

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

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IN RE VISA CHECK / MASTERMONEY	:	<u>ORDER</u>
LITIGATION	:	96-CV-2538 (JG)
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On October 6, 2009, Wells Fargo Retail Finance II, LLC (“WFRF”) moved by order to show cause for an order (1) authorizing it to participate in the class action settlement even though it missed the filing deadline for claims to the settlement fund, and (2) requiring Lead Counsel to provide information with respect to claims filed by merchants with whom WFRF held secured loan agreements. As explained below, the motion is denied in part and granted in part.

The deadline for submitting claims to the settlement fund was September 15, 2008. WFRF must therefore establish “excusable neglect” before being permitted to participate in the fund. When determining whether WFRF has established excusable neglect, I consider (1) the danger of prejudice to the non-movant; (2) whether the movant acted in good faith; (3) the length of the delay and its potential effect on judicial proceedings; and (4) the reason for the delay. *See Pioneer Investment Servs. Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 391 (1993). WFRF, a sophisticated entity, has failed to provide a sufficient reason to excuse the late filing of its claims. In particular, WFRF was aware of the settlement via its counsel as early as June 2006. Accordingly, I find that WFRF has not established excusable neglect, and that it is therefore not permitted to file untimely claims.

The request for information concerning timely claims to the settlement fund is granted to the extent that Lead Counsel is ordered to disclose to WFRF: (a) the identities of the two retail borrowers on whose behalf timely claims were filed and (b) the identities of the parties

who filed claims on their behalf.

So ordered.

John Gleeson, U.S.D.J.

Dated: November 19, 2009
Brooklyn, New York