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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 SCOTT EDELSTEIN, et al.,

11 Plaintiffs,

12 v.

13 WESTLAKE WELLBEING
14 PROPERTIES, LLC, et al.,

15 Defendants.
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Case No. CV 17-06488-AB (JEMx)

**ORDER GRANTING PLAINTIFFS'
MOTION TO REMAND [11]**

18 Before the Court is Plaintiffs Scott Edelstein (“Edelstein”) and Steven Brooks’
19 (“Brooks”) (collectively, “Plaintiffs”) Motion to Remand Action to State Court
20 (hereinafter, “Mot.,” Dkt. No. 11). Defendant Westlake Wellbeing Properties
21 (“Westlake Properties”) filed an opposition and Plaintiffs filed a reply. The Court heard
22 oral argument on November 3, 2017. For the following reasons, the Court **GRANTS**
23 Plaintiffs’ Motion.

24 **I. FACTUAL BACKGROUND**

25 Plaintiff Scott Edelstein is a resident of New York. (First Amended Complaint
26 (“FAC,” Dkt. No. 10”) ¶ 1.) Plaintiff Steven Brooks is a resident of Thousand Oaks,
27 California. (FAC ¶ 2.) Defendant Westlake Properties is a Delaware limited liability
28 company with a principal place of business in Westlake Village, California. (FAC ¶ 3.)

1 Westlake Properties owns the Four Seasons Westlake Village (“Westlake Four
2 Seasons”). (FAC ¶ 3.) Defendant Four Seasons Hotel (“Four Seasons”) is a Canada
3 corporation that manages more than thirty hotels and resorts across the United States,
4 including the Westlake Four Seasons. (FAC ¶ 4.)

5 In 2017, Edelstein used his MasterCard credit card to pay for his stay at the
6 Westlake Four Seasons. (FAC ¶ 10.) Defendants provided him with a printed receipt
7 for his payment. (FAC ¶ 10.) The printed receipt that Defendants provided Edelstein
8 contained more than the last five digits of the credit card account number and the card’s
9 expiration date. (FAC ¶ 10.) That same year, Brooks used his Visa credit card to pay
10 for his stay at the Westlake Four Seasons. (FAC ¶ 11.) Defendants provided him with a
11 printed receipt for his payment. (FAC ¶ 11.) The printed receipt Brooks received
12 contained more than the last five digits of the credit card account number and the credit
13 card expiration date. (FAC ¶ 11.) Plaintiffs allege that beginning on January 1, 2015, if
14 not earlier, through at least April 2017, Defendants have provided credit card and debit
15 card receipts that contained more than the last five digits of the account number and the
16 card expiration date through machines that were provided to customers at the point of
17 sale. (FAC ¶ 12.) Plaintiffs allege that the receipts Defendants provided violate the Fair
18 and Accurate Credit Transactions Act (“FACTA”), 15 U.S.C. §§ 1681, *et seq.*, and
19 assert their claim as a putative class action.

20 **II. PROCEDURAL BACKGROUND**

21 Defendants removed this action from state court to this Court on September 1,
22 2017. (*See* Dkt. No. 1, Defendants’ Notice of Removal.) On September 28, 2017,
23 Plaintiffs filed their First Amended Complaints alleging a violation of FACTA on behalf
24 of the individual Plaintiffs and all those similarly situated. (*See* FAC.) On October 3,
25 2017, Plaintiffs filed their Motion to Remand, arguing that they lack Article III standing
26 to pursue their claim in federal court, so it must proceed in state court.
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1 **III. LEGAL STANDARD**

2 To bring suit in federal court, a party must meet the standing requirements of
3 Article III of the Constitution. Standing “limits the category of litigants empowered to
4 maintain a lawsuit in federal court to seek redress for a legal wrong.” *Spokeo, Inc. v.*
5 *Robins*, 136 S. Ct. 1540, 1547 (2016). The “irreducible constitutional minimum” of
6 standing consists of three elements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560
7 (1992). “The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable
8 to the challenged conduct of the defendant, and, (3) that is likely to be redressed by a
9 favorable judicial decision.” *Spokeo*, 136 S. Ct. at 1547. “The plaintiff, as the party
10 invoking federal jurisdiction, bears the burden of establishing these elements.” *Id.*

11 **IV. DISCUSSION**

12 Plaintiffs’ argument in favor of remand is based on a lack of Article III standing.
13 (*See Mot.*) Plaintiffs argue that the Supreme Court’s opinion in *Spokeo, Inc v. Robins* in
14 conjunction with the Ninth Circuit’s opinion in *Robins v. Spokeo, Inc.* compels the
15 finding that there is no injury-in-fact in this case. (*Mot.* at 5–7.) The Court agrees.

16 In *Spokeo*, the plaintiff sued Spokeo for violations of the Fair Credit Reporting
17 Act (“FCRA”) based on Spokeo’s online publication of incorrect information about him
18 including his education level, socioeconomic status, age, and marital status. *Robins v.*
19 *Spokeo, Inc.*, 867 F.3d 1108, 1117 (9th Cir. 2017) (*Spokeo II*). The District Court
20 dismissed his action for lack of standing, specifically, that he had failed to plead an
21 injury-in-fact. *Robins v. Spokeo, Inc.*, 742 F.3d 409, 411 (9th Cir. 2014) (*Spokeo I*). The
22 Ninth Circuit reversed, holding that Robins had alleged sufficient injury to establish
23 standing. *Spokeo I*, 742 F.3d at 413. The Supreme Court reversed the Ninth Circuit’s
24 decision and remanded the case, directing the Ninth Circuit to specifically consider
25 whether Robins had alleged a sufficiently *concrete* injury. *Spokeo*, 136 S. Ct. at 1550.
26 While acknowledging that Congress retains the power to “elevat[e] to the status of
27 legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in
28 law,” the Court emphasized that Congress’s elevation of intangible harms does not mean

1 that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute
2 grants an individual a statutory right and then authorizes suit on behalf of any person.
3 *Spokeo*, 136 S. Ct. at 1549. “Article III standing requires a concrete injury even in the
4 context of a statutory violation.” *Id.* “A bare procedural violation” is not sufficient, in
5 the absence of concrete harm, to satisfy the injury-in-fact requirement. *Id.*

6 The Court then explained that a risk of real harm could satisfy the concreteness
7 requirement. *Id.* The law has often recognized that risk of intangible harms merits
8 recovery as evidenced by the existence of torts like libel or slander *per se*. *Id.* Thus, the
9 Court did not exclude the possibility that a statutory violation, as articulated by
10 Congress, may by itself be sufficient to satisfy the concreteness requirement. *Id.*
11 However, this will not always be the case. *Id.* In the Court’s opinion, this was not the
12 case with the FCRA. *Id.* at 1550.

13 On remand, the Ninth Circuit sought to fashion a test for concreteness in light of
14 the Supreme Court’s analysis. *Spokeo II*, 867 F.3d at 1113. The test the court adopted is
15 two-pronged: (1) whether the statutory provisions at issue were established to protect his
16 concrete interest (as opposed to purely procedural rights), and if so, (2) whether the
17 specific procedural violations alleged in this case actually harm, or present a material
18 risk of harm to, such interests. *Id.* The court found that by enacting the FCRA,
19 Congress sought to protect a concrete interest, not simply a procedural right, because of
20 the well-known risks involved in the publication of incorrect consumer reports. *Id.* at
21 1114. It then went on to find that Robins faced a material risk of harm because not only
22 did Spokeo aggregate incorrect information that pertained to important aspects of
23 Robins’ life, it also published such incorrect information on the Internet. *Id.* at 1116–17.

24 Here, Plaintiffs are alleging a violation of FACTA. (*See* FAC.) In support of
25 their claim, Plaintiffs allege that Defendants printed more than five digits of their credit
26 cards on a receipt and that this receipt was given to Plaintiffs. (FAC ¶¶ 10–11.) While
27 FACTA grants Plaintiffs the statutory right to be protected from such conduct and
28 authorizes suit in instances of violation, this bare procedural violation is not sufficient to

1 allege an injury-in-fact. Unlike the plaintiff in *Spokeo*, Plaintiffs have not plead any
2 facts to show that the sensitive information printed on the receipts was seen by anyone
3 except them. Recently, a court in this District made this precise distinction between the
4 facts in *Spokeo* and a FACTA violation. *Alvarado v. Univ. of S. Cal.*, No. 17-3671-
5 GW(AJWx), 2017 U.S. Dist. LEXIS 155608, at *4–5 (C.D. Cal. Sept. 22, 2017). The
6 simple printing of the digits on the receipt does not create a sufficient risk of harm like
7 the kind Congress sought to protect when it enacted FACTA. *Alvarado*, 2017 U.S. Dist.
8 LEXIS 155608, at *5. In enacting FACTA, Congress’ main concern was identity theft.
9 *Id.* Plaintiffs here have pled no facts that suggest that Defendants’ actions exposed them
10 to a material risk of identity theft or other kinds of economic and reputational harm.
11 Since Defendants have failed to distinguish *Alvarado* from the case at bar, the Court
12 finds it apposite and holds that Plaintiffs have not alleged a concrete enough injury to
13 satisfy the injury-in-fact requirement.

14 We turn next to the issue of the appropriate remedy for Plaintiffs’ lack of
15 standing. Plaintiffs rely on a recent case from the Ninth Circuit to argue that in the
16 absence of Article III standing, this Court should remand a removed action back to state
17 court. (Mot. at 8.) The Court agrees.

18 In *Polo v. Innoventions International*, the Ninth Circuit determined that a district
19 court must remand a removed action if it finds that it cannot exercise subject-matter
20 jurisdiction. *Polo v. Innoventions Int’l, L.L.C.*, 833 F.3d 1193, 1196 (9th Cir. 2016).
21 Lack of Article III standing is a subject-matter jurisdiction defect for which the
22 appropriate remedy is remand, not dismissal. *Id.* “Remand is the correct remedy
23 because a failure of federal subject-matter jurisdiction means only that the *federal* courts
24 have no power to adjudicate the matter. State courts are not bound by the constraints of
25 Article III.” *Id.* While the *Polo* case involved only state claims remanded back to state
26 court, the case at bar involves the violation of a federal statute. However, the rationale
27 of *Polo* does not draw such a distinction and requires remand whether the claim is
28 brought under state or federal law. *Advocates for Individuals with Disabilities L.L.C. v.*

1 *Home Depot USA Inc.*, No. CV-16-01002-PHX-ROS, 2017 U.S. Dist. LEXIS 6930, at
2 *6 (D. Ariz. Jan. 13, 2017). While the Ninth Circuit has not directly remanded a federal
3 claim back to state court, other circuits have explicitly done so, despite the odd nature of
4 such a transfer. *See Smith v. Wisconsin Dep't of Agric. Trade & Consumer Prot.*, 23
5 F.3d 1134, 1142 (7th Cir. 1994); *City of Kansas v. Yarco Co.*, 625 F.3d 1038, 1041 (8th
6 Cir. 2010) (remanding entire case, including federal claim); *Roach v. W. Virginia Reg'l*
7 *Jail & Corr. Facility Auth.*, 74 F.3d 46, 49 (4th Cir. 1996) (remanding case, including
8 § 1983 claim). Since the California Constitution does not contain a “case or
9 controversy” requirement like the one in the Federal Constitution, Plaintiffs may fare
10 better in state court. *Nat'l Paint & Coatings Ass'n, Inc. v. State*, 58 Cal. App. 4th 753,
11 760–61 (Ct. App. 1997).

12 **V. CONCLUSION**

13 The Court hereby **GRANTS** Plaintiffs' Motion for Remand and **ORDERS** that
14 Plaintiffs' action be **REMANDED** to the state court from which it was removed.

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16 **IT IS SO ORDERED.**

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19 Dated: November 15, 2017

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21 HONORABLE ANDRÉ BIROTTE JR.
22 UNITED STATES DISTRICT COURT JUDGE
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