

**1** UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

2

3

NOREEN SUSSINO,  
**4** PLAINTIFF

5

Vs.

CIVIL NO.  
15-5881 (PGS)

**6 WORK OUT WORLD, INC., et al,  
DEFENDANTS**

7

8

**9** CLARKSON S. FISHER COURTHOUSE  
402 EAST STATE STREET  
**10** TRENTON, NEW JERSEY 08608

11

**12** B E F O R E: THE HONORABLE PETER G. SHERIDAN  
**13** U.S. DISTRICT COURT JUDGE  
DISTRICT OF NEW JERSEY

14

A P P E A R A N C E S:

15

MARCUS ZELMAN, LLC

**16** BY: ARI H. MARCUS, ESQUIRE  
FOR THE PLAINTIFF

17

ANSELL, GRIMM & AARON, PC

**18** BY: JOSHUA S. BAUCHNER, ESQUIRE  
FOR THE DEFENDANT

19

20

**21 HEARING ON MOTION TO DISMISS**

22

23

24

Certified as true and correct as required  
by Title 28, U.S.C. Section 753  
/S/ Francis J. Gable  
FRANCIS J. GABLE, C.S.R., R.M.R.

1 THE COURT: The first matter is Sussino versus Work  
2 Out World. Do you want to enter your appearances? We will  
3 start with the plaintiff.

4 MR. MARCUS: Good morning, your Honor, Ari Marcus  
00:00 5 from Marcus and Zelman representing the plaintiff.

6 THE COURT: Good morning, Mr. Marcus.

7 MR. BAUCHNER: Good morning, Joshua Bauchner of  
8 Ansell, Grimm and Aaron on behalf of the defendants.

9 THE COURT: Good morning, Mr. Bauchner.

10 00:00 So, this is your motion to dismiss, Mr. Bauchner?

11 MR. BAUCHNER: Yes, sir.

12 THE COURT: Do you wish to be heard?

13 MR. BAUCHNER: I came all the way from New York City  
14 for this hearing.

15 00:00 THE COURT: Might as well.

16 MR. BAUCHNER: Thank you. And I'm confident the  
17 Court's read the papers so I'll be brief.

18 THE COURT: I have.

19 MR. BAUCHNER: Your Honor, this whole case is about  
00:00 20 one single unanswered call, and we put the emphasis on single  
21 and unanswered. Every case plaintiff relies on to establish a  
22 concrete injury under the recent *Spokeo* case from the United  
23 States Supreme Court is distinguishable, and critically  
24 distinguishable on that basis alone.

25 00:01 Those cases involved 17 auto-dialed calls, 31

1 auto-dialed calls; cases where the plaintiffs tried to contact  
2 the maker of the call, begged to be taken off the list and  
3 were ignored. We have one single unanswered call here, your  
4 Honor, it's critical.

00:01 5 To try to cure that critical defect, plaintiff  
6 claims that injuries sustained by auto-dialed calls are  
7 inherent and self-evident. But your Honor, that is exactly  
8 the type of argument that the Supreme Court rejected in  
9 *Spokeo*, where it said and I'm quoting, "Congress' role in  
00:01 10 identifying and elevating intangible harm does not mean that a  
11 plaintiff automatically satisfies the injury-in-fact  
12 requirement whenever a statute grants a person a statutory  
13 right and purports to authorize that person to sue to  
14 vindicate that right."

00:02 15 Here that's exactly what happened. The call was  
16 allegedly made I believe on July 25th, and three days later we  
17 have a class action complaint as a result of again one single  
18 unanswered phone call.

00:02 19 And critically, your Honor, plaintiff doesn't allege  
20 any concrete harm, any actual harm as required by *Spokeo*  
21 resulting from that call. Plaintiff doesn't allege she  
22 answered the call, we know she didn't. There was no intrusion  
23 upon her privacy as a result of that. She doesn't claim that  
24 it deleted her battery, she doesn't claim it somehow took her  
00:02 25 away from other phone calls, like the fax machine cases where

1 the fax machine's in use others can't use that fax. She  
2 doesn't claim that she spent any time answering the call, and  
3 her reliance on other putative class members, your Honor, who  
4 may have suffered harm, who may have had their minutes  
00:02 5 depleted, doesn't work because the Supreme Court also tells us  
6 that a plaintiff who seeks to serve as a class representative  
7 can't establish her standing by relying on absentee class  
8 members.

9 So we're left with a plaintiff here, your Honor,  
00:03 10 whose concrete injury is a single unanswered phone call, and  
11 that just is insufficient to establish standing under Article  
12 III of the Constitution, your Honor. And every case, again,  
13 cited by plaintiff is critically distinct on that basis. This  
14 is simply an attempt to manufacture a class action, your  
00:03 15 Honor. That's why two days after the unanswered phone call  
16 the complaint was filed. No effort was made by her whatsoever  
17 to contact us.

18 And critical, your Honor, in the Roma declaration we  
19 submitted with our reply, we certify that not a single other  
00:03 20 alleged recipient of these calls called to complain. Or  
21 otherwise we concede sure there's --

22 THE COURT: I don't know how I get into that  
23 certification on a motion to dismiss, however.

24 MR. BAUCHNER: Your Honor, it's a 12(b)(1), and on a  
00:03 25 12(b)(1) you can consider --

1 THE COURT: Oh, on a jurisdiction issue.

2 MR. BAUCHNER: Absolutely. It's a Rule 12(b) (1)  
3 application here, your Honor. We cited to the case law and  
4 the standard of review, and the Court is absolutely entitled  
00:04 5 to not only consider affidavits and other evidence, but the  
6 Court further, your Honor, unlike on a 12(b) (6) needn't accept  
7 any of plaintiff's allegations as true.

8 THE COURT: All right.

9 MR. BAUCHNER: And that actually, your Honor, we set  
00:04 10 forth in our opening papers --

11 THE COURT: But if I have the issue on a motion to  
12 dismiss back based on jurisdiction, I always give the  
13 plaintiff an opportunity to do discovery on it, and to, you  
14 know, take depositions to see if the certifications are  
00:04 15 correct.

16 MR. BAUCHNER: Your Honor, I don't -- I don't  
17 dispute that and I certainly understand it, however, here  
18 plaintiffs already amended their complaint once. They've  
19 already sought to correct the defects in their original  
00:04 20 complaint, which I presume they've acknowledged otherwise they  
21 wouldn't have amended. No matter what discovery they could  
22 do, your Honor, they're not going to be able to find that  
23 plaintiff here received more than one unanswered phone call,  
24 and that defect is alone.

25 Even again if they find that others might have

1 received these calls and that others might have answered the  
2 calls, that's insufficient, because those others in that  
3 putative class, they don't serve to satisfy plaintiff's  
4 standing. So no amount of discovery, your Honor, is going to  
00:05 5 change the fact that plaintiff only received one unanswered  
6 phone call, which does not amount to concrete harm.

7 THE COURT: But you were talking about a different  
8 fact, sir. You brought up that -- you cited the certification  
9 saying that no other person complained about the calls; that's  
00:05 10 the assertion that I was making reference to, like really.

11 The one unanswered call, that's a different fact that we're  
12 dealing with, and I believe that's set forth in the complaint.

13 MR. BAUCHNER: I understand, your Honor, I recognize  
14 the two different issues. My point is simply that there were  
00:05 15 no other complaints and they can have discovery on that, but  
16 even if they take discovery on it that it's still not going to  
17 endow plaintiff with standing.

18 THE COURT: Do you have any other issues?

19 MR. BAUCHNER: Yes, there's a second -- the other  
00:06 20 big issue, your Honor, is the offer of judgment.

21 THE COURT: So the *Campbell* issue.

22 MR. BAUCHNER: The *Campbell* issue, your Honor,  
23 exactly. This case is distinct from every single case  
24 plaintiff cites, because here the offer was made and the  
00:06 25 payment was not only tendered, it was received. And that is

1 the critical linchpin in all of the cases where the plaintiff  
2 actually receives the funds; that ends it, there's no case or  
3 controversy.

4 Now, she makes an argument, your Honor, that it was  
00:06 5 a different credit card, but she attested on her membership  
6 agreement it was her card. She used the card for her gym  
7 membership, she somehow in our declaration says --

8 THE COURT: Please give me the timing of that.

9 MR. BAUCHNER: When the funds were refunded, your  
00:06 10 Honor? March.

11 THE COURT: Because I'm trying to figure out when  
12 the refund was made; was it before the suit or after the suit?

13 MR. BAUCHNER: After the suit in conjunction with  
14 our offer of judgment, your Honor. I believe the refund was  
00:06 15 made in March of this year. And plaintiff kept those funds  
16 the entire time until we filed our original motion to dismiss,  
17 at which point she then tried to return the funds, but months  
18 and months later. But the fact of the matter was in that  
19 interim, she actually received the funds, they were refunded  
00:07 20 to her credit card.

21 And all of the courts, including the majority in  
22 *Campbell*, have said that the critical linchpin in assessing  
23 the offer of judgment, is the offer, tender and receipt of  
24 funds. Here, the funds were actually received, and three  
00:07 25 months later, to try to save her class action, she decided to

1 write a check back for those funds. But they were already  
2 received, your Honor, and she can't uno that critical fact.

3 THE COURT: So, when you issue a credit on a credit  
4 card, the credit card holder doesn't have to do anything, you  
00:07 5 just sent in a payment to her credit card company; is that  
6 what happened?

7 MR. BAUCHNER: The credit -- we had the refund -- I  
8 guess it's not a refund. We had the tender made on to her  
9 credit card, and it actually said WOW Tender of Judgment. So  
00:08 10 on her bill, it would have said WOW Tender of Judgment,  
11 \$1,501. Completely transparent to her. And we submitted some  
12 of the documentation to substantiate the transaction how it  
13 was made, and the funds were kept.

14 Now, your Honor --

00:08 15 THE COURT: I understand the argument.

16 MR. BAUCHNER: Okay.

17 THE COURT: Do you have any others?

18 MR. BAUCHNER: That's all, your Honor. Thank you.

19 THE COURT: Mr...

00:08 20 MR. MARCUS: Marcus.

21 THE COURT: Marcus. I'm sorry.

22 MR. MARCUS: That's okay, your Honor.

23 THE COURT: You're here so often, I should remember.

24 MR. MARCUS: I will be brief as well.

00:08 25 THE COURT: Can you just go into the *Spokeo* analysis

1 for me, please?

2 MR. MARCUS: The *Spokeo* analysis first, yes, that's  
3 fine, your Honor. I just want to point out one point. In  
4 *Spokeo* the court did not state that the plaintiff there had no  
00:09 5 standing or didn't have a concreted injury to confer standing,  
6 the court actually remanded it back to Ninth Circuit.

7 And the reason being that they said that they didn't  
8 analyze it correctly -- it was actually an 8-0 decision based  
9 on principle, even though 6-2, the two dissenters said that  
00:09 10 the Supreme Court should lend it to the next step, and how the  
11 plaintiff here does have standing. So there was no -- it  
12 wasn't reversed based on the plaintiff not having standing  
13 there.

14 But to move forward just on it, *Spokeo* didn't teach  
00:09 15 us much that we already didn't know; we knew you needed  
16 standing under Article III to be in federal court. What  
17 *Spokeo* mentioned is that the analysis you should look at is  
18 whether the plaintiff had a concrete and particularized  
19 injury. And in defining what a concrete injury is, the  
00:09 20 Supreme Court mentioned three points: One, all you need is an  
21 injury based on a risk of harm; two, you don't need a tangible  
22 injury, but -- and I quote: "Intangible injuries can  
23 nevertheless be concrete; and number three, to evaluate  
24 intangible harms, courts should look at both the history and  
00:10 25 judgment of Congress when deciding whether --

1                   THE COURT: So, do you agree that there was only one  
2 call made to your client?

3                   MR. MARCUS: I agree that my client has represented  
4 to us that she only received one call. I don't know if  
00:10 5 there's previous calls beyond -- and the issue of the amount  
6 of calls goes towards damage, it doesn't go toward standing.  
7 The Supreme Court stated you needed a concrete injury. And  
8 whether that injury is de minimus, it's small, that's all you  
9 need.

00:10 10                  So whether it's one call, that will go towards the  
11 damage. If you have a thousand calls or one call, it doesn't  
12 make a difference. If it's a harm, if the phone call itself  
13 is a harm, a concrete harm that Congress intended to confer  
14 standing on to, which Congress did here, then you have  
00:10 15 standing.

16                  In fact --

17                  THE COURT: Well, if you look at the TCPA, it talks  
18 about prevention of annoying and repeated telemarketing calls.  
19 I'm just reading out of the ABCs of the TCPA by Mark Ellis,  
00:11 20 but within that article they set forth the issues that were  
21 trying to be addressed, and they talk about it in terms of  
22 repeated and annoying. So, if there's only one it's not  
23 repeated; and annoying isn't usually -- I wouldn't associate  
24 it with one call. It seems to me you get annoyed when you get  
00:11 25 a number of calls.

1                   MR. MARCUS: Well, that's true, your Honor, but the  
2 statute's not reading where you have to have more than one  
3 call to have a violation. Any amount of calls would give you  
4 a violation of the Act. And consumers today are getting a  
00:11               5 bunch of calls from everywhere, so you have to add them up.  
6 And if companies can use machines to call you and constantly  
7 call you, that's exactly what Congress was intending to  
8 protect.

9                   And just because the plaintiff here sued after the  
00:12               10 first call and not waited until five or six or 10 or 12 calls  
11 doesn't make a difference, all it goes toward is damage. It's  
12 a statutory damage you can get per call. Plaintiff could have  
13 waited to 20 or 30 calls and then we would have got the  
14 argument from defendant that she didn't mitigate her damage,  
00:12               15 she should have sued right away right when she knew it was a  
16 violation of the Act.

17                  And I just want to point out pre-Spokeo the Supreme  
18 Court dealt with this issue under the TCPA twice. Pre-Spokeo  
19 they had two TCPA decisions in front of them; the first being  
00:12               20 in 2012, *Mims v. Arrow Financial*, and there they dealt with  
21 the issue of whether you have -- whether a consumer can sue in  
22 federal court under the TCPA. And Congress answered -- I mean  
23 the Supreme Court answered in the affirmative. And there  
24 obviously they dealt with the issue of whether a plaintiff is  
00:12               25 allowed to sue in federal court. It's something they were

1 thinking of.

2 Now, defendant can argue well, 2012 was pre-Spokeo,  
3 they weren't dealing with the issue of standing. They also  
4 recently in the *Campbell-Ewald* case, the *Campbell* case that  
00:13 5 defendant mentioned for a different reason, dealt with a TCPA  
6 case, one text message, one text message. And it would be  
7 hard to argue the Supreme Court didn't have *Spokeo* in mind  
8 being that they heard it right after *Campbell-Ewald*, they knew  
9 they were dealing with that.

00:13 10 And in that decision when they decided an offer of  
11 judgment does not moot a class, Justice Roberts noted: That  
12 the court's agreement that a receipt of an unwanted telephone  
13 call was undisputedly an injury in fact. And I quote: "All  
14 agree that at the time Gomez filed suit he had a personal  
00:13 15 stake in the litigation; in his complaint Gomez alleged that  
16 he suffered an injury in fact when he received an unauthorized  
17 text message from Campbell."

18 Again, one text message; they knew about *Spokeo*,  
19 they were dealing with *Spokeo* at the same time, and they  
00:13 20 easily could have said that the plaintiff doesn't have  
21 standing there, but they didn't, because they understood the  
22 plaintiff did have standing.

23 Now, I'd just like to talk about the cases after  
24 *Spokeo* now, all the cases which dealt with this issue of  
00:14 25 getting unwanted phone calls. First being *Booth v. Appstack*,

1 I'm just going to quickly go over three of them, because  
2 there's a lot of them in our motion because we have a lot of  
3 cases to support our position. The court held that: While  
4 the injury in *Spokeo* is arguably procedural and thus not  
00:14 5 concrete, the TCPA is an injury that Congress agrees is  
6 sufficiently concrete to confer standing. No mention of the  
7 amount of calls you need to confer standing. The TCPA itself  
8 is an injury that Congress agrees is sufficiently concrete to  
9 confer standing.

00:14 10 Second case, *Rogers v. Capital One*; the court held  
11 that by merely alleging that calls were made to a personal  
12 cellphone, plaintiff has suffered particularized injuries that  
13 were suffered to support standing. Again, no mention of the  
14 amount of calls. There in that case plaintiff didn't even  
00:15 15 allege a harm and the court said that's sufficient; you don't  
16 have to allege a harm because the TCPA itself is self-evident.

17 The third case, *Mey v. Got Warranty*, held that  
18 plaintiff has standing to sue since the harm caused by  
19 unwanted calls are self-evident. No mention of the amount of  
00:15 20 calls you need.

21 Now, defendant brings up two cases to support their  
22 position, both of them are clearly inapposite. It doesn't  
23 mention the facts in their brief about those cases because  
24 it's clear that they have no relevance here. The first being  
00:15 25 *Stoops v. Wells Fargo*, which I'm sure your Honor is aware of.

1 That is a case where a plaintiff admitted that she purchased  
2 cellphones inviting calls with the hope of getting calls so  
3 she can sue under the TCPA; she admitted that that was her  
4 business. The court held there that obviously there was no  
00:15 5 harm, she wanted these calls, this was her business.

6 THE COURT: There's an exception to standing where  
7 you manufacture the claim or create the claim in the *Stoops*  
8 case --

9 MR. MARCUS: Correct.

00:16 10 THE COURT: And the court found that.

11 MR. MARCUS: That's right.

12 THE COURT: So I think that's factually different  
13 than what we're looking at here.

14 MR. MARCUS: I agree, that's exactly my point, that  
00:16 15 this is the only case that defendant has to support their  
16 position of *Stoops*, which is not relevant to our case. The  
17 second case which they bring up in their reply brief for the  
18 first time is the *Sartin v. EKF Diagnostics*, that's a fax  
19 case, TCPA fax case. There the plaintiff did not allege any  
00:16 20 harm, the complaint was written before *Spokeo*, and there the  
21 court did not state that plaintiff did not have standing, the  
22 court stated that there was a procedural issue because the  
23 plaintiff didn't allege harm, so the court granted plaintiff  
24 leave to amend the complaint and alleged harm. So again, not  
00:16 25 relevant to our case.

1                 Now, our last point on *Spokeo* is that this is not a  
2 risk of harm, this is not an intangible injury, these are  
3 tangible real injuries. And I'm not sure why defendant is  
4 stating we didn't allege this in the complaint because we did  
00:17                 5 allege it. And while some of them may be minor and may be  
6 small, that's all you need for standing in federal court.

7 Like nuisance, like lost use of property, like depletion of  
8 battery life; these are small injuries, all mentioned in the  
9 three cases I spoke about post-*Spokeo* which held were enough  
00:17                 10 to confer standing. So defendant is asking this Court to be  
11 the one outlier, the one court post-*Spokeo* who decides that  
12 plaintiffs don't have standing on a TCPA violation.

13                 And I'd just like to address the *Campbell-Ewald*  
14 quickly --

00:17                 15 THE COURT: Okay.

16                 MR. MARCUS: The facts of the case are as follows.  
17 He filed a complaint, defendant made an offer of judgment,  
18 Rule 68 offer of judgment; our case was stayed pending the  
19 *Campbell-Ewald* decision. The Supreme Court decided that a  
00:17                 20 defendant cannot moot a class by making an offer of judgment.

21                 Thereafter defendant notified us that they deposited  
22 money into this credit card. Plaintiff didn't know about it,  
23 I didn't know about it, the reason being is because it's not  
24 her credit card. And we told defendant this and they still  
00:18                 25 filed this motion, they know about this. My office manager

1 has a credit card that has her name on it; it's not her credit  
2 card. Any money that is put into the credit card she would  
3 never see, she would never see the benefit of, she doesn't see  
4 the bills or anything like that.

00:18 5 Plaintiff here is an office manager of a dentist  
6 office. She was given a credit card for office expenses. As  
7 part of her perk for working there, her employer granted her a  
8 gym membership. She was the one who went to the gym, so she  
9 used that credit card because she knew it would be billed to  
00:18 10 her employer, she was granted permission to do that.

11 When the employer got a 1,501 credit on his credit  
12 card, he was blown away. He called Work Out World; Work Out  
13 World said I don't know what this this is. He called his  
14 credit card; his credit card company told him we can't do  
00:18 15 anything, wait until it hits your bank account and then write  
16 them a check, which is what the employer did. Waited until  
17 hit his bank account, took the check, went to his Work Out  
18 World because when he called Work Out World he couldn't get  
19 someone on the phone, when he finally got someone on the phone  
00:19 20 they said I don't know what this is.

21 So to argue that the plaintiff received the money is  
22 just incorrect; she didn't even know about it until I put her  
23 on notice. She never saw the benefit of it; didn't say her  
24 name, 1,501 to Noreen Sussino, it just say WOW Tender of  
00:19 25 Judgment.

1               Now, for academic purposes I'd like to make the  
2 argument that even if she did receive the money it's  
3 irrelevant. What *Campbell-Ewald* said, is that you can't make  
4 an offer of judgment, it won't moot a class, every plaintiff  
00:19               5 should be afforded the opportunity to do class discovery.

6               What the Supreme Court did not decide is what would happen if  
7 the money was actually tendered and received.

8               The defendant stated earlier, which is incorrect,  
9 that the Supreme Court said that all you need to do is tender  
00:19               10 and have the money received; the Supreme Court did not say  
11 that, they just said we're not answering that question because  
12 it's not before us. So it's a misrepresentation to say that's  
13 what the Supreme Court stated.

14               Now, after that decision, defendants, using this  
00:20               15 gamesmanship, decided that they're going to start doing that.  
16 And the Ninth Circuit recently held in *Chen v. Allstate*, after  
17 the plaintiff was given \$20,000, held a would-be class  
18 representative with a live claim of her own, must be accorded  
19 a fair opportunity to show certification is warranted. And  
00:20               20 they dismissed defendant's motion to dismiss, and the case  
21 moved forward.

22               In a more recent decision, *South Chiropractic --*  
23 *sorry.* *South Orange Chiropractic v. Cayan*, defendant did the  
24 same thing; they paid money to the plaintiff, defendant filed  
00:20               25 a motion to dismiss, which was denied. They attempted to file

1 an interlocutory appeal, which was denied because the court  
2 stated, and this is important, and I quote, "A defendant  
3 cannot moot a proposed class action solely by paying off the  
4 named plaintiff." And concluded that because there was no  
00:21 5 difference of opinions between the courts, there's no reason  
6 to hear the appeal. They didn't even hear the appeal.

7 Now, the only cases defendant brings, again, are not  
8 factually similar to our case. Two of them are individual  
9 cases, no class action, no need to do class discovery; and the  
00:21 10 third case was a case in which the plaintiff was granted an  
11 opportunity to do class discovery, did class discovery, filed  
12 their class cert motion which was denied, at which point  
13 afterward the court said now if you offer an offer of judgment  
14 we'll dismiss the case as being moot, because there is no more  
00:21 15 class discovery to be done.

16 So again, the defendant on this argument is asking  
17 the Court to ignore the facts that plaintiff never received  
18 the money; and even if the plaintiff received the money to be  
19 the one outlier case to decide to moot a case based off of a  
00:21 20 Rule 68 offer. And for those reasons we ask the Court to  
21 dismiss the defendant's motion.

22 THE COURT: Okay, thank you.

23 Do you wish to reply briefly?

24 MR. BAUCHNER: Very briefly, your Honor. First, I  
00:22 25 don't like to be accused of misrepresentation; I draw the

1 Court's attention to the *Campbell-Ewald* case at 671, where the  
2 court actually cited to three cases, *San Pablo*, *San Mateo* and  
3 *Little*, where it distinguished instances where the plaintiff  
4 actually received the funds and found that satisfied Rule 68.  
00:22 5 So it's not a misrepresentation to say the Supreme Court drew  
6 that distinction.

7 Secondly, your Honor, everything counsel said with  
8 respect to what the employer may have done is not in the  
9 record before this Court. There's no certification or  
00:22 10 declaration from the employer, that's all counsel's hyperbole  
11 and it's not before the Court. We know the money went into  
12 the account; we know plaintiff signed a membership agreement  
13 that said it's my credit card, perhaps under false pretenses  
14 but that's what she signed, and we refunded money to that  
00:22 15 account. To the assertion it's only for office expenses is  
16 belied by the fact that it's apparently also used by her for a  
17 personal gym membership.

18 And finally, your Honor, I think you hit it on the  
19 head, repeated and annoying calls. The argument from counsel  
00:22 20 that he didn't look at her records to see if there's any  
21 additional calls I think is a little specious. There's an  
22 amended complaint filed; earlier if they were trying to cure  
23 the injury issue in the original complaint they would have  
24 looked at the record, I'm sure they did, there were no more  
00:23 25 calls.

1                   There was one call, your Honor, that is not repeated  
2 and that is not annoying. If there were additional calls that  
3 they could have waited and the rest, that's nonsense. One  
4 unanswered phone call, your Honor, that is not a concrete  
00:23               5 injury.

6                   THE COURT: Okay, thank you.

7                   MR. MARCUS: Can I just make one quick point?

8                   THE COURT: You may.

9                   MR. MARCUS: I'm conceding there's one call, that's  
00:23               10 fine. And repeated and annoying would go towards whether  
11 there's a TCPA violation, it wouldn't go towards standing. If  
12 defendant wants to argue there's no violation of TCPA unless  
13 you have repeated and annoying they can make that argument,  
14 that shouldn't go toward the standing argument.

00:23               15 THE COURT: All right. So, a motion to dismiss for  
16 want of standing is properly brought pursuant to 12(b) (1).

17 It's a jurisdictional issue. *Constitutional Party*, 777 F.3d  
18 347, 357. Generally, the court must accept as true all  
19 material facts or allegations in the complaint, and construe  
00:24               20 the facts in favor of the non-moving party. That's *Storino v.*  
21 *Point Pleasant*, 322 F.3d 293. Plaintiff always bear the

22 burden of establishing standing. Generally, standing comes  
23 under cases in controversy as in the federal Constitution, and  
24 the doctrine of standing gives meaning to these constitutional  
00:24               25 limits by identifying those disputes which are appropriately

1 resolved in the judicial process. That's *Lujan*, 504 U.S. 555.  
2 To establish standing you usually need an injury in fact;  
3 causal connection between the injury and the conduct  
4 complained of, and the likelihood that the injury will be  
00:25 5 redressed by a favorable decision. That's *Lujan* again at 561.  
6 Generally, the injury, to be sufficient, must be concrete and  
7 particularized.

8 And that brings us to the *Spokeo* case, and it's a  
9 decision by Judge Alito. So within that *Spokeo* case, Justice  
00:25 10 Alito identified the terms concrete and particularized, upon  
11 which the plaintiff must show in order to have a case or  
12 controversy. And for the injury to be particularized, it must  
13 affect the plaintiff in a personal and individual way. And  
14 then he indicates that the injury must also be concrete;  
00:26 15 concrete injury must be de facto, that is, it must actually --  
16 it says: When we have used the adjective concrete, Judge  
17 Alito writes, we have meant to convey the usual meaning of  
18 that term, real and not abstract. And he cites to Webster's  
19 Dictionary. And then he indicates that concreteness is  
00:26 20 different than particularization, and that both needed to be  
21 shown in order to have standing. Concrete is not always  
22 synonymous with tangible, but Alito says intangible injuries  
23 can nevertheless be concrete. And then there's some  
24 explanation of that, and he does add in there that: In  
00:27 25 addition, because Congress is well positioned to identify

1 intangible harms that meet minimum Article III requirements,  
2 its judgment is also instructive and important. Thus, in  
3 *Spokeo*, Alito continues, Congress may elevate the status of  
4 legally cognizable injuries, concrete de facto injuries that  
00:27 5 were previously inadequate in law, and there he's citing to  
6 *Lujan* at page 578.

7 And in all these TCPA cases there's this underlying  
8 thought that Congress has passed the statute, and therefore  
9 they're identifying a concrete injury that has occurred to the  
00:28 10 person. So, with regard to that, I decided that I should look  
11 at the Telephone Consumer Protection Act to see if this is the  
12 type of case that Congress was trying to protect people  
13 against. And here, it seems to be admitted by Mr. Marcus that  
14 there was only one telephone call, and it lasted -- I believe  
00:28 15 it was a minute and a few seconds. And, at any rate, when  
16 Congress was enacting the Telephone Consumer Protection Act,  
17 it had four purposes: (1) minimizing random solicitation  
18 calls which tied up private and business phone lines and fax  
19 machines; (2) the prevention of annoying and repeated  
00:29 20 telemarketing calls and blast faxes, amounting to invasion of  
21 privacy; (3) elimination of the imposition of nonconsensual  
22 calls to recipients of calls and faxes who have no prior  
23 relationship with the advertiser; (4) debt collection and  
24 creditor calls initially were not considered to fall within  
00:29 25 the ambit of the TCPA, which was directed to advertisers and

1 solicitors. So, that's another purpose I take it. But  
2 generally, if you look at those purposes, when it says "tied  
3 up private and business phones", this means if the phone is  
4 tied up, and that is usually not the case on a one-minute  
00:30 5 call.

6 Secondly, the prevention of annoying and repeated  
7 telemarketing calls, seems to require that there needs to be  
8 some type of pattern or repeatedness to the telephone calls,  
9 so that does not mean once; there's three, five, seven,  
00:30 10 something like that. We've all been subject to those calls  
11 once or twice in our past. It's those types of telephone call  
12 patterns that Congress was looking at.

13 The elimination of nonconsensual calls to recipients  
14 -- and it's in the plural there -- of the calls and faxes, who  
00:30 15 had no prior relationship; so that seems to indicate that  
16 Congress was thinking about more than one call. And then it  
17 gets into the debt collectors and creditor callers.

18 So generally, when you look at concreteness -- and  
19 concreteness, as I had indicated, that is, it must actually  
00:31 20 exist; we have used the word concrete, we have meant to convey  
21 the usual meaning of the term -- real and not abstract. And  
22 this one-minute call -- and I know plaintiff talks about the  
23 loss of battery power and things of that nature; but that  
24 seems de minimus to me. There was a time when this statute  
00:31 25 was enacted where parties paid for calls they received, but I

1 don't think that that's at issue in the complaint. And most  
2 of the calling plans or telephone cellphone plans, now you can  
3 get unlimited amount of calls that you pay for, and there  
4 doesn't seem to be that allegation in the complaint that I  
00:32 5 could see.

6 Paragraph 18 of the complaint says: On or about  
7 July 28th, 2015, plaintiff received a telephone call on her  
8 cellular phone. And that's really the full explanation.  
9 There's no pattern related to it, there's no repeatedness,  
00:32 10 there's no annoying -- it wasn't really that annoying.  
11 Paragraph 20 does say there was a prerecorded message, and it  
12 was followed by a six-second pause and lasted one minute and  
13 two seconds in total. So, it doesn't seem as if it's a  
14 significant period of time, and it doesn't seem to be annoying  
00:33 15 in the sense that I think of that word.

16 So, with regard to the *Spokeo* case, it's my view  
17 that, as explained by Judge Alito in that case, the  
18 concreteness is not really set forth within the complaint.  
19 Any injury seems to be rather abstract; a loss of some de  
00:33 20 minimus battery power over a minute, doesn't seem to be  
21 significant in my mind.

22 And I've looked at these other cases, I should just  
23 point that out. The first case the plaintiff cited to was  
24 *Booth v. Appstack*, and there the court wrote: The TCPA  
00:34 25 violations alleged here, if proven, require plaintiffs to

1 waste time answering or otherwise addressing widespread  
2 robo-calls. Then it adds: The use of the auto dialer, which  
3 allegedly enabled defendants to make massive amounts of calls  
4 at low cost and in a short period of time amplifies the  
00:34 5 severity of this injury; such injury is sufficiently concrete  
6 to confer standing. And that's *Booth* at 2016 WL 3030256 at  
7 page 5. To me, this case is different; it's one call, it's  
8 not a massive amount of calls, it's not widespread robo-calls.  
9 So, I don't see how the *Booth* case is analogous to the facts  
00:35 10 that we have here.

11 In the *Rogers* case, 2016 WL 3162592, the plaintiffs  
12 allege that the calls were made to their personal cellphone  
13 numbers; they have suffered particularized injury because  
14 their cellphone lines were unavailable for a legitimate use  
00:35 15 during the unwanted calls. Again, it talks about calls, so  
16 there was always more than one. So it had this element which  
17 Congress was talking about -- repeated and annoying.

18 But then in the *Johnson* case, the court talked about  
19 how any harassment caused by these calls was actionable. And  
00:36 20 again, it was calls, and it was harassment; I don't see any  
21 harassment in the one call that would have any legal impact  
22 anyway.

23 Then in *Mey v. Got Warranty*, the court denied  
24 defendant's motion to dismiss because there were intangible  
00:36 25 injuries, and they cite to limited cellphone minutes. But the

1 limited cellphone minutes seems to me to go to those old  
2 calling plans where you had to pay for each call, even if you  
3 received it. And to me, the depletion of battery life for a  
4 minute doesn't amount to a type of injury that we would call  
00:37 5 concrete and particularized.

6 So having reviewed those cases as well, the Court  
7 finds that the defendant's motion to dismiss for lack of  
8 standing is granted.

9 With regard to the second motion, I don't really  
00:37 10 think I need to answer that having dismissed the complaint, so  
11 I'll deny it as moot. But I would say that if it were to go  
12 forward, I would permit discovery on that motion.

13 You don't see any reason why I need to handle the  
14 Campbell matter, do you?

00:38 15 MR. BAUCHNER: No, your Honor, not in light of your  
16 dismissal.

17 THE COURT: Okay. So for those reasons, the  
18 defendant's motion to dismiss is granted. Mr. Marcus had  
19 indicated that he was stipulating that there was only one  
00:38 20 call, so I don't see how I can allow an amendment at this  
21 point, because it would be futile based on the rationale that  
22 I had decided. So, thank you for coming in.

23 MR. MARCUS: Thank you, your Honor.

24 MR. BAUCHNER: Thank you, your Honor.

00:38 25 (Matter concluded.)



<b>case</b> [44] - 2:19, 2:21, 2:22, 4:12, 5:3, 6:23, 7:2, 12:4, 12:6, 13:10, 13:14, 13:17, 14:1, 14:8, 14:15, 14:16, 14:17, 14:19, 14:25, 15:16, 15:18, 17:20, 18:8, 18:10, 18:14, 18:19, 19:1, 21:8, 21:9, 21:11, 22:12, 23:4, 24:16, 24:17, 24:23, 25:7, 25:9, 25:11, 25:18	<b>clear</b> [1] - 13:24	<b>Constitutional</b> [1] - 20:17	16:1, 16:2, 16:6, 16:9, 16:11, 16:14, 19:13	18:1, 18:12, 25:23
<b>cases</b> [17] - 2:25, 3:1, 3:25, 7:1, 12:23, 12:24, 13:3, 13:21, 13:23, 15:9, 18:7, 18:9, 19:2, 20:23, 22:7, 24:22, 26:6	<b>clearly</b> [1] - 13:22	<b>constitutional</b> [1] - 20:24	<b>creditor</b> [2] - 22:24, 23:17	<b>dentist</b> [1] - 16:5
<b>causal</b> [1] - 21:3	<b>client</b> [2] - 10:2, 10:3	<b>construe</b> [1] - 20:19	<b>critical</b> [6] - 3:4, 3:5, 4:18, 7:1, 7:22, 8:2	<b>deny</b> [1] - 26:11
<b>caused</b> [2] - 13:18, 25:19	<b>cognizable</b> [1] - 22:4	<b>consumer</b> [1] - 11:21	<b>critically</b> [3] - 2:23, 3:19, 4:13	<b>depleted</b> [1] - 4:5
<b>Cayan</b> [1] - 17:23	<b>collection</b> [1] - 22:23	<b>Consumer</b> [2] - 22:11, 22:16	<b>depletion</b> [2] - 15:7, 26:3	<b>deposited</b> [1] - 15:21
<b>cellphone</b> [6] - 13:12, 24:2, 25:12, 25:14, 25:25, 26:1	<b>collectors</b> [1] - 23:17	<b>consumers</b> [1] - 11:4	<b>depositions</b> [1] - 5:14	<b>Diagnostics</b> [1] - 14:18
<b>cellphones</b> [1] - 14:2	<b>coming</b> [1] - 26:22	<b>contact</b> [2] - 3:1, 4:17	<b>cure</b> [2] - 3:5, 19:22	<b>dailed</b> [3] - 2:25, 3:1, 3:6
<b>cellular</b> [1] - 24:8	<b>companies</b> [1] - 11:6	<b>continues</b> [1] - 22:3		<b>dialer</b> [1] - 25:2
<b>cert</b> [1] - 18:12	<b>company</b> [2] - 8:5, 16:14	<b>controversy</b> [3] - 7:3, 20:23, 21:12		<b>Dictionary</b> [1] - 21:19
<b>certainly</b> [1] - 5:17	<b>complain</b> [1] - 4:20	<b>convey</b> [2] - 21:17, 23:20	<b>damage</b> [5] - 10:6, 10:11, 11:11, 11:12, 11:14	<b>difference</b> [3] - 10:12, 11:11, 18:5
<b>certification</b> [4] - 4:23, 6:8, 17:19, 19:9	<b>complained</b> [2] - 6:9, 21:4	<b>correct</b> [3] - 1:23, 5:15, 5:19	<b>days</b> [2] - 3:16, 4:15	<b>different</b> [8] - 6:7, 6:11, 6:14, 7:5, 12:5, 14:12, 21:20, 25:7
<b>certifications</b> [1] - 5:14	<b>complaint</b> [18] - 3:17, 4:16, 5:18, 5:20, 6:12, 12:15, 14:20, 14:24, 15:4, 15:17, 19:22, 19:23, 20:19, 24:1, 24:4, 24:6, 24:18, 26:10	<b>Correct</b> [1] - 14:9	<b>de</b> [5] - 10:8, 21:15, 22:4, 23:24, 24:19	<b>directed</b> [1] - 22:25
<b>Certified</b> [1] - 1:23	<b>complaints</b> [1] - 6:15	<b>correctly</b> [1] - 9:8	<b>dealing</b> [4] - 6:12, 12:3, 12:9, 12:19	<b>discovery</b> [11] - 5:13, 5:21, 6:4, 6:15, 6:16, 17:5, 18:9, 18:11, 18:15, 26:12
<b>certify</b> [1] - 4:19	<b>Completely</b> [1] - 8:11	<b>cost</b> [1] - 25:4	<b>dealt</b> [5] - 11:18, 11:20, 11:24, 12:5, 12:24	<b>DISMISS</b> [1] - 1:21
<b>change</b> [1] - 6:5	<b>concede</b> [1] - 4:21	<b>counsel</b> [2] - 19:7, 19:19	<b>debt</b> [2] - 22:23, 23:17	<b>dismiss</b> [12] - 2:10, 4:23, 5:12, 7:16, 17:20, 17:25, 18:14, 18:21, 20:15, 25:24, 26:7, 26:18
<b>check</b> [3] - 8:1, 16:16, 16:17	<b>conceding</b> [1] - 20:9	<b>counsel's</b> [1] - 19:10	<b>decide</b> [2] - 17:6, 18:19	<b>dismissal</b> [1] - 26:16
<b>Chen</b> [1] - 17:16	<b>concluded</b> [2] - 18:4, 26:25	<b>Court</b> [23] - 2:23, 3:8, 4:5, 5:4, 5:6, 9:10, 9:20, 10:7, 11:18, 11:23, 12:7, 15:10, 15:19, 17:6, 17:9, 17:10, 17:13, 18:17, 18:20, 19:5, 19:9, 19:11, 26:6	<b>decided</b> [6] - 7:25, 12:10, 15:19, 17:15, 22:10, 26:22	<b>dismissed</b> [2] - 17:20, 26:10
<b>Chiropractic</b> [2] - 17:22, 17:23	<b>Concrete</b> [1] - 21:21	<b>COURT</b> [35] - 1:1, 1:12, 2:1, 2:6, 2:9, 2:12, 2:15, 2:18, 4:22, 5:1, 5:8, 5:11, 6:7, 6:18, 6:21, 7:8, 7:11, 8:3, 8:15, 8:17, 8:19, 8:21, 8:23, 8:25, 10:1, 10:17, 14:6, 14:10, 14:12, 15:15, 18:22, 20:6, 20:8, 20:15, 26:17	<b>decides</b> [1] - 15:11	<b>dispute</b> [1] - 5:17
<b>Circuit</b> [2] - 9:6, 17:16	<b>concrete</b> [24] - 2:22, 3:20, 4:10, 6:6, 9:18, 9:19, 9:23, 10:7, 10:13, 13:5, 13:6, 13:8, 20:4, 21:6, 21:10, 21:14, 21:15, 21:16, 21:23, 22:4, 22:9, 23:20, 25:5, 26:5	<b>COURT</b> [35] - 1:1, 1:12, 2:1, 2:6, 2:9, 2:12, 2:15, 2:18, 4:22, 5:1, 5:8, 5:11, 6:7, 6:18, 6:21, 7:8, 7:11, 8:3, 8:15, 8:17, 8:19, 8:21, 8:23, 8:25, 10:1, 10:17, 14:6, 14:10, 14:12, 15:15, 18:22, 20:6, 20:8, 20:15, 26:17	<b>deciding</b> [1] - 9:25	<b>disputes</b> [1] - 20:25
<b>cite</b> [1] - 25:25	<b>concreted</b> [1] - 9:5	<b>court</b> [22] - 9:4, 9:6, 9:16, 11:22, 11:25, 13:3, 13:10, 13:15, 14:4, 14:10, 14:21, 14:22, 14:23, 15:6, 15:11, 18:1, 18:13, 19:2, 20:18, 24:24, 25:18, 25:23	<b>decisions</b> [1] - 11:19	<b>dissenters</b> [1] - 9:9
<b>cited</b> [5] - 4:13, 5:3, 6:8, 19:2, 24:23	<b>concreteness</b> [4] - 21:19, 23:18, 23:19, 24:18	<b>court's</b> [1] - 12:12	<b>declaration</b> [3] - 4:18, 7:7, 19:10	<b>distinct</b> [2] - 4:13, 6:23
<b>cites</b> [2] - 6:24, 21:18	<b>conduct</b> [1] - 21:3	<b>Court's</b> [2] - 2:17, 19:1	<b>defect</b> [2] - 3:5, 5:24	<b>distinction</b> [1] - 19:6
<b>citing</b> [1] - 22:5	<b>confer</b> [7] - 9:5, 10:13, 13:6, 13:7, 13:9, 15:10, 25:6	<b>COURTHOUSE</b> [1] - 1:9	<b>defects</b> [1] - 5:19	<b>distinguishable</b> [2] - 2:23, 2:24
<b>City</b> [1] - 2:13	<b>confident</b> [1] - 2:16	<b>courts</b> [3] - 7:21, 9:24, 18:5	<b>DEFENDANT</b> [1] - 1:18	<b>distinguished</b> [1] - 19:3
<b>CIVIL</b> [1] - 1:5	<b>Congress</b> [15] - 9:25, 10:13, 10:13, 10:14, 11:7, 11:22, 13:5, 13:8, 21:25, 22:3, 22:8, 22:12, 22:16, 23:12, 23:16, 25:17	<b>create</b> [1] - 14:7	<b>DISTRICT</b> [4] - 1:1, 1:1, 1:12, 1:13	<b>doctrine</b> [1] - 20:24
<b>claim</b> [6] - 3:23, 3:24, 4:2, 14:7, 17:18	<b>Congress'</b> [1] - 3:9	<b>credit</b> [20] - 7:5, 7:20, 8:3, 8:4, 8:5, 8:7, 8:9, 15:22, 15:24,	<b>documentation</b> [1] - 8:12	<b>documentation</b> [1] - 8:12
<b>claims</b> [1] - 3:6	<b>conjunction</b> [1] - 7:13		<b>done</b> [2] - 18:15, 19:8	<b>draw</b> [1] - 18:25
<b>CLARKSON</b> [1] - 1:9	<b>connection</b> [1] - 21:3		<b>drew</b> [1] - 19:5	<b>drew</b> [1] - 19:5
<b>class</b> [19] - 3:17, 4:3, 4:6, 4:7, 4:14, 6:3, 7:25, 12:11, 15:20, 17:4, 17:5, 17:17, 18:3, 18:9, 18:11, 18:12, 18:15	<b>consider</b> [2] - 4:25, 5:5		<b>during</b> [1] - 25:15	<b>during</b> [1] - 25:15
	<b>considered</b> [1] - 22:24			
	<b>constantly</b> [1] - 11:6			
	<b>Constitution</b> [2] - 4:12, 20:23			

**element** [1] - 25:16  
**elevate** [1] - 22:3  
**elevating** [1] - 3:10  
**elimination** [2] -  
22:21, 23:13  
**Ellis** [1] - 10:19  
**emphasis** [1] - 2:20  
**employer** [6] - 16:7,  
16:10, 16:11, 16:16,  
19:8, 19:10  
**enabled** [1] - 25:3  
**enacted** [1] - 23:25  
**enacting** [1] - 22:16  
**endow** [1] - 6:17  
**ends** [1] - 7:2  
**enter** [1] - 2:2  
**entire** [1] - 7:16  
**entitled** [1] - 5:4  
**ESQUIRE** [2] - 1:16,  
1:18  
**establish** [4] - 2:21,  
4:7, 4:11, 21:2  
**establishing** [1] -  
20:22  
**et** [1] - 1:6  
**evaluate** [1] - 9:23  
**everywhere** [1] - 11:5  
**evidence** [1] - 5:5  
**evident** [3] - 3:7,  
13:16, 13:19  
**Ewald** [6] - 12:4, 12:8,  
15:13, 15:19, 17:3,  
19:1  
**exactly** [5] - 3:7, 3:15,  
6:23, 11:7, 14:14  
**exception** [1] - 14:6  
**exist** [1] - 23:20  
**expenses** [2] - 16:6,  
19:15  
**explained** [1] - 24:17  
**explanation** [2] -  
21:24, 24:8

**F**

**F.3d** [2] - 20:17, 20:21  
**fact** [11] - 3:11, 6:5,  
6:8, 6:11, 7:18, 8:2,  
10:16, 12:13, 12:16,  
19:16, 21:2  
**facto** [2] - 21:15, 22:4  
**facts** [6] - 13:23,  
15:16, 18:17, 20:19,  
20:20, 25:9  
**factually** [2] - 14:12,  
18:8  
**fair** [1] - 17:19  
**fall** [1] - 22:24  
**false** [1] - 19:13

**Fargo** [1] - 13:25  
**favor** [1] - 20:20  
**favorable** [1] - 21:5  
**fax** [6] - 3:25, 4:1,  
14:18, 14:19, 22:18  
**faxes** [3] - 22:20,  
22:22, 23:14  
**federal** [5] - 9:16,  
11:22, 11:25, 15:6,  
20:23  
**few** [1] - 22:15  
**figure** [1] - 7:11  
**file** [1] - 17:25  
**filed** [8] - 4:16, 7:16,  
12:14, 15:17, 15:25,  
17:24, 18:11, 19:22  
**finally** [2] - 16:19,  
19:18  
**Financial** [1] - 11:20  
**fine** [2] - 9:3, 20:10  
**first** [7] - 2:1, 9:2,  
11:10, 11:19, 13:24,  
14:18, 24:23  
**First** [2] - 12:25, 18:24  
**FISHER** [1] - 1:9  
**five** [2] - 11:10, 23:9  
**followed** [1] - 24:12  
**follows** [1] - 15:16  
**FOR** [2] - 1:16, 1:18  
**forth** [4] - 5:10, 6:12,  
10:20, 24:18  
**forward** [3] - 9:14,  
17:21, 26:12  
**four** [1] - 22:17  
**Francis** [1] - 1:24  
**FRANCIS** [1] - 1:24  
**front** [1] - 11:19  
**full** [1] - 24:8  
**funds** [10] - 7:2, 7:9,  
7:15, 7:17, 7:19,  
7:24, 8:1, 8:13, 19:4  
**futile** [1] - 26:21

**G**

**Gable** [1] - 1:24  
**GABLE** [1] - 1:24  
**gamesmanship** [1] -  
17:15  
**Generally** [3] - 20:18,  
20:22, 21:6  
**generally** [2] - 23:2,  
23:18  
**given** [2] - 16:6, 17:17  
**Gomez** [2] - 12:14,  
12:15  
**granted** [6] - 14:23,  
16:7, 16:10, 18:10,  
26:8, 26:18

**grants** [1] - 3:12  
**Grimm** [1] - 2:8  
**GRIMM** [1] - 1:17  
**guess** [1] - 8:8  
**gym** [4] - 7:6, 16:8,  
19:17

**H**

**handle** [1] - 26:13  
**harassment** [3] -  
25:19, 25:20, 25:21  
**hard** [1] - 12:7  
**harm** [17] - 3:10, 3:20,  
4:4, 6:6, 9:21, 10:12,  
10:13, 13:15, 13:16,  
13:18, 14:5, 14:20,  
14:23, 14:24, 15:2  
**harms** [2] - 9:24, 22:1  
**head** [1] - 19:19  
**hear** [2] - 18:6  
**heard** [2] - 2:12, 12:8  
**HEARING** [1] - 1:21  
**hearing** [1] - 2:14  
**held** [7] - 13:3, 13:10,  
13:17, 14:4, 15:9,  
17:16, 17:17  
**history** [1] - 9:24  
**hit** [2] - 16:17, 19:18  
**hits** [1] - 16:15  
**holder** [1] - 8:4  
**Honor** [38] - 2:4, 2:19,  
3:4, 3:7, 3:19, 4:3,  
4:9, 4:12, 4:15, 4:18,  
4:24, 5:3, 5:6, 5:9,  
5:16, 5:22, 6:4, 6:13,  
6:20, 6:22, 7:4, 7:10,  
7:14, 8:2, 8:14, 8:18,  
8:22, 9:3, 11:1,  
13:25, 18:24, 19:7,  
19:18, 20:1, 20:4,  
26:15, 26:23, 26:24  
**HONORABLE** [1] -  
1:12  
**hope** [1] - 14:2  
**hyperbole** [1] - 19:10

**I**

**identified** [1] - 21:10  
**identify** [1] - 21:25  
**identifying** [3] - 3:10,  
20:25, 22:9  
**ignore** [1] - 18:17  
**ignored** [1] - 3:3  
**III** [3] - 4:12, 9:16, 22:1  
**impact** [1] - 25:21  
**important** [2] - 18:2,

22:2  
**imposition** [1] - 22:21  
**inadequate** [1] - 22:5  
**inapposite** [1] - 13:22  
**INC** [1] - 1:6  
**including** [1] - 7:21  
**incorrect** [2] - 16:22,  
17:8  
**indicate** [1] - 23:15  
**indicated** [2] - 23:19,  
26:19  
**indicates** [2] - 21:14,  
21:19  
**individual** [2] - 18:8,  
21:13  
**inherent** [1] - 3:7  
**injuries** [9] - 3:6, 9:22,  
13:12, 15:3, 15:8,  
21:22, 22:4, 25:25  
**injury** [31] - 2:22, 3:11,  
4:10, 9:5, 9:19, 9:21,  
9:22, 10:7, 10:8,  
12:13, 12:16, 13:4,  
13:5, 13:8, 15:2,  
19:23, 20:5, 21:2,  
21:3, 21:4, 21:6,  
21:12, 21:14, 21:15,  
22:9, 24:19, 25:5,  
25:13, 26:4  
**injury-in-fact** [1] -  
3:11  
**instances** [1] - 19:3  
**instructive** [1] - 22:2  
**insufficient** [2] - 4:11,  
6:2  
**intangible** [6] - 3:10,  
9:24, 15:2, 21:22,  
22:1, 25:24  
**Intangible** [1] - 9:22  
**intended** [1] - 10:13  
**intending** [1] - 11:7  
**interim** [1] - 7:19  
**interlocutory** [1] -  
18:1  
**intrusion** [1] - 3:22  
**invasion** [1] - 22:20  
**inviting** [1] - 14:2  
**involved** [1] - 2:25  
**irrelevant** [1] - 17:3  
**issue** [16] - 5:1, 5:11,  
6:20, 6:21, 6:22, 8:3,  
10:5, 11:18, 11:21,  
11:24, 12:3, 12:24,  
14:22, 19:23, 20:17,  
24:1  
**issues** [3] - 6:14, 6:18,  
10:20  
**itself** [3] - 10:12, 13:7,  
13:16

**J**

**JERSEY** [3] - 1:1,  
1:10, 1:13  
**Johnson** [1] - 25:18  
**Joshua** [1] - 2:7  
**JOSHUA** [1] - 1:18  
**Judge** [3] - 21:9,  
21:16, 24:17  
**JUDGE** [1] - 1:12  
**Judgment** [3] - 8:9,  
8:10, 16:25  
**Judgment** [11] - 6:20,  
7:14, 7:23, 9:25,  
12:11, 15:17, 15:18,  
15:20, 17:4, 18:13,  
22:2  
**judicial** [1] - 21:1  
**July** [2] - 3:16, 24:7  
**jurisdiction** [2] - 5:1,  
5:12  
**jurisdictional** [1] -  
20:17  
**Justice** [2] - 12:11,  
21:9

**K**

**kept** [2] - 7:15, 8:13  
**L**

**lack** [1] - 26:7  
**last** [1] - 15:1  
**lasted** [2] - 22:14,  
24:12  
**law** [2] - 5:3, 22:5  
**leave** [1] - 14:24  
**left** [1] - 4:9  
**legal** [1] - 25:21  
**legally** [1] - 22:4  
**legitimate** [1] - 25:14  
**lend** [1] - 9:10  
**life** [2] - 15:8, 26:3  
**light** [1] - 26:15  
**likelihood** [1] - 21:4  
**limited** [2] - 25:25,  
26:1  
**limits** [1] - 20:25  
**linchpin** [2] - 7:1, 7:22  
**lines** [2] - 22:18, 25:14  
**list** [1] - 3:2  
**litigation** [1] - 12:15  
**live** [1] - 17:18  
**LLC** [1] - 1:15  
**look** [7] - 9:17, 9:24,  
10:17, 19:20, 22:10,

23:2, 23:18  
**looked** [2] - 19:24,  
 24:22  
**looking** [2] - 14:13,  
 23:12  
**loss** [2] - 23:23, 24:19  
**lost** [1] - 15:7  
**low** [1] - 25:4  
**Lujan** [3] - 21:1, 21:5,  
 22:6

**M**

**machine** [1] - 3:25  
**machine's** [1] - 4:1  
**machines** [2] - 11:6,  
 22:19  
**majority** [1] - 7:21  
**maker** [1] - 3:2  
**manager** [2] - 15:25,  
 16:5  
**manufacture** [2] -  
 4:14, 14:7  
**March** [2] - 7:10, 7:15  
**MARCUS** [16] - 1:15,  
 1:16, 2:4, 8:20, 8:22,  
 8:24, 9:2, 10:3, 11:1,  
 14:9, 14:11, 14:14,  
 15:16, 20:7, 20:9,  
 26:23  
**Marcus** [7] - 2:4, 2:5,  
 2:6, 8:20, 8:21,  
 22:13, 26:18  
**Mark** [1] - 10:19  
**massive** [2] - 25:3,  
 25:8  
**Mateo** [1] - 19:2  
**material** [1] - 20:19  
**Matter** [1] - 26:25  
**matter** [4] - 2:1, 5:21,  
 7:18, 26:14  
**mean** [3] - 3:10, 11:22,  
 23:9  
**meaning** [3] - 20:24,  
 21:17, 23:21  
**means** [1] - 23:3  
**meant** [2] - 21:17,  
 23:20  
**meet** [1] - 22:1  
**members** [2] - 4:3, 4:8  
**membership** [5] - 7:5,  
 7:7, 16:8, 19:12,  
 19:17  
**mention** [4] - 13:6,  
 13:13, 13:19, 13:23  
**mentioned** [4] - 9:17,  
 9:20, 12:5, 15:8  
**merely** [1] - 13:11  
**message** [5] - 12:6,

12:17, 12:18, 24:11  
**Mey** [2] - 13:17, 25:23  
**Might** [1] - 2:15

**might** [2] - 5:25, 6:1  
**Mims** [1] - 11:20  
**mind** [2] - 12:7, 24:21  
**minimizing** [1] - 22:17  
**minimum** [1] - 22:1  
**minimus** [3] - 10:8,  
 23:24, 24:20  
**minor** [1] - 15:5  
**minute** [6] - 22:15,  
 23:4, 23:22, 24:12,  
 24:20, 26:4  
**minutes** [3] - 4:4,  
 25:25, 26:1

**misrepresentation** [3]  
 - 17:12, 18:25, 19:5  
**mitigate** [1] - 11:14  
**money** [11] - 15:22,  
 16:2, 16:21, 17:2,  
 17:7, 17:10, 17:24,  
 18:18, 19:11, 19:14  
**months** [3] - 7:17,  
 7:18, 7:25  
**moot** [7] - 12:11,  
 15:20, 17:4, 18:3,  
 18:14, 18:19, 26:11  
**morning** [4] - 2:4, 2:6,  
 2:7, 2:9  
**most** [1] - 24:1  
**motion** [16] - 2:10,  
 4:23, 5:11, 7:16,  
 13:2, 15:25, 17:20,  
 17:25, 18:12, 18:21,  
 20:15, 25:24, 26:7,  
 26:9, 26:12, 26:18  
**MOTION** [1] - 1:21  
**move** [1] - 9:14  
**moved** [1] - 17:21  
**moving** [1] - 20:20  
**Mr..** [1] - 8:19  
**must** [9] - 17:18,  
 20:18, 21:6, 21:11,  
 21:12, 21:14, 21:15,  
 23:19

**N**

**name** [2] - 16:1, 16:24  
**named** [1] - 18:4  
**nature** [1] - 23:23  
**need** [11] - 9:20, 9:21,  
 10:9, 13:7, 13:20,  
 15:6, 17:9, 18:9,  
 21:2, 26:10, 26:13  
**needed** [3] - 9:15,  
 10:7, 21:20  
**needn't** [1] - 5:6

**needs** [1] - 23:7  
**never** [4] - 16:3, 16:23,  
 18:17

**nevertheless** [2] -  
 9:23, 21:23  
**NEW** [3] - 1:1, 1:10,  
 1:13  
**New** [1] - 2:13  
**next** [1] - 9:10  
**Ninth** [2] - 9:6, 17:16  
**NO** [1] - 1:5  
**non** [1] - 20:20  
**non-moving** [1] -  
 20:20  
**nonconsensual** [2] -  
 22:21, 23:13  
**nonsense** [1] - 20:3  
**Noreen** [1] - 16:24  
**NOREEN** [1] - 1:3  
**noted** [1] - 12:11  
**notice** [1] - 16:23  
**notified** [1] - 15:21  
**nuisance** [1] - 15:7  
**number** [2] - 9:23,  
 10:25  
**numbers** [1] - 25:13

**O**

**obviously** [2] - 11:24,  
 14:4  
**occurred** [1] - 22:9  
**OF** [2] - 1:1, 1:13  
**offer** [13] - 6:20, 6:24,  
 7:14, 7:23, 12:10,  
 15:17, 15:18, 15:20,  
 17:4, 18:13, 18:20  
**office** [5] - 15:25,  
 16:5, 16:6, 19:15  
**OFFICIAL** [1] - 1:25  
**often** [1] - 8:23  
**old** [1] - 26:1  
**ON** [1] - 1:21  
**once** [3] - 5:18, 23:9,  
 23:11  
**One** [3] - 9:20, 13:10,  
 20:3  
**one** [33] - 2:20, 3:3,  
 3:17, 5:23, 6:5, 6:11,  
 9:3, 10:1, 10:4,  
 10:10, 10:11, 10:22,  
 10:24, 11:2, 12:6,  
 12:18, 15:11, 16:8,  
 18:19, 20:1, 20:7,  
 20:9, 22:14, 23:4,  
 23:16, 23:22, 24:12,  
 25:7, 25:16, 25:21,  
 26:19  
**one-minute** [2] - 23:4,

23:22  
**opening** [1] - 5:10  
**opinions** [1] - 18:5  
**opportunity** [4] - 5:13,  
 17:5, 17:19, 18:11  
**Orange** [1] - 17:23  
**order** [2] - 21:11,  
 21:21  
**original** [3] - 5:19,  
 7:16, 19:23  
**otherwise** [3] - 4:21,  
 5:20, 25:1  
**OUT** [1] - 1:6  
**outlier** [2] - 15:11,  
 18:19  
**own** [1] - 17:18

**P**

**Pablo** [1] - 19:2  
**page** [2] - 22:6, 25:7  
**paid** [2] - 17:24, 23:25  
**papers** [2] - 2:17, 5:10  
**Paragraph** [2] - 24:6,  
 24:11  
**part** [1] - 16:7  
**particularization** [1] -  
 21:20  
**particularized** [7] -  
 9:18, 13:12, 21:7,  
 21:10, 21:12, 25:13,  
 26:5  
**parties** [1] - 23:25  
**Party** [1] - 20:17  
**party** [1] - 20:20  
**passed** [1] - 22:8  
**past** [1] - 23:11  
**pattern** [2] - 23:8, 24:9  
**patterns** [1] - 23:12  
**pause** [1] - 24:12  
**pay** [2] - 24:3, 26:2  
**paying** [1] - 18:3  
**payment** [2] - 6:25,  
 8:5  
**PC** [1] - 1:17  
**pending** [1] - 15:18  
**people** [1] - 22:12  
**per** [1] - 11:12  
**perhaps** [1] - 19:13  
**period** [2] - 24:14,  
 25:4  
**perk** [1] - 16:7  
**permission** [1] - 16:10  
**permit** [1] - 26:12  
**person** [4] - 3:12,  
 3:13, 6:9, 22:10  
**personal** [5] - 12:14,  
 13:11, 19:17, 21:13,  
 25:12

**PETER** [1] - 1:12  
**PGS** [1] - 1:5  
**phone** [14] - 3:18,  
 3:25, 4:10, 4:15,  
 5:23, 6:6, 10:12,  
 12:25, 16:19, 20:4,  
 22:18, 23:3, 24:8  
**phones** [1] - 23:3  
**PLAINTIFF** [2] - 1:4,  
 1:16  
**Plaintiff** [5] - 3:21,  
 11:12, 15:22, 16:5,  
 20:21  
**plaintiff** [47] - 2:3, 2:5,  
 2:21, 3:5, 3:11, 3:19,  
 4:6, 4:9, 4:13, 5:13,  
 5:23, 6:5, 6:17, 6:24,  
 7:1, 7:15, 9:4, 9:11,  
 9:12, 9:18, 11:9,  
 11:24, 12:20, 12:22,  
 13:12, 13:14, 13:18,  
 14:1, 14:19, 14:21,  
 14:23, 16:21, 17:4,  
 17:17, 17:24, 18:4,  
 18:10, 18:17, 18:18,  
 19:3, 19:12, 21:11,  
 21:13, 23:22, 24:7,  
 24:23  
**plaintiff's** [2] - 5:7, 6:3  
**plaintiffs** [5] - 3:1,  
 5:18, 15:12, 24:25,  
 25:11  
**plans** [3] - 24:2, 26:2  
**Pleasant** [1] - 20:21  
**plural** [1] - 23:14  
**point** [11] - 6:14, 7:17,  
 9:3, 11:17, 14:14,  
 15:1, 18:12, 20:7,  
 24:23, 26:21  
**Point** [1] - 20:21  
**points** [1] - 9:20  
**position** [3] - 13:3,  
 13:22, 14:16  
**positioned** [1] - 21:25  
**post** [2] - 15:9, 15:11  
**post-Spokeo** [2] -  
 15:9, 15:11  
**power** [2] - 23:23,  
 24:20  
**pre** [2] - 11:17, 12:2  
**Pre** [1] - 11:18  
**pre-Spokeo** [2] -  
 11:17, 12:2  
**Pre-Spokeo** [1] -  
 11:18  
**prerecorded** [1] -  
 24:11  
**presume** [1] - 5:20  
**pretenses** [1] - 19:13  
**prevention** [3] - 10:18,

22:19, 23:6  
**previous** [1] - 10:5  
**previously** [1] - 22:5  
**principle** [1] - 9:9  
**privacy** [2] - 3:23,  
  22:21  
**private** [2] - 22:18,  
  23:3  
**procedural** [2] - 13:4,  
  14:22  
**process** [1] - 21:1  
**properly** [1] - 20:16  
**property** [1] - 15:7  
**proposed** [1] - 18:3  
**protect** [2] - 11:8,  
  22:12  
**Protection** [2] - 22:11,  
  22:16  
**proven** [1] - 24:25  
**purchased** [1] - 14:1  
**purports** [1] - 3:13  
**purpose** [1] - 23:1  
**purposes** [3] - 17:1,  
  22:17, 23:2  
**pursuant** [1] - 20:16  
**put** [3] - 2:20, 16:2,  
  16:22  
**putative** [2] - 4:3, 6:3

**Q**

**quick** [1] - 20:7  
**quickly** [2] - 13:1,  
  15:14  
**quote** [3] - 9:22,  
  12:13, 18:2  
**quoting** [1] - 3:9

**R**

**R.M.R** [1] - 1:24  
**random** [1] - 22:17  
**rate** [1] - 22:15  
**rather** [1] - 24:19  
**rationale** [1] - 26:21  
**read** [1] - 2:17  
**reading** [2] - 10:19,  
  11:2  
**real** [3] - 15:3, 21:18,  
  23:21  
**really** [5] - 6:10, 24:8,  
  24:10, 24:18, 26:9  
**reason** [5] - 9:7, 12:5,  
  15:23, 18:5, 26:13  
**reasons** [2] - 18:20,  
  26:17  
**receipt** [2] - 7:23,  
  12:12

**receive** [1] - 17:2  
**received** [18] - 5:23,  
  6:1, 6:5, 6:25, 7:19,  
  7:24, 8:2, 10:4,  
  12:16, 16:21, 17:7,  
  17:10, 18:17, 18:18,  
  19:4, 23:25, 24:7,  
  26:3  
**receives** [1] - 7:2  
**recent** [2] - 2:22,  
  17:22  
**recently** [2] - 12:4,  
  17:16  
**recipient** [1] - 4:20  
**recipients** [2] - 22:22,  
  23:13  
**recognize** [1] - 6:13  
**record** [2] - 19:9,  
  19:24  
**records** [1] - 19:20  
**redressed** [1] - 21:5  
**reference** [1] - 6:10  
**refund** [4] - 7:12, 7:14,  
  8:7, 8:8  
**refunded** [3] - 7:9,  
  7:19, 19:14  
**regard** [3] - 22:10,  
  24:16, 26:9  
**rejected** [1] - 3:8  
**related** [1] - 24:9  
**relationship** [2] -  
  22:23, 23:15  
**relevance** [1] - 13:24  
**relevant** [2] - 14:16,  
  14:25  
**reliance** [1] - 4:3  
**relies** [1] - 2:21  
**relying** [1] - 4:7  
**remanded** [1] - 9:6  
**remember** [1] - 8:23  
**repeated** [10] - 10:18,  
  10:22, 10:23, 19:19,  
  20:1, 20:10, 20:13,  
  22:19, 23:6, 25:17  
**repeatedness** [2] -  
  23:8, 24:9  
**reply** [3] - 4:19, 14:17,  
  18:23  
**REPORTER** [1] - 1:25  
**representative** [2] -  
  4:6, 17:18  
**represented** [1] - 10:3  
**representing** [1] - 2:5  
**require** [2] - 23:7,  
  24:25  
**required** [2] - 1:23,  
  3:20  
**requirement** [1] - 3:12  
**requirements** [1] -  
  22:1

**resolved** [1] - 21:1  
**respect** [1] - 19:8  
**rest** [1] - 20:3  
**result** [2] - 3:17, 3:23  
**resulting** [1] - 3:21  
**return** [1] - 7:17  
**reversed** [1] - 9:12  
**review** [1] - 5:4  
**reviewed** [1] - 26:6  
**risk** [2] - 9:21, 15:2  
**Roberts** [1] - 12:11  
**robo** [2] - 25:2, 25:8  
**robo-calls** [2] - 25:2,  
  25:8  
**Rogers** [2] - 13:10,  
  25:11  
**role** [1] - 3:9  
**Roma** [1] - 4:18  
**Rule** [4] - 5:2, 15:18,  
  18:20, 19:4

---

**S**

**San** [2] - 19:2  
**Sartin** [1] - 14:18  
**satisfied** [1] - 19:4  
**satisfies** [1] - 3:11  
**satisfy** [1] - 6:3  
**save** [1] - 7:25  
**saw** [1] - 16:23  
**Second** [1] - 13:10  
**second** [4] - 6:19,  
  14:17, 24:12, 26:9  
**Secondly** [2] - 19:7,  
  23:6  
**seconds** [2] - 22:15,  
  24:13  
**Section** [1] - 1:23  
**see** [11] - 5:14, 16:3,  
  19:20, 22:11, 24:5,  
  25:9, 25:20, 26:13,  
  26:20  
**seeks** [1] - 4:6  
**seem** [4] - 24:4, 24:13,  
  24:14, 24:20  
**self** [3] - 3:7, 13:16,  
  13:19  
**self-evident** [3] - 3:7,  
  13:16, 13:19  
**sense** [1] - 24:15  
**sent** [1] - 8:5  
**serve** [2] - 4:6, 6:3  
**set** [4] - 5:9, 6:12,  
  10:20, 24:18  
**seven** [1] - 23:9  
**severity** [1] - 25:5  
**SHERIDAN** [1] - 1:12  
**short** [1] - 25:4  
**show** [2] - 17:19,

**stayed** [1] - 15:18  
**step** [1] - 9:10  
**still** [2] - 6:16, 15:24  
**stipulating** [1] - 26:19  
**Stoops** [3] - 13:25,  
  14:7, 14:16  
**Storino** [1] - 20:20  
**STREET** [1] - 1:9  
**subject** [1] - 23:10  
**submitted** [2] - 4:19,  
  8:11  
**substantiate** [1] - 8:12  
**sue** [5] - 3:13, 11:21,  
  11:25, 13:18, 14:3  
**sued** [2] - 11:9, 11:15  
**suffered** [5] - 4:4,  
  12:16, 13:12, 13:13,  
  25:13  
**sufficient** [2] - 13:15,  
  21:6  
**sufficiently** [3] - 13:6,  
  13:8, 25:5  
**suit** [4] - 7:12, 7:13,  
  12:14  
**support** [4] - 13:3,  
  13:13, 13:21, 14:15  
**Supreme** [15] - 2:23,  
  3:8, 4:5, 9:10, 9:20,  
  10:7, 11:17, 11:23,  
  12:7, 15:19, 17:6,  
  17:9, 17:10, 17:13,  
  19:5  
**Sussino** [2] - 2:1,  
  16:24  
**SUSSINO** [1] - 1:3  
**sustained** [1] - 3:6  
**synonymous** [1] -  
  21:22

---

**T**

**talks** [3] - 10:17,  
  23:22, 25:15  
**tangible** [3] - 9:21,  
  15:3, 21:22  
**TCPA** [17] - 10:17,  
  10:19, 11:18, 11:19,  
  11:22, 12:5, 13:5,  
  13:7, 13:16, 14:3,  
  14:19, 15:12, 20:11,  
  20:12, 22:7, 22:25,  
  24:24  
**teach** [1] - 9:14  
**telemarketing** [3] -  
  10:18, 22:20, 23:7  
**telephone** [6] - 12:12,  
  22:14, 23:8, 23:11,  
  24:2, 24:7  
**Telephone** [2] - 22:11,

22:16  
**tender** [3] - 7:23, 8:8,  
  17:9  
**Tender** [3] - 8:9, 8:10,  
  16:24  
**tendered** [2] - 6:25,  
  17:7  
**term** [2] - 21:18, 23:21  
**terms** [2] - 10:21,  
  21:10  
**text** [4] - 12:6, 12:17,  
  12:18  
**Thereafter** [1] - 15:21  
**therefore** [1] - 22:8  
**They've** [1] - 5:18  
**they've** [1] - 5:20  
**thinking** [2] - 12:1,  
  23:16  
**third** [2] - 13:17, 18:10  
**thousand** [1] - 10:11  
**three** [8] - 3:16, 7:24,  
  9:20, 9:23, 13:1,  
  15:9, 19:2, 23:9  
**tied** [3] - 22:18, 23:2,  
  23:4  
**timing** [1] - 7:8  
**Title** [1] - 1:23  
**TO** [1] - 1:21  
**today** [1] - 11:4  
**took** [2] - 3:24, 16:17  
**total** [1] - 24:13  
**toward** [3] - 10:6,  
  11:11, 20:14  
**towards** [4] - 10:6,  
  10:10, 20:10, 20:11  
**transaction** [1] - 8:12  
**transparent** [1] - 8:11  
**TRENTON** [1] - 1:10  
**tried** [2] - 3:1, 7:17  
**true** [4] - 1:23, 5:7,  
  11:1, 20:18  
**try** [2] - 3:5, 7:25  
**trying** [4] - 7:11,  
  10:21, 19:22, 22:12  
**twice** [2] - 11:18,  
  23:11  
**two** [7] - 4:15, 6:14,  
  9:9, 9:21, 11:19,  
  13:21, 24:13  
**Two** [1] - 18:8  
**type** [4] - 3:8, 22:12,  
  23:8, 26:4  
**types** [1] - 23:11

---

**U**

**U.S.** [3] - 1:12, 1:25,  
  21:1  
**U.S.C.** [1] - 1:23

**unanswered** [10] -  
  2:20, 2:21, 3:3, 3:18,  
  4:10, 4:15, 5:23, 6:5,  
  6:11, 20:4  
**unauthorized** [1] -  
  12:16  
**unavailable** [1] -  
  25:14  
**under** [8] - 2:22, 4:11,  
  9:16, 11:18, 11:22,  
  14:3, 19:13, 20:23  
**underlying** [1] - 22:7  
**understood** [1] -  
  12:21  
**undisputedly** [1] -  
  12:13  
**UNITED** [1] - 1:1  
**United** [1] - 2:22  
**unless** [1] - 20:12  
**unlike** [1] - 5:6  
**unlimited** [1] - 24:3  
**uno** [1] - 8:2  
**unwanted** [4] - 12:12,  
  12:25, 13:19, 25:15  
**up** [7] - 6:8, 11:5,  
  13:21, 14:17, 22:18,  
  23:3, 23:4  
**usual** [2] - 21:17,  
  23:21

---

**V**

**versus** [1] - 2:1  
**view** [1] - 24:16  
**vindicate** [1] - 3:14  
**violation** [6] - 11:3,  
  11:4, 11:16, 15:12,  
  20:11, 20:12  
**violations** [1] - 24:25  
**Vs** [1] - 1:5

---

**W**

**wait** [1] - 16:15  
**waited** [3] - 11:10,  
  11:13, 20:3  
**Waited** [1] - 16:16  
**wants** [1] - 20:12  
**warranted** [1] - 17:19  
**Warranty** [2] - 13:17,  
  25:23  
**waste** [1] - 25:1  
**Webster's** [1] - 21:18  
**Wells** [1] - 13:25  
**whatsoever** [1] - 4:16  
**whole** [1] - 2:19  
**widespread** [2] - 25:1,  
  25:8

**wish** [2] - 2:12, 18:23  
**WL** [2] - 25:6, 25:11  
**word** [2] - 23:20,  
  24:15  
**WORK** [1] - 1:6  
**World** [5] - 2:2, 16:12,  
  16:13, 16:18  
**WORLD** [1] - 1:6  
**would-be** [1] - 17:17  
**WOW** [3] - 8:9, 8:10,  
  16:24  
**write** [2] - 8:1, 16:15  
**writes** [1] - 21:17  
**written** [1] - 14:20  
**wrote** [1] - 24:24

---

**Y**

---

**year** [1] - 7:15  
**York** [1] - 2:13

---

**Z**

---

**ZELMAN** [1] - 1:15  
**Zelman** [1] - 2:5