No. 129783

IN THE
SUPREME COURT OF ILLINOIS

CALLEY FAUSETT, individually and on behalf of others similarly situated, Plaintiff, v. WALGREEN CO., Defendant.	§	On Petition for Leave to Appeal from the Appellate Court of Illinois, Second Judicial District, Appeal No. 2-23-0105. There Heard On Appeal from the Nineteenth Judicial Circuit Court, Lake County, Illinois, Case No. 19 CH 675. The Hon. Donna-Jo Vorderstrasse, Judge Presiding.

BRIEF OF AMICUS CURIAE CINEMARK, USA, INC. IN SUPPORT OF DEFENDANT-APPELLANT

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TABLE OF POINTS AND AUTHORITIES

INTEREST OF AMICUS CURIAE

This brief in support of Walgreen Company ("Walgreen") is submitted by Cinemark USA, Inc., a Texas corporation ("Cinemark"). Like Walgreen, Cinemark is a defendant in a putative national class action asserting a claim under the federal Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq, which Cinemark has moved for the court to dismiss for lack of standing, and in which proceedings have been stayed pending this appeal.[1]

Cinemark submits this brief because its experience litigating FACTA claims in state courts provides an important perspective on the forum-shopping that would be tacitly encouraged if this Court were to expand the doctrine of standing under Illinois law to allow parties to bring no-injury FACTA claims in Illinois courts—particularly with respect to claims asserted on behalf of individuals located outside of Illinois whose suits would be barred in both the courts of their home states and all federal courts. Cinemark also submits this brief because the outcome of this appeal may, by operation of stare decisis, materially affect the outcome of its pending motion to dismiss in *Rodriguez*.

BACKGROUND

Like Walgreen, Cinemark is a defendant in a pending putative national FACTA class action lawsuit in Illinois court. *See* Complaint, *Rodriguez*, *supra* note 1 (A-34). The plaintiff in *Rodriguez*, like the plaintiff here, alleges no concrete injury, basing his claim

[1] *See* Complaint, *Rodriguez v. Cinemark USA, Inc.*, No. 2023-CH-01857 (Ill. Cir. Ct. Cook Cnty. Feb. 24, 2023) ("*Rodriguez*") (A-34); Cinemark Motion to Dismiss, *Rodriguez*, *supra* (May 22, 2023) (A-7); Order Granting Motion to Stay, *Rodriguez*, *supra* (Nov. 3, 2023) (A-81). The Court may take judicial notice of these documents. *See* Ill. R. Evid. 201(b). Another defendant in the *Rodriguez* action, Cinemark Holdings, Inc., contests personal jurisdiction and, out of an abundance of caution to avoid waiver of that defense, does not join this brief.

on an asserted bare violation of the federal statutory requirement that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction." 15 U.S.C. § 1681c(g)(1); Complaint ¶¶ 42-46, 56-64, *Rodriguez*, *supra* note 1 (A-34, 44-45, 47-48).

Directly relevant to the issues raised in this amicus brief, however, the FACTA suit against Cinemark was not originally filed in Illinois. Rather, *Rodriguez* is a copycat of a suit filed by most of the same attorneys roughly a year earlier against Cinemark in California.[2] The original California complaint, like the subsequent Illinois complaint, asserted the same no-injury FACTA claim based on substantially identical allegations.[3] Assuming that California might grant standing to its citizens to bring no-injury FACTA claims, Cinemark initially sought dismissal in the California action only as to the national class allegations. Joint Stipulation and Order ¶ 3, *Neal*, *supra* note 2 (Sept. 29, 2022) (A-83, 85).

In *Limon v. Circle K Stores, Inc*., 84 Cal.App.5th 671 (2022), *review denied* (Jan. 25, 2023), however, California subsequently elected, consistent with federal law, to require that plaintiffs allege a concrete injury-in-fact beyond a bare alleged FCRA violation to possess standing to sue. *See id*. at 706 (finding plaintiff was required to allege actual injury

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[2] *See* Complaint, *Neal v. Cinemark USA, Inc.* ("*Neal*"), No. 21-ST-CV-44508 (L.A. Cty. Sup. Ct. Dec. 7, 2021) (A-57).

[3] *Compare* Complaint ¶¶ 42-46, 56-64, *Rodriguez*, *supra* note 1 (A-34, 44-45, 47-48), *with* Complaint ¶¶ 43-49, 59-67, *Neal*, supra note 2 (A-57, 68-70, 72-73).

to have standing to sue on FCRA claim).[4] Shortly after the *Limon* decision, the court in *Neal* entered an order reasoning that, because the decision in *Limon* "cast doubt about Plaintiffs' ability to meet the standing requirements of this state," it would defer ruling on Cinemark's motion to strike the national class allegations until it addressed the question of plaintiff's individual standing under California law, and ordered further briefing on that specific issue. Tentative Ruling for 1/10/23, *Neal*, *supra* note 2 (Jan. 9, 2023) (A-89).

Recognizing the ruling in *Limon* jeopardized the viability of their no-injury FACTA suit in California, plaintiffs' counsel filed the copycat *Rodriguez* suit in Illinois and, three days later, voluntarily dismissed their California action in order to pursue their Illinois suit. *See* Plaintiffs' Request for Dismissal, *Neal*, *supra* note 2 (Feb. 27, 2023) (A-76); Complaint, *Rodriguez*, *supra* note 1 (Feb. 24, 2023) (A-34). Plaintiffs' counsel explicitly admitted that this was a forum-shopping effort, based on their perception that Illinois would provide a more favorable venue for plaintiffs' no-injury claims:

> [O]n February 27, 2023 [sic], a class action against Defendants was filed in the Circuit Court of Cook County, Illinois (*Rodriguez v. Cinemark USA, Inc. and Cinemark Holdings, Inc.*, Case No. 2023CH01857), and in Illinois there is appellate case law establishing standing to sue under FACTA. . . . Plaintiffs are part of the class alleged in *Rodriguez* and believe their interest can be better represented in the *Rodriguez* action where the plaintiff's standing cannot be disputed.

Plaintiffs' Request for Dismissal at 2, *Neal*, *supra* note 2 (A-76, 77).

Notably, although the *Rodriguez* suit has a different named plaintiff than did *Neal*, it is brought by the same attorneys, with the addition of local counsel. *Compare* Complaint

[4] While *Limon* involved a FCRA claim regarding allegedly incomplete disclosures concerning credit reports, its holding applies equally to claims under FACTA, which is part of FCRA, regarding truncation requirements for card transaction receipts.

at 18, *Neal*, *supra* note 2 (A-57, 74) (plaintiffs represented by John R. Habashy, Scott D. Owens, and Andree Quaresima), *with* Complaint at 15-16, *Rodriguez*, *supra* note 1 (A-34, 48-49) (plaintiff represented by Keith J. Keogh, Michael Hilicki, John R. Habashy, Scott D. Owens, and Andree Quaresima).

Cinemark has moved to dismiss *Rodriguez* for lack of standing. Cinemark Motion to Dismiss, *Rodriguez*, *supra* note 1 (May 22, 2023) (A-7). The *Rodriguez* court, however, has stayed consideration of Cinemark's motion specifically in deference to this Court's resolution of this appeal. Order Granting Motion to Stay, *Rodriguez*, *supra* note 1 (Nov. 3, 2023) (A-81).

ARGUMENT

I. This Court should hold, as a matter of Illinois law, that a no-injury plaintiff alleging only a bare FCRA/FACTA violation lacks standing.

The putative *Rodriguez* class action against Cinemark, like the instant case against Walgreen, alleges only a bare FACTA violation and no concrete injury. But Illinois standing law requires more than this—it requires "some injury in fact to a legally cognizable interest." *State ex rel. Leibowitz v. Fam. Vision Care, LLC*, 2020 IL 124754, ¶ 28 (citing *In re Est. of Wellman*, 174 Ill. 2d 335, 345 (1996)). Because no source of law, federal or state, establishes a cognizable interest in FCRA/FACTA compliance in the absence of concrete injury, a plaintiff alleging only that he was provided a receipt reflecting more digits than prescribed by FACTA lacks standing under Illinois law.

A. Federal law does not, because it cannot, create a legally cognizable interest in FCRA/FACTA compliance.

This Court is bound by the decisions of the U.S. Supreme Court regarding whether federal law creates a legally cognizable interest in compliance with a federal statute. *See,*

e.g., *Ammons v. Canadian Nat'l Ry. Co.*, 2019 IL 124454, ¶ 18 ("[U.S.] Supreme Court interpretation of federal law is clearly binding.").

The U.S. Supreme Court has held that Congress lacks authority to elevate bare regulatory compliance into a legally cognizable interest. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2201, 2209 (2021) (holding that a violation of FCRA based on the presence of "misleading" information in plaintiffs' credit report files erroneously matching them to the Treasury Department's national security watch list is not an injury-in-fact unless the report is disseminated to third parties); *see, e.g.*, *Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 936, 939 (7th Cir. 2022) (applying *TransUnion* to hold that receipt of a dunning letter sent in violation of the Fair Debt Collection Practices Act is not an injury-in-fact for purposes of a suit seeking statutory damages). For the federal legislature to create such a legally cognizable interest would violate the U.S. Constitution's separation of powers, including not just the judiciary's Article III authority to hear "cases and controversies," but also "the Executive Branch's Article II authority" to decide "how to prioritize and how aggressively to pursue" statutory violations. *TransUnion*, 141 S. Ct. at 2207.

Because the federal Congress has no authority to create a legally cognizable interest in statutory compliance "based only on [its] say-so," *id*. at 2205 (quoting *Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 999, n.2 (11th Cir. 2020)), the federal FCRA and FACTA statutes provide no basis for this Court to conclude that a bare FCRA/FACTA violation is an injury-in-fact.

B. Nothing in Illinois law elevates a bare FCRA/FACTA violation into an injury-in-fact.

The Illinois legislature ***has not*** elevated any inherent interest in the contents of payment card receipts (if such an interest even exists) into a legally cognizable interest in

compliance with federal statutory requirements. Thus, no Illinois statute provides a basis for this Court to hold that a bare FCRA/FACTA violation amounts to an injury-in-fact. The situation here is entirely unlike that in *Rosenbach v. Six Flags Ent. Corp*., where this Court considered an Illinois statute, the Biometric Information Privacy Act ("BIPA"), codifying a substantive "right to privacy in and control over [one's] biometric identifiers and biometric information." *Rosenbach v. Six Flags Ent. Corp.*, 2019 IL 123186, ¶ 33. As this Court explained, the Illinois legislature enacted BIPA to protect the substantive privacy interest flowing from the fact that an individual's "unique biometric identifiers" cannot be changed if compromised or misused—and emphasized that, in enacting BIPA, the legislature had "noted that 'Biometrics are unlike other unique identifiers that are used to access finances or other sensitive information . . . [because] . . . once compromised, the individual has no recourse." *Id*. at ¶¶ 34-35 (quoting 740 ILCS 14/5(c)). Accordingly, this Court concluded in *Rosenbach* that, because of the unique substantive right to privacy conferred by the Illinois legislature in BIPA, if a "private entity fails to adhere to the statutory procedures, … 'the right of the individual to maintain his or her biometric privacy vanishes into thin air'"—which this Court recognized as a "real and significant" injury. *Id.* at ¶ 34 (quoting *Patel v. Facebook, Inc.*, 290 F. Supp. 3d 948, 954 (N.D. Cal. 2018), *aff'd* 932 F.3d 1264 (9th Cir. 2019), *cert denied*, 140 S.Ct. 937 (2020)).

Consistent with *Rosenbach*, numerous courts have recognized that the substantive privacy injury necessarily resulting from a BIPA violation is not comparable to the lack of injury from a bare alleged FACTA violation. *See, e.g.*, *Bryant v. Compass Grp. USA, Inc.,* 958 F.3d 617, 624 (7th Cir. 2020) (BIPA violation was "no bare procedural violation; it was an invasion of her private domain, much like an act of trespass would be"); *Bassett v. ABM*

Parking Servs., Inc., 883 F.3d 776, 780-81 (9th Cir. 2018) (distinguishing FACTA truncation violations from "cases where we have recognized a privacy-based injury"); *Patel*, 290 F. Supp. 3d at 953-954 ("[Given] the legislature's judgment that a violation of BIPA's procedures would cause actual and concrete harm . . . the abrogation of the procedural rights mandated by BIPA necessarily amounts to a concrete injury. This injury is worlds away from the trivial harm of a mishandled zip code or credit card receipt.'").

II. This Court should not confer standing in Illinois courts for bare FCRA/FACTA violations because to do so would offend comity, raise federalism concerns, and invite forum shopping.

Beyond the foregoing legal precedent, there are strong prudential reasons to reach the same result. First, fundamental principles of federalism and comity strongly counsel against inviting federal claims that the federal Constitution bars from federal court into the courts of this state. Second, because no other state has found or is likely to find that standing exists for bare FCRA/FACTA violations, for Illinois to confer such standing would invite pernicious forum shopping—particularly by non-residents of Illinois whose no-injury claims did not occur in or have any connection to Illinois and could not be brought in either the state or federal courts of their home states.

A. For bare FCRA/FACTA violations to confer standing in Illinois courts would offend comity and federalism.

Under federal law, a bare FCRA/FACTA violation does not amount to an injury-in-fact, and so, as a constitutional matter, does not create standing to sue in federal court. *See TransUnion*, 141 S. Ct. at 2213. Illinois law also requires plaintiffs have an injury in fact in order to bring claims in Illinois. *State ex rel. Leibowitz*, 2020 IL 124754, ¶ 28. If Illinois were to confer standing on bare FCRA violations, it would allow plaintiffs to bring in Illinois courts federal claims that are barred from federal court, notwithstanding that both

Illinois and federal law require a plaintiff to have suffered an injury-in-fact. Such a counterintuitive result—*i.e.*, that the standard for whether a plaintiff has suffered the "injury-in-fact" necessary to pursue the identical claim would differ depending on where suit is filed—raises serious issues of federalism and comity.

As this Court has explained, comity is "a common law doctrine" under which "the courts of one state or jurisdiction will give effect to the laws and judicial decisions of another, not as a matter of obligation, but out of deference and respect." *Schoeberlein v. Purdue Univ.*, 129 Ill. 2d 372, 377-78 (1989) (citation and quotation marks omitted). Comity requires state courts to follow federal interpretations of federal law "to the end that such laws may be given uniform application." *Carr v. Gateway, Inc.*, 241 Ill.2d 15, 21 (2011); *see also Felder v. Casey*, 487 U.S. 131, 153 (1988) ("A law that predictably alters the outcome of [federal statutory] claims depending solely on whether they are brought in state or federal court within the same State is obviously inconsistent with th[e] federal interest in intrastate uniformity."). The uniformity desirable when applying a federal law creating a cause of action includes uniformity in the requirements for that cause of action to be in court in the first place. *See U.S. Dep't of Lab. v. Triplett*, 494 U.S. 715, 721 (1990) (reviewing a state-court decision respecting third-party standing in state court for a federal cause of action, and describing as "questionable" the proposition that state courts "have the power, by granting or denying . . . standing, to create or destroy federal causes of action").

Unsurprisingly, there are vanishingly few instances of state courts entertaining federal causes of action that a federal court would reject for lack of cognizable injury—indeed, this *amicus* has identified none. Accordingly, whether or not Illinois standing law

requires it, this Court should as a matter of comity decline to assert jurisdiction over federal causes of action that cannot be asserted in federal court.

B. For a bare FCRA violation to confer standing in Illinois courts would invite undesirable class-action forum shopping.

In addition to federalism and comity, this case implicates Illinois's strong and justified public policy against class-action forum shopping. If this Court were to confer standing to sue in Illinois courts based on bare FCRA violations, it would make Illinois an extreme outlier—and invite exactly the forum shopping this Court has held to be pernicious.

1. Illinois has a strong and justified public policy against forum shopping, particularly in the class action context.

As this Court has long and consistently recognized, "courts have never favored forum shopping." *Dawdy v. Union Pac. R.R. Co.*, 207 Ill. 2d 167, 174 (2003) (citing *Espinosa v. Norfolk & W. Ry. Co.*, 86 Ill. 2d 111, 122-23 (1981)); *see Fennell v. Illinois Cent. R. Co.*, 2012 IL 113812, ¶ 18 ("Decent judicial administration cannot tolerate forum shopping."); *Merritt v. Goldenberg*, 362 Ill.App.3d 902, 910 (Ill. 5th Dist. 2005) ("A plaintiff's use of forum shopping . . . is against Illinois's public policy.").

Illinois courts disfavor forum shopping for several reasons, including that it imposes unjustified "burdens of litigation [on] the public" by requiring the state judiciary to expend resources adjudicating the claims, *Fennell*, 2012 IL 113812, ¶ 45; that it subjects defendants to "vexatious and harassing suits," *Dawdy*, 207 Ill. 2d at 175 (quoting *Espinosa*, 86 Ill. 2d at 123 (quoting *Miles v. Illinois Central R.R. Co.*, 315 U.S. 698, 706 (1942) (Jackson, J., concurring)); and that it threatens the "good name" of the Illinois courts, *id*.

at 174 (quoting *Espinosa*, 86 Ill. 2d at 123 (quoting *Miles*, 315 U.S. at 706 (Jackson, J., concurring)).

Although the harms of forum shopping typically come up when deciding *forum non conveniens* motions, Illinois courts have also identified the problem in the class action context, where many of the same prudential considerations apply. For example, in *Portwood v. Ford Motor Co*., this Court rejected an argument that it should "[t]oll[] a state statute of limitations during the pendency of a federal class action," referred to as "cross-jurisdictional tolling," because doing so would invite forum-shopping:

> [Cross-jurisdictional tolling] may actually increase the burden on that state's court system, because plaintiffs from across the country may elect to file a subsequent suit in that state solely to take advantage of the generous tolling rule. *Unless all states simultaneously adopt the rule* of cross-jurisdictional class action tolling, *any state which independently does so will invite into its courts a disproportionate share of suits which the federal courts have refused* to certify as class actions after the statute of limitations has run. . . . Given [that few states have considered, let alone adopted it], it is clear that adoption of cross-jurisdictional class tolling in Illinois would encourage plaintiffs from across the country to bring suit here following dismissal of their class actions in federal court. *We refuse to expose the Illinois court system to such forum shopping*.

Portwood v. Ford Motor Co., 183 Ill. 2d 459, 465-66 (1998) (emphasis added). The reasoning of *Portwood* applies with equal force to the question currently before this Court.

2. If this Court were to confer standing to sue on bare FCRA/FACTA violations, it would make Illinois an outlier among the states.

Several state courts have held that a bare FCRA/FACTA violation does not, as a matter of state law, confer standing—and no state court after *TransUnion* has found to the contrary. If this Court elects to make Illinois an outlier, it will invite the kind of forum shopping that this Court in *Portwood* was keen to deter.

To begin, Florida, Missouri, and California state courts have published opinions dismissing no-injury FCRA/FACTA claims for lack of standing.

For example, a Florida appellate court affirmed dismissal for lack of standing where plaintiff brought a FACTA claim alleging that he was given a receipt displaying ten digits of his credit card number, but did not allege that his credit card was used, lost, or stolen. *See Southam v. Red Wing Shoe Co.*, 343 So.3d 106, 107-08, 111-12 (Fla. 4th DCA 2022), *review denied*, No. SC22-1052, 2022 WL 16848677 (Fla. Nov. 10, 2022). Adopting the injury requirements of *TransUnion* as Florida law, the court explained that the bare alleged FACTA violation did not confer standing to sue because Plaintiff did not allege any "'economic' injury, nor any 'distinct or palpable' injury," so he had "'no concrete harm, [and thus] no standing [under Florida law].'" *Id.* at 108 (citing *TransUnion*, 141 S. Ct. at 2200).

Similarly, a Missouri appellate court affirmed dismissal for lack of standing where a suit alleged a "bare procedural violation [of FCRA], divorced from any concrete harm," *Corozzo v. Wal-Mart Stores*, 531 S.W.3d 566, 573-76 (Mo. App. 2017) (citation omitted). And, as discussed above, a California court relied on *TransUnion* in concluding that a plaintiff alleging a bare FCRA violation lacked standing under California law. *See Limon*, 84 Cal.App.5th at 706. Additional states' courts have, in unpublished decisions, reached the same result. *See, e.g.*, *Steichen v. 1223 Spring St. Owners Ass'n*, No. 82407-4-I, 2023 WL 6973845, at *12 (Wash. Ct. App. Oct. 23, 2023) (unpublished) (finding that claim was properly dismissed because plaintiff did not "provide evidence that [defendant's] alleged procedural violation caused him concrete harm"); *Gennock v. Kirkland's Inc.*, No. 462 WDA 2022, 2023 WL 3477873, at *4–6 (Pa. Super. Ct. May 16, 2023) (unpublished)

(dismissing no-injury FACTA claim because "the mere printing of a receipt in violation of FACTA" did not satisfy the "foundational components of standing"—"an interest that is substantial, direct, and immediate").

Further, the courts of many other states would certainly reach the same result as *TransUnion* because their standing requirements track those of federal law regarding the requirement of an injury in fact. Twenty-two states explicitly incorporate the federal injury-in-fact requirement into their standing laws. *See* A-1, tbl.1. For example, "the *Lujan* requirements for establishing standing under Article III to bring an action in federal court are generally the same as the standards for determining standing to bring a case or controversy within the courts of Delaware," *Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1111 (Del. 2003); so Delaware courts are precedent-bound to deny standing for no-injury FCRA/FACTA claims just as did Florida—which also follows federal standing law, *see State v. J.P.*, 907 So. 2d 1101, 1113 (Fla. 2004) (adopting the federal "irreducible constitutional minimum for standing"). Seventeen more states will likely reach the same result because their standing law—like that of Illinois—includes requirements substantively parallel to the federal injury-in-fact requirement. *See* A-3, tbl.2. In Virginia, for example, standing requires a "particularized injury," *Wilkins v. West*, 571 S.E.2d 100, 107 (Va. 2002), and Virginia courts would likely follow federal standing law (which they often cite) to hold that a bare FCRA/FACTA violation is not actionable injury. Thus, all told, at least thirty-nine states have held, or if presented the question before this Court would in all likelihood hold, that no-injury FCRA/FACTA claimants lack standing.

Moreover, while the remaining ten states sometimes allow standing to no-injury plaintiffs, they do so ***only*** in deference to determinations by their own ***state*** legislatures to

grant standing in such circumstances, which the Illinois legislature has not done here. *See* A-5, tbl.3. For example, Pennsylvania follows federal standing precedents except when "a statute properly enacted by the ***Pennsylvania legislature*** furnishes the authority for a party to proceed in Pennsylvania's courts." *Hous. Auth. of Cnty. of Chester v. Pennsylvania State Civ. Serv. Comm'n*, 730 A.2d 935, 939 (Pa. 1999) (emphasis added); *see also Nat'l Ass'n of Mut. Ins. Companies v. Dep't of Bus. & Indus., Div. of Ins.*, 524 P.3d 470 (Nev. 2023) ("We . . . recognize statutory standing in cases where the [Nevada] Legislature has created a right and provided a statutory vehicle to vindicate that right that relaxes otherwise applicable standing requirements."); *Watkins v. Resorts Int'l Hotel & Casino, Inc.*, 591 A.2d 592, 604 (N.J. 1991) (explaining that, although New Jersey standing law is more liberal than federal standing law, nevertheless, a plaintiff who lacks standing for a federal cause of action in federal court also lacks standing to bring that claim in state court).[5] Since FCRA is a federal statute, and *TransUnion* held that a bare FCRA violation does not confer standing, there is no reason to expect that the courts of these ten states will conclude otherwise as a matter of state law. Indeed, apart from the instant case, ***no*** state appellate court to consider *TransUnion* has held that an allegation of a bare FCRA/FACTA violation creates a sufficiently concrete injury to confer standing.[6]

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[5] The District of Columbia has adopted a similar clear-statement rule for standing, under which an injury-in-fact is required absent "a clear expression of an intent by the [D.C.] Council to eliminate our constitutional standing requirement." *Grayson v. AT&T Corp.*, 15 A.3d 219 (D.C. 2011).

[6] While the New Jersey Supreme Court, two months after *TransUnion*, did allow a no-injury FCRA putative class action to proceed past the pleadings, its opinion does not discuss *TransUnion*, and indeed does not address standing, which the defendants did not challenge. *See Baskin v. P.C. Richard & Son, LLC*, 249 A.3d 461, 466 (N.J. 2021) (holding that plaintiffs had "sufficiently pled" the class action requirements of numerosity, predominance, and superiority).

In sum, it is highly likely that no other state's courts will confer standing on the kind of no-injury FCRA claim that *TransUnion* barred from federal court. If Illinois elects to grant standing for such claims, it will "encourage plaintiffs from across the country to bring suit here," thus "expos[ing] the Illinois court system" to the very forum shopping against which this Court has previously warned. *See Portwood*, 183 Ill. 2d at 466.

C. Conferring standing to bring no-injury FCRA claims on behalf of non-residents who cannot sue individually in any other court would exacerbate the comity and forum shopping problems.

This Court should deny standing to no-injury FCRA/FACTA putative class actions to the extent brought on behalf of non-resident putative class members whose claims accrued outside Illinois. Endorsing such class actions would not only encourage forum-shopping to Illinois on behalf of class members who could not sue in their home states, it would improperly permit the procedural device of a class action to be used to deprive defendants of dispositive standing defenses.

It is well-established that a class action is merely a "procedural device," and that it violates Due Process to allow the use of this mere "procedural device" to grant rights that a party would not otherwise have in an individual case, or deprive a defendant of defenses which it would have in an individual case. *See, e.g.*, *Smith v. Ill.s Cent. R.R. Co.*, 223 Ill.2d 441, 451 (2006) (stating that the "procedural device" of a class action "may not be construed to enlarge or diminish any [parties'] substantive rights or obligations").

Further, the U.S. Supreme Court in *TransUnion* held that ***all*** class members—not just the named plaintiffs—must have suffered concrete injury from a FCRA violation in order to seek or recover statutory damages. 141 S. Ct. at 2208 ("Every class member must have Article III standing in order to recover individual damages"). Indeed, *TransUnion*

reversed a class judgment for $60 million in statutory damages, holding that the claims of those class members whose erroneous credit reports had not been disseminated to third parties had to be dismissed because they lacked ***individual*** standing to sue. *See id.* at 2202-03, 2206, 2208-12.

As detailed above, non-resident putative class members whose claims arose outside of Illinois and have no connection to Illinois lack standing to bring no-injury FCRA/FACTA claims both in federal court, *see TransUnion*, 141 S. Ct. at 2200, and in their home state courts, *see supra* Section II.B.2.[7] To allow out-of-state class members without standing to bring a no-injury FCRA/FACTA claim to participate in a class action where their standing could not be challenged would distort the mere "procedural [class] device" into a fount of substantive rights, while violating defendants' Due Process rights by depriving them of a dispositive standing defense.

III. As Cinemark's experience shows, forum shopping is more than a hypothetical concern—it is a concrete problem.

Cinemark's experience exemplifies precisely the kind of forum shopping that would be incentivized by permitting out-of-state plaintiffs and putative class members to bring no-injury claims in Illinois that they could not sustain elsewhere. If this Court holds that Illinois law confers standing on a bare FCRA/FACTA violation, such forum shopping will only increase.

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[7] Nor could out-of-state putative class members bring individual no-injury FCRA/FACTA claims in Illinois against defendants not subject to general personal jurisdiction in Illinois, and as to whom there would be no basis for the Illinois courts to assert specific personal jurisdiction because none of the out-of-state plaintiffs' claims arise from or relate to any Illinois conduct by the defendant. *See, e.g.*, *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024-25 (2021) (describing the law of "general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction").

A. Cinemark has been subject to blatant, and indeed admitted, forum shopping.

Cinemark was named defendant in a California no-injury FACTA class action on December 7, 2021. Complaint, *Neal*, *supra* note 2 (A-57). Only *after* the California court indicated that it was likely to find that the *Neal* plaintiffs lacked standing, based on the *Limon* decision adopting *TransUnion*'s standing holding as California law, did the California plaintiffs request dismissal. Plaintiffs' Request for Dismissal, *Neal*, *supra* note 2 (February 27, 2023) (A-76); Tentative Ruling for 1/10/23, *Neal*, *supra* note 2 (January 9, 2023) (A-89). And, almost simultaneously with their request for dismissal of the California *Neal* suit, plaintiffs' attorneys coordinated the filing of a new class action in Illinois. Complaint, Rodriguez, *supra* note 1 (February 24, 2023) (A-34).

Although the named plaintiff in the Illinois class action against Cinemark differs from the named plaintiffs in the California case, the circumstances here make the forum shopping blatant. Indeed, the California plaintiffs explicitly admitted in their request for dismissal of the *Neal* suit that they believed Illinois would provide a more favorable forum. Request for Dismissal at 2, *Neal*, *supra* note 2 (A-76, 77). In other words: the California plaintiffs—or, rather, their attorneys—realized that California courts were uninterested in conferring standing based on a violation of a federal statutory requirement whose violation did not suffice for standing in federal court, but they believed Illinois would confer standing on no injury FCRA/FACTA claims. Accordingly, the attorneys engineered a new class action in Illinois and, three days later, had their California named plaintiffs request to dismiss the *Neal* suit in order to participate as class members in the Illinois *Rodriguez* case, despite having no claim which they could bring as an individual action in ***any*** court.

B. Cinemark is not the only defendant who has been subject to such forum shopping, and if this Court confers standing on bare FCRA/FACTA violations, it will not be the last.

While Cinemark's experience is instructive, it is not unique. Indeed, counsel for no-injury FCRA/FACTA plaintiffs are flocking to Illinois state court on the false legal premise that Illinois courts are open to federal statutory claims that have been rejected by both federal and sister state courts. For example, plaintiffs—represented by the same attorneys who brought both the *Rodriguez* action against Cinemark and this case against Walgreen—initially filed a no-injury FACTA putative class action against IKEA in California court.[8] But, after litigating that case in California for over a year, the parties entered into a settlement term sheet that called for a duplicative class action to be filed in Illinois.[9] As plaintiffs' attorneys again admitted, they chose to re-file in Illinois to "avoid [] standing objections," Declaration of John Habashy ¶ 4, *Richardson I*, *supra* note 8 (Sept. 6, 2022) (A-91, 92)—that is, they believed that Illinois courts would more favorably entertain no-injury FACTA claims and, thus, provide a vehicle for obtaining court approval of a national class settlement.

These instances of forum shopping have occurred simply because subsequently-vacated, pre-*TransUnion*, intermediate Illinois appellate court decisions had ***arguably*** supported standing for no-injury FCRA/FACTA claims.[10] If the arguable becomes the

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[8] Declaration of John Habashy ¶¶ 3-4, *Richardson v. IKEA N. America Servs., LLC.* ("*Richardson I*"), 19-ST-CV-37280 (L.A. Cty. Sup. Ct., Oct. 18, 2019) (A-91, 92) (describing case history).

[9] *Richardson v. IKEA N. America Servs., LLC* ("*Richardson II*"), 2021-CH-05392 (Cir. Ct. Cook Cty. Oct. 21, 2021).

[10] *Soto v. Great America LLC*, 2020 IL App (2d) 180911, *petition granted*, 439 Ill. Dec. 13 (May 27, 2020), *decision vacated*, No. 125806 (Ill. July 16, 2021); *Duncan v. FedEx Office*

indubitable, such forum shopping will only increase. For Illinois courts to entertain nationwide no-injury FCRA/FACTA class actions would not be fair to defendants obliged to litigate standing sequentially in the court of plaintiffs' first choice, then in Illinois court as a last resort in the event the first court denies standing Neither would it be fair to the people of Illinois, who have no interest in adjudicating disputes between non-Illinois class members and non-Illinois defendants regarding transactions having no connection to Illinois, and where the out-of-state class members' claims are barred from the courts of every other jurisdiction. To avoid this unjust and wasteful outcome, this Court should hold that an allegation of a bare FCRA/FACTA violation does not create the concrete injury requisite to confer standing in Illinois courts. At a minimum, the Court should decline to entertain such claims on behalf of non-resident putative class members whose claims would be barred by the laws of their home states.

& Print Servs., Inc., 2019 IL App (1st) 180857, *petition granted*, 433 Ill. Dec. 509 (Sept. 25, 2019), *decision vacated*, No. 124727 (Ill. Nov. 21, 2019).

CONCLUSION

For the foregoing reasons, the Court should hold that an allegation of a bare FCRA violation does not meet Illinois law's standing requirements. At a minimum, the Court should hold that the procedural device of a national class action cannot be utilized to grant standing to sue on behalf of putative class members outside of Illinois who lack standing under the laws of their home states or in any federal court.

December 8, 2023

Respectfully submitted,

By: /s/ Meghan E. Tepas

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5597 words.

December 8, 2023 By: /s/ Meghan E. Tepas

APPENDIX

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SUPPORTING CITATIONS FOR STATE STANDING REQUIREMENTS

Table 1. Twenty-two states have explicitly adopted *Lujan*'s requirement of an alleged injury in fact to a legal interest.

STATE	AUTHORITY
1. Alabama	*Ex parte King*, 50 So.3d 1056, 1059 (Ala. 2010) (explaining that Alabama has adopted *Lujan*, including the injury in fact requirement).
2. Delaware	*Dover Hist. Soc. v. City of Dover Plan. Comm'n*, 838 A.2d 1103, 1111 (Del. 2003) ("[T]he *Lujan* requirements for establishing standing under Article III to bring an action in federal court are generally the same as the standards for determining standing to bring a case or controversy within the courts of Delaware.").
3. Florida	*State v. J.P.*, 907 So. 2d 1101, 1113 (Fla. 2004) (adopting the federal "irreducible constitutional minimum for standing" that "a plaintiff must demonstrate an injury in fact, which is concrete, distinct and palpable, and actual or imminent" (cleaned up)).
4. Georgia	*Sons of Confederate Veterans v. Henry Cnty. Bd. of Commissioners*, 880 S.E.2d 168, 185-86 (Ga. 2022) (explaining that the Georgia constitution limits the judicial power to "controversies in which there is a cognizable injury," a requirement that "the General Assembly lacks the authority to set . . . aside by statute").
5. Hawai'i	*Kilakila 'O Haleakala v. Bd. of Land & Nat. Res.*, 317 P.3d 27, 38 (Haw. 2013) ("This court evaluate[s] standing using the 'injury in fact' test requiring: (1) an actual or threatened injury, which, (2) is traceable to the challenged action, and (3) is likely to be remedied by favorable judicial action," although standing requirements are less strictly applied "in cases involving native Hawaiian and environmental interests").
6. Idaho	*State v. Philip Morris, Inc.*, 354 P.3d 187, 194 (Id. 2015) ("Idaho has adopted the constitutionally based federal justiciability standard.").
7. Iowa	*LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329-30 (Iowa 2023), *reh'g denied* (Apr. 26, 2023) (explaining that "[a] complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected," and that "[t]he injury cannot be 'conjectural' or 'hypothetical,' but must be 'concrete' and 'actual or imminent'").
8. Kentucky	*Commonwealth Cabinet for Health & Fam. Servs., Dep't for Medicaid Servs. v. Sexton ex rel. Appalachian Reg'l Healthcare, Inc.*, 566 S.W.3d 185, 188 (Ky. 2018) (adopting *Lujan*, including the injury in fact requirement).
9. Maine	*City of S. Portland v. Maine Mun. Ass'n Prop. & Cas. Pool*, 158 A.3d 11, 15 (Me. 2017) (endorsing *Lujan*'s requirement of "an invasion of a legally protected interest

	which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical").
10. Nebraska	*Griffith v. Nebraska Dep't of Corr. Servs.*, 934 N.W.2d 169, 175 (Neb. 2019) (following federal law in holding that a plaintiff alleging a procedural violation "suffers the requisite injury for standing purposes only if they also suffered a concrete injury as a result of the disregarded procedural requirement").
11. New Hampshire	*Duncan v. State*, 102 A.3d 913, 923 (N.H. 2014) (explaining that federal precedents are persuasive regarding standing because the New Hampshire constitution imposes requirements similar to those of the U.S. Constitution, including that the plaintiff must allege a "concrete, personal injury" to a "personal legal or equitable right[]").
12. New Mexico	*ACLU of N.M. v. City of Albuquerque*, 188 P.3d 1222, 1226-28 (N.M. 2008) (declining to eliminate the injury-in-fact requirement New Mexico courts borrowed from *Lujan*).
13. Ohio	*Moore v. Middletown* 975 N.E.2d 977, 982 (Ohio 2012) (quoting *Lujan* and adopting its three-part test for standing).
14. Oklahoma	*Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 911 (Ok. 1994) (adopting *Lujan*, including the injury in fact requirement).
15. Rhode Island	*Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan* in defining the state's injury in fact requirement).
16. South Carolina	*ATC South, Inc. v. Charleston Cnty.,* 669 S.E.2d 337, 339 (S.C. 2008) (requiring a concrete and particularized injury in fact and quoting *Lujan*).
17. South Dakota	*Cable v. Union County Bd. Of County Com'rs*, 769 N.W.2d 817, 825-26 (S.D. 2009) (adopting *Lujan*, including its requirement of "an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent" (cleaned up)).
18. Tennessee	*City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013) (citing *Lujan* and explaining that the Tennessee constitution requires the same "three indispensable elements" of standing).
19. Texas	*DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) (citing federal precedents for the proposition that a "a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical").
20. Vermont	*Hinesburg Sand & Gravel Co. v. State*, 693 A.2d 1045, 1048 (Vt. 1997) (citing federal precedents for the proposition that standing require an "[i]njury in fact . . . defined as the invasion of a legally protected interest" (cleaned up)).

21. West Virginia	*Blair v. Brunett*, 889 S.E.2d 68, 74 (W. Va. 2023) (stating that West Virginia had adopted the *Lujan* test for standing, including the requirement of an 'injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical").
22. Wyoming	*Miller v. Wyo. Dep't of Health*, 275 P.3d 1257, 1261 (Wyo. 2012) (citing *Lujan* for the proposition that a plaintiff must have suffered an injury in fact to a legally protected interest).

Table 2. Eighteen states have adopted injury-in-fact requirements similar to that of *Lujan*.

STATE	AUTHORITY
1. Alaska	*Keller v. French*, 205 P.3d 299, 304 (Alaska 2009) ("To establish interest-injury standing plaintiffs must demonstrate that they have a sufficient personal stake in the outcome of the controversy and an interest which is adversely affected by the complained-of conduct." (cleaned up)).
2. Arizona	*Brewer v. Burns,* 213 P.3d 671, 674 (Ariz. 2009) ("To have standing, a party generally must allege a particularized injury that would be remediable by judicial decision.").
3. Arkansas	*Toland v. Robinson*, 590 S.W.3d 146, 150 (Ark. 2019) ("To be a proper plaintiff in an action, one must have an interest which has been adversely affected or rights which have been invaded." (cleaned up)).
4. Colorado	*Schaden v. DIA Brewing Co., LLC*, 478 P.3d 1264, 1274 (Colo. 2021) (adopting *Lujan*'s requirement that a plaintiff must demonstrate "that (1) he or she has suffered an injury in fact and (2) the injury was to a legally protected interest.").
5. Illinois	*State ex rel. Leibowitz v. Fam. Vision Care, LLC*, 2020 IL 124754, ¶ 28 (standing requires "some injury in fact to a legally cognizable interest").
6. Indiana	*City of Gary v. Nicholson*, 190 N.E.3d 349, 351 (Ind. 2022) (citing *Lujan* approvingly, and stating explicitly that "a statute can confer a party with standing but only if the statute requires an injury").
7. Kansas	*Gannon v. State*, 319 P.3d 1196, 1210 (Kan. 2014) ("Under the traditional test for standing in Kansas, a person must demonstrate that he or she suffered a cognizable injury and that there is a causal connection between the injury and the challenged conduct. We have also referred to the cognizable injury as an injury in fact.").
8. Louisiana	*Louisiana Associated Gen. Contractors, Inc. v. State Through Div. of Admin., Off. of State Purchasing*, 669 So. 2d 1185, 1192 (La. 1996) (explaining that Louisiana standing requirements resemble federal requirements, in that standing is limited to a

	"justiciable controversy," that is, "an existing actual and substantial dispute" in which "the plaintiff should have a legally protectable and tangible interest at stake").
9. Massachusetts	*Pugsley v. Police Dep't of Bos*., 34 N.E.3d 1235, 1239 (Mass. 2015) (citing federal precedents to support the proposition that standing requires an injury and that "injuries that are speculative, remote, and indirect do not confer proper standing" (cleaned up)).
10. Mississippi	*Hotboxxx, LLC v. City of Gulfport*, 154 So. 3d 21, 27 (Miss. 2015) (explaining that standing in Mississippi court requires a "colorable interest," defined as "a right to judicial enforcement of a legal duty of the defendant or . . . a present, existent actionable title or interest . . . complete at the time of the institution of the action").
11. Missouri	*Schweich v. Nixon*, 408 S.W.3d 769, 774 (Mo. 2013) (standing requires "a threatened or actual injury" to a "legally protectable interest").
12. Montana	*Heffernan v. Missoula City Council*, 255 P.3d 80, 91-92 (Mont. 2011) (explaining the federal requirements of standing before stating that "[s]imilarly, in Montana, to meet the constitutional case-or-controversy requirement, the plaintiff must clearly allege a past, present, or threatened injury to a property or civil right").
13. New York	*Mental Hygiene Legal Service v. Daniels*, 33 N.Y.3d 44, 50 (N.Y. 2019) (explaining that New York's "injury in fact requirement necessitates a showing that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm").
14. North Dakota	*Flatt ex rel. Flatt v. Kantak*, 687 N.W.2d 208, 225 (N.D. 2004) (relying on federal precedents for the proposition that "abstract injury [is] not sufficient to establish standing, because parties who invoke judicial power must show they have sustained, or are in immediate danger of sustaining, some direct injury").
15. Utah	*Utah Chapter of Sierra Club v. Utah Air Quality Bd.*, 148 P.3d 960, 971 (Utah 2006) (citing *Lujan* as persuasive authority, and explaining that standing requires a "distinct and palpable injury').
16. Virginia	*Wilkins v. West*, 571 S.E.2d 100, 107 (Va. 2002) (citing federal standing law as persuasive authority, and explaining that standing in Virginia requires a "particularized injury").
17. Washington	*To-Ro Trade Shows v. Collins*, 27 P.3d 1149, 1156 (Wash. 2001) ("[A] party lacking a direct, substantial interest in the dispute will lack standing.").
18. Wisconsin	*Friends of Black River Forest v. Kohler Co.*, 977 N.W.2d 342, 346 (Wisc. 2022) (explaining that Wisconsin standing law "looks to federal case law as persuasive authority," and imposes a similar requirement of a "direct[] . . . injury to . . . [an] interest recognized by law" (cleaned up)).

Table 3. Ten states and the District of Columbia allow standing absent an injury in fact—but only when a statute authorizes such standing.

STATE	AUTHORITY
1. California	*Jasmine Networks, Inc. v. Superior Ct.*, 180 Cal. App. 4th 980, 993, 103 Cal. Rptr. 3d 426, 434 (2009) (holding that the California constitution does not impose any standing requirement separate from the plaintiff's obligation to prove the elements of his cause of action).
2. Connecticut	*Smith v. Snyder*, 839 A.2d 589, 594 (Conn. 2004) ("Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved . . . [i.e., a] specific personal and legal interest has been specially and injuriously affected by the challenged action." (cleaned up)).
3. District of Columbia	*Grayson v. AT&T Corp.*, 15 A.3d 219, 235 n.38 & 243-44 (D.C. 2011) (adopting a clear statement rule for abolition of the injury-in-fact requirement, under which, "without a clear expression of an intent by the Council to eliminate our constitutional standing requirement," the creation of a cause of action does not eliminate the need for an injury in fact).
4. Maryland	*State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 92 A.3d 400, 430 (Md. 2014) (adopting an approach which "groups the traditionally distinct concepts of standing and cause of action into a single analytical construct").
5. Michigan	*Lansing Sch. Educ. Ass'n v. Lansing Bd. of Educ.*, 792 N.W.2d 686, 699 (Mich. 2010) (rejecting *Lujan* in favor of the rule that "a litigant has standing whenever there is a legal cause of action").
6. Minnesota	*In re Custody of D.T.R.*, 796 N.W.2d 509, 512 (Minn. 2011) ("Standing to bring an action can be conferred in two ways: either the plaintiff has suffered some 'injury-in-fact' or the plaintiff is the beneficiary of some legislative enactment granting standing." (cleaned up)).
7. Nevada	*Nat'l Ass'n of Mut. Ins. Companies v. Dep't of Bus. & Indus., Div. of Ins.*, 524 P.3d 470, 476 (Nev. 2023) ("We . . . recognize statutory standing in cases where the Legislature has created a right and provided a statutory vehicle to vindicate that right that relaxes otherwise applicable standing requirements.").
8. New Jersey	*Watkins v. Resorts Int'l Hotel & Casino, Inc.*, 591 A.2d 592, 604 (N.J. 1991) (noting that New Jersey standing law is more liberal than federal standing law, but declining to distinguish standing from cause of action, such that if a plaintiff lacks standing for a federal cause of action in federal court, it also lacks standing in state court).
9. North Carolina	*United Daughters of the Confederacy v. City of Winston-Salem ex rel. Joines*, 881 S.E.2d 32, 44 (N.C. 2022) ("[W]hen a person alleges the infringement of a legal right

	directly under a cause of action at common law, a statute, or the North Carolina Constitution . . . the legal injury itself gives rise to standing."(cleaned up)).
10. Oregon	*Kellas v. Dep't of Corr.*, 145 P.3d 139, 145 (Or. 2006) (holding that standing is a matter purely of legislative intent).
11. Pennsylvania	*Hous. Auth. of Cnty. of Chester v. Pennsylvania State Civ. Serv. Comm'n*, 730 A.2d 935, 939 (Pa. 1999) (explaining that Pennsylvania courts follow federal standing precedents except when "a statute properly enacted by the Pennsylvania legislature furnishes the authority for a party to proceed in Pennsylvania's courts").

IN THE CIRCUIT COURT
OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GERARDO RODRIGUEZ, individually and On behalf of others similarly situated,	)	
Plaintiff,	)	Case No.: 2023CH01857
vs.	)	
CINEMARK, USA, INC., a Texas corporation; CINEMARK HOLDINGS, INC., a Delaware Corporation,	)	
Defendants.	)	

CINEMARK, USA, INC.'S[1] MEMORANDUM IN SUPPORT OF MOTION TO DISMISS PURSUANT TO 735 ILCS 5/2-619

Dated: May 22, 2023

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ATTORNEYS FOR DEFENDANTS CINEMARK USA, INC. AND CINEMARK HOLDINGS, INC.

[1] In the event that the Court does not dismiss the suit against Cinemark Holdings, Inc. on personal jurisdiction grounds, it adopts and incorporates by reference this Memorandum pursuant to 735 ILCS 5/2-619.

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Defendant Cinemark USA, Inc. ("CUSA" or "Cinemark") moves to dismiss Plaintiff Gerardo Rodriguez's ("Plaintiff") Class Action Complaint ("Complaint"), attached as Exhibit 1, under 735 ILCS 5/2-619 because Plaintiff lacks standing to sue, as do the vast majority of putative class members in this proposed national class action.

I. SUMMARY OF PLAINTIFF'S ALLEGATIONS

Plaintiff alleges that he used his debit card to purchase movie tickets at a Cinemark theatre in Melrose Park, Illinois, and received an electronically printed receipt that displayed the first six and last four digits of his debit card number. (Complaint ¶¶ 37-38.) Plaintiff alleges that this violated the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq., a federal statute directing merchants to truncate certain credit and debit card information on printed receipts provided to consumers. (*See id.*) Plaintiff purports to sue on behalf of a putative national class of persons who received similar debit or credit card receipts for purchases at Cinemark theatres. (*Id.* ¶ 47.)

Plaintiff alleges that, as a result of having more than the last 5 digits of the card number printed on the receipt, he and the putative class members (i) suffered a "violation of their statutory rights," (ii) were exposed to a "heightened risk of identity theft," and (iii) had to "take action to prevent further disclosure of the private information displayed on the receipts." (*See* Complaint ¶¶ 2, 63.) Plaintiff, however, does not identify what "action" he supposedly took to "prevent further disclosure" of his receipt, nor allege that he (or any putative class member) actually suffered identity theft or any other concrete form of injury because of the number of digits printed on their receipts. And, consistent with this lack of alleged actual or concrete injury, Plaintiff does not claim or seek an award of any "actual damages" in this case, limiting the prayer to requests for "statutory damages" and "punitive damages" pursuant to 15 U.S.C. § 1681n(a). (*See* Complaint, p. 15.)

II. SUMMARY OF ARGUMENT

Plaintiff sues for an alleged violation of a federal statute, but alleges no concrete injury. The U.S. Supreme Court, in *TransUnion v. Ramirez*, 141 S. Ct. 2190, 2207-13 (2021), found relatively recently that plaintiffs ***lack standing*** to bring ***no-injury claims*** for statutory damages under FCRA, of which FACTA is a component. All federal appellate courts to have considered the issue since *TransUnion* have held that concrete injury is required to pursue this federal claim. In this case, the issue is whether Plaintiff can bring his no-injury federal claim in Illinois state court. And while Article III standing analysis is not identical to the standing analysis performed by Illinois courts, the same conclusion reached by the U.S. Supreme Court and other federal courts—a plaintiff without concrete injury lacks standing to sue for statutory damages based on a bare alleged violation of FCRA/FACTA—is equally required in this case.

To be sure, Illinois law on this point is currently arguably unsettled. Only three Illinois courts have considered the issue, and all did so prior to *TransUnion*. Moreover, two of those decisions were explicitly vacated by the Illinois Supreme Court, and in the third, the defendant did not challenge standing. Further, longstanding Illinois precedent makes clear that Illinois courts are to treat as binding U.S. Supreme Court interpretations of federal statutes. Thus, pursuant to *TransUnion* as detailed herein, the correct ruling is that, in order to maintain standing to sue, Illinois plaintiffs asserting a FACTA claim for statutory damages ***must allege concrete injury***, which Plaintiff has not done in this case.

If the Court were to elect not to follow *TransUnion* and thereby dismiss Plaintiff's claim for lack of standing, the putative national class allegations should nonetheless be stricken. The putative class consists almost entirely of citizens of other states, who did

not transact in Illinois, and who lack standing to sue for no-injury FACTA claims in ***either*** the ***state courts*** of their home states or in ***any federal court***. While Illinois may grant its own citizens standing to sue on ***state law*** claims more broadly than permitted under the U.S. Constitution, principles of comity and Due Process compel that Illinois cannot, via class treatment, grant such expansive standing to citizens of other states alleging a ***federal claim*** regarding transactions with no relation to Illinois. Any other result would incentivize forum shopping to Illinois. Thus, if the Court does not dismiss this suit in its entirety based upon Plaintiff's lack of standing, Cinemark moves to strike all national class allegations and limit the putative class to citizens of Illinois and New Jersey.

III. SECTION 2-619 MOTION TO DISMISS

Section 2-619 motions "dispose of issues of law and easily proved issues of fact at the outset of the litigation." *Van Meter v. Darien Park Dist.*, 207 Ill.2d 359, 367 (2003). A 2-619 motion admits to legal sufficiency, but "asserts certain defects or defenses." *Dratewska-Zator v. Rutherford*, 2013 IL App (1st) 122699, ¶ 13, 996 N.E.2d 1151.

A. PLAINTIFF LACKS STANDING TO BRING HIS INDIVIDUAL FACTA CLAIM

i. LEGAL STANDARD

Under Illinois law, lack of standing is an affirmative defense, but where (as here) it is demonstrated that the plaintiff does not have standing, "the proceedings must be dismissed." *Wexlr v. Wirtz Corp.*, 211 Ill.2d 18, 22 (2004). To have standing a plaintiff must have suffered a "distinct and palpable" "injury in fact to a legally cognizable interest." *See Cedarhurst of Bethalto Real Estate, LLC v. Village of Bethalto*, 2018 IL App (5th) 170309, ¶¶ 19 and 26, 116 N.E.3d 377 (finding no standing where plaintiff "ha[d] no direct personal injuries, i.e., no injury in fact"). In fact, "[f]ederal standing principles are similar to those in Illinois, and the case law is instructive." *Maglio v. Advocate Health & Hosps. Corp.*, 2015 IL App (2d) 140782, ¶¶ 24-29, 40 N.E.3d 746

(holding that plaintiff's speculative allegations of an increased risk of identity theft due to breach of an Illinois data protection statute did not constitute sufficiently "distinct and palpable" injury to convey standing); *see also People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶ 37, 49 N.E.3d 428 ("We find . . . federal authority [on standing] to be persuasive.").

ii. NO BINDING PRECEDENT IN ILLINOIS ALLOWS NO-INJURY FACTA CLAIMS

Plaintiff will likely contend that *Duncan v. FedEx Office & Print Svcs., Inc.*, *Soto v. Great America LLC*, and *Lee v. Buth-Na-Bodhaige, Inc.* permit Illinois plaintiffs to bring FACTA claims even where, as here, they have suffered no actual injuries. 2019 IL App (1st) 180857, 123 N.E.3d 1249; 2020 IL App (2d) 180911, 165 N.E.3d 935; 2019 IL App (5th) 18033, 143 N.E.3d 645. However, none of these cases are valid Illinois precedents for that proposition. It is true that those courts originally allowed plaintiffs to move forward with no-injury FACTA claims. However, in both *Duncan* and *Soto*, the Illinois Supreme Court permitted leave to appeal the intermediate appellate court's ruling (*Duncan v. FedEx Office & Print Svcs., Inc.*, 132 N.E.2d 347 (Table), 433 Ill.Dec. 509 (2019); *Soto v. Great America LLC*, 147 N.E.3d 688 (Table), 439 Ill.Dec. 13 (2020)), and both opinions were ordered ***vacated*** by the Supreme Court pursuant to settlements before final review. *See Soto v. Great America LLC*, No. 125806 (Ill. July 16, 2021); *Duncan v. FedEx Office & Print Svcs, Inc.*, No. 124727 (Ill. Nov. 21, 2019).[2]

Decisions accepted for Illinois Supreme Court review are not entitled to precedential weight when they are settled or otherwise dismissed before the appeal's merits are addressed. *See In re Marriage of Eckersall*, 2015 IL 117922, ¶ 20, 28 N.E.3d 742. Similarly, vacated decisions, like *Soto* and *Duncan*, "carr[y] no precedential weight."

[2] Exhibits 2 and 3 are the copies of these orders vacating the *Duncan* and *Soto* appellate court opinions.

Mohanty v. St. John Heart Clinic, S.C., 225 Ill.2d 52, 66 (2006). Moreover, even if this Court were inclined to consider the now-vacated decisions as potentially persuasive, it is noteworthy that *Soto* and *Duncan* both addressed a ***pre-TransUnion*** federal circuit split regarding standing to bring no-injury FACTA claims. *See Duncan*, 2019 IL App (1st) 180857 at ¶ 18-20; *Soto*, 2020 IL App (2d) 180911 at ¶ 21-22; *see also Lee*, 2019 IL App (5th) 180033 at ¶ 66 n. 7 (laying out the then-extant significant dispute among federal courts). In particular, *Duncan* was largely predicated on the court's view that the federal cases finding that no-injury FACTA plaintiffs had standing were "better reasoned." *Duncan*, 2019 IL App (1st) 180857 at ¶ 20. But, that reasoning is now untenable, given that the U.S. Supreme Court's *TransUnion* decision, discussed below, has abrogated the federal decisions on which *Duncan* relied.[3]

Further, the only non-vacated Illinois no-injury FACTA decision—*Lee* (again, also pre-*TransUnion*)—did not consider or address whether the defendant could have prevailed on an affirmative defense of standing, because the defendant "***chose not to raise the issue***." *Lee*, 2019 IL App (5th) 180033 at ¶ 68 (emphasis added).[4]

iii. FACTA PLAINTIFFS IN ILLINOIS MUST DEMONSTRATE A CONCRETE INJURY BECAUSE THE *TRANSUNION* DECISION IS BINDING AUTHORITY

As noted, in *TransUnion* the U.S. Supreme Court held that all class members who did not suffer concrete injury due to a FCRA violation lacked standing to sue for statutory damages. 141 S. Ct. at 2207-13. Indeed, *TransUnion* held that it would be an unconstitutional violation of the Separation of Powers for Congress to grant standing to

[3] Every federal appellate court facing a no-injury FCRA or FACTA claim since *TransUnion* has found that the plaintiff lacks standing. *See, e.g., Pierre v. Midland Credit Mgmt., Inc.,* 29 F.4th 934, 936 (7th Cir. 2022).
[4] The issue was, instead, raised only by an objector to the class settlement, who "had no standing to do so." *See id.* Thus, any discussion in *Lee* about standing to bring a no-injury FACTA suit was pure *dictum*.

plaintiffs to bring no-injury FCRA claims. *See Id.* at 2207 (concluding that it "would infringe on the Executive Branch's Article II authority" for Congress through FCRA to grant unharmed plaintiffs standing to sue); *see also id.* at 2205 (explaining that ***the Legislative Branch "may not simply enact an injury into existence,"*** by equating bare statutory violation with concrete injury) (emphasis added). And although Article III standing requirements do not always apply to Illinois courts,[5] it is clear that with respect to FCRA/FACTA claims, they do.[6]

As a starting point, no authority provides that Illinois can apply a more lenient standard so as to grant standing to sue on a ***federal*** claim to plaintiffs who did not suffer an actual, concrete injury as required to bring ***that federal claim*** in federal court. Such a remarkable proposition would mean that Congress's grant of concurrent jurisdiction to state courts could change the proof requirements of the ***same federal claim*** as between Illinois, other states' courts, and federal courts, which is not federal law. *See, e.g., McKenna v. Powell,* No. 10-017ML, 2010 WL 2474037, at *2 (D.R.I. April 28, 2010) (explaining that state law cannot alter "elements or defenses" to a federal claim "even when . . . [the] case is brought in state court" merely because there is concurrent jurisdiction over the claim) (citing *Howlett v. Rose,* 496 U.S. 356, 375-76 (1990) (holding that state law immunity did not apply to Section 1983 claim because "[t]he ***elements*** of, and the ***defenses*** to, a federal cause of action are ***defined by federal law***") (emphasis added)). Nor is that the law of Illinois, under which the U.S. Supreme Court's interpretation of federal statutes, like FCRA, is ***binding*** on state courts. *See Ammons v.*

[5] S*ee, e.g.*, *Greer v. Illinois Housing Dev. Auth.*, 122 Ill.2d 462, 491 (1988) (explaining Illinois law "tends to vary [from federal standing law] in the direction of greater liberality").
[6] As noted, FACTA is a component of FCRA. *See* 15 U.S.C. § 1681.

Canadian Nat'l Ry. Co., 2019 IL 124454, ¶ 18, 161 N.E.3d 890 ("[U.S.] Supreme Court interpretation of federal law is clearly binding"); *Williams v. Bd. of Review*, 241 Ill.2d 352, 360 (2011) (same); *Carr v. Gateway, Inc.,* 241 Ill.2d 15, 21 (2011) (explaining federal courts' decisions are binding in Illinois "to the end that such laws may be given ***uniform application***") (emphasis added). Thus, *TransUnion* makes clear that plaintiffs must have a concrete injury sufficient to confer federal Article III standing in order to have standing to bring a FACTA claim for statutory damages in Illinois state court.

Plaintiff will argue this rule conflicts with *Rosenbach v. Six Flags Ent. Corp*., in which the Illinois Supreme Court found that a plaintiff had standing to sue for a bare "technical violation" of Illinois's Biometric Information Privacy Act despite alleging no actual injury. 2019 IL 123186, 129 N.E.3d 1197, 1207. But, such an argument is incorrect. *Rosenbach* began from the premise that the state Legislature has a long history of expressly providing in Illinois statutes whether actual damage is required— concluding that, where an Illinois statute requires actual damage as part of the claim, concrete injury is required for standing; but where, in contrast, the state law grants a right of action to anyone "aggrieved by" a violation, plaintiff need not have concrete injury to have standing. *Rosenbach*, 129 N.E.3d at 1204-05. Thus, *Rosenbach* held that a bare statutory violation afforded standing to sue under the Biometric Information Privacy Act because, ***as a matter of state law***, the Legislature granted a cause of action to anyone "aggrieved." *See id*.

Rosenbach is thus inapposite for three interrelated reasons. First, Plaintiff here asserts a federal claim, not an Illinois statutory claim. Second, *Rosenbach's* reasoning does ***not*** apply to the interpretation of the standing requirements to assert a federal claim

under FCRA/FACTA; rather, the U.S. Supreme Court's interpretation of ***federal statutes***, like FCRA, is ***binding in Illinois***. *See Ammons*, 2019 IL 124454 at ¶ 18; *Williams*, 241 Ill.2d at 360; *Carr*, 241 Ill.2d at 21. And third, the U.S. Supreme Court's *TransUnion* decision plainly held that concrete injury is ***always*** a component of Article III standing to assert a FCRA/FACTA claim, and that it would be an unconstitutional violation of the Separation of Powers to hold otherwise. *TransUnion*, 141 S. Ct. at 2207-13. Accordingly, Plaintiff must allege concrete injury to establish standing to sue for statutory damages under FACTA.

iv. PLAINTIFF HAS NOT ALLEGED A CONCRETE INJURY

In this case, Plaintiff alleges "injuries" consisting of; (1) violation of his statutory rights, (2) risk of identity theft, (3) potential disclosure of his financial information to third parties, including Cinemark employees, and (4) taking unspecified action to prevent further disclosure. (Complaint ¶¶ 2, 27-30, 39, 45-46, 63.) None of these allegations demonstrate the concrete injury necessary for Plaintiff to have standing. Initially, *TransUnion* expressly held that merely suffering a violation of statutory rights (there, recording inaccurate information in class members' credit files in violation of FCRA), and an asserted "risk of future harm" from "potential" future disclosure to third parties, did not constitute concrete injury, such that those individuals lacked standing to sue. 141 S. Ct. at 2201; 2210-11.[7] The first three "injuries" Plaintiff alleges here are identically deficient, as they merely assert a statutory violation and "risk" of future harm that has not materialized. As *TransUnion* is binding authority on Illinois courts regarding standing

[7] The Supreme Court held that only those individuals whose information was actually conveyed by TransUnion to third parties had suffered a concrete injury so as to have standing to sue under FCRA. *Id.* at 2208-09.

to sue on a federal statutory claim, those asserted injuries do not afford Plaintiff standing to sue.

Plaintiff's final claimed "injury"—that he had to take some unspecified further action to prevent disclosure—is an attempted end-run around *TransUnion*. Indeed, the case cited in Plaintiff's Complaint for the proposition that taking steps to "safeguard" a receipt constitutes concrete injury ***was vacated by the 11th Circuit***, and a subsequent decision in the ***same exact lawsuit*** explicitly rejected Plaintiff's theory. *Compare Muransky v. GoDiva Chocolatier, Inc.*, 905 F.3d 1200 (11th Cir. 2018), vacated and superseded by *Muransky v. GoDiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019), *with Muransky v. GoDiva Chocalatier, Inc.*, 979 F.3d 917 (11th Cir. 2020). Further, Plaintiff does not allege anything he actually did to safeguard his receipt; and even if he had, that would not create standing to sue. *See, e.g.*, *Muransky*, 979 F.3d at 931 ("even if Muransky had alleged that he spent additional time destroying or safeguarding his receipt, he would not succeed on this theory"); *Clapper v. Amnesty Intern., USA*, 568 U.S. 398, 416 (2013) ("[R]espondents cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm"); *Kim v. McDonald's USA, LLC*, No. 21-cv-05287, 2022 WL 4482826, at *6 (N.D. Ill. Sept. 27, 2022) (same). Plaintiff's allegations fail to demonstrate he suffered any concrete injury, and the Court should dismiss this action for lack of standing.

B. EVEN IF THE COURT FINDS PLAINTIFF HAS STANDING, ALL CLAIMS OF PUTATIVE CLASS MEMBERS OUTSIDE OF NEW JERSEY AND ILLINOIS SHOULD BE STRICKEN

A determination that Plaintiff lacks standing to sue would result in the dismissal of this case. However, even if Plaintiff were permitted to proceed, the Court should nonetheless strike Plaintiff's national class allegations, as the vast majority of the

putative class members are citizens of other states, did not conduct transactions in Illinois, and lack individual standing to sue on the FACTA claim alleged herein in either their home states or any federal court. Thus, constitutional considerations of comity and due process compel the conclusion that Illinois should not grant standing to ***other states'*** citizens to sue on federal claims for conduct that did not occur in Illinois when those individuals lack standing to sue in either the state or federal courts of their home states.

i. THE VAST MAJORITY OF PUTATIVE CLASS MEMBERS LACK STANDING TO SUE

Here, putative class members in ***at least 34 states*** outside of Illinois lack standing to sue on the no-injury FACTA claim alleged herein in the courts of their home states, just as they would under *TransUnion* if they sued in any federal court. State supreme court decisions from Delaware, Iowa, and Ohio helpfully illustrate the issue. Each of Delaware, Iowa, and Ohio require that, to possess standing to sue, a plaintiff must meet requirements identical to the Article III standards set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992), which, as explained above, have been uniformly held not to confer standing to sue for no-injury FACTA claims. *See, e.g.*, *Dover Historical Soc. v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1111 (Del. 2003) (holding that the *Lujan* requirements "are generally the same as the standards for determining standing" to sue in Delaware); *Iowa Citizens for Comm. Improvement v. State*, 962 N.W.2d 780, 790 (Iowa 2021) ("Our court has interpreted the 'injuriously affected' prong of standing as incorporating the *Lujan* three-part test."); *Moore v. City of Middletown*, 133 Ohio St.3d 55, 975 N.E.2d 977, 982 (Ohio 2012) (same).

Similarly, appellate courts in Florida, Missouri, and California have dismissed for lack of standing exactly the type of no-injury FCRA/FACTA lawsuits brought by Plaintiff here. For example, *Southam v. Red Wing Shoe Co.*, 343 So.3d 106 (Fla. 4th DCA 2022),

affirmed dismissal for lack of standing where plaintiff alleged that he was given a receipt displaying ten digits of his credit card number, but did not allege that his credit card was used, lost, or stolen. *Id*. at 107-08, 111-12, review denied, No. SC22-1052, 2022 WL 16848677 (Fla. Nov. 10, 2022). Adopting the requirements of *Lujan* and *TransUnion* as Florida law, the *Southam* court explained that the bare alleged FACTA violation did not confer standing to sue because Plaintiff did not allege any " 'economic' injury, nor any 'distinct or palpable' injury," so he had " 'no concrete harm, [and thus] no standing.' " *Id*. at 108 (citing *TransUnion*, 141 S. Ct. at 2200). In *Corozzo v. Wal-Mart Stores*, 531 S.W.3d 566 (Mo. App. 2017), a Missouri court affirmed dismissal for lack of standing where the suit alleged a "bare procedural violation [of FCRA], divorced from any concrete harm." *Id*. at 573-76 (citation omitted); *see also Limon v. Circle K Stores*, 84 Cal.App.5th 671, 706 (2022) (finding plaintiff was required to allege actual injury to have standing to sue on a FCRA claim).

These six states are not remotely unique in requiring "concrete injury" to maintain standing. Consistent with the law in the foregoing states, putative class members in at least 34 states outside of Illinois lack standing to sue on the FACTA claim asserted here.[8]

Cinemark acknowledges that, pre-*TransUnion*, a New Jersey court appears to have held, in contrast, that its citizens could sue for statutory damages based on allegations of bare FACTA violations. *Baskin v. P.C. Richard & Son, LLC*, No. A-2662-18T1, 2020 WL

[8] A chart identifying the 28 additional states (i.e. those not discussed above) that apply the federal Article III/*Lujan* injury-in-fact standard, or a substantively parallel one—meaning those states' citizens lack standing to sue on the claim putatively asserted on their behalf by Plaintiff—is Appendix 1 hereto. Further, in other states where injury requirements have been less fulsomely articulated, Cinemark submits that, if presented the question squarely, those states' courts would similarly conclude that a FACTA plaintiff without concrete injury lacks standing to sue based on a bare statutory violation. *See, e.g.*, *Pittsburgh Palisades Park, LLC v. Commonwealth*, 585 Pa. 196, 888 A.2d 655, 660 (2005) (explaining that the key to standing in Pennsylvania "is that the person must be negatively impacted in some real and direct fashion"); *McClary v. Jenkins*, 299 Va. 216, 222 (Va. 2020) ("Typically, to establish standing a plaintiff must allege a particularized injury.").

989191, at *2-3, 11 (N.J. Super. Ct. App. Div. Mar. 2, 2020). The existence of one such state holding, however, does not alter that constitutional Due Process and prudential comity dictate that Illinois cannot grant its state courts subject matter jurisdiction over the federal claims of putative class members in other states who lack standing to sue in their home states regarding conduct that occurred outside of Illinois. Accordingly, Cinemark requests that the Court strike the national class allegations (Complaint ¶¶ 47-55) and, instead, limit the scope of the putative class to persons whose transactions occurred in Illinois and, perhaps, New Jersey.

ii. PURSUANT TO *TRANSUNION*, THE COURT SHOULD STRIKE PUTATIVE CLASS CLAIMS BROUGHT ON BEHALF OF PUTATIVE CLASS MEMBERS WHO PLAINLY LACK STANDING

Plaintiff will likely argue that the Court should assess the standing to sue of only the named plaintiff, but not putative class members, citing cases such as *I.C.S. Illinois, Inc. v. Waste Mgmt. of Ill., Inc.*, 403 Ill.App.3d 211, 221 (2010), *Maglio*, 2015 IL App (2d) 140782 at ¶ 21, and *Elliot v. Chicago Transit Auth.*, 2019 IL App (1st) 181892-U, ¶ 22, 2019 WL 5296835. However, each of these cases concerned putative classes of ***only*** persons complaining of conduct occurring ***in Illinois***. Thus, none addresses whether an Illinois court may use the purely procedural class action device to confer standing on a class comprised almost entirely of people outside of Illinois who lack standing to sue individually. As a result, those cases are simply not relevant to this Court's analysis.

Moreover, all three were decided before *TransUnion*, which held that ***all*** class members—not just the named plaintiffs—must have suffered concrete injury from a FCRA violation to recover statutory damages. *TransUnion*, 141 S. Ct. at 2207-13. Indeed,

TransUnion reversed a class judgment for $60 million in statutory damages as to all of the class members who ***individually*** lacked standing. *Id.* at 2202-03, 2206, 2208-12.

The seminal Illinois case in this area, *I.C.S.*, relied entirely on pre-*TransUnion* U.S. Supreme Court authority that has now been abrogated. *See*, *e.g.*, *I.C.S.*, 403 Ill.App.3d at 221. In fact, the Northern District of Illinois has recognized that, following *TransUnion*'s clarification that "[e]very class member must have Article III standing in order to recover individual damages," it is an open question whether a class action can proceed to certification without a showing that each putative class member has standing. *See, e.g.*, *Angulo v. Truist Bank*, No. 22 C 923, 2023 WL 1863049, at *3 n. 3 (N.D. Ill. Feb. 9, 2023) (quoting *TransUnion*, 141 S.Ct. at 2208 n. 4).

The argument for considering the standing of putative class members—not just that of the named plaintiffs—becomes even more compelling where, as here, a class action proceeding in Illinois would afford recovery rights upon citizens of other states who would have no such substantive rights in their own states for conduct occurring ***in those other states***. Such a combined application of Illinois standing law and class action procedure would deprive Cinemark of substantive, indeed ***dispositive***, defenses against huge numbers of class members' claims, in direct violation of Cinemark's Due Process rights. It is black letter law that the procedural class mechanism cannot be used to grant a party rights it would not have in an individual case or deprive a party of its substantive rights or defenses. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 367 (2011) ("a class cannot be certified on the premise that [a defendant] will not be entitled to litigate . . . defenses to individual claims"); *Marshall v. H&R Block Tax Svcs., Inc.*, 564 F.3d 826, 829 (7th Cir. 2009) (class action procedures "shall not abridge, enlarge or modify

any substantive right.") (internal quotations omitted). The Illinois Supreme Court has recognized this rule as well. *Smith v. Illinois Cent. R.R. Co.*, 223 Ill.2d 441 (2006) (The "procedural device" of a class action "may not be construed to enlarge or diminish any [parties'] substantive rights or obligations") (internal citation and quotations omitted). Thus, Illinois's highest court, like the U.S. Supreme Court, recognizes that Illinois courts cannot by class procedure prevent Cinemark from fully defending on all substantive grounds, including lack of standing, the claims of putative plaintiffs from, *e.g.*, California, Delaware, Florida, Iowa, Missouri, or Ohio.

Given that Cinemark's substantive rights with respect to putative class members' claims cannot be diminished by class treatment, this Court should conclude that standing is required for all putative class members, not just Plaintiff. Accordingly, the Complaint's national class allegations should be stricken, or at least limited to citizens of Illinois and New Jersey.

C. ALLOWING PLAINTIFF'S NO-INJURY PUTATIVE NATIONAL CLASS CLAIMS TO PROCEED WOULD INVITE FORUM SHOPPING

In light of *TransUnion* and resulting case law across the country, refusing to require (i) actual injury and (ii) standing for absent class members would incentivize forum shopping to Illinois. Longstanding precedent strongly counsels Illinois courts against incentivizing forum shopping. *Merritt v. Goldenberg*, 362 Ill.App.3d 902, 910 (2005) ("A plaintiff's use of forum-shopping . . . is against Illinois's public policy."); *Fennel v. Ill. Cent. R. Co.*, 2012 IL 113812, ¶ 19, 987 N.E.2d 355 ("Decent judicial administration cannot tolerate forum shopping.").

Indeed, this case exemplifies precisely the kind of forum shopping that would be incentivized by permitting plaintiffs to bring no-injury FACTA suits in Illinois that they could not sustain elsewhere. Two of Plaintiff's lawyers originally filed an identical suit in California, styled

LaKeenya Neal et. al. v. Cinemark USA Inc., et. al., but voluntarily dismissed it because they believed the *Limon* decision (requiring concrete injury for standing) impacted the viability of the suit in California, while Illinois would provide a more favorable forum.[9] Adopting a rule that would allow Plaintiff's no-injury suit to proceed on behalf of a national class of people who could not sue individually in their home states or any federal court would plainly reward forum shopping and run afoul of Illinois's public policy. *See Merritt*, 362 Ill.App.3d at 910.

IV. CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiff's suit because he lacks standing to sue on his no-injury claim for statutory damages under FACTA. But, if the Court were to elect not to follow *TransUnion* and dismiss Plaintiff's claim for lack of standing, the putative national class allegations should nonetheless be stricken (or at least limited to citizens of Illinois and New Jersey) on the grounds that Illinois cannot grant to citizens of other states standing to sue on a federal claim that they could not bring in either the courts of their home states or in any federal court.

WHEREFORE, Cinemark respectfully requests that this Court enter an Order granting this Motion, dismissing Plaintiff's claim against it for lack of standing with prejudice, and for such other and further relief this Court deems equitable, just, and proper.

[9] Cinemark asks the Court to take judicial notice of the Complaint in *Neal*, as well as of the plaintiffs' request for dismissal, which admits and explains the reasoning for the dismissal there. These documents are Exhibits 4 and 5, respectively.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 22, 2023, she caused a true and correct copy of the foregoing document(s) to be filed via the Court's Electronic Case Filing (ECF) system and thereby served on counsel and all other parties of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this certificate of service are true and correct.

Appendix 1

Supporting Citations for Additional States that Track *Lujan* and Require Injury in Fact to Have Standing to Sue

APPENDIX 1: SUPPORTING CITATIONS FOR ADDITIONAL STATES THAT TRACK *LUJAN* AND REQUIRE INJURY IN FACT TO HAVE STANDING TO SUE

State	Authority
1. Alabama	*Ex parte King,* 50 So.3d 1056, 1059 (Ala. 2010) ("This Court has adopted the *Lujan* test as the means of determining standing in Alabama.").
2. Alaska	*Wagstaff v. Superior Court*, 535 P.2d 1220, 1225 (Alaska 1975) (explaining that Alaska employs an injury in fact test).
3. Arizona	*Brewer v. Burns,* 213 P.3d 671, 674 (Ariz. 2009) ("To have standing, a party generally must allege a particularized injury that would be remediable by judicial decision.").
4. Colorado	*Schaden v. DIA Brewing Co., LLC*, 478 P.3d 1264, 1274 (Colo. 2021) ("In order to establish standing, a plaintiff must demonstrate that (1) he or she has suffered an injury in fact and (2) the injury was to a legally protected interest.").
5. Connecticut	*State Marshal Association of Connecticut, Inc. v. Johnson*, 198 Conn.App. 392, 234 A.3d 111, 125 (Ct. App. 2020) ("standing requires 'some direct injury for which the plaintiff seeks redress'") (quoting *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 613, 508 A.2d 743 (1986)).
6. District of Columbia	*Grayson v. AT&T Corp*., 15 A.3d 219, 235 n. 38 and 243-44 (D.C. 2011) (determining that a statute which plaintiff alleged removed the District's injury requirement did not do so, reasoning that "[e]limination of our constitutional standing requirement would be so unusual that we will not lightly infer such intent on the part of the Council. Thus, without a clear expression of an intent by the Council to eliminate our constitutional standing requirement, we conclude that a lawsuit under the CPPA does not relieve a plaintiff of the requirement to show a concrete injury-in-fact to himself.").
7. Georgia	*Oasis Goodtime Emporium I, Inc. v. City of Doraville*, 773 S.E.2d 728, 734 n. 9 (Ga. 2015) ("This Court has previously cited *Lujan* in assessing standing under Georgia law.").
8. Hawai'i	*Community Assn's of Hualalai, Inc. v. Leeward Planning Comm'n*, 150 Hawai'i 241, 500 P.3d 426, 443 (2021) ("This court evaluate[s] standing using the 'injury in fact' test requiring: (1) an actual or threatened injury, which, (2) is traceable to the challenged action, and (3) is likely to be remedied by favorable judicial action.").
9. Idaho	*Knox v. State ex rel. Otter*, 148 Idaho 324, 336, 223 P.3d 266, 278 (2009) ("To satisfy the requirement of standing litigants must allege an injury in fact, a fairly traceable causal connection between the claimed injury and the challenged conduct, and a

	substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.").
10. Indiana	*City of Gary v. Nicholson*, 190 N.E.3d 349 (Ind. 2022) ("Indiana law is clear that standing requires an injury. But the plaintiffs, acknowledging they have alleged no injury, argue instead that lack of injury is 'irrelevant' here because they have statutory and public standing. We disagree.").
11. Kansas	*Gannon v. State*, 319 P.3d 1196, 1210 (Kan. 2014) ("Under the traditional test for standing in Kansas, a person must demonstrate that he or she suffered a cognizable injury and that there is a causal connection between the injury and the challenged conduct. We have also referred to the cognizable injury as an injury in fact.").
12. Kentucky	*Commonwealth Cabinet for Health & Fam. Servs., Dep't for Medicaid Servs. v. Sexton ex rel. Appalachian Reg'l Healthcare, Inc.*, 566 S.W.3d 185, 188 (Ky. 2018) (explaining that Kentucky uses the *Lujan* requirements).
13. Minnesota	*In re Custody of D.T.R.*, 796 N.W.2d 509, 512-13 (Minn. 2011) (explaining that to demonstrate an injury in fact the plaintiff must show "a concrete and particularized invasion of a legally protected interest").
14. Montana	*Heffernan v. Missoula City Council*, 2011 MT 91, 360 Mont. 207, 255 P.3d 80, 91-92 (2011) (explaining the federal requirements of standing before stating that "[s]imilarly, in Montana, to meet the constitutional case-or-controversy requirement, the plaintiff must clearly allege a past, present, or threatened injury to a property or civil right").
15. Nebraska	*Central Neb. Pub. Power Dist. v. North Platte NRD,* 280 Neb. 533, 788 N.W.2d 252, 260 (2010) ("[A] litigant first must clearly demonstrate that it has suffered an injury in fact.").
16. Nevada	*Titus v. Umpqua Bank*, 132 Nev. 1037, 2016 WL 1335613, at *1 (2016) (citing federal standing precedent for the proposition that "to pursue a legal claim, an injury in fact must exist").
17. New Mexico	*ACLU of N.M. v. City of Albuquerque*, 144 N.M. 471, 188 P.3d 1222, 1226-28 (2008) (declining to eliminate injury in fact requirement).
18. New York	*Mental Hygiene Legal Service v. Daniels*, 33 N.Y.3d 44, 50 (N.Y. 2019) (explaining that New York's "injury in fact requirement necessitates a showing that the party has an actual legal stake in the matter being adjudicated and has suffered a cognizable harm").
19. Oklahoma	*Toxic Waste Impact Group, Inc. v. Leavitt*, 890 P.2d 906, 911 (Ok. 1994) (adopting the three part test from the Supreme Court's *Lujan* decision).

20. Rhode Island	*Pontbriand v. Sundlun*, 699 A.2d 856, 862 (R.I. 1997) (quoting *Lujan* in defining the state's injury in fact requirement).
21. South Carolina	*ATC South, Inc. v. Charleston Cnty.,* 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008) (requiring a concrete and particularized injury in fact and quoting *Lujan*).
22. South Dakota	*Cable v. Union County Bd. Of County Com'rs*, 769 N.W.2d 817, 825-26 (S.D. 2009) ("First, the plaintiff must establish that he suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical.").
23. Tennessee	*City of Memphis v. Hargett*, 414 S.W.3d 88, 98 (Tenn. 2013) ("First, a party must show an injury that is distinct and palpable.").
24. Texas	*DaimlerChrysler Corp. v. Inman*, 252 S.W.3d 299, 304-05 (Tex. 2008) (explaining that a "a plaintiff must be personally aggrieved; his alleged injury must be concrete and particularized, actual or imminent, not hypothetical").
25. Utah	*Southern Utah Wilderness Alliance v. Kane County Comm'n*, 2021 UT 7, 484 P.3d 1146, 1153 (2021) (explaining that, like in federal court, a concrete and particularized injury is required in Utah).
26. Vermont	*Brod v. Agency of Natural Resources*, 182 Vt. 234, 936 A.2d 1286, 1289 (2007) ("To satisfy the [standing requirements], plaintiffs must show (1) injury in fact, (2) causation, and (3) redressability.").
27. West Virginia	*Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002) ("First, the party attempting to establish standing must have suffered an 'injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical.").
28. Wyoming	*Miller v. Wyo. Dep't of Health*, 275 P.3d 1257, 1262 (Wyo. 2012) (citing *Lujan* for the proposition that a plaintiff must have suffered an injury in fact).

EXHIBIT 1

Firm 39042

IN THE
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GERARDO RODRIGUEZ, individually and on behalf of others similarly situated, Plaintiff, v. CINEMARK USA, INC., a Texas corporation; CINEMARK HOLDINGS, INC., a Delaware corporation, Defendants.	)	Case No.: 2023CH01857

CLASS ACTION COMPLAINT

Plaintiff, Gerardo Rodriguez, on behalf of himself and other similarly situated individuals, sues Defendants Cinemark USA, Inc. and Cinemark Holdings, Inc., and alleges the following:

INTRODUCTION

1. This action arises from Defendants' violation of the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as amended ("FCRA"), a federal statute which requires merchants to mask certain credit card and debit card information on receipts provided to consumers.

2. Despite the clear language of the statute, Defendant knowingly or recklessly failed to comply with FACTA by printing the first six (6) and the last (4) of credit or debit card numbers on receipts provided to consumers. As a result of Defendant's unlawful conduct, Plaintiff and the proposed Class, each of whom conducted business with Defendant during the time frame relevant to this complaint, suffered a violation of their statutory rights under § 1681c(g), an invasion of their privacy, and were burdened with an elevated risk of identity theft. Accordingly, Plaintiff and

the proposed Class members are entitled to an award of statutory damages as provided by 15 U.S.C. § 1681n.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 735 ILCS 5/2-209(a)(1) because Defendants conduct substantial business in Illinois, and because the tortious acts complained of occurred in substantial part within Illinois.

4. Venue is proper in Cook County because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.

PARTIES

5. Plaintiff, Gerardo Rodriguez, is a natural person who resides in Cook County, State of Illinois.

6. Defendant Cinemark USA, Inc. is Texas corporation whose headquarters are located at 3900 Dallas Parkway, Ste. 500, Plano, Texas 75093, and whose registered agent for service of process is Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

7. Defendant Cinemark Holdings, Inc., is a Delaware corporation whose headquarters are located at 3900 Dallas Parkway, Ste. 500, Plano, Texas 75093, and whose registered agent for service of process is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808.

8. Defendants are leaders in the theatrical exhibition industry and collectively exercise control over 517 theatres and 5,835 screens in the U.S. and Latin America as of September 30,

2022 with seven of them located in Illinois.[1]

FACTUAL ALLEGATIONS

Background of FACTA

9. Identity theft is a serious issue affecting both consumers and businesses. In 2021, nearly 42 million Americans were victims of identity theft, costing consumers $52 billion in total losses. https://www.aarp.org/money/scams-fraud/info-2022/javelin-report.html. Furthermore, according to a 2021 study, 22% of U.S. adults were victims of account takeovers (when a thief commits fraud using a victim's stolen information). See https://www.consumeraffairs.com/finance/identity-theft-statistics.html#:~:text=In%20its%202021%20Annual%20Data,of%201%2C506%20set%20in%202017

10. Upon signing FACTA into law, President George W. Bush remarked that "[s]lips of paper that most people throw away should not hold the key to their savings and financial secrets." 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4, 2003). President Bush added that the government, through FACTA, was "act[ing] to protect individual privacy." Id.

11. Years later the FTC explained "[c]redit card numbers on sales receipts are a 'golden ticket' for fraudsters and identity thieves." https://www.ftc.gov/tips-advice/business-center/guidance/slip-showing-federal-law-requires-all-businesses-truncate

12. One FACTA provision was specifically designed to thwart identity thieves' ability to gain sensitive information regarding a consumer's credit or bank account from a receipt provided to the consumer during a point-of-sale transaction, which, through any number of ways, could and at times have fallen into the hands of someone other than the consumer.

[1] Source: https://ir.cinemark.com/company-information (last viewed Feb. 22, 2023).

13. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

> ***"Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction."***

15 U.S.C. § 1681c(g)(1) (the "Receipt Provision").

14. After enactment, FACTA provided three (3) years in which to comply with its requirements, mandating full compliance with its provisions no later than December 4, 2006.

15. The requirement was widely publicized among retailers and the FTC. For example, on March 6, 2003, in response to earlier state legislation enacting similar truncation requirements, then-CEO of Visa USA, Carl Pascarella, explained;

> "Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. The card's expiration date will be eliminated from receipts altogether.... The first phase of this new policy goes into effect July 1, 2003, for all new terminals ...."

16. Within 24 hours, MasterCard and American Express announced they were imposing similar requirements.

17. Card issuing organizations proceeded to require compliance with FACTA **by contract**, in advance of FACTA's mandatory compliance date. For example, the publication, "Rules for Visa Merchants," which is distributed to and binding upon all merchants that accept Visa cards, expressly requires that ***"Visa requires that all new electronic POS terminals provide account number truncation on transaction receipts. This means that only the last four digits of an account number should be printed on the customer's copy of the receipt, and the expiration***

date should not appear at all."[2]

18. Because a handful of large retailers did not comply with their contractual obligations to the card companies and FACTA's straightforward requirements, Congress passed The Credit and Debit Card Receipt Clarification Act of 2007, to make technical corrections to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act.

19. Importantly, the Clarification Act did not amend FACTA to allow disclosure of card expiration dates. Instead, it simply provided amnesty for certain past violators up to June 3, 2008.

20. In the interim, card processing companies continued to alert their merchant clients, including Defendant, of FACTA's requirements. According to a Visa Best Practice Alert in 2010:

> Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit http://www.ftc.gov/os/statutes/fcrajump.shtm for more information on the FACTA.) To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

21. As noted above, the processing companies have required that credit card or debit card expiration dates not be shown since 2003 and still require it. For example, American Express

[2] Source: https://usa.visa.com/dam/VCOM/download/about-visa/visa-rules-public.pdf, at p. 21 (last viewed Feb. 11, 2023).

requires:

> Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as “x,” “*,” or “#,” and not blank spaces or numbers.

22. Similarly, MasterCard required in a section titled Primary Account Number (PAN) truncation and Expiration Date Omission:

> A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*," or "#," that are neither blank spaces nor numeric characters.

23. In sum, FACTA clearly prohibits the printing of more than the last five digits of the card number primarily to help protect persons from identity theft.

24. The risk of identity theft caused by disclosing of the first six digits of a debit or credit card number on customer transaction receipts is substantial, as it enables a thief who finds the receipt to generate the customer’s full card information and commit fraud.

25. For example, at least one study demonstrated that in just six seconds, a thief armed with nothing more than the first six and last four digits of a credit card account number – the very information disclosed on Plaintiff’s receipt here – can deduce the missing digits and make a fraudulent purchase online using a “distributed guessing attack,” *i.e.*, systematically attempting multiple online purchases with different number combinations. (*The Independent*, “Criminals can guess Visa card number and security code in just six seconds, experts find.”).

26. These kinds of attacks have increased. Visa recently reported “enumeration attacks” which, like the distributed-guessing attack above, involve fraudsters using automated computer programs to systematically submit multiple variations of card data (including the card number,

expiration date, and security or CVV code) to try to correctly guess a working set of numbers, are on the rise. (Visa Business News, Best Practices, Sept. 13, 2021) ("Visa has observed a sustained increase in enumeration attacks …"). This is further confirmed by the PCI Security Standards Council and National Cyber-Forensics and Training Alliance October 21, 2020 bulletin, which expressly describes these enumeration attacks as "an ongoing threat that requires urgent attention."

27. Defendants' practice of printing the last four digits of the card number on the receipt along with the first six also enhances a thief's ability to conduct these attacks because the last digit of the card number is a "check digit," *i.e.*, a digit whose value is determined based on the other digits of the card number using a formula called the Luhn algorithm. This significantly limits the number of possible combinations a thief will need to attempt to discover the missing digits.

28. The first six digits of a card also reveal details merchants do not normally print on the receipt that a thief can use to deduce missing account information needed to commit fraud via "phishing" inquiries, *i.e.*, using the first six digits and information about the cardholder's account learned from it, the thief can call or email the consumer posing as the store or bank and convince the consumer the call is legitimate, to extract more data. *See, e.g.*, *Redman*, 768 F.3d at 626 (data FACTA prohibits merchants from printing on the receipt can "bolster the credibility of a criminal" in "phishing scams"). Account information revealed by the first six digits includes, but is not limited to, the name of the card-issuing institution, the card level (black, platinum, business), and the card industry program (*e.g.* airline or gas card) or merchant program (such as American Airlines AAdvantage Miles, Hilton Honors Points, etc.). As one resource succinctly puts it: "**The BIN/IIN [*i.e.* the first six digits] provides merchants with a lot of other information besides**

just the issuing entity.").[3]

29. Disclosing FACTA-prohibited information on the receipt also gives thieves multiple ways to access it. In addition to finding the receipt if discarded or lost, expert testimony to Congress established printing the information where it can be seen risks its capture by "unscrupulous employees" or "shoulder-surfers" (persons standing nearby) who see the receipt.

30. The only reason Plaintiff was exposed to these real risks is because Defendants printed the first six and last four digits of his card number on his receipt. Absent Defendants' memorialization of the first six digits of Plaintiff's card on the receipt, a thief has no practical way to learn that information because banks issue cards using multiple first-six digit combinations, sometimes hundreds by a single bank, and thus without the receipt a thief cannot determine which first-six-digit combination is on Plaintiff's card.

Defendants' Prior Knowledge of FACTA

31. Defendants had actual knowledge of FACTA's truncation requirement long before they began failing to comply with the requirement *en masse*.

32. Despite the many warnings Defendants received regarding FACTA and its requirements, a federal lawsuit was filed on February 5, 2007, against Cinemark USA, Inc. for failing to comply with FACTA's requirements at one of their California locations. See *Vigdorchik v. Century Theatres Inc., and Cinemark USA, Inc*., No. 07-cv-00736 (N.D. Cal.). In addition, on May 29, 2013, Cinemark purchased another movie theater chain which had also been sued—in

[3]See https://chargebacks911.com/bank-identification-numbers/#:~:text=The%20BIN%2FIIN%20provides%20merchants,funds%20will%20be%20transferred%20from at "How Bank Identification Numbers Help" (bold and brackets added).

this instance multiple times—for violation of FACTA.[4] *See Grimes v. Rave Motion Pictures Birmingham, L.L.C.*, 264 F.R.D. 659 (N.D. Ala. 2010); *Rave Motion Pictures Little Rock, L.L.C., et al.*, Case 4:07-cv-00659-JLH (July 30, 2007 E.D. Ark.).[5]

33. Now, despite having been previously sued for violating FACTA on at least three other occasions, Defendants have once again knowingly or recklessly violated the aforesaid federal law by printing the first six and last four digits of customers' credit and debit card numbers on transaction receipts at one or more of their movie theaters within the United States, including but not limited to theaters in Illinois. *See Redman v. RadioShack Corp.*, 768 F.3d 622, 638 (7th Cir. 2014) (Posner, J.) (willfulness in FACTA class action lawsuit was "straightforward" wherein defendant violated a parallel state statute years earlier).

34. Defendants were not only clearly informed not to print more than the last five digits of credit or debit cards on their receipts, but were contractually prohibited from doing so. Defendants accept credit and debit cards from all major issuers, such as Visa, MasterCard, American Express and Discover Card. Each of these companies sets forth requirements that merchants such as (and including) Defendants must follow, including FACTA's redaction and truncation requirements found in the Receipt Provision. *See. e.g., Operating Engineers Pension*

[4] Source: https://ir.cinemark.com/sec-filings/all-sec-filings/content/0001193125-14-183653/0001193125-14-183653.pdf, p.9 (last viewed Feb. 11, 2023).

[5] Rave Motion Pictures' knowledge of FACTA on the basis the previous lawsuits can be imputed to Cinemark because of Cinemark's acquisition of Rave. *See S'holder Representative Servs. LLC v. RSI Holdco*, No. CV 2018-0517-KSJM, 2019 WL 2290916 (Del. Ch. May 29, 2019) ("all assets of a target company, including privileges over attorney-client communications, transfer to the surviving company unless the sellers take affirmative action to prevent transfer of those privileges"); *Wells Fargo & Co. v. United States*, 117 Fed. Cl. 30, 38 (2014) ("Because the surviving corporation steps into the shoes of the acquired entity and the surviving corporation is liable retroactively for the tax payments of its predecessors, it does not matter when the initial payments were made. Put another way, following a merger, the law treats the acquired corporation as though it had always been part of the surviving entity").

Trust v. Gilliam, 737 F.2d 1501, 1504 (9th Cir.1984) ("[one] who signs a written agreement generally is bound by its terms, even though he neither reads it nor considers the legal consequences of signing it.") (applying California law); *Wilton Properties, II v. 99 West, Inc*., 2000 WL 33170832 (Mass.Super.2000) ("[I]in the absence of fraud, one who signs a written agreement is bound by its terms whether he reads and understands it or not or whether he can read or not.").

35. Most of Defendants' business peers and competitors currently and diligently ensure their credit card and debit card receipt printing process remains in compliance with FACTA by consistently verifying their card machines and devices comply with the Receipt Provision. Defendants could very easily have done the same.

36. Plaintiff is informed and believes, and thereupon alleges, that had Defendants chosen to do so, it would have taken less than thirty seconds to run a test receipt in order to determine whether or not their point-of-sale system was printing FACTA-violative receipts.

Plaintiff's Factual Allegations

37. On or about November 23, 2021, Plaintiff used his personal VISA debit card to purchase a ticket the Cinemark movie theater in Melrose Park, IL.

38. After making his purchase, Plaintiff was subsequently presented with an electronically printed receipt showing the first six (6) and last four (4) digits of his debit card number.

39. As a direct result of the receipt showing ten (10) digits of his debit card number, Plaintiff felt it necessary to take steps to safeguard the receipt.

40. The printing of the first six (6) and last four (4) digits of his debit card number compromised the privacy of Plaintiff's sensitive financial information.

41. The printing of the first six (6) and last four (4) digits of his debit card number was

also a breach of confidence in the safe handling of his sensitive financial information, as well as a breach of an implied bailment.

Defendants' Misdeeds

42. Plaintiff is informed and believes, and thereupon alleges, that Defendants implement, oversee, and maintain control over the same uniform debit and credit card payment processing policies, practices, and procedures for the transactions at issue in this case – including, without limitation, negotiating, entering into, and acting pursuant to various contracts and agreements with the electronic payment processing company whose technology Defendants use to process all such transactions at their movie theater locations.[6]

43. The point-of-sale systems used by Defendants maintain records of all payment transactions and have the ability to print duplicate copies of all payment receipts provided to customers.

44. Notwithstanding their extensive knowledge of the requirements of FACTA and the well-documented dangers imposed upon consumers through their failure to comply, Defendants issued thousands of point of sale receipts containing the first six (6) plus the last four (4) digits of credit and debit card account numbers.

[6] Source: Cinemark Form 10-k years 2012, 2013, 104, 2015, available at https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-12-089012/0001193125-12-089012.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-13-083890/0001193125-13-083890.pdf https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-13-083890/0001193125-13-083890.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-14-077445/0001193125-14-077445.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-15-069425/0001193125-15-069425.pdf (last visited Dec. 3, 2021) ("We have developed our own proprietary point of sale system to enhance our ability to maximize revenues, control costs and efficiently manage operations. The system is currently installed in all of our U.S. theatres.")

45. By ignoring the requirements of this important federal statute, in an environment already ripe for identity theft and other evils, Defendants uniformly invaded Plaintiff's and the proposed Class members' privacy. Defendants' conduct alleged herein resulted in the potential disclosure of Plaintiff's and the proposed Class members' private financial information to the world, including, but not limited to, persons who might find the receipts in the trash or elsewhere, dedicated identity thieves who thrive in environments such as Defendants' various locations, and Defendants' agents or employees who handled the receipts.

46. Simply put, by printing numerous transaction receipts in wholesale violation of a well-known federal statute, Defendants have caused – to paraphrase the words of the Honorable Judge Posner (Ret.) – "an unjustifiably high risk of harm that [wa]s either known or so obvious that it should [have been] known" to Defendants. *Redman v. RadioShack Corp.*, 768 F.3d 622, 627 (7th Cir. 2014) (quoting *Farmer v. Brennan*, 511 U.S. 825, 836, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)).

CLASS ACTION ALLEGATIONS

47. Plaintiff brings this class action on behalf of himself and all persons in the United States who, within the time frame relevant to this action, engaged in one or more transactions using a debit card or credit card at a Cinemark location at a time when the point-of-sale system used to process the transaction was programmed to print more than the last five digits of the credit or debit card account number used in the transaction on the customer's receipt. Plaintiff is a member of this class. Excluded from the Class are the Judge to whom this case is assigned, any members of the Judge's immediate family, and counsel of record in this action.

48. Members of the proposed Class are so numerous that joinder of all members would be impracticable.

49. There are questions of law and fact common to all the members of the proposed Class that predominate over any questions affecting only individual members.

50. Plaintiff's claims are typical of the claims of other members of the proposed Class.

51. Plaintiff has no interests antagonistic to those of the proposed Class and Defendants have no defenses unique to Plaintiff.

52. Plaintiff will fairly and adequately protect the interests of the proposed Class, and has retained attorneys experienced in class and complex litigation.

53. A class action is superior to all other available methods for this controversy because: (i) the prosecution of separate actions by the members of the proposed Class would create a risk of adjudications with respect to individual members of the proposed Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; (ii) the prosecution of separate actions by the members of the proposed Class would create a risk of inconsistent or varying adjudications with respect the individual members of the proposed Class, which would establish incompatible standards of conduct for Defendants; (iii) Defendants acted or refused to act on grounds generally applicable to the proposed Class; and (iv) questions of law and fact common to members of the proposed Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

54. Plaintiff does not anticipate any difficulty in the management of this litigation.

55. The questions of law and fact which predominate over questions that may affect any individual proposed Class member include the following:

a. Whether Defendants and/or their agents generated customer transaction receipts displaying more than the last five digits of customer debit or credit card numbers, violating FACTA;

b. Whether Defendants' conduct was knowing or reckless;

c. Whether Defendants are liable for statutory damages, and the extent of such damages.

COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

56. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

57. 15 U.S.C. §1681c(g)(1) states as follows:

> ***"Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction."***

58. This section applies to any "device that electronically prints receipts" (hereafter "Devices") at point of sale or transaction. 15 U.S.C. §1681c(g)(3).

59. Defendants employ the use of said Devices for point-of-sale transactions at their movie theater locations in the United States.

60. On or before the date on which this complaint was filed, Defendants provided Plaintiff and members of the proposed Class with receipt(s) that failed to comply with the Receipt Provision.

61. At all times relevant to this action, Defendants were aware of both the Receipt Provision as well as the requirement to comply with said provision.

62. Notwithstanding the three-year period to comply with FACTA and its accompanying provisions, nor the subsequent years since FACTA became effective; and having

knowledge of the Receipt Provision and FACTA as a whole; Defendants knowingly or recklessly violated the FCRA and the Receipt Provision.

63. By printing the first six (6) and last four (4) digits of Plaintiff's debit card numbers on his transaction receipt, Defendants have caused Plaintiff to suffer a heightened risk of identity theft, compromised the privacy of Plaintiff's personal and private financial information, exposed Plaintiff's private information to those of Defendants' employees and who may have handled the receipt and compelled Plaintiff to take action to prevent further disclosure of the private information displayed on the receipts. *See Muransky*, 2018 WL 4762434, at *6.

64. As a result of Defendants' willful violations of the FCRA, Defendants are liable to Plaintiff and members of the proposed Class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney's fees and costs.

* * *

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and that of the proposed Class, and against Defendants as follows:

a. Granting certification of the Class;

b. Awarding statutory damages;

c. Awarding punitive damages;

e. Awarding attorneys' fees, litigation expenses and costs of suit; and

f. Awarding such other and further relief as the Court deems proper under the circumstances.

Dated: February 24, 2023

Respectfully submitted,

s/Keith J. Keogh
Keith J. Keogh

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Illinois Supreme Court Rule 222 Affidavit

I, Keith J. Keogh, an attorney, certify under penalty of perjury that the amount sought in this action exceeds $50,000.

s/Keith J. Keogh
Keith J. Keogh

EXHIBIT 2

IN THE

SUPREME COURT OF ILLINOIS

Karen Duncan, Individually and on Behalf of All Others Similarly Situated,	)	
Appellee	)	Petition for Leave to Appeal from Appellate Court
v.	)	First District
	)	1-18-0857
FedEx Office and Print Services, Inc., a Texas corporation,	)	17CH14517
Appellant	)	

ORDER

This cause coming to be heard on the joint motion of the parties, and the Court being fully advised in the premises;

IT IS ORDERED that the motion to dismiss the appeal is allowed. The appeal is dismissed. The Appellate Court, First District, is directed to vacate its January 25, 2019, judgment in case No. 1-18-0857. The appellate court is directed to remand the case to the circuit court with directions to dismiss the complaint with prejudice.

Order entered by the Court.

FILED
November 21, 2019
SUPREME COURT
CLERK

EXHIBIT 3

IN THE

SUPREME COURT OF ILLINOIS

Hugo Soto and Sharon Soto, Individually and on behalf of similarly situated persons, Appellees v. Great America LLC, d/b/a Six Flags Great America and Six Flags Hurricane Harbor and Does 1 to 20, Appellant	)	Petition for Leave to Appeal from Appellate Court Second District 2-18-0911 17CH1118

ORDER

This cause coming to be heard on the joint motion of the parties, and the Court being fully advised in the premises;

IT IS ORDERED that the joint motion to dismiss appeal is allowed. In the exercise of this Court's supervisory authority, the Appellate Court, Second District, is directed to vacate its judgment and opinion in Soto, Hugo, et al. v. Great America LLC, 2020 IL App (2d) 180911.

Order entered by the Court.

FILED
July 16, 2021
SUPREME COURT
CLERK

EXHIBIT 4

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CINEMARK USA, INC., a Texas corporation; CINEMARK HOLDINGS, INC., a Delaware corporation

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

LAKEENYA NEAL, and ROBERTO A. MENDOZA, individually and on behalf of a class of other similarly situated individuals,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Los Angeles Superior Court
111 N. Hill Street, Los Angeles CA 90012

CASE NUMBER: *(Número del Caso):*
21STCV44508

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: *(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*

John R. Habashy, Esq.; Lexicon Law PC, 633 W. 5th Street 28th Floor, Los Angeles, CA 90071

DATE: *(Fecha)* 12/07/2021

Clerk, by *(Secretario)* Sherri R. Carter Executive Officer / Clerk of Court, Deputy *(Adjunto)* R. Lozano

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. [ ] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [X] on behalf of (specify): CINEMARK HOLDINGS, INC., a Delaware corporation
   under: [X] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
   [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
   [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (authorized person)
   [ ] other *(specify)*:
4. [ ] by personal delivery on *(date)*:

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

SUMMONS

Code of Civil Procedure §§ 412.20, 465
www.courts.ca.gov

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Scott D. Owens (FL 0597651)
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(pending admission *pro hac vice*)
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Hollywood, Florida 33020
Tel: (954) 589-0588
Facsimile: (954) 337-0666

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

LAKEENYA NEAL, and ROBERTO A. MENDOZA, individually and on behalf of a class of other similarly situated individuals,

Plaintiffs,

v.

CINEMARK USA, INC., *a Texas corporation;* CINEMARK HOLDINGS, INC., *a Delaware corporation*;

Defendants.

CASE NO: 21STCV44508

CLASS ACTION

VIOLATION OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (FACTA)

JURY TRIAL DEMANDED

Plaintiffs, Lakeenya Neal ("Plaintiff Neal") and Roberto A. Mendoza ("Plaintiff Mendoza" and collectively with Plaintiff Neal, the "Plaintiffs"), on behalf of themselves and

other similarly situated individuals, sue Cinemark USA, Inc. and Cinemark Holdings, Inc. ("Defendants" or "Cinemark"), and allege the following:

INTRODUCTION

1. This action arises from Defendants' violation of the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., as amended (the "FCRA"), a federal statute which requires merchants to truncate certain credit card and debit card information on printed receipts provided to consumers.

2. Despite the clear language of the statute and having been previously sued for similar violations of FACTA, Defendants knowingly or recklessly failed to comply with FACTA by printing more than the last five digits of consumers' debit and credit cards on receipts provided to consumers. As a result of Defendants' unlawful conduct, Plaintiffs and the Class who have conducted business with Defendants during the time frame relevant to this complaint have suffered a violation of their statutory rights under § 1681c(g), an invasion of their privacy and have been burdened with an elevated risk of identity theft.

3. This Court has recently held that "California law [] does not restrict courts from enforcing substantive legal rights created by a legislature in favor of an individual even when the individual can show no injury other than the invasion of the substantive legal right". *Escobar v. Major League Baseball, et al.*, Case No. 18STCV02491 (Cal. Super. Ct., County of Los Angeles, May 8, 2019) (Order overruling defendant's demurrer). This Court also noted that California courts are not bound by the case and controversy requirement of Article III. *Id.*; *see also Tran v. Kohl's Corp.*, 2018 WL 11226904, at *4 (Cal. Super.) ("The Court rejects Kohl's argument that the Plaintiff lacks standing because Congress made clear that the FACTA is meant to prevent identity theft and credit card fraud, including an expiration date on a receipt does not

increase the risk of identity theft or credit card fraud, and that the FACTA is not meant to protect consumers who have suffered no actual harm to their credit or identity. The law, as written, is not so limited."); *Keim v. Trader Joe's*, Case No. BC683803 (Cal. Super. Ct., County of Los Angeles, May 4, 2021) ("As noted above, '[t]he Legislature defined PAGA standing in terms of violations, not injury." *Kim*, 9 Cal.5th at 84. Thus, under PAGA's plain language, a plaintiff need not allege actual harm to have standing to pursue PAGA penalties. As with PAGA, the plain language of FACTA does not require a plaintiff to allege actual harm to pursue a claim for willful violation of FACTA. To read a requirement of actual harm into Section 1681n(a)(1)(A) would be to ignore the Supreme Court's clear admonition that courts should not insert additional elements of proof into a statute that the Legislature clearly did not intend.").

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper in this Court as the amount in controversy is not less than the jurisdictional limit of this Court.

5. *In personam* jurisdiction over the Defendants is proper in this Court as the Defendants, or some of them, conduct substantial business within the State such that their affiliation is continuous and systematic.

6. Venue is proper in this Court as the violations of federal law complained of herein occurred within the City and County of Los Angeles, State of California.

PARTIES

7. Plaintiff Neal is a natural person over the age of eighteen (18) who resides in Los Angeles County, State of California.

8. Plaintiff Mendoza is a natural person over the age of eighteen (18) who resides in Los Angeles County, State of California.

9. Defendant Cinemark USA, Inc. is a Texas corporation with its headquarters located at 3900 Dallas Parkway, Ste 500, Plano, Texas 75093.

10. Defendant, Cinemark Holdings, Inc. is a corporation incorporated in Delaware, with its headquarters located at 3900 Dallas Parkway, Ste 500, Plano, Texas 75093. Cinemark Holdings, Inc. is a leader in the motion picture exhibition industry with 524 theatres and 5,897 screens in the U.S. and Latin America as of September 30, 2021.

11. Defendants collectively exercise control over the Cinemark movie theaters, including but not limited to, the type of point of sale (POS) terminals utilized to print receipts at Cinemark movie theaters in California and throughout the United States.

FACTUAL ALLEGATIONS

Background of FACTA

12. Congress enacted FACTA to prevent identity theft and related harm. See Pub. L. No. 108-159 (December 4, 2003) ("An Act . . . to prevent identity theft . . . and for other purposes.").

13. The "[s]tatutory text, legislative history, and public policy make clear that Congress, in passing FACTA, recognized that consumers have a concrete interest in using their cards without fear that each swipe will raise their risk of identity theft." *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 939 (11th Cir. 2020).

14. Upon signing FACTA into law, President George W. Bush remarked that "[s]lips of paper that most people throw away should not hold the key to their savings and financial secrets." 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4, 2003). President Bush added that the government, through FACTA, was "act[ing] to protect individual privacy." *Id.*

15. Along those lines, one such FACTA provision was specifically designed to

thwart identity thieves' ability to gain sensitive information regarding a consumer's credit or bank account from a receipt provided to the consumer during a point-of-sale transaction, which, through any number of ways, could fall into the hands of someone other than the consumer.

16. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

> *Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.*

15 U.S.C. § 1681c(g) (the "Receipt Provision").

17. The requirement was widely publicized among retailers and the FTC. For example, on March 6, 2003, in response to earlier state legislation enacting similar truncation requirements, then-CEO of Visa USA, Carl Pascarella, explained that,

> "Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. The card's expiration date will be eliminated from receipts altogether . . . The first phase of this new policy goes into effect July 1, 2003 for all new terminals."[1]

Within 24 hours, MasterCard and American Express announced they were imposing similar requirements.

18. Card-issuing organizations proceeded to require compliance with FACTA by contract, in advance of FACTA's mandatory compliance date. For example, the publication, *Rules for Visa Merchants*, which is distributed to and binding upon all merchants that accept

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[1] *Visa USA Announces Account Truncation Initiative to Protect Consumers from ID Theft*, PR NEWSWIRE (Mar 06, 2003) https://www.finextra.com/newsarticle/8206/visa-to-hide-card-numbers-in-bid-to-cut-identity- (Last viewed: Dec. 3, 2021).

Visa cards, expressly requires that "only the last four digits of an account number should be printed on the customer's copy of the receipt" and "the expiration date should not appear at all."[2]

19. However, because of apparent confusion surrounding the otherwise straightforward requirements of FACTA, a handful of large retailers failed to comply with their contractual obligations to the card companies and with FACTA. Accordingly, Congress passed *The Credit and Debit Card Receipt Clarification Act of 2007*, extending the compliance date to June 3, 2008, and making allowances to the definition of willful noncompliance with respect to violations involving the printing of an expiration date on certain credit and debit card receipts before the date of the enactment of this Act.[3] Importantly, the Clarification Act did not amend FACTA to allow disclosure of a credit or debit card's expiration date, nor did it excuse violations for printing more than the last five digits of a card's account number. Instead, it simply provided amnesty to past violators in connection with the printing of expiration dates only, up to June 3, 2008.

20. Meanwhile, card processing companies continued to alert their merchant clients, including Defendants, of FACTA's requirements. According to a Visa Best Practice Alert in 2010:

> Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit

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[2] *Rules for Visa Merchants*, VISA (Sept. 1, 2007), http://www.runtogold.com/images/rules_for_visa_merchants.pdf (Last viewed: Dec. 3, 2021).

[3] Source: https://www.govinfo.gov/content/pkg/BILLS-110hr4008enr/pdf/BILLS-110hr4008enr.pdf (Last viewed: Dec. 3, 2021).

> http://www.ftc.gov/os/statutes/fcrajump.shtm for more information on the FACTA.)
>
> To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.
>
> *Visa Best Practices for Primary Account Number Storage and Truncation.* [4]

21. As noted above, the processing companies have required that credit card or debit card expiration dates not be shown since 2003 and still require it. For example, American Express requires:

> Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "x," "*," or "#," and not blank spaces or numbers.
>
> *American Express Merchant Regulations.*[5]

22. Similarly, MasterCard required in a section entitled Primary Account Number (PAN) truncation and Expiration Date Omission:

> A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*," or "#," that are neither blank spaces nor numeric characters.

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[4] Source: https://www.visa.com.hk/content/dam/VCOM/global/support-legal/documents/bulletin-pan-truncation-best-practices.pdf (Last viewed: Dec. 3, 2021).

[5] Source: https://www.aexp-static.com/cdaas/merchant-interactive-content/infopros/weboutput-international-Regs-latest/index.html#t=Topics%2F2_General-Policies-6.htm (Last viewed: Dec. 3, 2021).

See Mastercard Acceptance Procedures.[6]

23. Despite FACTA, however, identity theft remains a serious issue affecting both consumers and businesses. In 2018, a Harris Poll revealed that nearly 60 million Americans have been affected by identity theft.[7] There were 16.7 million victims of identity theft in 2017, and account takeovers (when a thief opens a credit card or other financial account using a victim's name and other stolen information) tripled in 2017 form 2016, causing $5.1 billion in losses.

24. So problematic is the crime of identity theft that the three main credit reporting agencies, Experian, Equifax, and Transunion, joined to set-up a free website (http://www.annualcreditreport.com) in order to comply with FACTA requirements and to provide the citizens of this country with a means of monitoring their credit reports for possible identity theft.

25. FACTA clearly prohibits the printing of more than the last five (5) digits of the card number, including the expiration date, to protect persons from identity theft.

Defendants' Prior Knowledge of FACTA

26. Defendants had actual knowledge of FACTA's truncation requirement before they began failing to comply with the requirement *en masse*. There are numerous California statutes that require Defendants to maintain their locations in full compliance with state and federal regulations such as FACTA.

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[6] Source: https://www.aibms.com/wp-content/uploads/2014/12/Transaction_Processing_Rules_13_December_2013.pdf (Last viewed: Dec. 3, 2021).

[7] Source: https://lifelock.com/learn-identity-theft-resources-how-common-is-identity-theft.html. (Last viewed: Dec. 3, 2021).

27. Defendants' knowledge and experience regarding federal laws governing financial transactions no doubt translate to Defendants having intimate knowledge of the requirements of FACTA, a federal law governing financial transactions.

28. Most of Defendants' business peers and competitors currently and diligently ensure their credit card and debit card receipt printing process remains in compliance with FACTA by consistently verifying their card machines and devices comply with the Receipt Provision. Defendants could very easily have done the same.

29. Despite the many warnings Defendants received regarding FACTA and its requirements, a federal lawsuit was filed on February 5, 2007, against Cinemark USA, Inc. for failing to comply with FACTA's requirements at one of their California locations. See *Vigdorchik v. Century Theatres Inc., and Cinemark Usa, Inc.*, No. 07-cv-00736 (N.D. Cal.). In addition, on May 29, 2013, Cinemark purchased another movie theater chain which had also been sued, in this instance multiple times, for violation of FACTA.[8] *See Grimes v. Rave Motion*

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[8] Source: https://ir.cinemark.com/sec-filings/all-sec-filings/content/0001193125-14-183653/0001193125-14-183653.pdf (last viewed: Dec. 3, 2021) ("On May 29, 2013, the Company acquired 32 theatres with 483 screens from Rave Real Property Holdco, LLC and certain of its subsidiaries, Rave Cinemas, LLC and RC Processing, LLC (collectively "Rave") in an asset purchase for approximately $236,875 in cash plus the assumption of certain liabilities (the "Rave Acquisition"). The acquisition resulted in an expansion of the Company's domestic theatre base into one new state and seven new markets. The transaction was subject to antitrust approval by the Department of Justice or Federal Trade Commission. The Department of Justice required the Company to agree to divest of three of the newly-acquired theatres, which occurred during August 2013"); https://ir.cinemark.com/sec-filings/all-sec-filings/content/0000950170-21-003150/0000950170-21-003150.pdf (last viewed: Dec. 3, 2021) ("Headquartered in Plano, TX, Cinemark (NYSE: CNK) is one of the largest and most influential movie theatre companies in the world. Cinemark's circuit, comprised of various brands that also include Century, Tinseltown ***and Rave***, operates 524 theatres with 5,897 screens in 42 states domestically and 15 countries throughout South and Central America.") (emphasis added).

Pictures Birmingham, L.L.C., 264 F.R.D. 659 (N.D. Ala. 2010); *Rave Motion Pictures Little Rock, L.L.C., et al.*, Case 4:07-cv-00659-JLH (July 30, 2007 E.D. Ark.).[9]

30. Now, despite having been previously sued for violating FACTA on at least three other occasions, Defendants have once again knowingly and willfully violated the aforesaid federal law by printing the first six and last four digits of customers' credit and debit card numbers on transaction receipts at one or more of their movie theaters within the United States, including but not limited to theaters in California. *See Redman v. RadioShack Corp.*, 768 F.3d 622, 638 (7th Cir. 2014) (Posner, J.) (willfulness in FACTA class action lawsuit was "straightforward" wherein defendant violated a parallel state statute years earlier).

31. Defendants were not only clearly informed not to print more than the last five digits of credit or debit cards, but were contractually prohibited from doing so. Defendants accept credit and debit cards from all major issuers, such as Visa, MasterCard, American Express and Discover Card. Each of these companies sets forth requirements that merchants such as (and including) Defendants must follow, including FACTA's redaction and truncation requirements found in the Receipt Provision. *See Operating Engineers Pension Trust v. Gilliam*, 737 F.2d 1501, 1504 (9th Cir.1984) ("[one] who signs a written agreement generally is bound

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[9] Rave Motion Pictures' knowledge of FACTA on the of basis the previous lawsuits can be imputed to Cinemark because of Cinemark's acquisition of Rave. *See S'holder Representative Servs. LLC v. RSI Holdco*, No. CV 2018-0517-KSJM, 2019 WL 2290916 (Del. Ch. May 29, 2019) ("all assets of a target company, including privileges over attorney-client communications, transfer to the surviving company unless the sellers take affirmative action to prevent transfer of those privileges"); *Wells Fargo & Co. v. United States*, 117 Fed. Cl. 30, 38 (2014) ("Because the surviving corporation steps into the shoes of the acquired entity and the surviving corporation is liable retroactively for the tax payments of its predecessors, it does not matter when the initial payments were made. Put another way, following a merger, the law treats the acquired corporation as though it had always been part of the surviving entity")

by its terms, even though he neither reads it nor considers the legal consequences of signing it.") (applying California law); Restatement 2d Contracts § 23, Comments b, e (1981); *McClure v. Cerati*, 86 Cal.App.2d 74, 84-85, 194 P.2d 46 (1948) (party signing a contract should be charged with knowledge of its contents).

32. The crime of identity theft is on the rise and it has become a significant problem for the Los Angeles Police Department and for people who reside in the City of Los Angeles.[10] As such, companies operating in the sector should apply extra care in preserving customers' data and preventing identity theft. Given the size and years of experience of Defendants' business, and the various state and federal regulations governing their business, at minimum Defendants were acting with reckless disregard of the FACTA requirements and purpose when they printed the first six (6) along with the last four (4) digits of the account number on ticket receipts.

33. Plaintiffs are informed and believe, and thereupon allege, that Defendants knew about the requirement that they truncate credit and debit card digits on transaction receipts. This is evidenced by the fact that in the years prior to the illegal conduct alleged herein, Defendants formerly truncated credit and debit card account numbers on transaction receipts in compliance with FACTA.

34. Furthermore, Plaintiffs are informed and believe that Defendants' officers have knowledge of FACTA's truncation requirement.

35. Plaintiffs are informed and believe, and thereupon allege, that it would take an individual less than thirty seconds to run a test receipt in order to determine whether Defendants'

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[10] Source: http://www.lapdonline.org/search_results/content_basic_view/1364 (Last Viewed: Dec. 3, 2021).

point-of-sale system that printed the FACTA violative receipts was in fact in compliance with federal law(s).

Plaintiffs' Factual Allegations

36. On or about November 6, 2021, Plaintiff Neal used her personal debit card to purchase a ticket at one of Defendants' movie theaters in Palmdale, California.

37. After making her purchase, Plaintiff Neal was subsequently presented with an electronically printed receipt showing the first six (6) and last four (4) digits of her debit card account number.

38. On or about December 1, 2021, Plaintiff Mendoza used his personal debit card to purchase a ticket at one of Defendants' movie theaters in North Hollywood, California.

39. After making his purchase, Plaintiff Mendoza was subsequently presented with an electronically printed receipt showing the first six (6) and last four (4) digits of his debit card account number.

40. As a direct result of the receipts showing ten (10) digits of each of their debit card account numbers, Plaintiffs were required to take steps to safeguard the receipts.

41. The printing of the first six (6) and last four (4) digits of their card account numbers invaded Plaintiffs' privacy as it disclosed their private financial information.

42. The printing of the first six (6) and last four (4) digits of their card account numbers was a breach of confidence and breach of an implied bailment.

Defendants' Misdeeds

43. At all times relevant herein, Defendants were acting by and through their subsidiaries, agents, servants and/or employees, each of which were acting within the course and scope of their agency or employment, and under the direct supervision and control of

Defendants.

44. At all times relevant herein, the conduct of Defendants, as well as that of their subsidiaries, agents, servants and/or employees, were in willful, knowing, or reckless disregard for federal law and the rights of the Plaintiffs and other members of the class.

45. Plaintiffs are informed and believe, and thereupon allege, that Defendants implement, oversee, and maintain control over the same uniform debit and credit card payment processing policies, practices, and procedures for the transactions at issue in this case – including, without limitation, negotiating, entering into, and acting pursuant to various contracts and agreements with the electronic payment processing company whose technology Defendants use to process all such transactions at their movie theater locations.[11]

46. Upon information and belief, the point-of-sale systems used by Defendants maintain records of all payment transactions and have the ability to print duplicate copies of all payment receipts provided to customers.

47. Notwithstanding their extensive knowledge of the requirements of FACTA and the well-documented dangers imposed upon consumers through their failure to comply, Defendants issued thousands of point of sale receipts containing the first six (6) plus the last

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[11] Source: Cinemark Form 10-k years 2012, 2013, 104, 2015, available at https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-12-089012/0001193125-12-089012.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-13-083890/0001193125-13-083890.pdf https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-13-083890/0001193125-13-083890.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-14-077445/0001193125-14-077445.pdf; https://ir.cinemark.com/sec-filings/annual-reports/content/0001193125-15-069425/0001193125-15-069425.pdf (last visited Dec. 3, 2021) ("We have developed our own proprietary point of sale system to enhance our ability to maximize revenues, control costs and efficiently manage operations. The system is currently installed in all of our U.S. theatres.")

four (4) digits of credit and debit card account numbers.

48. By ignoring the requirements of this important federal statute, in an environment already ripe for identity theft and other evils, Defendants uniformly invaded Plaintiffs' and the other putative Class members' privacy. Defendants' conduct alleged herein resulted in the disclosure of Plaintiffs' and the Class members' private financial information to the world, including to persons who might find the receipts in the trash or elsewhere, including identity thieves who thrive in environments such as Defendants' various locations, as well Defendants' employees who handled the receipts.

49. Simply put, by printing numerous transaction receipts in wholesale violation of a well-known federal statute, Defendants have caused – to paraphrase the words of the Honorable Judge Posner (Ret.) – "an unjustifiably high risk of harm that [wa]s either known or so obvious that it should [have been] known" to Defendants. *Redman v. RadioShack Corp.*, 768 F.3d 622, 627 (7th Cir. 2014) (quoting *Farmer v. Brennan*, 511 U.S. 825, 836, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994)).

CLASS ACTION ALLEGATIONS

50. Plaintiffs bring this class action on behalf of themselves and all persons in the United States who, within the time frame relevant to this action, engaged in one or more transactions using a debit card or credit card at one or more of the Cinemark movie theatres in the State of California, and was thereupon provided an electronically printed receipt displaying the first six (6) and last four (4) digits of the credit or debit card account number used in connection with such transaction(s). Plaintiffs are members of this class. Excluded from the Class are the Judge to whom this case is assigned, any members of the Judge's immediate family, and counsel of record in this action.

51. Plaintiffs also bring this following subclass on behalf of themselves and all persons in the United States who, within the time frame relevant to this action, engaged in one or more transactions using a debit card or credit card at one or more of the Cinemark movie theatres in the United States and was thereupon provided an electronically printed receipt displaying the first six (6) and last four (4) digits of the credit or debit card account number used in connection with such transaction(s). Plaintiffs are members of this class. Excluded from the Class are the Judge to whom this case is assigned, any members of the Judge's immediate family, and counsel of record in this action.

52. Members of the Class are so numerous that joinder of all members would be impracticable.

53. There are questions of law and fact common to all the members of the Class that predominate over any questions affecting only individual members.

54. Plaintiffs' claims are typical of the claims of other class members of the Class. Plaintiffs have no interests antagonistic to those of the Class and Defendants have no defenses unique to Plaintiffs.

55. Plaintiffs will fairly and adequately protect the interests of the Class, and have retained attorneys experienced in class and complex litigation.

56. A class action is superior to all other available methods for this controversy because: (i) the prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; (ii) the prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying

adjudications with respect the individual members of the Class, which would establish incompatible standards of conduct for Defendants; (iii) Defendants acted or refused to act on grounds generally applicable to the Class; and (iv) questions of law and fact common to members of the Class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

57. Plaintiffs do not anticipate any difficulty in the management of this litigation.

58. The questions of law and fact to the class predominate over questions that may affect individual Class Members, including the following:

a. Whether, within the two (2) years prior to the filing of this Complaint, Defendants and/or their agents completed transactions by credit or debit card from any consumer and subsequently gave that consumer a printed receipt which displayed the first six (6) and last four (4) digits the debit or credit card account number;

b. Whether Defendants' conduct was knowing or reckless;

c. Whether Defendants are liable for damages, and the extent of statutory damages for each such violation; and

COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

59. Plaintiffs incorporate the foregoing paragraphs as if fully set forth herein.

60. 15 U.S.C. §1681c(g) states as follows:

> ***Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction.***

61. This section applies to any "device that electronically prints receipts" (hereafter

"Devices") at point of sale or transaction. 15 U.S.C. §1681c(g)(3).

62. Defendants employ the use of said Devices for point-of-sale transactions at their movie theater locations in California.

63. On or before the date on which this complaint was filed, Defendants provided Plaintiffs and members of the class with receipt(s) that failed to comply with the Receipt Provision.

64. At all times relevant to this action, Defendants were aware, or should have been aware, of both the Receipt Provision as well as the requirement to comply with said provision.

65. Notwithstanding the three-year period to comply with FACTA and its accompanying provisions, nor the subsequent years since FACTA became effective; and having knowledge of the Receipt Provision and FACTA as a whole; Defendants knowingly, willfully, intentionally, and/or recklessly violated and likely continue to violate the FCRA and the Receipt Provision.

66. By printing the first six (6) and last four (4) digits of Plaintiffs' card account numbers on their transaction receipt, Defendants caused Plaintiffs to suffer a heightened risk of identity theft, exposed Plaintiffs' private information to those of Defendants' employees who handled the receipts and forced Plaintiffs to take action to prevent further disclosure of the private information displayed on the receipts. *See Muransky*, 2018 WL 4762434, at *6.

67. As a result of Defendants' willful violations of the FCRA, Plaintiffs and members of the class continue to be exposed to an elevated risk of identity theft. Defendants are liable to Plaintiffs and members of the class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney's fees and costs.

* * *

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and the class, and against Defendants as follows:

a. Granting certification of the Class;

b. Awarding statutory damages;

c. Awarding punitive damages;

e. Awarding attorneys' fees, litigation expenses and costs of suit; and

f. Awarding such other and further relief as the Court deems proper under the circumstances.

JURY DEMAND

68. Plaintiffs demand a trial by jury on all issues so triable.

Dated: December 7, 2021.

Respectfully submitted,

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LEXICON LAW
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Los Angeles, CA 90071
Tel: (213) 223-5900

Scott D. Owens (FL 0597651)
(pending admission *pro hac vice*)
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EXHIBIT 5

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Attorney for Plaintiffs and the Proposed Class
LAKEENYA NEAL and ROBERTO A. MENDOZA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

LAKEENYA NEAL and ROBERTO A. MENDOZA, individually and on behalf of a class of other similarly situated individuals, Plaintiffs. v. CINEMARK USA, INC., a Texas Corporation; CINEMARK HOLDINGS, INC., a Delaware corporation	**CASE NO. 21STCV44508** **CLASS ACTION** **REQUEST FOR DISMISSAL; [PROPOSED] ORDER** ***[Declaration filed Concurrently]*** Judge: Hon. Stuart M. Rice Department: 1 Location: Los Angeles Superior Court – Spring Street Courthouse 312 N. Spring Street, Los Angeles, CA 90012

Plaintiffs LAKEENYA NEAL AND ROBERTO A. MENDOZA ("Plaintiffs") hereby request, by and through their counsel of record:

WHEREAS, on or December 7, 2021, Plaintiffs filed in the Superior Court in and for the State of California, County of Los Angeles, an action entitled *Neal et al. v. Cinemark USA, Inc. and Cinemark Holdings, Inc.*, Case No. 21STCV44508 ("the Lawsuit") in which Plaintiffs alleged a cause of action pursuant to the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681, *et seq.* ("FACTA") arising from Defendants allegedly printing more than the last five (5) digits of their debit card onto their receipt;

WHEREAS, Defendants anticipated they intend to challenge Plaintiffs' standing before this Court in light of the recent holding in *Limon v. Circle K Stores, Inc*. (5th Dist. 2022), 84 Cal. App. 5th 671;

WHEREAS, on February 27, 2023, a class action against Defendants was filed in the Circuit Court of Cook County, Illinois (*Rodriguez v. Cinemark USA, Inc. and Cinemark Holdings, Inc.*, Case No. 2023CH01857), and in Illinois there is appellate case law establishing standing to sue under FACTA. See *Duncan v. Fedex Office & Print Services*, 123 N.E.3d 1249 (App. Ct. 2019); *Lee v. Buth-Na-Bodhaige, Inc*., 143 N.E.3d 645 (App. Ct. 2019);

WHEREAS, Plaintiffs are part of the class alleged in *Rodriguez* and believe their interest can be better represented in the *Rodriguez* action where the plaintiff's standing cannot be disputed;

WHEREAS, the allegations asserted on behalf of a putative class may properly be dismissed consistent with California Rules of Court, Rule 3. 770;

WHEREAS, Plaintiffs have set forth the material terms the facts upon which the Plaintiffs rely to dismiss the lawsuit through the Declaration of John R. Habashy, filed concurrently herewith, consistent with California Rules of Court, Rule 3. 770(a); and

WHEREAS, pursuant to California Rules of Court, Rule 3.770(c), if the Court has not ruled on class certification, or if the Court has ruled on class certification but notice of the pendency of the action has not also been provided to class members in a case in which such notice is required, the Court may dismiss the action "without notice to the [putative class members] if the court finds that the dismissal will not prejudice them." No class has been certified in this Action. Furthermore, no notice has been individually sent to putative class members in this Action. None of the putative class members should be prejudiced in any way by the dismissal of the class claims without prejudice, in the absence of notice;

NOW, THEREFORE, Plaintiffs hereby request an Order dismissing Plaintiffs' individual claims and the class claims without prejudice.

Dated: 02/27/2023

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[PROPOSED] ORDER RE DISMISSAL

The Court, having reviewed Plaintiffs' Request for Dismissal and the Declaration of John R. Habashy, filed concurrently, and finding good cause, hereby issues an Order to:

1. Dismiss the named Plaintiffs, LAKEENYA NEAL AND ROBERTO A. MENDOZA and the putative class, without prejudice.

IT IS SO ORDERED.

_____
DATED:

_____
HONORABLE STUART M. RICE
SUPERIOR COURT JUDGE

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is: **633 W. 5th Street, 28th Floor, Los Angeles, CA 90071**

On the date below, I served the foregoing document(s) described as: **REQUEST FOR DISMISSAL; [PROPOSED] ORDER** in the matter of ***Neal et al. v. Cinemark USA, Inc. and Cinemark Holdings, Inc.,*** **Case No. 21STCV44508** on the interested parties in this action:

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Attorneys for Defendants CINEMARK USA, INC. and CINEMARK HOLDINGS, INC.

( ) (BY MAIL) I placed said copy(ies) in a sealed envelope(s), postage thereon fully prepaid, and placed for collection and processing for mailing following the business's ordinary practice, with which I am readily familiar. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid in the city indicated below in the ordinary course of business.

(X) (BY CASE ANYWHERE) By electronic service, pursuant to the Court's Order at the Initial Status Conference on March 3, 2020 and the parties' agreement, via the file transfer protocol at www.CaseAnywhere.com. Case Anywhere is the online service provider designated in this case.

(X) (BY E-MAIL DELIVERY) I caused such electronic envelope to be delivered electronically to the offices of the addressee.

Executed on February 27, 2023 at Los Angeles, California.

(X) (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Enny Echegoyen, Declarant

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

GERARDO RODRIGUEZ, individually and on behalf of others similarly situated,	)	
Plaintiffs,	)	Case No. 2023CH01857
v.	)	Hon. Anna M. Loftus
CINEMARK USA, INC., A Texas corporation; CINEMARK HOLDINGS, INC., a Delaware corporation,	)	
Defendants.	)	

ORDER

This matter, coming before the Court for hearing on Defendants' Notice of Supplemental Authority and Motion to Stay (the "Motion to Stay") and Defendant Cinemark USA, Inc.'s Motion to Dismiss, all counsel being present and the Court hearing oral argument and being duly advised, it is hereby ordered that:

1) Defendants' Motion to Stay is granted for the reasons stated in open court. This case is stayed generally pending the outcome of *Fausett v. Walgreens* currently before the Illinois Supreme Court.

2) This matter is set for status on April 4, 2024 at 10:00 am to proceed via Zoom. Zoom Meeting ID is 955 3557 3920

Judge Anna M. Loftus
NOV 03 2023
Circuit Court-2102

ENTERED:

/s/ Anna M. Loftus

Judge Anna M. Loftus, No. 2102

SGR/6348652.1

Prepared by:
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(*attorneys for Plaintiffs listed on following page*)

Electronically Received 08/23/2022 12:20 PM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LAKEENYA NEAL, and ROBERTO A. MENDOZA, individually and on behalf of a class of other similarly situated individuals,

Plaintiffs,

v.

CINEMARK USA, INC., a Texas corporation; CINEMARK HOLDINGS, INC., a Delaware corporation,

Defendants.

Case No. 21STCV44508

Assigned For All Purposes To The Honorable Stuart Rice

JOINT STIPULATION AND [~~PROPOSED~~] ORDER RE: (1) PRESERVATION OF PERSONAL JURISDICTION DEFENSES, (2) CLARIFICATION OF STATUTE OF LIMITATIONS ALLEGATIONS, AND (3) SETTING BRIEFING AND HEARING SCHEDULE ON DISPUTED THRESHOLD LEGAL ISSUE

Action Filed: December 7, 2021
Trial Date: None Set

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Attorneys for Plaintiffs, Lakeenya Neal, Roberto A. Mendoza, and the Proposed Class

STIPULATION

Pursuant to the pre-motion conference conducted by the Court on May 31, 2022, with counsel for defendants Cinemark Holdings, Inc. ("CHI") and Cinemark USA, Inc. ("CUSA") (collectively, "Defendants"), and counsel for plaintiffs Lakeenya Neal and Roberto Mendoza (collectively, "Plaintiffs"), and the Court's comments and guidance provided therein, the parties have further met and conferred and hereby stipulate and agree to the following:

1. Notwithstanding any otherwise applicable law, Defendant CHI shall not waive any personal jurisdiction defenses, nor be deemed to have consented to personal jurisdiction in California, by filing an Answer in this Action or by otherwise participating in the proceedings in this Action. CHI shall reserve its personal jurisdiction defenses and may assert such defenses at a later stage of proceedings in this Action via a motion to quash service of summons for lack of personal jurisdiction in accordance with and subject to the standards for resolution of such a motion pursuant to the California Civil Code of Procedure.

2. With respect to Plaintiffs' allegations in Paragraphs 50-51 of their Complaint defining the putative class(es) as persons who engaged in certain debit or credit card transactions "within the time frame relevant to this action," the phrase "time frame relevant to this action" is intended to refer to the two year statute of limitations pursuant to 15 U.S.C. § 1681p and to Plaintiffs' contention that the statute of limitations was tolled for an additional 180 days pursuant to Emergency Rule 9 of the California Rules of Court, and any other applicable law or event which may toll the statute of limitations in this case.

3. Defendants wish to raise the issue of whether claims may be asserted in this action on behalf of putative class members:

(a) who reside in states located outside of California;

(b) whose allegedly violative credit or debit card transactions occurred in states other than California; and

(c) whose claims would be barred based on lack of standing if asserted in their home states.

4. The parties agree that the Court may set a briefing and hearing schedule with

respect to the above-described disputed issue for resolution pursuant to the standards applicable to a motion to strike class allegations. In the event the Court sets a hearing date that presents a conflict for one of the parties, such party shall post a message on the noticeboard within 48 hours of the entry of the Order hereon requesting the Court re-set the hearing date.

5. This stipulation may be executed in counterparts with electronic signatures.

6. The Court may enter an order hereon.

Dated: August 23, 2022

NORTON ROSE FULBRIGHT US LLP
JOSHUA D. LICHTMAN
MICHAEL A. SWARTZENDRUBER
LARA KAKISH
PHILLIP DI TULLIO

By _____
JOSHUA D. LICHTMAN
Attorneys for Defendants CINEMARK USA, INC. and CINEMARK HOLDINGS, INC.

Dated: August 23, 2022

LEXICON LAW, P.C.
JOHN R. HABASHY

SCOTT D. OWENS, P.C.
SCOTT D. OWENS (*PRO HAC VICE* PENDING)

By */s/ John R. Habashy*
JOHN R. HABASHY
Attorneys for Plaintiffs LAKEENYA NEAL and ROBERTO MENDOZZA

~~[PROPOSED]~~ ORDER

Pursuant to the foregoing Stipulation, the Court ORDERS as follows:

1. Notwithstanding any otherwise applicable law, Defendant CHI shall not waive any personal jurisdiction defenses, nor be deemed to have consented to personal jurisdiction in California, by filing an Answer in this Action or by otherwise participating in the proceedings in this Action. CHI shall reserve its personal jurisdiction defenses and may assert such defenses at a later stage of the proceedings in this Action via a motion to quash service of summons for lack of personal jurisdiction in accordance with and subject to the standards for resolution of such a motion pursuant to the California Civil Code of Procedure.

2. The Court accepts the Parties' agreement concerning the meaning of the phrase "within the time frame relevant to this action" in Paragraphs 50-51 of Plaintiffs' Complaint set forth in paragraph 2 of the foregoing Stipulation.

3. The Court sets the following briefing and hearing schedule for resolution of the disputed issue set forth in paragraph 3 of the foregoing Stipulation pursuant to the standards applicable to a motion to strike class allegations:

(a) Defendants' Opening Brief: filed by October 21, 2022; (limited to 20 pages)

(b) Plaintiffs' Responding Brief: filed by Nov. 15, 2022; (limited to 20 pages)

(c) Defendants' Reply Brief: filed by December 6, 2022; and (limited to 10 pages)

(d) Hearing: January 10, 2023, ~~, 2022~~, at 1:45 ~~a.m.~~/p.m.

IT IS SO ORDERED.

Dated: ~~August __, 2022~~
09/29/2022

Stuart M. Rice / Judge

The Honorable Stuart Rice
Judge of the Superior Court

PROOF OF SERVICE

I, Matthew Park, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Forty-First Floor, Los Angeles, California 90071. On August 23, 2022, I served a copy of the within document(s):

JOINT STIPULATION AND [PROPOSED] ORDER RE: (1) PRESERVATION OF PERSONAL JURISDICTION DEFENSES, (2) CLARIFICATION OF STATUTE OF LIMITATIONS ALLEGATIONS, AND (3) SETTING BRIEFING AND HEARING SCHEDULE ON DISPUTED THRESHOLD LEGAL ISSUE

☒ by transmitting via CASEANYWHERE forth below on this date before 5:00 p.m.

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Attorney for Plaintiffs Lakeenya Neal and Roberto A. Mendoza

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 23, 2022, at Los Angeles, California.

Matthew Park
Matthew Park

Joshua D. Lichtman

From: service@caseanywhere.com
Sent: Monday, January 9, 2023 3:25 PM
To: Joshua D. Lichtman
Subject: Message Posted in Neal, et al. v. Cinemark USA, Inc., et al., Case No. 21STCV44508

[External Email – Use Caution]

The following message has been posted in **Neal, et al. v. Cinemark USA, Inc., et al.**, 21STCV44508:

Message Title: Tentative Ruling for 1/10/2023
To: Court and All Counsel
Posted By: Hon. Stuart Rice
Representing: Los Angeles Superior Court
Posting Date: 1/9/23
Time of Posting: 3:21 PM

Message:
The Court is in receipt of the parties' briefs concerning the striking of the nationwide class allegations from Plaintiffs' case in connection with a motion scheduled for January 10, 2023. On October 25, 2022, four days after Defendants filed their opening brief, the Court of Appeal decided Limon v. Circle K Stores (2022) 84 Cal.App.5th 671, which addresses California standing requirements for suits brought under the Fair Credit Reporting Act, or FCRA (15 U.S.C. § 1681 et seq.). Plaintiffs' claims in this action derive from 15 U.S.C. § 1681c(g), part of FCRA which was enacted as the Fair and Accurate Credit Transactions Act (FACTA).

It would not be an effective use of court resources to rule on the propriety of the national class allegations (which apparently depends on the standing requirements of other states) where the Limon decision could potentially cast doubt about Plaintiffs' ability to meet the standing requirements of this state. The Court will therefore defer ruling on the motion to strike the national class allegations until Plaintiffs' California standing has been addressed.

The Court will confer with the parties at the currently scheduled hearing about a briefing schedule on this threshold issue brought about by the recent Court of Appeal decision in Limon.

To reply to this message online, please click here. This message will also be saved as part of the case file. You will be directed to the Case Anywhere log in page. After entering your username and password, you will be taken to the requested message thread. If you have saved your log in information by selecting the "Remember me at this computer" option, you will be automatically logged in and directed to this posting.

If your organization is no longer involved in the above-referenced matter, or if there is any other reason your organization's subscription should be terminated or billing should be modified, please contact us immediately. It is your organization's responsibility to request removal from the case site and conclusion of your subscription for this matter. If your organization is being billed for this matter, it will continue to be billed until we are notified of any such change.

Please contact us by phone at (800) 884-3163 or (818) 650-1040 or by email at support@caseanywhere.com if you have any questions.

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Attorneys for Plaintiff
WILLARD D. RICHARDSON,
JAMIE YEOMANS, and the
proposed class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

WILLARD D. RICHARDSON, and JAMIE YEOMANS individually and on behalf of a class of other similarly situated individuals,

Plaintiffs,

v.

IKEA NORTH AMERICA SERVICES, LLC; IKEA U.S. RETAIL, LLC,

Defendants.

Case No. 19STCV37280

(Assigned for all purposes to Hon. William F. Highberger, Department 10)

DECLARATION OF JOHN HABASHY RE: CASE PENDING IN COOK COUNTY, ILLINOIS

Action Filed: October 18, 2019

DECLARATION OF JOHN R. HABASHY

I, John R. Habashy, declare as follows:

1. I am an attorney with Lexicon Law, PC, and am an attorney of record for the Plaintiffs Willard Richardson and Jamie Yeomans the putative class in the above-captioned civil matter, Case No**.** 19STCV37280, filed on October 18, 2019.

2. The facts stated in this declaration are within my personal knowledge, and if called upon to testify hereto I can and will do so competently.

3. On December 14, 2020, Plaintiffs, individually and on behalf of all the Settlement Class, and Defendants IKEA North America Services, LLC and IKEA US RETAIL LLC ("Defendant" or "IKEA") reached an agreement through a mediation process overseen by the Honorable Edward A. Infante (ret.) regarding the settlement of all claims that Plaintiffs have asserted against IKEA in this case. A final written agreement was signed on September 15, 2021.

4. On October 5, 2021, the Court called the matter for hearing to confer about the pending settlement. The parties apprised the Court of their intention to seek approval of the matter in Illinois to avoid baseless standing objections as described in more detail below. The parties requested a stay of the Los Angeles matter.

5. Plaintiffs recognize they should have followed up with a formal motion to stay so that the docket was clear on the status of the case and apologize to the Court for failing to do so.

6. The agreement the parties have reached would be the second largest FACTA class settlement in the history of FACTA, would be a $24 million non-revisionary common fund, provide direct notice to the class and does not provide any clear sailing for either an incentive award to Plaintiffs or attorneys' fees for Plaintiffs' counsel. Plaintiffs and Plaintiffs' counsels are very proud of this settlement and believe it to be an excellent result for the class.

7. Lately, FACTA class action settlements (including several filed by Class Counsel) have been the target of professional objectors, who object to the settlement to try to negotiate a payout to go away and, when rebuffed, threaten to destroy the settlement for the entire class by attacking the plaintiff's standing to bring the lawsuit. Initially these objectors argued in Federal Courts there was no Article III standing for these FACTA claims so the claims should be dismissed, and the class should get nothing. These appeals delayed the class obtaining the class benefits for years – at little cost to the objector – with a lengthy appeal of the issue. (*See, e.g.*, *Muransky v. Godiva Chocolatier, Inc*. (11th Cir. 2019) 922 F.3d 1175 [affirming FACTA class settlement was fair and reasonable as well as rejecting Article III standing argument], *vacated for rehearing en banc* (11th Cir. 2019) 939 F.3d 1279; *see also Wood v. J Choo USA, Inc*. (S.D. Fla. Apr. 7, 2017) 15-cv-81487-BB Dkt. 91 [order rejecting Muransky objector's attempt to challenge plaintiff's standing as amicus curiae].)

8. The *Muransky* case is a prime example, as the Plaintiff there achieved a near-record, multimillion-dollar cash settlement in January 2016, which was approved, yet more than four years later, the case was still tied up on appeal by a professional objector's standing argument. *See Muransky, supra.*

9. Although Plaintiffs are confident that they have standing to prosecute their FACTA claim under the law of this State,[1] there is no binding authority to that effect. Thus, in a large class action like this, Plaintiffs face the real risk of at least one professional objector raising standing as an issue, and years of resulting delay defeating that contention, when the settlement money should instead be put in the hands of the class members, who need it now, as promptly as possible.

[1] *See Varoz v Allsaints USA Ltd*. (Superior Court for San Diego County, May 30, 2017) 37-2016-00032584-CU-MC-CTL [overruling demurrer in a FACTA case because FACTA violation established standing].

10. Therefore, to eliminate this real risk and its consequences, the parties previously advised the Court of their plan to move the case to the State of Illinois. This will make any objection to Plaintiffs' standing virtually impossible, because binding Illinois authority holds FACTA plaintiffs do have standing. (*See Soto v. Great Am. LLC* (Ill. App. 2020) 2020 IL App (2d) 180911, P21 [stating that "[g]uided by the above principles and FACTA's plain language, we hold that plaintiffs had standing to pursue their statutory claims without pleading an actual injury beyond the violation of their statutory rights"]; *Lee v. Buth-Na-Bodhaige, Inc*. (Ill. App. 2019) 2019 IL App (5th) 180033 at P67-P68 [finding FACTA plaintiff had standing].)

11. It is important to note that *Lee* was appealed by a professional objector who raised lack of standing even though there were trial court orders in Illinois finding standing for FACTA cases. In other words, these professional objectors will continue to raise these arguments unless there is binding authority to the contrary, which Illinois has but California does not as of yet.

12. Accordingly, on October 21, 2021, Plaintiffs filed a complaint against Defendants in Cook County Illinois as it has binding authority that there is standing to prosecute these FACTA claims, which will preclude one of the main arguments that professional objectors have used to unnecessarily delay benefits to class members.

13. After two hearings to answer the Illinois' court's questions, Plaintiffs obtained preliminary approval in Illinois on March 11, 2022.

14. Currently Plaintiffs have subpoenaed card issuing banks to obtain card holder names and contact information and have recently begun to obtain the subpoenaed information. As such, the Plaintiffs by agreement with Defendant requested the Illinois Court extend the due dates for issuing class notices to December 2, 2022, and thereby extending the schedule in the Preliminary Approval Order.

15. Once again, Plaintiffs apologize to the Court for failing to file a formal motion to stay after the October 5, 2021 status hearing.

I declare under penalty of perjury under the laws of the United States of California that the foregoing is true and correct.

Executed this 8th day of September, 2022 at Los Angeles, California.

By:_____

JOHN R. HABASHY, ESQ.

PROOF OF SERVICE

Case: *Richardson v. Inter Ikea Systems B.V., et al*
No: 19STCV37280

I, Jackeline Valiente, am employed in the City of Los Angeles. I am over the age of eighteen (18) years and am not a party to the within action. My business address is 633 W. 5th Street, 28th Floor, Los Angeles, CA 90071.

On the date below, I served the attached **DECLARATION OF JOHN HABASHY RE: CASE PENDING IN COOK COUNTY, ILLINOIS**, on the interested parties in this action by placing a true and correct copy thereof in sealed envelope(s) addressed as follows:

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(X) (BY CASE ANYWHERE) I caused the document to be electronically transmitted to the parties listed above which is maintained by Case Anywhere, LLC as agreed by the parties.

Executed on September 8, 2022, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Jackeline Valiente

No. 129783

IN THE
SUPREME COURT OF ILLINOIS

CALLEY FAUSETT, individually and on behalf of others similarly situated, Plaintiff, v. WALGREEN CO., Defendant.	On Petition for Leave to Appeal from the Appellate Court of Illinois, Second Judicial District, Appeal No. 2-23-0105. There Heard On Appeal from the Nineteenth Judicial Circuit Court, Lake County, Illinois, Case No. 19 CH 675. The Hon. Donna-Jo Vorderstrasse, Judge Presiding.

NOTICE OF FILING

The undersigned, an attorney, caused the foregoing **Brief of Amicus Curiae Cinemark, USA, Inc. in Support of Defendant-Appellant** to be electronically filed on December 8, 2023 with the Clerk of the Illinois Supreme Court using the Odyssey eFileIL system.

December 8, 2023

Respectfully submitted,

By: /s/ Meghan E. Tepas

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on December 8, 2023, she caused a true and correct copy of the foregoing **Brief of Amicus Curiae Cinemark, USA, Inc. in Support of Defendant-Appellant** to be filed via the Odyssey eFileIL system, and thereby served on counsel listed below via ECF and email:

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: /s/ Meghan E. Tepas