

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

JAMES ROWE,	)	
individually and on behalf of	)	
all others similarly situated,	)	Case No. 10 CV 3314
Plaintiff,	)	
v.	)	Filed: June 1, 2010
	)	
NORTHEAST ILLINOIS REGIONAL	)	
COMMUTER RAILROAD CORPORATION,	)	
d/b/a METRA, an Illinois	)	
Corporation,	)	
Defendant.	)	JURY TRIAL DEMANDED

**AMENDED CLASS ACTION COMPLAINT**

Plaintiff, JAMES ROWE, individually and on behalf of all others similarly situated, by and through his attorneys, Larry D. Drury, Ltd., and John H. Alexander & Associates, LLC, hereby complains against NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION, d/b/a METRA (herein, "Metra"), an Illinois corporation, for violation of the Fair and Accurate Transactions Act amendment to the Fair Credit Reporting Act (FCRA) - herein, FACTA - and states as follows:

**INTRODUCTION**

1. The FACTA amendment to the FCRA, enacted in 2003, was designed to prevent credit card fraud by requiring the redaction and truncation of certain credit card information from receipts given to customers that may inadvertently fall into the wrong hands. The statute gave merchants - which includes entities like Metra - three years to comply with its provisions, and its

existence was widely publicized. Nevertheless, after the effective date of the statute, defendant herein failed to abide by the provisions of the FACTA and thereby subjected Plaintiff and the Class members to the potential of credit card fraud or identity theft.

**PARTIES**

2. Plaintiff, James Rowe, (hereinafter "Plaintiff") resides within the Northern District of Illinois, Eastern Division.

3. Defendant, NORTHEAST ILLINOIS REGIONAL COMMUTER RAILROAD CORPORATION, d/b/a METRA, (hereinafter "Defendant") is an Illinois corporation with its principal place of business in Chicago, Illinois.

**JURISDICTION**

4. This Court has jurisdiction over the subject matter of this proceeding pursuant to 28 U.S.C. §1331 and 15 U.S.C. §1681 *et seq.*

5. Venue is proper in the Northern District of Illinois, Eastern Division pursuant to 28 U.S.C. §1391(a), (b), and (c) in that Defendant conducts regular business within the State of Illinois and within the District, and the transaction that is the basis of Plaintiff's complaint occurred within the District.

**THE STATUTE**

6. The FACTA, codified as 15 U.S.C. §1681c(g) provides:

(g) Truncation of credit card and debit card numbers.

(1) In general. 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 the sale or transaction.

(2) Limitation. This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective Date. This subsection shall become effective—

(A) 3 years after the date of enactment of this subsection [enacted Dec. 4, 2003], with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after the date of enactment of this subsection [enacted Dec. 4, 2003], with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005. 15 U.S.C. §1681c(g).

7. Section 15 U.S.C. §1681n(a) of the FACTA, entitled “Civil Liability for Willful Non-Compliance” provides, in part:

a. In general. Any person who willfully fails to comply with any requirement imposed under this title [15 U.S.C. §§1681 *et seq.*] with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. 15 USC §§1681n(a).

### FACTS

8. On information and belief, the legislature enacted the FACTA because it is possible for thieves to reproduce a credit card number by using the expiration date and the last four digits of the card number. The FACTA was enacted to prevent such credit card fraud and identity theft should discarded receipts fall into the wrong hands.

9. As stated in 15 USC §1681c(g)(3), the FACTA provided persons who accept credit cards or debit cards up to three years to comply with its requirements. All persons covered under the act were to come into full compliance with the provisions therein no later than December 4, 2006.

10. On June 3, 2008, President Bush effectively instituted an extended quasi-grace period for compliance with certain provisions of FACTA, by signing into law the well-publicized Credit and Debit Card Receipt Clarification Act of 2007. The Clarification Act exempted the printing of the expiration date on a credit or debit card, as set forth above, from being deemed willfully non-compliant with FACTA, but only up to the date of

enactment of the that law on June 3, 2008 - long before Plaintiff's sales transaction at issue in this case.

11. Defendant falls within the definition of a "person that accepts credit cards or debit cards for the transaction of business" as defined in the FACTA.

12. Nevertheless, on June 1, 2010, Plaintiff used his credit card to pay for a Metra passenger ticket at the point-of-sale at a Metra train terminal, and in return, Plaintiff received an electronically printed receipt that contained the expiration date of his credit card. See Plaintiff's receipt, attached hereto as Exhibit A in its redacted form.

13. Defendant is and was at relevant times an Illinois public corporation duly licensed to conduct business in Illinois.

14. As early as at least 2009, Defendant's board of directors has supervised and approved of Metra's implementation of Metra ticket sales using credit (including debit) cards at Metra train stations and Metra ticket agent locations.

15. As part of the credit card program, Metra was responsible for ordering ticket vending machines that allow credit card purchases; and Metra placed the machines in train station locations where Plaintiff and other Class members purchased tickets.

16. Point-of-sale machines used to process credit and/or

debit card transactions at Metra train stations and Metra ticket agent locations generated electronically printed receipts which revealed, *inter alia*, the entire expiration date of the credit card, contrary to the proscriptions of FACTA.

17. As supervised by its executive and/or board of directors, Metra planned the roll-out of its above-described credit card program in advance, employing calculations regarding anticipated demand, marketing strategies, meeting needs of credit card purchasers with disabilities, and making its Transit Check Benefit program compatible with the credit card process.

18. Metra's above-described credit card program was expressly implemented so as to accept not only credit cards, but also, debit cards, that are associated with MasterCard or Visa.

19. Further, when planning its implementation of its credit card program, Metra planned to inform its customers that debit card transactions using the credit card machines that it installed at its train stations can only be made through MasterCard or Visa.

20. Metra is a MasterCard and Visa merchant, as set forth herein.

21. At relevant times, including as far back as September 9, 2009, public meeting minutes of Metra's Board of Directors of the Commuter Rail Division of the Regional Transportation Authority demonstrate that Metra was well aware of the need to

maintain security of its ticket purchase transactions, including credit card purchases; and Metra was likewise aware that credit card numbers as used and as entered by consumers in Metra ticket transactions must be completely "PCI" compliant (discussed below) on Metra's ticket processing system.

22. Minutes of the Metra board of director meeting of June 12, 2009, further acknowledge the existence of PCI standards, and the need for credit card processing to be PCI compliant.

23. Metra's September 2009 Special Edition Commuter Newsletter recognizes the need for Metra ticket sales to be transacted on safe and secure fashion, and further, boasts that its "Ticket by Internet" service is PCI compliant.

24. That Metra was intent on having its internet credit card transactions be compliant with PCI indicates Metra's knowledge of PCI standards which include compliance with FACTA's truncation requirements at issue in this case.

25. Metra's planning and/or offering of credit card transactions on its website preceding its planning and/or offering of credit card transactions on physical locations such as at Metra train stations, which are at issue in this case.

26. Metra's board of directors were aware of Metra purchase orders for point-of-sale ticket vending machines that accept credit cards, and spent time considering where and how such

machines should be located, and proposals for additional purchases of such machines.

27. Metra's employment of point-of-sale ticket vending machines, which Plaintiff and other Class members used to purchase Metra tickets and which printed credit and/or debit card receipts in violation of FACTA, was planned out by Metra as part of its revenue collection system.

28. The Payment Card Industry Data Security Standard ("PCI") is a worldwide information security standard defined by the Payment Card Industry Security Standards Council. The standard was created to help payment card industry organizations that process card payments prevent credit card fraud through increased controls around data and its exposure to compromise. The standard applies to all organizations that hold, process, or exchange cardholder information from any card branded with the logo of one of the card brands.

[http://en.wikipedia.org/wiki/Payment\\_Card\\_Industry\\_Data\\_Security\\_Standard](http://en.wikipedia.org/wiki/Payment_Card_Industry_Data_Security_Standard), last visited on September 29, 2010. Indeed, the Payment Card Industry Data Security Standard requires any organization that accepts payment cards or stores, processes, or transmits credit or debit card data must comply with the PCI DSS.

29. The organizations or companies that use Visa or



MasterCard credit card processing, for example - which includes Metra - are required by them to employ and adhere to PCI requirements.

30. PCI requires that when credit cards are used to process a sales transactions, steps are taken to comply with security and safety of such transactions, including compliance with rules inclusive of the requirements at issue in this case under FACTA.

31. For example, PCI prohibits storage of cardholder data including the expiration date of a credit/debit card. PCI similarly requires that cardholder terminals comply with PCI security requirements, and truncate or mask printouts of cardholder data including the expiration date.

32. PCI further instructs that other legislation (such as FACTA) may require specific protection of cardholder data including the credit card account number and expiration date.

33. The PCI industry-mandated security standard requires compliance with PCI to be achieved and maintained at virtually all times.

34. Any company that does business with Visa or MasterCard is required to comply with PCI.

35. PCI compliance is required for organizations or corporations like Metra which process Visa or MasterCard transactions. Visa and MasterCard endorse and incorporate PCI requirements into their rules and requirements.

36. Visa and MasterCard are two of five card brands which actually started the PCI Security Standards Council, and require the equivalent of PCI compliance by their vendors and merchants, including Metra.

37. PCI defines merchants subject to compliance with PCI as any entity that accepts payment cards bearing the logos of any five members of PCI Security Standards Council (including MasterCard or Visa) as payment for goods and services.

38. Visa advises in its written best practices guidelines about compliance with FACTA, including the printing of more than the last five digits of the account number or the card expiration date on any cardholder receipt. Accordingly, Visa counsels its merchants to disguise or suppress all but the last four digits of the cardholder personal identification number, and to suppress the full expiration date, on the cardholder's copy of a transaction receipt created at a point-of-sale terminal.

39. Visa and/or Metra's bank that processes Visa transactions provided its merchants, including on information and belief Metra, with its Rules for Visa Merchants and/or *Visa U.S.A. Inc. Operating Regulations*. These Visa rules define a merchant as any business entity that is authorized to accept Visa cards for the payment of goods and services, which includes Metra. These Visa Rules provide requirements for processing card-present

transactions at the point-of-sale for merchants like Metra, and provide, as far back as July 1, 2006, and as required by FACTA, that electronic point-of-sale terminals provide account number truncation on transaction receipts, *i.e.*, 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. Said Rules further provide that cardholder account numbers and other personal information should be released only to your merchant bank or processor, or as specifically required by law.

40. Furthermore, at all relevant times Visa has mandated all merchants and service providers that store, process or transmit Visa cardholder data - including Metra - to comply with its security rules, including to know and comply with PCI, and advises to contact vendors to determine if point-of-sale systems properly protect cardholder data.

41. Defendant has knowingly and willfully violated the provisions of the FACTA set forth above, and in doing so has failed to protect Plaintiff and other similarly situated against identity theft, credit card and debit card fraud by acting in breach of FACTA.

**CLASS ALLEGATIONS**

42. Plaintiff brings this action individually and as a Class action pursuant to Fed.R.Civ.P. 23(a) and (b)(3) on behalf of the following Class:

All persons who used their credit card or debit card with the Defendant at the point-of-sale in any transaction occurring after June 3, 2008, through the date of judgment herein, and were provided an electronically printed receipt at the point-of-sale which displays the expiration date of the person's credit card or debit card.

Excluded from the class definition are online transactions on the internet, as well as Plaintiff's counsel, officers or directors of the Defendant, and any member of the judiciary presiding over this action.

43. The class is so numerous that joinder of each of the individual members in one action would not be practical. Defendant, on information and belief, serves tens of thousands of customers every year. Defendant has likely provided hundreds, if not thousands of electronically printed receipts that violate the provisions of FACTA complained of herein.

44. Plaintiff's claims are typical of the claims of all of the class members; all claims are based upon the same FACTA violation.

45. Plaintiff adequately and fairly represents the Class members. Plaintiff does not have any interests that conflict with the interests of the Class members. In addition, Plaintiff has retained experienced counsel to assist in adjudication of this matter.

46. Common questions of law and fact exist that affect all of the Class members, which predominate over questions that may affect individual members that include:

- a. Whether Defendant has a business practice of providing its customers with an electronically printed receipt on which they printed the expiration date of the credit card or debit card;
- b. Whether Defendant's actions alleged herein have thereby violated the provisions of the FACTA; and
- c. Whether the conduct of Defendant was willful.

47. The Class action form is superior to other available methods for the fair and efficient adjudication of this controversy and the claims of the Class members as the amount in controversy makes individual action economically unfeasible.

**COUNT I - VIOLATION OF THE FACTA**

48. Plaintiff re-alleges and restates the above allegations as if fully alleged herein.

49. On information and belief, Defendant willfully violated 15 U.S.C. §1681c(g)(1) as set forth above. Those provisions provide in pertinent part that:

[N]o person that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the card number or the expiration date upon any receipt provided to the card holder at the point-of-sale or transaction. 15 U.S.C. §1681c(g)(1).

50. Pursuant to 15 U.S.C. §1681c(g)(3)(B), machines that were put to use after January 1, 2005 required immediate compliance with the provisions of 15 U.S.C. §1681c(g)(1) on or after December 4, 2006.

51. As stated, Defendant accepts credit cards and/or debit cards within the meaning of the FACTA in the course of transacting business with persons like Plaintiff and the Class members. During the course of transacting business, Defendant uses machines that electronically print receipts for credit card and/or debit card transactions as defined in the FACTA.

52. Despite the specific provisions of the FACTA, and the three years it provided for compliance, after December 4, 2006, the effective date of the statute, long after the Clarification Act was passed and publicized, and despite being apprised of the need to be compliant with PCI, Visa and MasterCard standards and rules including compliance with FACTA and masking of cardholder, and credit card account number and expiration date data as set forth above, Defendant, at the point-of-sale, provided Plaintiff and each Class member with one or more electronically printed receipts on which Defendant printed more than five digits of the credit card or debit card number and/or printed the expiration date of the credit or debit card.

53. On information and belief, Defendant knew and should have known of and was reckless in not ensuring compliance with FACTA including its prohibition of printing of more than five digits of credit card numbers and/or expiration dates on credit card or debit card receipts.

54. At all relevant times including long before Plaintiff's purchase at issue in this case, Visa, MasterCard, and other entities began informing the entities that processed their credit card transactions at the point-of-sale of the need to truncate credit card information which complies with applicable law, with the credit card companies' policies, and/or FACTA. In fact, years before Plaintiff's sales transaction at issue here, Visa implemented new operations regulations, applicable to cash registers, in response to legislation in other states requiring suppression of the expiration date and some digits of the credit card number, requiring similar suppression of such information for Visa transactions.

55. On information and belief, the FACTA's requirements were widely publicized among merchants and entities that transact credit card transaction at the point-of-sale and the public at large.

56. Indeed, on information and belief, most entities that fall within the provisions of FACTA have readily brought their credit card and debit card receipt printing process into

compliance with FACTA. Defendant could have done the same without difficulty. On information and belief, it would have been a simple task for Defendant to either reprogram its machines to not violate those provisions complained of herein, or purchase new machines that did not violate FACTA.

57. However, Defendant ignored all of these warnings, as well as the terms of the FACTA itself, and continued to print prohibited information on customer receipts. Defendant knowingly, intentionally and/or recklessly continued to use cash register or other machines that were not programmed to, or otherwise did not, comply with the requirements as set forth in FACTA.

58. Defendant knew that its receipt printing practice contravened its obligations as a processor of credit card sales transactions, and the rights of consumers under FACTA, or, at least recklessly disregarded whether their practice violated its customers' rights. Defendant has willfully violated the requirements of FACTA and continued to use cash registers or other machines or devices that print receipts that violate the requirements complained of herein.

59. As a result of Defendant's above-described conduct, Plaintiff and the Class are entitled to damages, including statutory damages provided under the FACTA.



WHEREFORE, Plaintiff, James Rowe, individually and on behalf of all others similarly situated, requests that this Honorable Court enter judgment in favor of Plaintiff and the Class members and against Defendant as follows:

- A. Certify the class and appoint Plaintiff and Plaintiff's counsel to represent the Class;
  - B. Find that Defendants committed a violation of the FACTA;
  - C. Enter judgment against Defendant pursuant to 15 USC §1681n(a)(1)(A) in the amount of up to \$1,000 per violation;
  - D. Award reasonable attorneys' fees and litigation expenses and costs pursuant to 15 USC §1681n(a)(3); and
  - E. Grant such other relief as this Court deems appropriate.
- Plaintiff demands trial by jury.

Respectfully submitted,

James Rowe, on behalf of himself  
and all others similarly situated

By:           s/ Larry D. Drury            
One of his attorneys

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Any person in possession of a counterfeit ticket will be prosecuted. Ticket not valid unless this strip and numeric boxes change from blue to white.					
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METRA  
 147TH ST.  
 (SIBLEY BLVD)  
 405 W 147th St.  
 Harvey Illinois 60469  
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-----CREDIT SALE-----  
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 CARD TYPE :-----VISA  
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 SALE AMT :-----\$ 32.30  
 SEQ NUMBER :---3526617374  
 AUTH CODE :-----614817

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