

7.4.5 Standing

7.4.5.1 Article III Standing

7.4.5.1.1 Overview of Article III standing and *Spokeo*

Over the last several years, some settlement service providers have argued that consumers lack standing under Article III of the United States Constitution if they cannot allege that the fee-splitting resulted in an overcharge or other monetary injury. Three circuit courts have concluded that an overcharge is not required for Article III standing,¹ but a few district courts have reached the opposite conclusion.² While the Supreme Court initially granted *certiorari* to review a case raising this question, the Court later dismissed the writ as improvidently granted.³

Service providers now may argue that the Supreme Court's 2016 decision in *Spokeo, Inc. v. Robins*⁴ gives their standing defenses new life. To the contrary, *Spokeo* should not affect section 2607 claims when the complaint alleges that the consumer paid the fee at issue even if it does not allege that the consumer paid more as a result of a RESPA violation. Since the Supreme Court decided *Spokeo*, at least one court has agreed with the analysis of the pre-*Spokeo* circuit court rulings in the context of section 2607 violations.⁵ The following discussion explains why these court rulings remain good law.

In *Spokeo*, the Supreme Court addressed the injury-in-fact requirement for Article III standing. *Spokeo* relied on the Court's prior precedents and broke no new ground. The Supreme Court confirmed the long-established principle that injury-in-fact is one of three elements required for standing.⁶ "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion

1 *Edwards v. First Am. Corp.*, 610 F.3d 514 (9th Cir. 2010); *Alston v. Countrywide Fin. Corp.*, 585 F.3d 753 (3d Cir. 2009); *Carter v. Welles-Bowen Realty, Inc. (In re Carter)*, 553 F.3d 979 (6th Cir. 2009). *See also* *Clements v. LSI Title Agency, Inc.*, 779 F.3d 1269, 1272–1273 (11th Cir. 2015) (finding Article III standing sufficiently alleged at motion-to-dismiss stage when plaintiff alleged she would have received refund but for the allegedly illegal charges, even though lender gave her a credit in same amount). *Accord* *Fangman v. Genuine Title, L.L.C.*, 2015 WL 8315704, at *4–5 (D. Md. Dec. 9, 2015).

2 *See, e.g., Mullinax v. Radian Guar., Inc.*, 311 F. Supp. 2d 474, 486 (M.D.N.C. 2004); *Contawe v. Crescent Heights of Am., Inc.*, 2004 WL 2244538 (E.D. Pa. Oct. 1, 2004) (finding no standing without overcharge); *Moore v. Radian Grp., Inc.*, 233 F. Supp. 2d 819, 825–826 (E.D. Tex. 2002), *aff'd*, 69 Fed. Appx. 659 (5th Cir. 2003).

3 *Edwards v. First Am. Corp.*, 610 F.3d 514 (9th Cir. 2010), *cert. dismissed as improvidently granted*, 132 S. Ct. 2536 (2012).

4 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

5 *Dolan v. Select Portfolio Servicing*, 2016 WL 4099109, at *5 (E.D.N.Y. Aug. 2, 2016).

6 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 1547, 194 L. Ed. 2d 635 (2016) (relying on *Lujan v.*

of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’ ”⁷ In the case before it, the Supreme Court held that the Ninth Circuit Court of Appeals had addressed the particularity requirement⁸ of injury in fact with respect to several alleged violations of the Fair Credit Reporting Act (FCRA) but had overlooked the concreteness requirement.⁹ The court noted that injury in fact needed to be clearly stated in the pleadings and clearly supported by evidence to obtain a summary or final judgment.

To establish injury in fact, the consumer will need to plead and prove “ ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’ ”¹⁰ *Spokeo* acknowledges that either tangible or intangible injuries can satisfy this requirement.¹¹

When the injury is intangible, *Spokeo* summarized two approaches to meet the requirement of concreteness. First, courts should consider “whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.”¹² As the Court noted, “the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure.”¹³

Second, Congress may “elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law. . . .”¹⁴ It “has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.”¹⁵

The Court noted that merely asserting a “bare procedural violation, divorced from any

Defenders of Wildlife, 504 U.S. 555, 560–561, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

7 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

8 For an injury to be “particularized,” it “must affect the plaintiff in a personal and individual way.” *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016). The Court found this part of the standing test was easily satisfied in the FCRA case before it.

9 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 1542–1543, 194 L. Ed. 2d 635 (2016).

10 *Id.*, 136 S. Ct. at 1548.

11 *Id.*, 136 S. Ct. at 1549.

12 *Id.*, 136 S. Ct. at 1549.

13 *Id.*, 136 S. Ct. at 1549 (relying on Restatement (First) of Torts §§ 569 (libel), 570 (slander per se) (1938)).

14 *Id.*, 136 S. Ct. at 1549 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)).

15 *Id.*, 136 S. Ct. at 1549 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (J. Kennedy, concurring)).

concrete harm,” will not satisfy the concreteness requirement.¹⁶ The Court characterized the FCRA violations alleged in *Spokeo* as violations of “procedural rights” granted by statute.¹⁷ The Court did not define its use of the label “procedural,” though one example it gave was the requirement in the FCRA that a consumer reporting agency provide a mandatory notice to a third party, that is, a user of the agency’s report. For procedural rights, a “risk of real harm” can satisfy Article III.¹⁸ Nonetheless, the Court also stated: “[T]he 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.”¹⁹

A guide to resources and further analysis relevant to *Spokeo, Inc. v. Robins*, can be found on NCLC’s website.²⁰

7.4.5.1.2 *Spokeo* supports the pre-*Spokeo* decisions finding Article III standing in RESPA cases

As noted in § 7.4.5.1.1, *supra*, the Supreme Court’s 2016 decision in *Spokeo, Inc. v. Robins*,²¹ breaks no new ground. *Spokeo* does not change, but in fact reaffirms, the decisions on which the pre-*Spokeo* Circuit decisions relied in finding Article III standing for RESPA fee-splitting claims. Those decisions rely extensively on *Lujan v. Defenders of Wildlife*.²² *Spokeo* repeatedly cites *Lujan* as authority²³ and quote its major holdings. Thus, *Spokeo* gives additional support to the pre-*Spokeo* RESPA decisions that applied the *Lujan* standard.²⁴

16 *Id.*, 136 S. Ct. at 1549.

17 *Id.*, 136 S. Ct. at 1550.

18 *Id.*, 136 S. Ct. at 1549.

19 *Id.* (emphasis in original).

20 See National Consumer Law Center, *Spokeo, Inc. v. Robins* website, at www.nclc.org.

21 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

22 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992).

23 The six-page majority opinion cites *Lujan* six times by name and two more times as “*Id.*,” Justice Thomas’s concurrence cites it another four times.

24 See, e.g., *Clements v. LSI Title Agency, Inc.*, 779 F.3d 1269, 1273 (11th Cir. 2015) (Article III standing adequately alleged based on illegal charges even though lender provided a credit in the same amount at closing); *Alston v. Countrywide Fin. Corp.*, 585 F.3d 753, 763 (3d Cir. 2009) (pleading a violation of section 2607 without alleging a resultant overcharge constitutes an injury in fact even though plaintiffs’ injury is non-monetary; “the actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing”); *Carter v. Welles-Bowen Realty, Inc. (In re Carter)*, 553 F.3d 979, 989 (6th Cir. 2009) (finding standing when consumers alleged that they had been injured by deprivation of a right conferred by RESPA because the “the sole purpose for the creation of Welles–Bowen Title was to enable Fidelity and/or Chicago Title to provide Welles–Bowen Realty with kickbacks in exchange for [referrals],” that they themselves received a referral from Welles–Bowen Realty; injuries need not be financial in nature to be concrete and individualized; therefore, plaintiffs need not allege that they paid more as a result of a RESPA violation). See also *Edwards v. First Am. Corp.*, 610 F.3d 514, 517 (9th Cir. 2010) (relying

7.4.5.1.3 Section 2607 violations are not “procedural”

The protections embodied in section 2607—that is, the prohibitions against kickbacks, fee splitting, and referral fees—are not the same as or even analogous to the “procedural” protections discussed in *Spokeo*. Rather, these RESPA prohibitions were designed by Congress to “ensure that the costs to the American home buying public will not be unreasonably or unnecessarily inflated by abusive practices.”²⁵ Section 2607 is properly described as embodying the right of consumers to pay only the fair cost for settlement services free from markups due to kickbacks and fee splitting, and “to receive referrals [to settlement service providers] untainted by conflicts of interest.”²⁶ The legislative history of RESPA and its purposes are discussed in more detail in § 7.4.5.1.4, *infra*.

7.4.5.1.4 Congress defined injuries and articulated chains of causation in section 2607 that meet Article III standards

As noted in § 7.4.5.1.1, *supra*, under *Spokeo* and *Lujan*, Congress “has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.”²⁷ “[B]ecause Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is . . . instructive and important.”²⁸ In the case of RESPA, Congress could not have been clearer in recognizing and defining the harm caused by fee-splitting and in articulating the chain of causation that would make violations actionable. Congress enacted RESPA in 1974 after years of hearings and study, including an influential report by the Department of Housing and Urban Development (HUD) and the Veterans’ Administration (VA) that it commissioned in 1970 pursuant to the Emergency Home Finance Act of 1970.²⁹ HUD and the VA studied settlement costs and practices in various parts of the United States and provided data and recommendations to Congress.³⁰ That report noted that a homebuyer “seldom decides who will provide settlement services for him.”³¹ Moreover, the report emphasized:

Competitive forces in the conveyancing industry manifest themselves in an elaborate system of referral fees, kickbacks, rebates, commissions and the like as inducements to those firms and

on *Warth v. Seldin*, 422 U.S. 490, 500 (1975), which later was relied on in *Lujan*).

25 S. Rep. No. 93-866, at 6 (1979), *reprinted in* 1974 U.S.C.C.A.N. 6546, 6548.

26 *Carter v. Welles-Bowen Realty, Inc. (In re Carter)*, 553 F.3d 979, 989 (6th Cir. 2009).

27 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016) (quoting *Lujan*).

28 *Id.*, 136 S. Ct. at 1549.

29 Emergency Home Finance Act of 1970, Pub. L. No. 91-351, § 701, 84 Stat. 450, 523, 537 (1970).

30 Dep’t of Hous. & Urban Dev. and the Veterans’ Admin., *Mortgage Settlement Costs* (Mar. 1972) (available online as companion material to this treatise).

31 *Id.* at 2.

individuals who direct placement of business. These practices are widely employed, rarely inure to the benefit of the home buyer, and generally increase total settlement charges.³²

Based upon the HUD/VA Report, a series of articles that appeared in *The Washington Post*, and extensive testimony acquired during hearings,³³ Congress enacted RESPA, in part, to “eliminate[e] . . . kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services.”³⁴ In Supreme Court decisions preceding, and not overruled by *Spokeo*, the Court consistently has held that “[t]he . . . injury required by Art. III may exist solely by virtue of ‘statutes creating legal rights, the invasion of which creates standing.’ ”³⁵ This long-standing principle applies to the protection that individual consumers derive from the prohibitions against unlawful kickbacks and referral fees under section 2607.

Congress’s actions in 1983 underscore this view. In that year, Congress amended section 2607 to accomplish two objectives. Congress clarified “that Section 8 of RESPA, the anti-kickback provision, applies in certain circumstances to referrals” among affiliates.³⁶ Congress permitted such arrangements, however, “subject to certain limitations and safeguards that will protect consumers.”³⁷ This narrow exemption for certain “controlled business arrangements” (later renamed “affiliated business arrangements”) was codified in two sections: 2602(7) (definition of affiliated business arrangement) and 2607(c)(4) (exception to the kickback and unearned fee provisions if certain conditions are met).³⁸ More relevant to this discussion, Congress replaced subsection (d) (penalties, damages, joint and several liability, among others).³⁹ The new section 2607(d)(2) reads as follows:

³² *Id.* at 3.

³³ S. Rep. No. 93-866 (1979), reprinted in 1974 U.S.C.C.A.N. 6546, 6547 (quoting and relying upon the HUD/VA Report); Rondal Kessler, *The Settlement Squeeze*, Wash. Post (Jan. 9–12, 1972) (providing numerous examples of how these practices drive up closing costs), reprinted in *Real Estate Settlement Costs, FHA Mortgage Foreclosures, Housing Abandonment, and Site Selection Policies: Hearings Before the Subcomm. on Housing of the H. Comm. on Banking & Currency on H.R. 13337*, 92nd Cong. Part I, 1-19 (1972).

³⁴ Real Estate Settlement Procedures Act of 1974, Pub. L. No. 93-533, § 2(b)(2), 88 Stat. 1724 (1974).

The prohibitions appearing in the original Section 2607(a) (business referrals) and (b) (splitting charges) have remained virtually unchanged since 1974. Compare Real Estate Settlement Procedures Act of 1974, Pub. L. No. 93-533, § 8(a), (b), with 15 U.S.C. § 2607(a), (b) (current version).

³⁵ *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578 (1992) (relying on *Warth v. Seldin*, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975), which quoted *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973)). See also *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373, 102 S. Ct. 1114, 71 L. Ed. 2d 214 (1982) (quoting this same principle appearing in *Warth* and *Linda R.S.*).

³⁶ H.R. Rep. No. 97-532, at 51 (1982).

³⁷ H.R. Rep. No. 97-532, at 52. See also H.R. Rep. No. 98-123, at 75–78 (1983).

³⁸ Pub. L. No. 98-181, § 461(a)-(b), 97 Stat. 1153, 1230 (1983).

³⁹ An Act making supplemental appropriations for the fiscal year ending September 30, 1984, Pub. L. No. 98-181, §

Any person or persons who violate the prohibitions or limitations of this section shall be jointly and severally liable to the person or persons charged for the settlement service involved in the violation in an amount equal to three times the amount of *any* charge paid for such settlement service.⁴⁰

The Sixth Circuit described the legislative history leading up to this change to the damages provision and the purposes the Act seeks to achieve, including the importance of healthy competition generated by independent settlement service providers.⁴¹ The court interpreted “any charge” to mean “that charges are neither restricted to a particular type of charge (such as an overcharge) nor limited to a specific part.”⁴² Moreover, the court noted “the conspicuous absence of the term ‘overcharge’ within the text of the statute . . . [and stated that] [t]aking these factors into consideration . . . a defendant is liable for the charges assessed the home buyer for settlement services as a whole, and not just for overcharges.”⁴³ Later, another court relied on a House Report that described the harm that could result from unregulated affiliated business arrangement beyond the potential of increases in the cost of settlement services:⁴⁴

[T]he advice of the person making the referral may lose its impartiality and may not be based on his professional evaluation of the quality of service provided if the referrer or his associates have a financial interest in the company being recommended. [Because the settlement service industry] almost exclusively rel[ies] on referrals . . . the growth of controlled business arrangements effectively reduce the kind of healthy competition generated by independent settlement service

461(c), 97 Stat. 1153, 1230 (1983) (replacing § 2607(d)(2)). Note the language Congress deleted from section 8(d):

[A]ny person or persons who violate the provisions of subsection (a) shall be jointly and severally liable to the person or persons whose business has been referred in an amount equal to three times the value or amount of the fee or thing of value, and any person or persons who violate the provisions of subsection (b) shall be jointly and severally liable to the person or persons charged for the settlement services involved in an amount equal to three times the amount of the portion, split, or percentage. In any successful action to enforce the liability under this paragraph, the court may award the court costs of the action together with a reasonable attorney’s fee as determined by the court.

The legislative history shows that Congress understood RESPA’s original damages provision to mean that that a person who violates § 2607 is liable “for three times the amount of the proscribed payment, kickback or referral fee.” S. Rep. No. 93–866, at 16 (1974), *as reprinted in* 1974 U.S.C.C.A.N. 6546, 6552 (emphasis added).

40 15 U.S.C. § 2607(d)(2) (emphasis added).

41 *Carter v. Welles-Bowen Realty, Inc. (In re Carter)*, 553 F.3d 979, 987 (6th Cir. 2009).

42 *Id.* at 986.

43 *Id.*

44 *Edwards v. First Am. Corp.*, 517 F. Supp. 2d 1199, 1203–1204 (C.D. Cal. 2007), *aff’d in relevant part*, 610 F.3d 514 (9th Cir. 2010).

providers.⁴⁵

The court interpreted “any charge paid” in section 2607(d)(2) to mean that standing exists even though the consumer did not suffer an overcharge.⁴⁶

7.4.5.1.5 The type of harm Congress made actionable by section 2607 is closely analogous to harm that is traditionally actionable at common law

The common law sought to protect many parties from transactions tainted by self-dealing or hidden conflicts. For instance, a trustee may not purchase property from the trust.⁴⁷ An agent may not take bribes from third parties, compete with the principal, or usurp business opportunities for his own benefit.⁴⁸ If a trustee, agent, or partner violates those duties, the courts have long entertained suits for returned fees, disgorged profits, or analogous relief with no further inquiry into whether the conflict of interest caused any harm to the plaintiff.⁴⁹

Indeed, the respondents and Solicitor General used this common-law history to argue in *Edwards v. First Am. Corp.* that a violation of RESPA’s right to be free from kickback-tainted insurance referrals mirrored a well-established common-law harm that provided a basis for standing in federal court.⁵⁰ Even though, at common law, the duty of loyalty preventing such conflicts of interest arose in specific fiduciary relationships, there is no reason that Congress cannot recognize this same type of well-established harm in other relationships. Recognizing the important, and often vulnerable, relationship between insurance brokers, mortgage lenders, and other financial agents and consumers, Congress provided anti-kickback and other protections familiar in the common law to a new group. The Sixth Circuit Court of Appeals recognized this Congressional intent in *Carter v. Welles-Bowen Realty, Inc.*⁵¹ RESPA thus bears a “close relationship” to its common-law analogues.⁵²

45 *Id.*, 517 F. Supp. 2d at 1203 (quoting H.R. Rep. No. 97-532, at 52 (1982)).

46 *Id.*, 517 F. Supp. 2d at 1204.

47 Restatement (Second) of Trusts § 170(1), cmt. B (1959).

48 Restatement (Third) of Agency §§ 8.01-8.06 (2006); Restatement (Second) of Agency § 388 (1958).

49 Restatement (Third) of Agency § 8.02, cmt. b (2006) (“[I]t is not necessary that the principal show that the agent’s acquisition of a material benefit harmed the principal.”); *Michoud v. Girod*, 45 U.S. (4 How.) 503, 11 L. Ed. 1046 (1846) (if trustee who sells a part of the trust “becomes himself interested in the purchase,” beneficiary has cause of action “without further inquiry” into nature of sale or fairness of transaction.)

50 *See, e.g.*, Brief of Respondent at 21–31, *Edwards v. First Am. Corp.* (U.S. Sup. Ct. Oct. 2011) (No. 10-708), *cert. dismissed as improvidently granted*, ___ U.S. ___, 132 S. Ct. 2536, 183 L. Ed. 2d 611 (2012) (available online as companion material to this treatise).

51 553 F.3d 979, 989 (6th Cir. 2009) (“The statute creates an individual right to receive referral services untainted by kickbacks or fee-splitting.”).

52 *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 1549, 194 L. Ed. 2d 635 (2016).

Conflicted commercial transactions at the heart of many RESPA claims are a “harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” As a result, consumers have Article III standing on this ground, also because of Congress’s definition of the injury and the chain of causation.⁵³

In addition, there is a substantial body of tort law that supports the measure of damages in kickback cases as the amount of the kickback without the necessity of also proving out-of-pocket damages, such as an upcharge paid directly by the plaintiff.⁵⁴ These common-law damage standards coincide nicely with the standards appearing in section 2607(d)(2).

7.4.5.2 Statutory Standing

Whether a plaintiff has statutory standing is a separate issue from Article III standing. Statutory standing focuses on the question of which persons are authorized by the statute to bring suit. However, note that the analysis of statutory standing overlaps with that for Article III standing to some extent. Congress’s “power to define injuries and chains of causation that will give rise to a case or controversy” is one of the potential bases for Article III standing⁵⁵ and probes many of the same questions as a statutory standing inquiry.

Courts are uniform in holding that a consumer who has entered into a transaction in which a lender violated RESPA by splitting fees with or receiving a kickback from a settlement service provider has standing, and need not show that the RESPA violation caused an overcharge. Four Circuits have so held.⁵⁶ The Third Circuit’s decision in *Alston v. Countrywide Financial Corp.*⁵⁷

⁵³ See § 7.4.5.1.4, *supra*.

⁵⁴ See, e.g., *Western Contracting Corp. v. Bechtel Corp.*, 885 F.2d 1196, 1206–1207 (4th Cir. 1989) (awarding damages in the amount contractor had paid under contract plus amount of kickbacks); *Amtruck Factors v. Int’l Forest Products*, 795 P.2d 742, 746 (Wash. Ct. App. 1990); *Phillips Chem. Co. v. Morgan*, 440 So. 2d 1292 (Fla. Dist. Ct. App. 1983). Accord *Cont’l Mgmt., Inc. v. United States*, 527 F.2d 613, 619 (Ct. Cl. 1975) (amount of bribe is reasonable measure of damages; ruling based on law regarding third party’s inducement of agent’s breach of duty to principal). See also *Northstar Indus., Inc. v. Merrill Lynch & Co.*, 576 F.3d 827, 832–833 (8th Cir. 2009) (stating in dictum that Minnesota law could allow for benefit received by defrauding party to be measure of damages in a contingent liability fraud action); *Twenty First Century L.P. I v. LaBianca*, 2001 WL 761163, at *2 (E.D.N.Y. May 2, 2001) (appropriate measure of damages for fraud claim is out-of-pocket loss directly and proximately caused by fraudulent acceptance of kickbacks, which includes all kickbacks that were paid as a result of fraud and breach of fiduciary duty); *Twp. of Wayne v. Messercola*, 789 F. Supp. 1305, 1312 (D.N.J. 1992) (amount of bribe is proper measure of damages; variety of tort claims).

⁵⁵ *Spokeo, Inc. v. Robins*, ___ U.S. ___, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

⁵⁶ *Galiano v. Fid. Nat’l Title Ins. Co.*, 684 F.3d 309, 315 n.9 (2d Cir. 2012) (“An allegation of overcharge is not necessary to sustain a § 8(a) claim.”); *Edwards v. First Am. Corp.*, 610 F.3d 514 (9th Cir. 2010); *Alston v. Countrywide Fin. Corp.*, 585 F.3d 753 (3d Cir. 2009); *Carter v. Welles-Bowen Realty, Inc. (In re Carter)*, 553 F.3d 979 (6th Cir. 2009). Accord *Fangman v. Genuine Title, L.L.C.*, 2015 WL 8315704, at *4–5 (D. Md. Dec. 9, 2015).

analyzes the question in detail and terms this the “unambiguously expressed intent of Congress,” mandated by the “plain, unambiguous language of section 8(d)(2).”⁵⁸

⁵⁷ Alston v. Countrywide Fin. Corp., 585 F.3d 753 (3d Cir. 2009).
⁵⁸ *Id.* at 762.