

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT
LAKE COUNTY, ILLINOIS

HUGO SOTO and SHARON SOTO,)
individually and on behalf of similarly situated)
persons,)

Plaintiffs,)

v.)

GREAT AMERICA LLC, d/b/a)
SIX FLAGS GREAT AMERICA and)
SIX FLAGS HURRICANE HARBOR,)
and DOES 1 to 20,)

Defendants.)

Case No.

17 CH1118

FILED

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Eva Carlsberg Weinstein
CIRCUIT CLERK

CLASS ACTION COMPLAINT

INTRODUCTION

1. Plaintiffs Hugo Soto and Sharon Soto individually and on behalf of similarly situated persons, bring this complaint against Defendants Great America LLC, d/b/a Six Flags Great America and Six Flags Hurricane ("Six Flags") and Does 1 to 20, for willfully violating the Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act ("FCRA"), codified at 15 U.S.C. § 1681c(g)(1).

2. 15 U.S.C. § 1681c(g)(1), provide in pertinent part:

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.

3. 15 U.S.C. § 1681c(g)(1)'s requirement not to print more than the last 5 digits of the card number is unambiguous. "The plain meaning of the statute is that a merchant shall not print more than the last 5 digits of the credit card number upon the receipt and a merchant shall not print the expiration date upon any receipt. In other words, a retailer must print no more than five digits of a card number, and a retailer must also remove the expiration date from the credit

card receipt. Printing either more than five digits of the credit card number or the expiration date of credit card violates Section 1681c(g).” *Iosello v. Leiblys, Inc.*, 502 F. Supp. 2d 782, 786 (N.D. Ill. 2007). FACTA “expressly prohibits printing more than the last five digits of the credit/debit card numbers and also prohibits printing the card’s expiration date.” *Pirian v. In-N-Out Burgers*, No. 06-1251, 2007 WL 1040864, 2007 U.S. Dis. LEXIS 25384, *8 (C.D. Cal. Apr. 5, 2007). *Accord, Follman v. Hospitality Plus of Carpentersville, Inc.*, 532 F. Supp. 2d 960 (N.D. Ill. 2007); *Korman v. Walking Co.*, 503 F. Supp. 2d 755 (E.D. Pa. 2007); *Ramirez v. MGM Mirage, Inc.*, 524 F. Supp. 2d 1226 (D. Nev. 2007).

4. However on August 5, 2017, when each Plaintiff respectively used their debit cards to purchase food five separate times at Six Flags, they were provided an electronically printed receipt at the point of sale or transaction that included the first eight digits of their debit card number in addition to the last four digits. (Group Exhibit A, Redacted).

5. While Plaintiffs retained these five receipts, they frequent Six Flags and have made food purchases in the past, but either threw away the receipts at Six Flags or at home and no longer have these receipts that are also on information and belief to have printed more of the account number than permitted under 15 U.S.C. § 1681c(g)(1).

6. Low tech thieves commonly known as “dumpster divers” or “carders” look for discarded credit and debit card receipts and use the information.

7. Obtaining almost all of a payment card’s account information can ease the facilitation of identity theft via social engineering or phishing email scams.

8. To reduce the risk of a card being compromised, 15 U.S.C. § 1681c(g)(1)’s truncation requirements were passed by Congress who established a statutory penalty, statutory damages, without the need to establish actual damages where a person subject to the Act

willfully violates it.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction under 15 U.S.C. § 1681p, which vest such jurisdiction “in any . . . court of competent jurisdiction.”

10. Venue is proper because the subject Six Flags location and transactions are in Gurnee, Illinois which is in Lake County.

THE PARTIES

11. Plaintiffs are natural persons.

12. Six Flags is an Illinois Limited Liability Company, and its agent’s name and address for service of process is Illinois Corporation Service Co., 801 Adlai Stevenson Dr., Springfield, IL 62703.

13. Six Flags is a “person” as that term is used in 15 U.S.C. § 1681c(g)(1) as it accepts credit cards or debit cards for the transaction of business.

14. Defendants Does 1 to 20 are individual Six Flags officers, directors, employees, agents, and other natural and artificial persons who authorized, directed, or participated in the willful violations of 15 U.S.C. § 1681c(g)(1) complained of.

FACTS

15. 15 U.S.C. § 1681c(g)(1), provides 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 sale or transaction.

15 U.S.C. § 1681c(g)(1).

16. Compliance with 15 U.S.C. § 1681c(g)(1) was to be completed no later than December 4, 2006.

17. Six Flags is believed to have known that its point of sale terminals can be programmed to print out more card information on receipts than permitted under 15 U.S.C. § 1681c(g)(1) given the hundreds of lawsuits filed against merchants, including such well known large retailers such as Zara, Lumber Liquidators and RadioShack that occurred prior to the violations alleged here. *See Redman v. RadioShack Corp.*, 768 F.3d 622 (7th Cir. 2014) *cert. denied. sub nom. Nicaj v. Shoe Carnival, Inc.*, 135 S. Ct. 1429 (2015).

18. At all times relevant to this Complaint, Six Flags either did not audit its Point of Sale ("POS") terminals' receipts after any software change which caused the subject receipts' non-compliance with 15 U.S.C. § 1681c(g)(1)'s truncation requirements, or it knew its POS terminals were printing at least the first six, perhaps the first eight digits of payment cards' account numbers.

19. Six Flags accepts the following payment cards: VISA, MasterCard, American Express, Discover.

20. On information and belief, Six Flag's merchant bank by contract required Six Flags to comply with VISA's and MasterCard's rules and regulations and that it was the responsibility of Six Flags to read and periodically review VISA's and MasterCard's rules and regulations.

21. Visa, MasterCard, American Express and Discover issue at least one a year updated rules and regulations to which Six Flags was to review. These rules and regulations placed Six Flags on actual notice that its conduct here was prohibited, and American Express and Discover would have notified Six Flags directly that such conduct it has now engaged in here would be a violation of 15 U.S.C. § 1681c(g)(1)'s truncation requirements.

22. American Express has explicitly interpreted 15 U.S.C. § 1681c(g)(1) to allow

only the printing of the last five digits of the payment card's number, but has required by contract its merchants to print only the last four digits.

23. It is believed that Discover, Visa, and MasterCard also interpreted 15 U.S.C. § 1681c(g)(1) to allow only the printing of the last five digits of the payment card's number, but has required by contract its merchants to print only the last four digits.

24. 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. These statements were accompanied by a picture of a receipt showing that the card's account numbers needed to be truncated. VISA required complete compliance by July 1, 2006, five months ahead of the statutory deadline.

25. For example, the February 2012 version of MasterCard's Security Rules and Procedures for merchants provides, in part, that all electronically printed receipts, "must reflect only the last four (4) digits" of a customer's card account number.

26. VISA, MasterCard, the PCI Security Standards Council a consortium founded by VISA, MasterCard, Discover, American Express and JCB companies that sell cash registers and other devices for the processing of credit or debit card payments, and other entities informed merchants about the truncation requirements of 15 U.S.C. § 1681c(g)(1) and its prohibition on the printing of expiration dates, and the need to comply with the same.

27. The card issuing organizations such as American Express and Discover proceeded to require compliance with the truncation requirements of FACTA, by contract directly with Six Flags.

28. On information and belief, Six Flags would have received such contractual

information from American Express and Discover at least once a year since the FACTA amendments to the FCRA became effective.

29. On information and belief, Six Flags in obtaining the right to accept credit and debit card contractually agreed to abide by the Payment Card Industry Security Standards and the card issuing regulations, which would include the duty to review periodically their receipts for compliance including whether their point of sale terminals were printing too much card information.

30. Truncation standards, including the standards reflected in the Visa Merchant Rules and in FACTA, permit the publication of the last four or five digits of customer account numbers on the receipt presented to customers at the point of sale. The publication of this minimal amount of account information is necessary to facilitate merchant account reconciliation, processing of returns, etc. In isolation, the publication of only the last four or five digits of a customer account number significantly limits the extent to which a potential identity thief can effectively use customer receipts disseminated at the point of sale to facilitate identity theft.

31. The FTC issued a business alert in May 2007 entitled "Slip Showing? Federal Law Requires All Businesses to Truncate Credit Card Information on Receipts," available at <https://www.ftc.gov/tips-advice/business-center/guidance/slip-showing-federal-law-requires-all-businesses-truncate> (last visited February 16, 2017). It explained that, "According to the federal Fair and Accurate Credit Transactions Act (FACTA), the electronically printed credit and debit card receipts you give your customers must shorten – or truncate – the account information. You may include no more than the last five digits of the card number, and you must delete the card's expiration date."

32. Most of Six Flags' business peers and competitors readily brought their credit card and debit card receipt printing process into compliance with 15 U.S.C. § 1681c(g)(1) by programming their card machines and devices to comply with the truncation requirement. Defendant could have readily done the same and could have ensured that no violation would have occurred by conducting an audit or by properly training its store managers and employees.

33. 15 U.S.C. § 1681c(g)(1)'s payment card account number truncation requirements are ubiquitous in the world of retailing.

34. Six Flags uses one or more cash registers and/or other machines or devices that electronically print receipts for all credit card and debit card transactions that occurred within its United States based stores.

35. Each of Six Flags point of sale terminals was programmed to print information that Six Flags has required to be printed of its receipts, including the name of the dining venue, the item purchased and its price.

36. The printing of any portion of a payment card's account number is caused by a tag field, which is an instruction code in the POS terminal's software, that's programmed to obtain information from the debit or credit card's magnetic strip and display that information in a specific field.

37. In this case, Six Flag's POS terminals contained a code for it to obtain the account number of each cardholder's debit or credit card and print the first six, maybe eight, and the last four digits of that account number on a receipt.

38. The printing of more than the last four digits of an account number on a receipt does not happen by accident, it requires the POS terminal to be intentionally programmed to do so.

COUNT I**WILLFUL VIOLATION OF FCRA § 1681c(g)(1)**

39. Plaintiffs incorporate and allege herein by reference the allegations in paragraphs 1 – 38 above as if fully set forth herein.

40. Six Flags is a “person that accepts credit cards or debit cards for the transaction of business” as that phrase is used in 15 U.S.C. § 1681c(g)(1).

41. Plaintiffs each are a “cardholder” as that term is used in 15 U.S.C. § 1681c(g)(1).

42. Plaintiffs respectively were provided “any receipt” by Six Flags. Exhibit A

43. Six Flags provided each Plaintiff any receipt at “the point of sale or transaction” as that phrased is used in 15 U.S.C. § 1681c(g)(1).

44. Six Flags in regard to Plaintiffs and each putative class member did not comply with 15 U.S.C. § 1681c(g)(1), which provides that:

... no person that accepts credit cards 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 cardholder at the point of sale or transaction.

15 U.S.C. § 1681c(g)(1).

45. 15 U.S.C. § 1681c(g)(1) cannot be reasonably read to permit the printing of the first six digits of the card number in addition to the last four digits.

46. Illinois likewise prohibits Six Flags’ conduct. 815 ILCS 505/2NN(b):

(b) Except as otherwise provided in this Section, no provider may print or otherwise produce or reproduce or permit the printing or other production or reproduction of the following: (i) any part of the credit card or debit card account number, other than the last 4 digits or other characters, (ii) the credit card or debit card expiration date on any receipt provided or made available to the cardholder.

47. “FACTA was intended to ‘protect consumers from identity thieves’ and ‘to limit the number of opportunities for identity thieves to ‘pick off’ key card account information.’”

Barbieri v. Redstone Am. Grill, Inc., 07 C 5758, 2009 U.S. Dist. LEXIS 9309 * 3-4 (N.D. Ill. Feb. 6, 2009) (quoting S. Rep. No. 108-166, at 3 (2003)); *Cicilline v. Jewel Food Stores, Inc.*, 542 F. Supp. 2d 831 (N.D. Ill. 2008); *Harris v. Mexican Specialty Food, Inc.*, 564 F.3d 1301, 1306 (11th Cir. 2009).

48. Six Flags' conduct exposed Plaintiffs and the members of the class to an increased risk that their payment card could be compromised.

49. Plaintiff Hugo Soto lost time in reviewing his and his wife's receipts to determine whether Six Flags were in compliance with 15 U.S.C. § 1681c(g)(1).

50. Plaintiffs are unable to locate the electronically printed receipts corresponding to other food purchases at Six Flags made this summer and therefore is at a greater risk of having their payment card compromised. Plaintiffs are contemplating whether to cancel and request new debit cards.

51. One of the intended benefits of 15 U.S.C. § 1681c(g)(1) was to eliminate the need for a person to review their receipt to make sure that too much financial information was not on the receipt before disposing of it.

52. One common modus operandi of identity thieves is to obtain credit card receipts that are lost or discarded, or through theft, and use the information on them to engage in transactions. Identity thieves who do this are known as carders and "dumpster divers." This modus operandi is more common than the use of sophisticated electronic means to obtain the information. Robin Sidel, Identity Theft Unplugged Despite the High-Tech Threat, When You Get Ripped Off It's Usually Still the Old Way, Wall Street Journal, Oct. 5, 2006, p. B1.

53. Have more financial information than permitted by law can assist social engineering or phishing scams to compromise more financial information.

54. Six Flags received notice of 15 U.S.C. § 1681c(g)(1)'s requirements.

55. Six Flags was contractually bound not to print anymore than the last five digits of payment cards account numbers on any electronically printed receipts provided to the cardholder at the point of sale.

56. Six Flags knew the truncation requirement of requirements of 15 U.S.C. § 1681c(g)(1) regarding credit card account numbers prior to August 5, 2017.

57. On information and belief, Six Flags knew the truncation requirement of requirements of 15 U.S.C. § 1681c(g)(1) regarding credit card account numbers prior to August 5, 2017.

58. Six Flags either knowingly violated 15 U.S.C. § 1681c(g)(1) or alternatively, failed to take necessary steps of a known danger to prevent 15 U.S.C. § 1681c(g)(1) from being violated, which is reckless conduct.

59. On information and belief, Six Flags violated 15 U.S.C. § 1681c(g)(1) at least one thousand times a day at all times relevant to this Complaint.

CLASS ALLEGATION

60. Plaintiffs bring this action individually and on behalf of a class defined as: All persons whom at a Six Flags location within the United States were provided an electronically printed receipt at the point of sale that contained more than the last five digits of their payment card's account number, from a time period beginning two years prior to the filing of this lawsuit until Six Flags stopped printing such receipts.

61. The class is so numerous that joinder of all individual members in one action would be impracticable.

62. On information and belief, there are more than one thousand persons in the United

States as defined by the putative class definition proposed above.

63. Common legal or factual questions predominate over any questions that may affect individual class members, such as:

- a. Whether a reasonable reading of 15 U.S.C. § 1681c(g)(1) prohibited Six Flags' conduct; and
- b. Whether conduct was done with knowledge or at a minimum was reckless in light of a known danger entitling Plaintiffs and the class members to punitive damages.

64. It is proper to certify as a class action a matter brought under 15 U.S.C. § 1681c(g)(1). *E.g. Stillmock v. Weis Mkts., Inc.*, 385 Fed. Appx. 267 (4th Cir. 2010) (unpublished); *see e.g. Vasquez v. Zara USA Inc.*, 1:15-cv-03433 (N.D. Ill.).

65. Plaintiffs will fairly and adequately represent the class members.

66. Plaintiffs have no interests that conflict with the interests of the class members.

67. Plaintiff's attorneys are experienced and competent in complex class action litigation and will competently and adequately represent class members' interests.

68. Class certification is appropriate to any other method or procedure for fairly and efficiently adjudicating class members' claims because:

- a. Economies for the Court and the parties exist from litigating the common issues on a classwide basis instead of on a repetitive, individual basis;
- b. Each class member's damage claim is too small to make individual litigation an economically viable possibility, for which reason few class members would have any interest in individually prosecuting separate actions;
- c. Despite the relatively small size of each class member's claim, the aggregate volume of their claims—coupled with the economies of scale inherent in litigating similar claims on a common basis—will enable Class counsel to litigate this case on a cost-effective basis; and

- d. Class treatment is required for optimal deterrence and for limiting the reasonable legal expenses incurred by class members.

69. Six Flags, on information and belief, has retained or has access to the payment card account numbers of the putative class members that can be used in identifying the cardholders.

70. Plaintiffs anticipate no unusual difficulties managing and maintaining this case as a class action.

WHEREFORE, Plaintiff request this Honorable Court to enter judgment in favor of Plaintiffs and the class for:

- a. Damages available under 15 U.S.C. § 1681n(a)(1)(A) per person;
- b. Punitive damages available under 15 U.S.C. § 1681n(a)(2) if the evidence warrants;
- c. Attorney's fees and costs available under 15 U.S.C. § 1681n(a)(3); and
- d. Any other relief deemed appropriate by the Court.

Respectfully submitted,

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