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The Meaning Of Spokeo, 365 Days And 430 Decisions Later

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Law360, New York (May 15, 2017, 5:02 PM EDT) --

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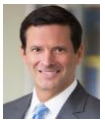

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It has been one year since the U.S. Supreme Court's much-anticipated decision in Spokeo Inc. v. Robins.[1] The Spokeo decision analyzed the standing requirement of Article III in the context of federal statutory claims — particularly addressing whether Congress may confer standing on a plaintiff who suffers no concrete harm and seeks only statutory damages. In the decision, the Supreme Court clarified that "Article III standing requires a concrete injury even in the context of a statutory violation," noting that a plaintiff cannot "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury in fact requirement of Article III."[2] The decision has set off an enhanced wave of motion practice, with litigants arguing the meaning of the decision in hundreds of cases in federal courts across the country.

In a December 2016 Law360 article, we marked the six-month anniversary of the decision with some observations on the initial trends in how Spokeo has been interpreted. Now that an additional six months has passed, we take stock of a full year's worth of jurisprudence. There have been more than 400 decisions nationwide interpreting and applying Spokeo — averaging at least one decision every day. As we reported in December 2016, the bulk of decisions have dealt with just four consumer protection statutes under which there is significant class action activity: the Fair and Accurate Credit Transactions Act, the Fair Credit Reporting Act, the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act. The remaining decisions, categorized as "Other" in our chart below, address a variety of consumer protection statutes, such as the Truth in Lending Act, the Cable Communications Privacy Act, the Video Privacy Protection Act, the Electronic Funds Transfer Act, the Driver's Privacy Protection Act, the Real Estate Settlement Procedures Act, as well as state common law claims.

	Standing	No Standing	Totals	Percent Finding Standing
FACTA	6	12	18	33%
FCRA	40	42	82	49%
FDCPA	55	17	72	76%
TCPA	67	10	77	87%
Other	89	95	184	48%
Total	255	175	430	59%

The overall numbers show that nearly 60 percent of courts analyzing constitutional standing after Spokeo have determined that the particular plaintiff had Article III standing. Notably, the outcomes have continued to vary markedly by statute and forum, and have intensified in some ways, too. For instance, although we previously noted that standing was found in 79 percent of TCPA cases decided by December 2016, that percentage has now grown to 87 percent. Likewise, six months after the Spokeo decision, only 50 percent of cases analyzing standing in the FACTA context found standing; this number has now fallen to just 33 percent — with nearly all of those decisions coming from district courts in the Eleventh Circuit.

Our analysis of the cases confirms that the individual facts at issue are often critical to the success of a motion challenging a plaintiff's standing under Article III, regardless of the statute at issue. However, the jurisdiction of the litigation and the individual judge are just as critical. We have found numerous cases that are essentially indistinguishable on the facts presented, yet courts have reached opposite results.

Fair and Accurate Credit Transactions Act

Among other things, FACTA prohibits printing more than the last five digits of the debit or credit card number or the expiration date on any receipt provided to the cardholder at the point of sale.[3] Over the last year, the Seventh Circuit and at least 17 district courts have addressed the effect of Spokeo on claims for statutory damages under FACTA. The Seventh Circuit recently found that a plaintiff lacked standing because, despite the alleged FACTA violation, "nobody else ever saw the non-compliant receipt" and the inclusion of an expiration date on the receipt did not increase the risk of identity theft.[4] Indeed, consistent with Meyers, the majority of district courts (at least 11) have found standing to be lacking.[5] In six cases, district courts held that plaintiffs had standing to pursue FACTA claims.[6]

Nearly all decisions finding standing were issued by district courts in the Eleventh Circuit and were decided shortly after Spokeo (and prior to the Seventh Circuit's decision in Meyers). These courts reasoned that the violation of FACTA, on its own, is sufficient to confer standing because FACTA protects a "substantive" right to receive a receipt with truncated information.[7]

One district court even suggested that the minor inconvenience of safekeeping a noncompliant receipt (rather than throwing it out) constitutes a concrete injury.[8] By contrast, the Seventh Circuit and the majority of other courts have held that an offending receipt does not automatically give rise to a concrete harm, particularly where the plaintiff retains that receipt and no third-party has seen it.[9] Instead, a plaintiff must allege non-speculative facts showing a resulting injury from the alleged violation, such as identity theft.[10]

Fair Credit Reporting Act

Cases under the FCRA demonstrate how forum can be critical in determining the success of a challenge to Article III standing. For example, within the Third Circuit, an equal number of post-Spokeo decisions under FCRA have granted and rejected Article III jurisdictional challenges.[11] On the other hand, decisions from courts in the Seventh[12] and Eighth Circuits[13] are heavily skewed in favor of finding that standing did not exist in FCRA cases. By contrast, both the Ninth Circuit and courts in the Ninth Circuit[14] have trended in the other direction.

Some key considerations that courts deem significant in determining whether standing exists to bring a FCRA claim include:

- Whether a violation of the statute has resulted in a disclosure to a third party. For example, in Bultemeyer v. CenturyLink Inc., the court explained that "[t]he post-Spokeo cases from around the country have uniformly found that, absent disclosure to a third party or an identifiable harm from the statutory violation, there is no privacy violation."[15]

- Whether the alleged violation can be construed as merely "technical" or a violation in "form" only. For example, in Kirchner v. First Advantage Background Services Corp., the court found that the authorization was not in a "completely separate document" as required by the FCRA, but that was insufficient to confer standing.[16] In Dutta v. State Farm Mutual Automobile Insurance Co., the court found that a three-day delay in providing an "entirely accurate" credit report to be a "textbook example of a bare procedural violation" and did not suffice to confer standing.[17]

- Whether the alleged FCRA violation impacted an adverse employment decision. In Davis v. D-W Tool Inc., the plaintiff alleged that she was "deprived of statutorily required information," but this was insufficient to confer standing because there was no allegation that the consumer report was inaccurate or the employer would have reached a different decision.[18]

Fair Debt Collection Practices Act

Courts evaluating Spokeo in the context of FDCPA decisions continue to find that standing exists in a majority of cases in which the issue is presented, although the percentage of cases finding standing has fallen somewhat. In cases finding standing, courts typically view the disclosure obligations of the FDCPA as substantive protections evincing Congressional intent to receive "truthful, non-deceptive information in debt collection communications." [19] Although the violation of the disclosure requirements may not give rise to a tangible injury, such as loss of money, courts examining the facts of such cases do often find the alleged violations are sufficiently concrete. Courts appear more likely to find standing lacking where the alleged violations appear technical in nature — such as a two week delay in providing the appropriate information,[20] failure to note on a credit report that a debt was disputed,[21] or errors in the advertised terms of debt repayment plans.[22] Not surprisingly, courts also have found standing to be lacking where the alleged violations appear unrelated to the congressional purpose in enacting the FDCPA.[23]

Telephone Consumer Protection Act

Over the last year, more than 70 decisions have addressed the impact of Spokeo on standing to bring TCPA claims. The TCPA regulates forms of marketing to fax machines and telephones, including text messages, without the consent of the recipient.[24] Although each case rests on its unique facts, the Ninth Circuit and the majority of district courts have rejected standing challenges to TCPA claims, whether based upon allegedly unsolicited phone calls, text messages, or faxes. Indeed, in Van Patten v. Vertical Fitness Group. LLC, the Ninth Circuit recently held that unsolicited telemarketing phone calls or text messages, by their nature, constitute an invasion of privacy; thus, a plaintiff alleging a violation under the TCPA "need not allege any additional harm beyond the one Congress has identified."[25]

Of the 77 federal decisions addressing Spokeo challenges to the TCPA, more than 65 have found a concrete injury under Article III.[26] These courts generally have reasoned that unsolicited calls, texts or faxes under the TCPA protect a substantive right to be free from the privacy-related harm that Congress sought to address in enacting the statute.[27] By contrast, at least 10 district courts have dismissed

TCPA cases for lack of standing.[28] They have primarily done so where the alleged TCPA violations appear minimal, such as a single call or text or the inclusion of a single line of advertising in otherwise permissible faxes;[29] where the plaintiff fails to allege nonconclusory facts regarding any harm experienced;[30] or where the plaintiff does not allege that she experienced any additional charges for the unsolicited call or text.[31] These decisions have come from federal district courts in California, New Jersey, Louisiana and Missouri, although the California decisions should be evaluated in light of the Ninth Circuit's decision in Van Patten.

Other Statutory and Common Law Claims

There are nearly 200 decisions involving Spokeo challenges to standing in cases related to other federal and state statutes, as well as state common law claims. The results here vary, too, depending on the statutes, claims, and facts in each case. In a Cable Communications Privacy Act putative class action, for instance, the Eighth Circuit held that the plaintiff lacked standing because he did not allege that the defendant used his information in any way or that any material risk of harm resulted from defendant's retention of it.[32] By contrast, the Eleventh Circuit held that a plaintiff had standing to bring a Video Privacy Protection Act claim, notwithstanding that he alleged no additional harm beyond the statutory violation.[33] The court reasoned that because the statute was enacted "to preserve personal privacy,"[34] the alleged violation — a wrongful disclosure of plaintiff's personal information to a third party — was sufficiently concrete to create Article III standing.[35]

As reflected by these cases, one critical issue under Spokeo remains the degree to which a distinction between whether a statute protects a substantive right or a procedural right matters to the standing analysis and, if so, how that distinction is determined. Some courts have held that a violation of a substantive statutory requirement alone creates standing.[36] Other courts have held that any purported substantive/procedural distinction is not relevant to the standing analysis; indeed, any statutory violation must be accompanied by a resulting injury-in-fact.[37] Still other courts have held that this distinction is relevant, yet have reached opposite conclusions on whether the statutory requirement at issue is procedural or substantive.[38]

Conclusion

A year of decisions interpreting Spokeo reveals that the Supreme Court's decision has made Article III standing a central issue in class action litigation regarding many statutory claims in federal courts. It has impacted cases not only under the FCRA, FDCPA, TCPA and FACTA, but also under many other federal and state laws. The Supreme Court's clarification that invoking a statutory cause of action created by Congress is not alone sufficient to confer Article III standing has created early case assessments as to whether to challenge subject-matter jurisdiction, an increase in dispositive motions challenging Article III standing, and many contradictory decisions across the country. As more circuit courts weigh in, including the much-anticipated Ninth Circuit's decision in Spokeo on remand, this emerging body of law will continue to develop. One thing is clear: A year later, Spokeo continues to have a dramatic impact on the American legal landscape.

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[1] 136 S. Ct. 1540 (2016), as revised (May 24, 2016).

[2] Id.

[3] 15 U.S.C.A. § 1681c(g).

[4] Meyers v. Nicolet Rest. of De Pere, LLC, 843 F.3d 724, 727 (7th Cir. 2016).

[5] See, e.g., Llewellyn v. AZ Compassionate Care Inc., No. CV-16-04181-PHX-DGC, 2017 WL 1437632, at *4 (D. Ariz. Apr. 24, 2017); Hendrick v. Aramark Corp., No. CV 16-4069, 2017 WL 1397241, at *5 (E.D. Pa. Apr. 18, 2017); Cruper-Weinmann v. Paris Baguette America, Inc., No. 13 Civ. 7013 (JSR), 2017 WL 398657, at *3-5 (S.D.N.Y. Jan. 30, 2017); Weinstein v. Intermountain Healthcare, Inc., No. 2:16-CV-00280-DN, 2017 WL 1233829, at *4 (D. Utah Apr. 3, 2017); Paci v. Costco Wholesale Corp., No. 16-CV-0094, 2017 WL 1196918, at *3 (N.D. Ill. Mar. 30, 2017); Fullwood v. Wolfgang's Steakhouse, Inc., No. 13 CIV. 7174 (KPF), 2017 WL 377931, at *7 (S.D.N.Y. Jan. 26, 2017); Mocek v. Allsaints USA Ltd., No. 16 C 8484, 2016 WL 7116590, at *2 (N.D. Ill. Dec. 7, 2016); Stelmachers v. Verifone Sys., Inc., 5:14-cv-04912-EJD, 2016 WL 6835084, at *4 (N.D. Cal. Nov. 21, 2016); Kamal v. J. Crew Grp., Inc., No. 2:15-0190 (WJM), 2016 WL 6133827, at *3 (D.N.J. Oct. 20, 2016); Thompson v. Rally House of Kansas City et al., 15-cv-00886-GAF, slip op. at *9 (W.D. Mo. Oct. 6, 2016); Noble v. Nevada Checker CAB Corp., 2:15-cv-02322-RCJ-VCF, 2016 WL 4432685, at *3 (D. Nev. Aug. 19, 2016).

[6] See Deschaaf v. Am. Valet & Limousine Inc., No. CV-16-03464-PHX-GMS, 2017 WL 610522, at *5 (D. Ariz. Feb. 15, 2017); Flaum v. Doctor's Associates, Inc., 204 F. Supp. 3d 1337 (S.D. Fla. 2016); Bouton v. Ocean Properties, Ltd., 201 F. Supp. 3d 1341, 1352 (S.D. Fla. 2016); Wood v. J Choo USA,Inc., 201 F. Supp. 3d 1332 (S.D. Fla. 2016); Guarisma v. Microsoft, 209 F. Supp. 3d 1261 (S.D. Fla. 2016); Altman v. White House Black Mkt., Inc., No. 15-cv-2451, 2016 WL 3946780 (N.D. Ga. July 13, 2016).

[7] See, e.g., Flaum, 204 F. Supp. 3d at 1341; Wood, 201 F. Supp. 3d at 1340.

[8] Deschaaf, 2017 WL 610522, at *4.

[9] See, e.g., Meyers, 843 F.3d at 728; Llewellyn, 2017 WL 1437632, at *6; Hendrick, 2017 WL 1397241, at *5; Stelmachers, 2016 WL 6835084, at *4.

[10] See, e.g., Meyers, 843 F.3d at 728.

[11] Miller v. Trans Union, LLC, No, 3:12-1715, 2017 WL 412641 (M.D. Pa. Jan. 18, 2017) (finding that standing does exist in an FCRA suit); In re Horizon Healthcare Servs. Inc. Data Breach Litig., 846 F.3d 625 (3d Cir. 2017) (same); In re Michaels Stores, Inc., Fair Credit Reporting Act (FCRA) Litigation, MDL No. 2615, 2017 WL 354023 (D.N.J. Jan. 24, 2017) (finding that standing does not exist in an FCRA suit); Long v. Se. Pennsylvania Transportation Auth., No. CV 16-1991, 2017 WL 1332716 (E.D. Pa. Apr. 5, 2017) (same).

[12] Tyus v. United States Postal Serv., No. 15-CV-1467, 2017 WL 52609 (E.D. Wis. Jan. 4, 2017) (finding that standing does not exist); Vera v. Mondelez Global LLC, No. 16 C 8192, 2017 WL 1036509 (N.D. Ill.

Mar. 17, 2017) (same).

[13] Boergert v. Kelly Servs., Inc., No. 2:15-CV-04185-NKL, 2017 WL 440272 (W.D. Mo. Feb. 1, 2017) (finding that standing does not exist); Fields v. Beverly Health and Rehab. Servs., Inc., Civil No. 16–527 (DWF/LIB), 2017 WL 812104 (D. Minn. Mar. 1, 2017) (same); Davis v. D-W Tool, Inc., No. 2:16-cv-04297-NKL, 2017 WL 1036132 (W.D. Mo. Mar. 17, 2017) (same); Campbell v. Adecco USA, Inc., Civ. No. 2:16-cv-04059, 2017 U.S. Dist. LEXIS 61515 (W.D. Mo. Apr. 24, 2017) (same).

[14] Eight of eleven FCRA cases in which the issue of standing has been decided in 2017 have found that standing does exist. Keller v. Experian Info. Sol., Inc., No. 16-CV-04643-LHK, 2017 WL 130285 (N.D. Cal. Jan. 13, 2017) (finding that standing does exist); Syed v. M-I, LLC, 853 F.3d 492 (9th Cir. 2017) (same); Artus v. Experian Info. Sols., Inc., No. 5:16-cv-03322-EJD, 2017 WL 346022 (N.D. Cal. Jan. 24, 2017) (same); Benton v. Clarity Servs., Inc., No. 16-cv-6583-MMC, 2017 WL 345583 (N.D. Cal. Jan. 24, 2017) (same); In re Ocwen Loan Servicing LLC Lit., No. 3:16-CV-00200-MMDWGC, 2017 WL 1289826 (D. Nev. Mar. 3, 2017) (same); Terrell v. Costco Wholesale Corp., Case No. C16-1415JLR, 2017 WL 951053 (W.D. Wash. Mar. 10, 2017) (same); Mamisay v. Experian Info. Sols., Inc., No. 16-cv-05684-YGR, 2017 WL 1065170 (N.D. Cal. Mar. 21, 2017) (same); Demmings v. KKW Trucking, Inc., No. 3:14–cv–494-SI, 2017 WL 1170856 (D. Or. Mar. 29, 2017) (same); Prescott v. Am. Auto. Ass'n, No. 15-55935, 2017 WL 587127 (9th Cir. 2017) (finding that standing does not exist); Bultemeyer v. CenturyLink, Inc., No. CV-14-02530-PHX-SPL, 2017 WL 634516, at *1 (D. Ariz. Feb. 15, 2017) (same); Mitchell v. WinCo Foods, LLC, No. 1:16-cv-00076-BLW, 2017 WL 901093 (D. Idaho Mar. 7, 2017) (same).

[15] 2017 WL 634516, at *1.

[16] Civ. No. 2:14-1437 WBS EFB, 2016 WL 6766944 (E.D. Cal. Nov. 14, 2016).

[17] No. 3:14-CV-04292-CRB, 2016 WL 6524390, at *1 (N.D. Cal. Nov. 3, 2016) (citing Spokeo, 136 S. Ct. at 1550) (internal quotations omitted).

[18] 2017 WL 1036132

[19] Remington v. Fin. Recovery Servs., Inc., No. 3:16-cv-865 (JAM), 2017 WL 1014994 (D. Conn. Mar. 15, 2017).

[20] Yeager v. Ocwen Loan Servicing, LLC, No. 1:14CV117-MHT(WO), 2017 WL 701387 (M.D. Ala. Feb. 22, 2017).

[21] Coleman v. Charlottesville Bureau of Credits, Inc., Civ. No. 3:17CV147-HEH, 2017 WL 1381666 (E.D. Va. Apr. 17, 2017).

[22] Johnston v. Midland Credit Mgmt., No. 1:16-cv-437, 2017 WL 370929 (W.D. Mich. Jan. 26, 2017); May v. Consumer Adjustment Co., Inc., No. 4:14CV166, 2017 WL 227964 (E.D. Mo. Jan. 19, 2017).

[23] Lyshe v. Levy, No. 16-4026, --- F.3d ---, 2017 WL 1404182 (6th Cir. Apr. 20, 2017) (in debt collection action, misstatements regarding Ohio state discovery rules did not give rise to a concrete injury under the FDCPA).

[24] 47 U.S.C.A. § 227(b)(1).

[25] Van Patten v. Vertical Fitness Grp., LLC, 847 F.3d 1037, 1043 (9th Cir. 2017) (internal citations omitted).

[26] Todd v. Citibank, Civ. No. 16-5204-BRM-DEA, 2017 WL 1502796 (D.N.J. April 26, 2017); Cunningham v. Rapid Response Monitoring Servs., Inc., et al., Civ. No. 3:15-CV-00846, 2017 WL 1489052 (M.D. Tenn. April 26. 2017); Brinker v. Normandin's, No. 5:14-CV-03007-EJD, 2017 WL 1425916, at *1 (N.D. Cal. Apr. 21, 2017); Banarji v. Wilshire Consumer Credit, No. 314CV02967BENKSC, 2017 WL 1346654 (S.D. Cal. Apr. 5, 2017); Heather McCombs, D.P.M., LLC v. Cayan LLC, No. 15 C 10843, 2017 WL 1022013 (N.D. Ill. Mar. 16, 2017); Bell v. Survey Sampling Int'l, LLC, No. 3:15-CV-1666 (MPS), 2017 WL 1013294 (D. Conn. Mar. 15, 2017); Flores v. Access Ins. Co., Case No. 2:15–cv–02883–CAS(AGRx), 2017 WL 986516 (C.D. Cal. Mar. 13, 2017); Johnson v. Am. Educ. Servs., No. 3:16-cv-00710-CRS, 2017 WL 938325 (W.D. Ky. Mar. 9, 2017); Gibbs v. SolarCity Corp., No. 4:16–CV–11010–TSH, 2017 WL 925003 (D. Mass. Mar. 8, 2017); Williams v. zZounds Music, L.L.C., No. 4:16-CV-00940-W-FJG, 2017 WL 777184 (W.D. Mo. Feb. 28, 2017); Abante Rooter & Plumbing, Inc. v. Pivotal Payments, Inc., No. 16-CV-05486-JCS, 2017 WL 733123 (N.D. Cal. Feb. 24, 2017); O.P. Schuman & Sons, Inc. v. DJM Advisory Grp., LLC, No. CV 16-3563, 2017 WL 634069 (E.D. Pa. Feb. 16, 2017); Toldi v. Hyundai Capital Am., No. 216CV01877APGGWF, 2017 WL 736882 (D. Nev. Feb. 23, 2017); Duguid v. Facebook, Inc., No. 15-CV-00985-JST, 2017 WL 635117 (N.D. Cal. Feb. 16, 2017); Whiteamire Clinic, P.A. Inc. v. Cartridge World N. Am., LLC., No. 1:16CV226, 2017 WL 561832 (N.D. Ohio Feb. 13, 2017); St. Louis Heart Ctr., Inc. v. Vein Centers for Excellence, Inc., No. 4:12 CV 174 CDP, 2017 WL 492778 (E.D. Mo. Feb. 7, 2017); Cholly v. Uptain Grp., Inc., No. 15 C 5030, 2017 WL 449176 (N.D. Ill. Feb. 1, 2017) Del Valle v. Glob. Exch. Vacation Club, No. SACV162149DOCJCGX, 2017 WL 433998 (C.D. Cal. Feb. 1, 2017); Manuel v. NRA Grp., LLC, 1:15-CV-274, 2016 WL 6892377 (M.D. Pa. Nov. 22, 2016); JWD Auto., Inc. v. DJM Advisory Grp. LLC, 2:15-CV-793-FtM-29MRM, 2016 WL 6835986 (M.D. Fla. Nov. 21, 2016); Holderread v. Ford Motor Credit Co., LLC, No. 4:16-CV-00222, 2016 WL 6248707 (E.D. Tex. Oct. 26, 2016); Abramson v. CWS Apartment Homes, LLC, No. CV 16-426, 2016 WL 6236370 (W.D. Pa. Oct. 24, 2016); LaVigne v. First Cmty. Bancshares, Inc., 215 F. Supp. 3d 1138 (D.N.M. 2016); Griffith v. ContextMedia, Inc., No. 16 C 2900, 2016 WL 6092634 (N.D. Ill. Oct. 19, 2016); Espejo v. Santander Consumer USA, Inc., No. 11 C 8987, 2016 WL 6037625, at *1 (N.D. Ill. Oct. 14, 2016); Dolemba v. Illinois Farmers Insurance Co., 213 F. Supp. 3d 988 (N.D. Ill. 2016); Brodsky v. Humanadental Ins. Co., No. 1:10-cv-03233, 2016 WL 5476233 (N.D. Ill. Sept. 29, 2016); Physicians Healthsource, Inc. v. A-S Medication Sols., LLC, No. 12-cv-05105, 2016 WL 5390952 (N.D. Ill. Sept. 27, 2016); Juarez v. Citibank, N.A., No. 16-CV-01984-WHO, 2016 WL 4547914 (N.D. Cal. Sept. 1, 2016); Cabiness v. Educ. Fin. Sols., LLC, No. 16-CV-01109-JST, 2016 WL 5791411, at *5 (N.D. Cal. Sept. 1, 2016); Fauley v. Drug Depot, Inc., 204 F. Supp. 3d 1008 (N.D. Ill. 2016); Hewlett v. Consol. World Travel, Inc., No. CV 2:16-713 WBS AC, 2016 WL 4466536 (E.D. Cal. Aug. 23, 2016); Aranda v. Caribbean Cruise Line, Inc., 202 F. Supp. 3d 850 (N.D. Ill. 2016); A.D. v. Credit One Bank, N.A., No. 14-C-10106, 2016 WL 4417077 (N.D. Ill. Aug. 29, 2016); Krakauer v. Dish Network L.L.C., 168 F. Supp. 3d 843, 844 (M.D.N.C. 2016); Ung v. Universal Acceptance Corp., 198 F. Supp. 3d 1036 (D. Minn. 2016); Cour v. Life360, Inc., No. 16-CV_00805-THE, 2016 WL 4039279 (N.D. Cal. July 28, 2016); Caudill v. Wells Fargo Home Mortg., Inc., No. CV 5:16-066-DCR, 2016 WL 3820195 (E.D. Ky. July 11, 2016); Mey v. Got Warranty, Inc., 193 F. Supp. 3d 641 (N.D.W. Va. 2016); Rogers v. Capital One Bank (USA), N.A., No. 1:15-CV-4016-TWT (N.D. Ga. June 3, 3016); Booth v. Appstack, Inc., No. C13-1533JLR, 2016 WL 3030256 (W.D. Wash. May 25, 2016), order clarified, No. C13-1533JLR, 2016 WL 3620798 (W.D. Wash. June 28, 2016).

[27] Dolemba, 213 F. Supp. 3d 988.

[28] Zemel v. CSC Holdings LLC, Civ. No. 16-4064-BRM-DEA, 2017 WL 1503995 (D.N.J. April 26, 2017) (text); St. Louis Heart Ctr., Inc. v. Nomax, Inc., No. 4:15-CV-517 RLW, 2017 WL 1064669 (E.D. Mo. March 20, 2017) (fax); St. Louis Heart Ctr., Inc.,, 2017 WL 492778 (fax); ARcare v. Qiagen N. Am. Holdings, Inc.,

No. CV 16-7638 PA (ASX), 2017 WL 449173 (C.D. Cal. Jan. 19, 2017) (fax); Osgood v. Main Street Mktg. LLC, No. 16-CV-2415-GPC(BGS), 2017 WL 131829 (S.D. Cal. Jan. 13, 2017) (call); Kostmayer Constr., LLC v. Port Pipe & Tube, Inc., No. 2:16-CV-01012, 2016 WL 6143075 (W.D. La. Oct. 19, 2016) (fax); Supply Pro Sorbents, LLC v. Ringcentral, Inc., No. C 16-02113 JSW, 2016 WL 5870111 (N.D. Cal. Oct. 7, 2016); Ewing v. SQM US, Inc., 211 F. Supp. 3d 1289 (S.D. Cal. 2016); Smith v. Aitima Med. Equip., Inc., No. 16-CV-00339-AB (DTBx), 2016 U.S. Dist. LEXIS 113671 (E.D. Cal. July 29, 2016) (call); Sartin v. EKF Diagnostics, Inc., No. 16-1816, 2016 WL 3598297 (E.D. La. July 5, 2016) (fax).

[29] Smith v. Aitima Med. Equip., Inc., No. EDCV1600339ABDTBX,, 2016 WL 4618780, at *4 (E.D. Cal. July 29, 2016); Supply Pro Sorbents, LLC, 2016 WL 5870111, at *3.

[30] Kostmayer Constr., LLC, 2016 WL 6143075, at *3.

[31] Zemel, 2017 WL 1503995, at *5.

[32] Braitberg v. Charter Commc'ns., Inc., 836 F.3d 925 (8th Cir. 2016).

[33] Perry v. Cable News Network, Inc., No. 16-13031, 2017 WL 1505064, at *2 (11th Cir. Apr. 27, 2017).

[34] Id. at *3 (internal quotations and citation omitted).

[35] Id.

[36]Perlin v. Time Inc., No. 16-10635, 2017 WL 605291, at *13 (E.D. Mich. Feb. 15, 2017); Griffin v. Bank of Am., N.A., No. 1:16 CV 1259, 2016 WL 7487724, at *4 (N.D. Ohio Dec. 28, 2016)

[37]Meyers, 843 F.3d 724, 727 n. 2; Haddad v. Midland Funding, LLC, No. 16 C 3942, 2017 WL 1550187, at *4 (N.D. Ill. May 1, 2017).

[38] Compare Thomas v. FTS USA, LLC, 193 F. Supp. 3d 623, 632 (E.D. Va. 2016) (The 'stand-alone disclosure requirement' is "clearly substantive, and neither technical nor procedural."), with Hopkins v. Staffing Network Holdings, LLC, No. 16 C 7907, 2016 WL 6462095, at *3 (N.D. Ill. Oct. 18, 2016) ("In the instant case, § 1681b(b)(2)(A) is an adoption of a procedure designed to decrease a congressionally identified risk of harm. . . . [and] a bare allegation of a violation of this section, without more, does not allege a concrete injury.").
