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January 7, 2017

Molly C. Dwyer, Clerk of the Court
United States Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Thomas Robins v. Spokeo, Inc.*, No. 11-56843 [Response to Spokeo, Inc.'s January 3, 2017 28(j) Letter]

Dear Ms. Dwyer:

Neither of the decisions Spokeo cites in its January 3 letter supports its argument that “injury in fact” requires proof of consequential harm beyond the invasion of an intangible interest Congress sought to protect. Indeed, any such holding would violate the Supreme Court’s admonition that, with respect to concrete intangible interests, “a plaintiff ... need not allege any *additional* harm beyond the one Congress has identified.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016). Unsurprisingly, the cases Spokeo identifies do not violate that rule.

In *Meyers v. Nicolet Restaurant of De Pere, LLC*, 2016 WL 7217581 (7th Cir. Dec. 13, 2016), the Court held that the plaintiff lacked standing to pursue a FACTA claim for a restaurant’s failure to truncate the date on his credit-card receipt. *Id.* at *1. In so holding, the Court pointed to the fact that Congress had “specifically declared that failure to truncate a card’s expiration date, without more, does not heighten the risk of identity theft,” and “[t]hat is why Congress sought to limit FACTA lawsuits to consumers ‘suffering from any actual harm.’” *Id.* at *3 (citing Pub. L. 110–241, §§ 2(a)(6), 2(b)).

This case is quite different. Spokeo’s dissemination of false information about Robins’ prior employment, earnings history, age, and marital status, are just the type of inaccuracies that prompted the Fair Credit Reporting Act.

The FCRA makes Robins’ intangible right to a materially accurate credit report actionable *without* any showing beyond the one Congress identified precisely because such inaccuracies create a real “risk of harm” to the subject of those reports even though, as with defamation, tangible harm is often “difficult to ascertain.” *Id.* at *3 nn.4-5.

Likewise, in *Soehrlen v. Fleet Owners Insurance Fund*, 2016 WL 7383993 (6th Cir. Dec. 21, 2016), an ERISA case, the Court held that—unlike here—Defendant’s statutory violations created no “risk of real harm” to the interests the statute sought to protect. *Id.* at *3. And, the Court reiterated *Spokeo*’s core holding: “non-tangible injuries, including violations of statutory rights, may satisfy the constitutional showing of an injury-in-fact[.]” *Id.*

Respectfully submitted,

/s/ William S. Consovoy
William S. Consovoy

CERTIFICATE OF SERVICE

I hereby certify that on January 7, 2017, I electronically filed the foregoing with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ William S. Consovoy
William S. Consovoy