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VIA ELECTRONIC FILING

Michael E. Gans
Clerk of Court
Eighth Circuit Court of Appeals
111 South 10th Street
Room 24.329
St. Louis, Missouri 63102

Re: *Braitberg v. Charter Communications*, No. 14-1737

Dear Mr. Gans:

Plaintiff/Appellant hereby responds to Charter's notice of new authority pursuant to Rule 28(j). The United States Supreme Court's decision in *Spokeo* does not support Charter's position here; it cuts exactly the opposite way.

Spokeo does not change the law. Plaintiff has standing to assert claims for Charter's violation of Plaintiff's rights under the Cable Communications Policy Act, 47 U.S.C. §551 *et seq.* (the "Cable Act"). That was true before *Spokeo*, and it is true now. Indeed, *Spokeo* ***reaffirms*** that the violation of a federal statute can provide the basis for standing, and the violation need only result in a "particularized" and "concrete" harm. Charter's wrongful retention of Plaintiff's most sensitive personal information constitutes exactly such an injury, just like the types of privacy injuries that courts and Congress have recognized and safeguarded for decades. This is no different.

Importantly, *Spokeo* makes clear that certain statutory violations *do* constitute Article III injury. The Court cited examples wherein the mere inability to obtain information regarding political or judicial candidates, in violation of statutory information-disclosure requirements, constituted injury. *Id.* (citing *F.E.C. v. Akins*, 524 U.S. 11, 20-25 (1998) (inability to obtain information regarding monetary contributions made to political candidates, as a result of violation of statute requiring disclosure, constitutes injury in fact); *Public Citizen v. D.O.J.*, 491 U.S. 440, 449 (1989) (same, with inability to obtain information pertaining to potential federal judicial appointees)). In the end, the Court did not decide whether the wrongful disclosure of plaintiff's personal information in that instance constituted "concrete" injury, remanding the matter for the Ninth Circuit's consideration instead. *Id.* n. 8.

Here, Plaintiff has alleged that Charter violated his privacy rights under the Cable Act by wrongfully retaining his sensitive personal information, including his Social Security number, date of

birth, credit information, address, and home and work telephone numbers. (SAC ¶¶33-36.)[1] Charter's reliance on the Seventh Circuit's opinion in *Sterk v. Redbox* is thus baffling, since the Seventh Circuit ***has already held such allegations demonstrate Article III injury.*** *Sterk v. Redbox Automated Retail, LLC*, 672 F. 3d 535, 539 (7th Cir. 2012) ("*Sterk I*") (plaintiff had standing to sue to enjoin defendant for wrongfully retaining personal information in violation of Video Privacy Protection Act); *see also Padilla v. Dish Network L.L.C.*, No. 12-cv- 7350, 2013 WL 3791140, at *5-*6 (N.D. Ill. Jul. 19, 2013) (plaintiff could sue to enjoin defendant's wrongful retention of personal information in violation of the Satellite Home Viewer Extension and Reauthorization Act); *Sterk v. Redbox Automated Retail, LLC* ("*Sterk II*), No. 11 C 1729, 2012 WL 3006674, at *8-*9 (N.D. Ill. Jul. 23, 2012) (plaintiffs "have an injury, even if only a highly attenuated one, if [defendant] retained their personal information without authorization").

Respectfully submitted,

Joseph J. Siprut

cc: Counsel of Record (via ECF)

[1] Defendant's wrongful retention not only violates the Cable Act, but also violates its own Privacy Policy, which promises customers that Defendant "personally maintains identifiable information about subscribers for as long as it is necessary for business purposes." (SAC ¶21, Ex. B.)