

1 Joshua B. Swigart, Esq. (SBN: 225557)
 josh@westcoastlitigation.com
 2 Yana A. Hart, Esq. (SBN: 306499)
 yana@westcoastlitigation.com
 3 **HYDE & SWIGART APC**
 4 2221 Camino Del Rio South, Suite 101
 5 San Diego, CA 92108
 Telephone: (619) 233-7770
 6 Facsimile: (619) 297-1022
 7

8 Quintin Shammam (SBN 246926)
LAW OFFICES OF QUINTIN G. SHAMMAM
 9 2221 Camino Del Rio South, #207
 10 San Diego, CA 92108
 Tel: (619) 444-0001
 11 Fax: (619) 501-1119
 12 Quintin@ShammamLaw.com

13 *Attorney for Plaintiff,*
 14 *JOSEPH SAMO, and other similarly-situated*

15 Additional Attorneys for Plaintiff on Signature Page

17 **UNITED STATES DISTRICT COURT**
 18 **SOUTHERN DIVISION OF CALIFORNIA**

19 JOSEPH SAMO, individually and on
 20 behalf of all others similarly situated,

21 Plaintiff,

23 vs.

25 ACE PARKING MANAGEMENT,
 26 INC,

27
 28 Defendant.

Case No.: '17CV2414 WQHBLM

CLASS ACTION COMPLAINT FOR
 DAMAGES:

1. VIOLATION OF THE FAIR AND ACCURATE CREDIT TRANSACTIONS ACT AMENDMENT TO THE FAIR CREDIT REPORTING ACT, 15 U.S.C. § 1681 ET SEQ.

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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 § 1681c(g) 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. As such, Plaintiff and other individuals that used a credit card or debit card to pay for parking at Defendants’ facility suffered violations of § 1681c(g).

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 federal statute.
- 3. Venue in this district is proper under 28 U.S.C. 1391 because a substantial part of the events or omissions giving rise to the claims herein occurred in this judicial district.
- 4. Defendant is incorporated in California and conducts business in this district by maintaining parking facilities throughout San Diego, and its contacts here are sufficient to subject it to personal jurisdiction.

PARTIES

- 1
- 2 5. Plaintiff Joseph Samo (hereinafter “Plaintiff”) is a resident of San Diego
- 3 County, California, and a “consumer” as defined by 15 U.S.C. § 1681a.
- 4 6. Defendant Ace Parking Management, Inc. (hereinafter “Defendant”) is a
- 5 corporation based in San Diego, California, and a “person” as the term
- 6 defined by 15 U.S.C. § 1681a(b). At all relevant times mentioned herein,
- 7 Defendant conducted and continues to conduct business in California.
- 8 7. Defendant manages over 450 lots and garages across the U.S., and services
- 9 nearly 250,000 customers per day. Gross receipts from all operations exceed
- 10 \$440 million annually. *See [https://www.aceparking.com/every-thank-you-](https://www.aceparking.com/every-thank-you-earned/)*
- 11 *earned/.*
- 12 8. One such location is 4150 Regents Park Row, La Jolla, California 92037,
- 13 where Defendant operates a parking lot near several offices and businesses.
- 14

FACTA Background

- 15 9. Identity theft is a serious issue affecting consumers throughout the United
- 16 States.
- 17
- 18 10. According to the IRS, “[t]he impact of identity theft on taxpayers is
- 19 profound and can have major consequences.” *See* Testimony of the
- 20 Honorable J. Russell George, Treasury Inspector General for Tax
- 21 Administration before the Committee on Oversight and Government Reform
- 22 Subcommittee on Government Organization, Efficiency and Financial
- 23 Management, U.S. House of Representatives (Nov. 4, 2011), p. 2.
- 24 11. The Taxpayer Advocate Service 2013 (“TAS”), acknowledged that identity
- 25 theft can result in “significant emotional trauma,” with symptoms
- 26 resembling post traumatic stress disorder. TAS, Report to Congress, Volume
- 27 1, p.76.
- 28

1 12. To combat the growing risk of identity theft and credit/debit card fraud,
2 Congress enacted FACTA in 2003 to provide certain safeguards to
3 consumers who use credit cards and debit cards. See Pub L. No. 108-159
4 (December 4, 2003) (“An Act...to prevent identity theft...and for other
5 purposes.”)

6 13. The Ninth Circuit held that “[i]n fashioning FACTA, Congress aimed to
7 ‘restrict the amount of information available to identity thieves.’” *Bateman*
8 *v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010) (citing to 149
9 Cong. Rec. 26,891 (2003) (statement of Sen. Shelby)).

10 14. Upon signing FACTA into law, President George W. Bush noted the
11 importance of safeguarding the information printed on receipts: “Slips of
12 paper that most people throw away should not hold the key to their savings
13 and financial secrets.” 39 Weekly Comp. Pres. Doc. 1746, 1757 (Dec. 4,
14 2003).

15 15. FACTA was widely publicized and required full compliance with its
16 provisions no later than December 4, 2006, which provided merchants three
17 years to update their debit/credit card systems to come into compliance with
18 the statute.
19

20 16. Many credit card companies took proactive steps prior to the enactment of
21 FACTA to implement policies to prevent identity thieves from gaining
22 customer information from transaction receipts. On March 6, 2003, Visa
23 USA’s CEO, Carl Pascarella, held a joint press conference on Capitol Hill
24 with several senators to announce Visa USA’s new receipt truncation policy.

25 Mr. Pascarella explained, as follows:

26 Today, I am proud to announce an additional measure to
27 combat identity theft and protect consumers. **Our new receipt**
28 **truncation policy will soon limit cardholder information on**
receipts to the last four digits of their accounts. The card’s

1 23. Any person who obtains a copy of Defendant’s parking receipt containing
2 full expiration date can use this data in attempt to defraud the actual
3 cardholders, or other potential information sources into disclosing additional
4 confidential financial information relating to the cardholder. The more
5 information that is disclosed on the receipt, the easier it becomes to steal
6 cardholders’ private confidential financial information.

7 24. In fact, in 2017, Javelin were subject to identity theft & Research reported
8 that approximately 15.4 million of U.S. consumers in 2016 were subject to
9 different types of identity theft and fraud, with resulting financial losses
10 close to \$15.3 billion. Al Pascual, Kyle Marchini, Sara Miller, *2017 Identity*
11 *Fraud: Securing the Connected Life*, (Feb. 1, 2017) (available at
12 <https://www.javelinstrategy.com/coverage-area/2017-identity-fraud>) (last
13 visited on November 26, 2017).

14 25. The study further reported a significant 40% increase in “card-not-present”
15 fraud and identity theft, which further depicts the need of preserving
16 cardholders’ information in strict confidence.

17 26. The operative provision of FACTA, codified in 15 U.S.C. § 1681c(g)(1)
18 provides as follows:
19

20 [N]o person that accepts credit cards or debit cards for
21 the transaction of business **shall print** more than the last
22 5 digits of the card number or **the expiration date upon**
23 **any receipt** provided to the cardholder at the point of the
24 sale or transaction. (emphasis added).

25 27. Section 1681c(g) is “not ambiguous.” *Pirian v. In-N-Out Burgers*, 06-1251,
26 207 WL 1040864, *3 (C.D. Cal. Apr. 5, 2007).

27 28. Defendant failed to assure that its point of sale machines are in strict
28 compliance with the provisions of 15 U.S.C. § 1681c(g)(1), thereby

1 debit or credit card within the two (2) years prior to the
2 filing of this complaint.

3 36. Plaintiff falls within the class definition and are members of the class.

4 37. Excluded from the class are the Defendant, Defendant's agents and
5 employees, and the Judge to whom this action is assigned and any member
6 of the Judge's staff and immediate family.

7 38. Plaintiff reserves the right to expand the Class definition to seek recovery
8 on behalf of additional persons as warranted as facts are learned in further
9 investigation and discovery.

10 **Certification Under Either Rule 23(b)(2) or (b)(3) is Proper**

11 39. *Ascertainability*. The members of the class are capable of being described
12 without managerial or administrative problems. The members of the class
13 are readily ascertainable from the information and records in the possession,
14 custody or control of Defendant. The Class, therefore, can be identified
15 through Defendant's records.

16 40. *Numerosity*. Defendant operates hundreds of parking locations throughout
17 the United States, accepts credit cards and debit cards at each and, upon
18 information and belief, prints receipts reflective of credit card or debit card
19 transactions. Therefore, it is reasonable to conclude that the class is
20 sufficiently numerous such that individual joinder of all members is
21 impractical, and the number of the class members is numerous. Plaintiff
22 believes the number of class members is in several hundreds, if not
23 thousands.

24 41. *Commonality*. This action will involve identical factual issues on a class-
25 wide basis, particularly whether Defendant within the statutory period
26 printed a receipt with the class members' credit card's expiration date, which
27 demonstrates commonality of factual and legal issues.
28

1 42. **Typicality.** Plaintiff used Defendant's La Jolla parking facility and received
2 a printed receipt containing the credit card's full expiration date. As such,
3 Plaintiff is asserting claims that are typical of the proposed class. Plaintiff
4 will fairly and adequately represent and protect the interests of the class in
5 that Plaintiff has no interests antagonistic to any member of the class.

6 43. Defendant's defenses are and will be typical of and the same or identical for
7 each of the members of the class and will be based on the same legal and
8 factual theories. There are no unique defenses to any of the class members'
9 claims.

10 44. **Adequacy of Representation.** Plaintiff will fairly and adequately protect the
11 interest of the Class.

12 45. **Adequacy of Class Counsel.** Plaintiff has retained counsel experienced in
13 consumer class action litigation and in handling claims involving a violation
14 of FACTA.

15 46. **Common Questions of Law and Fact are Predominate.** There are common
16 questions of law and fact that predominate over any questions affecting only
17 the individual members of the class. The wrongs alleged against Defendant
18 are statutory in nature and common to each and every member of the
19 putative class. The predominant questions of law and fact include, but are
20 not limited to the following:

- 21
- 22 a. Whether, within the two years prior to the filing of this Complaint,
23 Defendant accepted payment by credit or debit card from any
24 consumer and subsequently printed a receipt upon which contained
25 the full expiration date;
 - 26 b. Whether Defendant's conduct was willful and reckless;
 - 27 c. Whether Defendant is liable for damages, and the extent of statutory
28 damages for each such violation;

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- d. Whether Defendant should be enjoined from engaging in such conduct in the future.
- e. Whether members of the Class are entitled to an award of reasonable attorneys' fees and costs under FACTA.

47. While all Class members have experienced actual harm as previously explained herein, 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.

48. ***Class Action Is a Superior Method.*** A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendant to comply with federal law. The interest of class members in individually controlling the prosecution of separate claims against Defendant 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. A class action will also promote judicial economy.

49. 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. Separate adjudications of the claims will create a risk of decisions that are inconsistent with or dispositive of other class members' claims, and thus, the class action method is appropriate here.

50. Plaintiff requests certification of a class for monetary damages and injunctive relief.

FIRST CAUSE OF ACTION
VIOLATION OF 15 U.S.C. § 1681c(g)

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51. Plaintiff incorporates by reference, all preceding paragraphs, as though fully set forth in this cause of action.

52. The foregoing acts and omissions constitute violations of the FACTA, including but not limited to each and every one of the above-cited provisions of the FACTA, 15 U.S.C. §§ 1681 et seq.

53. 15 U.S.C. § 1681c(g) section applies to any “device that electronically prints receipts for credit card or debit card transactions. 15 U.S.C. § 1681c(g)(3).

54. Defendant employs the use of such devices for point of sale transactions to collect parking fees at the La Jolla parking lot, as well as its other lots located throughout California, and the United States.

55. The devices employed by Defendant provided Plaintiff with electronically printed receipts that displayed the full expiration dates of his credit card and the last four digits of his card numbers.

56. FACTA was enacted in 2003 and gave merchants who accept credit and/or debit cards up to December 4, 2006 to comply with its requirements.

57. Defendant has been in business for approximately 60 years, and thus, is well aware of the FACTA requirements. *See <https://www.aceparking.com/the-company/>* (stating that “[f]or over 60 years, ACE Parking’s priorities have been to exceed the financial objectives set forth by clients and to deliver the highest possible level of service.”)

58. Defendant was well informed about the law, including specifically FACTA’s prohibition on the printing of card expiration dates.

59. Most of Defendant’s business peers and competitors readily brought their credit and debit card printing processes into compliance with FACTA by

1 programming their card devices to omit cards' expiration dates. Defendant
2 remained unwilling to take the necessary action to ensure compliance and
3 safeguard their customers' credit and debit card information, especially
4 considering the drastic increase in identity theft crimes.

5 60. Defendant knowingly, willfully, intentionally, and recklessly violated and
6 continue to violate FACTA's prohibition on displaying the expiration date
7 on the electronically printed receipt.

8 61. By printing the cards' expiration dates on Plaintiff's transaction receipt,
9 Defendant caused Plaintiff to suffer a heightened risk of identity theft and
10 forced Plaintiff to take action to secure the receipt.

11 62. As a result of Defendant's willful violation of FACTA, Defendant is liable
12 to Plaintiff and each member of the Class in the statutory damage amount of
13 "not less than \$100 and not more than \$1,000" for each violation, punitive
14 damages, and attorneys' fees and costs. 15 U.S.C. § 1681n.

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17 **PRAYER FOR RELIEF**

18 Wherefore, Plaintiff prays for the following relief on behalf of himself and
19 each and every Class member:

- 20 • That this action be certified as a Class Action;
- 21 • Plaintiff's Counsel be appointed as a Class Counsel
- 22 • An award of statutory damages in the amount of \$1,000, pursuant to §
23 1681n(a)(1)(A);
- 24 • An award of punitive damages pursuant to § 1681n(a)(2);
- 25 • An award of attorney's fees, litigation expenses and costs of suit,
26 pursuant to § 1681n(a)(3);
- 27 • Injunctive and declaratory relief prohibiting Defendant's illegal
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practices; and

- For other relief this Court deems just and proper.

TRIAL BY JURY

63. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

HYDE & SWIGART, APC

Date: December 1, 2017

By: s/Joshua B. Swigart
Joshua B. Swigart
Attorney for Plaintiff

Additional Attorneys for Plaintiff:

Abbas Kazerounian, Esq. (SBN: 249203)
ak@kazlg.com
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

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
JOSEPH SAMO, individually and on behalf of all others similarly situated

DEFENDANTS
ACE PARKING MANAGEMENT, INC.

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Joshua B. Swigart, Esq., Hyde & Swigart 619-233-7770
2221Camino Del Rio South, Suite 101, San Diego, CA 92108

Attorneys (If Known)

'17CV2414 WQHBLM

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
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
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IV. NATURE OF SUIT (Place an "X" in One Box Only)

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

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. § 1681 et seq. ("FACTA")
Brief description of cause:
Defendant violated Fair and Accurate Credit Transactions Act Amendment to the Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/01/2017 SIGNATURE OF ATTORNEY OF RECORD s/ Joshua B. Swigart

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Consumer Claims Ace Parking Management Printed Too Much Payment Card Info on Receipts](#)
