

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

YAZAN SALEH, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

MIAMI GARDENS SQUARE ONE, INC.
D/B/A TOOTSIE'S CABARET,
a Florida corporation, and RCI
HOSPITALITY HOLDINGS, INC., a Texas
Corporation,

Defendants.

CLASS ACTION

JURY TRIAL DEMANDED

**CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE
FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (FACTA)**

Plaintiff YAZAN SALEH ("Plaintiff"), on behalf of himself and other similarly situated individuals, alleges the following, in relevant part, upon information and belief, and his own personal knowledge.

I. NATURE OF THE CASE

1. This class action complaint is based upon Defendants' violations of the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, as amended (the "FCRA"). Specifically, this action is based upon Section 1681c(g) of the FCRA, which states that, "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." Despite the clear language of the statute, Defendants willfully chose not to comply with the FCRA. As such, all consumers who purchased goods or services from Defendants using

a credit or debit card suffered violations of Section 1681c(g), have been uniformly burdened with an elevated risk of identity theft, and are entitled to an award of statutory damages.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1681p, and 28 U.S.C. §§ 1331 and 1337 because the claims in this action arise under violation of a federal statute.

3. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred here. Defendants do business in this District and their contacts here are sufficient to subject them to personal jurisdiction.

III. PARTIES

4. Plaintiff YAZAN SALEH (“Plaintiff”) is a natural person, who resides in the State of Florida, Broward County.

5. Defendant, MIAMI GARDENS SQUARE ONE, INC. D/B/A TOOTSIE’S CABARET (“Defendant” or “Tootsie’s Cabaret”), is a Florida corporation whose principal address is 150 NW 183rd Street Miami Gardens, Florida 33169.

6. Defendant, RCI HOSPITALITY HOLDINGS, INC., (“Defendant” or “RCI Hospitality”), is a Texas corporation whose principal address is 10959 Cutten Road, Houston, Texas 77066.

7. Defendant Tootsie’s Cabaret is the country's largest adult entertainment complex and a subsidiary of RCI Hospitality Holdings, Inc. Tootsie’s Cabaret’s complex consists of 74,000 square feet, more than 300 attractive entertainers, four full liquor bars, a 400-plus square

foot main stage, more than 300 hi-definition TV screens, three levels of VIP areas, and a 15,000 square foot Knockers Sports Bar.¹

8. On August 3, 2015, RCI Hospitality, a leading operator of gentlemen's clubs, announced the acquisition of Tootsie's Cabaret. At any relevant time, RCI Hospitality had control over its subsidiary Tootsie's Cabaret having assumed management of the Miami club on December 1, 2015.²

IV. FACTUAL ALLEGATIONS

A. Background

9. In 2003, FACTA was enacted by Congress, and signed into law by President George W. Bush. One of FACTA's primary purposes was to amend the FCRA through the addition of identity theft protections for consumers.

10. One such FACTA provision was specifically designed to thwart identity thieves' ability to gain sensitive information regarding a consumer's credit or bank account from a receipt provided to the consumer during a point of sale transaction, which, through any number of ways, could fall into the hands of someone other than the consumer.

11. Codified at 15 U.S.C. § 1681c(g), this provision states the following:

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 sale or transaction.

(hereinafter, the "Receipt Provision").

¹ See *Tootsie's Cabaret Miami Named "Club of The Year" at Industry Convention*, PR News Wire (Sep 02, 2015), <http://www.prnewswire.com/news-releases/tootsies-cabaret-miami-named-club-of-the-year-at-industry-convention-300136828.html>.

² *Rick's Cabaret International, Inc. Enters Florida Market With \$25 Million Acquisition of Tootsies Cabaret*, Press Release, (August 2, 2015), <http://www.rcihospitality.com/130/pressrelease.aspx>.

12. After enactment, FACTA provided three years in which to comply with its requirements, mandating full compliance with its provisions no later than December 4, 2006.

13. The requirement was widely publicized among retailers and the FTC.

14. For example, in response to earlier state legislation enacting similar truncation requirements, on March 6, 2003, the CEO of Visa USA, Carl Pascarella, explained that “Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. The card’s expiration date will be eliminated from receipts altogether. . . . The first phase of this new policy goes into effect July 1, 2003 for all new terminals. . . .” “Visa USA Announces Account Truncation Initiative to Protect Consumers from ID Theft; Visa CEO Announces New Initiative at Press Conference With Sen. Dianne Feinstein,” PR Newswire, March 6, 2003.

15. Within 24 hours, MasterCard and American Express announced they were imposing similar requirements.

16. The card issuing organizations proceeded to require compliance with FACTA by contract, in advance of FACTA’s mandatory compliance date.

17. For example, the August 12, 2006 edition of “Rules for Visa Merchants” (p. 62), which is distributed to and binding upon all merchants that accept Visa cards, expressly requires that “only the last four digits of an account number should be printed on the customer’s copy of the receipt” and “the expiration date should not appear at all.” VISA required complete compliance by July 1, 2006, five months ahead of the statutory deadline.

18. Because a handful of large retailers did not comply with their contractual obligations with the card companies and the straightforward requirements of FACTA, Congress

passed a law absolving all *past* violations of FACTA. *See* The Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, 122 Stat. 1565 (2008).

19. Importantly, the Clarification Act did not amend FACTA to allow publication of more than the last 5 digits of the card number. Instead, it simply provided amnesty for past violators up to June 3, 2008.

20. Card processing companies continued to alert merchants, including Defendant of FACTA's requirements. According to a Visa Best Practice Alert in 2010:

Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit <http://www.ftc.gov/os/statutes/fcrajump.shtm> for more information on the FACTA.)

To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

See Visa Alert attached hereto as Exhibit A.

21. Upon information and belief, most of Defendants' business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with FACTA by programming their card machines and devices to comply with the truncation requirement. Defendants could have readily done the same.

22. Not only were Defendants informed they could not print more than the last five numbers, it was contractually prohibited from doing so. Defendants accept credit cards from all

major issuers; these companies set forth requirements that merchants, including Defendants, must follow, including FACTA's redaction and truncation requirements.

23. As noted above, the processing companies have required that the credit card account number be redacted since 2003 and still require it. For example, American Express required:

Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "x," "*", or "#," and not blank spaces or numbers.

See Exhibit B, attached hereto.

24. Similarly, MasterCard required in a section titled Primary Account Number (PAN) truncation and Expiration Date Omission:

A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

See Exhibit C, attached hereto.

25. According to data from the Federal Trade Commission's 2015 Consumer Sentinel Network Data Book, Florida with its 306,133 complaints ranks No. 1 for the highest per capita rate of reported fraud and other types of complaints. For identity theft, Florida is ranked No. 3 in the country with a total of 44,063 complaints. Also, eight of the top 20 metro areas for identity theft are in Florida, according to the report. First is the Homosassa Springs area with 1290.0

complaints per 100,000 people, and the Miami area counts 482.3 complaints per 100,000 people.³

26. So problematic is the crime of identity theft that the three main credit reporting agencies, Experian, Equifax, and Transunion, joined to set-up a free website (<<http://www.annualcreditreport.com>>) in order to comply with FACTA requirements and to provide the citizens of this country with a means of monitoring their credit reports for possible identity theft.

27. In February 2014, the Department of Justice reported that from 2008 through May 2012, over 550,000 taxpayers had their identities stolen with the thieves claiming false tax refunds. Notwithstanding the constant efforts and new regulations to prevent identity theft, “greater efforts are [still] needed to address identity theft issues.”⁴

28. FACTA clearly prohibits the printing of more than the last 5 digits of the card number to protect persons from identity theft.

B. Plaintiff's Factual Allegations

29. On December 27, 2016, Plaintiff incurred two charges for services and/or goods purchased at Defendant Tootsie's Cabaret's club located at 150 NW 183rd Street Miami Gardens, Florida 33169.

30. Plaintiff paid for said goods and services using two different personal VISA[®] credit cards. Upon making the payment, he was provided with two electronically printed receipts

³ *Consumer Sentinel Network Data Book for January-December 2015*, Federal Trade Commission (February 2016), <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2015/160229csn-2015databook.pdf>.

⁴ Annette Nellen, *TTINs and protecting taxpayer identities* (September 11, 2014), https://www.aicpastore.com/Content/media/PRODUCER_CONTENT/Newsletters/Articles_2014/Tax/TTINs.jsp.

bearing the Miami Gardens Square 1 Inc. name, which also displayed the last four digits of his credit card *as well as the first six digits of his account number.*

31. Upon information and belief, the violations at issue have taken place at dozens of RCI Hospitality subsidiaries across the United States, including but not limited to the Tootsie's Cabaret in Miami Gardens, Florida.

32. Upon information and belief, the violations at issue arose when Defendants installed dozens (if not hundreds) of credit card payment systems in its many clubs across the United States.

33. Upon information and belief, prior to the rollout of the new point-of-sale system, Defendants had a written policy in place requiring the truncation of credit card account numbers; this is evidenced by the fact that prior to the installation of the aforementioned retail system, Defendants were actually truncating credit card account numbers.

34. Upon information and belief, a manual was provided to RCI Hospitality and Tootsie's Cabaret for the operation of the new point-of-sale system which explained that the retailer is able to determine which fields will appear on a printed receipt and further explained that the retailer is able to truncate credit card numbers and mask expiration dates.

35. Upon information and belief, it would take an individual less than thirty seconds to run a test receipt in order to determine whether the point-of-sale system was in compliance with federal law(s) or Defendants' own alleged written policy requiring the truncation of credit card numbers.

36. Moreover, Defendant RCI Hospitality had actual knowledge of the statute's requirements. In fact, in its Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for the fiscal year ended September 30, 2016, RCI Hospitality noted that:

We may in the future become subject to lawsuits or other proceedings for purportedly fraudulent transactions arising from the actual or alleged theft of our customers' debit and credit card information or if customer or employee information is obtained by unauthorized persons or used inappropriately. Any such claim or proceeding, or any adverse publicity resulting from such an event, may have a material adverse effect on our business.

37. The Annual Report was signed by Eric S. Langan, Chief Executive Officer and President of RCI Hospitality.

38. Furthermore, Steven L. Jenkins,⁵ director of RCI Hospitality is a member of the American Institute of Certified Public Accountants ("AICPA") that has published at least two articles concerning the need to comply with FACTA to prevent identity theft.⁶

39. The law is well settled that the knowledge of a corporation's directors may be imputed to the corporation. *Beck v. Deloitte & Touche*, 144 F.3d 732, 736 (11th Cir. 1998); *In re Hellenic Inc.*, 252 F.3d 391, 395 (5th Cir. 2001) (noting that "courts generally agree that the knowledge of directors or key officers, such as the president and vice president, is imputed to the corporation").

40. In addition to having a written policy and its board members and directors having personal knowledge of FACTA's truncation requirements, Defendants RCI Hospitality and Tootsie's Cabaret also would have been alerted by its third-party payment processing company. Many payment processors, including Chase Paymentech in 2010, sent email alerts directly to all merchants regarding FACTA's truncation requirement. Without the benefit of discovery, it is unknown which third-party payment processors were utilized by Defendant.

⁵ RCI Hospitality Holdings, Inc., Corporate Directors, <http://www.rcihospitality.com/investor/biodirectors.aspx> (last visited Dec. 28, 2016).

⁶ See, *supra* footnote No.4; *infra* footnote No. 7.

41. More so than most companies, RCI Hospitality was held to higher standards to prevent identity theft. In fact, in April 2013, the Securities and Exchange Commission (SEC) adopted joint rules with the Commodity Futures Trading Commission (CFTC) that require broker-dealers, mutual funds, investment advisers, and certain other entities defined as “financial institutions” or “creditors” regulated by the SEC and CFTC to adopt programs to prevent identity theft.⁷ RCI Hospitality is registered with the SEC and subject to its regulations. The so-called “Red Flags Rule” requiring the aforementioned institutions and creditors to establish reasonable policies and procedures for the implementation of the Commissions’ guidelines, became effective May 20, 2013, and compliance was required by November 20, 2013.

C. Defendant’s Misdeeds

42. At all times relevant herein, Defendants were acting by and through their agents, servants and/or employees, each of which were acting within the course and scope of their agency or employment, and under the direct supervision and control of the Defendants.

43. At all times relevant herein, the conduct of the Defendants, as well as that of their agents, servants and/or employees, was in willful and reckless disregard for federal law and the rights of the Plaintiff.

44. It is Defendants’ policy and procedure to issue an electronically printed receipt to individuals at the point of sale – *i.e.*, immediately upon receipt of credit card payment.

45. Consistent with Defendants’ policy and procedure, Defendants knowingly and intentionally includes more than the last 5 digits of the card number on its electronically printed receipts.

⁷ Commodity Futures Trading Commission and Securities and Exchange Commission, *Joint final rules and guidelines*, <https://www.sec.gov/rules/final/2013/34-69359.pdf>.

46. The digits appearing on the receipt are not printed accidentally; the equipment and software used to print the receipts and electronically store an image of same must be programmed to display certain information, and likewise, programmed not to display certain information.

47. Notwithstanding the fact that it has had years to comply, Defendants continue to issue point of sale receipts, which contain more than the last 5 digits of the card number, in direct violation of the Receipt Provision of the FCRA.

48. Notwithstanding the Receipt Provision, Defendants continue to deliberately, willfully, intentionally, and/or recklessly violate FACTA by issuing receipts which do not comply with the FCRA.

49. Notwithstanding the fact that Defendants had years to comply with FACTA's requirements, Defendants continue to act in conscious disregard for the rights of others.

50. To paraphrase the words of Judge Richard Posner in *Redman v. RadioShack Corp.*, --- F.3d ----, 2014 WL 4654477 (7th Cir. Sept. 19, 2014), Defendants have been engaged "in conduct that creates an unjustifiably high risk of harm that is either known or so obvious that it should be known..." *Id.* at *2.

V. CLASS ACTION ALLEGATIONS

51. This action is also brought as a Class Action under Fed. R. Civ. P. 23. Plaintiff proposes the following class, defined as follows, subject to modification by the Court as required:

(i) All persons in the United States (ii) who, when making payment for goods or services at one of RCI Hospitality Holdings, Inc.'s subsidiaries across the country (iii) made such payment using a credit or debit card (iv) and were provided with a point of sale receipt (v) which displayed

more than the last 5 digits of said credit or debit card (vi) within the two (2) years prior to the filing of the complaint.

52. The named Plaintiff falls within the class definition and is a member of the class. Excluded from the class are Defendants and any entities in which Defendants have a controlling interest, Defendants' agents and employees, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress.

A. Certification Under Either Rule 23(b)(2) or (b)(3) is Proper.

53. The members of the class are capable of being described without managerial or administrative problems. The members of the class are readily ascertainable from the information and records in the possession, custody or control of Defendants or third party credit card issuers.

54. Defendants operate adult entertainment clubs throughout the United States. Therefore, it is reasonable to conclude that the class is sufficiently numerous such that individual joinder of all members is impractical. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. The Class can be identified through Defendants' records or Defendants' agents' records.

55. There are common questions of law and fact that predominate over any questions affecting only the individual members of the class. The wrongs alleged against Defendants are statutory in nature and common to each and every member of the putative class.

56. This suit seeks only statutory damages and injunctive relief on behalf of the class and it expressly is not intended to request any recovery for personal injury and claims related

thereto. Plaintiff reserves the right to expand the class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

57. There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. The questions of law and fact to the class predominate over questions that may affect individual class members, including the following:

- a. Whether, within the two years prior to the filing of this Complaint, Defendants and/or their agents accepted payment by credit or debit card from any consumer and subsequently gave that consumer a printed receipt upon which more than the last 5 digits of the card number was printed;
- b. Whether Defendants' conduct was willful and reckless;
- c. Whether Defendants are liable for damages, and the extent of statutory damages for each such violation; and
- d. Whether Defendants should be enjoined from engaging in such conduct in the future.

58. As a person that purchased goods and/or services from Defendants and received a receipt upon which more than the last 5 digits of the card number were printed, Plaintiff is asserting claims that are typical of the proposed class. Plaintiff will fairly and adequately represent and protect the interests of the class in that Plaintiff has no interests antagonistic to any member of the class.

59. The principal question is whether the Defendants violated section 1681c(g) of the FCRA by providing class members with electronically printed receipts in violation of the Receipt Provision. The secondary question is whether it is Defendants' policy and practice to provide such electronically printed receipts to consumers that make payment using a credit or debit card,

despite the advice of one of the nation's largest law firms, and whether it was Defendants' policy and practice to print receipts bearing more than the last 5 digits of consumer credit cards is willful noncompliance of the FCRA.

60. Plaintiff and the members of the class have all suffered irreparable harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class action, the class will continue to face the potential for irreparable harm. In addition, these violations of law would be allowed to proceed without remedy and Defendants would undoubtedly continue such illegal conduct. Because of the size of the individual class members' claims, few class members could afford to seek legal redress for the wrongs complained of herein.

61. Defendants' defenses are and will be typical of and the same or identical for each of the members of the class and will be based on the same legal and factual theories. There are no unique defenses to any of the class members' claims.

62. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal law. The interest of class members in individually controlling the prosecution of separate claims against Defendants is small. The maximum statutory damages in an individual action for a violation of this statute are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

63. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

COUNT I – VIOLATIONS OF 15 U.S.C. § 1681(c)(g)

64. 15 U.S.C. §1681c(g) states as follows:

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 sale or transaction.

65. This section applies to any “device that electronically prints receipts” (hereafter “Devices”) for point of sale transactions. 15 U.S.C. §1681c(g)(3).

66. Defendants employ the use of said Devices for point of sale transactions at the various locations of Defendants.

67. On or before the date on which this complaint was filed, Plaintiff and members of the class were provided receipt(s) by Defendants that failed to comply with the Receipt Provision.

68. At all times relevant to this action, Defendants were aware, or should have been aware, of both the Receipt Provision as well as the need to comply with said provision.

69. Notwithstanding the three year period to prepare for FACTA and its accompanying provisions, including but not limited to the Receipt Provision; knowledge of the Receipt Provision and FACTA as a whole; Defendants knowingly, willfully, intentionally, and/or recklessly violated and continue to violate the FCRA and the Receipt Provision.

70. As a result of Defendants’ willful violations of the FCRA, Plaintiff and members of the class continue to be exposed to an elevated risk of identity theft. Defendants are liable to Plaintiff and members of the class pursuant to 15 U.S.C. § 1681n for statutory damages, punitive damages, attorney’s fees and costs.

WHEREFORE, Plaintiff YAZAN SALEH respectfully requests that this Court enter judgment in his favor and the class, and against Defendants MIAMI GARDENS SQUARE ONE, INC. D/B/A TOOTSIE’S CABARET and RCI HOSPITALITY HOLDINGS, INC. for:

- a. Statutory damages;
- b. Punitive damages;
- c. Injunctive relief;
- d. Attorneys' fees, litigation expenses and costs of suit, and
- e. Such other and further relief as the Court deems proper under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all counts.

Dated: January 1, 2017

Respectfully submitted,

By: /s/ Scott D. Owens
Scott D. Owens, Esq.
Florida Bar No. 0597651
SCOTT D. OWENS, P.A.
3800 S. Ocean Dr., Ste. 235
Hollywood, FL 33019
Telephone: (954) 589-0588
Facsimile: (954) 337-0666
scott@scottdowens.com

Jibrael S. Hindi, Esq.
THE LAW OFFICE OF JIBRAEL S. HINDI, PLLC
110 SE 6th Street
Ft. Lauderdale, FL 33301
Telephone: (954) 907-1136
Facsimile: (855) 529-9540
jibrael@jibraellaw.com

BRET L. LUSSKIN, Esq.
BRET LUSSKIN, P.A.
20803 Biscayne Blvd., Ste. 302
Aventura, Florida 33180
Telephone: (954) 454-5841
Facsimile: (954) 454-5844
bluskin@lusskinlaw.com

Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

YAZAN SALEH, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Scott D. Owens, Esq. / Scott D. Owens, P.A. 3800 S. Ocean Dr., Ste. 235 / Hollywood, FL 33019 (954) 589-0588

DEFENDANTS

MIAMI GARDENS SQUARE ONE, INC. D/B/A TOOTSIE'S CABARET, a Florida corporation, and RCI HOSPITALITY HOLDINGS, INC., a Texas corporation,

County of Residence of First Listed Defendant Miami-Dade (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. sec. 1681, et seq.

Brief description of cause: Violations of FACTA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE 01/01/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Scott D. Owens

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

YAZAN SALEH, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

MIAMI GARDENS SQUARE ONE, INC. D/B/A TOOTSIE'S CABARET, a Florida corporation, and RCI HOSPITALITY HOLDINGS, INC., a Texas Corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

MIAMI GARDENS SQUARE ONE, INC. c/o CORPORATE CREATIONS NETWORK INC. 11380 PROSPERITY FARMS RD, #221E PALM BEACH GARDENS, FL 33410

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott D. Owens, Esq. Scott D. Owens, P.A. 3800 S. Ocean Dr., St. 235 Hollywood, FL 33019 scott@scottdowens.com (954) 589-0588

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

YAZAN SALEH, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

MIAMI GARDENS SQUARE ONE, INC. D/B/A TOOTSIE'S CABARET, a Florida corporation, and RCI HOSPITALITY HOLDINGS, INC., a Texas Corporation,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

RCI HOSPITALITY HOLDINGS, INC. c/o CORPORATE CREATIONS NETWORK INC. 11380 PROSPERITY FARMS ROAD #221E PALM BEACH GARDENS, FL 33410

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Scott D. Owens, Esq. Scott D. Owens, P.A. 3800 S. Ocean Dr., St. 235 Hollywood, FL 33019 scott@scottdowens.com (954) 589-0588

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:



Visa Best Practices for Primary Account Number Storage and Truncation

Introduction

Due to misinterpretation of Visa dispute processing rules, some acquirers require their merchants to unnecessarily store full Primary Account Numbers (PANs)¹ for exception processing to resolve disputes. The unnecessary storage of full card PAN information by merchants has led to incidents of data compromise, theft or unintended disclosure during disposal. Additional confusion exists due to inconsistent dispute resolution practices by issuers and acquirers in use across different geographies, leading some merchants to conclude that PAN data must be retained for all transactions.

*To clarify, Visa **does not** require merchants to store PANs, but **does recommend** that merchants rely on their acquirer / processor to manage this information on the merchants' behalf. Visa also recommends that acquirers / processors evolve their systems to provide merchants with a substitute transaction identifier to reference transaction details (in lieu of using PANs).*

Some countries already have laws mandating PAN truncation and the suppression of expiration dates on cardholder receipts. For example, the United States Fair and Accurate Credit Transactions Act (FACTA) of 2006 prohibits merchants from printing more than the last five digits of the PAN or the card expiration date on any cardholder receipt. (Please visit <http://www.ftc.gov/os/statutes/fcrajump.shtm> for more information on the FACTA.)

To reinforce its commitment to protecting consumers, merchants, and the overall payment system, Visa is pursuing a global security objective that will enable merchants to eliminate the storage of full PAN and expiration date information from their payment systems when not needed for specific business reasons. To ensure consistency in PAN truncation methods, Visa has developed a list of best practices to be used until any new global rules go into effect.

¹ A PAN is the 16-digit number embossed, engraved, or imprinted on a payment card.

PAN Truncation Best Practice

In addition to required compliance with applicable card data security standards, including the Payment Card Industry Data Security Standard (PCI DSS), and Visa Best Practices for Tokenization of Cardholder Information, Visa strongly recommends that acquirers and merchants follow these best practices:

Domain	Best Practice
Cardholder Receipts	<p>1. Disguise or suppress all but the last four digits of the PAN, and suppress the full expiration date, on the cardholder's copy of a transaction receipt created at a point of sale (POS) terminal or an ATM (already required for merchants in the U.S., Europe, and CEMEA; Visa will apply this rule across all regions in the near future to provide global consistency).</p> <ul style="list-style-type: none"> • Example: XXXXXXXXXXXXX1234 for the PAN and XXXX for the expiration date.
Merchant Receipts	<p>2. Disguise or suppress the PAN to display a maximum of the first six and last four digits, and suppress the full expiration date, on the merchant's copy of a transaction receipt created at a POS terminal. Note: Many merchants already follow this best practice by truncating the PAN to the last four digits on both the cardholder's and merchant's receipts.</p> <ul style="list-style-type: none"> • Example: 412345XXXXXX6789 or XXXXXXXXXXXXX1234 for the PAN and XXXX for the expiration date.
Merchant Transaction Data Storage by Acquirers	<p>3. Acquirers should support their merchants by providing transaction data storage, thereby allowing merchants to retain only disguised or suppressed PANs on the merchant's copy of an electronically generated receipt and in their transaction records (unless the merchant has a business need to retain the full card PAN).</p>
Enhanced Acquirer Systems	<p>4. Acquirers should enhance their systems to provide merchants with substitute transaction identifiers (such as the Visa Transaction Identifier) or software tokens to facilitate retrieval of transaction data stored by the acquirer, in lieu of using the PAN as a reference for individual transactions.</p>
Merchant Communications from Acquirers	<p>5. Acquirers should disguise or suppress all PANs sent to merchants in any communications (e-mail, reports, etc.).</p> <p>Reminder: PCI DSS already requires a PAN transmitted over a public network to be rendered unreadable by encryption, truncation, or hashing.</p>

Conclusion

Due to legacy practices and a misinterpretation by issuers and acquirers of Visa dispute resolution processing rules, many merchants unnecessarily store and/or print full card PANs on cardholder and merchant receipts. Visa rules do not require merchants to store full card PANs after settlement, and do allow merchant receipts with truncated PAN information to be retained for copy retrieval and dispute fulfillment.

Visa encourages 1) merchants to only print truncated PANs on cardholder and merchant receipts; and 2) acquirers to not require merchants to store PANs, and to provide alternate means for merchants to reference individual transactions. Visa has developed best practices to increase data security without affecting merchants' ability to meet dispute resolution requirements. Acquirers and processors are strongly encouraged to support their merchants in following these best practices.

Respond With Comments by August 31, 2010

Visa would appreciate stakeholder feedback on these best practices by August 31, 2010. Please submit any comments via e-mail to inforisk@visa.com with "PAN Truncation Best Practices" in the subject line.

Related Documents

"Visa Best Practices for Data Field Encryption" – October 2009

"Visa Best Practices for Tokenization of Cardholder Information" – July 2010

American Express
Merchant
Requirements

A decorative graphic consisting of several overlapping, curved bands of blue in various shades, ranging from light to dark. The bands flow from the left side of the page towards the right, creating a sense of movement and depth.

April 2014

For Internet Orders, Merchant must:

- use any separate Merchant Numbers (Seller ID) established for Merchant for Internet Orders in all Merchant's requests for Authorization and Submission of Charges,
- provide American Express with at least one (1) month's prior written notice of any change in Merchant's internet address, and
- comply with any additional requirements that American Express provides from time to time.

Additionally, if a Disputed Charge arises involving a Card Not Present Charge that is an Internet Electronic Delivery Charge, American Express may exercise Chargeback for the full amount of the Charge and place Merchant in any of its Chargeback programs. When providing Proof of Delivery, a signature from the Card Member or an authorized signer of the Card is not required.

4.5 Charge Records

Merchant must create a Charge Record for every Charge. For each Charge submitted electronically, Merchant must create an electronically reproducible Charge Record, and the Charge must comply with the Technical Specifications.

The Charge Record (and a copy of the customer's receipt) must disclose Merchant's return and/or cancellation policies. See Section 4.8, "Return and Cancellation Policies" for additional information.

If the Card Member wants to use different Cards for payment of a purchase, Merchant may create a separate Charge Record for each Card used. However, if the Card Member is using a single Card for payment of a purchase, Merchant shall not divide the purchase into more than one Charge, nor shall Merchant create more than one Charge Record.

For all Charge Records, Merchant must:

1. submit the Charge to American Express directly, or through Merchant's Processor, for payment.
2. retain the original Charge Record (as applicable) and all documents evidencing the Charge, or reproducible records thereof, for the timeframe listed in American Express' country-specific policies. See chapter 8, "Protecting Card Member Information" for additional information.
3. provide a copy of the Charge Record to the Card Member.

Merchant may be able to create more than one Charge Record if the purchase qualifies for a Delayed Delivery Charge. See Section 4.13, "Delayed Delivery Charges".

The retention time frame for Charge Records is twenty-four (24) months from the date Merchant submitted the corresponding Charge to American Express.

Pursuant to Applicable Law, truncate the Card Number and do not print the Card's Expiration Date on the copies of Charge Records delivered to Card Members. Truncated Card Number digits must be masked with replacement characters such as "X," "*", or "#," and not blank spaces or numbers.

Acceptance Procedures

Returned Products and Canceled Services

Primary Account Number (PAN) Truncation and Expiration Date Omission

A Transaction receipt generated by an electronic POI Terminal, whether attended or unattended, must not include the Card expiration date. In addition, a Transaction receipt generated for a Cardholder by an electronic POI Terminal, whether attended or unattended, must reflect only the last four digits of the primary account number (PAN). All preceding digits of the PAN must be replaced with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

The Corporation strongly recommends that if an electronic POS Terminal generates Merchant copies of Transaction receipts, the Merchant copies should also reflect only the last four digits of the PAN, replacing all preceding digits with fill characters, such as "X," "*", or "#," that are neither blank spaces nor numeric characters.

NOTE

Additions and/or variations to this Rule appear in the "Canada Region" and "Europe Region" sections at the end of this chapter.

Returned Products and Canceled Services

A Merchant is required to accept the return of products or the cancellation of services unless specific disclosure was provided at the time of the Transaction.

Upon the return in full or in part of products or the cancellation of a service purchased with a Card, or if the Merchant agrees to a price adjustment on a purchase made with a Card, the following applies:

- If a MasterCard Card was used, the Merchant may not provide a price adjustment by cash, check, or any means other than a credit to the same Card Account used to make the purchase (or a Card reissued by the same Issuer to the same Cardholder). A cash or check refund is permitted for involuntary refunds by airlines or other Merchants only when required by law.
- If a Maestro Card was used, a Merchant may offer a price adjustment by means of a credit, provided the credit is posted to the same Card Account used to make the purchase (or a Card reissued by the same Issuer to the same Cardholder).

In a Card-present environment, the Merchant should ask the Cardholder for a Transaction receipt identifying (by means of a truncated PAN) the payment card used for the original purchase Transaction (but be aware that if a Contactless Payment Device was used, the PAN on a Card linked to the same Account may not match the PAN on the receipt). If the Card used to make the purchase is no longer available, the Merchant must act in accordance with its policy for adjustments, refunds, returns or the like.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Tootsie's Cabaret Faces Suit Over Credit Card Receipts](#)
