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Financial Services Alert

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Eleventh Circuit clarifies FCRA standing in *Nelson v. Experian*

By Andrew C. Glass, Gregory N. Blase, and Matthew W. Costello

Nelson gives companies fresh ammunition to attack FCRA complaints at the pleading stage and recalibrate compliance programs before harmless mistakes ripen into possible litigation exposure.

What's the impact?

- The decision tightens the standard for Article III standing in FCRA cases, holding that a consumer who merely spends time or money disputing an internal error—but suffers no third-party disclosure—lacks a "concrete" injury.
- *Nelson* aligns the Eleventh Circuit with the Supreme Court's recent views on wilfulness and concrete harm, further limiting "gotcha" class actions based solely on technical FCRA violations.
- Companies can still face potential liability exposure when supposedly inaccurate information is shared with lenders, insurers, landlords, or other third parties.

The Eleventh Circuit's recent decision in *Nelson v. Experian* clarifies the requirements to establish Article III standing under the Fair Credit Reporting Act (FCRA). In this closely watched case, the court emphasized that consumers cannot create standing through expenditure of their own funds to investigate a purported reporting error. Rather, consumers must demonstrate a concrete injury, such as third-party disclosure of inaccurate information, to have standing to bring an FCRA lawsuit.

The FCRA framework—why standing matters

Congress enacted the FCRA to promote accuracy, fairness, and privacy in consumer reporting. The statute imposes duties on consumer reporting agencies (CRAs) and data furnishers to ensure data accuracy, promptly investigate disputes, and provide adverse-action notices. Failure to comply can trigger actual damages if the violation is found to be negligent and statutory or punitive damage if the violation is found to be willful. As the US Supreme Court held in *Safeco Ins. Co. v. Burr* and as most recently reiterated by the Ninth Circuit, "when the applicable language of the FCRA is 'less than pellucid,' a defendant will nearly always avoid liability so long as an appellate court has not already interpreted that language." *Grijalva v. ADP Screening*, --- F.4th ----, 2025 WL 2371946, at *7 (9th Cir. Aug. 15, 2025) (quoting *Marino v. Ocwen Loan Serv. LLC*, 978 F.3d 669, 673-74). "Thus, in nearly every case involving unclear statutory language, an appellate court may dispose of the appeal by concluding that the defendant did not negligently or willfully violate the statute." *Marino*, 978 F.3d at 674.

Before reaching that determination, however, and as the Supreme Court explained in *TransUnion v. Ramirez*, a plaintiff must show a real-world injury that closely resembles a traditional harm—such as defamation or invasion of privacy—to invoke federal jurisdiction. *Nelson* is the Eleventh Circuit's newest application of that principle to everyday credit-reporting disputes.

Nelson v. Experian—What happened?

Jessica Nelson discovered spelling errors, outdated addresses, and a transposed Social Security Number digit in the informational portion of her Experian file. She sent certified letters, spent approximately $20, and alleged that Experian failed to perform a reasonable reinvestigation under 15 U.S.C. § 1681i. But she did not allege:

- Publication of the inaccurate data to any lender or other third party;
- Denial of credit, insurance, or housing; or
- Emotional distress or other intangible harms.

The district court found standing based on Nelson's postage costs and time spent contacting the defendant. On appeal, the Eleventh Circuit reversed, holding that self-initiated expenditures meant to "force compliance" with a statute are not enough. Without a disclosure, credit impact, or imminent identity-theft risk, her injury was "self-inflicted" and therefore not concrete for Article III purposes.

Practical takeaways for companies

In light of *Nelson*, businesses should re-evaluate their litigation posture when facing FCRA claims that are limited to internal file errors. The *Nelson* decision provides strong authority to challenge standing early and seek dismissal of suits lacking publication-based harm. Nevertheless, it is essential to maintain rigorous reinvestigation procedures, implement automated correction logic, and keep thorough audit trails. Businesses' correction of stale addresses, name variations, or merged-file issues can reduce reporting errors and lower reputational risk. Documenting consumer interactions is also critical—maintaining contemporaneous notes, call recordings, and prompt dispute resolutions may help counter claims that a defendant subjected a consumer to threat of imminent identity theft or emotional distress.

Final thoughts

Nelson reinforces the federal courts' message: technical missteps alone will not open the courthouse doors—but they still have the potential to open the company wallet if left unaddressed. Now is the time to calibrate your FCRA compliance program, review open matters for standing defenses, and refresh training materials.

If you would like assistance in auditing your dispute-handling procedures, assessing current litigation for standing vulnerabilities, or developing proactive FCRA governance frameworks, please reach out to your Nixon Peabody attorney or the authors of this alert. We are ready to help you turn *Nelson's* guidance into a strategic compliance advantage.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Andrew C. Glass
617.345.1331
aglass@nixonpeabody.com

Gregory N. Blase
617.345.1234
gblase@nixonpeabody.com

Matthew W. Costello
617.345.1024
mcostello@nixonpeabody.com