

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELIZABETH LARROQUE,
Plaintiff,
v.
FIRST ADVANTAGE LNS SCREENING
SOLUTIONS, INC.,
Defendant.

Case No. [15-cv-04684-JSC](#)

**ORDER TO SHOW CAUSE RE:
SUBJECT MATTER JURISDICTION**

Plaintiff brings this putative class action against Defendant for alleged violations of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681. On January 4, 2016, the Court granted Defendant’s motion to stay this action pending the United States Supreme Court’s decision in *Spokeo, Inc. v. Robins*. (Dkt. No. 23.¹) The Supreme Court issued its opinion in *Spokeo* on May 16, 2016. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), as revised (May 24, 2016). The parties submitted a joint case management statement on June 9, 2016 (Dkt. No. 28), and the Court held a further case management conference on June 16, 2016 (Dkt. No. 31). Although the parties agree in their joint statement that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 (Dkt. No. 28 at 2), the Court has concerns regarding Plaintiff’s standing in light of the Supreme Court’s *Spokeo* decision. Accordingly, the parties are ORDERED TO SHOW CAUSE as to whether the Court has subject matter jurisdiction over this action.

¹ Record citations are to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

1 **BACKGROUND**

2 On August 11, 2015, Plaintiff Elizabeth Larroque filed the instant case in the San Mateo
3 County Superior Court. (Dkt. No. 1-1 at 38, 31-37.) Defendant timely removed the action to this
4 Court on October 9, 2015, on the basis of federal question jurisdiction. (Dkt. No. 1.) In the
5 complaint, Plaintiff alleges that Defendant furnished a consumer report regarding Plaintiff to
6 Pacific Hotel Management, LLC (“Pacific”) without first having Pacific certify that it had
7 complied with the disclosure and authorization requirements set forth in Section 1681b(b)(1) of
8 the FCRA. (Dkt. No. 1-1 at 33-35.) Plaintiff seeks to represent a class of all persons as to whom
9 Defendant furnished consumer reports for employment purposes without first obtaining
10 certification of the employer’s compliance with Section 1681b(b)(1). (Id. at 35.) She seeks only
11 statutory and punitive damages. (Id. at 37.) Plaintiff does not allege that either she or any putative
12 class member suffered actual harm or actual damages. (See generally id.)

13 On November 11, 2015, Defendant moved to stay this action pending the ruling in Spokeo,
14 arguing that “[i]f the Supreme Court rules that Article III standing requires a concrete harm,
15 Plaintiff will have no standing to proceed and her lawsuit must be dismissed.” (Dkt. No. 8 at 4.)
16 Plaintiff opposed, noting that even if Spokeo divests her of Article III standing, FCRA § 1681p
17 grants concurrent federal-state jurisdiction over FCRA claims, and therefore the action could be
18 remanded to state court pursuant to 28 U.S.C. § 1447(c). (Dkt. No. 9 at 5-6.) The Court granted
19 the stay “[b]ecause the Spokeo decision is squarely on point” and “will directly impact whether, as
20 a matter of law, Plaintiff has standing to bring this action.” (Dkt. No. 23 at 3.)

21 On May 16, 2016, the Supreme Court issued its opinion in Spokeo, 136 S. Ct. at 1540.
22 Despite the apparent relevance of Spokeo as argued by Defendant and as noted by the Court,
23 neither party addressed Spokeo in their joint case management statement; instead, the parties
24 simply agreed that the Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. (Dkt.
25 No. 28 at 2.) The Court raised concerns regarding its subject matter jurisdiction, in light of
26 Spokeo, at the June 16, 2016 conference.

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1 **DISCUSSION**

2 Even in the absence of a challenge by the parties, “federal courts are under an independent
3 obligation to examine their own jurisdiction, and standing ‘is perhaps the most important of [the
4 jurisdictional] doctrines.’” *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1276
5 (2015) (citation omitted); see also *Bernhardt v. Cty. of Los Angeles*, 279 F.3d 862, 868 (9th Cir.
6 2002) (“The district court had both the power and the duty to raise the adequacy of [plaintiff’s]
7 standing sua sponte.”).

8 Article III standing consists of three “irreducible constitutional minimum” requirements:
9 “[t]he plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged
10 conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”
11 *Spokeo*, 136 S. Ct. at 1547. “To establish injury in fact, a plaintiff must show that he or she
12 suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and
13 ‘actual or imminent, not conjectural or hypothetical.’” *Id.* at 1548 (citing *Lujan v. Defs. of*
14 *Wildlife*, 504 U.S. 555, 560 (1992)). The party invoking federal jurisdiction bears the burden of
15 establishing these standing requirements. *Lujan*, 504 U.S. at 561.

16 In *Spokeo*, the plaintiff filed a class action complaint against a consumer reporting agency
17 for alleged violations of FCRA § 1681. 136 S. Ct. at 1545. The plaintiff alleged that *Spokeo*
18 violated the FCRA by providing inaccurate information about him in a generated credit report. *Id.*
19 at 1546. The district court dismissed the complaint for lack of standing, but the Ninth Circuit
20 reversed, finding that the plaintiff had adequately alleged an injury-in-fact for the statutory
21 violation. *Id.* at 1544-45. On review, the Supreme Court vacated the decision because the Ninth
22 Circuit’s standing analysis was incomplete; while the Ninth Circuit found that the plaintiff had
23 adequately alleged a “particularized” injury—the statutory violation of the FCRA—the Ninth
24 Circuit did not properly consider the “concreteness” requirement for an injury-in-fact. *Id.* at 1545.
25 As the Supreme Court noted, “Article III standing requires a concrete injury even in the context of
26 a statutory violation”; a plaintiff cannot satisfy Article III’s injury-in-fact requirement by
27 “alleg[ing] a bare procedural violation, divorced from any concrete harm.” *Id.* at 1549. Moreover,
28 “a plaintiff [does not] automatically satisf[y] the injury-in-fact requirement whenever a statute

1 grants a person a statutory right and purports to authorize that person to sue to vindicate that
2 right.” Id. Rather, “[a] violation of one of the FCRA’s procedural requirements may result in no
3 harm. For example, even if a consumer reporting agency fails to provide the required notice to a
4 user of the agency’s consumer information, that information regardless may be entirely accurate.”
5 Id. at 1550. The Supreme Court thus remanded the case to the Ninth Circuit to consider both
6 aspects of the injury-in-fact requirement. Id. at 1545.

7 Here, Plaintiff alleges that Defendant violated the procedural requirements of Section
8 1681b(b)(1), but does not allege that she or any members of the putative class suffered any actual
9 injury or harm as a result of Defendant’s purported statutory violations. Given the factual
10 similarities between Spokeo and this action and the Court’s continuing duty to examine its subject
11 matter jurisdiction, the Court is concerned that Plaintiff has not suffered a concrete injury that
12 would establish standing to proceed in federal court.

13 Accordingly, the parties are ORDERED TO SHOW CAUSE as to whether the Court has
14 subject matter jurisdiction to preside over this action. The parties shall meet and confer as to
15 whether they agree that Plaintiff does not have standing, especially in light of Defendant’s earlier
16 representation that “[i]f the Supreme Court rules that Article III standing requires a concrete harm,
17 Plaintiff will have no standing to proceed and her lawsuit must be dismissed.” (Dkt. No. 8 at 4.)
18 If they do not agree as to the lack of standing, the parties shall each file a response to this Order by
19 July 13, 2016. The Court will address this issue at a hearing on July 28, 2016 at 9:00 a.m. in
20 Courtroom F, 450 Golden Gate Avenue, San Francisco, California.

21 **IT IS SO ORDERED.**

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Dated: June 21, 2016


JACQUELINE SCOTT CORLEY
United States Magistrate Judge