

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

STEPHANIE LEOWARDY, individually and
on behalf of others similarly situated,

Plaintiff,

v.

OAKLEY, INC., OAKLEY SALES CORP.,
OAKLEY DIRECT, INC., and Does 3-10,

Defendants.

Case No. SACV 07-53 CJC (ANx)

The Honorable Cormac J. Carney

NOTICE OF PROPOSED SETTLEMENT AND CONDITIONALLY CERTIFIED CLASS ACTION

PLEASE READ THIS NOTICE CAREFULLY.

YOUR LEGAL RIGHTS MAY BE AFFECTED BY THIS SETTLEMENT AGREEMENT.

A federal court has authorized this Notice. This is not a solicitation from a lawyer. You are not being sued.

- This Notice will tell you about your potential rights in a proposed settlement that completely resolves a class action lawsuit. You are receiving this Notice because you may be a member of the proposed Settlement Class in the above-entitled action. You can determine whether you are a member of the proposed Settlement Class by reading the rest of this Notice, and/or by contacting Class Counsel (identified below) or your own attorney.
- The proposed settlement will provide benefits to consumers who were customers of Oakley and engaged in credit transactions at Oakley “O Stores” and “Vaults” or, in some instances, at www.oakley.com, during certain time periods set forth below.
- The proposed settlement resolves all claims against Oakley, Inc., Oakley Sales Corp., and Oakley Direct, Inc. (collectively “Oakley”) in the above-entitled action.

You may be entitled to receive one or more \$15 Settlement Vouchers under the terms of this Proposed Class Action Settlement. Please read the rest of this Notice to find out more.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

EXCLUDE YOURSELF	This is the only option that allows you to ever be part of any other lawsuit against Oakley, about the facts alleged 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 benefits. Give up rights.
OBTAIN SETTLEMENT VOUCHER	Submit a timely claim. Receive one or more \$15 Settlement Vouchers related to past in-store purchases and/or one \$10 Settlement Voucher related to past internet purchases.

- 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 finally approve the settlement. Payments will be made if the Court approves the settlement. Please be patient.

1. What is this lawsuit about?

Stephanie Leowardy (“Plaintiff”) has brought a class action lawsuit asserting that Oakley violated the Fair and Accurate Credit Transactions Act, 15 U.S.C. §1681c(g) (“FACTA”), by printing the expiration date of cardholders’ credit or debit cards on customer credit or debit card receipts between January 1, 2005 and January 16, 2007. The complaint, *Leowardy v. Oakley, Inc.*, Case No. SACV 07-53 CJC (ANx) (the “*Oakley Action*”), was filed on January 11, 2007, and is on file and available for review at the U.S. District Court at 411 West Fourth Street, Santa Ana, CA 92701-4516.

Oakley denies any liability or wrongdoing. Oakley maintains that Plaintiff’s FACTA case lacks merit because its printing of expiration dates on receipts was not “willful,” as alleged by Plaintiff. Oakley further contends that the penalties under FACTA are unconstitutionally excessive. Oakley contends that no Settlement Class Member has sustained any actual monetary injury as a result of the conduct alleged by Plaintiff. Likewise, Plaintiff has not alleged that she or Settlement Class Members suffered actual monetary loss, and she and her counsel are unaware of any actual monetary injury to any Settlement Class Member in this case. Plaintiff is not seeking to recover actual damages, but rather is seeking statutory damages, which are recoverable upon proof of willful FACTA violations.

Despite each party’s vigorous assertion of their respective positions, due to the unpredictability, risks, and high costs of litigation, the parties have determined that a settlement of this case is in their best interests.

On August 21, 2008, the Court conditionally certified a Settlement Class and preliminarily approved the proposed class settlement as fair, adequate and reasonable. The Court will make a final decision regarding approval later, as discussed in Paragraph 11 below.

2. Why is this a class action?

In a class action, one or more people called Class Representatives (in this case, Stephanie Leowardy) sue on behalf of people who have similar claims. All 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 Cormac J. Carney is in charge of this class action.

3. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Oakley. Plaintiff thinks she could have prevailed at a trial. Oakley thinks Plaintiff would not have prevailed at trial. But there was no trial. Instead, the Parties agreed to a settlement. That way, the Parties avoid the costs and risks of further litigation and a trial, and the people affected will be entitled to seek compensation. The Class Representative and the attorneys think the settlement is best for all Class Members.

4. How do I know if I am part of the settlement?

Judge Carney decided that any consumer who falls into any of the following three categories is a Class Member and may thus be affected by this settlement:

Sub-Class 1: All individuals in the United States of America who, from **December 4, 2006 through January 16, 2007**, used a credit or debit card, processed as a credit card transaction, in a transaction at an Oakley “O Store” and/or “Vault” store and in connection with that transaction were provided with an electronically-printed receipt;

Sub-Class 2: All individuals in the United States of America who, from **January 1, 2005 through December 3, 2006**, used a credit or debit card, processed as a credit card transaction, in a transaction at any Oakley “O Store” and/or “Vault” store in the United States, and in connection with that transaction were provided with an electronically-printed receipt, **EXCEPT** if the transaction occurred at one of the following designated Oakley stores: the Spectrum O Store (Irvine, CA), Oakley Lobby O Store (Foothill Ranch, CA), Milpitas Vault (Milpitas, CA), Cabazon Vault (Cabazon, CA), San Marcos Vault (San Marcos, TX), Hollywood O Store (Hollywood, CA), Sawgrass Mills Vault (Sunrise, FL), Tampa O Store (Tampa, FL), Orlando O Store (Orlando, FL), San Antonio O Store (San Antonio, TX), Boca Raton O Store (Boca Raton, FL), Dallas O Store (Dallas, TX), Colorado Mills Vault (Lakewood, CO), Dadeland O Store (Miami, FL), Houston O Store (Houston, TX), South Park O Store (North Carolina), Stonebriar O Store (Frisco, TX), Ala Moana O Store (Honolulu, HI), Mall of America O Store (Bloomington, MN), Barton Creek O Store (Austin, TX), Vegas Vault (Las Vegas, NV), Woodfield O Store (Schaumburg, IL), Stony Point O Store (Richmond, VA), Scottsdale O Store (Scottsdale, AZ), Cherry Creek O Store (Denver, CO), Carlsbad Vault (Carlsbad, CA), Arden Fair O Store (Sacramento, CA), Jacksonville O Store (Jacksonville, FL), Stoneridge O Store (Pleasanton, CA), Annapolis O Store (Annapolis, MD), Crabtree O Store (Raleigh, NC), Williamsburg Vault (Williamsburg, VA), Alderwood O Store (Lynnwood, WA), Santana Row O Store (San Jose, CA), Riverwalk O Store (New Orleans, LA), Chicago Vault (Aurora, IL), Rolling O, or Ontario Supervault (Ontario, CA).

Sub-Class 3: All individuals in the United States of America who, from **December 4, 2006 through January 18, 2007**, used a credit or debit card, processed as a credit card transaction, for an on-line purchase at www.oakley.com and then used their home computer to print out a customer receipt that contained the expiration date of that credit card.

5. What benefits does the settlement provide?

As discussed in more detail below, Settlement Class Members who submit timely, valid claims (claims submission is discussed in Paragraph 19 below) will be entitled to receive Settlement Vouchers that can be used in acquiring Oakley merchandise.

A. \$15 Settlement Vouchers Available to Members of Sub-Class 1 or Sub-Class 2 (in-store customers):

If you are a member of Sub-Class 1 or Sub-Class 2 (i.e., you received an electronically-generated receipt at an Oakley "O Store" or "Vault" within the relevant time periods set forth above), and you submit a timely valid claim, you will receive at least one \$15 Voucher that you can use to obtain merchandise at any Oakley "O Store" or "Vault" location within the United States, *except at the Oakley employee store*, within four months of issuance. You will receive one \$15 Voucher for each valid claim you submit.

If after distributing Vouchers for each verified claim, the claims rate is such that 9,000 \$15 Vouchers have not been distributed, then Oakley will distribute the remaining Settlement Vouchers on a random basis to customers on its mailing lists until 9,000 have been distributed.

If the holder elects to redeem the Voucher for store credit towards a purchase, the customer will not receive cash back or credit for any unused balance of the \$15. The Voucher must be presented at store at time of use, and may be combined with other discounts, gift cards and promotional offers, notwithstanding any prohibitions in other offers to the contrary, except it cannot be combined with any other Settlement Vouchers in any one transaction. The Voucher may be redeemed only by the person whose name appears on the reverse side or by a family member to whom the Voucher has been transferred. The Voucher cannot be used for internet orders or for previous purchases, and will not be replaced if lost or stolen.

B. \$10 Settlement Vouchers Available to Members of Sub-Class 3 (Oakley.com customers):

If you are a member of Sub-Class 3 (i.e., you printed an optional consumer receipt on your personal computer printer during your purchase of products from www.oakley.com between December 4, 2006 and January 18, 2007), and you submit a timely, valid claim, you will receive a \$10 Settlement Voucher for each valid claim you submit, for use at www.oakley.com within four months of issuance.

If the holder elects to redeem the Voucher for credit towards a purchase, the customer will not receive cash back or credit for any unused balance of the \$10. The Voucher may not be combined with other Settlement Vouchers in any one transaction. The Voucher cannot be used for previous purchases, and will not be replaced if lost or stolen.

C. Additional New Compliance Monitoring Program:

In addition, Oakley has agreed to engage in a new monitoring program to ensure that it continues to comply in the future with FACTA's requirements regarding the amount of credit and debit card account information that it can print on its customers' receipts.

D. Payment of Other Costs by Oakley:

Oakley has agreed to pay the costs of notice and administering the settlement, including the costs of processing any claims and any requests for exclusions. In addition, subject to court approval, Oakley has also agreed to pay attorneys' fees, costs and expenses to Class Counsel and a service award to the named Plaintiff for their services in pursuing this case and obtaining the benefits of this settlement. All of these costs are being paid separately from, and in addition to, the Settlement Vouchers available to Settlement Class Members who submit claims.

6. Who are the lawyers representing the class?

The Court has appointed the law firms of Spiro Moss Barness LLP and Seeger Weiss LLP to represent you and other Settlement Class Members. These lawyers are called Class Counsel. You will not be charged for their services. If you want to be represented by your own lawyer, you may hire one at your own expense.

7. How will these lawyers be paid?

Under the proposed settlement, you have no responsibility to pay Class Counsel anything for their services or to reimburse them for any of the costs they have incurred in litigating this matter on behalf of Plaintiff and the Settlement Class. Rather, Class Counsel will ask the Court to approve payment of reasonable attorney fees, costs

and expenses, which are recoverable pursuant to applicable law, and which will not exceed the total amount of \$100,000. In addition, Class Counsel will ask for payment of \$2,500 to Plaintiff Stephanie Leowardy for her services as Class Representative. Oakley will separately pay the fees, expenses, and payments that the Court awards up to the aforementioned amounts.

8. What is the recommendation of Class Counsel?

Class Counsel is experienced in handling cases involving alleged violations of FACTA. They and the Class Representative believe that the proposed settlement is in the best interest of the Settlement Class. The Court has given its preliminary approval to the settlement, subject to further consideration at the Fairness Hearing discussed below.

9. What am I giving up to get a Settlement Voucher or stay in the Settlement Class?

Unless you exclude yourself, you are staying in the Settlement Class, and that means that you cannot sue, continue to sue, or be part of any other lawsuit against Oakley about the facts alleged in this case. It also means that all of the Court's orders will apply to you and legally bind you. While the parties are unaware of any Class Member who suffered actual monetary loss as a result of Oakley's printing of credit or debit card expiration dates on receipts, you have a right to exclude yourself if you believe you suffered monetary loss. If you do so, Class Counsel will no longer be your counsel, and any relief you seek will be at your own expense.

10. How do I exclude myself from the Settlement Class?

If you do not wish to participate in this settlement, you must notify Class Counsel in writing of your intention to be excluded. Your election to exclude yourself must contain the following information and must be signed by you: (1) your name, (2) your current address, (3) a statement that you believe you are a member of the Settlement Class in the Oakley case and that you want to exclude yourself from the settlement, (4) your signature, and (5) the date your request for exclusion was signed. You must mail your exclusion request postmarked no later than October 23, 2008 to:

J. Mark Moore
Spiro Moss Barness LLP
11377 West Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683

If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may be able to sue (or continue to sue) Oakley in the future.

11. What is the legal effect of the settlement?

The released parties in the *Oakley Action* are Oakley, Inc., Oakley Sales Corp., and Oakley Direct, Inc. and each of their parents, subsidiaries, affiliates and the directors, officers, employees, partners, agents, attorneys, auditors, affiliates, heirs, executors, representatives, insurers, predecessors, successors and assigns of any of the aforementioned entities.

Once the Court has given final approval of the Settlement Agreement, the parties will submit a Judgment to the Court, dismissing the claims asserted in the *Oakley Action* with prejudice. Once the Judgment becomes final, Plaintiff and each and every member of the Settlement Class (except those who exclude themselves), will release any and all claims that have been, or could have been, raised against the above released parties in the *Oakley Action*. These claims include all claims, demands, debts, liabilities, actions, causes of action of every kind and nature, obligations, damages, losses and costs, whether known or unknown, actual or potential, suspected or unsuspected, direct or indirect, contingent or fixed, that were or could have been asserted in the *Oakley Action*, relating in any way or arising out of the facts alleged in the Complaint filed in the *Oakley Action*.

If no appeal from the Judgment referred to in the preceding paragraph is sought, the Judgment shall become "final" on the day after the last date any such appeal could be filed. If an appeal from the Judgment is sought, the Judgment shall become "final" the day after such Judgment is affirmed, or the appeal is dismissed or denied, and such Judgment is no longer subject to further judicial review.

12. If I don't exclude myself, can I sue Oakley for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Oakley for any claims arising out of the facts alleged in the Complaint filed in the *Oakley Action*. If you have a pending lawsuit, involving the same claims that this settlement resolves, speak to your lawyer in that case immediately. You must exclude yourself from this Settlement Class to continue your own lawsuit. If you have a pending lawsuit on matters not addressed in this settlement, you may continue that lawsuit against Oakley.

13. How can I object to the Settlement?

If you are a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter stating that you object to the settlement in *Leowardy v. Oakley, Inc.* Be sure to include your name, address, telephone number, your signature, and the reasons you object to the settlement. You must file the objection with the Clerk of the Court and serve notice of the objection to Class Counsel and Defense Counsel at the following addresses postmarked no later than October 23, 2008:

J. Mark Moore
Spiro Moss Barnes LLP
11377 West Olympic Boulevard, Fifth Floor
Los Angeles, CA 90064-1683

Gregory K. Nelson
Weeks, Kaufman, Nelson & Johnson
462 Stevens Ave., Suite 310
Solana Beach, CA 92075

Objectors who fail to properly or timely file their objections with the Court, or to serve them as provided above, shall not be heard during the Fairness Hearing, nor shall their objections be considered by the Court.

14. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

15. When and where will the Court decide whether to approve the Settlement?

The District Court will hold a hearing to decide whether to approve the settlement. This hearing is referred to as the "Fairness Hearing." It will be held on November 24, 2008 at 1:30 p.m. in Courtroom 9B of the United States District Court for the Central District of California located at 411 West Fourth Street, Santa Ana, CA 92701-4516. At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are objections or requests to be heard, the Court may consider them at the hearing. The Court may also decide the amount of attorneys' fees and costs to be paid to Class Counsel.

16. Do I have to come to the Hearing?

No. Class Counsel will answer questions the Judge may have. But, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it's not necessary.

17. May I speak at the Hearing?

You may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Leowardy v. Oakley, Inc.*" Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be postmarked no later than October 23, 2008, and be sent to the Clerk of the Court, Class Counsel, and Defense Counsel at the addresses in Paragraphs 13 and 15 above. You cannot speak at the hearing if you excluded yourself.

18. What happens if I do nothing at all?

If you do nothing, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Oakley about the legal issues in this case, ever again. Nor will you be able to obtain a Settlement Voucher, unless you are one of the customers on Oakley's mailing list who is randomly selected to receive an excess voucher, as discussed in Paragraph 5 above. Even if you are on Oakley's mailing list, and excess vouchers remain, there is no guarantee you will receive an excess voucher. The only way to ensure you will obtain a Settlement Voucher is to submit a timely, valid Claim Form.

19. How do I submit a Claim?

In order to receive any benefits to which you may be entitled under the settlement in this case, you must complete and sign the Claim Form and submit it by First-Class Mail, fax, or email (PDF only) to the **Claims Administrator, Oakley FACTA Settlement**, c/o Rosenthal & Company LLC, P.O. Box 6177, Novato, CA 94948-6177, postmarked no later than December 8, 2008. More information is available about submitting a claim at www.oakleyfactasettlement.com.

If you fail to submit your Claim Form on or before December 8, 2008 your claim may be rejected and you may be precluded from receiving any benefits from the settlement of this litigation. A Claim Form will be deemed submitted on the date postmarked or, if submitted other than by First-Class Mail, on the date it is actually received by the Claims Administrator.

Additional Claim Requirements for In-Store (Sub-Class 1 and 2) Customers:

If you are going to submit a claim as a member of Sub-Class 1 (covering in-store purchases from December 4, 2006 through January 16, 2007), or as a member of Sub-Class 2 (covering in-store purchases at certain stores from January 1, 2005 through December 3, 2006), you must provide one of the following, *in addition to* a completed, timely Claim Form:

- (a) a copy of the receipt you received for the transaction at issue; or
- (b) a copy of a credit card statement evidencing a purchase during the relevant period at an Oakley store (the statement can be redacted to delete information unrelated to the Oakley purchase, if desired); or
- (c) the account number(s) you believe was used in your transaction(s), which the Claims Administrator is able to match to Oakley's database of account numbers used in transactions during the relevant time period.

[Note: The information submitted will be maintained confidential and used for no purpose other than verifying eligibility to participate in the settlement. After verifying your claim, the Claims Administrator will shred any of your credit card information.]

Additional Claim Requirements for Oakley.com (Sub-Class 3) Customers:

If you are going to submit a claim as a member of Sub-Class 3 (covering Oakley.com purchases from December 4, 2006 through January 18, 2007), you must provide a copy (or the original) of the optional receipt you printed out on your personal computer after your Oakley.com transaction, *in addition to* a completed, timely Claim Form.

Please submit one Claim Form for each electronically printed receipt that you received with the credit and/or debit card's expiration date.

If you change your address or telephone number after submitting a Claim Form, please notify the **Claims Administrator, Oakley FACTA Settlement**, c/o Rosenthal & Company LLC, P.O. Box 6177, Novato, CA 94948-6177.

20. How do I get more information?

The foregoing is only a summary of the circumstances surrounding the litigation, the claims asserted, the class, the settlement, and related matters. You may seek the advice and guidance of your own private attorney, at your own expense, if you desire. For more detailed information, you may review the pleadings, records, and other papers on file in this litigation, which may be inspected during regular business hours at the U.S. District Court, 411 West Fourth Street, Santa Ana, CA 92701-4516. If you wish to communicate with Class Counsel identified above, you may do so by writing to J. Mark Moore, Spiro Moss Barness LLP, 11377 West Olympic Boulevard, Fifth Floor, Los Angeles, CA 90064.

By issuing this Notice, the Court expresses no opinion as to the merits of any claims or defenses asserted in this civil action.

DATED: Santa Ana, California
This 21st day of August, 2008

/s/ Cormac J. Carney
The Honorable Cormac J. Carney
United States District Judge
Central District of California

IF YOU HAVE ANY QUESTIONS OR CONCERNS,
ADDRESS ALL INQUIRIES IN THE MANNER SET FORTH ABOVE.
THE COURT AND THE CLERK WILL NOT ANSWER LEGAL QUESTIONS
FROM INDIVIDUAL CLAIMANTS. **PLEASE DO NOT CONTACT THE COURT.**