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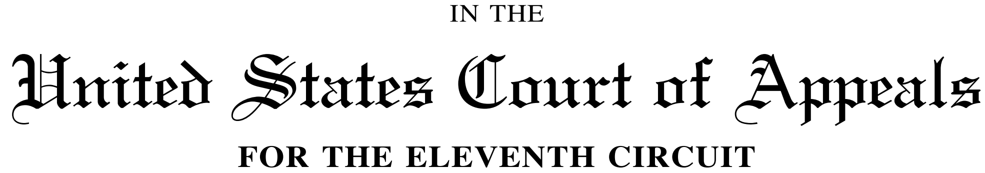

FOR THE ELEVENTH CIRCUIT

DR. DAVID S. MURANSKY,
individually and on behalf of all others similarly situated

Plaintiff-Appellee,

JAMES H. PRICE, ERIC ALAN ISAACSON,

Interested Parties-Appellants,

—v.—

GODIVA CHOCOLATIER, INC., a New Jersey corporation,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR *AMICI CURIAE* NATIONAL CONSUMER LAW CENTER AND NATIONAL ASSOCIATION OF CONSUMER ADVOCATES IN SUPPORT OF APPELLEE DAVID S. MURANSKY

JOHN YANCHUNIS
KENYA J. REDDY
MORGAN & MORGAN P.A.
201 North Franklin Street, 7th Floor
Tampa, Florida 33602
(813) 223-5505

Attorneys for Amici Curiae

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Federal Rule of Appellate Procedure 26.1 and 11th Circuit Rule 26.1-1, Amici Curiae, National Consumer Law Center and National Association of Consumer Advocates, respectfully submit the following Certificate of Interested Persons:

District Court Judges

Dimitrouleas, Hon. William P., United States District Judge

Snow, Hon. Lurana S., United States Magistrate Judge

Parties and Other Persons That Have an Interest in the Outcome

Almeida, David S. – Counsel for Defendant-Appellee Godiva Chocolatier, Inc.

American Express Company, Nonparty

Benesch, Friedlander, Coplan & Aronoff LLP – Counsel for Defendant-Appellee Godiva Chocolatier, Inc.

Bret Lusskin, P.A. – Counsel for Plaintiff-Appellee Muransky

Chamber of Commerce of the United States of America – Amicus

Cohen, Jonathan – Counsel for National Consumer Law Center and National Association of Consumer Advocates – Amici

Davis, John W., Counsel for Objector-Appellant Isaacson

Dykema Gossett PLLC, Counsel for Defendant-Appellee Godiva Chocolatier, Inc.

Franklin, Jonathan S. – Counsel for Six Flags Entertainment Corp. – Amicus

Godiva Chocolatier, Inc., Defendant-Appellee

Hilicki, Michael S., Counsel for Plaintiff-Appellee Muransky

Hogan Lovells US LLP – Counsel for Objector-Appellant Isaacson

Holt, Michael A., Counsel for Nonparty American Express Company

Huff, Kevin Brent – Counsel for Amici Chamber of Commerce, International Franchise Association, and National Retail Federation

International Franchise Association – Amicus

Isaacson, Eric Alan, Objector-Appellant

Katyal, Neal Kumar – Counsel for Objector-Appellant Isaacson

Kellog Hansen Todd Figel & Frederick, PLLC – Counsel for Chamber of Commerce, International Franchise Association, and National Retail Federation – Amici

Keogh Law, Ltd., Counsel for Plaintiff-Appellee David S. Muransky

Keogh, Keith J., Counsel for Plaintiff-Appellee David S. Muransky

Lacy, Price & Wagner, P.C., Counsel for Objector-Appellant Price

Law Office of John W. Davis, Counsel for Objector-Appellant Isaacson

Lusskin, Bret Leon, Jr., Counsel for Plaintiff-Appellee David S. Muransky

McDonald, W. Allen, Counsel for Objector-Appellant Price

Melendez, Brian, Counsel for Defendant-Appellee Godiva Chocolatier, Inc.

Muransky, David S., Plaintiff-Appellee

National Association of Consumer Advocates – Amicus

National Consumer Law Center – Amicus

National Retail Federation – Amicus

Newman, Jeremy S. – Counsel for Chamber of Commerce, International Franchise Association, and National Retail Federation – Amicus

Norton Rose Fulbright US, LLP – Counsel for Six Flags Entertainment Corp. – Amicus

Nutley, C. Benjamin, Counsel for Objector-Appellant Isaacson

Oracle America Inc., Nonparty

Owens, Scott D., Counsel for Plaintiff-Appellee David S. Muransky

Price, James H., Objector-Appellant

Reddy, Kenya J. – Counsel for National Consumer Law Center and National Association of Consumer Advocates – Amici

Reich, Mitchell P. – Counsel for Objector-Appellant Isaacson

Scott D. Owens, P.A., Counsel for Plaintiff-Appellee David S. Muransky

Shook, Hardy & Bacon L.L.P., Counsel for Nonparty American Express Company

Siegal, Peter B. – Counsel for Six Flags Entertainment Corp. – Amicus

Six Flags Entertainment Corp. – Amicus

Yanchunis, John A. – Counsel for National Consumer Law Center and National Association of Consumer Advocates – Amici

Amici Curiae National Consumer Law Center and National Association of Consumer Advocates are non-profit organizations that do not have parent companies and are not subsidiaries or affiliates of a publicly owned corporation.

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IDENTITY AND INTEREST OF AMICI CURIAE

The National Consumer Law Center ("NCLC") is a nonprofit organization that possesses a unique expertise and interest because of its many years of work protecting the integrity of the Fair Credit Reporting Act ("FCRA"), including the Fair and Accurate Credit Reporting Act ("FACTA") and the rights of low-income consumers under the Acts. NCLC is recognized nationally as an expert on the FCRA and FACTA, and has drawn on this expertise to provide information, legal research, policy analyses, and market insights to federal and state legislatures, administrative agencies, and the courts for over 40 years. NCLC has testified before Congress regarding the FCRA, regularly submits comments to regulators in FCRA rulemakings, and has issued special reports on consumer reporting and privacy issues. Among other treatises, NCLC publishes Fair Credit Reporting (9th ed. 2018), the primary treatise in this field, which comprehensively compiles judicial decisions, as well as regulatory and statutory developments, related to the FCRA, including FACTA. Its interest in this appeal flows from its efforts to protect the integrity of the privacy and accuracy of consumers' information.

The National Association of Consumer Advocates ("NACA") is a national nonprofit association of over 1500 attorneys and consumer advocates committed to representing consumers' interests. Its members are private and public sector attorneys, legal services attorneys, law professors and law students whose primary

focus is the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for communication, networking, and information-sharing among consumer advocates across the country, particularly regarding legal issues, and by serving as a voice for its members and consumers in the ongoing struggle to curb unfair or abusive business practices that affect consumers. In pursuit of this mission, making certain that corporations comply with state and federal consumer protection laws in general and the FCRA in particular, has been a continuing and significant concern of NACA since its inception.

This case concerns whether Appellee Muransky satisfied Article III standing requirements by alleging that a merchant disclosed ten out of sixteen of the numbers of his credit card number on a receipt, in violation of the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"). Congress's stated purpose in enacting FACTA was to protect consumers from the risk of identity theft from disclosure of their credit cared numbers on transaction receipts. FACTA created a substantive legal right for consumers to receive a truncated credit card receipt and permitted consumers to recover statutory damages for a willful violation of the truncation requirements. Congress therefore created a legally protected interest, the invasion of which creates an injury in fact. As a panel of this Court correctly

found, Appellee Muransky had standing to bring the underlying lawsuit, which resulted in a settlement benefitting himself and other similarly situated consumers.

FACTA has been a vital tool in encouraging merchants to comply with measures intended to prevent identity theft. Because Congress determined that disclosing anything other than the last five digits of a card number on a receipt is sufficient to create a real risk of harm, consumers are not required to plead specific facts demonstrating harm or a risk of harm. On behalf of consumers who rely on FACTA's protections to reduce their risk of identity theft, NCLC and NACA urges the court to affirm the decisions of the panel and the district court.

The undersigned counsel authored this brief in whole. No party, person, or other entity paid for its preparation or contributed money that was intended to fund the preparation or submission of the brief.

STATEMENT OF THE ISSUE

Did the allegations in Appellee Muransky's amended complaint satisfy Article III standing requirements by alleging that Godiva exposed him to an congressionally-determined risk of identify theft in violation of FACTA?

SUMMARY OF THE ARGUMENT

Finding that Americans had "become increasingly concerned about the risk of their personal financial information falling into the wrong hands" and that the crime of identity theft had "reached almost epidemic proportions in recent years," H.R. Rep. No. 108-263 at 25, Congress enacted the Fair and Accurate Credit Transactions Act of 2003 ("FACTA"). "Congress's aim in passing FACTA was to reduce the chance that a consumer would be injured (usually through identity theft) by virtue of the inclusion of sensitive information on a credit/debit card receipt." *Grabein v. 1–800–Flowers.com, Inc.*, Case No. 07–cv–22235–HUCK, 2008 WL 343179, at *3 (S.D. Fla. Jan. 29, 2008). To that end, FACTA "requires the truncation of credit and debit card account numbers on electronically printed receipts to prevent criminals from obtaining easy access to such key information." S. Rep. No. 108-166 at 3. Congress described truncation as a "private-sector *mandate*" intended to "enhance the ability of consumers to combat identity theft." *Id.* at 30, 3 (emphasis added).

As debit and credit transactions have become the dominant method of payment for consumer purchases, FACTA has been an important tool in preventing the disclosure of consumers' card information and preventing criminals from using that information for nefarious purposes. FACTA created a substantive legal right for consumers to receive a truncated credit card receipt and established that a

violation of that right is concrete "as soon as a company prints the offending receipt, as opposed to requiring a plaintiff actually suffer identity theft." *Guarisma v. Microsoft Corp.*, 209 F. Supp. 3d 1261, 1265-66 (S.D. Fla. 2016) (citing *Amason v. Kangaroo Exp.*, No. 7:09-cv-2117-RDP, 2013 WL 987935, at *4 (N.D. Ala. March 11, 2013)).

Decades of case law have established that Congress may create substantive legal rights that constitute legally protected interests, the invasion of which creates an injury in fact. *See*, *e.g.*, *Warth v. Seldin*, 422 U.S. 490, 500 (1975). Accordingly, this Court got it right when it held that "the heightened risk of identity theft Dr. Muransky experienced as a result of the FACTA violation constitutes an injury in fact" and he "suffered the heightened risk of identity theft the moment Godiva printed too many digits of his credit card number." *Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175, 1185 (11th Cir. 2019) ("*Muransky II*"). Appellant Isaacson urges the Court to now reach the opposite conclusion and hold that Muransky and other consumers cannot demonstrate injury in fact unless and until they have suffered identity theft. The Court should reject this theory of standing for the following reasons. First, it would undermine and contradict the purposes for which Congress enacted FACTA. Second, it would require the Court to substitute its judgment of what constitutes an injury in fact under FACTA for Congress's, in violation of the separation of powers doctrine. Third, it would allow

retailers to violate the statute with impunity and shift responsibility for protecting consumers' card information from retailers—as Congress intended—to the consumers themselves. Finally, it would effectively deny consumers access to the courts to redress violations of FACTA, rendering the statute nearly unenforceable.

ARGUMENT

I. Requiring Plaintiffs to Suffer Identity Theft Before Bringing a FACTA Claim Would Undermine and Frustrate the Very Purpose for Which FACTA Was Enacted.

Appellant Isaacson urges the Court to hold that a plaintiff alleging a FACTA violation must plead specific facts demonstrating actual harm to satisfy Article III standing requirements. Amici join in the well-reasoned arguments made by Appellee Muransky and Appellant Price explaining why the receipt Dr. Muransky received heightened his risk of identity theft and therefore constituted injury in fact under FACTA. Amici would add to that discussion the fact that requiring plaintiffs to demonstrate actual identity theft is contrary to the purpose of FACTA, which is to prevent that harm from occurring in the first place.

The Supreme Court has long recognized that "Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before." *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1549 (2016) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Therefore, Congress may "create a statutory right or entitlement the alleged

deprivation of which can confer standing to sue even where the plaintiff would have suffered no judicially cognizable injury in the absence of statute." *Warth*, 422 U.S. at 500; *Zivotofsky ex rel. Ari Z. v. Sec'y of State*, 444 F.3d 614, 619 (D.C. Cir. 2006) ("Although it is natural to think of an injury in terms of some economic, physical, or psychological damage, a concrete and particular injury for standing purposes can also consist of the violation of an individual right conferred on a person by statute."). The violation of a procedural right granted by a statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified." *Spokeo*, 136 S. Ct. at 1549; *Melito v. Experian Mktg. Sols., Inc.*, 923 F.3d 85, 88 (2d Cir. 2019) (holding that plaintiffs' receipt of unsolicited text messages, sans any other injury, was sufficient to demonstrate injury-in-fact without demonstrating any additional harm because "the nuisance and privacy invasion attendant on spam texts are the very harms with which Congress was concerned when enacting the [Telephone Consumer Privacy Act]" and history demonstrated that causes of action to remedy such injuries were traditionally regarded as providing bases for lawsuits in English or American courts).

Moreover "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is . . . instructive and

important." *Id.* at 1549. Congress exercised its judgment when it enacted FACTA. The Fair Credit Reporting Act ("FCRA") was passed in 1970 and substantially amended in 1996. H. R. Rep. No. 108-396 at 65 (2003). The purpose of the 1996 amendments was "to make the law relevant in an information age." *Id.* The 1996 amendments were set to expire on January 1, 2004, to prompt Congressional review of their impact. S. Rep. No. 108-166 at 6 (2003). Accordingly, in 2003, the Senate Committee on Banking, Housing and Urban Affairs and the House of Representatives' Committee on Financial Services each conducted numerous hearings on the FCRA and the changes that the national credit markets had undergone since 1996, primarily as a result of technological innovation. The Senate found that "[p]erhaps the most significant development since the passage of the 1996 amendments was the emergence and impact of identity theft." *Id.* at 8.

Although technological innovation had resulted in many benefits to American consumers, the House noted there had been one drawback: "Namely, the free flow of information has enabled the explosive growth of a new crime—identity theft." H.R. Rep. No. 108-396 at 65. The Senate decided that "[d]ue to the significant costs to consumers and to the economy and because of the constant efforts of criminals to find new victims, it is vitally important to address measures which will help *prevent identity theft* and to punish identity thieves." S. Rep. No. 108-166 at 8 (emphasis added). To that end, both the Senate and House committees

"developed comprehensive hearing records regarding the growth of this crime, and the havoc it visits upon the lives of its victims." H.R. Rep. No. 108-396 at 66.

Further, the legislative history repeatedly makes clear that the objective of FACTA was to protect consumers from identity theft *before* it occurs, not to redress identity theft after it occurs. The Senate explained that the legislation "contains numerous measures [that] protect consumers from identity thieves," and "requires the truncation of credit and debit card account numbers on electronically printed receipts *to prevent criminals from obtaining easy access to such key information.*" S. Rep. 108-166 at 3 (emphasis added). The truncation requirement was specifically included "to *limit the number of opportunities* for identity thieves to 'pick off' key card account information." *Id.* at 13 (emphasis added). As President Bush acknowledged when signing FACTA to in law, the truncation requirements "will help prevent identity theft *before* it occurs." 39 Weekly Comp. Pres. Doc. 1746, 2004 U.S.C.C.A.N. 1755, 1757 (Dec. 4. 2003) (emphasis added). Here the first six digits that were exposed reveal information about the cardholder's account, such as the card level (e.g. gold or platinum), whether it's a Mastercard or Visa, or even if its owner is enrolled in a loyalty program, all of which can be used to assist an identity thief, which is why this information must be masked to prevent identity theft before it happens.

Congress reiterated the purpose of the statute in the Credit and Debit Card Receipt Clarification Act of 2007 ("Clarification Act"), which amended FACTA to give retroactive amnesty for technical violations of the statute to retailers that misunderstood the requirements by properly truncating all but the last five digits of debit and credit card numbers but failed to truncate the card expiration date. In the Clarification Act's Findings, Congress stated that FACTA "was enacted into law in 2003 and 1 of the purposes of such Act is to prevent criminals from obtaining access to consumers' private financial and credit information in order to reduce identity theft and credit card fraud." Pub. L. 110-241, §2(a)(1), 122 Stat. 1565, 1565. The Act noted that "[e]xperts in the field agree that proper truncation of the card number, by itself as required by the amendment made by the Fair and Accurate Credit Transactions Act, regardless of the inclusion of the expiration date, *prevents* a potential fraudster from perpetrating identity theft or credit card fraud." *Id.* §2(a)(6), 122 Stat. at 1565 (emphasis added).

Based on the legislative history, it is clear that in 2003, Congress declared identity theft to be a major problem for consumers and found it necessary to prevent consumers from experiencing the harmful consequences of that crime. It responded by amending the FCRA to create new measures to limit the opportunity for identity thieves to steal consumers' card information by requiring businesses to truncate all but the last 5 digits of a consumer's card number. It provided

consumers the right to enforce the truncation requirements by imposing liability for merchants who willfully include more than the last five digits of a card number with statutory damages of $100 to $1000 without proving actual damages.

In light of Congress's stated goal to prevent identity theft, it would be contrary to the statute, its remedial scheme, and its legislative history to interpret FACTA to require that a consumer allege actual identity theft or some other tangible harm before he or she has standing to bring a claim alleging a violation of FACTA. It cannot be the case that Congress intended for a consumer to suffer the harm the statute was intended to prevent before he or she can have an actionable claim. *See Jeffries v. Vol. Servs. Am.*, 928 F.3d 1059 (D.C. Cir. 2019) ("The duty applies at the 'point of the sale or transaction' and a violation occurs regardless whether a plaintiff ever becomes the victim of any crime."); *Muransky II*, 922 F.3d at 1190 ("FACTA is designed to minimize the risk that disclosure will occur, not to remedy only actual disclosures.").

II. The Court Should Not Substitute Its Judgment for That of Congress.

It is well-settled that "Courts must be careful not to substitute their judgment for that of Congress, add restrictions not contained in the statute, or rewrite clear statutory language." *Bailey Vaught Robertson & Co. v. United States*, 828 F. Supp. 442, 445 (N.D. Tex. 1993) (citing *Commissioner v. Mercantile National Bank at Dallas*, 276 F.2d 58, 62–63 (5th Cir. 1960)). Isaacson asks this court to rewrite

FACTA and deny access to the courthouse by effectively requiring plaintiffs to demonstrate they were the victim of identity theft to bring a claim under FACTA. The Court must decline this invitation.

Congress is a political body that operates through hearings, findings, and legislation. *Minority Television Project, Inc. v. F.C.C.*, 736 F.3d 1192, 1199 (9th Cir. 2013). "When Congress makes findings on essentially factual issues . . . those findings are of course entitled to a great deal of deference, inasmuch as Congress is an institution better equipped to amass and evaluate the vast amounts of data bearing on such an issue." *Walters v. National Ass'n of Radiation Survivors*, 473 U.S. 305, 331 n.12 (1985).

As demonstrated *supra*, Congress held multiple hearings, took testimony from numerous witnesses, and developed an extensive factual record before deciding that consumers faced a real risk of identity theft when too much of their credit and debit card account numbers were disclosed on transaction receipts, and that the best way to eliminate that risk was to mandate truncation of all but the last five digits of consumers' debit and credit card numbers. Accordingly, to hold otherwise would require the Court "to play a game of legislative reconstruction." *Amason*, 2013 WL 987935 at *1. The Court recognized this in *Muransky II* and rightfully "decline[d] to substitute our judgment for Congress's by saying that, as a matter of law, the risk of identity theft is not concrete until a merchant prints the

first eight or ten digits instead of the first six." 922 F.3d at 1188. "To engage in such an exercise . . . would amount to an usurpation by this court of powers rightfully granted to Congress." *Amason*, 2013 WL 987935 at *1. The Court should not ignore fundamental principles of separation of powers by substituting its judgment for Congress's and weakening the substantive protections Congress set out in the statute.

III. The Risk of Preventing Identity Theft Should Not Be Shifted to Consumers.

The briefs submitted by Six Flags and the trade group amici demonstrate precisely why allowing consumers to recover for willful violations of FACTA without first requiring them to experience tangible harm is vital to the aims of the statute. On their own, without the threat of liability for non-compliance with the statute, businesses cannot be trusted to take steps to minimize the risk of identity theft for consumers.

When it enacted FACTA, Congress recognized that to comply with the new truncation requirements, "some merchants would have to make modifications to their systems, including software reprogramming, formatting changes to dial-up terminals, and purchase of new printing devices." S. Rep. No. 108-166 at 30. Recognizing the expense involved in replacing those systems, Congress provided a "phase-in" period for compliance with the new requirements, allowing a three-year

effective date for any cash registers in use on or before January 1, 2005 and a one-year effective date for any register put into use after January 1, 2005. 15 U.S.C. §1681c(g)(3). More than twelve years after the conclusion of the phase-in period and sixteen years after the enactment of the statute, there simply is no reason for any merchant not to be in compliance with FACTA requirements. Yet, the amici seek to avoid liability for willfully violating the statute by asking the Court to limit consumers' ability to privately enforce FACTA's requirements by requiring them to allege tangible harm.

The amici argue the standing requirements should be heightened because allegedly FACTA has been "weaponized" and threatens "devastating liability" to retailers (claims that are unsupported). In making this argument, the amici fail to acknowledge that retailers are subject to statutory damages only for violations that are *willful*. Thus, every retailer can protect itself from the alleged "devastating" liability by simply complying with the statute and routinely monitoring its systems (*i.e.* eyeballing its receipts, which store staff can easily do when they print and hand them to customers) to ensure that compliance. By asking the Court to limit their exposure to a lawsuit to only those instances in which their failure to comply with the statute results in actual identity theft, the amici not only seek to be absolved of any responsibility for not complying with the statute, they also seek to

shift the responsibility of preventing identity theft from retailers to consumers, in derogation of Congressional intent.

In mandating truncation of receipts to prevent the risk of identity theft, Congress necessarily determined responsibility for preventing identity theft should rest primarily with retailers, who are in a position to prevent disclosure of debit and credit card information. Consumers, in contrast, can only attempt to safeguard their information on an ad hoc basis after disclosure on a receipt. The amici would seek to shift full responsibility back to consumers, allowing retailers to avoid liability for willfully failing to comply with FACTA unless and the consumer has become the victim of identity fraud. This would defeat the entire purpose of the statute, which is to prevent injury in the first place.

The merchant and trade group amici argue that unless this Court adopts a theory of standing that requires plaintiffs to suffer tangible harm before they can recover under the statute, this Circuit will become a haven for abusive litigation. But Congress was aware of this asserted concern. In fact, it confronted this issue head on in 2007, after a wave of lawsuits were filed based on technical violations of the statute by retailers who complied with the requirement to truncate all but the last five card digits, but did not realize they were also required to truncate expiration dates. Hundreds of plaintiffs who received receipts that failed to truncate their expiration dates filed class action suits, causing Congress to be

concerned about abusive litigation. In response, it enacted the Clarification Act. The language of the Act made clear that Congress was concerned about the wave of litigation filed by plaintiffs who only alleged a violation of expiration-date masking requirement. PL 110-241§2(a)(4), 122 Stat 1565 ("hundreds of lawsuits were filed alleging that the failure to remove the expiration date was a willful violation of the Fair Credit Reporting Act even where the account number was properly truncated."). Congress specifically found that the disclosure of the expiration dates did not increase the risk of harm to any consumer *Id.*, §2(a)(5). It also recognized that "[d]espite repeatedly being denied class certification, the continued appealing and filing of these lawsuits represents a significant burden on the hundreds of companies that have been sued and could well raise prices to consumers without corresponding consumer protection benefit." *Id.*, §2(a)(7). Therefore, the stated purpose of the Clarification Act was "to ensure that consumers suffering from any actual harm to their credit or identity are protected while simultaneously limiting abusive lawsuits that do not protect consumers but only result in increased cost to business and potentially increased prices to consumers." *Id.*, §2(b).

Critically, Congress distinguished truncation of the expiration dates—which was found not to result in any actual harm to consumers—from truncation of card numbers by noting, "[e]xperts in the field agree that proper truncation of the card

number, *by itself* as required by the amendment made by the Fair and Accurate Credit Transactions Act, regardless of the inclusion of the expiration date, *prevents a potential fraudster from perpetrating identity theft or credit card fraud*." *Id.*, §2(a)(6) (emphasis added). Congress therefore amended FACTA to provide retroactive amnesty to all merchants who properly truncated the card number but did not truncate the expiration date on a receipt provided at a point of sale transaction between the date on which FACTA was enacted and the enactment date of the Clarification Act. Notably, it provided no amnesty for merchants that failed to truncate the card number.

Thus, Congress (1) was aware of the wave of lawsuits based on technical violations of FACTA, (2) was concerned about the potential negative impact of such lawsuits, and (3) decided to foreclose any lawsuits based on the printing of the expiration date during the amnesty period. If Congress had been concerned that companies were subject to class action suits for violating the requirement to truncate card numbers, it could have crafted the Clarification Act to constrain those lawsuits as well, or subsequently amended the statute to do so. Tellingly, it did not. As the court noted in *Amason*, "[b]ecause Congress actually took action to constrain liability with regard to the truncation of expiration dates, it is clear that Congress could also have barred the award of statutory damages for the failure to truncate credit card numbers where there was no allegation and/or proof of

damages." 2013 WL 987935 at * 5. Instead, "it removed liability for the failure to truncate expiration dates, but left the rest of the statute intact with regard to the truncation of credit card numbers." *Id.* at *6.

To the extent the amici believe that consumers' ability to bring lawsuits based on retailers' willful violations of the truncation requirements has resulted in abusive litigation, their remedy is to lobby Congress to further amend FACTA after adequate fact-finding and debate, not to ask the Court to judicially rewrite the statute or rewrite the rules of standing to inoculate them from the consequences of their willful violations of the statute. "To judicially insert additional exemptions into the statute based on hunches about what Congress would (or should) have done, or may eventually do, requires the court to engage in a game of legislative reconstruction." *Id.* This court should decline the amici's invitation to do just that by exempting violations unless and until a consumer learns she has been the victim of identity theft resulting from a merchant's failure to truncate. The purpose of FACTA was to protect consumers from the risk of identity theft, not to protect merchants from their willful non-compliance with the statute.

IV. Requiring Consumers to Allege Tangible Harm Would Render FACTA Nearly Unenforceable.

If the Court requires consumers to allege tangible harm to have standing to bring a claim under FACTA, it would deny them access to the courts and render

FACTA toothless by making it nearly unenforceable. The statute ensures merchant compliance with the truncation requirements by allowing consumers to privately enforce those provisions through its statutory damages scheme. However, an action to enforce any liability under the statute must be brought within two years after the date of discovery of the violation that is the basis for such liability or five years after the date on which the violation that is the basis for liability occurs. 15 U.S.C. § 1681p. As a practical matter, it can take years after an individual's card information is disclosed for them to become a victim of identity theft and even longer to detect that they were a victim. Moreover, tracing the theft back to a particular receipt would be extremely difficult if not impossible if the theft was not temporal to the issuance of the receipt . Defendants would challenge causation in every case and the burden for plaintiffs to establish the link between the receipt and identity theft would be difficult, if not impossible. Accordingly, requiring consumers to "wait and see" whether they fall victim to identity theft and connect the dots before bringing suit would prevent the vast majority of consumers from being able to vindicate their rights under FACTA within the limitations period, thereby frustrating the purpose of the private enforcement scheme.

Finally, if identity theft or other tangible harm is required to demonstrate injury in fact, the effect of such a requirement would essentially mean Congress could never pass any law meant to prevent identity theft that would be enforceable

in federal court. Yet, with criminals constantly employing new and inventive ways of stealing consumers' debit and credit card information, the need to provide effective tools for decreasing the risk of identity theft is more important than ever (as Congress found). The Court should not frustrate Congress's ability to protect consumers in this way.

CONCLUSION

The Court correctly determined that Dr. Muransky suffered a concrete injury when he received a receipt that failed to comply with the requirements of FACTA. The decision of the panel should be affirmed.

Dated: January 10, 2020

Respectfully submitted,

<u>/s/ John A. Yanchunis</u>
John A. Yanchunis
jyanchunis@ForThePeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
Telephone: (813) 223-5505
Facsimile: (813) 223-5402

CERTIFICATE OF COMPLIANCE

I hereby certify that this Brief complies with the with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). This brief contains 3950 words, excluding the parts of the Brief exempted by Fed. R. App. P. 32(f). It has been prepared in a proportionally spaced font using Microsoft Word in Times New Roman, 14 point font.

/s/ John A. Yanchunis

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 10, 2020, I electronically filed a true and correct copy of the foregoing brief with the Clerk of the Court using the CM/ECF system, which will send notification to all attorneys of record in this matter.

/s/ John A. Yanchunis

Counsel for Amici Curiae