To Be Argued By:
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Court of Appeals

STATE OF NEW YORK

SYLVESTER GREGG,

Plaintiff-Appellant,

against

SN SERVICING CORPORATION,
SECURITY NATIONAL MASTER HOLDING COMPANY, LLC,

Defendants-Respondents.

BRIEF FOR PLAINTIFF-APPELLANT

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There is no pending litigation related to this case.

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PRELIMINARY STATEMENT

In both federal and state court, before any suit is heard, every plaintiff must demonstrate standing. But standing means something different depending on whether a case is filed in federal or state court. Federal courts are courts of limited jurisdiction, confined by Article III of the U.S. Constitution to resolving "Cases" or "Controversies." U.S. Const. art. III, § 2, cl. 1. One element of the case-or-controversy requirement is standing. And to establish standing, it is not enough for a litigant in federal court to allege a violation of a statutory obligation owed them; they must demonstrate they were "concretely harmed" beyond the statutory violation itself. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021).

Not so in New York. The state supreme court is a court of general jurisdiction, open to redressing both harms traditionally recognized at common law and, "if the legislature shall create new classes of actions and proceedings," those elevated by statute. N.Y. Const. art. VI, § 7(b). Because its courts are not confined by the federal court's case-or-controversy requirement, New York is under no constitutional compulsion to demand an injury in fact—and, as a prudential matter, only requires one when a litigant sues to enforce a public duty. It has never demanded a private litigant suing to redress a violation of their own statutory right demonstrate a "concrete harm" beyond the infringement of their legal rights. For that litigant, the violation is the harm; nothing more is required.

Here, Sylvester Gregg sued in New York state court to redress violations of his statutory rights. After receiving debt collection notices from SN Servicing Corp. for a debt that had been discharged in bankruptcy more than a decade before, Mr. Gregg filed suit against SN Servicing to enforce his private statutory right to be free from deceptive, misleading, and unfair debt-collection practices under both the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq*., and New York's General Business Law § 349. That is all New York law requires to satisfy standing.

The court below thought otherwise. Relying on both the U.S. Supreme Court's recent decision in *TransUnion* and this Court's line of precedent that emerged from *Society of Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761 (1991), the Second Department held that Gregg did not "possess statutory standing separate and distinct from common-law standing irrespective of his failure to allege an injury-in-fact." R-157 (S. Ct. Decision and Order). That was an error twice over: First, the court below imported federal constitutional standing requirements into New York state courts; second, it conflated the type of harm this Court had held is necessary to bring a claim for a public right with that required to bring a claim to enforce a private right. The result leaves victims of statutorily prohibited deceptive debt-collection practices, like Mr. Gregg, with no avenue for recourse, ignoring the legislative judgment that such misdeeds deserve redress. This Court should reverse, reaffirming that, in New York, consumers need assert nothing more than a violation of their own statutory right to bring suit. It should further reverse or vacate the trial court's cursory ruling that Mr. Gregg's consumer protection claims lacked merit.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this appeal because the Second Department's affirmation of the supreme court's order dismissing Mr. Gregg's complaint in its entirety constitutes a final order within the meaning of C.P.L.R. §§ 5602(a)(1)(ii) and 5611. This Court granted Mr. Gregg's motion for leave to appeal on May 28, 2026.

QUESTIONS PRESENTED FOR REVIEW

1. Does a plaintiff who sues for a violation of his own private statutory right have standing in New York state court?

   Answer: Yes.[1]

2. Did the trial court err in concluding that SN Servicing's letters were not deceptive and misleading under New York's General Business Law § 349 and the Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et seq.*?

[1] *See* Memo. in Supp. of Plaintiff-Appellant's Mot. for Leave to Appeal 10 (preserving issue); Plaintiff-Appellant's Br. 13-25 (same); Plaintiff-Appellant's Reply Br. 3-10 (same).

Answer: Yes.[2]

BACKGROUND

A. New York and federal consumer protection law prohibit deceptive and misleading debt collection.

Both Congress and the New York legislature have sought to protect consumers from abusive debt collection efforts. Congress enacted the Fair Debt Collection Practices Act ("FDCPA") to "eliminate abusive debt collection practices" in response to "abundant evidence" that "[a]busive debt collection practices contribute" both to economic harms, like "the number of personal bankruptcies," and intangible ones, like "marital instability," "the loss of jobs," and "invasions of individual privacy." 15 U.S.C. § 1692(a), (e). Indeed, Congress explained that the "[p]assage" of the FDCPA "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." 123 Cong. Rec. H10243 (daily ed. Apr. 4, 1977). To achieve its purpose, the statute prohibits debt collectors from using both "false, deceptive, or misleading representation[s]," 15 U.S.C. § 1692e, or "unfair or unconscionable means" to collect debt, 15 U.S.C. § 1692f. Debt collectors are strictly liable for FDCPA violations, for which consumers may sue for actual or

[2] *See* Memo. in Supp. of Plaintiff-Appellant's Mot. for Leave to Appeal 11 (preserving issue); Plaintiff-Appellant's Br. 25-35, 41-46 (same); Plaintiff-Appellant's Reply Br. 11-24 (same).

statutory damages, attorneys' fees, and costs. 15 U.S.C. § 1692k; *see Russell v. Equifax A.R.S.*, 74 F.3d 30, 33 (2d Cir. 1996) (explaining that the FDCPA "imposes strict liability" on debt collectors who violate the statute).

New York's General Business Law similarly bars debt collectors from using deceptive practices against consumers. N.Y. Gen. Bus. Law § 349(a) (McKinney 2014) (amended 2026). When it was first enacted, enforcement was left to the Attorney General alone, but that proved inadequate to effectuate the legislature's purpose. So, the legislature later amended the statute to provide a right of action for consumers, "thereby ensur[ing] more optimal protection of the public." *See* N.Y. Gen. Bus. Law § 349(h) (McKinney 2026); *City of New York v. Smokes-Spirits.Com, Inc.*, 12 N.Y.3d 616, 621 (2009). In keeping with the statute's purpose, consumers need not have suffered a pecuniary loss; the legislature ensured that consumers could recover for intangible harms by providing for actual *or* statutory damages. *See Oswego Laborers' Loc. 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20, 26 (1995).

New York law also places specific burdens on debt collectors with regard to the statute of limitations. Understanding that an indebted consumer usually does not know whether the limitations period has expired for bringing an action to collect a debt, New York law put the onus on debt collectors to make that determination, and if the limitations period has ended, to "provide the consumer with clear and conspicuous notice . . . that . . . the debt collector believes that the statute of limitations applicable to the debt may be expired." N.Y. Comp. Codes R. & Regs. tit. 23 § 1.3(b)(1) (McKinney 2026). The statute supplies model language for that notice—spelling out that any new payment by the consumer can restart the clock and any suit by the debt collector violates the FDCPA. N.Y. Comp. Codes R. & Regs. tit. 23 § 1.3(c) (McKinney 2026). Consumers in New York contacted regarding a time-barred debt thus have a legal right to specific information regarding their rights and the risk of inadvertent re-tolling of the statute of limitations.

B. SN Servicing seeks to collect on Mr. Gregg's long-discharged debt.

Mr. Gregg took out a mortgage loan of $89,800 to purchase his home in 2006. R-96 (Gregg Aff. ¶ 5). Like millions of other Americans in the wake of the 2008 financial crisis, he later had to file for bankruptcy, and, as part of that bankruptcy proceeding, in April 2010, the bankruptcy court issued an order discharging Mr. Gregg from any personal liability for the mortgage. R-119 (Discharge Order, Exh. C to Gregg Aff.). Mr. Gregg ceased making mortgage payments in August 2011. R-97 (Gregg Aff. ¶ 13).

Though his debt had been discharged for a decade, in May 2020, SN Servicing sent Mr. Gregg a series of three letters stating that SN Servicing "is a debt collector . . . attempting to collect a debt" and demanding that Mr. Gregg pay over $142,000 on his mortgage. R-124 (Exh. D to Gregg Aff.); R-129 (Exh. E to Gregg Aff.); R-

131 (Exh. F to Gregg Aff.). But SN Servicing never provided clear and conspicuous notice that the statute of limitations for collecting on Mr. Gregg's mortgage had run. In a letter dated May 13, 2020, SN Servicing included state-specific statute-of-limitations notices for seven different states, including New York's. But it said those notices applied only "[i]f your debt is past the statute of limitations," leaving it to Mr. Gregg to guess if the clock had actually run.[3] R-129-30 (Exh. E to Gregg Aff.) (stating: "****IMPORTANT STATE DISCLOSURES**** . . . **If your debt is past the statute of limitations, you are hereby notified of the following important consumer information**" followed by the New York model notice language, as well as notices from six other states).

Each of the three letters also contained a substantially similar:

> *NOTICE TO ANY CONSUMER IN BANKRUPTCY OR WHO HAS RECEIVED A DISCHARGE IN BANKRUPTCY:* Notwithstanding anything in this notice to contrary, if you have filed a bankruptcy petition and . . . you have received a discharge of your personal liability for the obligation identified in this letter, we may not and do not intend to pursue collection of that obligation from you personally. If these circumstances apply, this notice is not intended as a demand from you personally.

R-131 (Exh. F to Gregg Aff.) (emphasis in original); *see also* R-123 (Exh. D to Gregg Aff.); R-130 (Exh. E to Gregg Aff.). As with the faulty statute-of-limitations notice, in the May 13 letter, the bankruptcy notice was preceded by the statement

[3] The statute of limitations for collecting on a mortgage debt under New York law is six years. N.Y. C.P.L.R. § 213(4) (McKinney 2026).

that the notice only applied "[i]f your debt is past the statute of limitations," inaccurately implying that the bankruptcy notice is irrelevant unless the consumer has determined that their debt is past the statute of limitations. R-129 (Exh. E to Gregg Aff.).

C. Mr. Gregg brings claims against SN Servicing for violating state and federal consumer-protection law.

Mr. Gregg initially brought putative class claims against SN Servicing in federal district court, alleging that its debt-collection letters were deceptive, misleading, and unfair in violation of GBL § 349 and the FDCPA. *Gregg v. SN Servicing Corp.*, No. 21-cv-1640, 2023 WL 112800, at *1 (E.D.N.Y. Jan. 5, 2023). After an initial conference, SN Servicing moved to dismiss, and Mr. Gregg moved for partial summary judgment. *Id.* While those motions were pending, the U.S. Supreme Court decided *TransUnion LLC v. Ramirez*, which tightened the requirements for Article III standing in federal court. 594 U.S. 413, 426 (2021). Following supplemental briefing, the district court dismissed Mr. Gregg's case for lack of Article III standing pursuant to *TransUnion*. *Gregg*, 2023 WL 112800, at *2.

In April 2023, Mr. Gregg re-filed in the supreme court of New York, Queens County. R-8-26 (Compl.). Mr. Gregg alleges both that SN Servicing unlawfully put the onus on consumers to determine whether the statute of limitations to sue to collect on their debt had expired, depriving them of information about the status of their debts in violation of the Compilation of Codes, Rules, and Regulations of the

State of New York (NYCRR), Title 23 § 1.3(a)-(b), R-9, R-13-14 (Compl.), and that its bankruptcy notice was ineffective in light of the letters' overarching demand for payment, R-14-15 (Compl.). Both, he alleges, are deceptive and misleading in violation of FDCPA § 1692e and GBL § 349 and unfair in violation of FDCPA § 1692f.

Relying on *TransUnion*, the trial court dismissed Mr. Gregg's claims for lack of standing. R-3-5 (S. Ct. Order). It also concluded—ignoring much of the letters' language—that SN Servicing's conduct was not deceptive or misleading, and that Mr. Gregg had failed to state a claim under GBL § 349 because he "failed to declare any injury/damages." R-5 (S. Ct. Order). Without expressly addressing Mr. Gregg's unfairness claims under FDCPA § 1692f, the trial court concluded that "Plaintiff's remaining theories, contentions, and opposition arguments either are without merit, or need not be addressed in light of" the rest of the court's order. R-5 (S. Ct. Order).

On appeal, the Second Department affirmed. App. Div. Order at 1-3. Relying on the U.S. Supreme Court's decision in *TransUnion*, 594 U.S. 413, and this Court's line of precedent that emerged from *Society of Plastics Industry, Inc. v. County of Suffolk*, 77 N.Y.2d 761 (1991), the Second Department held that Gregg did not "possess statutory standing separate and distinct from common-law standing irrespective of his failure to allege an injury-in-fact." R-157 (S. Ct. Decision and Order); *Gregg v. SN Servicing Corp.*, 242 A.D.3d 962, 965, 244 N.Y.S.3d 204 (2d

Dept. 2025). It also did not reach the question of whether the trial court correctly concluded that Mr. Gregg also failed to state a claim under GBL § 349 and the FDCPA.

This Court then granted Mr. Gregg's motion for leave to appeal the Second Department's decision.

ARGUMENT

I. Mr. Gregg has standing to bring his statutory claims in New York court. The Second Department's holding that Mr. Gregg lacks standing because he failed to allege a federal injury-in-fact turns New York's standing doctrine on its head. It imports federal standing principles to New York state courts, ignoring the differences between the general jurisdiction set out in Section Seven of the New York Constitution and the limited jurisdiction constrained by Article III of the U.S. Constitution. It conflates the type of harm necessary to bring a claim for a public as opposed to a private right, ignoring what this Court has recently said about prudential standing and what New York courts have long held is sufficient for an individual to bring suit for an individual harm. And, perhaps most importantly for plaintiffs like Mr. Gregg, it leaves victims of deceptive debt collectors with no avenue for recourse, ignoring the legislative judgment that such misdeeds deserve redress. This Court should reaffirm that, in New York, an individual need assert nothing more than a violation of his right under law to bring suit.

II. The trial court's additional, cursory ruling that Mr. Gregg failed to sufficiently plead that SN Servicing's letters were deceptive or misleading should also be reversed or vacated. The trial court ignored the applicable consumer standards—the FDCPA "least sophisticated consumer" standard and the GBL § 349 "reasonable consumer" standard—and failed to explain why SN Servicing's conditional notices were not deceptive or misleading under either the FDCPA or GBL § 349. But, because SN Servicing's letters leave a consumer, at best, confused about whether they are obligated to pay, they are deceptive and misleading under well-established interpretations of those statutes.

Moreover, the trial court erred in conflating the federal injury-in-fact standard with the statutory requirements in GBL § 349. There is nothing in the text or history of the statute to indicate the legislature intended to set such a high bar for recovery—on the contrary, the amendment adding a private right of action was designed to substantially expand enforcement.

POINT I: Mr. Gregg Has Standing to Pursue His Claims in New York Court.

A. New York's state courts, unlike federal courts, are courts of general jurisdiction.

"Standing comes in two flavors: constitutional and prudential." *U.S. Bank N.A. v. Nelson*, 36 N.Y.3d 998, 1002 (N.Y. 2020) (Wilson, C.J., concurring). For federal courts, standing is a constitutional prerequisite to filing suit. In New York, standing is a "prudential" concern, a court-made response to "the growth of litigation to enforce public values, such as protection of the environment." *Soc'y of Plastics Indus. v. Cnty of Suffolk*, 77 N.Y.2d 761, 771, 773 (1991). When determining if there is standing to sue, federal courts always and state courts sometimes look to see if a litigant has suffered an "injury in fact." *See TransUnion*, 594 U.S. at 425 (discussing Article III's requirement that a plaintiff demonstrate an "injury in fact"); *Soc'y of Plastics*, 77 N.Y.2d at 772 (noting that "injury in fact" has become the "touchstone" of standing doctrine (internal citation omitted)). But what that requires in federal court is entirely different than in state court. And for good reason: Federal and state courts occupy distinct roles in our system of federalism.

Like all state courts, New York's are "courts of general jurisdiction—essentially open to all comers on all matters." *E. Cent. Ill. Pipe Trades Health & Welfare Fund v. Prather Plumbing & Heating, Inc.*, 3 F.4th 954, 957 (7th Cir. 2021). The opposite is true in federal courts—plaintiffs "carry the burden of establishing," at the door, that federal courts can invoke their limited jurisdiction. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006).

That federal and state courts approach jurisdiction from opposite ends is reflected in their respective constitutions. Article III of the U.S. Constitution "confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion*, 594 U.S. at 423. "One element of the case-or-controversy requirement" is "standing." *Raines v. Byrd*, 521 U.S. 811, 818 (1997).

"Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy" without which federal court's limited jurisdiction cannot be invoked. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (citation omitted). And, in federal court, "the irreducible constitutional minimum of standing contains three elements," *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted), one of which is that a plaintiff must show "that he suffered an injury in fact," *TransUnion*, 594 U.S. at 423.

TransUnion articulated a federal injury-in-fact requirement "remarkable in both its novelty and effects." 594 U.S. at 453-54 (Thomas, J., dissenting). The U.S. Supreme Court declared that a federal 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." 594 U.S. at 426 (internal citation and quotations omitted). In other words, "under Article III, an injury in law is not an injury in fact." *Id*. at 427. Something more is required: "Only those plaintiffs who have been *concretely harmed* by a defendant's statutory violation may sue that private defendant over that violation in federal court." *Id*.

But because the "New York Constitution contains no case or controversy requirement," "federal constitutional standing doctrine," including *TransUnion*, "is of little or no relevance." *Nelson*, 36 N.Y.3d at 1002-03 (Wilson, C.J., concurring). The "constraints of Article III" simply "do not apply to state courts," "even when they address issues of federal law." *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) (citation omitted). New York's Constitution confers on its trial courts "original, unlimited and unqualified jurisdiction." *Kagen v. Kagen*, 21 N.Y.2d 532, 537 (1968) (citation omitted); *see also* N.Y. Const. art. VI, § 7(a) (noting that "[t]he supreme court shall have general original jurisdiction in law and equity"). Under this grant of authority, the supreme court must exercise its general jurisdiction over both harms traditionally recognized at common law and, "if the legislature shall create new classes of actions and proceedings," those newly elevated by statute. N.Y. Const. art. VI, § 7(b). And because the supreme court's jurisdiction extends over every action the legislature creates, and the "breach of [a] duty," "whether such duty be imposed by voluntary contract or by statute," "gives" rise to a "cause of action," a plaintiff has standing when a duty owed them by statute is violated. *Willy v. Mulledy*, 78 N.Y. 310, 314 (1879). "Every violation" of a statutory "right imports some damage," *Whittmore v. Cutter*, 29 F. Cas. 1120, 1121 (C.C.D. Mass. 1813); in New York, nothing more is needed. *See Willy*, 78 N.Y. at 314 (noting that it is the general rule that "in every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon that same statute for the thing enacted for his advantage" (citation omitted)).

That state courts would fill in the jurisdictional gaps left by Article III was an intentional aspect of our system of federalism. "Article III's limitations on the subject-matter jurisdiction of federal courts reflect the assumption," held by the Founders, "that state courts of general jurisdiction would be available to hear federal claims." Adam Flaherty & Isaiah W. Ogren, *The New Standing Doctrine, Judicial Federalism, and the Problem of Forumless Claims*, 134 Yale L. J. 1008, 1027 (2025). Indeed, in *TransUnion*, the U.S. Supreme Court was clear that "Congress may enact legal prohibitions and obligations" and "create causes of action for plaintiffs to sue defendants who violate those legal prohibitions or obligations." 594 U.S. at 427. What it cannot do is authorize plaintiffs to bring non-concrete claims under those causes of action in federal court. *Id*. That leaves "state courts" with "exclusive jurisdiction" over claims declared insufficiently concrete by federal courts. *Id*. at 459 n.9 (Thomas, J., dissenting).

In short, "it is axiomatic that the federal courts are courts of limited jurisdiction, whereas state courts are courts of general jurisdiction, able to hear many cases that federal courts cannot hear." *Colt v. New Jersey Transit Corp.*, 43 N.Y.3d 463, 506 n.13 (2024) (Wilson, C.J., concurring).

B. New York's injury-in-fact requirement applies only when plaintiffs enforce public, not private, rights.

Because New York state courts are not limited by a strict case-or-controversy requirement as their federal counterparts are, whether a litigant has suffered an injury in fact—some additional, concrete harm—from a statutory violation is not a threshold issue in every case. Injury in fact, in New York courts, "comes into play" *only* "when parties aim to enforce public—as opposed to private—rights." *Nelson*, 36 N.Y.3d at 1003 (Wilson, C.J., concurring). This Court has never required a private litigant, suing to enforce a private obligation conferred by statute, to prove standing by demonstrating an injury in fact.

Though the doctrine of standing is of relatively recent vintage in New York, the idea that the scope of the judicial power turns on whether a litigant is asserting his own rights is an "ancient one." *Soc'y of Plastics*, 77 N.Y.2d at 772. New York's modern supreme court of general jurisdiction was created by its 1846 Constitution. N.Y. Const. of 1846, art. VI, § 3 ("There shall be a supreme court, having general jurisdiction in law and equity."). In that same Constitution, the framers reaffirmed their continued reliance on English common law as it existed at the time of the state's founding. *Id*. at art. I, § 17 (the "parts of the common law" that existed at New York's founding "shall be and continue the law of this state").

At the founding, "[c]ommon law courts imposed different limitations on a plaintiff's right to bring suit depending on the type of right the plaintiff sought to vindicate." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 344 (2016) (Thomas, J., concurring). When an individual suffered a violation of his private right—"one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege," *Tennessee Elec. Power Co. v. Tennessee Val. Authority*, 306 U.S. 118, 137 (1939)—that violation was the harm.

The cause of action was "not contingent on a plaintiff's allegation of damages beyond the violation of his private legal right." *Spokeo*, 578 U.S. at 344 (Thomas, J., concurring). That is why, for example, "when one man placed his foot on another's property, the property owner needed to show nothing more to establish a traditional case or controversy." *Id*.

But to bring a suit on his own behalf for a violation of a duty owed to the general public, such as "general compliance with regulatory law," Ann Woolhander & Caleb Nelson, *Does History Defeat Standing Doctrine?*, 102 Mich. L. Rev. 689, 693 (2004), a litigant often had to show something more, that the violation harmed them in particular, *Spokeo*, 578 U.S. at 345 (Thomas, J., concurring); *cf. Commonwealth of Massachusetts v. Mellon*, 262 U.S. 447, 487-88 (1923) (holding that a federal taxpayer lacked could not bring a case directly under the Tenth Amendment against the "administration of any statute" because this was "essentially a matter of public and not of individual concern" for which the litigant could not bring suit "without some direct injury suffered or threatened"). As this Court stated in 1858, a "party who, in common with his fellow-citizens, is menaced by [a violation of a public duty], must, in respect to his legal remedy, wait until his individual rights are invaded." *Doolittle v. Supervisors of Broome Cnty.*, 18 N.Y. 155, 159 (1858). But once individually harmed, that "special, individualized, damage had the effect of creating a private action for compensatory relief to an otherwise public-rights claim." *Spokeo*, 578 U.S. at 345 (Thomas, J., concurring). And "[t]his distinction mattered not only for traditional common-law rights, but also for newly created statutory ones." *TransUnion*, 594 U.S. at 447 (Thomas, J., dissenting) (collecting cases).

That said, "[s]tatutes providing for actions by a common informer who himself had no interest whatever in the controversy other than that given by statute," known as *qui tam* suits, "have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government." *Marvin v. Trout*, 199 U.S. 212, 225 (1905). English common law recognized several extraordinary writs that allowed "strangers" to enforce public rights even when they "lack[ed] a personal stake in the litigation." *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 853 S.E.2d 698, 707-09 (N.C. 2021) (collecting cases). New York followed suit, adopting one of the earliest such statutes in 1692 that gave private "informers" the right to punish pirates and privateers. Steven L. Winter, *The Metaphor of Standing and the Problem of Self-Governance*, 40 Stan. L. Rev. 1371, 1407 (1988). And, within the first two months of its first session, Congress passed its first *qui tam* act. Act of July 31, 1789, ch. 5, § 29, 1 Stat. 29.

As long as legislatures gave private litigants the right to bring cases on the government's behalf for public offenses, courts early on heard them. In New York, for example, the Supreme Court of Judicature in 1837 considered whether "any citizen of the state" could seek mandamus "to enforce the execution of the common law, or of an act of the legislature" on the public's behalf. *People ex rel. Case v. Collins*, 19 Wend. 56, 56 (N.Y. Sup. Ct. 1837). Jurisdiction, the court there held, was certain: "The power of this court to grant a mandamus, at the suit of the people to compel" government officials "to perform their duty, has often been exerted, and cannot be questioned." *Id*. at 65. This Court later upheld the principle that, in New York, state courts had jurisdiction to hear mandamus suits brought by an individual "as relator or representative of the people to redress a public wrong" even without "an individual right to the thing asked." *People ex rel. Stephens v. Halsey*, 37 N.Y. 344, 348 (1867). So too at the federal level: By 1875, there was a "decided preponderance of American authority in favor of the doctrine, that private persons may move for a *mandamus* to enforce a public duty" even without an "interest other than such as belonged to others." *Union Pac. R.R. v. Hall*, 91 U.S. 343, 354-55 (1875).

By the end of the nineteenth century, then, federal and state courts had made it clear that a plaintiff's want of a personal interest was no barrier to a suit to vindicate a public right when a legislature had authorized it. But "in response to a growing administrative state and the increasing use of litigation to 'enforce public, primarily constitutional[,] values.'" *Nelson*, 36 N.Y.3d at 1003 (Wilson, C.J., concurring) (quoting William A. Fletcher, *The Structure of Standing*, 98 Yale L.J.

221, 225 (1988)), this Court in the twentieth century also reaffirmed that an individual, suing on his own behalf, could not challenge government action "unless thereby [his] civil, property or personal rights" were "affected." *Schieffelin v. Komfort*, 212 N.Y. 520, 530 (N.Y. 1914). It recast the old individualized-harm requirement as the modern doctrine of standing, requiring that a litigant demonstrate an "injury in fact" to proceed. *Society of Plastics*, 77 N.Y.2d at 772 (quoting *Ass'n of Data Processing Serv. Orgs. v. Camp*, 397 U.S. 150, 152-153 (1970)). The point, this Court clarified, of "tying the in-fact injury asserted to the governmental act challenged" was to "circumscribe[] the universe of persons who may challenge administrative action." *Id*. 773. And, in subsequent cases, it has repeatedly affirmed that "standing" is a "prudential issue focused on the enforcement of public rights." *Nelson*, 36 N.Y.3d at 1005 (collecting cases) (Wilson, C.J. concurring).

Not so for suits involving private rights. When, for example, a plaintiff sues a defendant for violating a statutory obligation owed to the plaintiff, the violation itself *is* the harm. Whether the plaintiff demonstrates that his private right was actually violated, and therefore states a claim for relief, "goes to the merits" of a dispute and not its "justiciability." *Nelson*, 36 N.Y.3d at 1006 (Wilson, C.J., concurring) (quoting *Bond v. United States*, 564 U.S. 211, 218-19 (2011)). Take, for example, a claim for "[d]eceptive acts and practices" under GBL § 349. "[A]ny person who has been injured by reason of any deceptive act," can bring suit against collectors from using "[u]nfair, deceptive, or abusive acts or practices" against consumers. N.Y. Gen. Bus. Law § 349(h) (McKinney 2026). In *Oswego Laborers' Local 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20 (1995), this Court set out what a plaintiff must establish—that the challenged act was consumer-oriented, that it was materially misleading, and that the plaintiff was injured as a result—but it treated each of these as an element of the claim on the merits. *Id.* at 25-26. The Court did not ask if plaintiffs had suffered some additional injury in fact so as to establish standing under *Society of Plastics*. It insisted, in fact, that plaintiffs need not demonstrate "pecuniary" harm to state a claim. *Id*. at 26. Injury, in other words, was only at issue because the statutory language made it an element of the claim, not because it was a precondition to the court's jurisdiction.

In sum, in New York's courts of general jurisdiction, an injury in law confers standing for individuals vindicating individual rights. Calling this an injury-in-fact issue is a "misnomer," one that has "increasingly been misapplied in cases where private rather than public rights are at issue." *Nelson*, 36 N.Y.3d at 1000, 1005 (Wilson, C.J., concurring); *compare Soc'y of Plastics Indus. v. Cty. of Suffolk*, 77 N.Y.2d at 769 (holding even the "question of standing to challenge particular governmental action may, of course, be answered by the statute at issue, which may identify the class of persons entitled to seek review . . . ."); *Harkenrider v. Hochul*, 38 N.Y.3d 494, 508 (2002) ("Moreover, statutes may identify the class of persons entitled to challenge particular governmental action, relieving courts of the need to resolve the question under common-law principles."). That is where the court below went wrong.

C. Because Appellant seeks to enforce his own private rights under federal and state law, he has standing.

Applying these fundamental principles here, Mr. Gregg has standing to pursue his claims under state and federal law. In the run up to the 2008 financial crisis, Mr. Gregg, like millions of other Americans, took out a mortgage and later had to file for bankruptcy. Ten years later, he received a series of letters from SN Servicing seeking to collect on his discharged mortgage debt for which the statute of limitations had long run. After a federal court dismissed his case for lack of standing under *TransUnion*, he brought suit in New York's supreme court instead, alleging that SN Servicing's debt-collection notices were deceptive, misleading, and unfair under the FDCPA and GBL § 349. Congress and New York's legislature provided Mr. Gregg with statutory rights to be free of such practices, rights he alleges were violated. That is all New York requires for standing.

The Second Department below made three errors in holding otherwise. First, citing *TransUnion*, the court held that Gregg did not "possess statutory standing separate and distinct from common-law standing irrespective of his failure to allege an injury-in-fact." R-157 (S. Ct. Decision and Order). But *TransUnion*'s novel injury-in-fact requirement, rooted in what the *federal Constitution* says about limiting the scope of federal jurisdiction, simply has no relevance to New York's courts of general jurisdiction. What is relevant is what the New York Constitution requires: That when the legislature "create[s] new classes of actions and proceedings," the supreme court "shall have jurisdiction over" them. N.Y. Const. art. VI, § 7(b).

Second, relying on a line of cases dating back to *Society of Plastics*, the court below held that Gregg had not established that he suffered "actual harm or injury as a result of defendants' alleged deceptive conduct." R-157 (S. Ct. Decision and Order). But in each of the cases cited by the Second Department, this Court required a concrete, individualized harm, or an injury in fact, because the suit was brought by an individual challenging regulatory conduct. This Court has never required a private litigant bringing suit for a violation of their private right, statutory or otherwise, to demonstrate harm beyond violation of their legal rights. Instead, relying on a common-law tradition dating back before the Founding, this Court has, in the very context of a violation brought under GBL § 349, *see Oswego*, 85 N.Y.2d at 26, insisted that "*every* legal injury necessarily causes damage." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 286 (2021) (collecting cases at common law). Whether Gregg was "injured" by SN Servicing's deceptive practices, as required by the text of the statute, goes to the merits of his case, not its justiciability.

Finally, Gregg's claims under the FDCPA and GBL § 349 were already dismissed in federal court for lack of standing under *TransUnion*. By following suit, the Second Department left Gregg, and other consumers who receive such deceptive debt-collection notices, without recourse. This Court should reverse. Doing so would ensure that New York's courts continue to play their distinct role in our dual system of federalism of providing a general forum for federal and state claims barred from federal court. And it would continue to afford respect, as this Court has done since its earliest days, to the legislative judgment of what harms merit judicial review.

POINT II: Mr. Gregg Sufficiently Pled Violations of FDCPA § 1692e and GBL § 349.

Contrary to the trial court's holding, Mr. Gregg sufficiently pled that SN Servicing's letters are deceptive and misleading. As such, if this Court determines Mr. Gregg has standing to bring his claims, it should reverse or vacate the trial court's decision on the merits of his pleadings.

After first concluding that Mr. Gregg lacked standing to bring his claims at all, the trial court held, in just a portion of a sentence, that Mr. Gregg failed to sufficiently plead that SN Servicing's "alleged deceptive business acts or practices were materially deceptive or misleading." R-5 (S. Ct. Order). That cursory decision was wrong. It was also unsupported by any meaningful reasoning or close examination of the letters SN Servicing sent to Mr. Gregg. Further, again in a single sentence, the trial court appeared to conflate GBL § 349's injury element with

TransUnion's injury in fact—a ruling unsupported by caselaw and contrary to the text and purpose of the statute. For those reasons, the trial court's conclusion as to whether Mr. Gregg sufficiently pled claims under the consumer-protection statutes, an issue not reached by the Second Department, should be reversed or vacated. Mr. Gregg urges this Court to hold that he sufficiently pled violations of those statutes, but, at the least, this Court should remand to the Second Department to reach the issue.[4]

1. At the outset, the trial court entirely failed to discuss or apply the appropriate standards for determining whether a debt-collection letter is false or misleading. That alone is sufficient basis to reverse its conclusion. "In evaluating potential violations of the FDCPA, the court must use an objective standard based on whether the least sophisticated consumer would be deceived by the collection practice." *Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 236 (2d Cir. 1998) (citation modified). The "least sophisticated consumer" is a "naïve" and "credulous"

[4] Mr. Gregg also alleges that SN Servicing's debt-collection efforts were unfair or unconscionable in violation of FDCPA § 1692f, and the trial court did not expressly address those claims. Rather, the court summarily concluded that Mr. Gregg's remaining arguments—presumably those other than the arguments related to standing or the letters being deceptive and misleading—were "without merit" or "need not be addressed" in light of the court's other conclusions. R-5 (S. Ct. Order). Because the trial court's rejection of Mr. Gregg's § 1692f claims appears to hinge on its standing holding, if this Court were to find that Mr. Gregg has standing, the ruling on his § 1692f should be reversed even if this Court does not reverse the trial court's holding as to the § 1692e claims.

person who possesses a "rudimentary amount of information about the world and a willingness to read a collection notice with some care." *Altman v. J.C. Christensen & Assocs., Inc.*, 786 F.3d 191, 193-94 (2d Cir. 2015) (internal quotations omitted). "Under this standard, a collection notice can be misleading if it is 'open to more than one reasonable interpretation, at least one of which is inaccurate.'" *Avila v. Riexinger & Assocs., LLC*, 817 F.3d 72, 75 (2d Cir. 2016) (quoting *Clomon v. Jackson*, 988 F.2d 1314, 1319 (2d Cir. 1993)). "Thus, even if a debt collector accurately conveys the required information, a consumer may state a claim if she successfully alleges that the least sophisticated consumer would inaccurately interpret the message." *Carlin v. Davidson Fink LLP*, 852 F.3d 207, 216 (2d Cir. 2017). A claim could thus include practices that are threatening, contradictory, or vague. *See Russell v. Equifax A.R.S.*, 74 F.3d 30, 35 (2d Cir. 1996); *Pipiles v. Credit Bureau of Lockport, Inc.*, 886 F.2d 22, 25-26 (2d Cir. 1989). And a debt-collection letter may be deceptive if its contradictory or vague statements "would make the least sophisticated consumer uncertain as to her rights"—regardless of whether a letter's notices are otherwise in technical compliance. *Russell*, 74 F.3d at 35.

Under GBL § 349, "[d]eceptive practices are acts which are dishonest or misleading in a material respect." *Spagnola v. Chubb Corp.*, 574 F.3d 64, 74 (2d Cir. 2009) (citation modified); *Oswego Laborers' Local 214 Pension Fund*, 85 N.Y.2d at 26. Specifically, representations or omissions are prohibited if they are "likely to mislead a reasonable consumer acting reasonably under the circumstances." *Id*. And a plaintiff need not demonstrate justifiable reliance to recover under the statute. *Id.* At their core, both statutes are governed by objective standards and both prohibit misleading as well as false information.

The trial court did not discuss or apply either statute's standard to Mr. Gregg's claims, nor did it grapple with Mr. Gregg's arguments as to why SN Servicing's letters are deceptive and misleading. Here, the mortgage debt SN Servicing sought to collect from Mr. Gregg had long ago been discharged in bankruptcy and was well outside New York's six-year statute of limitations for mortgage-debt collection actions. R-15, R-96-97. Mr. Gregg alleges that SN Servicing's demands for payment are misleading in multiple respects. They are internally contradictory and confusing as to whether Mr. Gregg is obligated to pay SN Servicing at all. And, they fail to adequately inform him about his rights as a consumer facing collection of a time-barred debt.

First, SN Servicing's notice regarding the statute of limitations is confusing, deceptive, and misleading because it fails to convey to the consumer, as required by state law, whether it has determined that the consumer's debt is outside the statute of limitations. The trial court was wrong to hold that SN Servicing's notice complies with 23 NYCRR § 1.3—and therefore that SN Servicing's communications were not deceptive or misleading—because it parroted the statutory model language. The problem with SN Servicing's notice is that the import of the model language—that the debt collector believes the debt is outside the statute of limitations and the creditor may not sue to collect on the debt—is undermined because it is preceded by a conditional: "*If* your debt is past the statute of limitations, you are hereby notified of the following important consumer information[.]" R-129 (Exh. E to Gregg Aff.) (emphasis added). In other words, the conditional language puts the onus on the *consumer* to determine whether the statute of limitations has expired and the notice is applicable, while the language of the notice itself states the debt collector has determined the statute of limitations has passed. *Id.* SN Servicing's contradictory statements, which falsely purport to be made "in accordance with state regulations," could easily be misunderstood by reasonable consumers trying to ascertain whether their debt is time-barred. *See DeSantis v. Comput. Credit, Inc.*, 269 F.3d 159, 161 (2d Cir. 2001) ("Even if a debt collector conveys the required information, the collector nonetheless violates the [FDCPA] if it conveys that information in a confusing or contradictory fashion so as to cloud the required message with uncertainty."). Under the FDCPA, a "[debt collector] has the obligation . . . to convey [information] clearly," and SN Servicing's time-bar notice does not do so. *Jacobson v. Healthcare Fin. Servs.*, 516 F.3d 85, 90 (2d Cir. 2008). That makes the notice deceptive and misleading for purposes of the FDCPA and GBL § 349.

Second, SN Servicing's bankruptcy notice, included both in the May 13th time-bar notice and SN's subsequent May 15th demand for payment, suffers from a similar defect. In the time-bar notice, the bankruptcy notice appears after the conditional statement that the notice applies only "if your debt is past the statute of limitations"—reasonably but inaccurately implying that the bankruptcy notice is irrelevant unless the consumer has determined that their debt is past the statute of limitations. *See* R-129 (Exh. E to Gregg Aff.). Such a confusing and misleading missive creates exactly the kind of uncertainty among consumers the statutes were intended to prevent.

SN Servicing's May 15th demand letter fares no better: It makes a clear demand for payment and states expressly that "SN Servicing Corporation is attempting to collect debt," but then tries to undo that demand entirely if the consumer has received a discharge in bankruptcy. *See* R-131 (Exh. F to Gregg Aff.). In case after case, courts have reached the same conclusion: When a debt-collection demand "overshadows or contradicts other language informing a consumer of her rights, it violates [the FDCPA]." *Savino v. Comput. Credit, Inc.*, 164 F.3d 81, 85 (2d Cir. 1998) (internal quotations omitted) (holding that a demand for immediate payment overshadowed statements of rights).[5] For example, in *Gagnon v. JPMorgan*

[5] *See also Wertzberger v. Shapiro*, No. 19-CV-4272 (MKB), 2021 WL 327619, at *7 (E.D.N.Y. Jan. 31, 2021) ("A collection activity or communication "overshadows or contradicts the validation notice 'if it would make the least

Chase Bank, N.A., 563 B.R. 835 (N.D. Ill. 2017), the court found that a similar demand for payment "would lead an unsophisticated consumer to believe that [the debt collector] was attempting to collect debt from [Appellant] personally, even though those letters also contained the bankruptcy disclaimer language" because "the disclaimer did not necessarily detract from an interpretation that the escrow notice 'was an attempt to induce Appellant to make a payment." *Id.* at 846 (internal quotations omitted). That's because such contradictory language makes a consumer "uncertain as to her rights," which, in turn, renders it deceptive or misleading. *Savino,* 164 F.3d at 85 (quoting *Russell*, 74 F.3d at 35). Because the bankruptcy notice is overshadowed by the demand for payment, making it unclear whether

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sophisticated consumer uncertain as to her rights.); *Williams v. Rushmore Loan Mgmt. Servs.*, No. 3:15-cv-673 (RNC), 2018 WL 1582515, at *11 (D. Conn. Mar. 31, 2018) ("Here, although many of the communications included a bankruptcy disclaimer, . . . they contemplated a payment plan meant to avoid foreclosure. In other words, they could reasonably be interpreted as attempts to collect the debt despite the bankruptcy disclaimers."); *Prindle v. Carrington Mortg. Servs., LLC*, No. 3:13-cv-1349-J-34PDB, 2016 WL 4369424, at *15 (M.D. Fla. Aug. 16, 2016) (". . . the disclaimers on the back of the June 2013 Statement 'can be viewed as either inconsistent or at least confusing, particularly in light of the amount due on the first page, and can leave a consumer guessing as to whether or not they owe the debt.' Tr. of 9/25 Hearing at 27."); G*reen v. Specialized Loan Servicing, LLC*, No. 15-CV-513-JDP, 2016 WL 3963255, at *4 (W.D. Wis. July 21, 2016) ("[I]n this case, the bankruptcy disclosure in the Notice and Verification are outweighed by the other aspects of the communications that indicate an attempt to collect."); *Whalen v. Specialized Loan Servicing, LLC*, 155 F. Supp. 3d 905, 911 (W.D. Wis. 2016) (holding that a disclaimer "means little when at the same time defendant was telling Appellant that she risked foreclosure if she did not pay up").

payment is required, it too is deceptive and misleading under the federal and state statutes. At a minimum, then, Mr. Gregg has sufficiently pled that SN Servicing's notices are deceptive and misleading to survive a motion to dismiss, and the trial court's decision to the contrary should be reversed.

2. The trial court also erred in conflating GBL § 349(h)'s injury requirement with the federal injury-in-fact standing one. R-5 (S. Ct. Order). Under GBL § 349(h), "any person who has been injured by reason of any deceptive act or deceptive practice made unlawful by this section" has a private cause of action "to recover such person's actual damages or fifty dollars, whichever is greater." When the legislature amended the statute in 1980 to add this claim, it could not have intended § 349(h)'s injury requirement, which goes to the merits of the claim, to mean the same thing as *TransUnion*'s injury in fact, which goes to federal standing. *See City of New York v. Smokes-Spirits.Com, Inc.*, 12 N.Y.3d 616, 621 (2009) (discussing 1980 amendments). Indeed, contemporaneous scholarship explains that the injury requirement in GBL § 349 means an "invasion of a legally protected interest"—the traditional understanding of "injury" that both federal and state courts had at that time. Joseph Thomas Moldovan, *New York Creates A Private Right of Action to Combat Consumer Fraud: Caveat Venditor*, 48 Brook. L. Rev. 509, 551 (1982). Consistent with that understanding—and with the statutory damages available under the statute—this Court has made clear that pecuniary harm is not required to recover, and other courts interpreting GBL § 349 have explained that "[a]busive debt collection is 'a harm in itself'" sufficient to satisfy the statutory requirement. *McCrobie v. Palisades Acquisition XVI, LLC*, 359 F. Supp. 3d 239, 255-56 (W.D.N.Y. 2019) (quoting *IM v. Bayview Loan Servicing LLC*, No. 16-cv-634, 2018 WL 840088, at *6 (S.D.N.Y. Feb. 12, 2018); *see also Evans v. Select Portfolio Servicing, Inc.*, No. 18-CV-5985 (PKC) (SMG), 2020 WL 5848619, at *18 (E.D.N.Y. Sep. 30, 2020) (same).

Here, Mr. Gregg was "injured by reason" of SN Servicing's deceptive debt-collection practices. GBL § 349(h). Among other things, New York law requires a debt collector pursuing a time-barred or discharged debt to tell the consumer, specifically and unambiguously, that under New York law, the debt collector cannot compel a consumer to pay the debt. SN Servicing instead left Mr. Gregg to figure that out for himself. The failure to provide Mr. Gregg with accurate information as required by law was an injury sufficient to state a claim under GBL § 349.

In short, the trial court erred in dismissing Mr. Gregg's claims under the FDCPA and GBL § 349. Its decision should be reversed or vacated, and Mr. Gregg should be allowed to proceed with his claims.

CONCLUSION

For the foregoing reasons, the Second Department's decision should be reversed. This Court should hold that Mr. Gregg has standing and that he has stated a claim under the relevant statutes.

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Respectfully,

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CERTIFICATE OF COMPLIANCE

I hereby certify pursuant to 22 NYCRR § 500.13(c) that the foregoing brief was prepared on a computer. A proportionally spaced typeface was used, as follows:

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