IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

JEREMY MEYERS, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	No. 15-cv-445
ONEIDA TRIBE OF INDIANS, OF WISCONSIN,	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

NOW COMES Plaintiff JEREMY MEYERS, by and through counsel, and respectfully requests the entry of an order certifying this action as a nationwide class action pursuant to Fed.R.Civ.P. 23(a) and 23(b)(3), as follows:

Plaintiff defines the class as follows:

> **all persons to whom Defendant or a Defendant affiliate provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring in the United States after June 3, 2008, which receipt displays more than the last five digits of the person's credit card or debit card number, or displays the expiration date of the person's credit card or debit card.**

(See, Plaintiff's Class Action Complaint ("Plf. Compl."), Docket No. 1, Para. 16).

Plaintiff further requests that Zimmerman Law Offices, P.C. be appointed counsel for the class.

In support of this motion, Plaintiff states as follows:

NATURE OF THE CASE

1. One provision of the December 2003 Fair and Accurate Credit Transactions Act ("FACTA") amendment to the Fair Credit Reporting Act ("FCRA"), codified as 15 U.S.C. §

1681c(g), 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).

2. Section 1681c(g) is not ambiguous. It "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*, 2007 WL 1040864 at *3 (C.D. Cal. 2007).

3. On February 6, 2015, Plaintiff received from Defendant at the point of sale at one of its retail establishments in Green Bay, a computer-generated cash register receipt which displayed more than the last five digits of the Plaintiff's credit card number as well as the card's expiration date. (See, Plaintiff's redacted receipt, attached hereto as Exhibit A-1).

4. On February 10, 2015, Plaintiff received from Defendant at the point of sale at one of its retail establishments in Green Bay, a computer-generated cash register receipt which displayed more than the last five digits of the Plaintiff's credit card number as well as the card's expiration date. (See, Plaintiff's redacted receipt, attached hereto as Exhibit A-2).

5. On February 17, 2015, Plaintiff received from Defendant at the point of sale at its retail establishment in Pulaski, a computer-generated cash register receipt which displayed more than the last five digits of the Plaintiff's credit card number as well as the card's expiration date. (See, Plaintiff's redacted receipt, attached hereto as Exhibit A-3).

6. Section 1681c(g) is an essential protection against identity theft, which according to the Federal Trade Commission, victimized some 9 million persons and caused over $57 billion in harm in 2006 alone. (See, "Stevens and Inouye ID Theft Prevention Act Passes Commerce Committee," States News Service, Apr. 25, 2007, attached hereto as Exhibit B). One common

modus operandi of identity thieves is to collect lost or discarded credit card receipts, or steal them, and use the information on them to engage in fraudulent transactions. Identity thieves who do this are known as "carders" and "dumpster divers." This is more common than the use of sophisticated electronic means to obtain the information. (See, Robin Sidel, "Identity Theft — Unplugged," *Wall Street Journal*, Oct. 8, 2005, p. B1, attached hereto as Exhibit C).

7. To curb identity theft, Congress prohibited merchants who accept credit cards and debit cards from issuing electronically-generated receipts that display either the expiration date or more than the last five digits of the card number. The law gave merchants who accept credit and debit cards up to three years to comply. Full compliance was required by December 4, 2006.

8. The need to "truncate" receipts was widely publicized among retailers. For example, the former CEO of Visa USA, Carl Pascarella, explained at a press conference with Sen. Dianne Feinstein on March 6, 2003 that: "Today, I am proud to announce an additional measure to combat identity theft and protect consumers. Our new receipt truncation policy will soon limit cardholder information on receipts to the last four digits of their accounts. The card's expiration date will be eliminated from receipts altogether. ... The first phase of this new policy goes into effect July 1, 2003 for all new terminals. ..." (See, "Visa USA Announces Account Truncation Initiative," *PR Newswire,* March 6, 2003, attached hereto as Exhibit D).

9. On information and belief, VISA, MasterCard, American Express, 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 Defendant about FACTA, including its specific requirements concerning the truncation of credit card and debit card numbers and prohibition on the printing of expiration dates, and that Defendant needed to comply with the

statute. (See, Plf. Compl., Docket No. 1, ¶ 30).

10. Most of Defendant's business peers and competitors readily brought their receipt printing process into compliance. Defendant could have done the same. It did not.

11. A private remedy is provided by §1681n and §1681o, which provide:

§1681n. Civil liability for willful noncompliance

> (a) In general. Any person who willfully fails to comply with any requirement imposed under this title [15 USC §§1681 *et seq*.] with respect to any consumer is liable to that consumer in an amount equal to the sum of
>
> > (1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $ 100 and not more than $ 1,000;
> >
> > ***
> >
> > (2) such amount of punitive damages as the court may allow; and
> >
> > (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

§ 1681o. Civil liability for negligent noncompliance

> (a) In general. Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of –
>
> > (1) any actual damages sustained by the consumer as a result of the failure; and
> >
> > (2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

CLASS CERTIFICATION REQUIREMENTS

11. To achieve class certification, a plaintiff must demonstrate that Rule 23(a)'s four prerequisites are satisfied: (1) that the proposed class is so numerous that joinder of all members is impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims of the representative party are typical of the claims of the class; and (4) that the representative party will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). This case satisfies all of those factors.

12. **Numerosity.** To satisfy the numerosity requirement, a class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "When the class is large, numbers alone are dispositive. . . ." *Riordan v. Smith Barney,* 113 F.R.D. 60, 62 (N.D. Ill. 1986). Where the class numbers at least 40, joinder is generally considered impracticable. *Armes v. Sogro, Inc.*, 08-C-0244, 2011 WL 1197537, at *2 (E.D. Wis. Mar. 29, 2011); *McCabe v. Crawford & Co.,* 210 F.R.D. 631, 643 (N.D. Ill. 2002). Here, upon information and belief there are over 50 alleged FACTA violations at issue. Since its first store opened in 1985, the Oneida Tribe has opened stores in fifteen locations in northern Wisconsin.[1] Many of the Oneida stores also contain casinos and slot machines for visitors to use.[2] The popularity of Oneida stores has helped them to become a "profitable growing enterprise for more than twenty-five years."[3] (See, Plf. Compl., Docket No. 1, ¶ 17). The numerosity requirement is satisfied.

13. **Commonality.** Rule 23(a)'s second requirement is that there must be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This "commonality" requirement is satisfied by showing "a common nucleus of operative fact." *Keele v. Wexler,* 149 F.3d 589, 594 (7th Cir. 1998). Where a question of law involves "standardized conduct of the defendant toward members of the proposed class, a common nucleus of operative facts is typically presented, and the commonality requirement . . . is usually met." *Franklin v. City of Chicago,* 102 F.R.D. 944, 949 (N.D. Ill. 1984); *accord, Patrykus v. Gomilla,* 121 F.R.D. 357, 361 (N.D. Ill. 1988).

---

[1] *See Oneida One Stop locations Oneida Smoke Shop locations – Our Locations*, Oneida Retail, *available at* www.oneidaretail.com/?id=13 (*last visited* March 24, 2015).

[2] *See One-Stop Casinos*, Oneida Bingo and Casino, *available at:* www.oneidabingoandcasino.net/locations/one-stop-casinos/ (*last visited* March 24, 2015).

[3] *See Oneida Tribe*, Oneida Retail, *available at* www.oneidaretail.com/?id=11 (*last visited* March 24, 2015).

Here, Defendant engaged in standardized conduct involving a common nucleus of operative facts. The case involves common fact questions about Defendant's alleged FACTA violations and common legal questions under FACTA, such as:

(a) Whether Defendant had a practice of providing customers with a sales or transaction receipt on which Defendant printed more than the last five digits of the credit card or debit card number, or printed the expiration date of the credit card or debit card;

(b) Whether Defendant thereby violated FACTA; and

(c) Whether Defendant's conduct was negligent, reckless or willful.

(See, Plf. Compl., Docket No. 1, ¶ 19).

14. **Typicality.** Rule 23(a)'s third requirement is that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "A plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *De La Fuente v. Stokely-Van Camp, Inc.,* 713 F.2d 225, 232 (7th Cir. 1983) (citation omitted). In this case, typicality is inherent in the class definition because each class member, including Plaintiff, was subjected to the same conduct. Each class member's claim is based on the same legal theory as Plaintiff's. Rule 23(a)(3)'s "typicality" requirement is satisfied.

15. **Adequacy of Representation — Rule 23(a)(4) Adequacy Requirement.** Rule 23(a)'s final requirement is that the class representative must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "The burden of showing sufficient interest is relatively modest." *Redmon v. Uncle Julio's of Ill., Inc.*, 249 F.R.D. 290, 295 (N.D. Ill. 2008). Here, Plaintiff understands the obligations of a class representative, the nature of the claims, is involved in the litigation, and has an interest in representing the class and enforcing FACTA. Plaintiff and the other class members all seek statutory damages under the FCRA. Given the

identity of claims between Plaintiff and the class members, there is no potential for conflicting interests. There is no antagonism between the interests of Plaintiff and those of the other class members, which is the key factor to determine whether a plaintiff is an adequate representative. Therefore, Rule 23(a)(4)'s "adequacy" requirement is satisfied.

16. **Adequacy of Representation — Rule 23(g) Class Counsel Adequacy Requirement.** Class counsel's adequacy is determined by four factors: (i) the work counsel has done in identifying or investigating potential claims; (ii) counsel's experience in handling class actions; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). Plaintiff's counsel are experienced lawyers and are adequate counsel for the Class. They have been appointed as lead or co-lead counsel in many class actions and have recovered substantial monies for their clients and the class members.

17. **Predominance.** Rule 23(b)(3) requires that Plaintiff show that common questions of law or fact predominate over any individual questions. For the reasons discussed above regarding commonality and typicality, there is no reason to believe that any individual question will predominate over the common questions in this litigation. Common legal issues predominate because the class members' claims arise under the same federal statute: the FCRA and its concomitant FACTA amendment. Common fact issues predominate because the class members' claims are focused on Defendant's conduct of providing non-compliant receipts to Plaintiff and other customers.

18. **Superiority.** Finally, Fed. R. Civ. P. 23(b)(3) requires that a class action be the superior method of adjudicating the claims at issue. The court determines the best available method for resolving the controversy in keeping with judicial integrity, convenience, and

economy. *Scholes v. Stone, McGuire & Benjamin,* 143 F.R.D. 181, 189 (N.D. Ill. 1992). It is proper for a court, in deciding the "best" available method, to consider the "[i]nability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Haynes v. Logan Furniture Mart, Inc.,* 503 F.2d 1161, 1165 (7th Cir. 1974). Here, allowing the case to proceed as a class action will be an efficient use of judicial resources and will be superior to individual lawsuits.

19. Further, at least twelve (12) other cases seeking damages under FACTA have been certified in district courts in the Seventh Circuit, including the Eastern District of Wisconsin. See, *e.g.*:

i. *Armes v. Sogro, Inc.*, 932 F. Supp. 2d 391, 08 cv 0244 (Judge Clevert, E.D. Wis March 18, 2013), *renamed Velasco v. Sogro, Inc.*, 2014 WL 3737971, 08 cv 0244 (Judge Clevert July 30, 2014);

ii. *Miller-Huggins v. Mario's Butcher Shop, Inc.*, 2010 WL 658863, 09 cv 3774 (Judge Hart, N.D. Ill. Feb. 22, 2010);

iii. *Shurland v. Bacci Cafe & Pizzeria on Ogden Inc.*, 259 F.R.D. 151, 08 cv 2259 (Judge Pallmeyer, N.D. Ill. Aug. 19, 2009);

iv. *Beringer v. Standard Parking Corp.*, 2008 WL 4390626, 07 cv 5027, 07 cv 5119 (Judge Pallmeyer, N.D.Ill. Sept. 24, 2008);

v. *Cicilline v. Jewel Food Stores, Inc.*, 542 F.Supp.2d 831, 07 cv 2333 (Judge Dow, N.D. Ill. Mar. 31, 2008);

vi. *Harris v. Best Buy Co., Inc.*, 254 F.R.D. 82, 07 cv 2559 (Judge St. Eve, N.D. Ill. Mar. 20, 2008);

vii. *Redmon v. Uncle Julio's of Ill., Inc.*, 249 F.R.D. 290, 07 cv 2350 (Judge

Castillo, N.D. Ill. Mar. 7, 2008);

viii. *Matthews v. United Retail, Inc.*, 248 F.R.D. 210, 07 cv 2487 (Judge Castillo, N.D. Ill. Mar. 5, 2008);

ix. *Meehan v. Buffalo Wild Wings, Inc.*, 249 F.R.D. 284, 07 cv 4562 (Judge Lindberg, N.D. Ill. Feb. 26, 2008);

x. *Harris v. Circuit City Stores, Inc.*, 2008 WL 400862, 07 cv 2512 (Mag. Judge Schenkier, N.D. Ill. Feb. 7, 2008);

xi. *Troy v. Red Lantern Inn, Inc.*, 2007 WL 4293014, 07 cv 2418 (Judge Aspen, N.D. Ill. Dec. 4, 2007);

xii. *Halperin v. Interpark, Inc.*, 2007 WL 4219419, 07 cv 2161 (Judge Bucklo, N.D. Ill. Nov. 29, 2007).

Clearly, all of Rule 23's requirements are satisfied here, as well.

20. Plaintiff has submitted a Memorandum of Law in support of this motion.

WHEREFORE, because the proposed Class meets the requirements of Rules 23(a), (b)(3), and (g), Plaintiff request that the Court (a) certify the Class, (b) appoint Plaintiff as the Class representatives, (c) appoint Plaintiff's attorneys as Class counsel, and (d) for any other relief the Court deems just.

Plaintiff JEREMY MEYERS, individually, and on behalf of all others similarly situated,

By: s/ Mark A. Eldridge

Shpetim Ademi (SBN 1026793)
sademi@ademilaw.com
John D. Blythin (SBN 1046105)
jblythin@ademilaw.com
Mark A. Eldridge (SBN 1089944)

meldridge@ademilaw.com
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, Wisconsin 53110
(414) 482-8000 telephone
(414) 482-8001 facsimile

Thomas A. Zimmerman, Jr. (*pro hac vice* anticipated)
tom@attorneyzim.com
Adam M. Tamburelli (*pro hac vice* anticipated)
adam@attorneyzim.com
ZIMMERMAN LAW OFFICES, P.C.
77 West Washington Street, Suite 1220
Chicago, Illinois 60602
(312) 440-0020 telephone
(312) 440-4180 facsimile
www.attorneyzim.com

Counsel for the Plaintiff and Class