

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ronald A. Guzman	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	07 C 2512	DATE	3/28/2008
CASE TITLE	William Harris vs. Circuit City Stores, Inc.		

DOCKET ENTRY TEXT

For the reasons set forth in this Order, the Court: overrules defendant's first objection and strikes as moot defendant's second objection [doc. no. 53] to Magistrate Judge Schenkier's Report and Recommendation ("R&R") that plaintiff's motion for class certification be granted; adopts the R&R [doc. no. 52] in its entirety; and grants plaintiff's motion for class certification [doc. no. 22], as amended by the Magistrate Judge.

Docketing to mail notices.

	Courtroom Deputy Initials:	LC/LM
--	-------------------------------	-------

The Court is required to make a *de novo* determination of the portions of the R&R to which defendant objects. 28 U.S.C. § 636(b)(1). The Court may “accept, reject, or modify” the R & R, “receive further evidence or recommit the matter to the magistrate judge with instructions.” *Id.*

Defendant objects to two aspects of the R&R. First, it argues that the Magistrate Judge, by recommending that the class be defined as [a]ll consumers . . . to whom Circuit City Stores, Inc., provided an electronically printed receipt” that displayed information barred by the Fair and Accurate Credit Transactions Act (“FACTA”) (*see* R&R at 20), essentially decided a contested issue in the case, *i.e.*, that the email plaintiff received was an electronically printed receipt within the meaning of the FACTA.

The Court disagrees. First, the case was not referred to Judge Schenkier for an R&R on the meaning of the statutory language. Thus he did not, indeed could not, have made such a recommendation. Second, Judge Schenkier specifically noted in the R&R that the parties disputed whether the email to plaintiff was such a receipt. (*See id.* at 3 n.2.) Third, the Magistrate Judge had to include the contested language in the class definition because the only people who can sue under the FACTA are those who received an electronically printed receipt displaying certain credit card information. 15 U.S.C. § 1681c(g)(1)-(2). If the Magistrate Judge had defined the class as consumers who received a document that looked like an electronically printed receipt or similar language, the class would have included people without statutory standing to sue. Thus, defendant’s first objection is overruled.

Defendant’s second objection is that the Magistrate Judge made a factual finding that defendant required plaintiff to bring a copy of the email to a Circuit City store to pickup the merchandise he bought online, though plaintiff has since disavowed that claim. At the outset, however, the R&R, makes clear that the Magistrate Judge was not making any final fact determinations: “We begin with the allegations on which plaintiff bases his request for class certification, as well as the facts asserted by defendant in its answer and the evidence obtained by the parties during discovery *thus far.*” (R&R at 2 (emphasis added).) Because Judge Schenkier did not make the fact finding defendant contest, its second objection is stricken as moot.