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May 16, 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 Supreme Court’s decision in *Spokeo, Inc. v. Robins*, -- S. Ct. --, 2016 WL 2842447 (May 16, 2016).

Spokeo is highly relevant to the pending Motion to Dismiss, *see* Doc. No. 18, because it addresses the injury-in-fact requirement of Article III standing. In *Spokeo*, the Court held that the Ninth Circuit did not address “whether the particular procedural violations alleged in th[e] case entail a degree of risk sufficient to meet the concreteness requirement.” *Spokeo*, 2016 WL 2842447, at *8. The Court therefore vacated the Ninth Circuit’s decision, and remanded the case for further consideration. *See id.*

Relevant to the pending Motion to Dismiss, however, *Spokeo* made clear that for Article III standing purposes, “[c]oncrete is not, however, necessarily synonymous with ‘tangible.’ Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete.” *Id.* at *7. Thus, “the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified.” *Id.* at *8.

Accordingly, Plaintiff respectfully submits that the Supreme Court’s holding in *Spokeo* does not change Judge Torres’ holding that “the VRPA creates for Plaintiff a specific, enforceable legal right to expect Defendant to keep private her identifying information ... its violation constitutes a concrete, particularized deprivation. ... If Defendant violated the statute by disclosing Plaintiff’s personal information, it deprived Plaintiff of a right to which she was particular entitled by law, constituting an injury-in-fact sufficient to confer standing.” *Boelter v. Hearst Commc’ns.*, 2016 WL 361554, at *3 (S.D.N.Y. Jan. 28, 2016).

Very truly yours,



Joseph I. Marchese

CC: All counsel of record (via ECF)