NEW YORK LAW SCHOOL

NYLS Law Review

Volume 68 | Issue 1 Article 8

January 2024

Pierre v. Midland Credit Management, Inc.

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VOLUME 68 | 2023/24

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Pierre v. Midland Credit Management, Inc.

68 N.Y.L. Sch. L. Rev. 65 (2023–2024)

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> *"Debts are now-a-days like children, begot with pleasure, but brought forth with pain."*[1]

Debt collectors earn a living by collecting financial debts owed to others.[2] To get the job done, some debt collectors use abusive tactics such as improperly threatening legal action and arrest, making false statements and misrepresentations, and even attempting to collect monies not owed.[3] Consumers who are harassed by unscrupulous debt collectors may suffer from emotional distress and other intangible injuries.[4]

In *Pierre v. Midland Credit Management, Inc.*, the Seventh Circuit determined that anxiety and stress caused by an abusive debt collector do not provide a consumer with the right to sue to recover statutorily permissible damages under the Fair Debt Collection Practices Act (FDCPA).[5] This Case Comment contends that the *Pierre* court's analysis was flawed in two ways. First, the court ignored persuasive precedent holding that the FDCPA should be construed to provide a broad civil remedy for consumers harmed by abusive debt collection tactics.[6] Second, the court wrongly held that intangible injuries caused by a defendant's violations of the FDCPA leave plaintiffs without standing to sue.[7] In reaching this conclusion, the court failed to consider similar common law injuries or congressional recognition of the alleged harm, as required by Supreme Court precedent.[8]

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1. 1 Molière, The Dramatic Works of Molière: Translated Into English Prose with Short Introductions and Explanatory Notes 37 (Charles Heron Wall trans., G. Bell & Sons, Ltd. 1910).

2. *See What Is a Debt Collector and Why Are They Contacting Me?*, Consumer Fin. Prot. Bureau, https://www.consumerfinance.gov/ask-cfpb/what-is-a-debt-collector-and-why-are-they-contacting-me-en-330/ (Aug. 2, 2023).

3. *See* Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2022 15–17 (2022), https://files.consumerfinance.gov/f/documents/cfpb_fdcpa_annual-report-congress_04-2022.pdf (listing common complaints consumers have when debt collectors attempt to collect a debt). *See also What Is Harassment by a Debt Collector?*, Consumer Fin. Prot. Bureau, https://www.consumerfinance.gov/ask-cfpb/what-is-haassment-by-a-debt-collector-en-336/ (Apr. 14, 2023) (indicating that harassment from debt collectors can include repetitious phone calls, threats of violence or other harm, and use of obscene and profane language).

4. *See* 123 Cong. Rec. 10243 (1977) (statement of Rep. Annunzio) ("Passage of the Debt Collection Practices Act is important if consumers throughout this country are to be protected from the mental anguish and intimidation that are the consequences of abusive debt collection practices.").

5. 29 F.4th 934, 939–40 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023).

6. *Compare id.* (holding that some intangible injuries are not concrete injuries in the context of the FDCPA), *with* Florence v. Nat'l Sys., No. C82-2020A, 1983 U.S. Dist. LEXIS 20344, at *11 (N.D. Ga. Oct. 14, 1983) ("An award of statutory damages for mental distress is not conditioned in [the FDCPA] upon . . . pecuniary or monetary damages."), *and* Fausto v. Credigy Servs. Corp., 598 F. Supp. 2d 1049, 1054–55 (N.D. Cal. 2009) (holding that an emotional distress injury is sufficient to award damages to consumers harmed by debt collectors who violate the FDCPA).

7. *Pierre*, 29 F.4th at 939–40.

8. *Compare id.* (holding that psychological distress and a risk of real harm do not provide a plaintiff with standing in the context of the FDCPA), *with* DiNaples v. MRS BPO, LLC, 934 F.3d 275, 279–80 (3d Cir. 2019) (analyzing plaintiff's standing to sue based upon Spokeo, Inc. v. Robins, 578 U.S. 330, 340–41 (2016) and finding plaintiff's injury was closely related to traditionally recognized invasion of

In 2006, Illinois resident Renetrice Pierre opened a credit card with Target National Bank (TNB).[9] Two years later, Pierre defaulted on the debt she accumulated on the card.[10] TNB then sold Pierre's outstanding debt to Midland Funding, LLC ("Midland Funding").[11] In 2010, Midland Funding sued Pierre to collect the debt, but later voluntarily dismissed the case.[12]

Five years later, in September 2015, Midland Credit Management, Inc. ("Midland"), an affiliate of Midland Funding,[13] sent Pierre a letter stating that she had been pre-approved for a discount program that would save her money on her TNB debt repayment.[14] Although the letter provided that Midland would not sue Pierre for the debt because of its age,[15] Pierre was still "surprised and confused."[16] Because she owed no money to Midland or Midland Funding, Pierre perceived the letter as a form of harassment.[17] She also feared that Midland might be able sue her,[18] that the TNB debt would somehow find its way back onto her credit report, and that her reputation would be damaged.[19]

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privacy injuries), *and* Lupia v. Medicredit, Inc., 8 F.4th 1184, 1191 (10th Cir. 2021) (stating that to determine whether an intangible injury provides a plaintiff with standing, the history of traditionally recognized harms provides a meaningful guide to the types of cases courts can hear under Article III (citing TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2204 (2021))).

9. Pierre v. Midland Credit Mgmt., Inc., No. 16-CV-02895, 2017 WL 1427070, at *1 (N.D. Ill. Apr. 21, 2017), *vacated*, 29 F.4th 934 (7th Cir. 2022), *cert denied*, 143 S. Ct. 775 (2023). TNB was the bank that originally issued and serviced Target retail store credit cards; TNB was acquired by TD Bank USA in 2013. George Simons, *How to Beat Target National Bank in a Debt Collection Lawsuit*, SoloSuit (Dec. 1, 2022), https://www.solosuit.com/posts/193.

10. Pierre v. Midland Credit Mgmt., Inc., No. 16-CV-2895, 2018 WL 723278, at *1 (N.D. Ill. Feb. 5, 2018), *vacated*, 29 F.4th 934 (7th Cir. 2022), *cert denied*, 143 S. Ct. 775 (2023). Pierre owed $5,799.94 at the time of default. Amended Class Action Complaint at 6, *Pierre*, No. 16-CV-02895, 2017 WL 1427070 [hereinafter Plaintiff's Amended Complaint].

11. *Pierre*, 29 F.4th at 936.

12. *Id.*

13. *Midland Funding, LLC*, Midland Credit Mgmt., https://www.midlandcredit.com/who-is-mcm/midland-funding-llc/ (July 11, 2023). Midland services accounts held by Midland Funding by engaging in communications to collect debts owed to Midland Funding. *See id.*

14. *Pierre*, 2018 WL 723278, at *1. Midland's letter to Pierre said, "Congratulations! You have been pre-approved for a discount program designed to save you money." *Id.* (emphasis omitted). The letter provided Pierre three "options" to repay her debt. *Id.*

15. Plaintiff's Amended Complaint, *supra* note 10, at 3. In 2015, Pierre's TNB debt was seven years old. *See id.* The Illinois statute of limitation states that civil actions for damages on unpaid contracts must be commenced within five years of the breach. *See* 735 Ill. Comp. Stat. 5/13-205 (2022).

16. *Pierre*, 29 F.4th at 937. *See also* Deposition of Renetrice R. Pierre at 112, *Pierre*, No. 16-CV-02895, 2018 WL 723278 [hereinafter Plaintiff's Deposition] ("I didn't understand why they were—why I had [the letter] in the first place.").

17. *See* Plaintiff's Deposition, *supra* note 16, at 108–09. *See also id.* at 119 ("[M]y knowledge was I didn't owe the money, so if that is in fact the case, then this letter is in fact a form of harassment even.").

18. *Id.* at 108–09; *Pierre*, 29 F.4th at 937.

19. Plaintiff's Deposition, *supra* note 16, at 108–09.

Pierre acted swiftly; first, she called Midland to contest the collection attempt and request that the company cease contacting her regarding any collection activity.[20] Then, she approached a lawyer regarding the possibility of representing a class of Illinois residents from whom Midland had tried to collect old debts.[21]

On March 7, 2016, Pierre filed a class action lawsuit against Midland in the Eastern Division of the Northern District of Illinois, seeking statutory damages for alleged violations of various provisions of the FDCPA.[22] The lawsuit claimed that Midland's letter violated the FDCPA by falsely representing the legal status of a debt in an attempt to collect monies not owed.[23] Pierre filed two motions to certify the proposed class, which was made up of an estimated 68,754 individuals who had received similar letters from Midland.[24] The court granted Pierre's second motion and certified the class on April 21, 2017.[25]

Pierre moved for partial summary judgment on July 18, 2017.[26] On February 5, 2018, the district court granted Pierre's motion for summary judgment as to liability, with damages to be determined at trial.[27] A jury awarded Pierre and the class of similarly situated plaintiffs over $350,000.[28] Midland appealed to the Seventh Circuit Court of Appeals.[29]

Congress passed the Consumer Credit Protection Act (CCPA) to protect consumers from unfair and misleading credit practices in 1968.[30] The CCPA was the

20. *Id.* at 123–24.

21. *See id.* at 128; *Pierre*, 29 F.4th at 937.

22. Class Action Complaint at 1, 6, Pierre v. Midland Credit Mgmt., Inc., No. 16-CV-02895, 2017 WL 1427070 (N.D. Ill. Apr. 21, 2017) [hereinafter Plaintiff's Complaint]. Pierre alleged that Midland violated certain provisions of the FDCPA, including 15 U.S.C. § 1692e(2)(A) (prohibiting false representation of the character, legal status, or amount of an alleged debt); 15 U.S.C. § 1692e(10) (prohibiting use of false representations and deceptive means to collect an alleged debt); 15 U.S.C. § 1692e(11) (requiring initial communications with consumers to identify that they are from a debt collector); and 15 U.S.C. § 1692f(1) (prohibiting collection of an alleged debt unless expressly authorized by an agreement or permitted by law). Plaintiff's Complaint at 1, 5, 8, 12, *Pierre*, No. 16-CV-02895, 2017 WL 1427070.

23. *See* Plaintiff's Complaint, *supra* note 22, at 1.

24. Plaintiff's Motion for Class Certification at 1, *Pierre*, No. 16-CV-02895, 2017 WL 1427070; Plaintiff's Second Motion for Class Certification at 1–2, *Pierre*, No. 16-CV-02895, 2017 WL 1427070.

25. *Pierre*, 2017 WL 1427070, at *11.

26. Plaintiff's Motion for Partial Summary Judgment at 1, Pierre v. Midland Credit Mgmt., Inc., No. 16-CV-02895, 2018 WL 723278 (N.D. Ill. Feb. 5, 2018). "Partial summary judgment" is granted when a court finds that there is no genuine issue of material fact on only one or some issues in the case. *See Summary Judgment*, Black's Law Dictionary (11th ed. 2019).

27. *Pierre*, 2018 WL 723278, at *7. Midland settled with Pierre for $992.63. Notification of Docket Entry at 1, *Pierre*, No. 16-CV-02895, 2018 WL 723278.

28. Pierre v. Midland Credit Mgmt., Inc., 29 F.4th 934, 937 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023).

29. *See generally Pierre*, 29 F.4th 934.

30. 15 U.S.C. § 1601; Michelle Black, *What Is the Consumer Credit Protection Act?*, Forbes: Advisor, https://www.forbes.com/advisor/credit-score/consumer-credit-protection-act/ (May 29, 2021, 8:28 AM).

first in a series of financial acts aimed at protecting consumers from lenders' abusive behaviors.[31] The other notable acts in the series included the Fair Credit Reporting Act (FCRA), passed in 1970;[32] the Equal Credit Opportunity Act, passed in 1974;[33] and the FDCPA,[34] enacted in 1978.[35]

Prior to the enactment of the FDCPA, there was no federal statutory scheme regulating debt collection, which meant that collectors could use any means necessary to recover debts owed by consumers.[36] Congress noted that debt collectors' inappropriate tactics—which included incessant calls and letters, threats of lawsuits and imprisonment, and numerous calls to debtors' places of employment[37]—contributed to a number of personal hardships for consumers, including bankruptcy, the loss of employment, and invasion of privacy.[38] The FDCPA was designed to safeguard consumers from unfair and abusive practices in debt collection.[39]

A consumer who brings a suit to vindicate their rights under a federal statute, like the FDCPA, must have standing.[40] Standing, a legal requirement derived from Article III of the Constitution,[41] imposes limitations on the cases a federal court may hear.[42] Although the standing doctrine has its origins in the early 1900s,[43] the

31. *See* Black, *supra* note 30.

32. 15 U.S.C. §§ 1681–1681x. *See also id.* § 1681(b) (stating that the FCRA's purpose is to require consumer reporting agencies to adopt procedures to protect and accurately report consumer credit information).

33. 15 U.S.C. §§ 1691–1691f. *See also id.* § 1691(a) (prohibiting lending discrimination based on protected characteristics, such as race, religion, national origin, sex, age, and other traits).

34. 15 U.S.C. §§ 1692–1692p.

35. Black, *supra* note 30.

36. *See* 123 Cong. Rec. 10241 (1977) (statement of Rep. Annunzio).

37. 15 U.S.C. § 1692(a); 123 Cong. Rec. 10243 (1977) (statement of Rep. Annunzio) (presenting testimony of Sherry Chenoweth, director of the Minnesota Office of Consumer Services, given before the Subcommittee on Consumer Affairs, detailing reported incidents of abuse by debt collectors).

38. 15 U.S.C. § 1692(a). Representative Frank Annunzio, who introduced the legislation, emphasized the importance of protecting consumers from the "mental anguish and intimidation" that results from abusive debt collection practices. 123 Cong. Rec. 10243 (1977) (statement of Rep. Annunzio).

39. 15 U.S.C. § 1692(e); 123 Cong. Rec. 10241 (1977) (statement of Rep. Annunzio). The Federal Trade Commission was initially given the power to enforce the FDCPA; in 2011, enforcement responsibilities shifted to the newly established Consumer Finance Protection Bureau. Consumer Fin. Prot. Bureau, Fair Debt Collection Practices Act: CFPB Annual Report 2013 2, 6 (2013), https://files.consumerfinance.gov/f/201303_cfpb_March_FDCPA_Report1.pdf.

40. *See* Allen v. Wright, 468 U.S. 737, 750–51 (1984).

41. U.S. Const. art. III, § 2, cl. 1 ("The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution . . . .").

42. *See Allen*, 468 U.S. at 750 ("Article III of the Constitution confines the federal courts to adjudicating actual 'cases' and 'controversies.'"). The Court has interpreted "cases and controversies" to require those bringing a case in federal court to have "standing," which is the determination of whether the court can decide the merits of the dispute. *See id.* at 750–51.

43. *See, e.g.*, New York *ex rel.* Hatch v. Reardon, 204 U.S. 152, 160 (1907) (stating that the court will not hear objections to the constitutionality of a state law unless the plaintiff is a member of the affected

Supreme Court did not clearly articulate the elements of standing until 1984, in the landmark case *Allen v. Wright*.[44] These elements are: (1) the plaintiff must suffer an injury that is "distinct" and "palpable" and not "conjectural" or "hypothetical;" (2) the injury alleged must be "fairly" traceable to the defendant's conduct; and (3) relief must be "likely" if a favorable decision is issued.[45]

In the 1992 case *Lujan v. Defenders of Wildlife*, the Supreme Court elaborated on standing by requiring that the plaintiff's injury be "concrete and particularized" and "actual or imminent."[46] In *Lujan*, a group of wildlife preservation organizations sued the Secretary of the Interior regarding the scope of an environmental protection regulation.[47] The plaintiffs alleged that many endangered species would face extinction because the regulation did not prevent U.S. activities abroad that would be harmful to endangered species.[48] The Court found that the plaintiffs lacked standing because they could not show any personal, special interest in preventing extinction of the endangered species that would result in a "concrete" injury to the plaintiffs.[49]

The *Lujan* Court did not address whether and how an intangible injury such as emotional distress[50]—which, by definition, might seem to lack concreteness—could confer standing.[51] It would take nearly a quarter of a century for the Supreme Court

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class); Williams v. Walsh, 222 U.S. 415, 423–24 (1912) ("A law cannot be declared invalid at the instance of one not affected by it . . . ."); Hendrick v. Maryland, 235 U.S. 610, 621 (1915) ("Only those whose rights are directly affected can properly question the constitutionality of a state statute and invoke our jurisdiction in respect thereto.").

44. 468 U.S. at 750–51. In *Allen*, parents of Black children attending public schools filed a class action lawsuit against the Internal Revenue Service (IRS) alleging that it had not fulfilled its obligation to deny tax-exempt status to racially discriminatory private schools. *Id.* at 743–45. The Court found that there was no way to trace the alleged lack of ability to receive a desegregated education to IRS conduct granting tax-exempt status to some racially discriminatory private schools. *Id.* at 757–59. The Court held that the plaintiffs failed to allege a sufficient personal injury because they never applied to the schools and thus were not "personally denied equal treatment." *Id.* at 755, 757.

45. *Id.* at 751.

46. 504 U.S. 555, 560 (1992).

47. *Id.* at 559.

48. *Id.* at 562. The regulation covered actions within the United States and on the high seas only. *Id.* at 558–59.

49. *See id.* at 564, 567. The Court explained that while the desire to "use or observe an animal species even for purely esthetic purposes" is a legally cognizable interest, for standing purposes, the plaintiff must suffer a specific injury to that interest. *Id.* at 562–63. The Court found that plaintiffs' allegations were insufficient to maintain standing because the plaintiffs: (a) could not demonstrate concrete plans to study the threatened populations or establish that the requested relief would remedy their alleged injuries, and (b) had failed to name any of the private parties who were actually responsible for the destruction of the habitat. *Id.* at 566–68, 571.

50. Emotional distress is defined as "[a] highly unpleasant mental reaction (such as anguish, grief, fright, humiliation, or fury) that results from another person's conduct." *Distress*, Black's Law Dictionary (11th ed. 2019).

51. *See generally Lujan*, 504 U.S. 555 (holding that an injury must be concrete, but failing to address whether an intangible injury could meet this standard).

to develop a test to determine when an intangible injury provides a plaintiff with standing.[52]

In the 2016 seminal case *Spokeo, Inc. v. Robins*, defendant Spokeo, Inc. ("Spokeo") operated a search engine that compiled personal information about individuals, which could be accessed by other Spokeo users.[53] After discovering that Spokeo had gathered and included incorrect information in his profile, plaintiff Thomas Robins filed a class action under the FCRA.[54] The issue before the Court was whether Robins had standing to sue.[55]

Although Robins did not allege a tangible injury, the *Spokeo* Court made clear that intangible injuries can be sufficiently concrete to confer standing.[56] The Court noted, however, that the injury requirement of standing is not automatically satisfied by the plaintiff's identification of an intangible harm if the plaintiff shows only a defendant's "bare procedural violation."[57] In other words, a plaintiff who alleges that the defendant violated a statute—but who cannot show that any actual harm resulted from the statutory violation—will lack standing.[58]

The *Spokeo* Court instructed lower courts deciding whether an intangible injury confers standing to consider: (1) whether the plaintiff's injury is similar to a harm traditionally recognized by the common law; and (2) the fact that Congress recognized such harm in a federal statute.[59] The Court opined that, in Robins' case, the risk of real harm caused by the publication of false information could be considered a concrete injury that is analogous to common law tort injuries such as libel and slander per se.[60]

In 2021, in *TransUnion LLC v. Ramirez*, the Supreme Court provided further guidance on the relationship between intangible injuries and the concreteness requirement of standing.[61] A class of 8,185 plaintiffs sued TransUnion LLC

52. *See* Spokeo, Inc. v. Robins, 578 U.S. 330, 340–41 (2016) ("[S]tanding derives from the case-or-controversy requirement," which is "grounded in historical practice;" therefore, courts should 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 in English or American courts" and Congress's judgment in "identify[ing] intangible harms that meet minimum Article III requirements").

53. *Id.* at 335–36. Spokeo includes a wide range of personal information on users' profiles such as address, phone number, marital status, finances, shopping habits, and musical preferences. *Id.*

54. *Id.* at 336. The plaintiff alleged that his profile stated that "he is married, has children, is in his fifties, has a job, is relatively affluent, and holds a graduate degree," all of which was incorrect. *Id.*

55. *Id.* at 337.

56. *Id.* at 340.

57. *Id.* at 341.

58. *See id.*

59. *See id.* at 340–41.

60. *See id.* at 341–42 (explaining that some tort victims are entitled to recovery "even if their [injuries] may be difficult to prove or measure"). Ultimately, the Court remanded the case so that the Ninth Circuit Court of Appeals could apply the new test and determine whether Robins had alleged a risk of harm adequate to satisfy the concreteness requirement. *Id.* at 342–43.

61. 141 S. Ct. 2190, 2214 (2021).

("TransUnion"), a credit reporting agency, after TransUnion published misleading information on the plaintiffs' credit reports in violation of the FCRA.[62] TransUnion provided to third parties the misleading reports of approximately 25 percent of this group.[63] The credit reports for the remainder of the class also contained false information, but were not shared.[64] The *TransUnion* Court considered which plaintiffs, if any, had standing to sue.[65]

Applying *Spokeo*, the *TransUnion* Court ultimately held that only the plaintiffs whose incorrect credit reports had been given to third parties suffered a concrete injury.[66] The *TransUnion* Court also clarified that a risk of a future harm that never materializes does not create a concrete injury.[67] However, the Court did note that plaintiffs could potentially satisfy the concreteness requirement by demonstrating that their exposure to the risk of harm created an independent injury, such as an emotional injury.[68]

Lower courts are split on the issue of whether plaintiffs have standing to sue for intangible injuries resulting from a defendant's violations of the FDCPA.[69] For instance, the Third and Tenth Circuits have answered the question in the affirmative,[70] while the Sixth and Eight Circuits have declined to find standing in similar cases.[71] In 2019, in *DiNaples v. MRS BPO, LLC*, debt collection agency MRS

62. *Id.* at 2200. Ramirez specifically alleged three violations of the FCRA: (1) TransUnion failed to follow reasonable procedures to ensure the accuracy of his credit information in violation of 15 U.S.C. § 1681e(b); (2) TransUnion did not provide him with all of the information in his credit file upon his request in violation of 15 U.S.C. § 1681g(a)(1); and (3) TransUnion failed to provide him with a summary of his rights with all written disclosures as required by 15 U.S.C. § 1681g(c)(2). *Id.* at 2202.

63. *See id.* at 2202 (stating that 1,853 out of 8,185 class members had false information shared with third parties).

64. *Id.* at 2209.

65. *Id.* at 2202.

66. *Id.* at 2213–14 (citing Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016)). The Court compared the injury of plaintiffs whose reports were not shared to that theoretically caused by a defamatory letter written and then stored in a drawer. *Id.* at 2210.

67. *Id.* at 2211.

68. *See id.* at 2211 & n.7 (noting that the plaintiffs whose reports were not shared did not present evidence of independent harm, such as an emotional injury, resulting from the risk that incorrect information might be shared with a third party).

69. Application for Extension of Time to File a Petition for a Writ of Certiorari at 1, 4–5, Pierre v. Midland Credit Mgmt., Inc., 143 S. Ct. 775 (2023) (No. 22-435).

70. *See, e.g.*, DiNaples v. MRS BPO, LLC, 934 F.3d 275, 279–80 (3d Cir. 2019) (holding that plaintiff had standing to sue for intangible injuries under the FDCPA when the defendant debt collector sent her a letter in an envelope displaying a QR code that, when scanned, would reveal her account number with the debt collection agency); Lupia v. Medicredit, Inc., 8 F.4th 1184, 1193 (10th Cir. 2021) (holding that plaintiff had standing to sue under the FDCPA when a debt collector called her after she sent a cease and desist letter).

71. *See, e.g.*, Buchholz v. Meyer Njus Tanick, PA, 946 F.3d 855, 863–64 (6th Cir. 2020) (holding that plaintiff did not have standing when he failed to allege an injury other than anxiety after receiving debt collection letters); Ojogwu v. Rodenburg L. Firm, 26 F.4th 457, 463 (8th Cir. 2022) (holding that plaintiff did not have standing for his intangible injuries—fear, restlessness, irritability, and nervousness—when he received a debt collector's garnishment summons letter).

BPO, LLC ("MRS BPO") sent Donna DiNaples a letter in an envelope displaying a QR code that, when scanned, revealed her debt collection agency account number.[72] DiNaples filed a class action alleging that MRS BPO had violated the FDCPA, which prohibits debt collectors from "[u]sing any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails."[73] The Third Circuit Court of Appeals applied *Spokeo* and found that DiNaples had standing to sue for her intangible injury because the privacy invasion alleged was "closely related to harm that has traditionally been regarded as providing a basis for a lawsuit in English and American courts."[74]

Without addressing the issue of standing, other courts have held that plaintiffs suing under the FDCPA can recover monetary damages for intangible injuries.[75] The Northern District of Georgia, in the 1983 case *Florence v. National Systems*, concluded that a plaintiff who cannot prove financial harm may recover statutory damages for mental distress under the FDCPA.[76]

The defendant in *Florence* had attempted to collect a debt by threatening legal action and sending harassing letters to the plaintiff, Graydon Florence.[77] After determining that the defendant had violated multiple provisions of the FDCPA, the *Florence* court turned to the issue of the plaintiff's damages.[78] The court determined that the FDCPA should be liberally interpreted in favor of consumers to support Congress's "broad remedial purpose" in enacting the statute.[79] Thus, a plaintiff's "actual damage" under § 1692k(a) of the FDCPA[80] may include "mental distress."[81]

In 2009, in *Fausto v. Credigy Services Corp.*, the Northern District of California also held that a plaintiff who suffers from emotional distress because of a debt collector's harassment can recover monetary damages under the FDCPA.[82] In an attempt to collect an alleged debt of $16,689.64, Credigy Services Corporation

72. 934 F.3d at 278.

73. *Id.* (alteration in original) (quoting 15 U.S.C. § 1692f(8)).

74. *See DiNaples*, 934 F.3d at 279–80 (quoting St. Pierre v. Retrieval-Masters Creditors Bureau, Inc., 898 F.3d 351, 358 (3d Cir. 2018)).

75. *See, e.g.*, Florence v. Nat'l Sys., No. C82-2020A, 1983 U.S. Dist. LEXIS 20344, at *11 (N.D. Ga. Oct. 14, 1983); Fausto v. Credigy Servs. Corp., 598 F. Supp. 2d 1049, 1054–56 (N.D. Cal. 2009).

76. 1983 U.S. Dist. LEXIS 20344, at *11.

77. *Id.* at *1–3. The alleged debt totaled under sixty-four dollars. *Id.* at *1–2.

78. *See id.* at *11.

79. *Id.* at *13.

80. 15 U.S.C. § 1692k(a) (stating that debt collectors found liable under FDCPA's statutory scheme shall pay plaintiffs a sum equal to: "(1) any actual damage sustained by such person as a result of such failure; [and] (2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000 . . . .").

81. *See Florence*, 1983 U.S. Dist. LEXIS 20344, at *11–12. As instructed by 15 U.S.C. § 1692k, the court analyzed the frequency and severity of the debt collector's FDCPA violations before awarding over $8 thousand in total damages. *Id.* at *11–13, *15.

82. 598 F. Supp. 2d 1049, 1054–56 (N.D. Cal. 2009).

("Credigy") and its agents contacted plaintiffs, Manuel and Luz Fausto (the "Faustos"), over ninety times in fifteen months by telephone and mail—despite receiving a cease and desist letter from the Faustos.[83] As a result of Credigy's debt collection tactics, the Faustos experienced psychological harm such as stress, anxiety, and depression.[84] The Faustos sued Credigy for violations of the FDCPA and requested damages for the emotional harm they suffered.[85] The court held that the statutory scheme of the FDCPA allows for damages for emotional distress and that a rational trier of fact could find that the Faustos had suffered actual injuries in the form of emotional distress; therefore, the Faustos were entitled to collect monetary damages under the FDCPA.[86]

In *Pierre v. Midland Credit Management, Inc.*, Midland argued on appeal that Pierre lacked standing to sue.[87] Because Pierre did not take any action to pay the debt Midland attempted to collect from her, Midland argued that Pierre did not suffer a concrete and particularized injury sufficient to maintain standing.[88] The Seventh Circuit agreed.[89]

Citing *Spokeo* and *TransUnion*,[90] the *Pierre* court stated that that a plaintiff has standing to sue only when the alleged intangible injuries[91] have a "close relationship" to a harm historically and traditionally recognized by the common law.[92] However, rather than applying the two-part *Spokeo* test,[93] the Seventh Circuit looked only to its

83. *Id.* at 1051. Between August 22, 2006, and November 23, 2007, Credigy made at least ninety-two phone calls to the Faustos' home, while also sending paper bills that included threats to take their home if the debt remained unpaid. *Id.*

84. *Id.* at 1055.

85. *Id.* at 1054.

86. *Id.* at 1054–56.

87. Opening Brief and Required Short Appendix of Defendant-Appellant Midland Credit Management, Inc. at 12, 29 F.4th 934 (7th Cir. 2022) (No. 19-2993).

88. *Id.* at 12, 16–18. Midland also argued that the district court erred in granting summary judgment on liability to Pierre and that the class should not have been certified. *Id.* at 24, 41. On cross-appeal, Pierre did not counter Midland's challenge to standing, but argued only that procedural deficiencies should lead to the judgment in her favor. *See generally* Reply Brief on Cross-Appeal of Plaintiff-Cross-Appellant Renetrice R. Pierre, *Pierre*, 29 F.4th 934 (No. 19-2993).

89. *Pierre*, 29 F.4th at 940. The Seventh Circuit only reached the issue of standing. *See id.*

90. *Id.* at 938. *See* Spokeo, Inc. v. Robins, 578 U.S. 330, 340 (2016) ("In determining whether an intangible harm constitutes injury in fact, both history and the judgment of Congress play important roles."); TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2205 (2021) ("[E]ven though '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.'" (quoting Hagy v. Demers & Adams, LLC, 882 F.3d 616, 622 (6th Cir. 2018))).

91. Pierre alleged that she suffered a risk of harm as well as stress, confusion, and other emotional distress as a result of the letter. *Pierre*, 29 F.4th at 939.

92. *Id.* at 938.

93. *See supra* text accompanying note 59.

own circuit precedent in FDCPA cases where plaintiffs who suffered intangible injuries were found to lack standing.[94]

The court ultimately held that Pierre's alleged emotional distress resulting from Midland's letter was insufficient to provide her with standing,[95] and that such intangible injuries are not redressable under the FDCPA.[96] Accordingly, the Seventh Circuit vacated the district court's judgment and remanded the case with instructions to dismiss for lack of subject-matter jurisdiction.[97]

The *Pierre* court failed to consider persuasive precedent holding that the FDCPA should be construed liberally in accordance with congressional intent.[98] Since the passage of the FDCPA, courts have looked to its legislative purpose and statutory scheme to find that Congress intended to create a broad civil remedy for plaintiffs to collect damages for a variety of harms—both tangible and intangible—caused by abusive debt collection practices.[99]

In *Florence v. National Systems*, the defendant debt collector repeatedly contacted the plaintiff threatening legal action and damage to his credit and business reputation.[100] Florence alleged that he suffered harassment and abuse as a result of the defendant's violations of the FDCPA, even though he did not experience financial harm.[101] The court considered the broad purpose of the FDCPA, which was to protect consumers from intimidation or harassment by debt collectors, and concluded that statutory damages could be awarded to a plaintiff without proof of financial injury.[102] Furthermore, the court noted that because the FDCPA is part of the broader CCPA, and because both pieces of legislation were intended to protect consumers from various forms of abuse, the FDCPA should be liberally interpreted to promote this objective.[103]

94. *Pierre*, 29 F.4th at 938–39 (first citing Ewing v. MED-1 Sols., LLC, 24 F.4th 1146 (7th Cir. 2022); then citing Casillas v. Madison Ave. Assocs., Inc., 926 F.3d 329 (7th Cir. 2019); and then citing Larkin v. Fin. Sys. of Green Bay, Inc., 982 F.3d 1060 (7th Cir. 2020)).

95. *Id.* at 940. The court found that Pierre had not suffered any concrete harm caused by Midland's debt collection practices. *Id.*

96. *Id.* at 939.

97. *Id.* at 940. In a six-part dissenting opinion, Circuit Judge David Hamilton argued that the majority failed to consider Congress's intent because the purported purpose of the FDCPA was to protect consumers from the harms resulting from abusive debt collection practices and contended that intangible injuries should provide a plaintiff with standing in FDCPA cases. *Id.* (Hamilton, J., dissenting).

98. *See supra* note 6.

99. *See infra* notes 102–03, 109–10 and accompanying text.

100. No. C82-2020A, 1983 U.S. Dist. LEXIS 20344, at *2–3 (N.D. Ga. Oct. 14, 1983). From November 6, 1980, to September 21, 1982, the defendant contacted the plaintiff at least eleven times, even after the plaintiff paid the alleged debt by mailing a check to the defendant on February 3, 1981. *See id.* at *1–4.

101. *Id.* at *2, *12.

102. *See id.* at *11–14. The court further held that the plaintiff did not need to show that the debt collector's conduct was wanton or malicious. *Id.* at *12.

103. *Id.* at *13–14. The court also recognized that an essential part of the FDCPA's legislative purpose was to provide "an effective private enforcement mechanism" for consumers to use against debt collectors who engage in abusive practices. *Id.* at *14.

Like the plaintiff in *Florence*, Pierre was concerned that Midland would pursue litigation if she did not make a payment on the alleged debt, which caused her to suffer emotional distress.[104] However, unlike the *Florence* court, the *Pierre* court ignored the stated purpose of the FDCPA—to protect consumers from abusive debt collection practices—in its discussion of Pierre's alleged injuries.[105] By forgoing any discussion of the FDCPA's objectives, the *Pierre* court failed to properly recognize Pierre's injury as one that should be remedied by an award of monetary damages.[106]

The Northern District of California concluded in *Fausto v. Credigy Services Corp.* that the statutory scheme of the FDCPA permits actual damages to be awarded for both tangible economic harms and a variety of intangible injuries.[107] The Faustos argued that they experienced severe emotional distress and anxiety caused by Credigy's unrelenting contact and threats to take their home if they did not pay the alleged outstanding debt.[108]

The *Fausto* court referenced the language of the consumer recovery provision of the FDCPA, which provides a broad avenue for relief for "any actual damage" suffered by a plaintiff as a result of a debt collector's noncompliance with the provisions of the Act.[109] The court interpreted this provision to mean that the FDCPA allows for recovery when the consumer has experienced humiliation, embarrassment, mental anguish, or emotional distress.[110] Therefore, the court denied Credigy's motion for summary judgment since the Faustos' alleged intangible injuries could entitle them to collect damages under the FDCPA.[111]

Like the Faustos, Pierre alleged that she suffered stress, confusion, and other emotional distress resulting from the debt collection letter she received from Midland.[112] However, unlike the *Fausto* court, the *Pierre* court did not conduct any

104. Pierre v. Midland Credit Mgmt., Inc., 29 F.4th 934, 939 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023); Plaintiff's Deposition, *supra* note 16, at 108–09.

105. *Compare Pierre*, 29 F.4th at 938–40 (analyzing Pierre's injuries using only circuit precedent), *with Florence*, 1983 U.S. Dist. LEXIS 20344, at *13–14 (looking to the purpose of the FDCPA and CCPA for guidance on covered injuries). In the entire discussion of standing, the remedies available under the FDCPA, and past FDCPA cases the court heard, the *Pierre* court never mentions the FDCPA's purpose or the legislative intent underlying the statute. *See Pierre*, 29 F.4th at 938–40.

106. *See Pierre*, 29 F.4th at 938–40. *But see Florence*, 1983 U.S. Dist. LEXIS 20344, at *13 (noting that debt collectors must comply with the FDCPA provisions to avoid consumer injury and subsequent liability).

107. *See* 598 F. Supp. 2d 1049, 1054–55 (N.D. Cal. 2009).

108. *Id.* at 1055.

109. *Id.* at 1054–55. *See supra* note 80.

110. *Fausto*, 598 F. Supp. 2d at 1054–56.

111. *Id.* at 1056.

112. Pierre v. Midland Credit Mgmt., Inc., 29 F.4th 934, 939 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023); Plaintiff's Deposition, *supra* note 16, at 108–09. Pierre's complaint requested only statutory damages under 15 U.S.C. § 1692k(a)(2), but to maintain a suit to recover any damages under the FDCPA, Pierre needed to allege an injury sufficient to survive a challenge to standing. Plaintiff's Amended Complaint, *supra* note 10, at 8; Spokeo, Inc. v. Robins, 578 U.S. 330, 341 (2016) ("Article III standing requires a concrete injury even in the context of a statutory violation.").

textual analysis of the FDCPA to determine whether Pierre brought the correct suit for her alleged harm.[113] Instead, citing circuit precedent, the *Pierre* court offered a conclusory statement that "[p]sychological states induced by a debt collector's letter" are not concrete injuries in the context of the FDCPA.[114] Had the *Pierre* court conducted an inquiry into the language of the FDCPA like the *Fausto* court did, it likely would have concluded that the statute's open-ended nature did not limit covered harms to those that are monetary or tangible.[115]

It has consistently been the task of the courts to give effect to congressional intent through statutory interpretation.[116] Further, courts may look to congressional purpose for guidance when the literal interpretation of a statute produces results contrary to the intent behind the legislation.[117] Thus, the *Pierre* court wrongly ignored persuasive precedent that required a broad interpretation of the FDCPA, inclusive of intangible harms, to give full effect to the intent of Congress.[118]

The *Pierre* court also erred in concluding that Pierre lacked standing without first conducting an analysis of analog common law injuries and congressional judgment as instructed by Supreme Court precedent in *Spokeo* and *TransUnion*.[119] To

113. *Compare Pierre*, 29 F.4th at 939 (mentioning the FDCPA only to say that "psychological states" and "confusion" are not concrete injuries under it), *with Fausto*, 598 F. Supp. 2d at 1054–55 (noting that a violation of the FDCPA's provisions can lead to the recovery of damages for emotional distress, humiliation, and mental anguish).

114. *Pierre*, 29 F.4th at 939.

115. *See supra* note 113.

116. *See* United States v. Am. Trucking Ass'ns, 310 U.S. 534, 542 (1940) ("In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress.").

117. *See id.* at 543.

118. *Compare* Florence v. Nat'l Sys., No. C82-2020A, 1983 U.S. Dist. LEXIS 20344, at *11–14 (N.D. Ga. Oct. 14, 1983) (holding that an award of statutory damages for mental distress under the FDCPA is not precluded by a lack of economic harm), *and Fausto*, 598 F. Supp. 2d at 1054 (holding that emotional distress is sufficient for recovering damages under the FDCPA), *with Pierre*, 29 F.4th at 939 (holding that emotional distress injuries do not provide a path to recovery under the FDCPA). In addition to courts' interpretation of the FDCPA's purpose, federal agencies that have been charged with enforcement of the law have recognized FDCPA's ability to redress injuries for intangible harms like emotional distress. *See* Mary L. Azcuenaga, Comm'r, Fed. Trade Comm'n, Remarks Before the California Association of Collectors: The Fair Debt Collection Practices Act at the Federal Trade Commission (May 17, 1994), at § I(A), https://plus.lexis.com/api/permalink/28e4156a-b5a1-4296-9bfe-d96e2a8f0bb1/?context=1530671 ("[Debt collector] abuse included practices that appear[] [to be] designed to inflict severe emotional distress and otherwise to injure consumers by invading their privacy [and] damaging their reputations . . . .").

119. *Compare* Lupia v. Medicredit, Inc., 8 F.4th 1184, 1190–93 (10th Cir. 2021) (analyzing plaintiff's injury by looking to common law analogues and Congress's recognition of the harm), *and* DiNaples v. MRS BPO, LLC, 934 F.3d 275, 279–80 (3d Cir. 2019) (holding that plaintiff had standing because their injury was closely related to traditionally recognized invasion of privacy injuries), *with Pierre*, 29 F.4th at 938–40 (analyzing plaintiff's injury without considering analog common law injuries or Congress's recognition of the harm). *See* Spokeo, Inc. v. Robins, 578 U.S. 330, 340–41 (2016) (looking at Congress's history and judgment to determine whether an intangible harm is considered a concrete injury); TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2204 (2021) ("[W]ith respect to the concrete-harm requirement . . . courts should assess whether the alleged injury to the plaintiff has a 'close relationship'

conduct a standing analysis of a plaintiff's alleged intangible injuries, courts should look to history to determine whether that type of injury has been traditionally recognized by the common law.[120] In addition, courts should provide due respect to Congress's decision to provide a civil remedy for plaintiffs bringing a suit under a federal statute.[121]

In *DiNaples v. MRS BPO, LLC*, the Third Circuit Court of Appeals found that DiNaples had standing to sue a debt collection agency for its violation of the FDCPA.[122] DiNaples received a letter from MRS BPO that displayed a QR code on the envelope.[123] Scanning the QR code would disclose the plaintiff's account number with the debt collection agency.[124] The court conducted a *Spokeo* analysis and concluded that DiNaples' intangible injury implicated "core privacy concerns" and was similar to harms that have traditionally provided a basis for a suit at common law.[125]

In *Lupia v. Medicredit, Inc.*, the Tenth Circuit found that the plaintiff's alleged intangible injury gave her standing to sue under the FDCPA.[126] Elizabeth Lupia had acquired a $21,893.00 medical debt, but her insurance only paid approximately one-third of that amount.[127] Believing that the hospital had accepted the payment from her insurer in "full and final satisfaction of charges for medical services and treatment rendered," Lupia refused to pay the remaining debt, which was eventually sent to Medicredit, Inc. ("Medicredit") for collection.[128] Lupia disputed the debt in a cease and desist letter mailed to Medicredit on May 2, 2018, and demanded that the collector cease all phone communication with her regarding the alleged debt.[129] Medicredit received Lupia's letter on May 7, 2018, and proceeded to call her the following day.[130]

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to a harm 'traditionally' recognized as providing a basis for a lawsuit in American courts." (citing *Spokeo*, 578 U.S. at 341)).

120. *See Lupia*, 8 F.4th at 1191 (considering history and tradition when determining whether an intangible injury is sufficiently concrete (citing *TransUnion*, 141 S. Ct. at 2204)). *See also infra* note 125 and accompanying text.

121. *See Lupia*, 8 F.4th at 1191 (holding that Congress's recognition of invasion of privacy as a potential harm caused by abusive debt collection is persuasively in favor of finding a concrete injury when there is a common law analog); *DiNaples*, 934 F.3d at 279–80 (stating that "both history and the judgment of Congress play important roles" when determining concreteness of an intangible injury (quoting *Spokeo*, 578 U.S. at 340)).

122. 934 F.3d at 278, 280.

123. *Id.* at 278.

124. *Id.*

125. *Id.* at 279–80.

126. 8 F.4th at 1193.

127. *Id.* at 1188 (paying $7,154.36 to the hospital).

128. *Id.*

129. *Id.*

130. *Id.*

Lupia sued, alleging violations of the FDCPA and requesting actual damages for the intangible injury of interference with her right to privacy.[131] Applying *Spokeo*, the *Lupia* court found that Lupia's injury was similar in nature to the common law tort of intrusion upon seclusion[132] and that Congress's recognition of consumer privacy protection as a concern of the FDCPA also favored Lupia's right to sue.[133] Therefore, the court held, Lupia had standing.[134]

Pierre, like the plaintiffs in *DiNaples* and *Lupia*,[135] alleged intangible injuries in support of her claim for statutory damages under the FDCPA.[136] Unlike the Third and Tenth Circuits,[137] however, the Seventh Circuit failed to analyze the plaintiff's alleged injury in *Pierre* by looking for a similar traditionally recognized common law harm, such as intentional infliction of emotional distress.[138] Instead, the *Pierre* court merely reviewed its own prior circuit decisions, ultimately concluding that Pierre's injuries were similar to those presented in cases in which the Seventh Circuit did not find standing.[139] Had the *Pierre* court analyzed the plaintiff's alleged injuries under *Spokeo* like the *DiNaples* and *Lupia* courts did, it would have found that Pierre's injuries were analogous to common law tort injuries for emotional distress that, when combined with a recognition of the judgment of Congress, constituted concrete injuries under *Spokeo*.[140]

Congress enacted the FDCPA to stop abusive debt collection behavior and create a statutory right for adversely affected consumers to bring legal actions against debt

131. *Id.* at 1189.

132. *Id.* at 1191 ("At common law, courts readily recognized a concrete injury arising from the tort of intrusion upon seclusion . . . . Ms. Lupia suffered a similar harm when Medicredit made an unwanted call and left her a voicemail about a debt, despite her . . . requesting that it cease telephone communications. Thus, Ms. Lupia suffered an injury bearing a 'close relationship' to the tort of intrusion upon seclusion." (citations omitted)).

133. *Id.* at 1192–93. *See* 15 U.S.C. § 1692(a) (stating that abusive debt collection practices contribute to invasions of privacy).

134. *See Lupia*, 8 F.4th at 1193.

135. *See supra* notes 123–24, 131 and accompanying text.

136. *See* Pierre v. Midland Credit Mgmt., Inc., 29 F.4th 934, 939 (7th Cir. 2022), *cert. denied*, 143 S. Ct. 775 (2023); Plaintiff's Deposition, *supra* note 16, at 108–09.

137. *See supra* note 121 and accompanying text (describing the Third and Tenth Circuits' standing analyses).

138. *See Pierre*, 29 F.4th at 937–40; Restatement (Third) of Torts: Liab. for Physical and Emotional Harm § 46 (Am. L. Inst. 2012) ("An actor who by extreme and outrageous conduct intentionally or recklessly causes severe emotional harm to another is subject to liability for that emotional harm . . . .").

139. *See supra* note 94.

140. *See* DiNaples v. MRS BPO, LLC, 934 F.3d 275, 279–80 (3d Cir. 2019) (holding that the plaintiff had standing to sue under *Spokeo* because the plaintiff's injury was closely related to traditionally recognized invasion of privacy injuries); *Lupia*, 8 F.4th at 1191–93 (applying *Spokeo* and holding that repeated contact by a debt collector has a common law analog in the tort of intrusion upon seclusion); Restatement (Third) of Torts: Liab. for Physical and Emotional Harm § 45 cmt. a (Am. L. Inst. 2012) ("Emotional harm [includes] . . . fear . . . anxiety . . . and a host of other detrimental—from mildly unpleasant to disabling—mental conditions."). *But see Pierre*, 29 F.4th at 939 (holding that Pierre's allegations of confusion and emotional harm were insufficient to establish standing).

collectors who violate the Act.[141] Without the FDCPA, consumers could be subjected to any number of unethical actions by creditors.[142] These actions could result in a variety of harms ranging from overpayment on relatively small principal debt amounts to severe psychological harm caused by consumers' fear that noncompliance with the requests of a debt collector will ruin their lives.[143] The Seventh Circuit's reluctance to recognize noneconomic harms caused by abusive collection practices sets the stage for a future where debt collectors can engage in egregious conduct that pushes consumers to their psychological limits without fear of retribution.[144]

141. 15 U.S.C. §§ 1692(e), 1692k.

142. *See supra* note 4 and accompanying text.

143. *See* 123 Cong. Rec. 10243 (1977) (statement of Rep. Annunzio).

144. *See id.* (stating that legislation to protect consumers from abuse by debt collectors was necessary to prevent the negative psychological effects caused by abusive debt collection practices). *But see Pierre*, 29 F.4th at 939–40 (finding that noneconomic harms do not provide a plaintiff with standing to sue under the FDCPA).