

CASE NO. 15-3690

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

DANIEL B. STORM, *et al.*,
Appellants,

v.

PAYTIME, INC., *et al.*,
Appellees.

*Appeal from the Orders of the United States District Court for the Middle District
of Pennsylvania in Civil Action Nos. 14-1138 and 14-3964 (Jones, J.)*

**MOTION FOR LEAVE TO FILE AN OUT OF TIME
AMICUS CURIAE BRIEF ON BEHALF OF
MOVANT NATIONAL ASSOCIATION OF CONSUMER ADVOCATES
(AMICUS CURIAE)**

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The National Association of Consumer Advocates (NACA), by its counsel and pursuant to Rule 29(e), respectfully moves this Court for leave to file out of time an amicus curiae brief in support of the Plaintiff-Appellant. NACA is a non-profit association of attorneys and consumer advocates committed to representing consumers' interests. This motion should be granted for the following reasons:

(1). The above-captioned matter focuses on the question of Article III standing and, in particular, the question of injury in fact. The recently issued U.S. Supreme Court decision, *Spokeo v. Robins*, No. 13-1339 (2016), turned on the plaintiff's showing of injury in fact and is directly relevant to this matter. Because much consumer protection litigation, especially consumer class action litigation, turns on questions of standing, NACA has a vested interest in advocating for the proper interpretation of the *Spokeo* decision in the courts of appeal.

(2). NACA can assist the Court by providing helpful analysis on the *Spokeo* decision and the issue of standing which is directly central to the disposition of this appeal. Particularly in light of the fact that the interpretation of the *Spokeo* decision is already the subject of heated debate. *Compare* Amy Howe, Opinion analysis: Case on standing and concrete harms returns to the Ninth Circuit, at least for now, SCOTUSblog (May 16, 2016), <http://bit.ly/1TB3vd1> (characterizing *Spokeo* as a "narrow" decision);

Daniel J. Solove, *Spokeo, Inc. v. Robins: When Is a Person Harmed by a Privacy Violation?*, Geo. Wash. L. Rev. On the Docket (May 19, 2016), <http://bit.ly/1U806ON> (arguing that *Spokeo* did very little to change the law), with Andrew J. Pincus, *Plaintiffs' Lawyers Try to Spin Spokeo*, Mayer Brown Class Defense Blog (May 18, 2016), <http://bit.ly/1WDcsoP> (calling *Spokeo* a game changer that will force plaintiffs “to find new arguments to justify standing”). NACA therefore submits that a succinct, non-redundant amicus brief that addresses this new, contested precedent is in the Court and public’s interest. This is all the more true because this case will likely represent this Court’s first proclamation on *Spokeo*’s meaning.

(3). *Spokeo* was only decided within the five weeks. In that short time alone, the decision has been the subject of extensive litigation. Indeed, more than 100 cases across the country were stayed pending *Spokeo*’s outcome. Due to the volume of stayed cases, it took NACA some time to discover each of the pending matters where amicus briefing may be appropriate. NACA’s out-of-time request for an extension here is not reflective of laxity on its part, but rather the sheer number of cases it was required to review. NACA contends that these factors merit good cause worthy of a short extension of time.

(4). Any potential prejudice to the Appellees can be eliminated by granting them the opportunity, in the Court's discretion, to respond to the NACA's amicus brief, as contemplated by Rule 29(e) of the Federal Rules of Appellate Procedure.

(5). NACA sought and obtained consent from Plaintiff-Appellant to file an amicus brief in support of Plaintiff-Appellant and to seek an extension of time within which to file the brief. The Amicus Curiae sought consent from Defendant-Appellee, but were not able to obtain Defendant-Appellee's consent.

CONCLUSION

For the foregoing reasons, NACA requests that the Court grant NACA permission to file an out of time amicus brief. Because the deadline for filing was June 7, 2016, the Amicus Curiae seeks leave of the Court to file an out-of-time amicus brief on June 29, 2016.

RESPECTFULLY SUBMITTED this 22nd day of June, 2016.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was filed via the ECF filing system on June 22, 2016 and that as a result, electronic notice of the filing was served on all attorneys of record.

/s/ James J. Bilsborrow
James J. Bilsborrow