventh Circuit confirmed that the "bottom line" is that "a plaintiff cannot manufacture standing by spending time and money to rectify an otherwise harmless statutory violation." According to the court, finding otherwise would "create a loophole in *Spokeo* and [*Ramirez*]" that had already been "closed" by the Supreme Court because "[a]ny plaintiff could bypass those holdings by spending time and money to rectify an otherwise harmless statutory violation."

Consequently, the Eleventh Circuit vacated the district court's decision due to the plaintiff's lack of standing because the plaintiff had not established a concrete injury for standing purposes based on lost time or expenditures. The court concluded that "the incorrect information in [the plaintiff's] credit file is not itself a concrete harm, the time and money she spent to correct that information is not a concrete harm either."

TAKEAWAYS

The narrowing of Article III standing is always significant and is likely to have widespread impact in the coming weeks and months because, as the Eleventh Circuit explained, many FCRA plaintiffs do not suffer a real injury from a mere statutory violation of the FCRA.

- *Nelson* ups the ante for FCRA plaintiffs by confirming that plaintiffs do not have a free pass to jurisdiction in federal court. Only plaintiffs who suffer "real-world harm" have standing to pursue an FCRA claim. Plaintiffs can no longer "manufacture" standing with "self-inflicted" harm. This will lead to earlier and more frequent dismissals, at least until plaintiffs stop filing cases based on "self-inflicted" harm without any accompanying concrete injury.

- Lost time and money ***alone*** are no longer a sufficient harm to establish a concrete injury for standing purposes. In order for lost time or money to be a concrete harm, "the wasted time and effort" must have "responded to something that 'is itself a concrete harm.'" This means that the plaintiff must have "suffered some real-world harm," which prompted them to spend money and waste time." Notably, "incorrect information" in a credit report alone will not meet this bar—that is precisely the type of self-inflicted harm that the Eleventh Circuit rejected.

- Will other circuits follow suit? *Nelson* is controlling precedent in the Eleventh Circuit, though the language used by the court is persuasive and will surely be cited in district and circuit

courts across the country in the coming months as defendants challenge FCRA cases based on purely statutory violations and a plaintiff's alleged self-inflicted harm without any accompanying harm, such as credit denials or legitimate emotional distress. These future challenges will provide other circuits with the opportunity to join the Eleventh Circuit and expand the precedential effect of the ruling.

- Defendants who challenge standing in federal court based on *Nelson* may need to be careful what they wish for. In cases that are removed from state court, the result of a standing challenge could be that the case is simply remanded back to state court—which the Eleventh Circuit noted may be the ultimate result in *Nelson*. This outcome may be less desirable for defendants than simply litigating in federal court, especially when the potential removal would occur after the defendant incurred time and expense to litigate the case in federal court.

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