



Holme Roberts  
& Owen LLP

Attorneys at Law

#### HRO CONTACTS

Denver

**Bobbee J. Musgrave**  
Partner  
bobbee.musgrave@hro.com  
303-866-0386

**Steven J. Perfremment**  
Partner  
steven.perfremment@hro.com  
303-866-0370

Advertising Material

# HRO Alert

## FAIR AND ACCURATE CREDIT TRANSACTIONS ACT (“FACTA”)

In 2003, Congress enacted the Fair and Accurate Credit Transactions Act (“FACTA”) of 2003, 15 U.S.C. Section 1681 to 1681x. In December of 2006, a provision of FACTA became effective that bars the printing of certain information on receipts provided to the cardholder by businesses that accept payment by credit or debit cards.

Specifically, electronically printed receipts provided to the cardholder at the point of the sale or transaction cannot include more than the last five (5) digits of the credit or debit card number, or the expiration date of the card. This restriction applies only to receipts that are electronically printed, and does not apply to transactions in which the sole means of recording a credit or debit card account number is by handwriting or by an imprint or copy of the card.

FACTA allows private plaintiffs to sue in federal court to collect any actual damages sustained as a result of a negligent failure to comply with this requirement, plus attorney’s fees. Any person who *willfully* fails to comply with these requirements may be liable for actual damages sustained by consumers as a result of the failure, or statutory damages of \$100 to \$1,000 per violation, plus attorney’s fees.

Plaintiffs’ class action lawyers have seized on this statute and filed numerous FACTA class action lawsuits across the country. Any company that accepts credit or debit cards may find itself a target of this kind of lawsuit if its equipment or software has not been updated to implement FACTA’s number truncating and expiration date masking requirements.

Several courts, most notably in California, have refused to allow FACTA cases to proceed as class actions because of the possible financial impact it would have on the defendant and the disproportionate damages that could be awarded in a class action in relation to the harm suffered by the class. *See, e.g., Soualian v. International Coffee & Tea LLC*, 2007 U.S. Dist. LEXIS 44208 (D. Cal. 2007). Defending class action lawsuits is inherently expensive and time-consuming, however, and this rationale for denying class certification may be reversed on appeal or rejected by other courts. Anyone who accepts credit or debit cards would therefore be wise to ensure that card numbers are truncated and expiration dates are masked on their printed receipts.

*This article is a periodic publication of Holme Roberts & Owen LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances, nor is it intended to address specific disclosure or compliance issues that may arise in particular circumstances or provide an exhaustive discussion of the topics discussed herein. The contents are intended for general informational purposes only, and you are urged to consult counsel concerning your own situation and any specific legal questions you may have. For further information regarding the topics described herein, please contact any of the persons listed on the left side of this page by telephone or by email.*

1700 Lincoln Street, Suite 4100 · Denver, Colorado 80203-4541  
tel 303-861-7000 · fax 303-866-0200 · [www.hro.com](http://www.hro.com)

August 6, 2007

DENVER BOULDER COLORADO SPRINGS LONDON LOS ANGELES MUNICH SALT LAKE CITY SAN FRANCISCO