2024 IL App (2d) 230105
No. 2-23-0105
Opinion filed December 18, 2024

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CALLEY FAUSETT, Individually and On Behalf of Others Similarly Situated, Plaintiff-Appellee v. WALGREEN COMPANY, d/b/a Walgreens, Defendant-Appellant.	)	Appeal from the Circuit Court of Lake County. No. 19-CH-675 Honorable Donna-Jo R. Vorderstrasse, Judge, Presiding.

JUSTICE MULLEN delivered the judgment of the court, with opinion.
Justice Jorgensen concurred in the judgment and opinion.
Justice McLaren dissented, with opinion.

OPINION

¶ 1 I. INTRODUCTION

¶ 2 Plaintiff, Calley Fausett, individually and on behalf of others similarly situated, brought an action against defendant, Walgreen Company, doing business as Walgreens, alleging that it willfully violated section 1681c(g)(1) of the Fair and Accurate Credit Transactions Act of 2003 (FACTA) (15 U.S.C. § 1681c(g)(1) (2018)) by printing more than the last five digits of debit card numbers on receipts provided to consumers. Following the trial court's denial of defendant's motion to dismiss the complaint, plaintiff moved for class certification. See 735 ILCS 5/2-801 to 2-807 (West 2018). The trial court granted plaintiff's motion. Defendant timely filed a petition for

leave to appeal to this court pursuant to Illinois Supreme Court Rule 306(a)(8) (eff. Oct. 1, 2020) (allowing a party to petition for leave to appeal from an order of the circuit court granting or denying certification of a class action). On May 18, 2023, we denied defendant's petition for leave to appeal. Defendant subsequently filed a petition for leave to appeal with the Illinois Supreme Court (see Ill. S. Ct. R. 315 (eff. Oct. 1, 2021)). The supreme court granted the petition. On May 17, 2024, however, the supreme court, on its own motion, entered an order concluding that the petition for leave to appeal was improvidently granted. In the exercise of its supervisory authority, the supreme court directed this court to allow defendant's petition for leave to appeal. On appeal, defendant argues that the trial court's decision to grant plaintiff's motion for class certification should be reversed because plaintiff lacks standing to bring her FACTA claim in Illinois. We hold that, under principles of standing in Illinois, an alleged willful violation of an individual's statutory rights under section 1681c(g)(1) of FACTA (15 U.S.C. § 1681c(g)(1) (2018)) is sufficient to confer standing even in the absence of an allegation of any actual injury or adverse effect. Accordingly, we issue this opinion affirming the trial court's decision to grant plaintiff's motion for class certification.

¶ 3 II. STATEMENT OF FACTS

¶ 4 A. Statutory Background

¶ 5 Congress enacted FACTA in 2003 to amend the Fair Credit Reporting Act (FCRA) (15 U.S.C. § 1601 *et seq.* (2018)). *Meyers v. Nicolet Restaurant of De Pere, LLC*, 843 F.3d 724, 725 (7th Cir. 2016). Relevant to this appeal, section 1681c(g)(1) of FACTA (15 U.S.C. § 1681c(g)(1)) contains a "truncation requirement," which limits the information that can be included on a receipt provided to a consumer. That provision states:

> "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 truncation requirement was included in the statute "to limit the number of opportunities for identity thieves to 'pick off' key card account information." S. Rep. No. 108-166, at 13 (2003); see *Kamal v. J. Crew Group, Inc.*, 918 F.3d 102, 106 (3d Cir. 2019) (noting that FACTA seeks to protect consumers from identity theft). It is also intended to thwart credit- and debit-card fraud. See Credit and Debit Card Receipt Clarification Act of 2007 (Clarification Act), Pub. L. No. 110-241, § 2(a)(1), (6), 122 Stat. at 1565 (2008) (reiterating that among the purposes of FACTA "is to prevent criminals from obtaining access to consumers' private financial and credit information in order to reduce identity theft and credit card fraud" and explaining that "the proper truncation of the card number, by itself as required by [FACTA,] *** prevents a potential fraudster from perpetrating identity theft or credit card fraud"); *Jeffries v. Volume Services America, Inc.*, 928 F.3d 1059, 1066 (D.C. Cir. 2019).

¶ 6 FACTA incorporates the FCRA's damages provision, which provides in relevant part that "[a]ny person who willfully fails to comply" with a provision of FACTA with respect to any consumer is liable to that consumer in an amount equal to the sum of "any actual damages sustained by the consumer as a result of the failure [to comply with the statute] or damages of not less than $100 and not more than $1,000." 15 U.S.C. § 1681n(a)(1)(A) (2018). Punitive damages, costs, and attorney fees are also available. See 15 U.S.C. § 1681n(a)(2)-(3). A lawsuit under FACTA "may be brought in any appropriate United States district court *** or in any other court of competent jurisdiction." 15 U.S.C. § 1681p.

¶ 7 B. Factual Background and Circuit Court Proceedings

¶ 8 Defendant operates a chain of drugstores throughout the United States. On March 7, 2019, plaintiff entered one of defendant's stores in Phoenix, Arizona and tendered cash to load funds onto a general-purpose reloadable prepaid card (prepaid card). In return, the cashier provided plaintiff with two electronically printed receipts. The receipts disclosed the first 6 and the last 4 digits of plaintiff's 16-digit prepaid card number. On June 4, 2019, plaintiff filed a class action complaint against defendant in the circuit court of Lake County, Illinois (the location of defendant's corporate headquarters). As amended, plaintiff's complaint alleged that defendant willfully violated FACTA by issuing receipts with more than the last five digits of plaintiff's "debit card account number." Plaintiff did not suggest that anyone (other than the cashier and her lawyers) saw the receipts. Further, she alleged neither that her identity was stolen nor that her card number was misappropriated. Rather, plaintiff claimed that by printing the first six and the last four digits of the card number on her receipts, defendant caused her to suffer a heightened risk of identity theft, exposed her private information to others who may have handled the receipt, and forced her to take action to prevent further disclosure of the private information displayed on the receipt. Plaintiff further alleged that, due to defendant's willful violation of FACTA, she and members of the class "continue to be exposed to an elevated risk of identity theft." Plaintiff requested statutory damages, punitive damages, attorney fees, and costs. See 15 U.S.C. § 1681n(a).

¶ 9 Defendant filed a combined motion to dismiss plaintiff's first amended complaint, pursuant to sections 2-615, 2-619, and 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615, 2-619, 2-619.1 (West 2018)). Defendant cited four reasons why plaintiff could not establish a claim under FACTA as a matter of law: (1) FACTA does not apply to cash transactions and plaintiff's value load transaction was made in cash, (2) a prepaid card is neither a credit nor a debit card and

therefore does not implicate FACTA, (3) plaintiff failed to establish that defendant's alleged violation of FACTA was willful, and (4) plaintiff lacked standing under Illinois law because she failed to allege an actual injury.

¶ 10 Regarding the lack-of-standing argument, defendant acknowledged that plaintiff's receipt disclosed the first six and the last four digits of her prepaid card number. Defendant asserted, however, that because the last four digits of even a credit or debit card used in a transaction are properly disclosed under FACTA, the case concerned only the disclosure of the first six digits of plaintiff's prepaid card number. According to defendant, plaintiff could not have been injured by the disclosure of the first six digits of her prepaid card number, because this numerical sequence represents merely the bank identification number, *i.e.*, it identifies the bank issuing the prepaid card and does not reveal any personal information. In support of its position, defendant cited "a consensus" of federal court cases which hold that revealing the bank identification number on a receipt does not support FACTA standing, even for credit or debit card transactions, because it would not lead to identity theft. See, *e.g.*, *Kamal*, 918 F.3d at 116; *Katz v. Donna Karan Co.*, 872 F.3d 114, 120 (2d Cir. 2017). Defendant further noted that, under federal law, a plaintiff must suffer a "particularized" and "concrete" injury to have standing. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338-40 (2016). That is, the injury must "actually exist" and be "real," "not abstract." (Internal quotation marks omitted.) *Spokeo, Inc.*, 578 U.S. at 340. Defendant asserted that Illinois standing principles are similar to federal standing principles, so it would be "anomalous" if plaintiff had standing in Illinois to assert a "technical violation" of FACTA when a federal court would bar the same case.

¶ 11 On November 22, 2019, the trial court (Judge Luis Berrones) heard defendant's motion to dismiss. Following arguments by the parties, the court denied the motion. With respect to the

standing issue, the court considered itself bound by *Duncan v. FedEx Office & Print Services, Inc.*, 2019 IL App (1st) 180857, ¶ 25, which held that an alleged willful violation of FACTA was sufficient to confer standing to sue in Illinois courts, even when the plaintiff merely raises a violation of statutory rights.[1] The court further explained that the jurisdiction of a federal court is restricted by the United States Constitution. But, as a state court, it was not bound by such restrictions. To the contrary, the court determined that standing "seems to be much more liberally granted in the state court." Accordingly, the trial court rejected defendant's argument that federal case law barred plaintiff from pursuing a FACTA claim in state court.

¶ 12 Plaintiff subsequently filed a motion for class certification, which she later amended. Plaintiff asserted that her FACTA claim was appropriate for class treatment because it satisfied the four requirements for class certification (numerosity, commonality, adequacy, and appropriateness) under section 2-801 of the Code (735 ILCS 5/2-801 (West 2018)).

¶ 13 In response, defendant argued that class certification should be denied. As a threshold matter, defendant asserted that, in considering whether to grant class certification, a court must

[1]The defendant in *Duncan* filed a petition for leave to appeal to the Illinois Supreme Court. The supreme court allowed the petition for leave to appeal. *Duncan v. FedEx Office & Print Services, Inc.*, No. 124727 (Ill. Sept. 25, 2019) (supervisory order). The parties in *Duncan* subsequently filed a joint motion to dismiss the appeal and the entire action with prejudice because they had reached a settlement. On November 21, 2019, just one day before Judge Berrones's ruling on defendant's motion to dismiss in this case, the supreme court allowed the parties' joint motion to dismiss the *Duncan* appeal. Further, the supreme court directed the appellate court in *Duncan* to vacate its judgment in the case and remand the matter to the trial court with directions to dismiss the complaint with prejudice.

determine if the underlying claim is actionable. See *Alley 64, Inc. v. Society Insurance*, 2022 IL App (2d) 210401, ¶ 76. According to defendant, plaintiff has no actionable claim. In support of this proposition, defendant principally raised the contentions it cited in its motion to dismiss. As to standing, however, defendant argued that the primary case relied on by Judge Berrones in denying the motion to dismiss (*Duncan*, 2019 IL App (1st) 180857) had been vacated and a recent case from the United States Supreme Court controlled. That case, *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), held that "no-injury plaintiffs" do not have an actionable claim for statutory damages under § 1681n(a)(1) of the FCRA (15 U.S.C. § 1681n(a)(1)), the statute upon which plaintiff relies. Further, defendant contended that the Supreme Court's holding was not limited to federal standing law, as the Court's decision specified that "[a] regime where Congress could freely authorize unharmed plaintiffs to sue defendants who violate federal law not only would violate Article III [of the United States Constitution (U.S. Const., art. III)] *but also would infringe on the Executive Branch's Article II authority* [(U.S. Const., art. II)]." (Emphasis added and omitted.) *TransUnion*, 594 U.S. at 429. Defendant explained that article II is implicated by section 1681n(a)(1) of the FCRA because only the executive branch may decide when to enforce federal statutes in the absence of concrete harm. Defendant contended that congressional authority does not vary with a lawsuit's venue. Therefore, because plaintiff is a "no-injury plaintiff" who relies on section 1681n(a)(1) to seek statutory damages, she lacks standing to bring her claim in Illinois. Defendant also argued that plaintiff failed to satisfy three of the four prerequisites for class certification (commonality, adequacy, and appropriateness).

¶ 14 On March 1, 2023, following a lengthy hearing, the trial court (Judge Donna-Jo R. Vorderstrasse) granted the amended motion for certification but modified the proposed class definition. With respect to the standing issue, the court agreed that there "seem[ed] to be no dispute

that Fausett is a no-injury plaintiff." Nevertheless, Judge Vorderstrasse was not persuaded that case law decided after Judge Berrones's ruling on defendant's motion to dismiss required a change in his decision. The court pointed out that federal standing rules do not apply in state court, even in cases based on federal law. Thus, a plaintiff in Illinois is not required to satisfy the federal "concrete injury" test of article III (U.S. Const., art. III). The court, citing *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, further noted that, under Illinois law, a violation of one's statutory rights is sufficient to confer standing. The court rejected defendant's reliance on *TransUnion*, 594 U.S. 413, reasoning that that case addressed only federal standing.

¶ 15 Defendant timely filed a petition for leave to appeal to this court pursuant to Illinois Supreme Court Rule 306(a)(8) (eff. Oct. 1, 2020). On May 18, 2023, we denied defendant's petition for leave to appeal. Defendant subsequently filed a petition for leave to appeal to the Illinois Supreme Court. Ill. S. Ct. R. 315 (eff. Oct. 1, 2021). On September 27, 2023, the supreme court granted defendant's petition for leave to appeal. A briefing schedule was set and the parties (as well as several *amicus curiae*) filed their briefs. However, on May 17, 2024, the supreme court, on its own motion, entered an order finding that the petition for leave to appeal was improvidently granted. Accordingly, the supreme court vacated its September 27, 2023, order allowing defendant's petition for leave to appeal and denied the same. Additionally, in the exercise of its supervisory authority, the supreme court directed this court to vacate our May 18, 2023, order denying defendant's petition for leave to appeal and allow the petition. The order further provides that the briefs filed in the supreme court shall stand as the briefs in this court.

¶ 16 III. ANALYSIS

¶ 17 On appeal, defendant argues that the trial court's decision to grant plaintiff's motion for class certification should be reversed because plaintiff cannot show that she has an actionable

claim. Specifically, defendant asserts that plaintiff lacks standing to bring her claim in Illinois because she did not sustain an injury in fact. Defendant contends that, absent a valid claim, plaintiff cannot establish the prerequisites of commonality and adequacy of representation necessary for class certification. Plaintiff counters that, under Illinois law, a violation of an individual's statutory rights constitutes an injury in fact to a legally cognizable interest and confers standing to sue.

¶ 18 This appeal is before us, pursuant to Illinois Supreme Court Rule 306(a)(8) (eff. Oct. 1, 2020). That rule allows a party to petition for leave to appeal from an order of the circuit court granting or denying certification of a class action. Ill. S. Ct. R. 306(a)(8) (eff. Oct. 1, 2020); *Bayeg v. The Admiral at the Lake*, 2024 IL App (1st) 231141, ¶ 22. Class certification is governed by section 2-801 of the Code. See 735 ILCS 5/2-801 (West 2018). Section 2-801 provides that an action may be maintained as a class action if the trial court finds that (1) the class is so numerous that joinder of all members is impracticable (numerosity), (2) there are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members (commonality), (3) the representative parties will fairly and adequately protect the interest of the class (adequacy), and (4) the class action is an appropriate method for the fair and efficient adjudication of the controversy (appropriateness). 735 ILCS 5/2-801 (West 2018). The party seeking class certification must establish all four prerequisites. *Bayeg*, 2024 IL App (1st) 231141, ¶ 22. Decisions regarding class certification are within the sound discretion of the trial court and will not be overturned on appeal unless the trial court abused its discretion or applied impermissible legal criteria. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 125-26 (2005). An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *In re Estate of McDonald*, 2024 IL App (2d) 230195, ¶ 45.

¶ 19 In addition to the four prerequisites set forth in section 2-801 of the Code, our supreme court has held that, "as a threshold matter," a trial court must determine whether the claim asserted constitutes "an actionable claim." *Barbara's Sales, Inc. v. Intel Corp.*, 227 Ill. 2d 45, 72 (2007); see *Avery*, 216 Ill. 2d at 139 (noting that a class cannot be certified unless the named plaintiff has a cause of action); *Alley 64, Inc.*, 2022 IL App (2d) 210401, ¶ 79 (stating that, without a valid claim, a plaintiff cannot establish the statutory prerequisites necessary for class certification); *Stefanski v. City of Chicago*, 2015 IL App (1st) 132844, ¶ 15 (explaining that, if a plaintiff has not stated an actionable claim, there is no need to determine whether the four statutory prerequisites for a class action have been met); *Turnipseed v. Brown*, 391 Ill. App. 3d 88, 94-95 (2009) (noting that a trial court must determine whether a plaintiff's claim is actionable prior to considering the issue of class certification). As one court has explained, " '[c]lass certification is not proper when the putative class representative cannot adequately represent the class sought to be certified,' and '[a] representative cannot adequately represent a class when the representative does not state a valid cause of action.' " *Stefanski*, 2015 IL App (1st) 132844, ¶ 15 (quoting *De Bouse v. Bayer AG*, 235 Ill. 2d 544, 560 (2009)). Thus, if a plaintiff's claim is not actionable, then it is immaterial whether the plaintiff satisfied the class requirements enumerated in section 2-801 of the Code (735 ILCS 5/2-801 (West 2018)). See *Barbara's Sales, Inc.*, 227 Ill. 2d at 72; *Alley 64, Inc.*, 2022 IL App (2d) 210401, ¶ 118; *Stefanski*, 2015 IL App (1st) 132844, ¶ 48; *Turnipseed*, 391 Ill. App. 3d at 100; see also *Griffith v. Wilmette Harbor Ass'n*, 378 Ill. App. 3d 173, 184 (2007) ("In the context of a class action, if a purported representative plaintiff for a class action cannot maintain his individual claim against the defendant because of lack of standing or otherwise, then the class action claim cannot be maintained."). Where, as here, a party raises an issue of standing, we are presented with a question of law and apply *de novo* review. *Midwest Commercial Funding, LLC*

v. Kelly, 2023 IL 128260, ¶ 13; *Sharon Leasing, Inc. v. Phil Terese Transportation, Ltd.*, 299 Ill. App. 3d 348, 355 (1998).

¶ 20 Defendant argues that plaintiff has no actionable claim because she lacks standing. Defendant notes that, under Illinois law, standing requires some injury in fact to a legally cognizable interest. See *Greer v. Illinois Housing Development Authority*, 122 Ill. 2d 462, 492 (1988). According to defendant, however, plaintiff did not sustain any injury at all when she was issued cash register receipts revealing 10 digits of her 16-digit prepaid card number. In this regard, defendant reiterates that FACTA permits a merchant to disclose the last four digits of a credit or debit card number. Further, the bank identification number—the first six digits of the card number printed on the receipts issued to plaintiff—are not unique to her and reveal nothing about her. Defendant also points out that plaintiff does not claim to be the victim of identity theft and she does not explain how the disclosure of the bank identification number exposed her to an elevated risk of harm. As such, plaintiff merely asserts a "technical violation" of FACTA, which is not actionable. Defendant argues that the consequences of allowing plaintiff to bring her no-injury FACTA claim in Illinois would not only "fundamentally strip [the Illinois Supreme Court] of the ability to set legal standards for the bringing of claims and the provisions of relief" but also "grant[ ] the United States Congress the authority to tax the courts of Illinois to resolve disputes that Congress knows federal courts will not consider because they are unworthy of federal judicial time, attention, and resources."

¶ 21 In Illinois, "[s]tanding is a prudential doctrine that falls under the umbrella of justiciability." *Rowe v. Raoul*, 2023 IL 129248, ¶ 22. The standing doctrine is intended to preclude parties without an interest in a controversy from bringing suit. *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999). "The doctrine assures that issues are raised only by those parties with a real

interest in the outcome of the controversy." *Glisson*, 188 Ill. 2d at 221. In Illinois, standing "requires only some injury in fact to a legally cognizable interest." *Greer*, 122 Ill. 2d at 492. The claimed injury, whether actual or threatened, must be (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be prevented or redressed by the grant of the requested relief. *Greer*, 122 Ill. 2d at 492-93. A plaintiff is not required to allege facts establishing standing. *State ex rel. Leibowitz v. Family Vision Care, LLC*, 2020 IL 124754, ¶ 29. Instead, it is the defendant who bears the burden to plead and prove lack of standing. *Leibowitz*, 2020 IL 124754, ¶ 29.

¶ 22 Guided by the principles set forth above, we conclude that defendant has failed to establish that plaintiff lacks standing to bring her FACTA claim in Illinois. First, plaintiff's alleged injury is "distinct and palpable." "A distinct and palpable injury refers to an injury that cannot be characterized as a generalized grievance common to all members of the public." (Internal quotation marks omitted.) *Illinois Road & Transportation Builders Ass'n v. County of Cook*, 2022 IL 127126, ¶ 17. Here, plaintiff went to one of defendant's retail stores, tendered cash to load funds onto a prepaid card, and was provided receipts showing 10 digits of her 16-digit prepaid card number. She filed suit, alleging that defendant willfully violated FACTA by issuing her a receipt with more than the last five digits of her prepaid card number. Plaintiff prayed for statutory damages, punitive damages, costs, and attorney fees. Far from asserting a generalized grievance common to all members of the public, plaintiff alleged that defendant violated *her* rights under FACTA by printing 10 digits of her prepaid card number on the receipts she was issued. Second, the alleged injury is fairly traceable to defendant's actions. In this regard, plaintiff alleged that *defendant* provided her receipts that violated FACTA's truncation requirement. Finally, plaintiff's injury is substantially likely to be prevented or redressed by the grant of the requested relief,

because plaintiff alleges that defendant's violation was willful and FACTA, through the FCRA, provides for statutory damages of between $100 and $1000 for any willful violation. In short, plaintiff has alleged a violation of her rights under FACTA and seeks the damages the statute provides. Plaintiff therefore has standing in Illinois to pursue her statutory claim.

¶ 23 In so concluding, we reject defendant's position that plaintiff lacks standing because her suit involves merely a "technical violation" of FACTA without alleging an actual injury or adverse effect. Whether section 1681n(a)(1)(A) of the FCRA (15 U.S.C. § 1681n(a)(1)(A)) requires a plaintiff to plead actual damages in addition to a statutory violation to establish standing presents an issue of statutory construction. See *Rosenbach*, 2019 IL 123186, ¶¶ 1, 18-32 (invoking principles of statutory construction in determining whether an individual may seek liquidated damages under the Biometric Information Privacy Act (Privacy Act) (740 ILCS 14/1 *et seq.* (West 2016)) in the absence of an allegation of some actual injury or adverse effect beyond a violation of one's statutory rights); *Glisson*, 188 Ill. 2d at 231 (noting, in its standing analysis, that no private right of action was granted due to an alleged violation of an endangered species protection statute and holding that a party cannot gain standing merely through a self-proclaimed interest or concern about an issue). The primary objective in construing a statute is to ascertain and give effect to the intent of the legislature. *Rosenbach*, 2019 IL 123186, ¶ 24. The most reliable indicator of legislative intent is the language of the statute itself, given its plain and ordinary meaning. *iMotorsports, Inc. v. Vanderhall Motor Works, Inc.*, 2022 IL App (2d) 210785, ¶ 14. When the statutory language is plain and unambiguous, a court may not depart from the statute's terms by reading into it exceptions, limitations, or conditions the legislature did not express, nor may a court add provisions not found in the statute. *Rosenbach*, 2019 IL 123186, ¶ 24. Questions of statutory

interpretation are subject to *de novo* review. *Rosenbach*, 2019 IL 123186, ¶ 18; *iMotorsports, Inc.*, 2022 IL App (2d) 210785, ¶ 14.

¶ 24 As noted above, the FCRA provides that a person who "willfully fails to comply with any requirement" of the statute is liable to the consumer in an amount equal to the sum of "any actual damages sustained by the consumer as a result of the failure *or* damages of not less than $100 and not more than $1,000." (Emphasis added.) 15 U.S.C. § 1681n(a)(1)(A). As our supreme court has observed, "[t]he word 'or' is disjunctive" and, "[a]s used in its ordinary sense, *** marks an alternative indicating the various parts of the sentence which it connects are to be taken separately." *Elementary School District 159 v. Schiller*, 221 Ill. 2d 130, 145 (2006). More succinctly, the word "or" "connotes two different alternatives." *Elementary School District 159*, 221 Ill. 2d at 145. Applying this principle, we conclude that, when given its plain and ordinary meaning, the language of section 1681n(a)(1)(A) signifies the intent of Congress to provide alternative recovery for a willful violation of the statute for (1) actual damages, if any, *or* (2) statutory damages of not less than $100 and not more than $1000. *Cf.* 15 U.S.C. § 1681*o*(a)(1) (2018) (providing that a cause of action for a negligent violation of the FCRA (as opposed to a willful violation) requires a showing of actual damages). Thus, when a person willfully fails to comply with FACTA's truncation requirement, the FCRA provides a private cause of action for statutory damages. Actual damages need not be pleaded or proved. See *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033, ¶ 64 (holding that FACTA does not require a person to suffer actual damages to seek recourse for a willful violation of the statute); see also *Glisson*, 188 Ill. 2d at 222 (noting that, when a plaintiff alleges a statutory violation, no "additional requirements" are needed for standing).

¶ 25 Our conclusion is consistent with the intent of the statute. As noted earlier, among the purposes of section 1681c(g) of FACTA is to protect consumers from identity theft and fraud

involving credit and debit cards. See S. Rep. No. 108-166, at 13 (2003); Clarification Act § 2(a)(1), (6); *Kamal*, 918 F.3d at 106; see also *Lee*, 2019 IL App (5th) 180033, ¶ 64 (noting that FACTA's intent is "to protect consumers from the risk posed when credit card account information is displayed on printed receipts at the point of sale"). Allowing an individual to seek statutory damages pursuant to FACTA, even in the absence of an actual injury or adverse effect beyond a statutory violation, furthers FACTA's preventative and deterrent purposes by providing a strong incentive to comply with the law and preventing problems before they occur and cannot be undone. See *Rosenbach*, 2019 IL 123186, ¶ 37 (addressing a violation of the Privacy Act).

¶ 26 Defendant does not dispute that *Greer* sets forth Illinois's standing test. Nevertheless, it insists that plaintiff "has not and cannot" establish an injury in fact. Defendant acknowledges that the receipts issued to plaintiff disclosed the first six and the last four digits of her prepaid card. Yet, defendant reasons, because FACTA permits a merchant to disclose the last four digits of a credit or debit card (see 15 U.S.C. § 1681c(g)(1)), the only question is whether the disclosure of the first six digits caused her to suffer an injury in fact to a legally cognizable interest. Defendant insists that it did not because the first six digits disclose only the identification number for the card issuer and disclose nothing about plaintiff personally. We reject defendant's position, as it ignores FACTA's unambiguous prohibition against printing more than the last five digits of a consumer's card number upon any receipt provided to the cardholder at the point of the sale or transaction. 15 U.S.C. § 1681c(g)(1).

¶ 27 Defendant further asserts that every United States Court of Appeals to address the issue has concluded that the disclosure of the first six digits of a credit or debit card does not cause an injury in fact to the cardholder. See, *e.g.*, *Thomas v. TOMS King (Ohio), LLC*, 997 F.3d 629, 636, 642 (6th Cir. 2021) (holding that bare procedural violation of FACTA's truncation requirement

was insufficient to satisfy the standing requirement to sue in federal court under article III of the United States Constitution, reasoning that "printing the first six digits does not inevitably lead to identity theft or increase the risk of it"); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 929-35 (11th Cir. 2020) (*en banc*) (holding that the plaintiff "failed to allege either a harm or a material risk of harm stemming" from the disclosure of the first six digits of his card and therefore did not have standing to sue in federal court under article III of the United States Constitution); *Noble v. Nevada Checker Cab Corp.*, 726 F. App'x 582, 584 (9th Cir. 2018) (disclosing the first and final four digits of the cardholder's credit card number "does not involve the sort of revelation of information that Congress determined could lead to identity theft"); *Kamal*, 918 F.3d at 116 (affirming dismissal of plaintiff's federal lawsuit for lack of standing under article III of the United States Constitution where the plaintiff could not "plausibly aver how [the defendant's] printing of the [first] six digits [of the plaintiff's credit card number] presents a material risk of concrete, particularized harm"); *Katz*, 872 F.3d at 120 (affirming dismissal, noting that "the first six digits of a credit card number constitute the [identification number] for the card's issuer, digits which can easily be obtained for any given issuer").

¶ 28 Defendant's reliance on the federal cases cited above is misplaced, as they are premised on federal standing principles imposed by article III of the United States Constitution (U.S. Const., art. III, § 2). As defendant concedes, however, federal standing law and Illinois standing law are not identical (*In re Estate of Burgeson*, 125 Ill. 2d 477, 485 (1988)) and Illinois courts are not required to follow federal law on issues of justiciability and standing (*Greer*, 122 Ill. 2d at 491). See *Soto v. Great America LLC*, No. 17-cv-6902, 2018 WL 2364916, at *5 (N.D. Ill. May 24, 2018) (recognizing that, while "both Illinois courts and federal courts impose an injury-in-fact

standing requirement on litigants," this "does not necessarily mean that both forums define that requirement in the same way").

¶ 29 Indeed, the *Greer* court expressly declined to follow federal standing law. In that case, the plaintiffs—neighborhood residents—sued the defendant—an administrative agency—for its approval of a housing development that the plaintiffs contended was in violation of the defendant's rules. *Greer*, 122 Ill. 2d at 470-71. The plaintiffs argued that they suffered injury in the form of diminution of property values. One of the issues before the supreme court was whether the plaintiffs had standing. The defendant, relying on *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 155-56 (1970), argued that

> "the proper test for assessing standing *** is that the party who asserts standing must demonstrate: (1) that the illegal action will cause the plaintiff to suffer injury in fact and (2) that the interest asserted by the plaintiff lies within the zone of interests arguably sought to be protected by the statute in question." *Greer*, 122 Ill. 2d at 487.

The plaintiffs countered that they needed to show only an injury in fact. *Greer*, 122 Ill. 2d at 487-88. The supreme court carefully reviewed the development of federal law on standing and declined to adopt the zone-of-interests test as an additional requirement for standing in Illinois. *Greer*, 122 Ill. 2d at 488-92. In rejecting the zone-of-interests test, the supreme court criticized the test for confusing the issue of standing with the merits of the suit. *Greer*, 122 Ill. 2d at 492. Ultimately, the supreme court concluded that the plaintiffs' allegation that the value of their properties would be diminished by the development constituted a legally cognizable interest. *Greer*, 122 Ill. 2d at 493-95. The court explained that the threatened injury, even in the absence of immediate, ascertainable damages, could be a basis for the relief sought. *Greer*, 122 Ill. 2d at 493-94. The court further explained that the plaintiffs' proximity to the development supported their allegation

of a "distinct and palpable injury," rather than a generalized grievance common to all members of the general public, and that there was no question that the diminution in value of the plaintiffs' properties would be "fairly traceable" to the defendant's approval of the development. (Internal quotation marks omitted.) *Greer*, 122 Ill. 2d at 494.

¶ 30 Pointing out that in Illinois lack of standing is an affirmative defense, the *Greer* court denounced as "incorrect" the defendant's assumption that the plaintiff had the burden of alleging standing. *Greer*, 122 Ill. 2d at 494. The court observed that even in federal courts there is a maxim that "controversies regarding standing are best resolved by motions for summary judgment rather than motions for judgment on the pleadings." *Greer*, 122 Ill. 2d at 494 (citing *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 (1973)). The court stated that, after the facts were developed, the defendant would have the opportunity to move for summary judgment and demonstrate to the court that the allegations were a sham. *Greer*, 122 Ill. 2d at 494-95. As the foregoing discussion of *Greer* makes clear, Illinois standing law is not in lock step with federal standing law.

¶ 31 Additionally, we observe that "[f]ederal courts are courts of limited jurisdiction." *Kokkonen v. Guardian Life Insurance Co. of America*, 511 U.S. 375, 377 (1994). Under federal law, standing is a threshold issue under the jurisdictional case-or-controversy requirement of article III (U.S. Const., art. III, § 2), which a plaintiff has the burden of pleading and proving. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 254 n.4 (2010); *People v. $1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d 314, 328 (1997). With some exceptions not relevant here, the Illinois Constitution vests circuit courts with "original jurisdiction of all justiciable matters." Ill. Const. 1970, art. VI, § 9; *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 530 (2001) (noting that the Illinois Constitution vests the circuit court with "jurisdiction to adjudicate

all controversies"). Standing in Illinois is not jurisdictional; it is an affirmative defense, the lack of which a defendant has the burden to plead and prove. *$1,124,905 U.S. Currency & One 1988 Chevrolet Astro Van*, 177 Ill. 2d at 328-30. State law on standing varies from federal law in that it "tends to vary in the direction of greater liberality". *Greer*, 122 Ill. 2d at 491. If a case presents a justiciable matter and does not fall within the original and exclusive jurisdiction of the supreme court, an Illinois circuit court has jurisdiction. *Zahn v. North American Power & Gas, LLC*, 2016 IL 120526, ¶ 13; *Lee*, 2019 IL App (5th) 180033, ¶ 67. Guided by the differences between standing under federal and Illinois law, an application of Illinois's standing test, and the plain language of the statute involved, we remain steadfast that plaintiff has standing in Illinois to pursue her statutory claim without pleading an actual injury beyond a violation of her statutory rights.

¶ 32 Defendant also asserts that "the *only* basis for affirmance would be to hold that [the Illinois Supreme] Court's decision in *Rosenbach* *** fundamentally swept away many decades of Illinois standing law and set Illinois outside the scope of the widespread agreement among American legal jurisdictions." (Emphasis in original.) According to defendant, *Rosenbach* "does not refer to standing and nothing in its holding or analysis breaks stride with Illinois'[s] injury-in-fact requirement."

¶ 33 *Rosenbach* involved the Privacy Act (740 ILCS 14/1 *et seq.* (West 2016)). The Privacy Act imposes numerous restrictions on how private entities collect, retain, disclose, and destroy biometric identifiers, such as fingerprints, retina scans, and voiceprints. 740 ILCS 14/15 (West 2016). Under the Privacy Act, any person "aggrieved" by a violation of the statute "shall have a right of action *** against an offending party" and "may recover for each violation" the greater of liquidated damages or actual damages, reasonable attorney fees and costs, and any other relief the court deems appropriate, including an injunction. 740 ILCS 14/20 (West 2016).

¶ 34 In *Rosenbach*, the plaintiff's minor son visited an amusement park operated by the defendants. Prior to the visit, the plaintiff purchased a season pass for her son from the defendants' website. The plaintiff's son completed the sign-up process in person at the amusement park by providing a fingerprint that was scanned into the defendants' biometric data capture system. Neither the plaintiff nor her son received any paperwork or information regarding the specific purpose and length of term for which the fingerprint had been collected. *Rosenbach*, 2019 IL 123186, ¶¶ 5-7. The plaintiff sued the defendants on her son's behalf, alleging, in a three-count complaint, a violation of the Privacy Act and unjust enrichment. The plaintiff sought liquidated damages and injunctive relief. The defendants moved to dismiss, arguing, among other things, that the plaintiff had suffered no actual or threatened injury and therefore lacked standing to sue. The trial court granted the motion to dismiss the unjust-enrichment count, but it denied the motion to dismiss the counts premised on the Privacy Act. *Rosenbach*, 2019 IL 123186, ¶¶ 8-13.

¶ 35 On appeal, the supreme court addressed whether one is "aggrieved" and may seek liquidated damages and injunctive relief under the Privacy Act if he or she has not alleged some actual injury or adverse effect beyond a violation of his or her rights under the statute. The court answered this inquiry in the affirmative, stating:

> "More than a century ago, our court held that to be aggrieved simply 'means having a substantial grievance; a denial of some personal or property right.' *Glos v. People*, 259 Ill. 332, 340 (1913). A person who suffers actual damages as the result of the violation of his or her rights would meet this definition of course, but sustaining such damages is not necessary to qualify as 'aggrieved.' Rather, '[a] person is prejudiced or aggrieved, in the legal sense, when a legal right is invaded by the act complained of *or* his pecuniary interest

> is directly affected by the decree or judgment.' (Emphasis added.) *Id.*" *Rosenbach*, 2019 IL 123186, ¶ 30.

The court further explained:

> "When private entities face liability for failure to comply with the [Privacy Act's] requirements without requiring affected individuals or customers to show some injury beyond violation of their statutory rights, those entities have the strongest possible incentive to conform to the law and prevent problems before they occur and cannot be undone. Compliance should not be difficult; whatever expenses a business might incur to meet the [Privacy Act's] requirements are likely to be insignificant compared to the substantial and irreversible harm that could result if biometric identifiers and information are not properly safeguarded; and the public welfare, security, and safety will be advanced. That is the point of the law. To require individuals to wait until they have sustained some compensable injury beyond violation of their statutory rights before they may seek recourse, as defendants urge, would be completely antithetical to the [Privacy] Act's preventative and deterrent purposes." *Rosenbach*, 2019 IL 123186, ¶ 37.

Thus, the court held that a violation of an individual's statutory rights alone was sufficient to bring suit under the Privacy Act and that "[n]o additional consequences need be pleaded or proved." *Rosenbach*, 2019 IL 123186, ¶ 33.

¶ 36 Defendant maintains that *Rosenbach* is distinguishable because it did not involve FACTA, but, rather, involved the Privacy Act and an individual's control over his or her biometric information. Although *Rosenbach* and this case involve different statutes, the rationale for the supreme court's holding in that case is equally applicable here. That is because both statutes provide for a right of action based on a violation of an individual's statutory rights, even in the

absence of any actual harm or adverse effect. Compare 740 ILCS 14/20 (West 2022) (providing that "[a]ny person aggrieved by a violation of [the Privacy] Act shall have a right of action" and that the prevailing party may recover for each violation the greater of liquidated damages *or* actual damages), with 15 U.S.C. § 1681n (providing that "[a]ny person who willfully fails to comply with any requirement imposed [by FACTA] with respect to any consumer is liable to that consumer in an amount equal to the sum of *** any actual damages sustained by the consumer as a result of the failure [to comply with the statute] *or* damages of not less than $100 and not more than $1,000" (emphasis added)); see also *Lee*, 2019 IL App (5th) 180033, ¶ 64 (noting that FACTA provides a private cause of action for statutory damages and does not require a person to suffer actual damages to seek recourse for a willful violation of the statute).

¶ 37 Also applicable here are the supreme court's statements in *Rosenbach* regarding the preventative and deterrent purposes of the Privacy Act and the cost of complying with the statute versus the harm that can result in the absence of compliance. As we mentioned earlier, allowing an individual to seek statutory damages pursuant to FACTA, even in the absence of an actual injury or adverse effect beyond a violation of his or her rights under the statute, furthers FACTA's preventative and deterrent purposes by providing a strong incentive to comply with the law and preventing problems before they occur and cannot be undone. See *Rosenbach*, 2019 IL 123186, ¶ 37. Likewise, the cost of complying with FACTA's truncation requirement is likely to be insignificant compared to the substantial harm that could result to an individual if he or she is the victim of identity theft or credit- or debit-card fraud. *Rosenbach*, 2019 IL 123186, ¶ 37. Defendant need only reprogram its point-of-sale systems to mask all but the last five digits of a prepaid card when a customer loads funds onto the card. This is something defendant already does when a customer makes a purchase with a credit or debit card. Echoing the words of the supreme court in

Rosenbach, to require individuals to wait until they have sustained some compensable injury beyond violation of their statutory rights before they may seek recourse, as defendant urges, would be completely antithetical to FACTA's preventative and deterrent purposes. See *Rosenbach*, 2019 IL 123186, ¶ 37.

¶ 38 Relying principally on *Maglio v. Advocate Health & Hospitals Corp.*, 2015 IL App (2d) 140782, defendant argues that a "bald and ultimately baseless allegation of an alleged 'increased risk' of harm cannot, as a matter of law, suffice." Defendant's reliance on *Maglio* is misplaced. In that case, the plaintiffs filed putative class actions against the defendant after four computers containing patient information were stolen from the defendant's offices. The plaintiffs' lawsuit raised claims of negligence, violations of the Personal Information Protection Act (815 ILCS 530/1 *et seq.* (West 2014)) and the Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1 *et seq.* (West 2014)), and invasion of privacy. *Maglio*, 2015 IL App (2d) 140782, ¶ 1. The plaintiffs did not allege that their personal information was used in any unauthorized manner. Instead, they alleged that they faced an increased risk of identity theft or identity fraud due to the defendant's negligence. The trial court granted the defendant's motion to dismiss, finding, *inter alia*, that the disclosure of the confidential information did not constitute an injury in fact sufficient to confer standing. On appeal, this court affirmed. *Maglio*, 2015 IL App (2d) 140782, ¶ 1. We concluded that the plaintiffs lacked standing because the allegations in their complaint were merely claims of speculative injury. *Maglio*, 2015 IL App (2d) 140782, ¶ 24. *Maglio*, however, is not a FACTA case. And as one court has expressed, FACTA's truncation requirement "punishes conduct that *increases the risk* of third-party disclosure, not the actual disclosure itself." (Emphasis in original.) *Jeffries*, 928 F.3d at 1065. Moreover, there is no indication in *Maglio* that the statutes upon which the plaintiffs based their claims expressly provided a private cause of

action for a statutory violation, as does FACTA through the FCRA, and as does the Privacy Act (see 740 ILCS 14/20 (West 2022)).

¶ 39 Defendant also argues that adopting plaintiff's view would make Illinois an outlier both as a matter of constitutional-standing doctrine and the interpretation of FACTA. In this regard, defendant first claims that a finding that plaintiff has standing to bring her FACTA claim in an Illinois court eliminates the injury-in-fact requirement and removes Illinois from the overwhelming majority view of courts that have adhered to an injury-in-fact requirement. We disagree. As discussed above, application of Illinois's standing test as set forth by the supreme court in *Greer*, 122 Ill. 2d at 492-93, demonstrates that plaintiff has established an injury in fact under Illinois law. Our holding does not abandon the injury-in-fact requirement.

¶ 40 Defendant states that it is unaware of any other state appellate court that has ruled that Congress, "through legislation creating a private right of action, conferred upon uninjured individuals a right to sue in state court even though Congress lacks authority to grant those individuals access to federal court." But, as noted above, the plain and ordinary language of the FCRA provides a private cause of action for statutory damages and does not require a consumer to suffer actual damages before seeking recourse. See 15 U.S.C. § 1681n(a); *Lee*, 2019 IL App (5th) 180033, ¶¶ 64-68; see also *Jeffries*, 928 F.3d at 1067 n.3 (stating that FACTA "does not make liability contingent on a showing of actual harm"); *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708, 719 (9th Cir. 2010) ("Congress expressly created a statutory damages scheme that [was] intended to compensate individuals for actual or potential damages resulting from FACTA violations, without requiring individuals to prove actual harm."). Further, the FCRA expressly permits an individual to file a FACTA suit "in any appropriate United States district court *** *or in any other court of competent jurisdiction*." (Emphasis added.) 15 U.S.C. § 1681p. The plain and

unambiguous language used in section 1681p clearly permits courts in Illinois (and in all other states and territories of competent jurisdiction) to decide FACTA cases. Thus, we do not find this argument compelling.[2]

¶ 41 Defendant claims that a finding that plaintiff has standing to pursue her FACTA claim in an Illinois court would also make Illinois an outlier with respect to the interpretation and application of FACTA. Defendant reiterates that federal courts have uniformly rejected the proposition that a violation of FACTA's truncation requirement confers standing without regard to some concrete injury. See, *e.g.*, *Thomas*, 997 F.3d at 636, 642 (holding that bare procedural violation of FACTA's truncation requirement was insufficient to satisfy the standing requirement to sue in federal court under article III of the United States Constitution (U.S. Const., art. III), reasoning that "printing the first six digits does not inevitably lead to identity theft or increase the

[2]*Amici*, the United States and the Illinois Chambers of Commerce, contend that Congress demonstrated a contrary intent in the Clarification Act, Pub. L. No. 110-241. We disagree. The Clarification Act addressed lawsuits involving disclosure of expiration dates, not insufficient masking of card numbers, and then only to provide retroactive amnesty for violations up to 2008. See *Muransky v. Godiva Chocolatier, Inc.*, 905 F.3d 1200, 1210 (11th Cir. 2018), *rev'd on other grounds*, 979 F.3d 917. It did not otherwise change FACTA, and the reference to "actual harm" in the Clarification Act's findings refers to only the Clarification Act itself, not FACTA. See *In re Toys "R" Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litigation*, 300 F.R.D. 347, 364 n.39 (C.D. Cal. 2013) (noting that "the 'Purpose' subsection of the Clarification Act *** states: 'The purpose of this [Clarification] Act *** is to ensure that consumers suffering from any actual harm to their credit or identity are protected.' " (quoting 15 U.S.C. § 1681n note (2012) (Statement of Findings and Purpose for 2008 Amendment))).

risk of it"); *Muransky*, 979 F.3d at 929-35 (holding that the plaintiff "failed to allege either a harm or a material risk of harm stemming" from the disclosure of the first six digits of his card and therefore did not have standing to sue in federal court under article III of the United States Constitution (U.S. Const., art. III)); *Kamal*, 918 F.3d at 116 (affirming dismissal of the plaintiff's federal lawsuit for lack of standing under article III of the United States Constitution (U.S. Const., art. III) where the plaintiff could not "plausibly aver how [the defendant's] printing of the [first] six digits [of his credit card number] presents a material risk of concrete, particularized harm"); but see *Jeffries*, 928 F.3d at 1067 n.3 (stating that FACTA does not make liability contingent on a showing of actual harm); *Bateman*, 623 F.3d at 719 (same). To this, we again observe that Illinois courts are not required to follow federal law on issues of justiciability and standing. *Greer*, 122 Ill. 2d at 491. Indeed, as our supreme court has recognized, Illinois courts are more expansive in recognizing a party's standing than are federal courts. *Greer*, 122 Ill. 2d at 491. The United States Supreme Court has also acknowledged that federal standing rules do not apply in state court, even in cases based on federal law. *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989) ("We have recognized often that the constraints of Article III [of the United States Constitution (U.S. Const., art. III)] do not apply to state courts, and accordingly the state courts are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law, as when they are called upon to interpret the Constitution or, in this case, a federal statute.").

¶ 42 Defendant also asserts that numerous other states have chosen to follow federal authority when faced with FACTA cases. See, *e.g.*, *Gennock v. Kirkland's Inc.*, No. 462 WDA 2022, 2023 WL 3477873, at *4-6 (Pa. Super. Ct. May 16, 2023) (holding that the plaintiff lacked standing under Pennsylvania law to bring FACTA claim alleging that improper truncation of credit card

numbers heightened risk of identity theft); *Saleh v. Miami Gardens Square One, Inc.*, 353 So. 3d 1253, 1255 (Fla. Dist. Ct. App. 2023) (rejecting the plaintiff's invitation "to broaden Florida's standing requirements and exercise jurisdiction over the federal statutory claim," because "Florida law also imports an injury in fact requirement under [its] standing framework," which the plaintiff could not satisfy); *Southam v. Red Wing Shoe Co.*, 343 So. 3d 106, 112 (Fla. Dist. Ct. App. 2022) (holding that the plaintiff did not have "an injury-in-fact that is concrete and particularized to meet standing requirements" under Florida law); *Limon v. Circle K Stores Inc.*, 300 Cal. Rptr. 3d 572, 598 (Ct. App. 2022) (finding no standing for FCRA claim based on improper disclosures because plaintiff could not satisfy California's standing requirements). But at least one state court recently rejected that the federal test for standing is applicable to a suit under the FCRA in state court. See, *e.g.*, *Kenn v. Eascare, LLC*, 226 N.E.3d 318, 324 (Mass. App. Ct. 2024) (reversing trial court's dismissal of FCRA lawsuit for lack of standing, noting that "[t]he plaintiff's lack of standing in Federal court is not dispositive of the question of her standing in State court"). Moreover, cases from our sister states are not binding on this court. *In re Parentage of Scarlett Z.-D.*, 2014 IL App (2d) 120266-B, ¶ 49.

¶ 43 In addition, we disagree that adopting a view that plaintiff has standing to pursue her FACTA claim in state court would make Illinois's view on standing an outlier. Many states reject the federal test for standing. See, *e.g.*, *Kenn*, 226 N.E.3d at 324 (reversing trial court's dismissal of FCRA lawsuit for lack of standing, noting that "[t]he plaintiff's lack of standing in Federal court is not dispositive of the question of her standing in State court"); *State ex rel. Dodrill Heating & Cooling, LLC v. Akers*, 874 S.E.2d 265, 273 (W. Va. 2022) (finding a violation of statutory rights sufficient to show injury for standing "because the Legislature has *made* it so" (emphasis in original)); *Committee to Elect Dan Forest v. Employees Political Action Committee*, 376 N.C.

558, 2021-NCSC-6, ¶¶ 57, 72-74 (rejecting the current federal standing test, noting that it "has been increasingly used to constrain access to federal courts even where a statute creates a right to sue"); *Lansing Schools Education Ass'n v. Lansing Board of Education*, 792 N.W.2d 686, 693 (Mich. 2010) (stating "[t]here is no support in either the text of the Michigan Constitution or in Michigan jurisprudence, however, for *** adopting the federal standing doctrine").

¶ 44 Indeed, the fact that state courts, including Illinois, may hear federal statutory claims and that federal courts cannot has been described as "a notable quirk of the United States federalist system." (Internal quotation marks omitted.) *Soto*, 2018 WL 2364916, at *5; see *Smith v. Wisconsin Department of Agriculture, Trade & Consumer Protection*, 23 F.3d 1134, 1142 (7th Cir. 1994) ("While some consider it odd that a state court might have the authority to hear a federal constitutional claim in a setting where a federal court would not [citation], it is clear that Article III's 'case or controversy' limitations apply only to the federal courts [citation]."). Indeed, the dissent in *TransUnion* predicted that the majority's holding that federal courts lack standing to address statutory violations of the FCRA would "ensure[ ] that state courts will exercise exclusive jurisdiction over these sorts of class actions." *TransUnion*, 594 U.S. at 459 n.9 (Thomas, J., dissenting, joined by Breyer, Sotomayor, and Kagan, JJ.).

¶ 45 Defendant contends that FACTA should not be construed to allow a "no-injury plaintiff" barred from suing in federal court to sue in state court. In support of this proposition, defendant directs us to *TransUnion*, 594 U.S. 413 (majority opinion). But defendant reads *TransUnion* too broadly.

¶ 46 In *TransUnion*, two subclasses of plaintiffs sued TransUnion, alleging a violation of the FCRA. Both subclasses claimed that TransUnion's internal credit files contained misleading information about them. The first subclass included those whose credit reports had been

disseminated to potential creditors. The second subclass included those whose credit reports were never shared with anyone outside TransUnion. With respect to the first subclass, the United States Supreme Court held that their reputational harm from the disclosure of their misleading credit reports bore a close relationship to the harm caused by the tort of defamation. *TransUnion*, 594 U.S. at 432-33. So, the first subclass had "suffered a concrete injury under Article III" of the United States Constitution (U.S. Const., art. III). *TransUnion*, 594 U.S. at 433. But for the second subclass, those whose credit reports had not been disseminated, the Supreme Court held that they had not suffered a concrete harm. *TransUnion*, 594 U.S. at 439. Thus, the issue addressed in *TransUnion* was whether the plaintiffs suffered "concrete harm" such that they had article III standing (U.S. Const., art. III) to sue under federal law. *TransUnion*, 594 U.S. at 417. Yet, as noted repeatedly in this opinion, Illinois courts are not required to follow federal law on issues of justiciability and standing. *Greer*, 122 Ill. 2d at 491.

¶ 47 Defendant acknowledges as much but argues that the United States Constitution "does not empower Congress to 'elevate' statutory violations into injuries that trigger the judicial power to resolve controversies." Citing *TransUnion*, defendant suggests that a finding that plaintiff has standing to sue under FACTA therefore violates article II of the United States Constitution (U.S. Const., art. II). In *TransUnion*, the Supreme Court stated that "[a] regime where Congress could freely authorize unharmed plaintiffs to sue defendants who violate federal law not only would violate Article III [of the U.S. Constitution (U.S. Const., art. III)] *but also would infringe on the Executive Branch's Article II [(U.S. Const., art. II)] authority*." (Emphasis added and omitted.) *TransUnion*, 594 U.S. at 429. However, the Court did not conclude that FACTA constituted such a scheme. Nor did the Court make an article II violation a part of its holding. Indeed, the *TransUnion* majority begins its opinion with the following passage: "To have *Article III standing*

to sue in federal court, plaintiffs must demonstrate, among other things, that they suffered a concrete harm. No concrete harm, no standing." (Emphasis added.) *TransUnion*, 594 U.S. at 417. The Court later frames the issue presented as "whether the 8,185 class members have *Article III standing* as to their three claims." (Emphasis added.) *TransUnion*, 594 U.S. at 422. The Court held that the subclass of members whose credit reports were disseminated to third parties had "suffered a concrete injury under *Article III*" while the subclass of members whose credit reports were not so disseminated "did not suffer a *concrete harm*" under article III. (Emphases added.) *TransUnion*, 594 U.S. at 433, 439. Clearly, the holding in *TransUnion* is rooted in article III, not article II.

¶ 48 Defendant also raises a due process argument, asserting that "allowing uninjured plaintiffs to bring putative class actions seeking statutory damages raises serious due process concerns that Congress would not have intended." In this regard, defendant posits that, when combined with the procedural device of a class action, aggregated statutory damages can result in liability exposure in the hundreds of millions of dollars for a class whose members may not have suffered an injury in fact and whose actual damages are nonexistent. But defendant's argument presupposes that a statutory violation of FACTA alone does not constitute an injury. As noted above, it does under Illinois law. In any event, this argument is premature, as this appeal comes before this court only after the trial court granted the motion to certify the class. Significantly, to date, no trial has occurred and no damages have been awarded.

¶ 49 For the reasons set forth above, we determine that the trial court did not err in concluding that plaintiff has standing to bring her FACTA claim in Illinois court. The absence of a valid claim based on a lack of standing formed the sole basis for defendant's argument in this appeal. Having rejected this argument, we therefore conclude that the trial court's decision to grant plaintiff's

motion for class certification did not constitute an abuse of discretion or the application of impermissible legal criteria. See *Avery*, 216 Ill. 2d at 125-26.

¶ 50 Prior to concluding, we emphasize that we are not deciding whether plaintiff's claim would ultimately be successful. Further, nothing in this opinion should be interpreted as addressing the other reasons advanced by defendant in its motion to dismiss as to why plaintiff could not establish a claim under FACTA, including whether FACTA applies to cash transactions, whether a prepaid card is a "debit" or "credit" card for purposes of section 1681c(g)(1) of FACTA (15 U.S.C. § 1681c(g)(1)), or whether defendant's alleged violation of FACTA was willful. In addition, nothing in this opinion should be interpreted to control the outcome of any other matter defendant may yet raise to defeat plaintiff's cause of action. To be clear, we have neither considered nor ruled upon any issue other than the propriety of the trial court's decision to grant plaintiff's motion for class certification in light of defendant's claim that plaintiff lacks standing to bring her FACTA claim in Illinois. Within that very limited scope, we merely hold that, under principles of standing in Illinois, an alleged willful violation of an individual's statutory rights under section 1681c(g)(1) of FACTA (15 U.S.C. § 1681c(g)(1)) is sufficient to confer standing, even in the absence of an allegation of any actual injury or adverse effect.

¶ 51 III. CONCLUSION

¶ 52 For the reasons set forth above, we affirm the judgment of the circuit court of Lake County, which granted plaintiff's motion for class certification.

¶ 53 Affirmed.

¶ 54 JUSTICE McLAREN, dissenting:

¶ 55 I dissent because I believe the majority has engaged in piecemeal litigation and rendered a speculative, advisory opinion on only one independent aspect of class certification. It is one thing

to render a decision on standing because the supreme court ordered this court to entertain the appeal, but the majority's disposition is an enthymeme that purports to address only standing and then affirms class certification based on a limited record and in disregard of defenses raised below.

¶ 56 The majority states in the second paragraph that "an alleged willful violation of an individual's statutory rights under section 1681c(g)(1) of FACTA (15 U.S.C. § 1681c(g)(1)) is sufficient to confer standing" (*supra* ¶ 2) but then goes on to affirm "the trial court's decision to *grant plaintiff's motion for class certification*" (emphasis added) (*supra* ¶ 50). In paragraph 50, the majority lists many legal arguments that are not addressed by the opinion, such as whether FACTA applies to cash transaction or whether a prepaid card is a "debit" or "credit" card for the purposes of the act. *Supra* ¶ 50. The majority then states they have "neither considered nor ruled upon any issue other than the propriety of the trial court's decision to grant plaintiff's motion for class certification in light of defendant's claim that plaintiff lacks standing to bring her FACTA claim in Illinois." *Supra* ¶ 50. The majority then holds that an allegation of a willful violation of an individual's statutory rights under FACTA is "*sufficient to confer standing even in the absence of an allegation of any actual injury or adverse effect.*" (Emphasis added.) *Supra* ¶ 50.

¶ 57 The majority analysis is premised on the validity of plaintiff's pleading, without a record to address whether it states a cause of action, whether there are affirmative defenses, whether there are no material issues of fact, and whether certification is appropriate. Put another way, the majority determines only that standing has been met under Illinois law, despite issues still pending below. I submit that this determination necessarily presumes that the allegations in the complaint are true. This implied premise makes part of this decision speculative, advisory, and premature.

¶ 58 The majority notes that a trial court must determine whether there is an actionable claim as a threshold matter and a class cannot be certified unless the named plaintiff has a cause of action.

The majority specifically cites *Stefanski* for the proposition that, "if a plaintiff has not stated an actionable claim, there is no need to determine whether the four statutory prerequisites for a class action have been met." *Supra* ¶ 19 (citing *Stefanski*, 2015 IL App (1st) 132844, ¶ 15). The majority concludes that plaintiff's alleged injury is "distinct and palpable" but subject to change upon further review.

¶ 59 Unfortunately, the majority fails to end its analysis on standing as the sole issue on appeal and goes on to affirm class certification. In paragraph 49, the majority concludes that "the trial court's decision to grant plaintiff's motion for class certification did not constitute an abuse of discretion or the application of impermissible legal criteria." *Supra* ¶ 49. This is a *holding* in the majority disposition. In the next paragraph, however, the majority relates that there are matters to be determined upon remand that may alter the present determination of standing and this *holding*.

¶ 60 I submit that the majority's holding is a *non sequitur*. Its finding that there is standing and then concluding that the class certification was proper is an improper conclusion based upon the hypothetical and presumed premises that standing and the allegations in the complaint remain valid and will not be affected by motions to dismiss or summary judgment in favor of the defendant. I contend that the matter should be remanded to the trial court to address the full panoply of issues and arguments relating to how a class certification should be addressed and adjudicated.

¶ 61 Furthermore, I disagree with much of the analysis of which law should be applied to determine the merits of the cause. I submit that federal law, and not state law, should be utilized. The federal statute regulates interstate commerce and therefore preemption should apply. See *Colorado Anti-Discrimination Comm'n v. Continental Air Lines, Inc.*, 372 U.S. 714, 723 (1963). I also believe that when there is a conflict between state and federal law, the federal law should apply. See *McCulloch v. Maryland*, 17 U.S. 316, 327 (1819).

¶ 62 I submit that we should answer the question of standing and remand the cause to the trial court for further proceedings. Beyond that, determining what law should be utilized to determine whether a cause of action has been alleged and whether summary judgment, or partial summary judgment, should be granted is *dicta*. Regardless, the record is insufficient to definitively rule on anything other than that there is standing under Illinois law. I submit that affirming class certification with the extant provisos is oxymoronic, serves little purpose, and violates the policies against issuing advisory opinions and entertaining piecemeal litigation. See *People ex rel. Black v. Dukes*, 96 Ill. 2d 273, 276 (1983) (noting "[t]he courts of this State should not decide a case" where the judgment "could have [an] advisory effect only"); *The Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 34 (holding the disposition of a portion of a cause of action for expediency "is the very definition of piecemeal litigation, and it is something this court is not inclined to accommodate").

¶ 63 Were the majority to be consistent, there should be several other piecemeal interlocutory appeals dealing with only what defendant wishes to address in each appeal. I submit that the supreme court realized its grant for leave to appeal was improvidently granted because the record is insufficient to fully determine the merits of class certification aside from the issue of standing. Unfortunately, the majority has decided that it must affirm the class certification even though the supreme court balked and referred the case to this court. I submit that this court should have considered standing consistently with an appeal under Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019), answered the question of standing in the affirmative, and remanded the case for further proceedings without affirming the certification of the class and the attendant qualifications that emasculate the affirmance of the class certification. Simply put, we may have the authority to entertain this appeal, but we do not have the ability to either affirm or deny class certification.

¶ 64 This court should not have adjudicated the class certification. Therefore, I dissent.

Fausett v. Walgreen Co., 2024 IL App (2d) 230105

Decision Under Review:	Appeal from the Circuit Court of Lake County, No. 19-CH-675; the Hon. Donna Jo R. Vonderstrasse, Judge, presiding.
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