

2022 WL 17259718

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United States Court of Appeals, Eleventh Circuit.

Coy EVANS, Jeffrey Adams, Bernard Brown, Albert
Dudley, Michael Giello, et al., Plaintiffs-Appellants,

v.

**OCWEN LOAN SERVICING,
LLC**, Defendant-Appellee.

No. 21-14045

|

Filed: 11/29/2022

Appeal from the United States District Court for the Southern
District of Florida, D.C. Docket No. 9:18-cv-81394-RLR

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Appellee.

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Before Branch and Grant, Circuit Judges, and Schlesinger,
District Judge.

Opinion

PER CURIAM:


*1 This appeal arises under the Telephone Consumer
Protection Act,  47 U.S.C. § 227 (“TCPA”). Plaintiffs
allege that Ocwen Loan Servicing, LLC, violated the TCPA
by calling them using an automatic telephone dialing system
 (“ATDS”), which is prohibited under the TCPA.  47 U.S.C.
 § 227(b)(1)(A). The district court dismissed plaintiffs’ claims
 for failure to state a claim, concluding that Ocwen’s dialing

system was not an ATDS under the TCPA. Plaintiffs then
 appealed the district court’s dismissal to this Court.


Upon review, we have discovered a significant jurisdictional
 issue unaddressed by the district court—whether Article
 III standing exists in this case. Article III of the
 Constitution empowers federal courts to decide “Cases” or
 “Controversies.” To have standing to bring a claim under
 Article III, a plaintiff must have suffered a concrete injury.

 *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

In this context, we have stated that “[t]he receipt of more
 than one unwanted telemarketing call ... is a concrete injury
 that meets the minimum requirements of Article III standing.”

 *Glasser v. Hilton Grand Vacations Co., LLC*, 948 F.3d
 1301, 1306 (11th Cir. 2020) (quoting *Cordoba v. DIRECTV,
 LLC*, 946 F.3d 1259, 1270 (11th Cir. 2019)). These decisions
 make it clear that more than one call is a concrete injury that
 confers standing, but neither *Glasser* nor *Cordoba* address
 whether a single call is sufficient to confer standing. Thus, the
 resolution of the standing question could differ depending on
 how many calls each plaintiff is alleged to have received.

Plaintiffs’ operative complaint alleges that each plaintiff
 received a varying amount of calls from Ocwen. For eight of
 the sixteen plaintiffs, the exact number of calls received is
 explicitly stated in the complaint, ranging from 27 calls to 877
 calls. However, for the other eight plaintiffs, the complaint
 states that the “[e]xact number of calls is not confirmed at
 this point.” This language is ambiguous. For any of these
 plaintiffs, the “exact number of calls” they received could be
 zero, one, or more than one. Each of these scenarios would
 potentially present a different resolution to the standing issue.

Because we cannot ascertain from the allegations in the
 operative complaint how many calls each of those eight
 plaintiffs received, and because additional briefing would not
 resolve this issue, we vacate the dismissal and remand this
 case to the district court for a ruling on the issue of Article III
 standing in the first instance. Remand is appropriate where,
 as here, the record before us is incomplete and the question
 of standing was not litigated before the district court. See
  *Steele v. Nat’l Firearms Act Branch*, 755 F.2d 1410, 1415
 (11th Cir. 1985). Once the standing issue is resolved, the
 district court may then reissue its decision (or rule otherwise
 as it seems fit), and an appeal may again follow.

VACATED and REMANDED.

All Citations

Not Reported in Fed. Rptr., 2022 WL 17259718

Footnotes

- * Honorable Harvey E. Schlesinger, United States District Judge for the Middle District of Florida, sitting by designation.

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