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SPOKEO CONTINUES TO BE A HURDLE IN FDCPA CASES

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Debt collectors may find relief in arguing an absence of Article III standing in defending FDCPA claims. In *Trichell v. Midland Credit Management*[1], the 11th Circuit Court of Appeals denied relief to a consumer under 15 USC 1692e, because the court found that any claimed misleading representation had not been relied upon, and there were no damages. The consumer received debt collection letters on a credit card debt, and sued under 1692e, claiming that he was misled and was entitled to damages. The district court dismissed the case for failure to state a claim, and held that the letters were not misleading nor unfair. On appeal, the 11th Circuit ordered the parties to brief the issue of standing under Article III. In holding that no injury in fact existed, the Court stated as follows:

> By contrast, the common law furnishes no analog to the FDCPA claims asserted here. The closest historical comparison is to causes of action for fraudulent or negligent misrepresentation, but these torts differ from the plaintiffs' claims in fundamental ways. For centuries, misrepresentation torts have required a showing of justifiable reliance and actual damages. *See Pasley v. Freeman* (1789) 100 Eng. Rep. 450, 453 (Buller, J.) ("Fraud without damage, or damage without fraud, gives no cause of action; but where these two concur, an action lies."); *Prosser & Keeton on the Law of Torts* §§ 105, 108 (5th ed. 1984). Today as well, a claim for fraudulent misrepresentation still requires the plaintiff to prove harm "caused to him by his justifiable reliance upon the misrepresentation." Restatement (Second) of Torts, § 525 (1977); *see also* Restatement (First) of Torts, § 525 (1938). Likewise, negligent misrepresentation claims still require plaintiffs to show harm "caused to them by their justifiable reliance upon" the false information. Restatement (Second) of Torts, § 552; *see also* Restatement (First) of Torts, § 552. In short, under our common-law tradition, "there can be no recovery if the plaintiff is none the worse off for the misrepresentation, however flagrant it may have been." *Prosser & Keeton, supra*, § 110.
>
> The claims asserted here depart dramatically from these centuries of tradition. The plaintiffs seek to recover for representations that they contend were misleading or unfair, but without proving even that they relied on the representations, much less that the reliance caused them any damages. By jettisoning the bedrock elements of reliance and damages, the plaintiffs assert claims with no relationship to harms traditionally remediable in American or English courts. This cuts against Article III standing, for the purpose of that doctrine is to confine courts to their "traditional role." *Summers v. Earth Island Inst.*, 555

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U.S. 488, 492, 129 S. Ct. 1142, 173 L. Ed. 2d 1 (2009); *see also* *Spokeo*, 136 S. Ct. at 1547; *Raines*, 521 U.S. at 819.[1]

Later in the opinion, the Court continued its analysis by stating that Congress's role in the assessment of Article III standing is necessarily limited. As the master of its own statutes, Congress may freely make injuries legally cognizable for statutory purposes. *See* *Defs. of Wildlife*, 504 U.S. at 578. But the requirements of concreteness, particularization, and imminence are "irreducible" elements of Article III itself. *See* *id.* at 560-61. In enacting statutory causes of action, Congress must assess for itself whether these constitutional requirements have been met. *See* U.S. Const. art. VI, cl. 3 That is why, as the Supreme Court has insisted time and again, "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies 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." *Spokeo*, 136 S. Ct. at 1549; *see* *Earth Island Inst.*, 555 U.S. at 497; *Raines*, 521 U.S. at 820 n.3. On the contrary, the existence of a "cause of action does not affect the Article III standing analysis." *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1620, 207 L. Ed. 2d 85 (2020). "Article III standing requires a concrete injury even in the context of a statutory violation," *Spokeo*, 136 S. Ct. at 1549, and Article III courts—while exercising jurisdiction to determine their own jurisdiction—must ultimately decide what injuries qualify as concrete. Congress's judgment may inform that assessment but cannot control it.

[1] *Trichell v. Midland Credit Management* , 2020 US App. Lexis 20849