

Aramark FACTA Suit Can't Survive Under Spokeo, Judge Says

By **Shayna Posses**

Law360, New York (April 19, 2017, 4:28 PM EDT) -- A Pennsylvania federal judge Wednesday tossed a proposed class action accusing Aramark of violating the Fair and Accurate Credit Transactions Act by including too many payment card digits on receipts, saying the Alabama man leading the suit didn't allege a sufficient injury under the high court's landmark Spokeo decision.

U.S. District Judge Nitza I. Quiñones Alejandro concluded that Joel Hendrick didn't allege a concrete injury sufficient to establish standing under the U.S. Supreme Court's decision in *Spokeo Inc. v. Robins*, which held that allegations of a bare statutory violation divorced from any concrete harm aren't enough to give a plaintiff Article III standing.

This dooms Hendrick's FACTA claims stemming from an Aramark-operated food court on the University of Alabama campus giving him a receipt for his drink refill purchase that included more than 10 digits of his credit card number, the judge determined, noting that he only alleges that he is subject to an increased risk of identity theft, not that he's suffered any actual injury.

"As such, this court finds that plaintiff's allegations do not 'entail a degree of risk sufficient to meet the concreteness requirement.' Under the Spokeo analysis, plaintiff's bald allegation of increased risk of identity theft is insufficient to satisfy the injury in fact requirement for Article III standing. Without an injury in fact, plaintiff lacks standing to sue under Article III," the judge said. "Therefore, plaintiff's complaint is dismissed."

The judge explained that neither the Third Circuit nor any other court in the district has addressed the particular standing issue involved in the case, but said she found several post-Spokeo rulings from courts in other jurisdictions persuasive in reaching her ruling.

For instance, she highlighted the Seventh Circuit's December decision in *Meyers v. Nicolet Restaurant of De Pere*, which concluded that under Spokeo, a similar allegation of an increased risk of identity theft wasn't enough to meet standing requirements for a FACTA claim.

Also, in *Kamal v. J. Crew Group Inc.*, a New Jersey federal court rejected the same arguments with respect to a plaintiff's standing to assert a FACTA claim as those Hendrick made here, the judge said. That plaintiff alleged that J. Crew's inclusion of too many card digits on receipts exposed him to an increased risk of identity theft, according to court filings.

But the court concluded that the allegation didn't "entail a degree of risk sufficient to meet the concreteness requirement" because the complaint lacked "any facts demonstrating a risk sufficiently 'actual or imminent' to constitute a concrete injury," according to court filings.

Hendrick's allegations suffer from the same issues and thus, aren't sufficient to establish standing, the judge said. After all, he doesn't allege that anyone other than himself saw or possessed the receipt, nor that anyone has attempted to use or access his credit card information, she held.

The consumer's July suit alleged that he used his credit card to buy a drink refill from Stewart's Corner — a food court-style cafe operated by Aramark at the University of Alabama — last spring, receiving a receipt that included more than 10 digits of his credit card number.

He brought a FACTA claim against Aramark and a number of subsidiaries, seeking to represent all individuals in the United States who received a printed receipt from the defendants that included more than the last five digits of the consumer's payment card number on or after Dec. 4, 2006.

Aramark moved to dismiss the action in September, arguing that Hendrick's allegation about his increased risk of identity theft wasn't enough to establish an actual injury-in-fact.

Hendrick fought back the next month with a brief contending that he adequately stated a FACTA claim by alleging facts to establish a violation of the statute and an increased risk of identity theft.

Archie I. Grubb II, who represents Hendrick, told Law360 in a Wednesday email, "We are studying the opinion and considering our options."

Representatives for Aramark didn't immediately return a request for comment Wednesday.

Hendrick is represented by W. Daniel "Dee" Miles III, Rebecca D. Gilliland and Archie I. Grubb II of Beasley Allen Crow Methvin Portis & Miles PC and Richard Golomb and Kenneth J. Grunfeld of Golomb & Honik.

Aramark is represented by Gregory T. Parks, Ezra D. Church, Kristin M. Hadgis and Andrew W. Katz of Morgan Lewis & Bockius LLP.

The suit is Joel Hendrick v. Aramark Corp. et al., suit number 2:16-cv-04069, in the U.S. District Court for the Eastern District of Pennsylvania.

--Editing by Orlando Lorenzo.