NOT FOR PUBLICATION

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MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESUS JARAS, Plaintiff-Appellant, v. EQUIFAX INC., Defendant-Appellee.	No. 17-15201 D.C. No. 5:16-cv-03336-LHK MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

WILBUR GREEN, Plaintiff-Appellant, v. EXPERIAN INFORMATION SOLUTIONS, INC.; et al., Defendants-Appellees.	No. 17-15987 D.C. No. 3:16-cv-05679-WHA

HOWARD RYDOLPH, Plaintiff-Appellant,	No. 17-15990 D.C. No. 3:16-cv-05694-WHA

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

v.

EXPERIAN INFORMATION SOLUTIONS, INC.; et al.,

Defendants-Appellees.

KIMBERLY CONTRERAS,

Plaintiff-Appellant,

v.

EXPERIAN INFORMATION SOLUTIONS, INC.; et al.,

Defendants-Appellees.

No. 17-15991

D.C. No. 3:16-cv-06315-WHA

SCOTT HUNTER,

Plaintiff-Appellant,

v.

EXPERIAN INFORMATION SOLUTIONS, INC.; et al.,

Defendants-Appellees.

No. 17-15992

D.C. No. 3:16-cv-06335-WHA

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Argued and Submitted September 5, 2018
San Francisco, California

Before: BERZON and FRIEDLAND, Circuit Judges, and DOMINGUEZ,** District Judge.

The Plaintiffs in these related cases—Wilbur Green, Howard Rydolph, Kimberly Contreras, Scott Hunt, and Jesus Jaras (collectively, "Plaintiffs")—filed for bankruptcy between 2011 and 2014 under Chapter 13 of the Bankruptcy Code. After the bankruptcy court confirmed their Chapter 13 plans, Plaintiffs requested their credit reports and noticed that some account information was being reported in a manner that they allege is inconsistent with the treatment of those claims in their confirmed bankruptcy plans. Plaintiffs asked the three largest credit reporting agencies—Experian Information Solutions, Inc., Equifax, Inc., and Transunion, LLC—to update the information to match their confirmed bankruptcy plans. But when Plaintiffs requested their credit reports again after allowing the credit reporting agencies adequate time to reinvestigate and update the information, they allege that several inaccuracies remained.

Plaintiffs subsequently sued credit reporting agencies and creditors providing the allegedly inaccurate information under the federal Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s-2(b), and its California law counterpart, the California Consumer Credit Report Agencies Act ("CCRAA"),

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** The Honorable Daniel R. Dominguez, United States District Judge for the District of Puerto Rico, sitting by designation.

Cal. Civ. Code § 1785.25(a), alleging that a confirmed Chapter 13 bankruptcy plan changes the legal status of prior debts, and that such changes must be reflected in the credit report in order for the report to be accurate and not misleading. The district courts granted Defendants' motions to dismiss or for judgment on the pleadings, holding that the challenged statements were not inaccurate so FCRA did not require changing them. On review, we affirm the dismissal of these complaints, but on the grounds that Plaintiffs—a group of individuals in bankruptcy who gave no indication that they had tried to engage in or were imminently planning to engage in any transactions for which the alleged misstatements in their credit reports made or would make any material difference—lack standing to pursue their claims.

In *Spokeo, Inc. v. Robins*, the Supreme Court held 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. 1540, 1549 (2016). Rather, "Article III standing requires a concrete injury even in the context of a statutory violation." *Id.* The Supreme Court offered a specific example to show that "not all inaccuracies cause harm or present any material risk of harm"—stating that "[i]t is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm." *Id.* at 1550. The Court then remanded to our court to determine whether

the alleged FCRA violations "entail[ed] a degree of risk sufficient to meet the concreteness requirement." *Id.*

On remand, we accordingly considered whether the alleged FCRA violations—Spokeo's publication on the internet of a credit report that falsely stated the plaintiff's age, marital status, wealth, education level, and profession, in violation of 15 U.S.C. § 1681e(b)—were more material than a zip code error and thus amounted to a sufficiently concrete injury to support Article III standing. *Robins v. Spokeo, Inc.*, 867 F.3d 1108, 1111 (9th Cir. 2017). The plaintiff alleged that the inaccuracies harmed his chances of making a favorable impression on prospective employers and that he was actively looking for a job. *Id.* at 1117. In holding that the plaintiff did have standing, we emphasized that the inaccuracies in the credit report at issue had already been requested and obtained by at least one third party, and that they were of a type likely enough to cause harm to his employment prospects at a time when he was unemployed and actively looking for work. *Id.* at 1116-17.

By contrast, Plaintiffs here do not make any allegations about how the alleged misstatements in their credit reports would affect any transaction they tried to enter or plan to try to enter—and it is not obvious that they would, given that Plaintiffs' bankruptcies themselves cause them to have lower credit scores with or without the alleged misstatements. They have therefore said nothing that would

distinguish the alleged misstatements here from the inaccurate zip code example discussed by the Supreme Court in *Spokeo*. Indeed, Plaintiffs have not alleged that they tried to enter any financial transaction for which their credit reports or scores were viewed at all, or that they plan to imminently do so, let alone that the alleged inaccuracies in their credit reports would make a difference to such a transaction. Unlike the plaintiff in *Spokeo*, Plaintiffs did not say anything about what kind of harm they were concerned about, other than making broad generalizations about how lower FICO scores can impact lending decisions generally—without any specific allegation that lower FICO scores impact lending decisions regarding individuals who are already in Chapter 13 bankruptcy. Without any allegation of the credit report harming Plaintiffs' ability to enter a transaction with a third party in the past or imminent future, Plaintiffs have failed to allege a concrete injury for standing.[1]

[1] The absence of allegations of an actual or imminent concrete harm also causes Plaintiffs' claims to be too amorphous to litigate. As the Supreme Court has explained:

> The gist of the question of standing is whether the party seeking relief has 'alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends . . . [Standing] is demanded so that federal courts will not be asked to decide illdefined controversies over . . . issues . . . or a case which is of a hypothetical or abstract character.

Flast v. Cohen, 392 U.S. 83, 99-100 (1968) (citations and internal quotation marks omitted).

The absence of allegations that Plaintiffs have suffered or imminently will suffer a concrete injury compels dismissal of the Complaints in this case for lack of standing. *Spokeo*, 136 S. Ct. at 1547-48. But such dismissals should be without prejudice. *See Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017) ("Plaintiffs have not satisfied the requirements [for] . . . standing. In theory, Plaintiffs could allege . . . facts that might support standing. As a result, the complaint should have been dismissed *without* prejudice."); *Hampton v. Pac. Inv. Mgmt. Co. LLC*, 869 F.3d 844, 846 (9th Cir. 2017) ("Dismissals for lack of . . . jurisdiction . . . must be without prejudice.").

AFFIRMED in part and VACATED in part. REMANDED with instructions to enter dismissals without prejudice.