

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
CIVIL MINUTES - GENERAL

JS-6

Case No. CV 07-0559 GPS(JWJx) Date: January 10, 2008

Title: Veronica Blanco v. CEC Entertainment Concepts L.P., et al.

PRESENT: THE HONORABLE GEORGE P. SCHIAVELLI, JUDGE

Jake Yerke
Courtroom Clerk

Not Present
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Not Present

Not Present

PROCEEDINGS: Order Denying Plaintiff's Motion for Class Certification
(In Chambers)

On January 7, 2008, the Court held a hearing regarding Plaintiff's Motion for Class Certification and took the matter **UNDER SUBMISSION**. After considering the arguments and reviewing the files, the Court **DENIES** Plaintiff's Motion for Class Certification **WITHOUT PREJUDICE**. Additionally, the Court **STAYS** the action pending the appellate outcome of *Soualian v. Int'l Coffee & Tea LLC*, No. CV 07-502-RGK (JCx), 2007 U.S. Dist. LEXIS 44208 (C.D. Cal. June 11, 2007).

I. BACKGROUND

Plaintiff Veronica Blanco ("Plaintiff") filed a class action Complaint against CEC Entrtainment Concepts, L.P; CEC Entertainment, Inc.; and Nor-Cal Chuck E. Cheese, LLC (collectively "Defendants" or "Chuck E. Cheese"). Plaintiff alleges that Chuck E. Cheese willfully and knowingly prints "Prohibited Information", i.e., either (1) more than the last five digits of credit or debit card numbers on receipts; or (2) expiration dates on its receipts. (First Amended Complaint or "FAC" ¶ 1.) Printing this Prohibited Information would violate the Fair Credit Reporting Act ("FCRA"), as amended by the Fair and Accurate Credit Transactions Act of 2003 ("FACTA").¹ This statute was passed, in part, to help prevent identity theft.

Plaintiff seeks to represent herself and:

All individuals in the United States of America who, on or after December 4, 2006, were provided at the point of a sale or transaction

¹ 15 U.S.C. § 1681 et seq.

with an electronically-printed receipt by CHUCK E. CHEESE on which CHUCK E. CHEESE printed Prohibited Information. (FAC ¶ 16.)

In her Motion for Class Certification, Plaintiff seeks to recover statutory damages under FACTA for each class member that received a receipt from Chuck E. Cheese that included the Prohibited Information. In essence, this is a class action for a technical violation of FACTA - one of at least a dozen such actions filed in this district alone.

II. ANALYSIS

Rule 23 of the Federal Rules of Civil Procedure governs the certification of federal class actions. To sustain certification, a class action must meet the four threshold requirements of Rule 23(a) and fall within one of the three categories of class actions set forth in Rule 23(b). See *Zinser v. Accufix Research Inst.*, 253 F.3d 1180, 1186 (9th Cir. 2001); *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996). Under Rule 23(b)(3), the court may certify a class if questions of law or fact common to the class predominate and a class action is superior to other available methods for fairly and effectively adjudicating the controversy. Critically, the proponent bears the burden of proving that the Rule 23 requirements are met. *Id.*

This present analysis focuses on the second prong of Rule 23(b)(3), the superiority prong, because Plaintiff fails to show that a class action would be the superior method of redressing the claims. "A class action is the superior method for managing litigation if no realistic alternative exists." *Valentino*, 97 F.3d at 1234-35 (adding that class certification is appropriate where it will reduce litigation costs and promote greater efficiency). Additionally, courts have emphasized that when considering superiority, "[f]airness 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 Commc'ns, Inc.*, 2004 U.S. Dist. LEXIS 30333 (C.D. Cal. 2004) (citations omitted) (finding that the court "bear[s] a significant responsibility to insure that the great power wielded by plaintiffs (or more accurately their counsel) carrying the cudgel of a class action is used only in appropriate cases."). A court has "broad discretion" in determining whether an action satisfies the superiority requirement of Rule 23(b)(3). *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975).

The Court finds that Plaintiff cannot demonstrate here that a class action is *superior* to other methods for the fair and efficient adjudication of the controversy under Fed. R. Civ. P. 23(b)(3) for two main reasons.

First, the potential damages at issue are grossly disproportionate to the alleged injury (i.e., potential threat of identity theft rather than actual harm). See *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 416, 426 (2003) ("[t]he Due Process Clause of the Fourteenth Amendment

prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor."); see also *Ratner v. Chemical Bank of NY Trust Co.*, 54 F.R.D. 412 (S.D.N.Y. 1972) (denying certification because plaintiff sought to certify a class of 130,000 members, which would have resulted in a statutory damages of \$13 million, even though there was no proof of actual damages).

In this case, if Plaintiff Blanco's class is certified, damages will range between \$198,025,000 to \$1,980,250,000 though Plaintiff admits that she incurred no actual harm and has not alleged actual harm to the class. (Def.'s Opp'n 21:6-11.) This would completely swallow CEC's net income last year of \$68,257,000. (*Id.* 21:10-11.) This end result would be grossly disproportionate to the harm, especially when Defendant immediately rectified this technical problem after the lawsuit was filed.

Second, there are viable alternative methods to a class action. FACTA provides for the recovery of attorneys fees and punitive damages. See 15 U.S.C. §1681n(a)(2) (providing punitive damages as the court may allow for a willful violation of FACTA). This gives individuals an incentive to sue and provides an alternative to bringing a class action. Moreover, the Advisory Notes to Rule 23 state that there may be "greater practical advantages" to other methods such as consolidating cases. 2007 FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES BOOK, at 116. Additionally, there are other federal enforcement alternatives, such as through the Federal Trade Commission. Thus, in light of the remedies granted by Congress, individual litigation is superior to a class action in this case, which could result in grossly disproportionate damages.

III. CONCLUSION

In light of the above analysis, the Court finds that a class action is not the superior method to pursue these claims and **DENIES** Plaintiff's Motion **WITHOUT PREJUDICE** to renewal after *Soualian* is decided. The Ninth Circuit's *Soualian* case is an appeal from a June 2007 decision by Judge Gary Klausner of the Central District of California. In this opinion, Judge Klausner denied a nearly identical motion for class certification because the superiority requirement had not been met. *Soualian*, 2007 U.S. Dist. LEXIS 44208, at *11 (reasoning that the damages were grossly disproportionate to the harm and alternatives to class proceedings were viable). Accordingly, this action is **STAYED** pending a decision in *Soualian*.

Therefore, it is **HEREBY ORDERED** that the action be removed from the Court's active caseload pending a further order of the Court. Additionally, counsel are **ORDERED** to file a quarterly joint status report commencing on March 3, 2008. The Court retains jurisdiction over this action.

IT IS SO ORDERED.