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7 *Attorneys for Defendant*
8 *SGGOAKS Royal Link, LLC*
(erroneously sued as Royal Links Golf Club)

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 * * *

12 KEITH MARTINEZ, INDIVIDUALLY AND
13 ON BEHALF OF ALL OTHERS SIMILARLY
SITUATED,

CASE NO. 2:18-cv-02393-KJD-CWH

14 Plaintiff,

15 vs.

16 ROYAL LINKS GOLF CLUB,

17 Defendant.

18
19 **MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6) FOR FAILURE**
20 **TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

21 Defendant SGGOAKS Royal Links, LLC (“Royal Links” or “Defendant”), erroneously
22 sued as Royal Links Golf Club, by and through its counsel of record, Michael R. Brooks, Esq.
23 and Hunter S. Davidson, Esq. of Kolesar and Leatham, hereby moves this Honorable Court to
24 dismiss Plaintiff Keith Martinez’s (“Plaintiff”) Complaint for failure to state a claim upon which
25 relief may be granted.

26 This Motion is made and based upon Fed. R. Civ. P. 12(b)(6), the following
27 Memorandum of Points and Authorities, the pleadings and papers on file herein, and any
28 additional argument this Court may consider at the hearing of this matter.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's Complaint alleges "on information and belief" that Plaintiff suffered damages
4 when a he received a receipt with an incomplete credit card number that contained more than the
5 statutorily allowed number of digits. An allegation of damages based on "information and belief"
6 is not sufficient when Plaintiff is required at a minimum to allege that the improper receipt was
7 disclosed to an unauthorized party resulting in an identity theft to establish standing. Plaintiff has
8 not alleged that the receipt was disclosed improperly and therefore Plaintiff's Complaint should
9 be dismissed in its entirety for failure to state a claim upon which relief can be granted.
10 Moreover, Plaintiff's class claims must be dismissed for similar reasons because there is no
11 allegation in the purported class claims that any of the class members had standing to pursue
12 claims.

13 **II. FACTUAL BACKGROUND**

14 According to the allegations in the Complaint, on May 17, 2017, Plaintiff used his
15 American Express credit card at the Royal Links Golf Club, located at 5995 East Vegas Valley
16 Drive, Las Vegas, Nevada 89142 (the "Royal Links Golf Club").¹ At the point of sale, Royal
17 Links allegedly provided a receipt that contained both the first six and last four digits of
18 Plaintiff's card number, "_____ xxxxx3007."² There is no allegation that Plaintiff was a
19 victim of identity theft or credit card fraud from his receipt. Nevertheless, Plaintiff asserts two
20 causes of action against Royal Links: (1) violation of the Fair and Accurate Credit Transactions
21 Act ("FACTA"); and (2) violation of Nevada's Deceptive Trade Practices Act ("DTPA").
22 Plaintiff has also alleged class claims on behalf of members of a national class and a subclass of
23 potential plaintiffs limited to Nevada residents under the DTPA.

24 **III. STANDARD OF REVIEW**

25 Pursuant to Fed. R. Civ. P. 12(b)(6), a court may dismiss a plaintiff's complaint for
26 "failure to state a claim upon which relief can be granted." Federal Rule of Civil Procedure 8

27 _____
¹ Pl.'s Compl. ¶ 17.

28 ² *Id.* ¶ 18. ("_" denotes card numbers printed).

1 requires every complaint to contain “[a] short and plain statement of the claim showing that the
2 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp v. Twombly*, 550 U.S. 544,
3 555 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). While Rule 8 does not require
4 detailed factual allegations, the properly pled claim must contain enough facts to “state a claim to
5 relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. This “demands more than an
6 unadorned, the-defendant-unlawfully-harmed-me accusation”; the facts alleged must raise the
7 claim “above the speculative level.” *Iqbal*, 556 U.S. at 678–79. In other words, a complaint must
8 make direct or inferential allegations about “all the material elements necessary to sustain
9 recovery under some viable legal theory.” *Twombly*, 550 U.S. at 562 (*quoting Car Carriers, Inc.*
10 *v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

11 District courts employ a two-step approach when evaluating a complaint’s sufficiency on
12 a Rule 12(b)(6) motion to dismiss. First, the court must accept as true all well-pled factual
13 allegations in the complaint, recognizing that legal conclusions are not entitled to the assumption
14 of truth. *Iqbal*, 556 U.S. at 678–79. Mere recitals of a claim’s elements, supported only by
15 conclusory statements, are insufficient. *Id.* Second, the court must consider whether the well-pled
16 factual allegations state a plausible claim for relief. *Id.* at 679. A claim is facially plausible when
17 the complaint alleges facts that allow the court to draw a reasonable inference that the defendant
18 is liable for the alleged misconduct. *Id.* A complaint that does not permit the court to infer more
19 than the mere possibility of misconduct has “alleged—but not shown—that the pleader is entitled
20 to relief,” and it must be dismissed. *Twombly*, 550 U.S. at 570.

21 Review on a motion to dismiss under Rule 12(b)(6) is normally limited to the four
22 corners of the complaint. *See Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). “If
23 the district court relies on materials outside the pleadings in making its ruling, it must treat the
24 motion to dismiss as one for summary judgment and give the non-moving party an opportunity
25 to respond.” *See United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003). “A court may,
26 however, consider certain materials—documents attached to the complaint, documents
27 incorporated by reference in the complaint, or matters of judicial notice—without converting the
28 motion to dismiss into a motion for summary judgment.” *Ritchie*, 342 F.3d at 908. And

1 “documents whose contents are alleged in a complaint and whose authenticity no party
2 questions, but which are not physically attached to the pleading, may be considered in a ruling on
3 a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994),
4 *overruled on other grounds in Galbraith v. Cty of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

5 IV. LEGAL ARGUMENT

6 A. PLAINTIFF’S CLAIM FOR VIOLATION OF THE FAIR AND ACCURATE CREDIT 7 TRANSACTION ACT SHOULD BE DISMISSED BECAUSE HE LACKS STANDING, AND 8 FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

9 1. Plaintiff’s claim for violation of the Fair and Accurate Credit 10 Transaction should be dismissed for lack of standing because nobody 11 else has seen his receipt.

12 To have Article III standing, a plaintiff must allege that they: (1) suffered an *injury in*
13 *fact*, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to
14 be redressed by a favorable judicial decision. *Bassett v. ABM Parking Servs., Inc.*, 883 F.3d 776,
15 779 (9th Cir. 2018). To establish an injury in fact, plaintiff must prove that they suffered “an
16 invasion of a legally protected interest that is concrete and particularized and actual or imminent,
17 not conjectural or hypothetical.” *Id.* (internal quotations omitted) (citing *Spokeo, Inc. v. Robins*,
18 136 S. Ct. 1540, 1548 (2016), *as revised* (May 24, 2016)).

19 As applied to FACTA, the Ninth Circuit has explicitly held that a plaintiff does not suffer
20 a concrete injury, for the purposes of Article III standing, if the receipt that purportedly violates
21 FACTA remained undisclosed—i.e. the plaintiff was the only individual to have seen the receipt.
22 *Id.* at 780–81. In *Bassett*, Plaintiff, after using his card at Defendant’s parking garage, received a
23 receipt displaying his credit card’s full expiration date in violation of 15 USC § 1681c(g). *Id.* at
24 777. Thereafter, Plaintiff sued, merely alleging a statutory violation and a potential for exposure
25 to actual injury. *Id.* Ultimately, the court held that Plaintiff failed to allege a concrete injury in
26 fact because he was the only individual to see the receipt—any risk of identity theft or credit card
27 fraud was simply speculative. *Id.* at 783; *see also Noble v. Nevada Checker Cab Corp.*, 726 F.
28 App’x 582 (9th Cir. 2018) (Taxi Cab Company’s printing of credit card receipts that included the
first digit and last four digits of Plaintiff’s credit card number was not a harm sufficient to give

1 Plaintiff Article III standing because Plaintiff failed to allege that anyone else received or would
2 receive a copy of the receipts).

3 The facts in the instant case are nearly identical to those found in *Bassett* and *Noble* and,
4 therefore, warrant dismissal. Like *Bassett* and *Noble*, Plaintiff failed to specifically allege that
5 anyone but himself saw the receipt that purportedly included the first six digits and last four
6 digits of his card number. Plaintiff merely states that, “upon information and belief,” his credit
7 card information was obtained and used by identity theft criminals.³ However, Plaintiff fails to
8 adequately allege any particularized facts that would give rise to this allegation beyond just
9 “belief.” Accordingly, Plaintiff’s alleged injury is entirely speculative as there is not a single
10 factual allegation that tends to suggest risk of identity theft or credit card fraud. As such, Plaintiff
11 has failed to state a claim that would establish Article III standing, thus warranting dismissal of
12 his claim.

13 **B. PLAINTIFF’S CLAIM FOR VIOLATION OF NEVADA’S DECEPTIVE TRADE**
14 **PRACTICES ACT, NRS 598, ET SEQ., SHOULD BE DISMISSED FOR FAILURE TO**
15 **STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.**

16 Plaintiff’s DTPA Claims are based on the purported violations of FACTA. Specifically,
17 Plaintiff alleges: “Defendant knowing violated NRS 598.0923 by violating the federal statute
18 FACTA, 15 U.S.C. §§ 1681, et seq. . . .”⁴ Plaintiff also alleges violations of NRS 603A.210
19 which do nothing more than require compliance with Federal law. In light of the fact that
20 Plaintiff is unable to allege violations of FACTA based on his lack of standing, Plaintiff’s state
21 law violations must be dismissed as well.

22 **C. PLAINTIFF’S CLASS CLAIMS MUST BE DISMISSED FOR FAILURE TO ALLEGE**
23 **STANDING ON BEHALF OF THE CLASS MEMBERS.**

24 Plaintiff has alleged class action claims on behalf of a class of members with one
25 subclass of members. As set forth above, it is imperative that a claimant under FACTA and
26 correspondingly, under Nevada law must allege that the receipt was improperly disclosed to
27 establish standing to bring a claim. *See Bassett, supra* at 780-781; *Noble, supra*. As the United

28 ³ See Pl.’s Compl. ¶ 27.

⁴ See Pl.’s Compl. ¶ 51.

1 States Supreme Court has established, if the allegations of the Complaint do not address the
2 necessary elements of the claim, the lawsuit should be dismissed. *Bell Atl. Corp v. Twombly*, 550
3 at 556 (Complaint must show that the pleader is entitled to relief.)

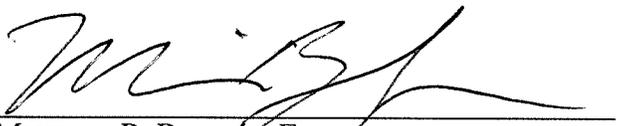
4 In the present case, the Plaintiff has defined the class, and subclass, at paragraphs 29 and
5 30 of the complaint. Missing from both class definitions is any reference to unauthorized
6 disclosure of the receipt resulting in identity theft or damage. Without an allegation of
7 unauthorized disclosure, none of the class members would have standing to pursue claims. As a
8 result, all class action claims must be dismissed for failure to state a claim.

9 **V. CONCLUSION**

10 For the foregoing reasons, Royal Links respectfully request that the Court dismiss
11 Plaintiff's Complaint, with prejudice, for failure to state a claim upon which relief may be
12 granted.

13 DATED this 26 day of December, 2018.

14 KOLESAR & LEATHAM

15 By 

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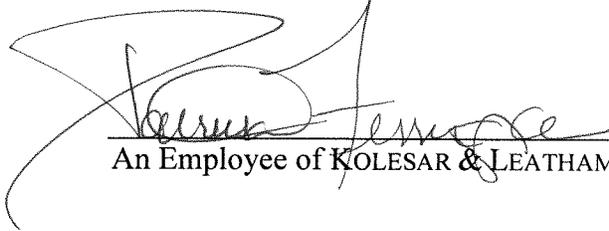
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 26th day of December, 2018, I caused to be served a true and correct copy of foregoing **MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED** in the following manner:

(ELECTRONIC SERVICE) Pursuant to Rule 5-4 of the Local Rules of Civil Practice of the United States District Court for the District of Nevada, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by that Court's facilities.

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