Amicus Briefs

Below are some of the amicus briefs filed by NCLC and our partners on behalf of our low-income clients. In collaboration with national, state, and local organizations and attorney advocates, NCLC provides guidance on a wide range of cases impacting low- to middle-income consumers and their families.

Access to Justice  ||  Civil Rights  ||  Consumer Protection & the CFPB  ||  Debt Collection  ||  Housing  ||  Predatory Lending  ||  Regulatory Enforcement  ||  Student Loans  ||  TCPA

Access to Justice

2019

• China Agritech v. American Pipe & Construction Co. v. Utah

The Supreme Court held that “the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action.” The question presented in this appeal was whether the plaintiffs, whose individual claims were timely as a result of American Pipe tolling also may bring those claims in a subsequent class action on behalf of all class members who also had timely claims under the American Pipe rule. The 9th Circuit said they could. NCLC, in an amicus brief prepared by the Gupta Wessler law firm, joined AAJ in support of the plaintiff’s claim and seeking affirmation of the 9th Circuit’s ruling.

The Supreme Court ruled, however, that upon denial of class certification, a putative class member may not, in lieu of promptly joining an existing suit or promptly filing an individual action, commence a class action anew beyond the time allowed by the applicable statute of limitations.

• Franks v. Google

NCLC filed an amicus brief joined by U.S. PIRG. The issue presented was a challenge by a professional objector and industry-based class action opponent to the approval of a pure cy pres settlement distribution. The agreement negotiated between Google and the consumer class in the underlying breach of privacy case resulted in a more than reasonable damages figure. However, because of the enormous size of the class, it was economically infeasible to distribute the funds to the class members. Therefore, all of the damages were allocated to appropriate non-profit organizations. NCLC’s amicus brief focused on cy pres as a vital component for ensuring the enforceability of consumer laws and preserving their deterrent impact.

Based on a suggestion made by the Solicitor General in his submitted amicus brief, and discussed at the oral argument in the case, however, the Supreme Court ultimately decided it should not reach the merits of the appeal because there were substantial questions about whether any of the originally named plaintiffs had standing to sue in light of the standards established in Spokeo. Therefore, the Court never reached the cy pres issue but, rather, vacated the judgment of the Ninth Circuit and remanded the matter for further proceedings on the standing issue.

• Home Depot v. Jackson
NCLC submitted an amicus brief prepared by the Lieff Cabraser and Tousely Brain Stephens Law firms. The case raised a narrow, atypical issue: whether a third-party counter-defendant may remove a case to federal court under the Class Action Fairness Act ("CAFA"), notwithstanding that the federal court lacked subject matter jurisdiction over the original parties. The amicus brief provided the Court with representative examples of fact patterns under which a counter-defendant would attempt to remove a case under CAFA, particularly when the target of a state-court debt collection action counterclaims that the underlying debt is invalid under state law. Class action counterclaims arise in debt collection actions to dispute the merits of the debt itself. When one party avails itself of state court in an effort to collect another party's fraudulent debt, we argued that it is not unreasonable to expect the latter to answer the charge that its debt is unlawful in that same forum. We stressed that Home Depot not only sought to change the way removal jurisdiction has worked in a radical manner, but would do so in a way that would impact the ability of consumers to raise meritorious counterclaims in an efficient and fair manner.

The Supreme Court ultimately agreed. It held that a third-party counterclaim defendant may not remove a case to federal court — even if the counterclaim against the defendant is brought as a putative class action that otherwise satisfies the requirements for federal subject matter jurisdiction under CAFA. In context, the Court stated, the term “defendant,” as used in 28 U.S.C. § 1441(a), means the defendant sued in the original complaint. The majority held that Section 1441(a) refers to the removal of a “civil action” and that the “civil action” subject to removal is the action “defined by the plaintiff’s complaint,” not a counterclaim later filed in that action. The only “defendant” entitled to remove, the Court thus concluded, is the defendant named in the original complaint. The majority also determined that construing the term “defendant” to have different meanings for purposes of Section 1441 and CAFA would render the provisions “incoherent.”

2010

- **AT&T Mobility L.L.C. v. Concepcion**

NCLC joined a dozen other advocacy organizations in a brief by the Legal Aid Society of the District of Columbia and NACA arguing that the Federal Arbitration Act does not prevent state contract law from invalidating as unconscionable a contract providing that a consumer entering into the contract has waived her right to a class action against the phone company.

The Supreme Court on April 27, in a highly anticipated decision in Concepcion sharply limited consumer class actions. The court ruled that the Federal Arbitration Act (FAA) preempts the “Discover Bank” rule, finding unconscionable a contractual clause banning class relief. The Court limited FAA language that an arbitration agreement can be struck down “upon such grounds as exist at law or in equity for the revocation of any contract.” The Discover Bank rule prohibited bans on class-wide relief found in consumer adhesion contracts where damages are small and where the party with superior bargaining power deliberately cheats large numbers of consumers out of individually small sums of money. Since this rule applies to bans on class relief both in court and arbitration, it is grounds for “the revocation of any contract.” The majority still struck it down as inconsistent with the FAA. The majority found that it was fundamental to arbitration that it be streamlined and expeditious. The Discover Bank rule, by forcing class arbitration on an unwilling party, negates the FAA requirement that arbitration agreements be enforceable as written. Class arbitration is inconsistent with FAA arbitration because it greatly increases the risks to defendants, requires arbitrators to make class certification judgments, and is slower, more costly and more likely to generate procedural issues.

- **Wal-Mart Stores v. Dukes**
NCLC joined in an amicus brief with the Consumers Union of the United States, Inc. and Center for Constitutional Rights. Although the case primarily concerns issues of employer wage discrimination against female employees, its implications for other class actions is enormous. The brief argues that Wal-Mart Stores, Inc. (“Wal-Mart”) was mistaken that a defendant has the right to individual hearings to determine the monetary relief owed by its discriminatory policies. This position would gut the class-action mechanism along with its intended efficiencies. Wal-Mart disregards widely approved techniques used to calculate monetary relief in class suits generally, and in employment-discrimination class actions specifically. Second, the employees’ experts on discrimination satisfied the requirements for expert testimony.

The Supreme Court found (9 to 0) that classes certified under Fed. R. Civ.P. 23(b)(2) cannot include claims for individualized monetary relief—in this case, backpay—at least where the monetary relief is not incidental to injunctive or declaratory relief. Instead, the class should proceed under Rule 23(b)(3) that contains additional requirements. The case’s other ruling (5-4 with the usual five conservative justices in the majority) found insufficient commonality where the class alleged that thousands of Wal-Mart managers pursuant to a corporate culture had each discriminated against 1.5 million female employees. While the decision contains broad and troubling language about commonality, the unusually ambitious nature of the claims should limit the holding’s applicability regarding many consumer class actions.

- **Jackson v Rent A Center, Inc.**

NCLC and Consumer Action joined in an amicus urging the Supreme Court to affirm the 9th Circuit’s decision and hold that unconscionability is a question for a court, rather than the arbitrator, to decide because judicial review of unconscionability challenges to arbitration clauses is necessary to maintain the fairness and integrity of arbitration proceedings.

**Civil Rights**

2019

- **Bostock v. Clayton County**

NCLC, with 56 other civil rights organizations, joined an amicus brief prepared by The Lawyers’ Committee for Civil Rights Under Law and The Leadership Conference on Civil and Human Rights, filed in a trio of cases before the Supreme Court. These combined cases, which the Court will consider next term, examine whether employment discrimination on the basis of sexual orientation and gender identity are covered under Title VII of the Civil Rights Act of 1964. The brief argues that outlawing job discrimination based on LGBTQ status is fully consistent with Title VII’s long history of anti-discrimination achievements, as well as the statutory text that has made those successes possible. Furthermore, if Title VII does not bar LGBTQ discrimination, that will leave many LGBTQ people of color vulnerable to workplace discrimination – an outcome contrary to Congress’ paramount goal of ensuring equal access to employment opportunities for minorities. Since there are nearly two million LGBTQ people of color in America’s workforce, they are far more likely to suffer discrimination than their white counterparts. We argue, therefore, if Title VII is not construed according to its plain text so that it covers LGBTQ discrimination, such discrimination would go unchecked by federal law, and biased employers would have a convenient pretext for discriminating against LGBTQ persons of color. It is thus impossible to carve out LGBTQ discrimination from Title VII’s ambit without inflicting severe harm on countless employees of color.

- **State of New York v. U.S. Department of Commerce**
NCLC joined with over 150 civil rights, grassroots, advocacy, labor, legal services groups in an amicus drafted by the Leadership Conference on Civil and Human Rights, The Leadership Conference Education Fund, Muslim Advocates, National Coalition on Black Civic Participation, National Association of Latino Elected and Appointed Officials and Wilmer Cutler Pickering Hale and Dorr LLP.

The case involved a challenge by numerous states, local governments, and non-governmental organizations to the Secretary of Commerce’s announcement to add a citizenship question to the 2020 census over the strenuous objection of the Census Bureau. The stakes are high and long-lasting as the decennial census endeavors to count every person residing in the US, regardless of citizenship status. The count is used to apportion political power at all levels of government, allocate $800 billion annually in federal funds, and affect policy and investment decisions by government and non-government entities. The addition of a citizenship question threatened to undermine the integrity of the population count by depressing the count for those who fear the government will use the information against them, in particular noncitizens and immigrant communities of color. The amicus brief challenged the defendants’ premise that the citizenship question has been a part of the modern census, as the question hasn’t been a part of the census since 1950 (before the passage of the Voting Rights Act). The amicus also argued that the plaintiffs had standing because the citizenship question would lead to an undercounting which would result in a loss of federal funding. Finally, the amicus challenged the defendants’ assertion that the citizenship question was necessary to enforce the Voting Rights Act.

The Supreme Court upheld that the Enumeration clause allows for a citizenship question to be added to the Census, but stated that the decision to add this question is a reviewable action under the Administrative Procedure Act (APA). The Supreme Court also agreed that the explanation provided by the Commerce Department for the question was insufficient. The majority wrote that under the APA, it was expected that the Commerce Department would “offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public”, but that the reason provided by the Commerce Department appeared to have been contrived and was pretextual. The Supreme Court, therefore, affirmed the District Court’s injunction prohibiting the addition of the citizenship question until the Commerce Department is able to provide a satisfactory explanation for such an action.

- **Comcast v. NAAAOM**

NCLC joined 20 other national civil rights organizations in an amicus brief filed by the Lawyers Committee for Civil Rights Under Law with the United States Supreme Court. The case concerns the issue of whether a claim of race discrimination under 42 U.S.C. § 1981, a historic and critical civil rights law, fails in the absence of but-for causation. The brief seeks to detail how the application of a but-for analysis to claims brought under section 1981 could hinder access to the protections guaranteed by the statute and argues that the application of a but-for standard to establish claims of intentional race discrimination would be inconsistent with the statute’s text, history, and purpose.

2017

- **Bank of America v. City of Miami**

NCLC joined an amicus brief prepared by the Cohen Milstein law firm and also signed by the Lawyers Committee for Civil Rights, NFHA, ACLU, the Poverty & Race Research Action Council, the Leadership Conference on Civil Rights and the Impact Fund, supporting the standing of the City of Miami to assert discrimination claims against BOA and Wells Fargo under the FHA. The brief argued that standing under the FHA extends to municipalities not directly targeted by discrimination.
Noting that racially discriminatory lending practices are a major cause of this country’s residential segregation, we asserted that the FHA was designed to address the systemic problems associated with such segregation and permits cities to seek redress for injuries caused by discriminatory practices.

The Supreme Court ruled that the city’s claimed injuries fall within the zone of interests that the FHA arguably protects,” and, therefore, “the city is an ‘aggrieved person’ able to bring suit under the statute.” The Court sent the case back to the 11th Circuit Court of Appeals after it “declined to decide whether the city had asserted a direct enough connection between the banks’ actions and the harm it claimed.”

**Consumer Protection & the CFPB**

2020

- [Seila Law v. CFPB](#)

NCLC’s amicus brief was joined by the Center for Consumer Law and Education Center (a joint partnership between West Virginia University College of Law and Marshall University); the UC Berkeley Center for Consumer Law & Economic Justice; The Housing Clinic of the Jerome N. Frank Legal Services Organization at Yale Law School; Consumer Action; and Professor Craig Cowie (Asst. Professor of Law and Director of the Blewett Consumer Law & Protection Program at the University of Montana Alexander Blewett III School of Law). The brief supports the 9th Circuit’s ruling that the Dodd-Frank Act provision providing that the Director of the CFPB only can be terminated by the President for-cause is constitutional. Because the CFPB has chosen to join the appellant’s challenge to its own management structure, the Supreme Court has appointed former Solicitor General Paul Clement to defend the Court of Appeals’ decision. However, since that opinion found that the for-cause termination provision was valid the Court of Appeals did not reach the issue of remedy and, therefore, Mr. Clement has not addressed that issue either. However, the appellant, the CFPB (via the current Solicitor General), and a number of their supporting amici have argued for various outcomes in the event that the provision is found to be unconstitutional, ranging from severance of the offending clause to the repeal of Dodd-Franks. NCLC’s brief, therefore, argues that if a remedy nonetheless is necessary it only should entail the severance of the current “for-cause” termination provision (which, in essence, would result in an “at-will” termination status for the Director). Such a remedy would give effect to the express language of the Dodd-Frank Act’s severability clause and comport with the traditional doctrine of severability that provides that a court should nullify no more of a statute than is necessary. We also assert that undoing Congress’s sweeping restructuring of financial regulation by eliminating the CFPB instead of severing the for-cause removal provision would contravene Congress’s intent to establish a sole federal regulator charged with stabilizing the marketplace and protecting consumers.

2018

- [Ohio v. American Express Co.](#)

NCLC joined a brief also submitted on behalf of the U.S. Public Interest Research Group Education Fund, Inc., the Center for Responsible Lending, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and Public Citizen. The United States and several states sued Amex, claiming that its anti-steering provisions (i.e. merchants could not offer if the Amex card as a payment option unless they agreed not to steer customers towards other credit cards that provided better financial deals for the merchant) violate §1 of the Sherman Antitrust Act. The District Court agreed, finding that the credit-card market should be treated as two separate
markets—one for merchants and one for cardholders—and that Amex’s anti-steering provisions are anticompetitive because they result in higher merchant fees. The Second Circuit reversed. It determined that the credit-card market is one market, not two. The Court of Appeals concluded that Amex’s anti-steering provisions did not violate federal antitrust law. Our brief was prepared by U.S. PIRG and the firm of Cohen, Milstein, Sellers & Toll and argued that American Express’s merchant restraint suppresses price competition and thereby harm consumers. The Supreme Court affirmed the Second Circuit ruling.

**Debt Collection**

**2020**

- *Rotkiske v. Klemm*

The key question presented in this case is whether the discovery rule applies to toll the Fair Debt Collection Act’s (“FDCPA”) one-year statute of limitations. NCLC filed its own amicus brief in which we argued that debt collection, which affects millions of Americans each year, often is accompanied by deceptive or unfair practices, particularly by the third-party debt collectors that are subject to the FDCPA. We contended that the FDCPA was intended to curb such abuse, but that such a purpose would be impaired if consumers were not given a fair opportunity to pursue violations that go undetected when they occur. Therefore, we supported the proposition that the one-year statute of limitations should not be construed as an absolute bar to claims that are brought beyond a year from the date of the violation.

In an 8-1 opinion authored by Justice Thomas, the Supreme Court ruled that, absent the application of an equitable doctrine, the statute of limitations in the FDCPA begins to run on the date on which the alleged violation occurs, not the date on which the violation is discovered. The Court recognized, however, the existence of a fraud-based discovery rule, although it found that Rotkiske failed to properly make that fraud argument on appeal (contrary to the dissent filed by Justice Ginsberg). We are disappointed that the discovery rule clearly will not apply in FDCPA cases as we argued, but we were pleased that the Court did not change any of its jurisprudence regarding the availability of equitable tolling of the applicable statute of limitations under appropriate circumstances.

**2019**

- *Obduskey v. McCarthy & Holthus, LLP*

NCLC submitted an amicus brief in support of the consumer’s argument that non-judicial foreclosures are covered under the FDCPA, clarifying that mortgages are debts, the law firm in question was a debt collector, and the letter in question was in connection with the collection of a debt. The brief also analyzed the mechanics of Colorado foreclosure law and discussed the policy reasons for applying the FDCPA to non-judicial foreclosure.

The Supreme Court, however, affirmed the lower court ruling and held that a business engaged in no more than non-judicial foreclosure proceedings is not a “debt collector” under the FDCPA, except for the limited purpose of enforcing security interests.

**2017**

- *Henson v. Santander*

NCLC joined with NACA, Tzedek DC, The Legal Aid Society of the District of Columbia, and Civil
Justice in an amicus brief to address the question whether a company that regularly attempts to collect debts it purchased after the debts had fallen into default is a “debt collector” subject to the Fair Debt Collection Practices Act. Our amicus builds upon one that we filed in the 4th Circuit, which was authored by Dick Rubin and Joanne Faulkner. Dan Edelman is the lead author of this version of the brief. This amicus brief argues that the ruling below, holding that a bad-debt purchaser is not subject to the FDCPA because the debt buyer is not seeking to collect “for another” (1) runs afoul of the principles of statutory construction; (2) is inconsistent with congressional intent and legislative history of the FDCPA; (3) is contrary to decades of guidance and enforcement actions by the federal agency responsible for enforcing the FDCPA; and (4) would exempt the entire debt buying industry and grant debt buyers a significant competitive advantage over other debt collectors whose collection efforts must comply with the FDCPA, which would elevate form over substance and weave a technical loophole into the fabric of the FDCPA big enough to devour all of the protections Congress intended in enacting that legislation.

The Supreme Court decided, however, that Santander was not a debt collector under the FDCPA’s second definition of debt collector. The narrow opinion held that a debt buyer is not subject to the FDCPA as an entity regularly collecting debts “owed or due another,” leaving intact the alternative approach of showing that a debt buyer qualifies as a debt collector under the FDCPA because the “principal purpose” of its business is the collection of debts.

2016

- **Midland Funding v. Johnson**

NCLC joined Public Citizen, the Legal Aid Society of DC and NACA in an amicus brief prepared by Public Citizen in support of the respondent. The case presents two questions: (1) whether filing a proof of claim on a knowingly time-barred debt violates the FDCPA, and (2) whether any such claim under the FDCPA is impliedly repealed by the Bankruptcy Code. The Public Citizen amicus brief argues: (1) The Court should affirm that a knowing attempt to collect time-barred debt violates the FDCPA, and (2) The least sophisticated consumer standard for assessing whether collection conduct is deceptive or misleading under 15 U.S.C. 1692e should be applied to proof of claims in bankruptcy, not what a competent attorney or trustee would believe as argued by Midland Funding.

- **Sheriff v. Gillie**

NCLC coordinated efforts in this FDCPA case to file an amicus brief prepared by Dick Rubin and Deepak Gupta that also was joined by Public Good and NACA. The issues presented are (1) Whether special counsel – lawyers appointed by the Attorney General to undertake his duty to collect debts owed to the state – are state “officers” within the meaning of 15 U.S.C. § 1692a(6)(C); and (2) whether it is materially misleading under 15 U.S.C. § 1692e for special counsel to use Attorney General letterhead to convey that they are collecting debts owed to the State on behalf of the Attorney General.

Our amicus focuses on the second issue, including rebutting Petitioner’s argument that the Supreme Court should reject the least sophisticated consumer standard and instead adopt an “average consumer” standard.

2013

- **Marx v. General Revenue Corp**

The court held that when a debt collector wins a Fair Debt Collection Act case brought by a
consumer that the consumer may be made responsible for the debt collector’s court costs, amounting to $5443, in this case. Previously most courts had held that the debt collector could only recover its costs if it established that the consumer brought the suit in bad faith and for the purpose of harassment. The debt collector must establish that to obtain the payment of its attorney fees by the consumer.

2010

- **Jerman v. Carlisle**

Debt collectors’ legal mistake in the language of a Fair Debt Collection Practices Act notice did not amount to a bona fide error defense letting the debt collector off the hook.

- **United Student Aid Funds, Inc. v. Espinosa**

Argued that the Fair Debt Collection Practices Act’s bona fide error defense was not intended by Congress to apply to mistakes of law by debt collectors. Since the bankruptcy court’s error in confirming a Ch. 13 plan discharging a portion of the student loan debt without first finding undue hardship in an adversary proceeding was not jurisdictional, the judgment was not void. Because student loan creditor received actual notice of the filing, due process was met. The bankruptcy court’s legal error in confirming the debtor’s plan absent a finding of undue hardship in an adversary proceeding did not render its judgment void. Bankruptcy courts presented with a plan proposing the discharge of student loan debt without a determination of undue hardship in an adversary proceeding should not confirm such a plan, even if the creditor fails to object or to appear at the proceeding at all.

**Housing**

2015

- **Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.**

NCLC filed an amicus brief with our colleagues at the ACLU in an appeal in the United States Supreme Court in which the disparate impact cause of action under the Fair Housing Act is being challenged. The brief is substantially similar to the amicus we filed in the Mt. Holly case prior to that appeal being settled before a decision was handed down. It is one of approximately a dozen amicus briefs being coordinated by a coalition of civil rights organizations, including NCLC, to be filed in support of the appellee. The unique contribution of our amicus brief is that it focuses on disparate impact as a vital tool for remedying the discriminatory lending practices that fueled the subprime lending bubble and contributed to the current foreclosure crisis. The brief also argues that disparate impact analysis is a crucial tool for stopping housing discrimination against domestic and sexual violence victims. The Supreme Court subsequently upheld the decision of the 5th Circuit Court of Appeals and ruled that disparate-impact claims are cognizable under the Fair Housing Act.

- **Jesinoski v. Countrywide Home Loans, Inc.**

NCLC and amici opposed the respondents’ argument that TILA rescission must be exercised by filing a lawsuit. Rescission gives homeowners the right to cancel a loan transaction for three days after a loan closing. Consumers can exercise this right simply by giving notice to the creditor. The plain language of the statute unmistakably supports this position. Additionally, administrative interpretations from the Federal Reserve Board and judicial interpretations from the federal courts...
of appeal support rescission through notice. The Truth in Lending Act gives a homeowner the right to rescind a mortgage loan (other than a purchase-money mortgage) for up to three years if the lender failed to make certain key disclosures about the loan. Some courts had held that the homeowner had to file suit in court within this three year period. The Supreme Court issued a unanimous decision, agreeing with our amicus brief that the only thing the homeowner has to do within the three-year period is notify the creditor that he or she is exercising the right to rescind. The Supreme Court also made another very helpful comment, stating that the consumer could return the net amount owing on the loan after rather than before rescinding. The right to rescind under the Truth in Lending Act has been one of the most important tools to fight predatory mortgage lending. This decision will make a difference for many homeowners.

2013

- **Mount Holly v. Mount Holly Citizens in Action**

NCLC wrote the amicus brief with the ACLU and were joined on the brief by the National Coalition Against Domestic Violence; NCRC; the National Center on Homelessness and Poverty; the National Housing Law Project; Public Citizen and the National Women’s Law Center. The Mt. Holly case concerns the application of the Fair Housing Act disparate impact discrimination cause of action in a municipal zoning challenge by elderly African Americans and Hispanic Americans whose affordable residences were consider “blighted” by their town and threatened with demolition to build unaffordable housing. The case was settled by the parties and dismissed.

2012

- **First American v. Edwards**

NCLC joined AARP, Center For Responsible Lending, and the National Consumers League in a amicus brief prepared primarily by Public Citizen, Inc., arguing that permitting Real Estate Settlement Procedures Act plaintiffs to seek statutory damages without proving their monetary loss does not undermine the values of the constitutional requirement of “standing” – that a plaintiff has a real stake in the suit.

The Court dismissed its decision to grant certiorari in *Edwards v. First American. Corp.* as improvidently granted. In *Edwards* the Ninth Circuit held that a homebuyer had standing to assert a violation of RESPA’s ban on referral fees and kickbacks against a title insurer even though the homebuyer did not allege that she was overcharged as a result of the illegal conduct. The court based its decision on the text of RESPA and legislative history showing that Congress was concerned about more than just the cost of settlement services. Kickbacks could affect a service provider’s impartiality and willingness to give professional advice. In doing so the Ninth Circuit followed similar decisions from the Third and Sixth Circuits. No circuit courts have required economic injury to establish standing under this section of RESPA.

- **Magner v. Gallaher**

NCLC joined an amicus brief prepared by the Lawyers’ Committee for Civil Rights Under Law with other national civil rights organizations arguing that the Fair Housing Act properly is interpreted to authorize disparate impact claims and that the Eight Circuit applied the correct burden-shifting approach to litigating disparate impact claims consistent with current practices and HUD’s proposed regulation. NCLC also consulted with the ACLU (which cites NCLC’s Credit Discrimination manual and references NCLC’s sub-prime mortgage discrimination disparate impact cases brought under the Fair Housing Act) and the Department of Justice with regard to the preparation of the amicus
briefs they separately prepared.

The Fair Housing Act makes it unlawful “[t]o refuse to sell or rent after the making of a bona fide offer ... or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” 42 U.S.C. § 3604(a).

 Plaintiffs are owners of rental properties who argue that Petitioners, municipal officials, violated the Fair Housing Act by “aggressively” enforcing the City of Saint Paul’s housing code. According to Respondents, because a disproportionate number of renters are African-American, and Respondents rent to many African-Americans, requiring them to meet the housing code will increase their costs and decrease the number of units they make available to rent to African-American tenants. The district court granted summary judgment for the City, and the Eighth Circuit reversed holding that the lessors should be allowed to proceed to trial because they presented sufficient evidence of a “disparate impact” on African-Americans.

The Supreme Court granted cert on the following critical questions presented:

1. Are disparate impact claims cognizable under the Fair Housing Act?
2. If such claims are cognizable, should they be analyzed under the burden-shifting approach, under the balancing test, under a hybrid approach, or by some other test?

Predatory Lending

2010

• Midwest Title Loans v. Mills

NCLC joined AARP, Consumer Federation Of America, Indiana Legal Services, Inc., and The Sargent Shriver National Center On Poverty Law in an amicus brief primarily prepared by Public Citizen and the Center For Responsible Lending in support of the Indiana Attorney General’s certiorari petition to the U.S. Supreme Court. Indiana, which regulates auto-title lending, sought to apply its law to title loans made by Illinois lenders to Indiana residents when the loans were advertised in Indiana and the lenders registered liens in Indiana and repossessed cars in Indiana– but the loan contracts themselves were signed over the border in Illinois. A lender brought a commerce clause challenge and was successful arguing that the Indiana law unlawfully interfered with interstate commerce: “The contract was, in short, made and executed in Illinois, and that is enough to show that the territorial-application provision violates the commerce clause.”

Cert denied leaving intact the 7th Circuit decision that the Indiana law regulating car loans between Indiana consumers and Illinois car dealers unlawfully interfered with interstate commerce.

2008

• Commonwealth of Massachusetts v. Fremont Investment & Loan, and Fremont General Corporation

NCLC joined AARP, Center for Responsible Lending, National Association of Consumer Advocates, and National Association of Consumer Bankruptcy Attorneys in an amicus brief vigorously disagreeing with Fremont’s claim that the Superior Court’s injunction “is flawed as a matter of public policy.” Fremont’s lending practices exemplified the “immoral, unethical, oppressive, or unscrupulous” conduct prohibited as unfair by Chapter 93A. Milliken & Co. v. Duro Textiles, LLC, 451 Mass. 547, 563 (2008).
The promise of subprime mortgage lending is simple: allowing persons without traditional access to credit the opportunity to become homeowners and build long-term wealth. That promise, however, is fulfilled only when the subprime mortgage is backed by solid underwriting and includes fair terms that the borrower will be able to meet over the long-term. Unfortunately, some subprime lenders disregarded the underwriting process and the fairness of loan terms in focusing on short-term profits that could be gained by catering to Wall Street’s insatiable appetite for subprime loans. Fremont singularly concentrated on the profits to be made by selling more and more loans to Wall Street.

**Regulatory Enforcement**

2020

- **Liu v. SEC**

NCLC joined an amicus brief with Better Markets and CRL. The issue presented in Liu is whether the SEC has the ability to order disgorgement as a remedy in its cases under the explicit equitable authority granted by its enabling statute. The certified the question whether, and to what extent, the SEC may seek “disgorgement” in the first instance through its power to award “equitable relief” under 15 U. S. C. §78u(d)(5), a power that historically excludes punitive sanctions. The appellant’s argument, rejected by both the District Court and the 9th Circuit Court of Appeals, is that disgorgement is an unauthorized penalty rather than an equitable remedy. Our amicus brief supports the position that disgorgement is, in fact, an equitable remedy which falls well within the broad express powers granted to the agency by Congress. But it goes further in arguing that a contrary ruling would call into question similar remedies available to other agencies through virtually identical grants of equitable authority and jeopardize their enforcement efforts by eliminating critical options for effective relief. Without raising the issue directly in the amicus brief, we primarily are concerned that a bad opinion affecting our ability to exercise private rights of action under the ECOA, FHA and ERISA, among other consumer protection statutes, where NCLC often relies upon disgorgement as a viable remedy and a necessary component for successfully certifying a class. The Supreme Court held that a disgorgement award that does not exceed a wrongdoer’s net profits and is awarded for victims is equitable relief permissible under §78u(d)(5).

2012

- **National Meat Ass’n, v. Harris**

NCLC joined in an amicus brief with Public Citizen, Center for Responsible Lending, AARP, Public Health Law Center and Consumer Federation of America in a case about whether the Federal Meat Inspection Act expressly nullifies or preempts a particular California law. The amicus brief argues there is a presumption against federal laws preempting state laws. Although the main brief did not challenge the presumption, the Chamber of Commerce’s amicus brief did challenge it. The Supreme Court held that the California statute directly conflicted with the federal statute and was preempted without having to address the presumption against preemption.

**Student Loans**

2020

- **New York Legal Assistance Group v. Devos and U.S. Department of Education**
Based on our extensive experience advocating for debt relief on behalf of low-income students harmed by abusive schools and consulting with legal aid attorneys across the country who represent student borrowers, amicus writes to explain how the Department of Education’s 2019 Rules arbitrarily and capriciously ignored congressional intent and its own prior justification for heightened student protections. Further, it ignored the experience of the students Congress intended the Higher Education Act to help. Legal aid organizations told the Department about the ways in which schools deceive borrowers and the struggles borrowers face in getting relief. Instead of reducing burdens for borrowers and increasing school oversight, the 2019 Rules not only rescind virtually all of the student protections added by the 2016 Rules, they also give predatory schools a free pass to lie and cheat students, while saddling them with debt they will never be able to repay.

TCPA

2020

• **Barr v. American Association of Political Consultants**

The National Consumer Law Center, the Consumer Federation of America, and Verizon filed a joint amicus brief in a case in which a group of robocallers is challenging the constitutionality of an exemption provision of the Telephone Consumer Protection Act (TCPA). The amicus brief does not support either party in the appeal. Nor does it take any position on the validity of the specific TCPA exemption at issue in the case. Rather the amici argue that the TCPA plays an integral role in protecting the country’s communications customers as well as the communications system from being deluged by automated, unsolicited calls to mobile phones. The purpose of the statute represents a compelling interest sufficient to justify any narrow restrictions on speech inherent in protecting consumers and the communications network from such calls. Therefore, minimal exceptions to the TCPA’s general protections should not in any way justify a ruling from the Court that would undermine Congress’ ability to adopt the TCPA’s general prohibition on non-consented-to calls to cellular phones.

2018

• **Marks v. Crunch San Diego**

The National Consumer Law Center and the National Association of Consumer Advocates (NACA) filed a joint amicus brief as consumer protection organizations that work to protect consumers from the scourge of unwanted robocalls. The brief argues the Federal Communication Commission’s (FCC) pre-2015 orders are still in effect and are binding on Courts. The effect of ACA International v. FCC, 885 F.3d 687 (D.C. Cir. 2018), on three pre-2015 FCC orders interpreting the definition of automated telephone dialing systems (ATDS) under the TCPA, 47 U.S.C. § 227(a)(1), is critical to this appeal but has not received thorough analysis in the other briefs. All three orders state, among other things, that a system that dials numbers from a list is an ATDS.

2016

• **ACA International (Cavalry Portfolio Services) v. FCC**

The National Consumer Law Center, the National Association of Consumer Advocates, Consumers Union, AARP, Consumer Federation of America, and MFY Legal Services are each non-profit filed a joint amicus brief, drawing on extensive experience in consumer protection legal issues, including the financial impact of onerous policies and practices affecting consumers, and specifically, the burdens and intrusions of increasingly rampant automatically dialed “robocalls” and texts to cell
phones. The amicus brief raised the following issues: the distressing—and sometimes financially perilous—impacts on consumers subjected to multiple unwanted and unconsented-to robocalls to their cell phones. Amici support the FCC’s 2015 Order as an entirely legal and justified interpretation of the TCPA, and appropriate safeguarding of consumers’ legal right to decide whose autodialed and prerecorded calls and texts to their cell phones they will receive.

2011

- **Mims v. Arrow Financial Services, LLC**

NCLC and the National Association of Consumer Advocates (NACA) urged the Supreme Court to review a lower court decision denying a consumer the right to file their federal Telephone Consumer Protection Act (TCPA) claim in a federal court by finding that Congress limited TCPA claims to state courts. On June 27, 2011, the United States Supreme Court granted the petition for review. Oral argument for petitioners is scheduled for November 28, 2011.

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**Obduskey v. McCarthy & Holthus L.L.P.**

On March 20, 2019, the Supreme Court’s unanimous decision in **Obduskey v. McCarthy & Holthus L.L.P.** examined liability for violations of the Fair Debt Collection Practices Act (FDCPA) that are committed in non-judicial foreclosures.

This webpage provides resources to consumer attorneys litigating FDCPA cases arising from foreclosures. This webpage will be updated as more materials become available. Please email akuehnhoff@nclc.org with any submissions of relevant materials.

**Articles Discussing Case Development**

- **Viable FDCPA Claims Arising from Foreclosures After March 20 Supreme Court Decision** by NCLC attorneys Geoff Walsh and April Kuehnhoff, March 26, 2019

**Sample Obduskey Briefing**

- **Amodio v. Ocwen Loan Servicing LLC, et al.** (M.D. Tenn.)
  - Memorandum in Opposition to Summary Judgment
  - Memorandum and Order Denying Summary Judgment (5/7/2019)

- **Eastman v NPL Capital LLC, No. 1:17-cv-03074** (D. Colo.)
  - Second Amended Complaint
  - Motion to Dismiss Complaint
  - Response to Motion to Dismiss Complaint
  - Order Denying Motion to Dismiss Complaint (4/15/2019)

- **Smith v. Bank of New York Mellon, No. 2:19-cv-00538** (W.D. Wash.)
  - Response to Motion to Dismiss
Additional Resources

- National Association of Consumer Advocates (NACA) webinar: The Scope of the FDCPA: Implications of the Obduskey Decision, June 26, 2019. Note: Non-members of NACA must be vetted prior to purchasing. Please e-mail rebecca@consumeradvocates.org
- Obduskey v. McCarthy & Holthus L.L.P., Supreme Court Decision, March 20, 2019

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**Spokeo, Inc. v. Robins**

On May 16, 2016, the United States Supreme Court issued its decision in the case of Spokeo v. Robins, establishing important parameters for Article III federal jurisdiction in statutory damages litigation. Eleven days later, on May 27, 2016, with the generous assistance of our supporters, NCLC was able to launch a new webpage for consumer advocates and practitioners dedicated to critical analyses of the Spokeo decision and providing access to helpful briefs and model language, relevant court decisions and other useful practice aids. Since that time, we are to proud to have been able to post over 350 separate documents on the webpage which have provided valuable guidance and information regarding the quickly developing law and practice under Spokeo. This service was considered to be vital because of the large number of cases stayed in the federal District Courts and Courts of Appeal pending the Spokeo outcome. Once the Spokeo opinion was issued there was a flood of new arguments, hearings and appeals that helped to define the application of the Supreme Court’s ruling. Providing quick and easy access to the new decisions broken down by the consumer statutes to which they applied helped to inform and educate the consumer advocacy community.

Now, however, there is a wealth of newly published opinions applying Spokeo that generally are indexed and available through traditional research tools and services. Therefore, effective January 1, 2017, NCLC will no longer be posting published Spokeo decisions but, rather, will focus its efforts on Spokeo-related amicus briefs, litigation advice and assistance and the coordination of litigation arguments and strategies.

Spokeo opinions issued before that date still will be available on the NCLC website. In addition, unpublished opinions issued after that date, as well as new briefs and model language, will be posted under a new materials section of the webpage. Advocates are encouraged to continue to submit such materials to NCLC at spokeo-upload@nclc.org. Finally, NCLC consumer manuals and digital library will be kept up to date and current on significant Spokeo developments, decisions and analyses.

We appreciate the wonderful support and feedback NCLC has received for its Spokeo webpage and look forward to continuing to provide useful resources related to the Spokeo decision for the benefit of the consumer advocacy community.

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**NCLC’s Analysis** | **General Spokeo Analysis** | **Briefs and Model Language** | **Relevant Court Decisions** | **Other Practice Aids** | **Additional Resources**

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**Robins v. Spokeo, Inc., Case No. 11-56843 (9th Cir.):**

- Plaintiff-Appellant Robins filed a supplemental brief in response to Spokeo’s January 3rd submission on January 7th, 2017
- Defendant-Appellee Spokeo filed a supplemental brief on January 3rd, 2017, calling the 9th Cir. Court of Appeals’ attention to two new cases decided since oral argument (Meyers v.
Plaintiff-Appellant Robins filed a supplemental brief in response to Spokeo’s submittal that the pertinent issue in this case is whether Robins suffered a “real-world” harm. Plaintiff-Appellant instead explains that because Spokeo concedes that the violation of a statutory right can be concrete without any further showing, the issue is whether Section 1681e(b) protects a concrete interest. Robins argues that it does.

Defendant-Appellee Spokeo filed a supplemental brief arguing that Congress expressed no judgment as to whether the publication of false information in a consumer report automatically constitutes an injury-in-fact, and that Section 1681e(b) does not therefore protect a concrete interest.

Upon remand to the U.S. Court of Appeals for the Ninth Circuit, Plaintiff-Appellant, Thomas Robins, filed a supplemental brief in response to the Court’s request for briefing on whether the particular procedural violations of the Fair Credit Reporting Act alleged by Robins entail a degree of risk sufficient to meet the concreteness requirement for Article III standing.

Defendant-Appellee, Spokeo Inc., also submitted a supplemental brief, arguing that neither the statutory violations alleged nor the factual allegations of the complaint demonstrate that Robins suffered the required concrete harm or faced a certainly impending risk of harm.

The CFPB has filed an unopposed motion for leave to file a brief as amicus curiae in Robins v. Spokeo, Inc. The CFPB writes in support of Plaintiff-Appellant, arguing that Spokeo’s alleged dissemination of an inaccurate consumer report about Robins is a concrete injury under Article III.

Experian has filed an unopposed motion for leave to file a brief as amicus curiae in Robins v. Spokeo, Inc.. In its brief, Experian argues that Plaintiff alleges a broad “type” of inaccuracy that cannot without more constitute a concrete harm sufficient to satisfy Article III.

Statute-Specific Spokeo Analyses Excerpted from Updated National Consumer Law Center (NCLC) Legal Treatises

Relevant Spokeo analyses are available below, along with links to the treatises from which they have been extracted.

- **Class Actions** Spokeo analysis from Consumer Class Actions (760 pp.; in print and online)
  Ch. 10.3.3: Typicality—Rule 23(a)(3)  [PDF] || [MS Word]

- **Fair Credit Reporting Act** Spokeo analysis from Fair Credit Reporting (1136 pp. in two vol.; online update)
  Ch. 11.2.1.3.9a  [PDF] || [MS Word]

- **Fair Debt Collection Practices Act** Spokeo analysis from Fair Debt Collection (1416 pp. in two vol.; online update)
  Ch. 6.11a: Article III Constitutional Standing Under Spokeo As Applied to the FDCPA  [PDF] || [MS Word]

- **Foreclosure**
  Ch. 10.4.1.2A Standing  [PDF] || [MS Word]

- **Mortgage Lending**
  Ch. 7.4.5  [PDF] || [MS Word]

- **Real Estate Settlement Procedures Act (mortgage servicing provisions)**
  Ch. 3.2.10.7: Spokeo analysis from Foreclosures and Mortgage Servicing  [PDF] || [MS Word]

- **Truth in Lending** Spokeo analysis from Truth in Lending (1650 pp. in two vol.; online update)
NCLC’s full treatises contain additional information concerning litigation issues under these federal statutes. NCLC’s 20 consumer law treatises are the most important tool in a consumer lawyer’s arsenal. For over 30 years, the treatises have helped new and experienced attorneys around the country win cases involving debt collection, mortgages, other forms of consumer credit, credit reporting, class actions, vehicle sales, and more. Written by legal experts, the treatises are comprehensive and practical.

The treatises are available in print and online. The online versions include additional pleadings and primary source material, and feature frequent updates, full text search, live links, and the ability to copy/paste excerpts. Subscriptions are available as print and online or online-only, and to individual titles or to the complete 20 treatise set. Visit: www.nclc.org/bookstore.

General Spokeo Analyses

- The Supreme Court’s Spokeo Decision: Less Than Meets the Eye by NCLC attorney Charles Delbaum, May 23, 2016.
- In-depth overall analysis of Spokeo’s requirements prepared by Gupta-Wessler PLLC, May 2016. NACA members can access the analysis directly at http://www.consumeradvocates.org/spokeo-resources. Others can seek permission to download the analysis from the Gupta Wessler Law firm through their website.

Other Practice Aids

Sample motions, model damage allegations for pleadings, and other practice materials are available below. Relevant materials may be submitted to NCLC’s Director of Litigation Stuart Rossman at spokeo-upload@nclc.org. Please submit a Word version, and, if the document has been filed with the court, a PDF version with the date stamp. Note: NCLC has neither proofread nor edited submitted materials.

- Storm v. Paytime, Inc. NACA Motion for Leave to File an Out of Time Spokeo Amicus Brief-3rd Circuit Court of Appeals
- Winehouse v. GC Services LP, FDCPA Class Action Complaint with Spokeo allegations filed in E.D.N.Y.
- Model TCPA Injury Allegations PDF || MS Word
- Perrill v. Equifax Amended FCRA Complaint with Spokeo Allegations (W.D. TX)

Additional Resources

- Spokeo, Inc. v. Robins Supreme Court Decision, May 16, 2016.
- National Association of Consumer Advocates (NACA) webinar: What does the Spokeo Decision Mean for Consumer Lawyers, May 18, 2016. Cost: $35 (NACA member); $90 (Non-member) Note: Non-members of NACA must be vetted prior to purchasing. Please e-mail rebecca@consumeradvocates.org.
- Still Standing After Spokeo. Stuart Rossman, Trial Magazine article, Feb. 2017

NCLC thanks members of the National Association of Consumer Advocates, the National Association of Consumer Bankruptcy Attorneys, and our many others for their generous support for this web
content. Additional donations are welcome. Please contact NCLC Director of Litigation Stuart Rossman (srossman@nclc.org).

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

**Spokeo, Inc. v. Robins Relevant Court Decisions**

**Fair Credit Reporting Act** || **Fair Debt Collection Practices Act**  
**Telephone Consumer Protection Act** || **Other**

**Fair Credit Reporting Act**

  Memorandum opinion granting three Defendants’ motions to dismiss in a case alleging violations of the Maryland Consumer Debt Collection Act, § 14-202, the Maryland Consumer Protection Act, § 13-301, the FDCPA, 15 U.S.C. § 1692e, and the FCRA, 15 U.S.C. § 1681 et seq. The court grants with prejudice GMU’s motion to dismiss for lack of jurisdiction, and grants without prejudice the motions to dismiss filed by Experian and Trans Union. The court notes that it is “unable to determine whether Defendants’ failure to give Alston formal notice of their reinvestigation results, which were clearly favorable to Alston, created a sufficient injury to confer standing.”

  Opinion granting a motion to dismiss in a case alleging violation of the FCRA, 15 U.S.C. § 1681. The court finds that the Plaintiff has not alleged that he suffered the kind of concrete and particularized harm necessary to confer standing on him to maintain this action.

  Memorandum opinion denying Defendant’s motion to dismiss a case brought under the FCRA, 15 U.S.C. § 1681b(f). The court finds that Plaintiff has alleged more than a bare procedural violation and has satisfied Article III standing requirements.

  Memorandum opinion denying Defendant’s motion to dismiss a case alleging violation of the FCRA, 15 U.S.C. §1681b(f). The Court finds that the FCRA “was meant to protect the interest of privacy” and that Plaintiff suffered a concrete harm.

  Memorandum opinion denying Defendant’s motion to dismiss for lack of standing in a case brought under the FCRA, 15 U.S.C. § 1681g(a)(2). The court concludes that Plaintiff satisfies the requirements for Article III standing.
• **Collier v. SP Plus Corp.,** Case No. 3:15-cv-00180 (S.D. Ohio July 14, 2016)
In this case, Plaintiff requested voluntary dismissal without prejudice after Defendant filed a motion to dismiss for alleged lack of standing. The court proceeded to dismiss Plaintiffs’ complaint without prejudice for failure to establish jurisdiction and to state a claim. The further court found that, according to Spokeo, Plaintiffs had not suffered an injury as a result of the alleged statutory violation of FACTA, 15 U.S.C. §§ 1681 et seq.


• **Disalvo v. Intellincorp Records, Inc.,** Case No. 1:16-cv-1697, 2016 WL 5405258 (N.D. Ohio Sept. 27, 2016) ** opinión and order dencribing Defendant’s motion to dismiss** and remanding a case alleging violation of the FCRA, 15 U.S.C. § 1681b(b)(1). Plaintiffs in this case did not argue that they suffered a concrete harm required for Article III standing under Spokeo, and instead argued that upon a determination that the court lacks jurisdiction, it must remand to state court. The court did so here.


• **Fisher v. Enterprise Holdings, Inc.,** Case No. 4:15-cv-00372 AGF, 2016 WL 4665899 (E.D. Mo. Sept. 7, 2016) **Memorandum and order granting Defendant’s motion for judgment on the pleadings in a case alleging violations of the FCRA,** 15 U.S.C. §§ 1681, et seq. The Court finds that Plaintiff did not allege a concrete injury, and notes that “not all inaccuracies cause harm or present any material risk of harm.” The Court cites an incorrect zip code as an example.

• **Flaum v. Doctor’s Associates, Inc.,** Case No. 16-61198, (S.D. Fla. Oct. 27, 2016) **Order denying Defendant’s motion to certify order for immediate appeal,** The case concerns a violation of FACTA, 15 U.S.C. § 1681(c)(g). Defendant moved to dismiss the complaint for lack of subject-matter jurisdiction because Plaintiff failed to allege an injury-in-fact. The Court denied Defendant’s motion, and now denies Defendant’s new motion for interlocutory appeal.

• **Frankenfield v. Microbilt Corp.,** Civil No. 4:14-cv-1112, 2016 U.S. Dist. LEXIS 137944 (M.D. Pa. Oct. 3, 2016) **Order granting a motion to dismiss in a case alleging violation of the FCRA, 15 U.S.C. § 1681.** The court finds that the Plaintiff has not alleged that he suffered the kind of concrete and particularized harm necessary to confer standing on him to maintain this action.

• **Galaria; Hancox v. Nationwide Mutual Insurance Company,** Case Nos. 15-3386/3387 (6th Cir. Oct. 12, 2016)
Order denying Defendant’s rehearing en banc request in a case where the 6th Circuit found that Plaintiffs have Article III standing.

  
  **Opinion in a consolidated appeal where Plaintiffs allege claims for invasion of privacy, negligence, bailment, and violations of the FCRA**, 15 U.S.C. § 1681. The Court finds that Plaintiffs have Article III standing and reverse and remand for further proceedings.

  
  **Order denying Defendant’s motion to dismiss** for lack of standing in a case alleging violation of the FCRA, 15 U.S.C. §§ 1681(b)(2)(A)(i) and 1681(b)(2)(A)(ii). The court finds that Plaintiff established Article III standing and that Defendant’s interpretation of Spokeo is “misguided and contrary to the holding”.


  **Opinion in a case brought under the FCRA**, 15 U.S.C. §1681(b)(2)(A)(i), which was stayed pending the decision in Spokeo. The Court grants Defendant’s motion to dismiss, finding that Plaintiff did not allege a concrete harm.


  **Order granting class certification in a FCRA claim**, and finding that Plaintiff has alleged a harm that sufficiently establishes the concreteness requirement contained in Spokeo. The court distinguishes the harm alleged in this case from the examples given in Spokeo where a procedural violation would not result in concrete harm.


  **Opinion denying Plaintiffs’ renewed motion for class certification in a case alleging violations of the FCRA**, 15 U.S.C. §§ 1681k(a) and 1681e(b). Defendant contends that Plaintiffs lack Article III standing, but the court notes that Defendants misapprehend the role of constitutional standing in the class action context. The court explains that Article III simply requires the named plaintiffs to have standing, and that is not questioned here.


  **Order remanding case for lack of subject matter jurisdiction** in a claim brought under the Fair Credit Reporting Act, 15 U.S.C. § 1681.


  **Order regarding supplemental briefing** on Plaintiff’s motion for class certification in a case brought under the FCRA, 15 U.S.C. 1681g(a). The order grants class certification and finds that Spokeo does not deprive Plaintiff of Article III standing.
• **Lewis v. Southwest Airlines Co.**, 2016 U.S. Dist. LEXIS 74887 (N.D. Cal.)

• **Meza v. Verizon Communications, Inc.**, Case No. 1:16-cv-0739 AWI MJS, 2016 WL 4721475 (E.D. Cal. Sept. 9, 2016)
  Order denying Defendant's motion to dismiss a case alleging violations of the FCRA, specifically 15 U.S.C. § 1681b(b)(2)(A). The Court finds that the Complaint adequately alleges two concrete injuries (an informational injury and a privacy invasion).

  Opinion denying Plaintiff's motion for class certification and denying Defendant's motion to dismiss for lack of subject matter jurisdiction in a case brought under the FCRA, 15 U.S.C. § 1681b(b). The court finds that Plaintiff has standing to bring this action but denies the motion for class certification due to concerns of typicality.

• **Moody v. Ascenda USA Inc.**, Case No. 16-cv-60364-WPD, 2016 WL 5900216 (S.D. Fla. Oct. 5, 2016)
  Order denying Defendant's motion to dismiss for lack of subject matter jurisdiction in a case brought pursuant to the FCRA, 15 U.S.C. § 1681. Defendants removed this case on federal question ground. On a prior motion to dismiss, the court rejected most of Defendant's arguments but that Plaintiffs had not sufficiently alleged that they suffered a concrete and particularized injury. Plaintiffs filed an amended complaint. The court now holds that Plaintiffs have indeed alleged a concrete and particularized injury sufficient for Article III standing under Spokeo.

• **Moody v. Ascenda USA, Inc.** C.A. No. 16-cv-60364, 2016 WL 4721240 (S.D. Fla. June 24, 2016)
  Denial of Motion to Dismiss Plaintiff's Third Class Claim for Relief in a suit brought under the FCRA, 15 U.S.C. § 1681k(a).

  Order granting Defendant's motion to dismiss a case alleging that six taxi companies have violated FACTA, 15 U.S.C. § 1681c(g). The court finds that Plaintiffs have no Article III standing because the harm envisioned by Congress (credit card fraud) has not been made materially more likely to occur under the facts as alleged.

  Order granting motion to dismiss for lack of subject matter jurisdiction and dismissing case without prejudice, Plaintiff alleges violation of FCRA §§ 1681b(b)(2), 1681d(a)(1), 1681g(c), California's Investigative Consumer Reporting Agencies Act § 1786.16(a)(2)(B), and California's Consumer Credit Reporting Agencies Act § 1785.20.5(a). The court finds Plaintiff has not met Article II's injury-in-fact requirement.

  Order denying in part and granting in part Defendant's motion to dismiss a claim brought under the FCRA, 15 U.S.C. § 1681. The Court finds that Plaintiff suffered an invasion of privacy within the context of the FCRA that constitutes a concrete harm.

  Opinion granting a motion to dismiss in a case alleging violation of the FCRA, 15 U.S.C. § 1681. The court finds that the Plaintiff has not alleged that he suffered the kind of concrete
and particularized harm necessary to confer standing on him to maintain this action.

  Memorandum of opinion and order denying Defendants’ motion to dismiss in a case arising out of the FCRA, 15 U.S.C. § 1681c(a). While the court finds that Plaintiff lacks standing because he fails to allege an injury-in-fact, the court holds that the proper action is to remand the action to state court instead of dismissing.

  Memorandum Opinion adopting the Magistrate’s Report and Recommendation to deny Defendant’s motion to dismiss for lack of subject matter jurisdiction. The court finds that Plaintiff has alleged a concrete injury.


  Order denying motions to dismiss challenging, inter alia, Article III standing to bring claims under the FCRA, Sections 1681b(b)(1)(A); 1681b(b)(3)(A); 1681f(f); 1681e(a), (b) and (d) and 1681(k)a.

  Memorandum opinion granting in part and denying in part Defendant’s motion for reconsideration in a case brought under the FCRA, 15 U.S.C. §§ 1681k(a), 1681b, 1681e(b). After Spokeo was decided, Defendants moved the Court to reconsider its decision granting in part and denying in part Defendant’s second motion to dismiss. The Court finds that the Name Plaintiff has standing, but finds that the Newly Named Plaintiffs have failed to plead a “particularized” injury in Count I.

- **SEE RELEVANT FCRA BRIEFS HERE >>>**

**Fair Debt Collection Practices Act**

- **Bautz v. ARS National Services, Inc.,** 2016 WL 7422301, No. 16-cv-768 (JFB) (SIL) (E.D.N.Y. Dec. 23, 2016)
  Memorandum and order denying Defendant’s motion to dismiss for lack of standing in a case alleging violation of the FDCPA, 15 U.S.C. § 1962e. “The court finds that plaintiff has pled a concrete interest for the purpose of Article III standing . . . because a material violation of FDCPA Section 1692e infringes plaintiff’s substantive statutory right to be free from abusive debt practices.”

- **Bernal v. NRA Group, LLC,** Case No. 16 C 1904, 2016 WL 4530321 (N.D. Ill. Aug. 30, 2016)
  Memorandum opinion and order granting Plaintiff’s motion for class certification in a case alleging violations of the FDCPA, 15 U.S.C. § 1692 et seq.

  Opinion discussing the Supreme Court’s “strong language” in Spokeo and remanding a claim brought under the FDCPA, 15 U.S.C. § 1692e, to the district court to determine in the first instance whether Plaintiff has Article III standing.

  Memorandum opinion and order denying Defendant’s motion and granting Plaintiff's in a case brought under the FDCPA, 15 U.S.C. § 1692 et. seq. “Because Bowse has alleged a violation of
§ 1692e(8) of the FDCPA . . . Bowse has Article III standing to bring this suit.”

- **Chapman v. Bowman, Heintz, Boscia & Vician, PC**, Case No. 2:15-CV-120, 2016 WL 3247872 (N.D. Ind, June 13, 2016) approving class action settlement and holding, in Footnote 1, that “Spokeo largely reiterated long-standing principles of Article III standing, and did not clearly disrupt appellate precedent holding that plaintiffs...have standing to bring this type of claim under the FDCPA

- **Church v. Accretive Health**, Case No. 15-15708, 2016 WL 3611543 (11th Cir. July 6, 2016) Opinion affirming the district court’s decision in which it granted summary judgment in favor of the Defendant, but finding that Plaintiff alleged a concrete injury sufficient to establish Article III standing in a FDCPA case.


- **Dickens v. GC Services Limited Partnership**, Case No. 8:16-cv-803-T-30TGW, 2016 WL 3917530 (M.D. Fla., July 20, 2016) Order in a FDCPA case denying Defendant’s motion to dismiss a claim alleging violations of 15 U.S.C. § 1692 et seq.. The court finds that Defendant “grossly misreads” Spokeo and clarifies that an alleged failure to comply with a federal law may be enough to confer standing. The court also points to Church v. Accretive Health, Inc. ___ Fed.Appx. ___, 2016 WL 3611543 (11th Cir. July 6, 2016) where the 11th Circuit found that standing existed in a case nearly identical to this one.

- **Dilallo v. Miller**, No. 16 C 51, 2016 WL 4530319 (N.D. Ill. Aug. 30, 2016) Memorandum opinion denying Defendants’ motions to dismiss a claim alleging violations of the FFFCA, 15 U.S.C. §§ 1692e, 1692i. The Court finds that the alleged violation of the FDCPA is a material one and has shown standing.

- **Evans v. Portfolio Recovery Associates, LLC**, Case No. 15 C 4498 (E.D. Ill. Nov. 20, 2016) Memorandum opinion and order in an action filed under the FDCPA, 15 U.S.C. § 1692e(8) granting Plaintiff’s motion for summary judgment. The court finds that Plaintiff has standing because “the presence of inaccurate information on one’s credit record poses a readily apparent risk of harm.”

- **Gomez v. Portfolio Recovery Associates, LLC**, No. 15 C 4499, 2016 WL 3387158 (N.D. Ill. June 20, 2016) Memorandum opinion denying Defendant’s motion for summary judgment and granting Plaintiff’s in a case brought under the FDCPA, 15 U.S.C. § 1692e(8). The court notes that the Seventh Circuit “has clearly indicated that a plaintiff has the option under the FDCPA to seek only statutory damages,” and that Plaintiff therefore has Article III standing here.


Defendant’s oppose Plaintiff’s motion arguing that Plaintiff suffered no actual damages and does not meet Article III’s standing requirements. The court disagrees and grants Plaintiff’s motion.

  Order and opinion granting Plaintiff’s renewed motion for class certification in a case alleging violation of the FDCPA, 15 U.S.C. § 1692e. Defendant opposes Plaintiff’s motion, arguing lack of Article III standing. The court holds that Plaintiff did present evidence of a concrete injury and that Plaintiff has satisfied the Spokeo requirements for standing.

- **Horowitz v. GC Services Limited Partnership,** 2016 WL 7188238, Case No. 14cv2512-MMA RBB (S.D. Cal. Dec. 12, 2016)  
  Order granting in part and denying in part Defendant’s motion for summary judgment in a case brought under the FDCPA, 15 U.S.C. § 1692 et seq.; the Rosenthal Act, California Civil Code § 1788 et seq.; the TCPA 47 U.S.C. § 227 et seq.; and the California Invasion of Privacy Act, California Penal Code § 631 et seq. The court finds that “Plaintiff Hamby lacks both Article III and statutory standing to sue for a violation of the TCPA” and grants Defendant’s motion for summary judgment as to Plaintiff’s TCPA claim.

- **In re Robinson v. JH Portfolio Debt Equities, LLC,** Case No. 15-30223, 2016 WL 4069395 (W.D. La. July 28, 2016)  
  Opinion in a case brought under the FDCPA, 15 U.S.C. § 1692, finding that Plaintiff has standing. The court granted Defendant’s motion to dismiss for failure to state a claim, but is allowing Plaintiff to file an amended complaint.

  Order denying Defendant’s motion to dismiss and granting Plaintiff’s motion to enter judgment in favor of Plaintiff in a case arising out of the FDCPA, 15 U.S.C. § 1692. The Court agrees that Plaintiff suffered a concrete injury sufficient to establish Article III standing.

- **Jackson v. Abendroth,** No. 4:16-cv-00113-RGE-HCA, 2016 WL 4942074 (S.D. Iowa Sept. 12, 2016)  
  Order granting Defendant’s motion to dismiss for lack of subject matter jurisdiction in a case alleging violations of the FDCPA, 15 U.S.C. § 1692g(b).

  Memorandum order denying Defendant’s motion to dismiss in a case alleging violations of the FDCPA, 15 U.S.C. §§ 1692e(2)(A), (5), (10), and 1692f(1), and of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. Defendant contends that Spokeo undermines Plaintiff’s Article III standing and supports Defendant’s argument that the remaining FDCPA claims lack materiality. The court finds that Defendant’s “alleged violation of Kaymark’s right to truthful information and freedom from efforts to collect unauthorized debt constitutes a concrete injury and satisfies Article III’s injury-in-fact requirement.”

  Order denying Defendant Friedman’s motion as to standing and a motion as to vagueness and granting in other parts. Plaintiffs allege that Defendants violated the FDCPA, 15 U.S.C. § 1692i(a)(2). The Court finds that by alleging a violation of § 1692i, the Simmons Plaintiffs articulated a concrete harm.
  Order denying Defendants’ motion to dismiss for lack of subject matter jurisdiction and motion for judgment on the pleadings in a case brought under the FDCPA. The court finds that Plaintiff has Article III standing because “the alleged injury is a defined and cognizable harm under the FDCPA, it is more than a bare procedural violation of the statute.”


  Opinion in a debt collection case brought under the Florida Consumer Collection Practices Act, Fla. Stat. § 559.55 et seq., the FDCPA, 15 U.S.C. § 1692 et seq., and 11 U.S.C. § 105(1). Defendant moved to dismiss the case arguing that Plaintiff lacked Article III standing because he did not plead an injury-in-fact. The court concluded that Plaintiff had standing and proceeded to grant in part, and deny in part the motion to dismiss. One count was dismissed without prejudice to Plaintiff to pursue in the bankruptcy court.

  In this order of preliminary approval of class action settlement, the court notes that it has subject matter jurisdiction over this action alleging violation of the FDCPA, 15 U.S.C. §§ 1692 et seq., because Plaintiff alleges that she alleged an injury-in-fact fairly traceable to the challenged conduct that is likely to be redressed by a favorable judicial decision in line with the Spokeo case.


  Opinion and order granting Defendant’s motion to vacate entry of default judgment in a case alleging violations of the FDCPA, 15 U.S.C. §§ 1692 et seq., and the Michigan Collection Practices Act, M.C.L.A. §§ 445.252(f)(i-ii) and 445.252(h). Defendant argues that Plaintiff did not adequately allege an injury-in-fact as required by Spokeo. The court focuses on other factors in ruling that there is good cause to set aside the judgment.


  Order granting motion to dismiss with leave to amend in a case brought under the FDCPA, 15 U.S.C. § 1692g. The court finds that Plaintiff only alleged procedural violations of sections 1962g(a) and (b) of the FDCPA and that such violations do not constitute a concrete injury. The court notes that such a failure to allege a concrete injury may reflect “a mere pleading

Order finding that Plaintiff has Article III standing and granting in part and denying in part Defendant’s motion for summary final judgment. The Court concludes that Plaintiff has alleged an injury-in-fact sufficient to establish Article III standing in a case alleging violations of the FDCPA, 15 U.S.C. §§1692-1692p, and that the “FDCPA unambiguously grants recipients of debt-collection communications (such as Prindle) a right to be free from abusive collection practices.”

Provo v. Rady Children’s Hospital, Case No. 15-cv-00081-JM(BGS), 2016 WL 4625556 (S.D. Cal. Sept. 6, 2016)


Memorandum opinion and order in a case alleging violations of the FDCPA, 15 U.S.C. § 1692, and the Illinois Consumer Fraud and Deceptive Practices Act, 815 ILCS 505/1 et seq. The Court grants in part and denies in part Defendant’s motion to dismiss, and allows Plaintiffs to amend the complaint to include more specific allegations of pecuniary harm. The Court finds that Plaintiffs’ alleged injury satisfies Article III.


Memorandum opinion and order granting in part and denying in part Defendant’s motion to dismiss a case alleging violations of the FDCPA, 15 U.S.C. § 1692 et seq., and the Illinois Consumer Fraud and Deceptive Practices Act (“ICFA”), 815 ILCS 505/1 et seq. The court finds that Defendant’s failure to provide Plaintiffs with information required under the FDCPA constitutes a sufficiently concrete harm to establish Article III standing.


Memorandum opinion and order denying in part and granting in part Defendant’s motion to dismiss a case brought under the FDCPA, 15 U.S.C. § 1692 et seq. The court finds that Plaintiff alleged a concrete injury sufficient to establish Article III standing but cannot allege facts sufficient to support a claim that Defendant meets the statutory definition of a debt collector under the FDCPA.


Memorandum opinion and order finding that Defendant violated 15 U.S.C. § 1692e(8) and entering judgment in favor of the Plaintiff. The Court finds that plaintiff’s alleged injury is both particularized and concrete.

Tourgeeman v. Collins Financial Services, Inc., Case No. 08-CV-1392 CAB (NLS)

- Order dismissing Plaintiff’s FDCPA claim brought under 15 U.S.C. § 1692(e)(1) & (3) for lack of standing as to his complaint about a letter. The court did, however, find that Plaintiff has Article III standing to pursue his FDCPA claim, 15 U.S.C. § 1692(e)(1), regarding the complaint filed in state court. 2016 WL 3919633 (S.D. Cal., June 16, 2016).

- Order dismissing class claim in an FDCPA suit after standing was established due to a lack of competent evidence offered to establish the proper amount of damages that the finder of fact may consider in the award of statutory damages. Because this necessary element of the class claim cannot be proved, the class claim is dismissed. 2016 WL 3854540 (S.D. Cal., July 15, 2016).
  

• **SEE RELEVANT FDCPA BRIEFS HERE >>>**

**Telephone Consumer Protection Act**

  
  Memorandum opinion and order denying Plaintiff’s motion for class certification, denying Defendant’s motion to dismiss, and granting Defendant’s motion to compel arbitration and stay proceedings. The Court finds that “[t]here is no gap – there are not some kinds of violations of [the TCPA, 47 U.S.C.] section 227 that do not result in the harm Congress intended to curb, namely the receipt of unsolicited telemarketing calls that be their nature invade the privacy and disturb the solitude of their recipients.”

  
  Memorandum and order denying Defendant’s motions to decertify the classes and for summary judgment in a case alleging violations of the TCPA, 47 U.S.C. § 227. The Court states that “there are not some kinds of violations of section 227 that do not result in the harm Congress intended to curb”.


  
  Memorandum opinion and order denying Defendant’s motion to dismiss for lack of subject matter jurisdiction in a case alleging violation of the TCPA, 47 U.S.C. § 227 et seq. The Court finds that Plaintiff and the putative class allege a concrete injury.

• **Cabiness v. Educational Financial Solutions, LLC,** Case No. 16-cv-01109-JST, 2016 WL 5791411 (N.D. Cal.)
  
  Order denying Defendant’s motion to dismiss and motion to stay proceedings in a claim brought under the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii). The Court finds that “a statutory violation of Section 227(b)(1)(A)(iii) of the TCPA necessarily harms the recipient of the unwanted calls such that the statutory violation is sufficient on its own to constitute an injury in fact.”

• **Caito v. Ocwen Loan Servicing, LLC,** Case No. 8:15-cv-2472-T-17TBM (M.D. Fla. Dec. 9, 2016)
  
  Order denying Defendant’s motion to dismiss in a case brought under the TCPA, 47 U.S.C. § 227 et seq., and the Florida Consumer Collection Practices Act. The court finds that Plaintiff suffered a concrete injury, noting that “[t]he occupation of a call recipients telephone line is a specific injury targeted by the TCPA.”

  
  Memorandum opinion and order in a case arising out a TCPA, 47 U.S.C. § 227(b), claim. The Court finds that Plaintiff has sufficiently demonstrated that his alleged harm is fairly traceable to the challenged conduct and that he has therefore established standing.
• **Cour v. Life360, Inc.**, Case No. 16-cv-00805-TEH, 2016 WL 4039279 (N.D. Cal. July 28, 2016)
  Order granting Defendant’s motion to dismiss a claim brought under the TCPA, 47 U.S.C. § 227, and California’s unfair competition law, Cal. Bus. & Prof. Code §§ 17200, et seq. The court noted that this case is “indistinguishable” from Meyer v. Bebe Stores, Inc., in terms of questions related to standing. The court found that Plaintiff alleged a concrete injury sufficient to confer Article III standing.

  Order remanding case back to state court after defendant conceded that there is a lack of Article III standing in a claim brought under the TCPA, 47 U.S.C. § 227, and C.F.R. § 64.1200(a)(3)(iii) and (iv)

• **Errington v. Time Warner Cable Inc.**, 2016 WL 2930696, at *2-3 (C.D. Cal.)
  N.B. Motion to stay proceedings was submitted on February 24, 2016 before Spokeo was decided. The opinion in Errington was granted after Spokeo was decided, and comments on Spokeo.

  Order denying Defendant’s motion to dismiss for lack of subject matter jurisdiction in a case brought under the TCPA, 47 U.S.C. § 227. The Court finds that the sending of a single text message in violation of the TCPA constitutes an injury-in-fact.

  Opinion denying Defendant’s motion to dismiss, and denying Plaintiff’s motion for partial summary judgment in a case alleging violations of the TCPA, 47 U.S.C. § 227. The Court finds that Plaintiff alleges injuries adequate for standing purposes under Article III.

• **Fauley v. Drug Depot, Inc.**, No. 15 C 10735, 2016 WL 4591831 (N.D. Ill. Aug. 31, 2016)
  Order denying Defendant’s motion to dismiss a claim brought under the TCPA, 47 U.S.C. § 227. The Court finds that while Plaintiff’s allegation that the fax at issue constituted an invasion of privacy does not allege injury as required under Article III, his other allegations do.

  Order denying Defendant’s motion for judgment on the pleadings in a case brought under the TCPA, 47 U.S.C. §227.

  Memorandum and order denying Defendant’s motion to dismiss a claim brought under the TCPA, 47 U.S.C. § 227 et seq., for lack of subject matter jurisdiction. The Court finds that Plaintiff’s allegations are sufficient to satisfy Article III, and notes that “[c]ourts have consistently held that allegations of nuisance and invasion of privacy in TCPA actions are sufficient to state a concrete injury under Article III.”

  Memorandum opinion and order denying Defendant’s motion to dismiss a claim brought under the TCPA, 47 U.S.C. § 227, et seq. “The Court finds a TCPA violation can cause intangible concrete harm.”

  Order denying Defendant’s motion to dismiss and to strike a claim brought under the TCPA, 47 U.S.C. § 227 et seq., and California’s Rosenthal Fair Debt Collection Practices Act, Civil Code
1788 et seq. The Court finds that Plaintiff’s allegations are sufficient to allege a concrete and particularized injury.

- **JWD Automotive, Inc. v. DJM Advisory Group LLC, et al.**, Case No. 2:15-cv-793-FtM-29MRM (M.D. Fla. Nov. 21, 2016)
  
  **Opinion and order denying Defendants’ motions to dismiss** a case brought under the TCPA, as amended by the Junk Fax Protection Act of 2005, 47 U.S.C. § 227, et seq. The court finds that “the injuries alleged in Plaintiff’s Complain are not mere ‘procedural’ statutory violations; rather, they are precisely the kinds of harm the TCPA aims to prevent.”

  
  **Order denying Defendant’s motion to dismiss** or stay proceedings in a case brought under the TCPA, 47 U.S.C. §§ 227(b)(1)(A) and (b)(3). “Here, both history and Congress’ judgment confirm that unsolicited robocalls cause sufficiently concrete harm to establish Article III standing.”

  
  **Order in a case brought under the TCPA**, 47 U.S.C. § 227(c), denying Defendant’s motion to dismiss and finding that Plaintiff suffered a concrete injury. The Court finds that “[t]elemarketing calls made in violation of the Telephone Consumer Protection Act ... are more than bare procedural violations.”

  
  **Memorandum opinion and order denying Defendants’ motion to dismiss** for lack of subject matter jurisdiction in a case alleging violation of the TCPA, 47 U.S.C. §227(a)(1). The court finds that a violation of the TCPA constitutes a concrete harm for an Article III injury-in-fact requirement and notes that most courts that have addressed this issue have sided with plaintiffs.

  
  **Denial of Motion to Dismiss TCPA case**

  
  **Order denying defendant’s motion to dismiss as well as an alternative motion to stay in light of Spokeo in a claim brought under 47 U.S.C. § 227(b)(1)(A)(iii)**. Order discusses Plaintiff’s concrete and particularized injury under the TCPA.

  

- **Sartin v. EKF Diagnostics, Inc. & Stanbio Laboratory, L.P.**, C.A. No. 16-1816, 2016 WL 3598297 (E.D. La. July 5, 2016)
  
  **Order granting Defendant’s Motion to Dismiss, finding that complaint fails to indicate that a concrete harm occurred in a claim brought under TCPA as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227**.

  
  **Opinion granting Defendant’s motion to dismiss without leave to amend a claim alleging violations of the TCPA, 47 U.S.C. § 227 et seq.** The Court finds that “Plaintiff’s de minimis injury is not sufficient to confer standing.”

- **Stoops v. Wells Fargo, C.A** No. 3:15-83, 2016 WL 3566266 (W.D. Pa, June 24, 2016)
  
  **Order granting defendant summary judgment and denying plaintiff summary judgment, finding**
a lack of constitutional or prudential standing to bring claims under the TCPA.

  
  Memorandum opinion and order denying Defendant’s motion to dismiss for lack of Article III standing, and granting with prejudice Defendant’s motion to dismiss for failure to state a claim. Plaintiff alleges a violation of the TCPA, 42 U.S.C. §227. The Court declines to dismiss for lack of standing because Plaintiff’s injuries “were not entirely self-caused,” and because they were “fairly traceable” to Defendant’s alleged conduct.

  
  Order denying Defendant’s motion to dismiss for lack of standing in a case alleging violations of the TCPA, 47 U.S.C. § 227 et seq. The court notes that it has been “repeatedly recognized that the receipt of unwanted phone calls constitutes a concrete injury sufficient to create standing under the TCPA”.

- **Wilkes v. CareSource Management Group Co.**, 2016 WL 7179298, Case No. 4:16-cv-038 JD (N.D. Ind. Dec. 9, 2016)
  
  Order denying Defendants’ motion to dismiss for lack of standing in a case brought under the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii). The court finds that Plaintiffs’ allegations are sufficient to plausibly allege that both Melissa and Benjamin Wilkes suffered a concrete injury-in-fact.

- **SEE RELEVANT TCPA BRIEFS HERE >>>

Other

  
  Opinion and Order finding that Plaintiffs have Article III standing in claims brought under the New York Real Property Law (“RPL”), § 275, and the New York Real Property Actions and Proceeding Law (“RPAPL”), § 1921. The court finds that the violation of the procedural right created by RPL § 275 and RPAPL § 1921 constitutes a concrete injury.

  
  Omnibus ruling in related cases on motions to dismiss complaints alleging violations of federal energy statutes and for preliminary injunctive relief. The Court finds that Allco lacks standing to assert claims and request the relief in question.

  
  Order denying Defendant’s motion to dismiss and rejecting the final report and recommendation which found that Plaintiff lacked standing in a claim brought under FACTA, 15 U.S.C. § 1681(g)(1).

- **American Farm Bureau Federation v. U.S. Environmental Protection Agency**, Case No. 15-1234, 836 F.3d 963 (8th Cir. Sept. 9, 2016)
  
  Opinion reversing and remanding a case brought under the Administrative Procedure Act (“APA”), 5 U.S.C. §706(2)(A). The Court finds that the disclosure of already public information by the EPA, allegedly shared in violation of FIA, constitutes an injury in fact.

  
allege a concrete harm.


  Plaintiffs in this case sought to enjoin a new state law, alleging that the law violates the First and Fourteenth Amendments. Defendant’s challenged Plaintiffs’ standing, arguing that Plaintiffs’ injuries are speculative not imminent, and that Plaintiffs are not the objects of the law in question. The court disagreed and found that Plaintiffs will suffer a concrete and particular injury. The law was enjoined.


  Opinion granting Defendant’s motion to dismiss a case alleging constitutional torts, and finding that “Plaintiff’s ‘public trust’ claim is precisely the type of generalized grievance against the government that Article III precludes”.


  Opinion and order denying Defendant’s motion for summary judgment in a case alleging violations of Section 275 of the New York Real Property Law and Section 1921 of the New York Real Property Actions and Proceedings Law. The Court finds that Plaintiff clearly suffered an injury-in-fact.


  Order granting in part and denying in part counter-defendants’ motion to dismiss. Plaintiff’s amended counterclaims and finding that Plaintiff has alleged an injury satisfying Article III standing in a claim alleging violations of the Sherman Act, 15 U.S.C.§ 1 and breach of contract.


  Opinion finding that Plaintiff has standing Article III to sue under the Michigan Preservation of Personal Privacy Act, M.C.L. §§ 445.1711 et seq.


  Order granting Defendant’s motion to dismiss a case brought under FACTA, 15 U.S.C. § 1681 et seq. The court finds, however, that Plaintiff adequately alleged a concrete and particularized injury-in-fact and the complaint is to be amended to reflect the proper defendant.


  Opinion and Order granting Defendant’s motion to dismiss and finding that Plaintiff does not have standing in a claim brought under 42U.S.C. §1983. The court explained that a citizen lacks standing to contest the policies of a prosecuting authority when he himself is neither prosecuted nor threatened with prosecution.

- **Braitberg v. Charter Communications, Inc.**, Case No. 14-1737, 2016 WL 4698283 (8th Cir. Sept. 8, 2016)

  Opinion affirming the district court judgment that Plaintiff lacks Article III standing and fails to state a claim in a case alleging a violation of the Cable Communications Policy Act, 47 U.S.C. § 551(e).
• **Derek Gubala v. Time Warner Cable, Inc.,** Case No. 15-cv-1078, 2016 WL 3390415 (E.D. Wis. June 17, 2016)
  Decision and Order granting defendant’s motion to dismiss and discussing Article III standing in light of **Spokeo** in a claim brought under the Cable Communications Policy Act (“CCPA”), 47 U.S.C. § 551(e)

• **Diedrich v. Ocwen Loan Servicing, LLC,** Case No. 15-2573, 2016 WL 5852453 (7th Cir. Oct. 6, 2016)
  Opinion in a case brought under Wisc. Stat. § 224.77(1) and § 138.052(7) and RESPA, 12 U.S.C. §§ 2605(e)(2), affirming. The court rules that Plaintiffs have alleged concrete injuries sufficient to satisfy Article III standing under Spokeo.

• **Dolan v. Select Portfolio Servicing,** Case No. 03-cv-3285 PKC AKT, 2016 WL 4099109 (E.D.N.Y. Aug. 2, 2016)
  Order granting in part Defendant’s motion to dismiss, finding that Congress “did not intend to confer standing for mere procedural violations of [RESPA 12 U.S.C.] Section 2605, without some allegation of actual harm.”

• **Eduardo de la Torre v. Cashcall, Inc.,** Case No. 08-cv-03174-MEJ (N.D. Cal. Nov. 23, 2016)
  Order denying Defendant’s motion for a new trial and/or relief from the Court’s Findings of Fact and Conclusions of Law following a bench trial. The case is brought under the Electronic Funds Transfer Act (“EFTA”), 15 U.S.C. § 1693k(1) and California’s Unfair Competition Law (“UCL”), Business and Professions Code § 17200. The court finds that the class representative adequately established standing as to the EFTA claim and findings, and that no additional trial is needed for this issue. The court also grants in part and denies in part Plaintiffs’ cross motion, striking the portion of the Findings of Fact and Conclusions of Law pertaining to the UCL claims, ordering the parties to meet and confer and propose a plan to submit additional evidence regarding standing for the UCL claims, and ordering parties to attend another settlement conference. The court has not yet issued a judgment related to the Findings of Fact and Conclusions of Law.

  Order denying Defendant’s letter motion to dismiss a claim for lack of standing brought under the Kansas Consumer Protection Act, Kan. Stat. 50-623, et seq.

• **Ferrari v. Natural Partners, Inc.,** Case No. 15-cv-04787-LHK, 2016 WL 4440242 (N.D. Cal. Aug. 23, 2016)
  Order granting in part and denying in part Defendants’ motions to dismiss a claim alleging strict liability, negligence, breach of express warranty, and breach of implied warranty. The Court finds that Plaintiffs’ adequately pled standing.

  Order denying Defendant’s motion to dismiss for lack of subject matter jurisdiction in a case asserting claims under the Song-Beverly Credit Card Act of 1971, § 1747.08(a)(2). Plaintiffs properly removed the case to federal court under the Class Action Fairness Act. The court finds that the holding in Spokeo does not apply and that it continues to have subject matter jurisdiction.

  Opinion in a case concerning alleged violations of the Endangered Species Act, 16 U.S.C. §1533, finding that Plaintiff lacked informational standing and dismissing the complaint. The court notes that its holding is narrow, and suggests that informational standing may be possible under section 4 of the ESA though it was lacking in this “deadline suit”.

Order granting in part and denying in part a motion to partially dismiss a complaint alleging claims under the Fair Labor Standards Act. The Court finds that “Plaintiffs have not simply alleged a statutory violation, but have alleged that the violations caused them confusion and caused them to be misinformed.” The Court finds that this is a concrete injury sufficient under Article III and denies Defendant’s motion on this issue.


  Order in a case brought under FACTA, 15 U.S.C. §1681, in which the court agrees that “Defendant’s violation of FACTA constitutes a concrete injury in and of itself because Congress created a substantive right for individuals to receive printed receipts that truncate their personal credit card information, in order to decrease the ever-present threat of identity theft”.


  Order granting in part Defendant’s motion to stay action and providing for limited discovery during pendency of stay in a case alleging violations of Michigan’s Preservation of Personal Privacy Act. Defendant’s motion to stay is granted pending a determination by the Sixth Circuit on defendant’s motion to dismiss the Coulter-Owens appeal (Case No. 16-1321).


  Opinion vacating the district court’s decision and remanding for dismissal because the court found that neither Plaintiff had alleged a concrete Article III injury tied to disclosure of a zip code. Accordingly, the court found that the district court lacked jurisdiction to decide the merits of the case in the first place. The claim was brought under the District of Columbia’s Use of Consumer Identification Information Act, D.C. Code § 47-3151 et seq.


  Memorandum and order denying Defendant’s motion to dismiss for lack of standing in a case brought under a claim of negligence. The court finds that Plaintiff has standing to bring her claim for negligence, and “follows the cases finding that plaintiffs had standing when they suffered from an incident of identity theft after a data breach.”


  Opinion in a case alleging violations of the Americans with Disabilities Act (ADA, Rehabilitation Act, and Fair Housing Act. The district court dismissed the case on standing and mootness grounds, but the D.C. Circuit Court found that the Plaintiffs did demonstrate an injury-in-fact and, thus, had standing.


  Opinion granting Defendant’s motion to dismiss without prejudice in a case alleging violation of New Jersey’s Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14 et seq. The court finds that Plaintiff’s complaint alleges the “quitessential” bare procedural harm that is insufficient to establish Article III standing.


  The court grants Defendant’s motion to dismiss without prejudice a claim brought under New Jersey’s Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. § 56:12-14 et seq. The court finds that Plaintiff presents a bare procedural harm.

- **Hochendoner v. Genzyme Corp.**, 2016 U.S. App. LEXIS 9438 (1st Cir.)


  
  **Opinion granting in part Defendant’s motion for summary judgment in a case brought under Section 10(b), 18, and 20 of the Securities Exchange Act and SEC Rule 10b-5**, The court found that Plaintiff did not have standing due to the fact that third-party standing was inappropriate in this instance and contrary to case law. Without third-party standing, the Plaintiff could not establish that he suffered an injury-in-fact.

- **In re: Nickelodeon Consumer Privacy**, No. 15-1441, ___ F.3d___, 2016 WL 3513782 (3rd Cir., June 27, 2016)
  
  **Court of Appeals decision** affirming the District Court’s dismissal of most of the plaintiffs’ claims, vacating its dismissal of the claim for intrusion upon seclusion against Viacom, and remanding the case for further proceedings in a claim brought under the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 et seq., and Video Privacy Protection Act, 18 U.S.C. §§ 2710, et seq

  
  **Order** granting Defendant’s motion to dismiss Plaintiff’s TILA claim for lack of standing with leave to amend.

- **Jonathan Kanfer v. PharmaCare US Inc.**, Case No. 3:15-cv-00120, 2016 WL 3554919 (S.D. Cal.)
  

  
  **Opinion and order granting Defendant’s motion to dismiss** for lack of subject matter jurisdiction in a case brought under TILA, 15 U.S.C. §§ 1601 et seq. The court finds that Plaintiffs alleged a mere statutory violation and not a concrete and particularized injury as required to establish Article III standing.

  

- **Lee v. Verizon**, Case No. 14-10553, 837 F.3d 523 (5th Cir. Sept. 15, 2016)
  
  **Opinion in a case on remand from the United States Supreme Court alleging fiduciary misconduct pursuant to ERISA § 409(a), 29 U.S.C. § 1109(a)**. The Court found that the Supreme Court’s ruling in Spokeo did not affect their original reasoning in finding that Plaintiff’s lacked Article III standing.

- **Left Field Media LLC v. City of Chi., Ill.**, 2016 U.S. App. LEXIS 9348 (7th Cir.)
Opinion denying motion for a preliminary injunction and finding that Plaintiff would not have standing under Spokeo if product were treated as a newspaper in a claim brought under §§ 4-244-030, 4-244-140, and 10-8-520 of the Chicago Municipal Code.


Decision in a school desegregation suit denying a motion to intervene on behalf of Charter Public School Parents and Children. The Plaintiff class opposed the motion and the court found that the movants lacked standing to intervene, since the movant cannot set out any specific injury that will certainly occur if they are not allowed to intervene.


Order granting Cross-Defendant’s motion to dismiss a case brought against it alleging conversion, fraud, breach of fiduciary duty, unjust enrichment, negligence, imposition of a constructive trust, joint and several liability under the Fair Labor Standards Act, breach of oral contract, and complete indemnity to the extent Defendant’s are liable for any of Plaintiff’s claims. The Court finds that Defendants have standing to bring claims that seek indemnification.


Order and opinion granting Plaintiff summary judgment in a case claiming that Rio Rancho Municipal Code Section 12-6-12. 18(5) is overbroad in violation of the First Amendment. The court finds that Plaintiff suffered a concrete and particularized injury sufficient to satisfy Article III standing.


Order granting Defendant’s motion to dismiss but finding that Plaintiff had standing in a case brought under § 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132.


Order granting in part and denying in part Defendant’s motion to dismiss. The court finds that Plaintiff lacks standing to assert a claim against the national union President in a claim brought under the “Bill of Rights for Union Members” of the Labor Management Reporting and Disclosures Act, 29 U.S.C. § 411(a)(1) and (a)(1).


In a case alleging violations of the Illinois Biometric Information Privacy Act, 740 ILCS 14/1 et seq., Defendants moved to dismiss for lack of jurisdiction and failure to state a claim. The court ruled that Plaintiff only alleged the “sort of bare procedural violation that cannot satisfy Article III standing”.


Opinion finding that Plaintiff lacked standing in a case alleging violation of the Fourteenth Amendment as brought under 42 U.S.C. § 1983, and consequently granting Defendant’s motion for summary judgment. The court found that while Plaintiff suffered an injury, he could not satisfy the “able and ready” requirement at issue due to the nature of the relief sought.

- **McLaughlin v. Wells Fargo** - TILA Class Certification Order- No. C 15-02904 WHA, 2016 WL 3418337 *5-6 (N.D. Cal.)


  Memorandum affirming the district court’s dismissal of Plaintiff’s lawsuit brought under TILA, 15 U.S.C. § 1641(g), but discussing the impact of Spokeo on alleged violations of TILA. The court notes that there is some question as to whether a violation of TILA’s notice requirement under 15 U.S.C. § 1641(g), without more, creates an injury that is sufficiently concrete to confer standing. In this case, however, the court finds that Plaintiffs alleged a concrete injury. The suit was dismissed.


  Opinion vacating the district court’s judgment and remanding a case brought under FACTA, 15 U.S.C. § 1681 et seq. The court finds that “Spokeo compels the conclusion that Meyers’ allegations are insufficient to satisfy the injury-in-fact requirement for Article III standing.”


  Order and Memorandum denying Defendant’s motion to dismiss and instead remanding the case to state court. The case was brought under FACTA, 15 U.S.C. § 1681c(g) and was removed to federal court by Defendant under 28 U.S.C. 1441. Defendant then moved to dismiss the case for lack of federal jurisdiction, citing Spokeo. Because “no party [is] willing to overcome the presumption against federal jurisdiction, remand is appropriate on any analysis.”


  Opinion discussing Article III standing and granting Defendant’s motion to dismiss in a claim brought under N.C.G.S. §§ 25-3-420, 25-3-405, 25-3-306, 25-1-304, negligence, gross negligence, and unfair trade practices.

- **Nicklaw v. Citimortgage, Inc.**, Case No. 15-14216, 2016 WL 5845682 (11th Cir. Oct. 6, 2016)

  Opinion in a case brought under N.Y. Real Prop. Law §275 and N.Y. Real Prop. Act. Law § 1921, where the 11th Circuit has ruled that Plaintiff lacks standing to maintain this action because “Nicklaw has not alleged that Citimortgage’s violation of New York law caused or could cause him any harm”. The Court dismisses the appeal for lack of jurisdiction.


  Findings of Fact and Conclusions of Law in a case alleging that state voting provisions were unconstitutional, violated the Voting Rights Act, and resulted from intentional discrimination by the Wisconsin legislature. Defendants argued that no plaintiff has standing to challenge the voter ID law and that Plaintiffs here suffered no concrete injury sufficient to satisfy Article III. The court disagreed, finding that plaintiffs have standing to challenge the voter ID law.


  Opinion granting State’s motion to dismiss a case challenging the constitutionality of Maryland’s 2011 congressional redistricting law under Article I, § 2 of the U.S. Constitution and the Due Process Clause of the Fifth and Fourteenth Amendments. The Court discusses Spokeo, and finds that the “Voters must assert more than a concrete and particularized injury
they must also allege ‘an invasion of a legally protected interest.’”

  Order adopting report and recommendation of the Magistrate Judge in a case alleging breach of contract. The Order finds that Plaintiff has sufficiently established standing in light of Spokeo.

  Order finding that Plaintiff has standing to sue under the Driver’s Privacy Protection Act (“DPPA”), 18 U.S.C. § 2721 et seq. and denying Defendant's motion to dismiss on that ground. The court also found that Plaintiff may not recover liquidated damages without establishing that she suffered actual damages, but that she may recover punitive damages without recovering actual damages.

  Court Order discussing Article III standing in light of Spokeo while certifying a class action brought under §11 of the 1933 Act, 15 U.S.C. §77k, §12(a)(2) of the 1933 Act, and §15 of the 1933 Act.


  Opinion and Order granting Defendant’s renewed motion to dismiss and granting plaintiffs’ request to file a second amended complaint with discussion of Article III standing in light of Spokeo in a claim brought under implied warranty of merchantability under A.R.S. § 47-2314(B)(6), M.C.L. §440.2314(2)(f), breach of implied warranty of fitness, Michigan Consumer Protection Act, M.C.L/ § 445.901, et seq., the Arizona Consumer Fraud Act, A.R.S. § 44-1521, et seq., and unjust enrichment.

- **Strubel v. Comenity Bank**, No. 15-528-cv (2d Cir. Nov. 23, 2016)
  Opinion dismissing in part, and affirming in part an appeal in a case brought under TILA, 15 U.S.C. § 1637(a)(7). On appeal, Defendant argues that the district court ruled correctly on the merits while also challenging Plaintiff’s standing to main the action. The court finds that Plaintiff fails to demonstrate the concrete injury necessary for standing in two of the challenged disclosures, and so dismisses both TILA claims. With respect to the remaining two disclosure challenges, the court finds that Plaintiff adequately demonstrates standing, but the court finds that those challenges fail as a matter of law.

  Order denying Plaintiffs’ motion for summary judgement and granting Defendant’s cross-motion for summary judgement. Plaintiff brought suit under 42 U.S.C. § 1983, claiming that the Kentucky General Assembly’s chosen ballot access scheme did not comport with the First and Fourteenth Amendment. The court disagrees but finds that Plaintiffs suffered an injury-in-fact due to their lack of general ballot access.

- **Thompson v. Rally House of Kansas City, Inc.**, Case No. 15-00886-CV-W-GAF (W.D. Mo. Oct. 6, 2016)
  Order granting Defendant’s motion to dismiss for lack of subject matter jurisdiction in a case


Order denying Defendant’s motion to dismiss a claim challenging Indiana Code § 35-42-4-14, alleging that it violates Plaintiff’s First and Fourteenth Amendment rights. The court found that Plaintiff “met the low threshold for pleading injury required to demonstrate that he has standing” under Article III.

**Vigil et al. v. Take-Two Interactive Software, Inc.**, Case No. 15-cv-8211 (JGK) (S.D.N.Y.)

Order denying as moot Defendant’s motion to dismiss for lack of standing and finding that Plaintiffs should be afforded the opportunity to replead in light of Spokeo.


Order granting Plaintiffs’ motion to replead their claims to satisfy the standards set forth in Spokeo in a case brought under RPAPL § 1921(1) and RPL § 275(1).


Order denying Defendant’s motion to dismiss a case filed under FACTA for lack of subject matter jurisdiction. The Court looks to Guarisma v. Microsoft Corp., — F. Supp. 3d –, 2016 WL 4017196, and finds that Plaintiff suffered a concrete harm.


Memorandum and order denying Defendant’s motion to dismiss a claim brought under the Video Privacy Protection Act, 18 U.S.C. § 2710. The Court finds that “the VPPA ‘plainly’ provides plaintiffs like Yershov, who allege wrongful disclosure of their PII, with standing and a right to relief.”


Order granting an amended uncontested motion seeking conditional certification of a settlement class and preliminary approval of a class action settlement after evaluating whether Plaintiff has Article III standing in a claim brought under New York’s Real Property Law, § 275(1), and Real Property Actions and Proceedings Law, § 1921(1). This case was stayed pending the outcome in Spokeo.

**SEE RELEVANT BRIEFS HERE >>>**
below. Relevant briefs may be submitted to NCLC’s Director of Litigation Stuart Rossman at spokeo-upload@nclc.org. Please submit a Word version and a PDF of the document as filed with the court, including the date stamp. Note: NCLC has neither proofread nor edited submitted materials.

Model Language for Spokeo Briefs

Model language for Spokeo briefs, with statute specific arguments focusing on the nature of harm as it applies to various aspects of consumer law, are available below.

- **Model brief arguing that robocalls cause concrete harm to a plaintiff who is not charged for calls and whose cell phone plan does not provide only a limited number of minutes**
- **Model Brief arguing that the understatement of the finance charge and the APR create concrete harm to the Plaintiff seeking statutory damages pursuant to the Truth in Lending Act**

Fair Credit Reporting Act

- **Connolly v. Umpqua Bank and Sterling Infosystems, Inc.**, Case No. 2:15-cv-00517 (W.D. Wash.)
  - Plaintiff’s brief in opposition to Defendant’s motion to dismiss in a claim brought under the FCRA, 15 U.S.C. §§ 1681b(b)(2)(A)(I), 1681b(b)(2)(A)(II), 1681m(a)(2), 1681b(b)(3), 1681m(a)(2), and 1281m(a)(3). Plaintiff argues that she suffered two particularized and concrete harms as a result of Defendant’s actions and that Spokeo supports her position.
  - Plaintiff’s first and second notice of supplemental authority in a case brought under the FCRA, 15 U.S.C. §§ 1681b(b)(2)(A)(I), 1681b(b)(2)(A)(II), 1681m(a)(2), 1681b(b)(3), 1681m(a)(2), and 1281m(a)(3).
- **Cruper-Weinmann v. Paris Baguette**, Case No. 14-3709-cv (2nd Cir.)
  - Amicus brief filed in support of Appellant’s Article III standing under Spokeo in a claim brought under the FCRA, 15 U.S.C. § 1681 et seq. (MS Word)
  - Plaintiffs’ brief in response to Defendant’s motion to dismiss the amended complaint in an action brought under 15 U.S.C. 1681(b)(2). Plaintiffs argue that Defendants misread Spokeo, and that even if Plaintiffs lacked standing, that the appropriate action would be to remand rather than dismiss.
- **Gorshek v. Time Warner Cable Inc. together with Groshek v. Great Lakes Higher Education Corporation**, Nos. 16-3355 and 16-3711 (consolidated) (7th Cir. Nov. 28, 2016)
  - Plaintiff-Appellant’s brief in opposition to Defendants’ motion to dismiss for lack of standing in a case alleging violation of the FCRA, 15 U.S.C. § 1681b(b)(2)(A). Plaintiff-Appellant argues that a concrete injury was suffered in both cases, because the FCRA’s disclosure requirement provides a substantive protection.
- **Graham v. Pyramid Healthcare Solutions, Inc.**, Case No. 8:16-cv-1324-T-30UAM (M.D. Fla.)
  - Plaintiff’s response in opposition to Defendant’s motion to dismiss in a case brought under the FCRA, 15 U.S.C. §§ 1681b(b)(2)(A)(i) and 1681b(b)(2)(A)(ii), arguing that Plaintiff suffered a concrete and particularized injury.
- **Katz v. The Donna Karan Company LLC**, Case No. 15-464-cv (2nd Cir.)
  - Amicus brief filed in support of Appellant’s Article III standing under Spokeo in a claim brought under the FCRA, 15 U.S.C. §§ 1681c(g)(1) and 1681n (MS Word)
Hancock v. Urban Outfitters Inc., Case No. 14-7047 (D.C. Cir.)
Appellant’s Motion in Further Support of Article III Standing, supplemental briefing filed at the request of the Court, after oral argument and issuance of the Spokeo decision, in an FCRA case.

In Re: Horizon Healthcare Services, Inc. Data Breach Litigation, Case No. 15-2309 (3rd Cir.)
- Submission from Horizon Healthcare in response to Appellant’s letter.

Lewis v. Southwest Airlines Co., Case No. 3:16-cv-00749-JCS 2016 U.S. Dist. LEXIS 74887 (N.D. Cal.)

Milbourne v. JRK Residential America, C.A. 12-00801 (E.D. Va)
Opposition to Motion to Dismiss FCRA claim brought under 15 U.S.C. § 1681b(b)2 and 3 PDF || MS Word

Perrill v. Equifax, Case No. 1:14-cv-00612-SS (W.D. Tex.)
Brief in response to Defendant’s motion to dismiss a case brought under the FCRA, §15 U.S.C. 1681 et seq. Plaintiffs argue that Spokeo compels the conclusion that Plaintiffs suffered an injury-in-fact.

Shapiro v. T-Mobile USA, Inc., Case No. 2:16-cv-04698-RGK-(MRWx) (C.D. Cal.)
Plaintiff’s brief in opposition to Defendant’s motion to dismiss the first amended complaint in a case brought under the FCRA, California’s Consumer Credit Reporting Act, California’s Unfair Competition Law, and California’s Consumer Legal Remedies Act. Plaintiff argues that he has asserted a concrete injury under Spokeo.

Witt v. Corelogic, C.A. 15-386 (E.D. Va)
Plaintiff’s memorandum in opposition to defendant’s motion for reconsideration in light of Spokeo in a claim brought under the FCRA, 15 U.S.C. §§ 1681(a)(1), 1681b, 1681e(e), and 1681e(b) MS Word

William Jones v. Waffle House, Inc., Case No. 6:15-cv-1637-Orl-37DAB (M.D. Fla.)
- Plaintiff’s opposition brief in response to Defendant’s motion to dismiss for lack of standing in a claim brought under the FCRA, 15 U.S.C. §§ 1681b(f), 1681b(b)(3)(A), 1681m(a), 1681b(a) and 1681e(a), 1681e(b), 1681e(d), 1681b(b)(1), 1681a(1)(C), 1681k(a)(1), and 16 C.F.R. § 610.3.
- Defendant’s reply memorandum in response to Plaintiff’s opposition brief

Fair Debt Collection Practices Act

Bock v. Pressler & Pressler, No. 15-1056 (3rd Cir.)
- Supplemental brief requested by Court seeking parties’ position on Article III standing in light of Spokeo in a claim brought under the FDCPA, 15 U.S.C. §§ 1692(e), et seq.
- Supplemental amicus brief submitted by the CFPB in response to Court seeking parties’ position on Article III standing in light of Spokeo in a claim brought under the FDCPA, 15 U.S.C. §§ 1692(e), et seq

Dickens v. GC Services Limited Partnership, Case No. 8:16-cv-803-T-30TGW. See 2016 WL
- **Plaintiff’s response in opposition to Defendant’s motion to dismiss** for lack of standing claims arising under the FDCPA, 15 U.S.C. § 1692 et seq. Plaintiff points out that Defendant wholly ignores the 11th Circuit's decision in Church v. Accretive Health, Inc. ___ Fed.Appx. ___, 2016 WL 3611543 (11th Cir. July 6, 2016) where the 11th Circuit found that standing existed in a case nearly identical to this one.

- **Defendant’s memorandum in support of its motion to dismiss**, misreading *Spokeo* as confirmed by a subsequent court order. See 2016 WL 3917530 (M.D. Fla., July 20, 2016).

- **Collier v. SP Plus Corp.**, Case No. 3:15-cv-00180 (S.D. Ohio)
  - *Plaintiffs requested voluntary dismissal without prejudice* in a claim brought under FACTA, 15 U.S.C. §§ 1681 et seq. Defendants in this case had submitted a motion to dismiss based on an alleged lack of Article III standing, and while Plaintiffs do not concede that they lack standing, they nevertheless move for dismissal without prejudice arguing that dismissal based on standing is a jurisdictional issue.

- **Hagy v. Demers & Adams**, Case No. 2:11CV530 (S.D. Ohio)

- **Long v. Fenton & McGarvey**, C.A. No. 1:15-cv-1924 (S.D. Ind),
  - **Plaintiff’s opposition brief in response to Defendant’s motion to dismiss** and for judgment on the pleadings in a case brought under the FDCPA, 15 U.S.C. § 1692g(a)(2). (MS Word)
  - **Plaintiff’s reply in support of her amended motion for class certification**, arguing that Plaintiff suffered a concrete injury as a result of violations of the FDCPA, 15 U.S.C. §1962g(a)(2).
  - **Defendant’s brief in support of its motion to dismiss and motion for judgment on the pleadings for lack of standing.**
  - **Defendant’s opposition to Plaintiff’s motion to certify class**, arguing that Plaintiff does not have standing.

- **Lou Ellen Chapman v. Bowman, Heintz, Boscia & Vician, P.C.**, Case No. 2:15-CV-120 JD (N.D. IN)
  - **Defendant’s brief in response to court order seeking parties’ position on Article III standing in light of *Spokeo* in a claim brought under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(4).** Court has subsequently granted final approval of class action settlement.
  - **Plaintiff’s brief in response to court order seeking parties’ position on Article III standing in light of *Spokeo* in a claim brought under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a)(4).** Court has subsequently granted final approval of class action settlement.

- **Remington v. Financial Recovery Services, Inc.**, Case No. 3:16-cv-865 (JAM) (D. Conn.)
  - *Plaintiff’s opposition to Defendant’s motion to dismiss a claim brought under the FDCPA*, 15 U.S.C. § 1692 et seq. Plaintiff argues that she suffered a concrete injury, as evident by the fact that defendants “created a false sense of urgency”.

- **Tourgeman v. Collins Financial Services, Inc.**, Case No. 08-CV-1392 CAB (NLS). See 2016 WL 3919633 (S.D. Cal., June 16, 2016)
  - **Plaintiff’s briefing in response to a request for a status conference** on the impact of *Spokeo* on the scope and timing of the trial of two FDCPA claims brought under 15 U.S.C. § 1692(e)(1) & (3).
  - **Plaintiff’s briefing in response to order on motion for hearing** re impact of *Spokeo* on the claims filed by Plaintiff.

- **SEE RELEVANT FDCPA COURT DECISIONS >>>**
Truth in Lending and Mortgage Related

- **Keen v. JPMorgan Chase Bank**, Case No. 15-17188 (9th Cir.)
  - Appellant’s motion for Court to determine its own subject matter jurisdiction in light of Spokeo for a claim brought under the Truth in Lending Act, 15 U.S.C. § 1640(a)
  - Appellee’s response to Appellant’s motion for Court to determine its own subject matter jurisdiction in light of Spokeo for a claim brought under the Truth in Lending Act, 15 U.S.C. § 1640(a), and cross-motion to dismiss appeal
  - Appellant’s reply to Appellee’s response to its motion for Court to determine its own subject matter jurisdiction in light of Spokeo and response to Appellee’s cross-motion to dismiss including a new Spokeo argument
  - The CFPB filed an amicus brief in a case involving a claim under the Truth in Lending Act for alleged failure of a creditor to accurately disclose the finance charge on a mortgage loan. In its brief, the CFPB argues that receiving a disclosure that incorrectly states the finance charge in violation of TILA is a concrete harm sufficient to support Article III standing.

- **McLaughlin v. Wells Fargo Bank**, NA, Case No. 3:25-cv-02904 (N.D. CA)
  - Plaintiff’s memorandum discussing the impact of Spokeo on class certification in a claim brought under the Truth in Lending Act, 15 U.S.C. 1640(a)(1)-(a)(2)
  - Plaintiff’s reply memorandum discussing Spokeo and its impact on class certification
  - Defendant’s response brief in re impact of Spokeo decision on class certification
  - Defendant’s briefing on the impact of Spokeo on class certification in a claim brought under the Truth in Lending Act, 15 U.S.C. 1640(a)(1)-(a)(2)

- **Whittenburg v. Bank of America**, Case No. 14 cv 947 (VB) (S.D. N.Y.)
  - Brief in response to Court Order seeking parties’ positions on the impact of Spokeo, Inc. v. Robins on the Courts’ subject matter jurisdiction

Telephone Consumer Protection Act

  - Letter explaining why Spokeo has no impact on claim brought under TCPA, 47 U.S.C. § 227
  - PDF || MS Word

- **Davis Neurology v. DoctorDirectory.com LLC**, Case No. 4:16-cv-00095 BSM (E.D. Ark.)
  - Plaintiff’s brief responding to Defendant’s allegation that Plaintiff did not suffer an injury sufficient to claim Article III standing
  - Defendant’s memorandum in support of motion for judgment on the pleadings alleging that Plaintiff did not suffer an injury sufficient to claim Article III standing in a case brought under the TCPA, 47 U.S.C. § 227, and C.F.R. § 64.1200(a)(3)(iii) and (iv)

- **Duguid v. Facebook, Inc.**, Case No. 3:15-cv-00985-JST (N.D. Cal.)
  - Plaintiff argues that he suffered an injury-in-fact because he was “frustrated with [Facebook’s] text message bombardment,” because Facebook committed an “extreme” invasion of privacy, and because he suffered economic harm.

- **In Re: Monitronics International, Inc.**, No. 1:13-md-02493-JPB-MJA (N.D. W. Va.)
  - Plaintiff’s post-stay briefing requested by the Court on Spokeo’s impact on a pending TCPA MDL
  - PDF || MS Word

- **Johnson v. Navient Solutions Inc.**, Case No. 1:15-cv-00716-LJM-MJD (S.D. Ind.)
  - Plaintiff’s memorandum of law in support of his motion for summary judgment in a case alleging violation of the TCPA, 47 U.S.C. § 227, et seq. Plaintiff argues that Defendant violated the TCPA by placing autodialed calls to Plaintiff’s cellular telephone number, and by leaving
artificial or prerecorded messages on his cellular telephone.
- **Plaintiff’s memorandum in opposition** to Defendant’s motion for summary judgment.

- **Klein v. Hyundai Capital America**, Case No. 8:16-cv-01469-JLS-JCG (S.D. Cal.)
  - Plaintiff’s memorandum in opposition to Defendant’s motion to dismiss for lack of standing in a case brought under the TCPA, 47 U.S.C. § 227(b)(1)(A).
  - **Defendant’s memorandum** in support of its motion to dismiss for lack of standing.

- **Melito v. American Eagle Outfitters, Inc.**, Case No. 1:14-cv-02440 (S.D.N.Y.)
  - Plaintiff’s brief in response to the Third Party Defendant’s motion to dismiss a claim brought under the TCPA, 47 U.S.C. § 227(b)(1)(A), arguing that Plaintiff suffered a concrete injury under *Spokeo*.
  - Third Party Defendant, Experian, filed a motion to dismiss alleging that Plaintiff did not suffer an injury.

  - Plaintiff’s supplemental brief to inform the Court of *Spokeo* and its relevance to plaintiff’s standing in a claim brought under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227(b)(3)(A), 227(b)(3)(B), and 227(c)(5), 47 C.F.R. § 64.1200(d)(3)

- **Sartin v. EKF Diagnostics, Inc. & Stanbio Laboratory, L.P.**, C.A. No. 16-1816 (E.D. La.)
  - Plaintiff’s response to Defendant’s motion to dismiss alleging that Plaintiff has alleged actual damages and has Article III standing in a claim brought under the TCPA as amended by the Junk Fax Prevention Act of 2005, 47 U.S.C. § 227.
  - **Defendant’s motion to dismiss** for lack of standing and Defendant’s reply to Plaintiff’s opposition memorandum.

- **Sterling v. Mercantile Adjustment Bureau, LLC**, No. 14-1247 (2d Cir.)
  - Plaintiff-Appellant’s supplemental briefing on injury-in-fact as requested by court order in light of Spokeo in a claim brought under the TCPA, 47 U.S.C. § 227(b)(1)(A). Plaintiff-Appellant argues that he alleges a number of concrete injuries.
  - Defendant-Appellee’s supplemental briefing on injury-in-fact, conceding that Plaintiff-Appellant would likely meet his burden to establish that he suffered an injury-in-fact sufficient to establish standing due to records exchanged during discovery which indicate that voicemail messages were left for Plaintiff-Appellant in a claim arising under the TCPA.

- **Van Patten v. Vertical Fitness Group**, LLC, No. 14-55980 (9th Cir.)
  - Plaintiff-Appellant’s supplemental briefing on Article III standing in a case brought under the TCPA, 47 U.S.C. §227. Plaintiff-Appellant argues that Defendant violated his substantive, rather than procedural rights, under the TCPA and that the harm suffered has both a “close relationship” to a harm recognized at common law and is of the type recognized by Congress to satisfy Article III.

- **SEE RELEVANT TCPA COURT DECISIONS >>>**

**Other**

- **Alleruzzo v. SuperValu Inc.**, Case No. 16-2528 (8th Cir.)
  - Plaintiff-Appellants’ brief on appeal in a claim brought under various state consumer protection acts as well as state data breach notification statutes, arguing that they satisfy Article III standing as a result of substantial risk of suffering identity fraud and theft, as well as time, money, and efforts required to mitigate the ongoing risk of fraud and identity theft.
  - Electronic Privacy Information Center submitted an amicus brief in support of Plaintiff-Appellants, arguing that they sustained an injury-in-fact. The brief explains that a company causes legal injury when it violates its customers’ statutory or common law rights by failing to protect their data or failing to inform them of a data breach.

- **Altman v. White House Black Market, Inc.**, C.A. No. 1:15-cv-2451-SCJ (N.D. Ga.)
  - Plaintiff submitted objections to the Magistrate’s Final Report and Recommendation in light
of the *Spokeo* ruling, arguing that the report misreads and misapplies *Spokeo* in a claim brought under FACTA, 15 U.S.C. § 1681(g)(1), and that the suit should not be dismissed because Plaintiff has standing.

- **Defendant submitted a reply to Plaintiff’s objections.**

  - **Boelter v. Advance Magazine Publishers Inc.,** Case No. 15-cv-05671-NRB (S.D.N.Y.)
    - Plaintiff submitted a letter advising the Court of the *Spokeo* decision and its impact on a claim brought under the Video Rental Privacy Act, M.C.L. § 445.1712
    - Plaintiff submitted a letter advising the Court of the Third Circuit’s recent decision in *In re Nickelodeon Consumer Privacy Litigation*, — F.3d–, 2016 WL 3513782 (3d Cir. June 27, 2016)
    - Defendant submitted a letter detailing the implications of *Spokeo*
    - Defendant submitted a letter responding to Plaintiff’s letter advising the Court of the decision rendered in *Boelter v. Hearst Comm’n, Inc.*, No. 15-cv-03934 (S.D.N.Y.)

  - **Braitberg v. Charter Communications,** No. 14-1737 (8th Cir.)
    - Plaintiff-Appellant’s response to Defendant-Appellee’s notice of new authority regarding the affect of *Spokeo* on a claim brought under §551(e) of the Cable Communications Policy Act

  - **Boelter v. Hearst** (CA No. 15-cv-03934-AT (S.D.N.Y)
    - Plaintiff’s opposition to Supplemental Brief in Further Support of its Motion to Dismiss suit brought under the Michigan Preservation of Personal Privacy Act, M.C.L. §§ 445.1711 et seq.

  - **Carpenters Industrial Council v. Ashe,** Case No. 15-5304 and 15-5334 (DC Cir.)
    - Appellant Reply Brief in opposition to Appellee’s Brief alleging lack of standing

  - **Cruper-Weinman v. Paris Baguette,** Case No. 13-cv-07013-JSR (S.D.N.Y.)
    - Plaintiff’s memorandum of law in opposition to Defendant’s motion to dismiss the amended class action complaint which alleges violation of FACTA, 15 U.S.C. § 1681 et seq. Plaintiff argues that she suffered a concrete injury sufficient to satisfy Article II when a merchant violated her substantive, statutorily protected rights by printing her personal financial information in violation of FACTA.

  - **Derek Gubala v. Time Warner Cable, Inc.,** Case No. 16-2613 (7th Cir.)
    - Plaintiff-Appellant’s brief arguing that Plaintiff’s complaint establishes Article III standing, and that The Cable Act creates substantive rather than procedural requirements.

  - **Emilio v. Sprint Spectrum L.P.,** Case No. 1:11-cv-03041 (S.D.N.Y.): OTHER
    - Plaintiff’s first and second responses to Defendant’s briefing on the implications of the *Spokeo* ruling on Plaintiff’s claim brought under the Kansas Consumer Protection Act, Kan. Stat. 50-623, et seq.
    - Defendant’s briefing on *Spokeo*, and letter claiming that the case must be dismissed for lack of injury.

  - **Fraser et al. v. Wal-Mart Stores Inc.** et al., Case No. 2:13-cv-00520 (E.D. Cal.)
    - Plaintiff’s response and opposition to Defendant’s motion to determine whether subject matter jurisdiction exists in a claim brought under California’s Song-Beverly Credit Card Act.

  - **Friends of Animals v. Sally Jewell,** Case No. 15-5223 (D.C. Cir.)
    - Plaintiff’s response to Defendant’s submittal of supplemental authority regarding *Spokeo*, distinguishing the FCRA claim in *Spokeo* from the ESA claim at issue. Plaintiff explains that “[t]here is a difference between Congress providing a petitioner the right to sue for general violations of an Act and providing a petitioner with means of enforcing a statutory provision that certain information be publically disclosed”.

  - **Goertzen v. Great American Life Insurance Co.,** Case No. 4:16-cv-00240-YGR (N.D. Cal.)
    - Plaintiff’s opposition to Defendant’s motion for summary judgment regarding standing in a
case brought under the Unfair Competition Law, Bus. & Prof. Code § 17200, et seq. Plaintiff argues that she suffered real injury as a direct result of the issuance of an illegal annuity contract, and that her claim is one of statutory violation not fraud.

- **Guarisma v. Microsoft**, No. 1:15-cv-24326 (S.D. Fla.)
  - Plaintiff’s opposition to Defendant’s motion to dismiss a claim brought under FACTA, 15 U.S.C. § 1681c(g), arguing that Plaintiff suffered a concrete injury.
  - Defendant’s motion to dismiss alleging that Plaintiff did not allege a concrete injury under *Spokeo*.

- **Gubala v. Time Warner Cable, Inc.**, Case No. 16-02613 (7th Cir.)
  - Amicus brief submitted by Electronic Privacy Information Center in support of Plaintiff-Appellant and in support of reversal in a case brought under the Cable Communications Policy Act (“CCPA”), 47 U.S.C. § 551(e). Electronic Privacy Information Center argues that the lower court failed to apply the Spokeo test and that Plaintiff-Appellant has standing under Article III.
  - Plaintiff-Appellant’s brief arguing that Plaintiff’s complaint establishes Article III standing and that the Cable Act Creates substantive rather than procedural requirements.

- **Hardaway v. DC Housing Authority**, Case No. 14-7144 (DC Cir.)
  - Amicus brief in support of Plaintiff-Appellants’ claim under the Fair Housing Act, the ADA, and Rehabilitation Act § 504


- **In Re Barnes & Noble Pin Pad Litigation**, Case No. 1:12-cv-08617 (N.D. Ill.)
  - Plaintiffs’ opposition to Defendant’s motion to dismiss the consolidated class action complaint alleging violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2, and §§ 1798.80 of the California Civil Code. Plaintiffs argue that they have Article III standing.
  - Defendant’s submission in response to Plaintiffs’ supplemental authority.

- **In re Facebook Biometric Information Privacy Litigation**, No. 3:15-cv-3747-JD (N.D. Cal.)
  - Plaintiffs’ opposition to Facebook’s motion to dismiss a case brought under the Biometric Information Privacy Act, 740 ILCS 14/1 et seq., for lack of subject matter jurisdiction. Plaintiffs argue that they suffered both a tangible injury to their property rights and an informational injury as a result of Facebook’s actions.

- **Martinez v. Burlington Stores Inc.**, Case No. 1:16-cv-02064 (D.N.J.)
  - Plaintiff’s memorandum in opposition to Defendant’s motion to dismiss, arguing that plaintiffs have Article III standing to bring claims under New Jersey’s Truth-in-Consumer Contract, Warrant and Notice Act as a result of concrete informational injuries as supported by the New Jersey Legislature. Plaintiff alleges that Defendant violated TCCWNA, N.J.S.A. §56:12-14, et seq.

- **Matera v. Google, Inc.**, No. 5:15-cv-04062 LHK (N.D. Cal.)
  - Supplemental briefing in response to *Spokeo* for a claim brought under the California Invasion of Privacy Act, Cal. Pen. Code §§ 630, et seq., and the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 et seq. (Plaintiff’s and Defendant’s Supplemental Briefs) PDF || MS Word
  - Plaintiff’s Reply brief
  - Defendant’s Reply Brief
• **Medellin v. IKEA U.S. West, Inc.,** Case No. Case No. 15-55174 (9th Cir.)
  - Plaintiff-Appellant’s motion to dismiss appeal for lack of subject matter jurisdiction with directions to the District Court to remand a claim brought under the California Civil Code, section 1747.08(e).
  - Defendant-Appellee’s brief in opposition to Plaintiff-Appellant’s motion to dismiss and directions to remand.

• **In re: Nickelodeon Consumer Privacy,** No. 15-1441 (3rd Cir.)

• **O’Shea v. P.C. Richard & Son, LLC,** Case No. 2:15-cv-09069-KPF (S.D.N.Y.)
  Memorandum in opposition to Defendants’ motion to dismiss a case brought under FACTA, 15 U.S.C. § 1681c(g)(1). Plaintiffs argue that they have established Article III standing.

• **Parker v. Hey, Inc.,** Case No. 3:16-cv-4884-WHA (N.D. Cal. Nov. 16, 2016)
  Plaintiff’s response in opposition to Twitter’s motion to dismiss a case brought under Alabama’s Rights of Publicity Act, Ala. Code 1975 § 6-5-770 et seq. Plaintiff argues that he has suffered an injury-in-fact and that he therefore has Article III standing.

• **Perry v. Cable News Network Inc.,** Case No. 16-13031 (11th Cir.)
  - Appellant’s brief discussing a claim brought under the Video Privacy Act, 18 U.S.C. § 2710(a)(3) and (b)(1), and arguing that Appellant has Article III standing. The district court found that the Appellant did indeed have Article III standing and Appellant defends that ruling while arguing that the district court erred in denying leave to amend.
  - Appellant’s brief in opposition to Defendant’s motion to dismiss for lack of standing and subject matter jurisdiction, arguing that the VPPA protects a concrete interest.

• **Potocnik v. Carlson,** Case No. 0:13-cv-02093 (D. Minn.)
  - Plaintiff’s letter brief on the impact of *Spokeo* in a claim brought under the Driver’s Privacy Protection Act (“DPPA”), 18 U.S.C. § 2721, et seq., and 42 U.S.C. § 1983. Plaintiff argues that she satisfies the injury-in-fact requirement of Article III as supported by her articulation of emotional distress suffered as a result of Defendant’s alleged violation of the DPPA.
  - Defendant’s letter brief on the impact of *Spokeo* in a DPPA claim, conceding that Plaintiff has alleged a concrete injury by alleging that she suffered injury in the form of emotional distress. Defendant disputes that allegation and argues that Plaintiff must prove the existence of her alleged injury-in-fact before trial can proceed on the issues of liquidated or punitive damages.

• **Pundt v. Verizon Commc’n, Inc.,** Case No. 3:12-cv-4834 (5th Cir.):
  - Plaintiff-Appellants’ supplemental brief in a case brought under the Employment Retirement Income Security Act, 29 U.S.C. §§ 1132(a)(2) and (a)(3). The case was vacated and remanded to the Fifth Circuit for further consideration in light of *Spokeo*. Plaintiff-Appellant argues that a fiduciary breach is a de facto injury and that Pundt suffered a concrete injury-in-fact when Defendant’s breached their fiduciary duties to the class.
  - Defendant-Appellee’s supplemental brief in a case brought under the Employment Retirement Income Security Act, 29 U.S.C. §§ 1132(a)(2) and (a)(3). Defendant-Appellee argues that *Spokeo* does not affect the Fifth Circuit’s original standing analysis, and claims that Plaintiff-Appellants’ alleged allocation of a fiduciary breach is not a concrete harm.

• **Roldan v. Toys R Us, Inc.,** Civil Action No. 2:16-CV-01929-SDW-LDW (D.N.J.)
  - Plaintiff’s brief in opposition to Defendant’s motion to dismiss for lack of injury in a claim brought under the New Jersey Truth-in-Consumer Contract, Warranty and Notice Act, N.J.S.A. 56:12-15 and 56:12-16
  - Defendant’s motion to dismiss alleging that Plaintiff failed to allege any injury suffered.

• **Rose Coulter-Owens v. Time Inc.,** Case No. 16-01321 (6th Cir.)
  Plaintiff-Appellant’s Response to Defendant-Appellee’s motion to dismiss a claim brought under Michigan’s Video Rental Privacy Act (“VRPA”), M.C.L. § 445.1712, for lack of Article III
standing. Plaintiff-Appellant argues that Time’s motion should be denied because *Spokeo* confirms – rather than undermines – that Plaintiff-Appellant suffered an injury-in-fact, and that the dispute is not really one of standing but rather about whether a cause of action exists under a recent Michigan statutory amendment.

- **Rupel v. Consumers Union of United States, Inc.,** Civil Action No. 16-cv-02444-KMK (S.D.N.Y.)
  - Plaintiff’s opposition to Defendant’s motion to dismiss in a case brought under the Michigan Preservation of Personal Privacy Act, M.C.L. §§ 445.1711, et seq.
  - Plaintiff argues that he alleges a injury sufficient to satisfy Article III standing.

- **Schwartz v. HSBC Bank USA, N.A.,** Case No. 14-cv-9525 (KPF) (S.D.N.Y.):
  - Plaintiff’s Memorandum of Law in Opposition to Defendant’s motion to dismiss under Spokeo in a case alleging a violation of the Truth in Lending Act, 15 U.S.C. § 1601 et seq.
  - Plaintiff argues that he suffered a concrete and particularized injury when Defendant exposed him to a material risk that he would be misled into overpaying for credit.

- **Strubel v. Comenity Bank, C.A.** No.15-528 (2nd Cir.)
  - Plaintiff’s supplemental Spokeo briefing filed at the request of the Second Circuit in a case dismissed under the Fair Credit Billing Act (“FCBA”)
  - CFPB amicus brief in support of Plaintiff’s standing in a case dismissed under the Fair Credit Billing Act (“FCBA”)

- **Sweeney v. Bed Bath & Beyond Inc.,** Case No. 2:16-cv-01927 (D.N.J.)
  - Defendant’s brief in support of its motion to dismiss alleging that Plaintiff did not suffer an injury sufficient to create Article III standing.

- **Storm v. Paytime, Inc.,** No. 15-03690 (3rd. Cir.)
  - Appellant Reply Brief in opposition to Appellee’s Brief alleging lack of standing in a breach of contract claim
  - Amicus brief submitted by the National Association of Consumer Advocates (“NACA”) in support of Appellants seeking reversal and/or vacatur of the District Court’s ruling.

  - Notice of authority filed by Plaintiff about the *Spokeo* case in a claim brought under 740 Ill. Comp. Stat. 14/1 to 14/99

  - Plaintiff’s objection to the Report and Recommendation which finds that Plaintiff did not suffer an injury-in-fact, and therefore lacks Article III standing.

- **Whitaker v. Appriss, Inc.,** No. 3:13-cv-00826-RLM-CAN (N.D. Ind.)
  - Plaintiffs’ opposition to Defendant’s motion to dismiss in a case alleging violations of the Driver’s Privacy Protection Act, 18 U.S.C. §§ 2721-22. Plaintiffs argue that they have suffered the type of harm specified by Congress and which the DPRA was enacted to prohibit and remedy. They further argue that it is immaterial whether this harm is physical or monetary.

  - Plaintiff’s response in opposition to Defendant’s motion to dismiss a claim brought under the Video Privacy Protection Act, 18 U.S.C. § 2710. Plaintiff argues that Defendant misreads *Spokeo* and that Plaintiff suffered a concrete injury sufficient to satisfy Article III.

- **Zink v. First Niagara Bank,** N.A., Case No. 13-CV-01076-RJA-JJM, (W.D.N.Y.)
Plaintiff submitted a memorandum of law in response to the court’s order seeking the parties’ respective positions on the impact of Spokeo on the court’s subject matter jurisdiction. The claim arises under New York’s Real Property Law, § 275(1), and Real Property Actions and Proceedings Law, § 1921(1), and was stayed pending Spokeo. Plaintiff argues that he suffered a concrete injury-in-fact.

**SEE RELEVANT COURT DECISIONS >>>

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**Henson v. Santander**

The Supreme Court on June 12 in *Henson v. Santander Consumer USA Inc.*, __ U.S. __, 2017 WL 2507342 (June 12, 2017) held that debt buyers are not covered under the FDCPA’s second definition of debt collector because they do not collect debts owed to another. This webpage provides resources to consumer attorneys litigating cases against debt buyers whose principal business is buying defaulted debt.

This webpage will be updated as more materials become available. Please email henson@nclc.org with any submissions of relevant materials.

**Articles Discussing Case Development**

- **Key Post-Henson Decision Holds Debt Buyer Is a “Principal Purpose” Debt Collector** by NCLC attorney April Kuehnhoff, March 7, 2019
- **FDCPA Coverage of Debt Buyers: Implications of Supreme Court’s June 12 Ruling in Henson** by NCLC attorney April Kuehnhoff, June 15, 2017.

**Model Language for Henson Briefs**


**Sample Complaints Against Debt Buyers**


**Sample Henson Briefing**

- McAdory v. M.N.S. & Associates, L.L.C., Case No. 18-35923 (9th Cir.) ([Opening Brief](#) and [Reply](#))
- **Barbato v. Greystone Alliance**, L.L.C., Case No. 18-1042 (3d Cir.)
- **Bueno v. Mel S. Harris and Associates**, LLC, et al., Case No. 1:16-cv-04737-WFK-VMS (E.D.N.Y.)
- **Chenault v. Credit Corp Solutions, Inc.**, Case No. 16-cv-5864 (E.D. Pa.)
- **McMahon v. LVNV Funding, LLC**, Case No. 12-cv-1410 (N.D. Ill.)
- **Mitchell v. LVNV Funding, LLC**, Case No. 12-cv-523 (N.D. Ind.) ([Motion to Reconsider](#) and [Reply](#))
- Reygadas v. DNF Assoc., L.L.C., Case No. 18-cv-2184 (W.D. Ark.) ([Amended Complaint](#) and [Opposition to Motion to Dismiss](#))
- **Schweer v. HOVG, L.L.C.**, Case No. 16-cv-1528 (M.D. Pa.)
Additional Resources

- **Henson v. Santander Consumer USA Inc.** Supreme Court Decision, June 12, 2017.
- National Association of Consumer Advocates (NACA) webinar: **Henson v. Santander Consumer USA Inc.**, June 28, 2017. Cost: $40 (NACA member); $75 (Non-member). Note: Non-members of NACA must be vetted prior to purchasing. Please e-mail rebecca@consumeradvocates.org

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**Case Index - Closed Cases**

**Auto Finance Discrimination**

As co-counsel in a series of national class action lawsuits brought under the Equal Credit Opportunity Act, NCLC has successfully attacked racially discriminatory lending practices in the used (and new) car business, with settlements valued at well over $100 million. The cases, which were filed against some of the nation’s largest auto finance companies and banks, charged that the defendants maintained policies which permit car dealers to “mark-up” the finance rates on loans based on subjective criteria unrelated to creditworthiness. This mark-up policy has had a disparate impact on African-American and Hispanic customers, who end up paying more for credit than whites with similar credit ratings. The lawsuits, which exposed practices that had operated secretly for over 75 years and had resulted in higher-interest rate car loans for minorities, have transformed car financing practices across the industry.

- Op-ed by NCLC Director of Litigation Stuart Rossman **“The data is clear: Auto lenders discriminate.”** Nov. 17, 2015
- Testimony at the **CFPB Auto Finance Forum re: results of NCLC’s auto finance discrimination litigation**, Nov. 2013
  - Video of CFPB Auto Finance Forum (Stuart Rossman testimony begins at 55:25)
- **AHFC (Terry Willis, et al v. American Honda Finance Corporation)**
  - Settlement Agreement
  - **Appendix D**: Top Dollar and Percentage Point Markups
  - **Appendix F**: Top 100 Dollar Markups by State
Bank Overdraft Fees

- **Yourke v. Bank of America**, [Complaint](#)  
  (Appendix A, Appendix B, Appendix C-1 and C-2, Appendix D, Appendix E, Appendices F-G)

Debt Collection

- **Blake v. Riddle & Wood**, Second Amended Class Action [Complaint](#) for telephone harassment of Massachusetts debtors.  
- **Clawson, appellant v. Midland Funding** – [Opinion of Court of Appeals Decision](#), Feb. 26, 2013. The Sixth Circuit Court of Appeals reversed approval of a nationwide settlement affecting 1.44 million victims of a debt buyer’s “predatory practices” in using robosigned affidavits to obtain state court collection judgments. The Court found that the original settlement was unfair, unreasonable, and inadequate, that the district court abused its discretion in certifying the nationwide settlement class, and that the notice to prospective class members did not satisfy due process. This step allows all of the other robo-signing cases brought against Midland around the United States to proceed. NCLC represented one of the appellants in the case.
- **Dorrian v. LVNV** [Second Amended Complaint](#) on behalf of class of individuals sued by debt buyer which is unlicensed in Massachusetts. Class certified and partial [Summary Judgment](#) for Plaintiffs was overturned by the Massachusetts Supreme Judicial Court. 479 Mass. 265 94 N.E.3d 370 (2018).
- **Fritz v. Resurgent Capital Services and LVNV**, Case No. 11-CV-3300 FB VVP in the Eastern
This case challenges the practice of debt buyer LVNV filing state court collection suits in the name of Resurent Capital, one of its unlicensed subsidiaries, in order to protect itself from liability. In a ruling on July 24, 2013, the court denied the defendants’ Motion to Dismiss in all respects but one. He held that plaintiffs had stated a viable misrepresentation claim under the FDCPA. The court recognized that misrepresenting the owner of the debt was a material violation even though the true owner was a corporate parent because it could confuse and mislead the least sophisticated consumer. Another FDCPA violation that also passed muster was that defendants falsely reported the amount of the debt to CRAs by including state court costs even when they hadn’t yet gotten a judgment in their collection action awarding such costs.

Affirmative defenses of collateral estoppel (due to state court collection judgments), abstention and Noerr Pennington were rejected too. The only claim that was dismissed related to an individual collection letter that also misrepresented ownership of the debt, but was filed beyond the 1 year statute of limitations for such a claim. The decision is reported at 2013 WL 3821479.

- *Jenkins v. General Collection Co.*, Second Amended Class Action Complaint and Settlement Agreement
- *Kulig v. Midland Funding*, Case No. 13 CV 4715, US District Court (EDNY) – suit for systematically filing time-barred lawsuits against hundreds of New York consumers who fell behind on their credit card payments. The suit covers New York consumers whose credit card was issued by a Delaware bank. Under NY law, these collection suits must be filed within 3 years of default on the account, but Midland routinely sues long after that. Settled on an individual basis.
- *Lannan v. Levy & White*, Case No. 14 cv 13866 – Partial summary judgment as to liability and class certification were granted in an FDCPA and MA Ch. 93A suit against an attorney debt collector who misrepresented the amount owed by persons receiving ambulance services when he calculated prejudgment interest from the date the services were provided, rather than from the date a demand for payment was sent to the patient. In addition, as a separate violation, in his small claims complaints, the attorney lumped prejudgment interest that hadn’t yet been awarded into the amount claimed to already be due at the time of filing of the complaint. The court found this could be confusing to an unsophisticated consumer deciding how to respond to the complaint. Complaint || Order Subsequently, a class action settlement was approved by the Court.
- *Pettway v. Harmon Law Offices*, P.C., Second Amended Class Action Complaint
- *Spence v. Cavalry*, Complaint and Class Action Settlement involving major debt buyer’s practice of retroactively adding interest to the balances on credit card debts it purchased.

**ERISA**


**Fair Housing**

- *Connecticut Fair Housing Center, Inc. vs Liberty Bank Case No. 18-1654* || Press Release and Complaint The National Consumer Law Center and the Connecticut Fair Housing Center filed a fair housing lawsuit in the United States District Court for the District of Connecticut against Liberty Bank, alleging that Liberty Bank violated the Fair Housing Act by: engaging in a pattern and practice of redlining communities where most of the residents are racial and ethnic minorities; discriminating against African - American and Latinx mortgage
applicants and discouraging African–American and Latinx mortgage applicants from applying for credit. Press Release and Settlement Agreement.

**Foreclosures**

- *Archibald v. GMAC Mortgage* Class Action Complaint alleging routine use of fraudulent affidavits in foreclosures (Exhibits 1-4, Exhibits 5-25);
- Court Decision of the Maine S.Ct., on certified question from the U.S. District Court

**Land Contracts**

- *Horne et al. v. Harbour Portfolio et al.* Second Amended Complaint (N.D. GA)
- *Horne et al. v. Harbour Portfolio et al.* Third Amended Complaint (N.D. GA)
- Opposition to Defendant Harbour’s Motion to Dismiss Second Amended Complaint
- Opposition to Defendant NAA’s Motion to Dismiss Second Amended Complaint
- Order on Motion to Dismiss Second Amended Complaint (N.D. GA)

*Horne v. Harbour Portfolio*, United States District Court for the Northern District of Georgia: Suit was brought by the Atlanta Legal Aid Society on behalf of 22 African-American residents representing 16 households. The action asserted claims of discriminatory targeting for abusive credit terms in home purchase “contract for deed” transactions extended by Harbour Portfolio. The complaint alleged that Harbour Portfolio, through both intentional targeting of African-American consumers and practices that have a foreseeable disparate impact on African-American consumers, violated the Fair Housing Act of 1968, as amended, 42 U.S.C. § 3601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. § 1691, et seq., and the Georgia Fair Housing Act, O.C.G.A. § 8-3-200 et seq. NCLC subsequently joined the case as plaintiffs’ co-counsel.

On March 20, 2018, the Court denied a motion to dismiss for all but one of the claims asserted (wrongful eviction). Thereafter, during on-going discovery, including subpoenas issued to Fannie Mae, requests for production of documents by the defendants and depositions of the defendant principal, the parties engaged in mediation before a U.S. Magistrate Judge. The case settled in December, 2018. The 12 households who were still living in their homes received a deed converting their contract for deed to a mortgage with title insurance, reduced interest rates, shorter repayment terms and, in some cases, principal reductions. They also received a lump sum cash payment. The four households who were evicted/no longer living in the home received separate lump sum cash payments. As part of the settlement, separate attorneys’ fees were paid to plaintiffs’ counsel of record. (More information on land installment contracts including NCLC’s 2016 report, Toxic Transactions: How Land Installment Contracts Once Again Threaten Communities of Color, here)

**Military Pensions**

- *Amos v. Advanced Funding, Inc. et al* Complaint
- *Henry v. Structured Investments Co. et al* Complaint/Trial Decision (Class-action lawsuit regarding assignment of pension rights in exchange for lump sum payments)
- Testimony of NCLC Director of Litigation Stuart Rossman before the U.S. Senate Committee on Aging re: pension advance schemes, Sept. 30, 2015
Mortgage Related Claims

**HAMP Trial Period Plan (TPP) Contract Claims**

- [Complaint](#) against Bank for failure to honor its agreements with borrowers to modify mortgages and prevent foreclosures under the United States Treasury’s Home Affordable Modification Program (“HAMP”).

**Mortgage Discrimination by Subprime Lenders**

National class action cases brought under the Fair Housing Act and the Equal Credit Opportunity Act against certain subprime mortgage lenders:

- [Barrett v. H & R Block Class Certification Report of Ian Ayres](#) (redacted and publicly filed)
- [Barrett v. H & R Block Class Certification Reply Report of Ian Ayres](#) (redacted and publicly filed)
- [Barrett v. H & R Block Class Certification Rebuttal Report of Patricia McCoy](#) (redacted and publicly filed)
- [Barrett v. H & R Block Class Certification Decision](#)
- [Garcia v. Countrywide Financial Corporation, Class Action Complaint](#)
- [Ramirez v. Greenpoint-Howell Jackson Expert Report](#) (publicly filed)
- [Ramirez v. Greenpoint-Howell Jackson Reply Expert Report](#) (publicly filed)
- [Ramirez v. Greenpoint-Patricia McCoy Rebuttal Expert Report](#) (publicly filed)
- [In re Wells Fargo Mortgage Lending Practices Litigation, Class Action Complaint](#)
- [In re Wells Fargo Mortgage Lending Practices Litigation, Class Certification Report](#)
- [In re Wells Fargo Mortgage Lending Practices Litigation, Reply Class Certification Report](#)

**Mortgage Securitization Discrimination**

- [Beverly Adkins et al. v Morgan Stanley](#)

The National Consumer Law Center is co-counsel for African American plaintiffs in a prospective class action lawsuit brought against Morgan Stanley. The lawsuit claims that the Defendant violated federal civil rights laws, the Fair Housing Act and the Equal Credit Opportunity Act as well as state laws by adopting mortgage securitization policies that caused predatory lending and adversely impacted African Americans in the Detroit, Michigan area. It is the first case where a prospective class of affected homeowners victimized by subprime lending abuses has directly sued an investment bank. It is also the first lawsuit to connect racial discrimination to the securitization of mortgage-backed securities.

- [Adkins v. Morgan Stanley](#)

The [Adkins v. Morgan Stanley](#) lawsuit asserts that Morgan Stanley pursued mortgage securitization policies and practices that, through their funding of now-defunct mortgage lender New Century Mortgage Company, resulted in a significant discriminatory impact on African-American borrowers in the Detroit metropolitan area, flooding the already highly segregated community with toxic, combined-risk subprime loans in the lead-up to the collapse of the housing market in 2008. Read the expert reports submitted in support of the reverse red-lining allegations made in the case and NCLC’s issue brief detailing key findings by the experts.

- [Appellants’ 2nd Circuit Brief](#) (Class Certification) (November 2015)
- [AFSCME/SEIU 2nd Circuit Amicus Brief](#) (November 2015)
- [NAACP Legal Defense & Educational Fund, New York Law School Racial Justice Project](#)
- [Damon J. Keith Center for Civil Rights and Michigan Welfare Rights Organization 2nd](#)
Private Child Support Collection Agencies

- Zipperer v. Supportkids, Inc. (Complaint and Court Decision and Order)

Refund Anticipation Loan Cross Lender Debt Collection

- Order After Hearing: Preliminary Approval of Class Settlement
- Settlement Agreement
- FAQ
- Press Release (March 18, 2003)
- Hood v. Santa Barbara Bank & Trust Complaint

Small Loans at High Cost

- Chester v. Tancorde - Complaint and Class Action Settlement against small loan company for violations of TILA.
- Tullie v. T & R Market - Complaint and Class Action Settlement against pawnbroker for TILA and state law violations
- In re: Chase Bank USA, N.A. “Check Loan” Contract Litigation, Master Class Action Complaint

Student Loans

- Bible v. United Student Aid Funds, Inc - Case Number 1:13-cv-00575, U.S. District Court, S.D. Indiana. A $23 Million dollar settlement was approved in this class action asserting that United Student Aid Funds, a non-profit guarantor for certain student loans, unlawfully imposed collection costs on student loan borrowers like Plaintiff. Plaintiffs’ contention was that the Higher Education Act, which is incorporated in the parties’ promissory note, provides that collection costs cannot be imposed if a borrower enters into a rehabilitation agreement within 60 days of default. Defendants argued that the applicable regulations should be interpreted to permit the imposition of such costs. The case had gone up to the 7th Circuit Court of Appeals, which in a split decision, reversed dismissal of the suit. USAF then filed a non-frivolous affirmative suit against DoE to strike down its favorable interpretation of the regulation on APA grounds. Nevertheless, mediation before a retired federal judge led to a favorable settlement for the class.
Litigation

Consumer Class Actions

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NCLC represents consumers in cutting-edge litigation that seeks to reform the rules of the marketplace. We are interested in cases that will have a far-reaching impact and can benefit from our unique legal and policy expertise. To maximize our limited resources we help bring together strong litigation teams made up of private lawyers, legal aid, and nonprofit groups.

Amicus Briefs || Litigation Project Guidelines

Co-Counseling with NCLC || NCLC Open Cases || NCLC Closed Cases

Litigation Tools || Spokeo, Inc. v. Robins

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- Amicus Brief by the National Consumer Law Center and the Center for Responsible Lending supporting neither party in David Petersen, et al v. Chase Card Funding, LLC, Chase Issuance Trust, and Wilmington Trust Company, as Trustee of Chase Issuance Trust filed with the U.S. Western District Court of New York, Feb. 7, 2020
- Amicus Brief of National Consumer Law Center, Center for Responsible Lending and Colorado Public Interest Research in support of plaintiff in Martha Fulford v Avant of Colorado LLC et al and Web Bank, January 13, 2020
- NCLC and the National Association of Consumer Advocates (NACA) submitted a Supplemental Comment to the Judicial Conference Advisory Committee on Civil Rules and its Rule 30(b)(6) Subcommittee regarding the alternative proposed amendments to federal Rule of Civil Procedure 30(b)(6), March 29, 2019
- NCLC, in conjunction with the National Veterans Legal Services Program and Alliance for Justice, represented by Gupta Wessler LLC (Complaint), filed a Federal Circuit brief (Brief) defending their partial victory (Summary Judgment) in a class action challenging the federal judiciary’s collection of millions of dollars in excess fees for access to online court records (PACER). NCLC and the other plaintiffs allege the excessive PACER fees inhibit public understanding of the courts and thwart equal access to justice, erecting a financial barrier that many citizens are unable to clear. The case, now on appeal at the United States Court of Appeal has attracted an array of supporting briefs from former judges, news organizations,

- NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 30(b)(6), August 9, 2017  
  - Supplementary comments on behalf of NCLC and NACA, January 3, 2019
- Testimony of NCLC Director of Litigation Stuart Rossman before the U.S. Senate Committee on Aging re: pension advance schemes, Sept. 30, 2015
- NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 23, September 4, 2015
- NCLC and NACA comments to the Civil Rules Advisory Committee re: Rule 23, April 1, 2015
- U.S. Consumer Law Attorney Fee Survey 2017-2018 (Released by Ronald L. Burdge, Esq. on Sept. 10, 2019)

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**Case Index - Open Cases**

**Criminal Justice Debt**

- *Crain & Serna v Accredited Surety and Casualty Co., et al.*, Case No RG1900-4509 [Complaint](#) and [Press Release](#)
  NCLC has filed a class-action lawsuit, with our partners at Lieff Cabraser Heimann & Bernstein LLP, Justice Catalyst Law, Public Counsel, and Towards Justice, in which we are challenging a scheme to inflate the price of bail premiums in the state of California. The lawsuit was filed in California state court on Jan 29, 2019, against the surety companies that underwrite bail bonds and the state and national trade associations representing the bail bond industry. Plaintiffs allege that an unlawful antitrust conspiracy has kept bail bond premiums higher than they would be if the California bail-bonds market functioned competitively. This scheme, ongoing since at least 2004, has not only made bail bonds costlier for California consumers, but also resulted in more people spending time in jail while awaiting trial—separated from their families, jobs, and lives. The suit seeks damages for the hundreds of thousands of Californians who have overpaid for unlawfully inflated bail bond premiums and also injunctive relief to end the overcharges going forward.

- *Pearson et al v Hodgson and Securus Technologies, Inc*, Case No. 18-1360, [Complaint](#) and [Press Release](#)
  With our partners at Prisoners’ Legal Services, Harvard Law School’s Legal Services Clinic, and Bailey Glasser LLP, NCLC has filed a class-action lawsuit in MA federal court in which we are challenging an alleged illegal kickback scheme between the Bristol County Sheriff’s Office and telecom giant Securus Technologies that is nearly doubling the cost of privatized calls made by prisoners in Massachusetts correctional facilities. The challenge is based on Massachusetts laws restricting the ability of sheriffs to assess fees; this litigation targets a scheme by which the Bristol County Sheriff is attempting to get around those restrictions by contracting with the private vendor in order to extract revenues on his behalf. The suit seeks an injunction prohibiting the kickback scheme and monetary relief in the amount of the unjust enrichment generated by the practice. On December 20th, 2018 the [Court denied a motion to dismiss](#) filed by the Sheriff’s Office and declined to dismiss the claims asserted against Securus under M.G.L. c.93A, the Massachusetts Consumer Protection Statute.

- *Egana v Blair’s Bail Bonds, Inc*. Case No. 2:17-cv-5899 [First Amended Complaint](#)
Plaintiffs (who are accused criminal defendants) and others who agreed to indemnify the bail bond company in case of loss, filed this action on behalf of themselves and all individuals whose rights under federal and state law were violated when they contracted with Defendants for a bail bond to secure their own or their loved ones’ release from jail. The Amended Complaint describes the process through which Defendant bail bond company agreed to allow plaintiffs to finance the premium for the bond, but utilized contracts that violate the Truth in Lending Act, 15 U.S.C. § 1601 et seq. by failing to make necessary disclosures, and state contract, conversion, and usury laws by requiring payment of amounts above what state law allows, including paying daily fees for ankle monitors supplied by another company. The FAC also alleges that Defendants violated the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962 (RICO) and the Louisiana Racketeering Act, La. Stat. Ann. § 15:1351, by conspiring to employ or contract with bounty hunters to kidnap, detain, and threaten to jail principals unless they or their loved ones paid money that was distributed between Defendants. NCLC’s co-counsel are the Southern Poverty Law Center and the firm of Wilmer Hale

**Debt Collection**

- **Baker v. Ross** [Press Release] [Complaint] - The innovative class action lawsuit was filed by the Public Interest Law Center, Chimicles & Tikellis LLP, and the National Consumer Law Center, on behalf of a low-income tenant named Cassandra Baker and others like her. The complaint alleges her landlord’s collection lawyer, like many landlord lawyers, used misleading debt collection practices while attempting to evict her and force her to pay rent she did not owe, and that those practices violated federal law. A class action settlement was agreed upon in June, 2018, and is subject to Court approval.

- **White v. Fein, Such & Crane, LLP** - [Amended Complaint] asserting that law firm pursuing foreclosures attempted to collect fees and costs for services that were not performed or for services for which it could not legally collect.

**ERISA**

- **Huffman v. Prudential Insurance Company of America**, Class Action [Complaint]

Claim for insurance company’s improperly benefiting from the use of proceeds of life insurance policies provided by employers.

**Fair Credit Reporting**

- **Robinson v National Student Clearinghouse**, April 18, 2019 [Complaint]

The Francis & Mailman firm, along with the National Consumer Law Center and Justice Catalyst Law, filed a class action lawsuit against the National Student Clearinghouse (“NSC”) in the United States Federal District Court for the District of Massachusetts. The suit alleges that NSC maintains vast databases housing detailed information about college students and their college enrollment history from which it sells reports to potential creditors, insurers and employers among others. As such, the complaint asserts that NSC is a credit reporting agency under the Federal Fair Credit Reporting Act and the Massachusetts Credit Reporting Act and that it has violated those statutes by requiring unlawful and excessive charges for consumers to access their files. The complaint also asserts that the disclosure overcharges constitute unfair conduct in violation of the Massachusetts Consumer Protection Act. The plaintiff seeks to have the overcharging practices enjoined, the unlawful and excessive charges returned, applicable statutory damages and punitive awards for the willful and knowing violations of the consumer statutes.

- **White v. Experian/TransUnion/Equifax**
The National Consumer Law Center is co-counsel for the plaintiffs in class action lawsuit against TransUnion LLC, Experian Information Solutions, Inc., and Equifax Information Services LLC (“Defendants”). The suit claims that the Defendants violated the Fair Credit Reporting Act (“FCRA”) and state laws when reporting debts that had been discharged in bankruptcy as not discharged, failed to conduct proper investigations of consumer disputes regarding such debts and caused damage to consumers as a result. An injunctive relief settlement has been approved by the Court, and a proposed damages settlement has been reached and finally approved by the Court, subject to appeal by objectors.

Foreclosure and Mortgage

- Wilborn v. Bank One, Class Action [Complaint]
  This lawsuit challenged provisions in mortgages that allow reinstatement of a loan after default only if the homeowner brings all payments current and also pays the attorney’s fees incurred by the lender attempting to foreclose. NCLC and our co-counsel argued that these provisions were contrary to Ohio’s public policy that creditors cannot collect attorney’s fees from borrowers in debt collection actions. The Ohio Supreme Court found that because the right to reinstate was contractual, not statutory, the requirement to pay attorney’s fees was an enforceable part of the bargain. However, the Court distinguished reinstatement from other circumstances such as redemption or paying off a home equity line of credit, where the borrower pays the entire debt and no contractual relationship remains – in those circumstances, the lender cannot collect its attorney’s fees. The Ohio Supreme Court remanded the remaining portion of the case which it distinguished for trial in the Court of Common Pleas, and that the matter remains pending there for those class members who did not have their debts reinstated.

High Cost Small Loans


Mortgage Satisfactions

- Stromberg v. Ocwen Loan Servicing [Third Amended Complaint] and
- Maddox v. Bank of New York Mellon [Complaint]

These putative class actions seek penalties for untimely filing mortgage loan satisfactions of record.

Mortgage Servicing Litigation

Taylor v. Ocwen Loan Servicing [Complaint] for Violating Chapter 13 Bankruptcy Notice of Discharge Cures

Racial Justice

Comcast v. NAAAOM [Amicus brief] urging the Court to affirm the Ninth Circuit’s ruling denying Comcast’s motion to dismiss, Sept. 30, 2019
Robocalls & Telemarketing

Salcedo v. Hanna Amicus brief in support of plaintiff-appellee’s petition for rehearing and rehearing en banc, Sept. 25, 2019

Student Loans

- **Barber, Jenkins et al vs Devos and U.S. Department of Education**, Case 1:20-cv-01137, [Amended Complaint](#) and [Press Release](#), May 7, 2020. **Share your story** if you have had wages garnished in 2020 for a student loan. NCLC and Student Defense, with support of the Student Borrower Protection Center filed an emergency APA lawsuit in the D.C. District Court against the U.S. Department of Education seeking to stop its garnishment of wages from defaulted student loan borrowers and to force the agency to immediately comply with [Sec. 3513 (e)](#) of the CARES Act that mandates that all such collections be ceased until at least next September. As [reported](#) by the Washington Post, the Education Dept. estimates that 285,000 borrowers are still having their wages garnished. A motion for injunctive relief class certification has also been filed.

- **Bodor v Maximus Federal Services, Inc**. Case No. 5:19-cv-05787-EGS in the U.S. District Court for Eastern Pennsylvania, December 19, 2019. [Complaint](#) and [press release](#).

- **Bryant v. Navient Corp.** – Case No. 12-36689-BJH13 in the U.S. Bankruptcy Court, N.D. Texas, Dallas Division. This is a putative class action on behalf of numerous student loan borrowers across the country against the Department of Education and two of its servicers, Navient and Direct Loan Servicing. Filed in November, 2019, the suit seeks relief for the many student loan borrowers who made payments on their loans through their Chapter 13 plans, but whose payments were routinely returned to the Trustee, were then deposited in the Court Registry (where they are inaccessible to the borrowers), and were not credited to their loan accounts with the Department of Education. The problem is largely a result of the Department of Education changing servicers during the pendency of the borrowers’ Chapter 13 plans. After making the switch of servicers, neither the Department of Education nor the servicers filed an amended proof of claim with the bankruptcy court or a notice of address change listing a different or new address for payment for any of these borrowers. As a result, hundreds of thousands of dollars is languishing in the Unclaimed Funds Registry of scores of bankruptcy courts throughout the country.

- **National Consumer Law Center v U.S. Department of Education**, April 17, 2019, [Complaint](#) and [Press Release](#)

  The National Consumer Law Center (NCLC) filed a Freedom of Information Act (FOIA) complaint against the United States Department of Education (ED) in the Unites States District Court for the District of Massachusetts (C.A. No. 1:19-cv-10739). In the action NCLC seeks to have the ED produce a copy of its contract (including related amendments) with the Pennsylvania Higher Education Assistance Agency (PHEAA), one of the private student loan servicing companies with whom ED contracts to handle billing and other services for federal student loans. The U.S. Department of Justice and ED have stressed the importance of the requested materials, citing the contract as a basis to support their pronouncement that state regulators and law enforcement agencies are prohibited from enforcing state consumer protection statutes against student loan servicers. To date, however, nine (9) months after NCLC filed a FOIA Request on July 18, 2018 seeking the release of ED’s contract and related documents arising from its relationship with PHEAA, ED has not communicated to NCLC its determination as to NCLC’s Request, nor provided NCLC with any responsive documents as required by FOIA. NCLC has requested the Court to declare that ED has violated FOIA by its failure to timely respond to NCLC’s Request and its failure to make the requested records promptly available and to order ED to make the requested records available to NCLC without
further delay.


The National Consumer Law Center filed a lawsuit in the U.S. District Court for Massachusetts against the U.S. Department of Education for records related to its purported justification for delaying implementation of a rule to protect student loan borrowers from school fraud and abuse, including records of communications between agency officials and representatives of the for-profit college industry. NCLC filed a FOIA request for these records last summer and received limited, heavily redacted materials in response. NCLC asks the court to declare that the Department’s search was inadequate and its withholding of the records is unlawful, and to order the agency to make the requested records available without delay. Public Citizen is serving as co-counsel on the case.

- Menendez v. DeVos and the US Department of Education, Complaint

The Legal Aid Foundation of Los Angeles and National Consumer Law Center filed a lawsuit in federal court against the U.S. Department of Education and Secretary Betsy DeVos on behalf of three student loan borrowers defrauded by the for-profit Marinello Schools of Beauty (“Marinello”). At the time of its closure, Marinello had 56 campuses throughout California, Connecticut, Kansas, Massachusetts, Nevada, and Utah. The complaint challenged the Department’s delay of student loan borrower defense regulations. Shortly after the case was filed, the Department mooted it by granting discharges to the three named plaintiffs.

- Case against the United States Department of Education

The National Consumer Law Center is co-counsel in a Freedom of Information Act suit requesting public records of the U.S. Department of Education regarding race and debt collection practices of third-party debt collectors hired by the Department. Complaint, Exhibit 1 (FOIA request, May 7, 2015), Exhibit 2, Exhibit 3, and Exhibit 4, and Press Release

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CLOSED CASES

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Co-Counseling with the National Consumer Law Center (NCLC)

Why Co-counsel With NCLC?

NCLC sets an example for ethical, principled consumer law practices and encourages broader participation in such efforts by directly joining the litigation battle in partnership with new recruits as well as seasoned veterans. We offer a unique set of resources that can play a critical role in providing high quality representation to low income and elderly consumers in select class actions and high-impact cases.

First, NCLC is the leading national expert on legal and policy issues concerning low-income consumers. For over 40 years, NCLC has earned respect for its dedicated, informed, and well-researched consumer law advocacy. The professional integrity of the organization has consistently been recognized by the courts. NCLC will not become involved in a case unless the consumer issues presented are material, significant, and meritorious. Therefore, NCLC’s participation in a consumer
case will impact the way the action is perceived by adversaries, the court, and the public.

Second, the depth of NCLC attorneys’ knowledge of consumer laws, policies, and cases is unparalleled. To prepare and update NCLC’s consumer law treatises, NCLC’s staff drills down into every detail of the key consumer statutes that litigators enforce, from the details of its legislative history to the latest decisions and issues. Some of the best legal experts in the practice, those that know the most recent trends and theories, are our staff. The edge that this provides, and the savings in research time and effort, are extremely valuable.

Third, NCLC brings a national perspective to the cases it works on, even those with a local focus. Our staff frequently engage in projects with public agencies, community advocates, public interest organizations, private lawyers, and legal services offices from across the country. Our broad consumer practice has afforded us a special cache between, and among, widely disparate groups that might not be natural allies. Yet, NCLC has sufficient credibility and trust among all of these potential partners to create coalitions that are stronger and more effective, than any individual effort could be. Vigorous consumer law advocacy usually results in an equally vigorous, focused, well-financed industry response. To meet this challenge, and to share the cutting edge risks and expenses that often must be undertaken to achieve true, meaningful systemic change on behalf of consumers, we must work together.

Fourth, NCLC’s class action litigators, Stuart T. Rossman and Charles M. Delbaum, each have more than 35 years of experience handling complex litigation, including scores of consumer class actions.

Contact Us:
We invite you to review examples of current and past NCLC cases. Attorneys who wish to discuss the possibility of co-counseling a class action or impact case with NCLC should send an email to srossman@nclc.org or cdelbaum@nclc.org.