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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 ALU BANARJI, individually and on
12 behalf of all others similarly situated,
13 Plaintiff,
14 v.
15 WILSHIRE CONSUMER CREDIT,
16 Defendant.

Case No.: 3:14-cv-02967-BEN-KSC
**ORDER DENYING MOTION FOR
SUMMARY JUDGMENT**
[ECF No. 64]

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18 Plaintiff Alu Banarji initiated this action on December 17, 2014, alleging a
19 violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*
20 She claims that Defendant Wilshire Consumer Credit (“Defendant” or “WCC”)
21 repeatedly called her cell phone without her prior express consent. WCC now moves for
22 partial summary judgment on the issue of Plaintiff’s standing to bring the TCPA claim.
23 (Mot., ECF No. 64.) For the reasons that follow, the Court **DENIES** WCC’s motion.

24 **BACKGROUND**

25 The relevant facts are not in dispute. Sami Banarji, Plaintiff’s father, took out a
26 loan with WCC. On the application, Sami listed a cell phone number ending 0861 as his
27 own. In fact, that number belonged to Alu. Alu claims that she had no involvement with
28 Sami’s loan, except to pay a bill for him on occasion.

1 At some point, Sami failed to make a payment to WCC, and WCC began calling
2 the 0861 number to inquire about the debt. WCC used an automatic telephone dialing
3 system to dial the 0861 number. Alu received several calls from WCC. She asserts that
4 she was called constantly and being harassed. The calls irritated her. She asked WCC to
5 stop calling her cell phone multiple times, and asked Sami to also convey that message to
6 WCC.

7 LEGAL STANDARD

8 Summary judgment is appropriate when “there is no genuine dispute as to any
9 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
10 56(a); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In
11 considering a summary judgment motion, the evidence of the nonmovant is to be
12 believed, and all justifiable inferences are to be drawn in his or her favor. *Anderson*, 477
13 U.S. at 255.

14 A moving party bears the initial burden of showing there are no genuine issues of
15 material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). It can do so by
16 negating an essential element of the non-moving party’s case, or by showing that the non-
17 moving party failed to make a showing sufficient to establish an element essential to that
18 party’s case, and on which the party will bear the burden of proof at trial. *Id.* The burden
19 then shifts to the non-moving party to show that there is a genuine issue for trial. *Id.*

20 “Only disputes over facts that might affect the outcome of the suit under the
21 governing law will properly preclude the entry of summary judgment. Factual disputes
22 that are irrelevant or unnecessary will not be counted.” *Anderson*, 477 U.S. at 248. As a
23 general rule, the “mere existence of a scintilla of evidence” will be insufficient to raise a
24 genuine issue of material fact; there must be evidence on which the jury could reasonably
25 find for the non-moving party. *Id.* at 252.

26 DISCUSSION

27 The issue before the Court is whether Plaintiff has satisfied the injury in fact
28 requirement of Article III standing to pursue her TCPA claim. *See Spokeo, Inc. v.*

1 *Robins*, 136 S. Ct. 1540, 1547 (2016) (“[S]tanding consists of three elements. . . . The
2 plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the
3 challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable
4 judicial decision.”). To establish an injury in fact, a plaintiff must show that she
5 “suffered an invasion of a legally protected interest that is concrete and particularized and
6 actual or imminent, not conjectural or hypothetical.” *Id.* (citing *Lujan v. Defenders of*
7 *Wildlife*, 504 U.S. 555, 560 (1992)). Defendant WCC argues that but for the TCPA,
8 Plaintiff did not suffer a real, concrete injury. It relies on the Supreme Court’s decision
9 in *Spokeo*, which explained that a plaintiff does not “automatically satisf[y] the injury-in-
10 fact requirement whenever a statute grants a person a statutory right and purports to
11 authorize that person to sue to vindicate that right.” *Id.* at 1549.

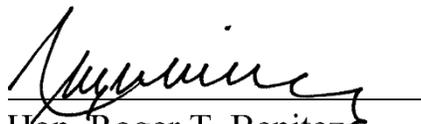
12 The Ninth Circuit recently addressed a plaintiff’s standing to bring a TCPA claim
13 in light of *Spokeo*. See *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037 (9th Cir.
14 2017). In general, the TCPA prohibits anyone from using an automatic telephone dialing
15 system to make an unsolicited call to a cell phone number without the called party’s prior
16 express consent. 47 U.S.C. § 227(b)(1)(A)(iii). In *Van Patten*, the Ninth Circuit
17 explained that, in enacting the TCPA, “Congress sought to protect consumers from the
18 unwanted intrusion and nuisance of unsolicited telemarketing phone calls and fax
19 advertisements.” 847 F.3d at 1043 (citing Pub. L. 102-243, § 2, ¶ 12.) The legislature
20 “identified unsolicited contact as a concrete harm, and gave consumers a means to redress
21 this harm.” *Id.* In rejecting the defendant’s challenge to plaintiff’s standing, the Ninth
22 Circuit held that “[u]nsolicited telemarketing phone calls or text messages, by their
23 nature, invade the privacy and disturb the solitude of their recipients. A plaintiff alleging
24 a violation under the TCPA ‘need not allege any *additional* harm beyond the one
25 Congress has identified.” *Id.* (citing *Spokeo*, 136 S. Ct. at 1549).

26 In this case, WCC is not entitled to judgment as a matter of law on the ground that
27 Plaintiff does not have standing. Plaintiff has established that she received unsolicited,
28 automated calls to her cell phone from WCC, which is sufficient to confer Article III

1 standing under *Van Patten*. Plaintiff received five to seven calls a day. (Opp’n, Decl. of
2 Mona Amini, Ex. A at 66.) The calls disrupted and bothered her. (*Id.* at 29, 42, 94.) She
3 testified that she “kept getting harassed. They kept calling me constantly.” (*Id.* at 42.)
4 Viewing these facts in the light most favorable to Plaintiff, she has satisfied the injury in
5 fact requirement. WCC’s motion is **DENIED**.

6 **IT IS SO ORDERED.**

7 Dated: April 5, 2017

8 
9 Hon. Roger T. Benitez
10 United States District Judge

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