

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

KATHY ALIANO v. JOE CAPUTO AND SONS-ALGONQUIN, INC., No. 09-CV-910

NOTICE OF PENDENCY OF CLASS ACTION PROPOSED SETTLEMENT

TO: All persons who made a credit or debit card purchase using their personal (not business) card between August 27, 2007 and February 14, 2009 at Joe Caputo & Sons Fruit Market in Algonquin, IL ("Caputo's") and who received an electronically printed credit or debit card receipt which displayed more than the last five digits of your credit card or debit card number, and/or the expiration date of the card (the "Settlement Class").

PLEASE READ THIS NOTICE CAREFULLY. You may be eligible to receive a payment of up to \$75.00.

- The settlement resolves a lawsuit alleging violations of certain requirements imposed by the Fair and Accurate Credit Transactions Act (“FACTA”). It avoids costs and risks of continuing the lawsuit; entitles consumers who are members of the Settlement Class to receive a payment of up to \$75.00; and releases Caputo's from any alleged liability.
- Caputo's denies that it is liable to the Settlement Class.
- Lawyers for the settlement class will ask the Court for attorneys’ fees in the amount of up to \$275,000 to be paid in addition to the settlement fund of up to \$500,000.
- Your legal rights are affected whether you act or don’t act by the deadlines set out in this notice. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

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| SUBMIT A CLAIM FORM | The only way to get a payment. |
| EXCLUDE YOURSELF | Get no payment. This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims in this case. |
| OBJECT | Write to the Court about why you don’t like the settlement. |
| GO TO A HEARING | Ask to speak in Court about the fairness of the settlement. |
| DO NOTHING | Get no payment. Give up rights to receive a settlement payment or sue separately. |

- These rights and options – and the deadlines to exercise them – are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

1. What is this lawsuit about?

Plaintiff filed this Lawsuit on behalf of herself and all others similarly situated alleging that Caputo's violated the FACTA amendments to the Fair Credit Reporting Act ("FCRA"), which generally prohibit merchants from issuing electronically printed credit or debit card receipts which contain more than the last five digits of the card number and/or the card expiration date. Plaintiff alleges that Caputo's willfully violated the FCRA by issuing credit and debit card receipts for purchases made at Caputo's which contained the first six digits and the last four digits of card numbers. The FCRA allows an individual to bring an action against a defendant for violating the Act and to recover actual damages for *negligent* violations of the Act, or to recover statutory damages of between \$100 and \$1,000 if the defendant *willfully* violated the Act. Caputo's denies any liability or wrongdoing.

2. What is a class action?

In a class action, one or more people called Class Representatives (in this case Kathy Aliano), sue on behalf of people who have similar claims. All of these people are a Class or Class members. One court resolves the issues for all Class members, except for those who exclude themselves from the Class. U.S. District Judge Harry Leinenweber is in charge of this class action.

3. Why is there a settlement?

The Court did not decide the merits in favor of Plaintiff or Defendant. The Plaintiff thinks she could have prevailed at a trial.

The Defendant thinks that the Plaintiff would not have prevailed at trial. But there was no trial. Instead, both sides agreed to a settlement. The Class Representative and Class Counsel think the settlement is fair and reasonable for all Class members.

4. The Settlement Benefits – What You Get.

The Settlement Agreement calls for Caputo's insurer to make a \$500,000 settlement payment (the "Settlement Payment") for the benefit of the Settlement Class which will be reduced by costs related to notice and administration of the settlement and an incentive award to Plaintiff for representing the Class, not to exceed \$10,000. Settlement Class members who timely submit a complete and valid claims form will receive a payment of up to a maximum of \$75.00. The amount of the Settlement Payment each Settlement Class member will receive will be determined based on the number of Valid Claim Forms submitted. There are approximately 77,000 individuals who received non-compliant receipts issued to the Settlement Class.

To receive a settlement payment you must submit a valid claim form by July 6, 2012.

5. Class Counsel's Opinion of the Settlement.

In an individual lawsuit or class action under the FCRA, a prevailing plaintiff who can prove that the defendant willfully violated the FACTA amendments to the FCRA may be able to recover between \$100 to \$1,000 in statutory damages or any actual damages, plus the costs of suit and attorney's fees. Of

course, if an individual does not prevail, he/she will receive no payment. Here, in this Lawsuit, the Court has not ruled in Plaintiff's favor as to whether the Defendant willfully violated FACTA.

Class Counsel has considered the benefits that the Settlement Class will receive under the Settlement Agreement, the potential defenses of Defendant, and the attendant risks, uncertainties and delays of litigation. Here, Class members can receive up to \$75.00 if they submit a claim form, which is a significant portion of the amount they would likely receive for a single receipt if Plaintiff prevailed at trial. Consequently, Class Counsel believes that the terms of the settlement are fair and reasonable, and the members of the Settlement Class should accept this settlement.

6. No Admission of Liability.

By entering into this agreement, Caputo's does not admit that it is liable to Plaintiff and the Settlement Class. Caputo's enters into this Agreement solely to avoid the expense, burden, and uncertainty of further litigation, and to put to rest all claims, known or unknown, that have been or might have been asserted by the Plaintiff or the Settlement Class against it concerning the matters alleged in the Class Action Complaint.

7. What am I giving up as part of the settlement?

If you remain in the Settlement Class and the settlement becomes final, you will be releasing any claims you have relating to Caputo's issuance of electronically printed credit and debit card receipts allegedly in violation of FACTA during the Class Period. Unless you exclude yourself, you are staying in the class which means that you cannot sue, continue to sue, or be part of

any other lawsuit against Caputo's about the legal issues in *this case*. It also means that all of the Court's orders will apply to you and legally bind you. This release is more fully explained in paragraph 12 of the Settlement Agreement.

8. What Are My Options?

OPTION 1: Remain a member of the Settlement Class and submit a claim to receive a settlement payment. To do so you must submit the Claim Form at the end of this notice to the Claims Administrator by **July 6, 2012**. You must mail or otherwise deliver the Claim Form to **First Class, Inc./Aliano, 5410 W. Roosevelt Rd., Ste. 222, Chicago, IL 60644-1478, or via fax: 773-378-1018**. Claims must be postmarked or received by the Claims Administrator on or before **July 6, 2012**. If the settlement receives final approval from the Court, your claim will be processed and you will receive a Settlement Payment up to a maximum of \$75.00. By remaining a member of the Settlement Class you will be releasing Defendant and the Releasees from liability as discussed above. **YOU MUST PROVIDE ALL INFORMATION REQUESTED IN THE CLAIM FORM, SIGN THE FORM AND ATTACH A COPY OF THE RECEIPT YOU RECEIVED OR A MONTHLY CARD STATEMENT OR PRINTOUT SHOWING THAT YOU MADE A PURCHASE AT CAPUTO'S DURING THE PERIOD AUGUST 27, 2007 TO FEBRUARY 14, 2009.**

OPTION 2: Exclude Yourself From the Settlement Class. If you fall within the Settlement Class definition, you will be a member of the Settlement Class unless you exclude yourself from the Settlement Class. If you want to exclude yourself from the Settlement Class, then you must complete and mail or otherwise deliver to Class

Counsel a notice of intention to opt-out (“Opt-Out”), which contains the following: (a) the case name and number at the top of this notice; (b) your full legal name, address, and telephone number; (c) your signature; and (d) a statement that sets forth your intent not to participate in the settlement and to waive all rights to the benefits of the settlement. In addition, for your Opt-Out to be valid it must be mailed and postmarked by or otherwise delivered to Class Counsel on or before **April 27, 2012** at the following address :

Zimmerman Law Offices, P.C.
Caputo's Settlement
77 West Washington Street, Suite 1220
Chicago, IL 60602

If you wish to bring your own individual action (at your expense) against Defendant, you must exclude yourself from this case. If you exclude yourself from this case you will not receive any money from the Settlement Payment.

OPTION 3: Object to the Settlement. You can file an objection with the Clerk of the Court by **April 27, 2012** stating that you do not agree with the settlement or some part of it. The objection is to be filed at: Clerk of the United States District Court, 219 S. Dearborn Street, 20th Floor, Chicago, IL 60604. You must give reasons why you think the Court should not approve the settlement, including any legal support and a description of your supporting evidence. The Court will consider your views if you properly submit an objection on time. Objecting is simply telling the Court that you do not like something about the settlement. You can object **ONLY** if you stay in the Settlement Class. If you wish to object to the settlement or to any awards to Plaintiff or Class Counsel, then you must send a copy of the objection you file with

the Court to Class Counsel: Thomas A. Zimmerman Jr., Zimmerman Law Offices, P.C., 77 West Washington, Suite 1220, Chicago, IL 60602; and to Defendant's Counsel: Bart Murphy, Ice Miller LLP, 2300 Cabot Dr., Suite 455, Lisle, IL 60532. Each objection must (a) set forth the objector's full legal name, address and telephone number; (b) state the objection to the settlement; (c) set forth a statement of the legal and factual basis for the objection; and (d) provide copies of any documents in support of the objection. If you do not submit a timely objection in accordance with the requirements set forth above, you will not be treated as having filed a valid objection to the Settlement. If you do file an objection and wish it to be considered, you may also appear at the Fairness Hearing on July 12, 2012 at 9:30 a.m. before Judge Harry Leinenweber, Room 1941 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604. **YOU ARE NOT REQUIRED TO ATTEND THIS HEARING.** Please note that it is not sufficient to simply state that you object. You must state reasons why the settlement should not be approved. The Fairness Hearing may be continued to another date without further notice to the Settlement Class.

OPTION 4: Do Nothing. You are not required to do anything in response to this Notice. If you do nothing, you will remain a member of the Settlement Class and you will release your claims against Defendant and others, but you will not receive a Settlement Payment.

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| 9. Who Are Counsel For Plaintiff and the Class? |
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The Court has appointed the following attorneys to represent you and other

members of the Settlement Class in this lawsuit:

Thomas A. Zimmerman, Jr.
Adam M. Tamburelli
Zimmerman Law Offices, P.C.
77 West Washington Street, Suite 1220
Chicago, IL 60602
Tel: 312-440-0020
www.attorneyzim.com

These attorneys represent your interests in this lawsuit. You may contact them with any questions that you have about the lawsuit or the settlement. You may also hire your own attorney at your own cost to enter an appearance on your behalf in this matter.

10. The Court's Fairness Hearing.

The Court will hold a hearing on the settlement in before Judge Harry Leinenweber, Room 1941 of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, Chicago, IL 60604 (“Fairness Hearing”) on July 12, 2012 at 9:30 a.m. to determine, among other things: (i) whether it will be approved as fair, adequate and reasonable; (ii) what amount, if any, to award Class Counsel for attorney’s fees and costs in the Action; and (iii) what amount, if any, to award Plaintiff for her services as Class Representative. **YOU ARE NOT REQUIRED TO ATTEND THE FAIRNESS HEARING.** The Fairness Hearing may be continued by the Court without further notice to Class members. If the Court does not approve the Settlement, the class action will proceed, and you may or may not get the money that this case may provide in the future.

11. Where Can I Obtain Additional Information?

The description of the lawsuit and settlement that is contained in this Notice is only

general in nature. All papers filed in this case, including the full Settlement Agreement, are available for you to inspect and copy (at your expense) at the Clerk’s Office of the U.S. District Court for the Northern District of Illinois, Eastern Division, 219 S. Dearborn Street, 20th Floor, Chicago, IL 60604. You must bring the name of the case and case number with you, since the Clerk will need to know this information in order to obtain the court file for you to inspect. If you or your attorney require additional information, you should write or call Class Counsel at the address and telephone number listed above in paragraph 9 during regular business hours. Please include the case name and number, your name and your current return address on any letters, not just the envelopes. Please do not contact Defendant’s attorneys; they are not in a position to give you any advice about this settlement.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANT'S COUNSEL FOR INFORMATION.

Dated: March 6, 2012

BY ORDER OF THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN
DIVISION

