

Ninth Circuit Doubles Down on Lack of Standing Under Spokeo in Facta Cases

Article By:

Gregory N. Blase

Andrew C. Glass

Recently, the Ninth Circuit held in *Bassett v. ABM Parking Services, Inc.* that an allegation that a business violated the Fair and Accurate Credit Transactions Act (“FACTA”) by printing a credit card expiration date on a customer’s receipt is, by itself, insufficient to establish Article III standing under *Spokeo, Inc. v. Robins*. (For more information, read K&L Gates alerts on [the Bassett decision](#) and [FACTA standing jurisprudence](#).) Now, in *Noble v. Nevada Checker Cab Corp.*, No. 16-16573 (9th Cir. Mar. 9, 2018), the Ninth Circuit reached the same conclusion with respect to an alleged FACTA violation arising out of the printing of the first digit of the card number in addition to the last four digits. In doing so, the Ninth Circuit appears to be sending a strong signal to potential FACTA plaintiffs that something more than a technical violation is necessary to have standing to pursue statutory damages in federal court under FACTA.

FACTA provides 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 [electronically-printed] receipt provided to the cardholder at the point of the sale or transaction.” 15 U.S.C. § 1681c(g). Thus, printing the first digit of a 16-digit card number technically violates the statute. But, the *Noble* plaintiffs did not allege any other facts that, if proven, would have demonstrated injury, such as that the receipts in question were lost or stolen. Under that circumstance, the Ninth Circuit concluded that *Bassett* was controlling. It reasoned that “[a]s in *Bassett*, [the plaintiffs] did not allege that anyone else had received or would receive a copy of their credit card receipts” and that the plaintiffs’ “alleged injury depended entirely on a FACTA violation.” [Slip op.](#) at 4. Further, the Court found that the risk the receipts at issue posed was no greater than those in *Bassett*, because “the first digit of a credit card number merely identifies the brand of the card, and Congress has not prohibited printing the identity of the credit card issuer along with the last five digits of the credit card number.” *Id.*

In reaching this result, the Ninth Circuit joins the Second Circuit’s view of the issue. Several appeals regarding the issue (or the related issue regarding the printing of expiration dates) remain pending in the Third, Fifth, and Eleventh Circuits.

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