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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

MICHELLE ORPILLA,  
Plaintiff,  
  
v.  
  
SCHENKER, INC.,  
Defendant.

Case No. [19-cv-08392-BLF](#)

**ORDER GRANTING PLAINTIFF’S  
MOTION TO REMAND;  
TERMINATING DEFENDANT’S  
MOTION TO TRANSFER VENUE AS  
MOOT**

[Re: ECF 24, 27]

Plaintiff, Michelle Orpilla, bring this putative class action against Defendant Schenker, Inc. for alleged violations of the Fair Credit Reporting Act (the “FCRA”). *See* Exhibit A to Notice of Removal (“Compl.”), ECF 1-2. Defendant removed the action to this Court on the ground that Plaintiff’s claim for relief invokes federal law and thus federal jurisdiction is established per 28 U.S.C. § 1331. Notice of Removal at 2, ECF 1. Before the Court is Plaintiff’s Motion to Remand to state court. Motion, ECF 24. For the reasons stated below, the Court GRANTS Plaintiff’s Motion and REMANDS the case to Superior Court of the State of California for the County of Santa Clara. The Court also TERMINATES Defendant’s Motion to Transfer Venue at ECF 27 as MOOT and VACATES the hearing scheduled for May 28, 2020.

**I. BACKGROUND**

Plaintiff alleges that she was employed by Defendant on or about November 20, 2017. Compl. ¶ 20. When Plaintiff applied for employment, Defendant performed a background investigation on her. *Id.* ¶ 21. According to Plaintiff, Defendant failed to provide legally compliant disclosures and authorization forms to Plaintiff. *Id.* ¶ 22. Plaintiff further alleges that Defendant routinely acquires consumer, investigative consumer and/or consumer credit reports (collectively

1 “credit and background reports”) to conduct background checks on Plaintiff and other prospective,  
2 current and former employees and uses information from credit and background reports in  
3 connection with its hiring process without providing proper disclosures and obtaining proper  
4 authorization in compliance with the FCRA. Compl. ¶ 2.

5 Plaintiff alleges that Defendant’s “credit and background reports” are “consumer reports”  
6 within the meaning of section 1681a(d)(1) of the FCRA. Compl. ¶ 27. Plaintiff further alleges that  
7 Defendant’s “credit and background reports” violated Section 1681b(b)(2)(A) of the FCRA, which  
8 establishes the conditions upon which employers may furnish and use consumer reports –  
9 specifically, requiring the employer to provide “[a written] clear and conspicuous disclosure” that  
10 “consists solely of the disclosure” and receive a written authorization from the prospective  
11 employee. *See* Compl. ¶ 28 (citing 15 U.S.C.A. § 1681b(b)(2)(A), “standalone requirement”).  
12 According to Plaintiff, Defendant’s disclosures violated the FCRA because they “are embedded  
13 with extraneous information, and are not clear and unambiguous disclosures in stand-alone  
14 documents.” *Id.* ¶ 32.

15 Plaintiff alleges two instances of “extraneous information” in the disclosures in violation of  
16 the stand-alone disclosure requirement of FCRA. First, the disclosures that Plaintiff received  
17 included state-specific disclosure applicable to New York applicants or employees. Compl. ¶ 22.  
18 Second, Defendant required a “liability release” in the disclosure form, which the Federal Trade  
19 Commission (“FTC”) has found to be in violation of the FCRA § 1681 b(b)(2)(A). *See* Compl. ¶¶  
20 39; 36. Plaintiff alleges that Defendant acted “in deliberate or reckless disregard of their obligations  
21 and the rights of applicants and employees” because (1) Defendant is a large corporation with access  
22 to legal advice; (2) Defendant requires authorization to perform credit and background checks in its  
23 employment application process; (3) the statute’s language is clear as to the requirements for the  
24 disclosures; and (4) the FTC statement regarding impermissibility of “liability waiver” in  
25 disclosures predates Defendant’s Conduct. *Id.* ¶ 38.

26 As a result of Defendant’s “unlawful procurement of credit and background reports by way  
27 of their inadequate disclosures,” Plaintiff alleges that Plaintiff and other similarly situated  
28 individuals were “injured, including but not limited to, having their privacy and statutory rights

1 invaded in violation of the FCRA.” Compl. ¶ 42. Accordingly, Plaintiff seeks to recover “statutory  
2 damages and/or actual damages, punitive damages, injunctive and equitable relief and attorneys’  
3 fees and costs.” *Id.* ¶ 43; *see also* Prayer for Relief.

4 On November 20, 2019, Plaintiff filed this putative class action against Defendant in the  
5 Superior Court of California, County of Santa Clara. *See* Compl. The Complaint alleges one cause  
6 of action for violation of sections 15 U.S.C. §§ 1681b(b)(2)(A) of the FCRA. On December 23,  
7 2019, Defendants removed this action to Federal Court because Plaintiff brought a federal claim  
8 arising under the FCRA. *See* Notice of Removal.

9 Plaintiff moves this Court to remand this action to California state court because “there is no  
10 Article III standing since the background check claims brought by Plaintiff under the Fair Credit  
11 Reporting Act does not assert that she has suffered an ‘injury in fact’ that would satisfy Article III’s  
12 ‘case and controversy’ requirement.” Motion at 2.

13 **II. LEGAL STANDARD**

14 **A. Removal**

15 A suit may be removed from state court to federal court only if the federal court would have  
16 had subject matter jurisdiction over the case. 28 U.S.C. § 1441(a); *see Caterpillar Inc. v. Williams*,  
17 482 U.S. 386, 392 (1987) (“Only state-court actions that originally could have been filed in federal  
18 court may be removed to federal court by the defendant.”). If it appears at any time before final  
19 judgment that the federal court lacks subject matter jurisdiction, the federal court must remand the  
20 action to state court. 28 U.S.C. § 1447(c).

21 The party seeking removal bears the burden of establishing federal jurisdiction. *Provincial*  
22 *Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). “The removal  
23 statute is strictly construed, and any doubt about the right of removal requires resolution in favor of  
24 remand.” *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1244 (9th Cir. 2009) (citation  
25 omitted).

26 When the Court determines that it lacks subject matter jurisdiction over an action that has  
27 been removed to federal court, the Court must remand the case to state court. *Polo v. Innoventions*  
28 *Int’l LLC*, 833 F.3d 1193, 1196 (9th Cir. 2016) (“Remand is the correct remedy because a failure of

1 federal subject-matter jurisdiction means only that the federal courts have no power to adjudicate  
2 the matter. State courts are not bound by the constraints of Article III.”)

3 **B. Article III Standing**

4 In *Spokeo*, the Supreme Court reaffirmed that to have Article III standing, a plaintiff must  
5 have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the  
6 defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v.*  
7 *Robins*, 136 S.Ct. 1540, 1547 (2016) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61  
8 (1992)). Here, for the purposes of this Motion, neither party denies that Plaintiff has alleged facts  
9 showing that the alleged statutory violations of the FCRA are traceable to Defendant’s conduct, and  
10 that the alleged violations are redressable by statutory damages. Accordingly, the remainder of the  
11 discussion on the standing issue is addressed solely to the requirement of injury in fact.

12 To establish injury in fact, a plaintiff must have suffered “‘an invasion of a legally protected  
13 interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or  
14 hypothetical.’” *Spokeo*, 136 S. Ct. at 1548 (citing *Lujan*, 504 U.S. at 560). To be “particularized,”  
15 an injury “must affect the plaintiff in a personal and individual way.” *Id.* (citing *Lujan*, 504 U.S. at  
16 560 n.1). The Supreme Court in *Spokeo* distilled several “general principles” from its prior cases  
17 with respect to concreteness. *Id.* at 1549–50. A concrete injury is one that is “‘real,’ and not  
18 ‘abstract.’” *Id.* at 1548 (citation omitted). Tangible injuries plainly satisfy this requirement. *Id.* at  
19 1549. Nevertheless, intangible injuries may also be concrete. *Id.* In evaluating whether an  
20 intangible injury satisfies the “concreteness” requirement, the *Spokeo* Court identified two important  
21 considerations (1) “whether an alleged intangible harm has a close relationship to a harm that has  
22 traditionally been regarded as providing a basis for a lawsuit in English or American courts” and (2)  
23 the judgment of Congress, which “‘has the power to define injuries and articulate chains of causation  
24 that will give rise to a case or controversy where none existed before.’” *Id.* (quoting *Lujan*, 504  
25 U.S. at 580 (Kennedy, J., concurring in part and concurring in judgment)).

26 The Supreme Court then elaborated on the connection between statutory standing and  
27 concrete injury. First, the Court explained that “Article III standing requires a concrete injury even  
28 in the context of a statutory violation[.]” *Id.* (citing *Summers v. Earth Island Inst.*, 555 U.S. 488,

1 496 (2009)). Therefore, “[a plaintiff] could not, for example, allege a bare procedural violation,  
2 divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III.” *Id.* At  
3 the same time, the Supreme Court observed, in cases where “harms may be difficult to prove or  
4 measure[,]” “the violation of a procedural right granted by statute can be sufficient ... [and] a plaintiff  
5 in such a case need not allege any additional harm beyond the one Congress has identified.” *Id.*  
6 (citing *FEC v. Akins*, 524 U.S. 11, 20–25 (1998); *Pub. Citizen v. De’ t of Justice*, 491 U.S. 440, 449  
7 (1989)). The Supreme Court noted that although one of the FCRA’s purposes is to protect against  
8 inaccurate credit reporting, “not all inaccuracies cause harm or present any risk of harm.” *Id.* at  
9 1550.

10 **III. DISCUSSION**

11 **A. Request for Judicial Notice**

12 The Court may take judicial notice of documents referenced in the complaint, as well as  
13 matters in the public record. *See Lee v. City of L.A.*, 250 F.3d 668, 688–89 (9th Cir. 2001), *overruled*  
14 *on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1125–26 (9th Cir. 2002).  
15 In addition, the Court may take judicial notice of matters that are either “generally known within  
16 the trial court’s territorial jurisdiction” or “can be accurately and readily determined from sources  
17 whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Public records, including  
18 judgments and other court documents, are proper subjects of judicial notice. *See, e.g., United States*  
19 *v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007). However, “[j]ust because the document itself is  
20 susceptible to judicial notice does not mean that every assertion of fact within that document is  
21 judicially noticeable for its truth.” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th  
22 Cir. 2018).

23 In connection with its opposition to Plaintiff’s Motion, Defendant requests that the Court  
24 take judicial notice of four documents: (1) the first amended complaint filed in the United States  
25 District Court, Eastern District of California, on September 2, 2014, in the case entitled *Sarmad*  
26 *Syed v. M-I LLC and PreCheck, Inc.*, Case No. 14-cv-00742-WBS-BAM (Exhibit A); (2) the  
27 complaint filed in the Superior Court of the State of California, for the County of Los Angeles, on  
28 July 20, 2015, in the case entitled *Desiree Gilberg v. California Check Cashing Stores, Inc. and*

1 *Checksmart Financial, LLC*, Case No. B558602 (Exhibit B); (3) portions of plaintiff’s reply in  
2 support of motion for class certification, filed in the United States District Court, Central District of  
3 California, Civil Division, on November 30, 2018, in the case entitled *Pitre v. Wal-Mart Stores,*  
4 *Inc.*, Case No. 17-cv-1281-DOC-DFM (Exhibit C); and (4) defendant’s opposition to plaintiff’s  
5 motion to remand, filed in the United States District Court, Eastern District of California,  
6 Sacramento Division, on October 22, 2019, in the case entitled *Desiree Gilberg v. California Check*  
7 *Cashing Stores, Inc. and Checksmart Financial, LLC*, Case No. 15-cv-02309-JAM-AC. (Exhibit  
8 D). ECF 28-1; ECF 28-2. Plaintiff has not objected to Defendant’s request. Because these  
9 documents are public court documents, the Court GRANTS Defendant’s request and takes judicial  
10 notice of Exhibits A-D at ECF 28-2.

11 **B. Article III Standing**

12 Plaintiff moves to remand this case to state court on one ground: relying on *Spokeo*, Plaintiff  
13 argues that “while the complaint contains claims under the Federal Fair Credit Reporting Act, there  
14 is no subject matter jurisdiction over those claims since Article III standing is lacking.” Motion at  
15 4. In response, Defendant cites to three Ninth Circuit decisions and argues that noncompliant FCRA  
16 disclosures give rise to “substantive privacy and informational injuries,” which according to  
17 Defendant, constitute “injury-in-fact.” Defendant Schenker, Inc.’s Opposition to Plaintiff’s Motion  
18 “Opp’n”) at 5 (citing *Syed v. M-I, LLC*, 853 F.3d 492 (9th Cir. 2017); *Gilberg v. California Check*  
19 *Cashing Stores, LLC*, 913 F.3d 1169, 1175 (9th Cir. 2019); *Walker v. Fred Meyer, Inc.*, 953 F.3d  
20 1082, 1084 (9th Cir. 2020)), ECF 28.

21 It is true that alleged procedural violation of a statute “can by itself manifest a concrete injury  
22 where Congress conferred the procedural right to protect a plaintiff’s concrete interests.” *Robins v.*  
23 *Spokeo, Inc.*, 867 F.3d 1108, 1113 (9th Cir. 2017). However, none of the Ninth Circuit cases  
24 Defendant cites support the conclusion that mere procedural violations of FCRA’s standalone  
25 requirement for consumer reports – the basis for Plaintiff’s allegations in this case – without more,  
26 can establish concrete injury and confer Article III standing.

27 Defendant relies heavily on *Syed* for the proposition that alleging a mere violation of the  
28 FCRA’s standalone disclosure requirement is sufficient to demonstrate a “concrete” injury to

1 Plaintiff’s right to “privacy” and “information.” *See* Opp’n at 8-9. *Syed* is factually similar to this  
2 case to the extent that the plaintiff in *Syed* received a disclosure document that included a liability  
3 waiver – allegedly in violation of § 1681b(b)(2)(A)(i). But the plaintiff in *Syed*, unlike Plaintiff in  
4 this case, had alleged that he “discovered [defendant]’s violation(s) within the last two years when  
5 he obtained and reviewed his personnel file from [defendant] and discovered that [defendant] had  
6 procured and/or caused to be procured a ‘consumer report’ regarding him for employment purposes  
7 based on the illegal disclosure and authorization form.” *Syed*, 853 F.3d at 499. The *Syed* court  
8 found this allegation “sufficient *to infer* that *Syed* was deprived of the right to information and the  
9 right to privacy guaranteed by Section 1681b(b)(2)(A)(I)–(ii) because it indicates that *Syed was not*  
10 *aware that he was signing a waiver authorizing the credit check when he signed it.*” *Id.* (emphasis  
11 added).

12 The *Syed* court went on to conclude that it could “fairly *infer that Syed was confused* by the  
13 inclusion of the liability waiver with the disclosure and would not have signed it had it contained a  
14 sufficiently clear disclosure, as required in the statute.” *Syed*, 853 F.3d at 499-500 (emphasis  
15 added). Here, Plaintiff has made no allegations of confusion, late discovery of Defendant’s violation  
16 of the FCRA, or any other allegation from which the Court may infer that she was confused or that  
17 she would not have signed the document if she had received clear disclosures. Thus, the Court  
18 disagrees with Defendant’s analysis that “according to *Syed*, the alleged inclusion of a liability  
19 release in an FCRA disclosure form necessarily implicates a plaintiff’s substantive rights and  
20 confers standing.” *See* Opp’n at 9. In fact, “[m]any district courts have dismissed FCRA claims  
21 that are based on bare procedural violations similar to the alleged disclosure violation in *Syed*.”  
22 *Williams v. Nichols Demos, Inc.*, No. 5:17-CV-07101-EJD, 2018 WL 3046507, at \*4 (N.D. Cal.  
23 June 20, 2018) (collecting cases and finding no Article III standing where plaintiff alleged violation  
24 of standalone disclosure requirement of the FCRA based on inclusion of liability release and other  
25 extraneous information); *compare with* *Bebault v. DMG Mori USA, Inc.*, No. 18-CV-02373-JD,  
26 2020 WL 2065646, at \*1 (N.D. Cal. Apr. 29, 2020) (finding Article III standing where plaintiffs  
27 expressly alleged that they were “confused by the extraneous information” in defendant’s  
28 disclosure); *Taaflua v. Quantum Glob. Techs., LLC*, No. 18-CV-06602-VKD, 2020 WL 95639, at

1 \*6 (N.D. Cal. Jan. 8, 2020) (same).

2 Next, Defendant relies on *Gilberg* and *Fred Meyer* because in those cases, the Ninth Circuit  
3 summarily concluded that it had jurisdiction to hear the appeal. The Court is not persuaded that  
4 these cases support Defendant’s position. In *Gilberg* and *Fred Meyer*, the Ninth Circuit did not  
5 address or discuss the issue of Article III standing – but instead, clarified the contours of the FCRA’s  
6 standalone disclosure requirement. *See Gilberg*, 913 F.3d at 1175-76 (clarifying that the standalone  
7 requirement applies to all extraneous and irrelevant information, not just the liability waiver at issue  
8 in *Syed*); *Fred Meyer*, 953 F.3d at 1088-89 (clarifying that “beyond a plain statement disclosing  
9 ‘that a consumer report may be obtained for employment purposes,’ some concise explanation of  
10 what that phrase means may be included as part of the ‘disclosure’ required by §  
11 1681b(b)(2)(A)(i)”). *Gilberg* is distinguishable for one more reason. As Defendant concedes, when  
12 the plaintiff in *Gilberg* filed her appeal to the Ninth Circuit, “she expressly conceded that the district  
13 court had subject matter jurisdiction over the case, and that the Ninth Circuit had jurisdiction over  
14 the appeal.” Opp’n at 9 n. 1. No such concession was made here.

15 In sum, while procedural violations that have resulted in real harm – or even a risk of real  
16 harm – may be sufficient to meet the “injury-in-fact” requirement of Article III, Plaintiff in this case  
17 has alleged no such injury. Instead, the crux of Plaintiff’s Complaint is that the disclosure form did  
18 not technically comply with the requirements of the FCRA. This is the kind of bare procedural  
19 violation that the Supreme Court described in *Spokeo* as insufficient. Specifically, Plaintiff alleges  
20 that when she applied for employment, Defendant performed a background investigation on her –  
21 containing a liability waiver and other extraneous information in violation of the FCRA. Compl. ¶¶  
22 21, 37. Plaintiff does not allege that she was “confused” by the disclosure or that she would not  
23 have signed the authorization had it been presented separately from the liability waiver or other  
24 extraneous information. Plaintiff does not allege that she was not aware she was authorizing a  
25 background check when she was presented with the disclosures. Nor does Plaintiff allege that she  
26 was unaware she was releasing liability. Plaintiff does not allege that she was denied employment  
27 based on the consumer report that Defendant allegedly procured – in fact she alleges that she was  
28 hired by Defendant. Compl. ¶ 20. Nor does Plaintiff allege that the consumer report was inaccurate.



1 Accordingly, because Plaintiff has not alleged any concrete harm, she lacks Article III standing to  
2 assert her FCRA claim in this Court.

3 Finally, Defendant argues that Plaintiff has alleged a concrete injury because she “expressly  
4 alleges an injury to her privacy rights[.]” Opp’n at 10-11 (citing Compl. ¶ 42). Specifically,  
5 Plaintiff alleges that her “privacy and statutory rights” were invaded in violation of the FCRA.  
6 Compl. ¶ 42. But “a reference to invaded ‘privacy and statutory rights,’ ... [is] insufficient to  
7 describe a concrete and particularized harm.” *Moore v. United Parcel Serv., Inc.*, No. 18-CV-  
8 07600-VC, 2019 WL 2172706, at \*1 (N.D. Cal. May 13, 2019); *see also Arroyo v. J.R. Simplot Co.*,  
9 No. 18-CV-07187-LHK, 2019 WL 2338518, at \*3 (N.D. Cal. June 3, 2019) (finding insufficient  
10 allegations that “Plaintiff and other class members have been injured, including but not limited to,  
11 having their privacy and statutory rights invaded in violation of the FCRA”). As was the case in  
12 *Arroyo*, Defendant “is unable to point to any decision in which a court held that conclusory  
13 allegations of harm to ‘privacy and statutory rights’ resulting from a failure to comply with the  
14 FCRA’s disclosure requirements suffice to allege Article III standing.” *Arroyo*, 2019 WL 2338518,  
15 at \*3.

16 In conclusion, the Court holds that it lacks subject matter jurisdiction to hear this case  
17 because Plaintiff’s Complaint fails to establish Article III standing.

18 **C. Plaintiff’s Pleadings**

19 Defendant argues that Plaintiff is employing “artful” and “imprecise” pleading to evade  
20 federal jurisdiction because she makes no representations in her Complaint or in support of her  
21 Motion to Remand “disclaiming any injury-in-fact.” Opp’n at 13. According to Defendant, Plaintiff  
22 seeks to remand this action *without indicating* whether she claims an ‘injury-in-fact,’ in hopes she  
23 can preserve her ability to later *argue the opposite*—that she was confused and/or misled by the  
24 supposedly ‘extraneous’ language.” *Id.* (emphasis in original). For support, Defendant analogizes  
25 this case to those where plaintiffs manipulate or conceal the amount-in-controversy to avoid federal  
26 jurisdiction. *Id.* at 14. Plaintiff responds that “the FCRA provides a for [sic] statutory damages  
27 against those who fail to comply even in the absence of actual harm” and thus, “Plaintiff need not  
28 plead actual harm or lack thereof as part of her FCRA claim.” Reply at 7, ECF 30.

1 Under the artful pleading rule, a “plaintiff may not defeat removal by omitting to plead  
2 necessary federal questions in a complaint.” *JustMed, Inc. v. Byce*, 600 F.3d 1118, 1124 (9th Cir.  
3 2010) (citation omitted). The Court is not persuaded that Plaintiff has omitted facts necessary to  
4 federal jurisdiction. The Complaint is clearly brought under federal law: the FCRA. And the FCRA  
5 provides for statutory damages of \$100 to \$1,000 even if no actual damages are sustained. 15 U.S.  
6 Code § 1681n(a). Accordingly, Plaintiff is free to plead (truthfully, of course) that she did or did  
7 not sustain actual harm. Defendant’s speculative arguments regarding what Plaintiff may or may  
8 not do at later stages of the litigation are simply irrelevant. So are Defendant’s citations to Plaintiff’s  
9 counsel’s arguments in other unrelated cases. *See e.g.* Opp’n at 14-15.

10 And the authority that Defendant cites are inapposite. For example, in *Amoche v. Guarantee*  
11 *Tr. Life Ins. Co.*, 556 F.3d 41 (1st Cir. 2009), the First Circuit criticized plaintiff for not discrediting  
12 the facts upon which the defendant relied to establish amount-in-controversy. *Id.* at 51. Here, there  
13 are no facts to dispute – plaintiff has simply not alleged that she was harmed and Defendant does  
14 not (and realistically cannot) present that she was. In *Evans v. Walter Indus., Inc.*, 449 F.3d 1159  
15 (11th Cir. 2006) – a case involving a specific and narrow issue not present here – *after* defendants  
16 carried their burden to establish federal jurisdiction under Class Action Fairness Act (“CAFA”),  
17 plaintiffs invoked “local controversy exception” to CAFA – which requires evidence about the  
18 composition of the plaintiff class. *Id.* at 1164. Under the CAFA framework, the Eleventh Circuit  
19 put the burden on plaintiffs who had “better access to information about the scope and composition  
20 of that class.” *Id.* at 1164 n. 3. In contrast, Plaintiff is not invoking an exception to federal  
21 jurisdiction.

22 In sum, the Court is not persuaded that Plaintiff has evaded federal jurisdiction by “artful  
23 pleading” or that she was required to plead additional facts in her Complaint or disclaim injury-in-  
24 fact in her Motion to Remand.

25 **D. Defendant’s Request for Jurisdictional Discovery**

26 Next, Defendant argues that even if this Court finds that an injury-in-fact is established by  
27 Plaintiff’s Complaint, it should nonetheless allow Defendant limited jurisdictional discovery – by  
28 deposing Plaintiff – to determine whether Plaintiff has Article III standing (*e.g.*, whether she was

1 confused by the disclosure). Defendant claims that without discovery, it has “no means to know  
2 what Plaintiff subjectively understood or intended when she read the FCRA disclosure and  
3 authorized a background check.” Opp’n at 17. According to Defendant, remanding this case  
4 without granting limited discovery “would deprive Schenker of due process.” Opp’n at 16.

5 The Court disagrees. Congress authorized citizens to vindicate their rights under the FCRA  
6 in either federal or state court. *See* 15 U.S.C. § 1681p. Moreover, “a lack of Article III standing  
7 does not necessarily preclude a plaintiff from vindicating a federal right in state court.” *Moore*,  
8 2019 WL 2172706, at \*2 (Citing *Collier v. SP Plus Corp.*, 889 F.3d 894, 897 (7th Cir. 2018); *Soto*  
9 *v. Great Am. LLC*, 2018 WL 2364916, at \*5 (N.D. Ill. May 24, 2018) (“[T]his means that a state  
10 court potentially has jurisdiction over a federal statutory violation in an instance where a federal  
11 court does not....”); *Miranda v. Magic Mountain LLC*, 2018 WL 571914, at \*3 (C.D. Cal. Jan. 25,  
12 2018) (“While it may strike some as nonsensical that a state court has jurisdiction to adjudicate a  
13 federal claim when a federal court does not, this is in fact a notable quirk of the United States  
14 federalist system.”); *Mocek v. Allsaints USA Ltd.*, 220 F. Supp. 3d 910, 912 (N.D. Ill. 2016)  
15 (“Moreover, even when they adjudicate federal claims, state courts are not restricted by Article III  
16 of the Constitution, although they may have their own standing requirements.”); *Zachary D.*  
17 *Clopton, Justiciability, Federalism, and the Administrative State*, 103 CORNELL L. REV. 1431  
18 (2018)). Thus, remanding this case to state Court does not deprive Defendant of due process because  
19 Defendant can present any defenses it might have – including Plaintiff’s standing under state law –  
20 in the state court proceedings.

21 Defendant’s authority on jurisdictional discovery are not persuasive. In *Laub v. U.S. Dep’t*  
22 *of Interior*, 342 F.3d 1080. (9th Cir. 2003), a case involving National Environmental Policy Act  
23 (NEPA), the Ninth Circuit ordered jurisdictional discovery because the discovery might have  
24 resulted in a different outcome as to *dismissal* of the action – not a remand. *Id.* at 1093. In *Dart*  
25 *Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547 (2014), the Supreme Court addressed  
26 a “single question” of whether notice of removal must include evidentiary support of the amount-  
27 in-controversy. *Id.* at 551. Here, the removal was not based on diversity jurisdiction and thus the  
28 amount-in-controversy is not at issue. In *Lang Van, Inc. v. Vng Corp.*, 669 F. App’x 479 (9th Cir.

1 2016), the Ninth Circuit remanded to district court for jurisdictional discovery where the district  
2 court had *dismissed* the case for lack of *personal* jurisdiction.

3 In sum, the Court finds that jurisdictional discovery is not warranted.

4 **E. Plaintiff's Choice of Venue**

5 In its opposition to Plaintiff's Motion, Defendant argues that this case has "no connection to  
6 Northern California." Opp'n at 6-7. Defendant has separately filed a motion to transfer this case to  
7 Virginia. ECF 27. First, Defendant's arguments regarding improper venue are irrelevant to the  
8 Motion to Remand and therefore the Court need to address them. Second, because the Court has  
9 decided that it lacks subject matter jurisdiction to hear this case, Defendant's Motion to Transfer  
10 Venue to the United States District Court for the District of Virginia at ECF 27 is TERMINATED  
11 as MOOT.

12 **IV. ORDER**

13 For the foregoing reasons, Plaintiff's Motion to Remand at ECF 24 is GRANTED.  
14 Defendant's Motion to Transfer Venue to the United States District Court for the District of Virginia  
15 at ECF 27 is TERMINATED as MOOT. The Clerk shall remand this action to the Superior Court  
16 of the State of California for Santa Clara County.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: May 12, 2020



21  
22 BETH LABSON FREEMAN  
United States District Judge