

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 07-502-RGK (JCx) Date June 11, 2007

Title TALINE SOUALIAN v. INTERNATIONAL COFFEE AND TEA LLC, et al.

Present: The Honorable R. GARY KLAUSNER, UNITED STATES DISTRICT JUDGE

Sharon L. Williams

Not Reported

N/A

Deputy Clerk

Court Reporter / Recorder

Tape No.

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Not Present

Not Present

Proceedings:

**(IN CHAMBERS) PLAINTIFF'S MOTION FOR CLASS
CERTIFICATION (DE 20)**

I. INTRODUCTION

On January 19, 2007, Plaintiff Taline Soulian ("Plaintiff") filed a class action against International Coffee & Tea, LLC ("Defendant"), under the Fair and Accurate Credit Transactions Act ("FACTA").¹ Plaintiffs' Motion for Class Certification is presently before the Court. For the reasons below, the Court denies Plaintiffs' Motion.

II. FACTUAL BACKGROUND

The following facts are alleged by the parties. On January 10, 2007, during a credit card transaction with one of Defendant's Coffee Bean stores, Plaintiff received an electronically-printed receipt that contained the last five digits of her credit card number and the card's expiration date. Plaintiff alleges that her receipt violates 15 U.S.C. § 1681c(g), 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 of the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction." (Comp. ¶ 2-4, *see also* 15 U.S.C. § 1681c(g)(1)).

Plaintiff filed this class action against Defendant on January 19, 2007. Under Federal Rule of Civil Procedure 23 ("Rule 23"), Plaintiff seeks to certify the class of individuals who made purchases at Defendant's stores between December 24, 2006 and January 24, 2007 and who received receipts on which Defendant printed more than the last five digits of the person's credit card or debit card number, or on which Defendant printed the expiration date of the person's credit or debit card.

¹ FACTA is a subset of the statutes contained within the Fair Credit Reporting Act ("FCRA"), codified at 15 U.S.C. §§ 1681, *et. seq.*

III. JUDICIAL STANDARD

"Class actions have two primary purposes: (1) to accomplish judicial economy by avoiding multiple suits, and (2) to protect rights of persons who might not be able to present claims on an individual basis." *Haley v. Medtronic, Inc.*, 168 F.R.D. 643, 647 (C.D. Cal. 1996) (citing *Crown, Cork & Seal Co. v. Parking*, 462 U.S. 345 (1983)). Federal Rule of Civil Procedure 23 ("Rule 23") governs class actions. A class action "may be certified if the trial court is satisfied after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied." *General Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 161 (1982).

To certify a class action, Plaintiffs must set forth prima facie facts that support the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation. *Mego Fin. Corp. Sec. Litig. v. Nadler*, 213 F.3d 454, 462 (9th Cir. 2000) (internal quotations omitted). These requirements effectively "limit the class claims to those fairly encompassed by the named plaintiff's claims." *Falcon*, 347 U.S. at 155 (quoting *General Tel. Co. of Northwest*, 446 U.S. at 330).

If the district court finds that the action meets the prerequisites of Rule 23(a), the court must then consider whether the class is maintainable under Rule 23(b). A class is maintainable under Rule 23(b)(3) where "questions of law or fact common to the members of the class *predominate* over any questions affecting only individual members," and where "a class action is *superior* to other available methods for fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3) (emphasis added). "The Rule 23(b)(3) predominance inquiry tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998) (citing *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997)). The predominance inquiry measures the relative weight of the common issues to individualized claims. *Id.* "Implicit in the satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy." *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1189 (9th Cir. 2001) (citing *Valentino*, 97 F.3d 1227, 1234 (9th Cir. 1996)).

In determining superiority, the court must consider the four factors of Rule 23(b)(3): (1) the interests members in the class have in individually controlling the prosecution or defense of the separate actions; (2) the extent and nature of any litigations concerning the controversy already commenced by or against members of the class; (3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely encountered in the management of a class action. "If the main issues in a case require the separate adjudication of each class member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate." *Id.*

IV. DISCUSSION

A. The Proposed Class

Plaintiffs propose a Class defined as follows: "All individuals who, on or after December 4, 2006, were provided at the point of a sale or transaction with an electronically-printed receipt by COFFEE BEAN on which COFFEE BEAN printed more than the last five digits of the person's credit card or debit card number, or on which COFFEE BEAN printed the expiration date of the person's credit or debit card." (the "Plaintiff Class"). (P. Mot. At 5).²

² Defendant argues that the proposed class is overbroad. Defendant asserts that Coffee Bean has not printed more than the last five digits of account numbers on receipts for several years, and Plaintiff's receipt also shows that Coffee Bean properly truncated her credit card number to only five digits. The Court need not decide this issue since it finds that certification is not proper under 23(b).

A class action can be maintained under Rule 23(b)(3) if a court finds both that common questions of law or fact “predominate” over individual questions, and that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3).

Defendant opposes class certification on the grounds that a class action is not the superior method for the fair and efficient adjudication of the controversy. Because of the potential for a large statutory damage award, out of proportion with any harm suffered by the plaintiff, Defendant argues that the Court should deny class certification. Defendant also claims that superiority is not met because of the serious difficulty in managing and notifying all of the class members. For the following reasons, the Court agrees.

A court must find that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.” Fed. R. Civ. P. 23(b)(3). Under Rule 23(b)(3), courts have recognized that “fairness and due process concerns make litigation by and against some parties the normal rule and litigation by or against a class the exception to the normal rule.” *Legge v. Nextel Communications, Inc.*, 2004 WL 5235587 (C.D. Cal 2004).⁴

In interpreting the superiority requirement, a Central District Court of California recently denied a plaintiff’s motion for class certification. *Spikings v. Cost Plus, Inc.*, Case No. CV 06-8125-JFW (AJWx) (C.D. Cal. May 25, 2007) (order denying class certification). In *Spikings*, the court dealt with the same violations of FACTA as the instant case, and ruled that class certification was not appropriate.⁵ The *Spikings* court noted that other courts, including the Ninth Circuit, have denied class certification where the defendant’s liability would “constitute horrendous, possibly annihilating punishment unrelated to any damage to the purported class.” *Kline v. Coldwell Banker & Co.*, 508 F.2d 226, [PIN] (9th Cir. 1974) (citing *Ratner v. Chem Bank*, 54 F.R.D. 412, 416 (S.D.N.Y. 1972)). In these cases, the courts did not deny class certification solely because of the possible financial impact it would have on the defendant, but because of the disproportionality of the damages award in relation to the harm actually suffered by the class. *Ratner*, 54 F.R.D. at 416.⁶

Here, the facts mirror those of *Spikings*. Plaintiff alleges no actual damages, such as identity theft, as a result of her expiration date appearing on her receipt from Coffee Bean. There is no evidence that any customer making a purchase from Defendant’s stores between December 4, 2006 and January 24, 2007 suffered any actual harm due to the inclusion of the expiration date on credit card and debit

³ Because the Court denies Plaintiff’s Motion for Class Certification for failure to satisfy the requirements of 23(b), it need not consider Rule 23(a).

⁴ See also Note to Amended Rule 23, 39 F.R.D. 98, 102-103, explaining that the superiority requirement allows courts to exercise considerable discretion in deciding whether or not to certify a class for a category of cases for which a class action may not be the best method.

⁵ After receiving evidence that the inclusion of the expiration date on a credit card or debit card receipt was virtually impossible to result in identity theft and any other actual harm, the lack of any actual harm suffered by members of the potential class, and considering the disastrous consequences to Defendant’s business and the thousands of Defendant’s employees that would be left without a job if the class was certified in the case, the court denied class certification.

⁶ Other courts have likewise denied class certification due to disproportionate damages. In *London v. Wal-Mart Stores, Inc.*, 340 F.3d 1256, 1255 n. 5 (11th Cir. 2003) (citing *Kline*, 508 F.2d 226 at [PIN]), the court held that class treatment fails to meet the “superiority requirement” where the defendant’s liability “would be enormous and completely out of proportion to any harm suffered by the plaintiff. In *Ratner*, 54 F.R.D. at 416, the court held that class certification lacks superiority where a violation is technical, and aggregation of statutory damages under TILA would be financially devastating for the defendant. Similarly, in *Wilcox v. Commerce Bank of Kansas City*, 474 F.2d 336, 341-347 (10th Cir. 1973), the court affirmed the district court’s denial of class certification for TILA violations cases where class members were not harmed and aggregate of statutory damages would be extremely large.

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card receipts. Furthermore, it appears virtually impossible for the inclusion of the expiration date on a credit card or debit card receipt to result in identity theft or any other actual harm. Declaration of Mari J. Frank, ¶ 4, 8-18.

If Plaintiff is able to prove that Defendant committed a “willful” violation of FACTA, each class member would be eligible to receive between \$100 and \$1,000 in statutory damages. If the class is certified, Defendant faces statutory damages alone of between approximately \$4.8 million and \$48 million. (Def. Motion at 1). Given the disproportionate consequences to Defendant’s business and the lack of any actual harm suffered by members of the potential class, the Court finds that Plaintiff fails to meet the superiority requirement.⁸

Furthermore, as soon as becoming aware that having the expiration date on credit card and debit card receipts was a technical violation of FACTA, Defendant investigated and removed the expiration dates on the receipts distributed in all of its Coffee Bean locations within two days. Defendant’s immediate action to comply with FACTA’s requirements once becoming aware of this action also supports denial of class certification. *Spikings v. Cost Plus, Inc.*, Case No. CV 06-8125-JFW (AJWx) (C.D. Cal. May 25, 2007) (order denying class certification).⁹ Courts have recognized deterrence as a public policy objective of class action treatment. *Abels v. JBC Legal Group, P.C.*, 227 F.R.D. 541 (2005) (quoting H. Newberg, *Class Actions* § 4.36 (4th ed. 2002)) (recognizing that class actions “were designed not only to compensate victimized members of groups who are similarly situated...but also deter violations of the law”). By immediately remedying their misconduct upon receiving Plaintiff’s Complaint, Defendants demonstrated good faith and nullified any deterrence benefit that might have been derived from a class action.

Therefore, the Court finds that the superiority requirement has not been met. Where massive damage awards would be disproportionate to any actual damage caused by the alleged violations, class action is not the superior method of adjudicating class members’ claims. Denial of class certification in this case does not prevent any of the Defendant’s customers seeking statutory and punitive damages, or those who may have suffered actual damages as a result of Defendant’s conduct, from proceeding with individual cases to recover those damages. Nor is class action treatment the only means of ensuring that Defendant can be held accountable for violations of FACTA. *Spikings*, Case No. CV 06-8125-JFW (AJWx).

⁷ Although the court should not judge the ultimate merits of the case at the class certification stage, it may consider evidence relating to the merits if such evidence also goes the requirements of Rule 23. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

⁸ Plaintiff contests that, under *Murray v. GMAC*, 434 F.3d 948, 953 (7th Cir. 2001), which was followed by a California district court in *White v. E-Loan*, 2006 WL 2411420 (N.D. Cal. Aug. 18, 2006), the potential of “annihilating” statutory damages should not preclude class action treatment. However, the *White* court distinguished itself from *Ratner* and *Kline* on the ground that the defendant was not accused of a mere technical violation. Further, while the Seventh Circuit in *Murray* failed to adopt the *Ratner*’s reasoning, the Ninth Circuit in *Kline* specifically follows *Ratner*.

⁹ See also *Shroder v. Suburban Coastal Corp.*, 729 F.2d 1371, 1377 (11th Cir. 1984), where a technical violation of TILA had prompted the defendant’s vice president to immediately discontinue using the forms at issue, the court upheld the district court’s denial of class certification. The *Shroder* court noted that “although technical violations of the complex TILA disclosure requirements are sufficient to establish a cause of action, the purpose of the Act is to insure compliance by creditors and not to punish an unwary violator.” *Id.*

IV. CONCLUSION

For all the foregoing reasons, Plaintiff has failed to satisfy Rule 23(b)(3). Accordingly, the Court **DENIES** Plaintiff's Motion.

IT IS SO ORDERED.

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