

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

WILLIAM JONES,	:	Case No. 6:15-cv-01637-RBD-DAB
	:	
Plaintiff,	:	(Judge Roy B. Dalton, Jr.)
	:	
vs.	:	
	:	
WAFFLE HOUSE, INC.,	:	MOTION FOR LEAVE TO FILE
WH CAPITAL, LLC,	:	REPLY MEMORANDUM IN
THE SOURCE FOR PUBLIC DATA, L.P.,	:	SUPPORT OF MOTION TO
SHADOWSOFT, INC.,	:	DISMISS FOR LACK OF
HARLINGTON-STRAKER-STUDIO, INC.,	:	STANDING
and DALE BRUCE STRINGFELLOW,	:	
	:	
Defendants.	:	

Defendants, The Source for Public Data, L.P. (“Public Data”), Shadowsoft, Inc., Harlington-Straker Studio, Inc., and Dale Bruce Stringfellow (collectively, the “Defendants”), by counsel, hereby move this Court for leave to file a reply memorandum in support of their Motion to Dismiss due to Plaintiff’s lack of standing. (Dkt. No. 37.)

1. Defendants filed their Motion to Dismiss on December 2, 2015. Plaintiffs timely filed their opposition brief later that month. The Motion to Dismiss remains pending.

2. On May 16, 2016, the Supreme Court issued its decision in *Spokeo, Inc. v. Robins*, 2016 U.S. LEXIS 3046 (U.S. May 16, 2016). *Spokeo* confirmed the Court’s significant gate-keeping duties at the Rule 12(b) stage where, as here, the plaintiff alleges a bare statutory violation of procedural rights under the Fair Credit Reporting Act (“FCRA”).

3. The binding decision in *Spokeo*, which informs Plaintiff’s lack of standing to pursue the claims alleged, including with respect to many of the highly-technical FCRA claims asserted in this case, was not available to Defendants at the time that they moved to dismiss.

4. Plaintiff also previously opposed Defendants' Motion to Dismiss on the basis that "discovery" was necessary to evaluate whether he was the subject of a search query by Waffle House, Inc. at publicdata.com in connection with his December 2014 application for employment and had standing to create subject matter jurisdiction. That discovery has since occurred. Defendants seek leave to make the Court aware of Plaintiff's failure to discover any facts to support his claim that a search was done.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE A REPLY
MEMORANDUM IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS FOR LACK OF STANDING

On May 16, 2016, the Supreme Court issued its decision in *Spokeo, Inc. v. Robins*. In *Spokeo*, the Supreme Court considered whether Congress may confer Article III standing by authorizing a private right of action based on the violation of a federal statute alone, despite a plaintiff having suffered no harm from an alleged procedural violation. 2016 U.S. LEXIS 3046, at *2-4. The *Spokeo* Court held that alleging "a bare procedural violation, divorced from any concrete harm," is plainly insufficient at the motion to dismiss stage. *Id.* at *16.

The Court ultimately remanded the case to the Ninth Circuit because it had failed to consider both aspects of the injury-in-fact requirement – that is, whether the plaintiff suffered (1) an "invasion of a legally protected interest" that is (2) "concrete *and* particularized." *Id.* at *2-4, 18 (emphasis added). As *Spokeo* made clear, "[f]or an injury to be 'particularized,' it 'must affect the plaintiff in a personal and individual way.'" 2016 U.S. LEXIS 3046, at *13. Further, "a 'concrete' injury must be '*de facto*'; that is, it must actually exist" in a "'real,' and not 'abstract'" sense. *Id.* at *14. In so ruling, the Supreme Court emphasized that, where "a case is at the pleading stage, the plaintiff must clearly allege facts demonstrating each element" of their claim(s). *Id.* at *12.

Defendants seek leave to file a reply memorandum in order to explain the application of this on-point Supreme Court authority to their pending Motion to Dismiss. Good cause exists as this controlling authority addresses standing under the FCRA, as well as Defendants' inability to earlier cite that decision and to explain its import.

Furthermore, Plaintiff's principal opposition tactic with respect to Defendants' Motion to Dismiss was to claim that "discovery" was necessary to determine if Waffle House ran a search. (Dkt. No. 49 at pp. 2, 3-5, 9, 15.) Although that discovery was not needed in light of the complete proof submitted by Defendants, that further discovery has now occurred over the past six months. Defendants seek leave to inform the Court as to the outcome of that discovery, including with respect to the discovery responses and testimony provided by Plaintiff and Waffle House, which confirm the lack of any evidence of any public record search of publicdata.com. *See, e.g., Hawthorne v. Baptist Hosp., Inc.*, 2008 U.S. Dist. LEXIS 124732, at *2 (N.D. Fla. Nov. 24, 2008) (in a "factual" attack on standing, a court may consider information "outside of the pleadings"—including testimony, affidavits, and other evidence—and it "may make factual findings necessary to resolve the motion."). Again, good cause exists for the filing of a reply memorandum given the centrality of that procedural argument to Plaintiff's opposition and the fact that discovery has now occurred.

Defendants envision filing a reply memorandum of less than 8 pages. Defendants will also put their reply brief on file very shortly after leave to do so is granted.

Pursuant to Local Civil Rule 3.01(g), Defendants state that they have conferred with counsel for Plaintiff by telephone, who did not consent to the relief requested in this Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 3rd day of June, 2016, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system, which will send a notice of electronic filing to all counsel of record, including the following:

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