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July 1, 2016

By ECF:

The Honorable Naomi Reice Buchwald
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Boelter v. Advance Magazine Publishers Inc.*, Case No. 15-cv-05671-NRB (S.D.N.Y.)

Dear Judge Buchwald:

I write on behalf of Plaintiff Suzanne Boelter (“Plaintiff”) to advise 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) (“*Nickelodeon*”).

Nickelodeon is highly relevant to the pending motion to dismiss because it discusses Article III standing under the federal Video Privacy Protection Act – the Michigan Preservation of Personal Privacy Act’s federal counterpart – after *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016). In *Nickelodeon*, the Third Circuit reaffirmed long-standing precedent that “in some cases an injury-in-fact ‘may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.’” *Nickelodeon*, 2016 WL 3513782, at *6 (quoting *In re Google Consumer Privacy Litig.*, 806 F.3d 125, 134 (3d Cir. 2015)). The Third Circuit also held that “[t]he Supreme Court’s recent decision in *Spokeo* ... does not alter our prior analysis in *Google*.” *Id.* at *7. As the Third Circuit explained, “[t]he purported injury here is clearly particularized, as each plaintiff complains about the disclosure of information relating to his or her online behavior,” and “the harm is also concrete in the sense that it involves a clear *de facto* injury, *i.e.*, the unlawful disclosure of legally protected information.” *Id.*

Plaintiff respectfully requests that the Court consider *Nickelodeon* as supplemental authority for her opposition to Defendant’s motion to dismiss, because the Third Circuit rendered its decision after Plaintiff’s opposition was filed on November 3, 2015.

Very truly yours,



Joseph I. Marchese

CC: All counsel of record (via ECF)