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NATIONAL LAW REVIEW

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## Second Circuit Holds Receipt of Unwanted Text Messages, Even Without Other Alleged Harm, Confers Standing for TCPA Claims

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Friday, May 17, 2019

Joining similar decisions from the U.S. Courts of Appeals for the Third and Ninth Circuits, the Second Circuit held in [Melito v. Experian Marketing Solutions, Inc.](#) that the receipt of unwanted text messages, even without any other alleged harm, meets the injury-in-fact requirement for Article III standing to bring Telephone Consumer Protection Act (TCPA) claims.

In rendering its decision, the Second Circuit determined that the plaintiffs—representatives of a conditionally certified settlement class of more than 618,000 people who received text messages on their cell phones from American Eagle Outfitters, Inc. (AEO)—had standing to bring claims under the TCPA. The plaintiffs alleged they received the text messages but did no other harm. The court determined there was standing to bring TCPA claims because "text messages, while different in some respects from the receipt of calls or faxes specifically mentioned in the TCPA, present the same 'nuisance and privacy invasion' envisioned by Congress when it enacted the TCPA." The court also emphasized that the harm was closely related to traditional common law claims for "invasions of privacy, intrusion upon seclusion, and nuisance." Therefore, receiving an unwanted text message suffices to show both a concrete and particularized injury.

*Melito* is the latest TCPA development in the aftermath of the U.S. Supreme Court's decision in *Spokeo Inc. v. Robins*, which held that, in the context of the Fair Credit Reporting Act (FCRA), to have Article III standing, plaintiffs must establish "injury in fact" by showing "an invasion of a legally protected interest" that is both "concrete and particularized." In the FCRA context, *Spokeo* requires more than just a bare procedural violation in order to establish injury in fact.

By contrast, in *Melito*, the Second Circuit joined two other circuits in holding that, in the TCPA context, a text message received in violation of the TCPA – even without more – is sufficient for Article III standing.

*Melito* could lead to even more TCPA class action litigation because, in at least three circuits, there is now no requirement to show harm beyond a technical TCPA violation to have Article III standing. The decisions in *Melito*, along with [Van Patten v. Vertical Fitness Group, LLC](#), and [Susinno v. Work Out World Inc.](#), could also have other far-reaching consequences because numerous statutes other than the TCPA allow plaintiffs to recover statutory damages where actual damages for violations are often difficult to prove or nonexistent. How courts ultimately resolve the tension between the Supreme Court's FCRA decision in *Spokeo* and TCPA cases such as *Melito* remains to be seen.

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