

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Harry D. Leinenweber	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	09 C 910	DATE	6/17/2011
CASE TITLE	Aliano vs. Joe Caputo & Sons - Algonquin, Inc.		

DOCKET ENTRY TEXT

Plaintiff Kathy Aliano's Motion for Approval of Class Notice Plan [236] is granted. Plaintiff shall use the class definition set forth in this Opinion in executing her class notification. The oral ruling date of 6/23/2011 is stricken.

■ [For further details see text below.]

Docketing to mail notices.

STATEMENT

On February 12, 2008, Plaintiff Kathy Aliano (hereinafter, the "Plaintiff") shopped at Joe Caputo & Sons Fruit Market in Algonquin, Illinois, and used her Discover credit card to purchase \$105.57 in groceries. She received a receipt from the store that showed the first six digits and last four digits of her credit card number, which violates the Fair and Accurate Credit Transactions Act ("FACTA"). 15 U.S.C. § 1681c(g)(1). Plaintiff subsequently filed a putative Class Action Complaint against Defendant Joe Caputo and Sons – Algonquin, Inc.'s (hereinafter, the "Defendant"), seeking statutory damages of \$100 to \$1,000 per FACTA violation, plus attorneys' fees and costs, for Defendant's alleged willful FACTA violations. Aliano does not claim any actual damages from Defendant's actions. The Court certified the putative class on September 21, 2010. Following this Court's denial of Defendant's Motion for Summary Judgment [235], Plaintiff moved to approve a class notice plan. [236]

As an initial matter, a dispute exists over the potential class size. While Plaintiff alleges the class may comprise more than 294,000 individuals, Defendant argues that, at maximum, 77,214 individuals received a receipt that did not comply with FACTA. Defendant calculated this number by eliminating records with duplicate credit card numbers from its credit card transaction records from August 2007 through February 28, 2009, produced to Plaintiff by FifthThird Bank Processing Solutions.

Defendant argues that with this reduced class size, Plaintiff must send individual notice to each member of the class pursuant to Federal Rule of Civil Procedure 23(c)(2)(B). "[M]embers of a Rule 23(b)(3) class must receive reasonable notice and an opportunity to opt out; that is an absolute requirement for a court to exercise jurisdiction over those class members." *Smith v. Shawnee Library Sys.*, 60 F.3d 317, 321 (7th Cir. 1995). In order to effectuate this notice, the Court must "direct to class members the best notice practicable under the circumstances including individual notice to all members who can be identified through reasonable effort." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974) (quotation omitted).

In this case, Defendant's plan for individual notice is not reasonable. The text file from FifthThird Bank Processing Solutions does not contain the names and addresses associated with each credit or debit card