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**THE HONORABLE SAMUEL S. CHUNG**  
**Noting Date: March 2, 2018, 11:00 a.m.**  
(Continued by Court from February 23, 2018)

**SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY**

ALBERT VIESSE, on behalf of himself and )  
all others similarly situated, )  
Plaintiff, )  
v. )  
SAAR'S INC., and DOES 1 through 100, )  
inclusive, )  
Defendants. )

Case No. 17-2-07783-6 SEA  
**MOTION FOR FINAL APPROVAL OF  
CLASS ACTION SETTLEMENT;  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2 PLEASE TAKE NOTICE THAT Plaintiff, Albert Viesse, on behalf of himself and on  
3 behalf of the Settlement Class, will and hereby does move the Court, pursuant to Superior Court  
4 Civil Rule 23 and, to the extent applicable, Federal Rule of Civil Procedure Rule 23, for an Order  
5 and Judgment granting final approval of the proposed class action settlement on the terms and  
6 conditions set forth in the Stipulated Settlement Agreement and Release (hereinafter sometimes  
7 referred to as "Settlement" or "Agreement").<sup>1</sup>

8 Plaintiff further moves the Court for an Order:

- 9 1. Confirming its previous findings that the requirements for class certification, for  
10 settlement purposes, are satisfied;
- 11 2. Certifying the Settlement Class for settlement purposes;
- 12 3. Appointing Plaintiff Albert Viesse as the Class Representative for the Settlement  
13 Class;
- 14 4. Appointing attorneys Chant Yedalian of Chant & Company A Professional Law  
15 Corporation and James A. Sturdevant as Class Counsel for the Settlement Class;
- 16 5. Appointing JND Legal Administration as the Settlement Administrator;
- 17 6. Finding that the Settlement is fair, adequate and reasonable and complies with  
18 Superior Court Civil Rule 23 and, to the extent applicable, Federal Rule of Civil  
19 Procedure Rule 23(e);
- 20 7. Finding that the notice of Settlement directed to the Class has been completed in  
21 conformity with the Court's orders;
- 22 8. Binding all Class members who did not timely exclude themselves from the  
23 Settlement to the Agreement, including the release contained in paragraph 19 of the  
24 Agreement;
- 25 9. Directing the Parties and Settlement Administrator to effectuate all terms of the  
26 Settlement;

27  
28 <sup>1</sup> A copy of the Agreement is attached to the Declaration of Chant Yedalian as Exhibit 1. Capitalized terms shall have the same meanings as in the Agreement, unless indicated otherwise.



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On November 2, 2017, this Court entered an Order granting preliminary approval of the  
4 proposed class action settlement. As part of the same Order, the Court approved a plan of notice  
5 to be directed to Settlement Class members and set deadlines by which Settlement Class members  
6 may opt-out, object or request to be heard at the final approval hearing. Order, ¶¶ 8-14.

7 As explained in further detail below, notice to Settlement Class members has been  
8 provided in conformity with the Court's Orders, and no Settlement Class member has opted-out,  
9 objected or requested to be heard at the final approval hearing.

10 Plaintiff, Albert Viesse ("Viesse" or "Plaintiff"), on behalf of himself and on behalf of the  
11 Settlement Class, hereby respectfully moves the Court for an Order and Judgment granting final  
12 approval of the proposed class action Settlement.

13 **II. FACTUAL SUMMARY**

14 Plaintiff Albert Viesse is a customer of defendant Saar's. Complaint ¶ 22.

15 Saar's Inc. ("Saar's") is a Washington corporation that owns and operates six (6) grocery  
16 stores using the names Saar's or Super Saver Foods (the "Saar's Stores"). Exh. 2: C. Petersen letter  
17 dated March 23, 2017, containing factual attestation by Greg Saars ("Saar's Decl.") ¶ 1.

18 During the settlement class period of July 20, 2014 through July 18, 2016 ("Settlement  
19 Class Period"), Saar's provided Mr. Viesse with electronically printed customer receipts which  
20 displayed the expiration date of his credit card or debit card, the last four digits of his card number,  
21 and the brand of his card (e.g. Master Card, etc.). Complaint ¶ 32.

22 During the Settlement Class Period, all credit and debit card receipts for credit transactions  
23 generated at the six Saar's Stores were similar in that they displayed the respective card expiration  
24 date. Exh. 2: Saar's Decl. ¶ 3.

25 During the Settlement Class Period 167,742 unique credit/debit cards were used for credit  
26 transactions, and some of which were used for multiple transactions. Exh. 2: Saar's Decl. ¶ 5.

1 On July 12, 2016, Saar's received a letter from Plaintiff's counsel in this case entitled  
2 "Notice To Cease And Desist FACTA Violations; And Notice Of Intended Class Action Lawsuit,"  
3 together with an enclosed copy of a proposed complaint that had not yet been filed. Exh. 2: Saar's  
4 Decl. ¶ 4.

5 Following the receipt of the letter and proposed complaint from Plaintiff's counsel, Saar's  
6 changed its card transaction software and as of July 18, 2016 all of its Saar's Stores stopped  
7 printing any portion of the credit/debit card expiration date on customer receipts. Exh. 2: Saar's  
8 Decl. ¶ 4.

9 FACTA, which is a subset of the Fair Credit Reporting Act, provides that any merchant  
10 which accepts credit and/or debit cards is prohibited from printing on electronically printed  
11 receipts "more than the last 5 digits of the card number or the expiration date upon any receipt  
12 provided to the cardholder at the point of sale or transaction." 15 U.S.C. § 1681c(g)(1). A  
13 merchant who "willfully" fails to comply with FACTA is liable for (1) actual damages, if any, or  
14 statutory damages of not less than \$100 and not more than \$1,000, (2) punitive damages as may be  
15 awarded by the court, and (3) attorney's fees and costs. 15 U.S.C. § 1681n.

16 Saar's denies any wrongdoing or violation of FACTA. Agreement ¶¶ 6 and 30.

### 17 **III. SETTLEMENT DISCUSSIONS**

18 Following the July 12, 2016 receipt of the letter and proposed complaint from Plaintiff's  
19 counsel, Saar's counsel and Plaintiff's counsel commenced settlement negotiations. Yedalian  
20 Decl. ¶ 3.

21 In order to further facilitate settlement discussions, Plaintiff and Saar's entered into a  
22 written and signed agreement regarding statute of limitations and, as the exchanges continued, this  
23 was followed by three amended agreements (all written and signed) regarding statute of  
24 limitations. Yedalian Decl. ¶ 4.

25 During approximately nine (9) months of settlement discussions, various proposals (oral  
26 and written) were made and considered as part of the discussions between Plaintiff and Saar's.  
27 Yedalian Decl. ¶ 5. In connection with these exchanges the parties also debated legal issues,  
28

1 including claims and various defenses. *Ibid.* Underlying facts and information were also  
2 exchanged between Plaintiff and Saar's to facilitate the discussions. *Ibid.*

3 The process also occurred in two phases. During the first phase Plaintiff and Saar's  
4 negotiated and reached agreement on the class-wide settlement structure and benefits to class  
5 members. Yedalian Decl. ¶ 6. After this was agreed upon, the parties thereafter commenced and  
6 later reached agreement on attorneys' fees and costs and an incentive award to the class  
7 representative. *Ibid.*

8 The long-form settlement agreement, entitled Stipulated Settlement Agreement and  
9 Release (hereinafter sometimes referred to as "Settlement" or "Agreement") Exh. 1<sup>2</sup>, is a product  
10 of all of the extensive negotiations and exchanges between the Parties. Yedalian Decl. ¶ 7.

11 The Agreement is also based upon the information exchanged by the Parties. Yedalian  
12 Decl. ¶ 8.

13 **IV. NOTICE HAS BEEN PROVIDED TO CLASS MEMBERS IN CONFORMITY**  
14 **WITH THIS COURT'S ORDERS AND NOT A SINGLE CLASS MEMBER HAS**  
15 **OPTED-OUT, OBJECTED OR REQUESTED TO BE HEARD**

16 Here, Saar's does not know, nor does Saar's have access to any information which would  
17 enable it to determine, the names, postal addresses, email addresses or facsimile numbers of absent  
18 Settlement Class members. Saar's Decl. ¶ 6.

19 Thus, pursuant to the Court-approved notice plan, notice was to be provided to Settlement  
20 Class members in the following ways:

21 **On-Location Notice**

22 For a period of at least 180 days (180 days is the duration of the claims period), multiple  
23 copies of the Short-Form Notice were to be prominently posted at or near the following locations  
24 within each of the Saar's Stores: (1) front door and (2) each cash register. Agreement ¶ 14(a). The  
25 Short Form Notice shall include the Settlement Website address and Settlement Administrator's  
26

27  
28 <sup>2</sup> Capitalized terms shall have the same meanings as in the Agreement, unless indicated otherwise.

1 toll-free telephone number which Settlement Class members may use to obtain further  
2 information. Agreement, Exh. C.

3 **Settlement Website, Full Notice and Claim Form**

4 For at least a 180 day period, the Settlement Administrator will also provide, viewable,  
5 printable, and downloadable copies of the Full Notice and Claim Form, via a Settlement Website  
6 which contains a description of the settlement terms. Agreement ¶ 14(b) and ¶ 11 (d).

7 **Declarations From the Parties Concerning Compliance With Notice Plan**

8 On January 17, 2018, Defendant filed with the Court the Declaration Of Greg Saar  
9 regarding the provision of on-location. Concurrently provided with this Motion as Exhibit 3 is the  
10 Declaration of Jennifer M. Keough on behalf of the Settlement Administrator JND Legal  
11 Administration ("JND Decl."). Together, these declarations establish that notice to the Settlement  
12 Class has been provided in conformity with the Court-approved notice plan.

13 **A. No Opt-Outs**

14 Settlement Class members were provided until January 12, 2018 to opt-out. Order, ¶ 10.  
15 No Settlement Class member opted-out during the opt-out period. JND Decl. ¶ 6.

16 **B. No Objections**

17 Settlement Class members were provided until January 12, 2018 to object to the terms of  
18 the Settlement. Order, ¶ 11.

19 During the objection period, no Settlement Class member objected to the Settlement. JND  
20 Decl. ¶ 8.

21 **C. No Notice of Intention to Appear**

22 In addition to allowing Settlement Class members an opportunity to opt-out or object,  
23 Settlement Class members were also provided an opportunity to request permission to appear and  
24 speak at the final approval hearing. Order, ¶ 14.

25 Settlement Class members were provided until January 12, 2018 to make such a request.  
26 Order, ¶ 14.

27  
28

1 As demonstrated by the Court's records in this case, to date, no Settlement Class member  
2 has filed a request for permission to appear or speak at the final approval hearing.

3 **V. THE LACK OF ANY OPT-OUTS, OBJECTIONS AND REQUESTS TO APPEAR**  
4 **PROVIDES FURTHER SUPPORT FOR THE SETTLEMENT**

5 The lack of any opt-outs, objections and requests to appear provides further support for the  
6 Settlement. "It is established that the absence of a large number of objections to a proposed class  
7 action settlement raises a strong presumption that the terms of a proposed class settlement action  
8 are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1043  
9 (N.D. Cal. 2008) (quoting *Nat'l Rural Telecomms. Coop. v. DirecTV*, 221 F.R.D. 523, 529 (C.D.  
10 Cal. 2004)). "The absence of a single objection to the Proposed Settlement provides further  
11 support for final approval of the Proposed Settlement." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D.  
12 at 529.

13 **VI. THE SETTLEMENT**

14 Subject to the Court's approval pursuant to Superior Court Civil Rules, CR 23, the Parties  
15 have agreed to settle this matter upon the terms and conditions set forth in the Agreement.

16 A summary of the terms of the Settlement is as follows:

17 • This Settlement concerns the six (6) Saar's Stores during the settlement class period  
18 of July 20, 2014 through July 18, 2016 ("Settlement Class Period"). Exh. 2: Saar's Decl. ¶¶ 1, 3  
19 and Agreement ¶ 12 (both identifying the Saar's Stores and period).

20 • During the Settlement Class Period, all credit and debit card receipts generated at  
21 the six Saar's Stores for credit transactions were similar in that they displayed the respective card  
22 expiration date. Exh. 2: Saar's Decl. ¶ 3.

23 • During the Settlement Class Period 167,742 unique credit/debit cards were used for  
24 credit transactions, and some of which were used for multiple transactions. Exh. 2: Saar's Decl. ¶  
25 5.

26 • The parties are not aware of any customer who has sustained any actual damages as  
27 a result of the printing of the expiration date on any of the subject receipts in this case.  
28

1           •       For the purposes of the Settlement, Plaintiff and Saar's have stipulated to the  
2 certification of the following Settlement Class: "All consumers to whom Saar's, during the period  
3 July 20, 2014 through July 18, 2016, provided an electronically printed receipt at the point of a  
4 credit sale or transaction at any of its Saar's or Super Saver Foods stores, on which receipt Saar's  
5 printed the expiration date of the consumer's credit card or debit card." Agreement ¶ 12.

6           •       Saar's will establish a settlement fund in the amount of \$475,000 in Gift Card value  
7 (the "Settlement Fund"). The Settlement Fund will be divided by the total number of Settlement  
8 Class members who submit a valid and timely claim to determine each claiming Settlement Class  
9 member's pro-rata share (the "Pro-Rata Share"). In the event the Pro-Rata Share is equal to or  
10 exceeds \$75, each Settlement Class member who submits a valid and timely claim will be mailed  
11 a Saar's Gift Card in the amount of \$75, the value of which will be paid and deducted from the  
12 Settlement Fund. In the event the Pro-Rata Share is less than \$75, each Settlement Class member  
13 who submits a valid and timely claim will be mailed a Saar's Gift Card in the amount of the Pro-  
14 Rata Share, to be paid and deducted from the Settlement Fund. Agreement ¶ 13(a).

15           •       Each Settlement Class member may submit only one claim, regardless of whether  
16 they made one or more credit transaction (either using a credit card or debit card) during the  
17 period July 20, 2014 through July 18, 2016. A valid claim will require that a Settlement Class  
18 member produce evidence that he or she received a customer receipt from any of the Saar's Stores  
19 at any time during the period July 20, 2014 through July 18, 2016 that displays the expiration date  
20 of his or her credit or debit card used for a credit transaction. Proof of claim may consist of the  
21 original or a copy of either (1) a customer receipt containing the expiration date of his or her credit  
22 or debit card showing that he or she made a transaction at any time during the period July 20, 2014  
23 through July 18, 2016 from any of the Saar's Stores, or (2) a credit or debit card statement (which  
24 will be encouraged to be in redacted form) showing that he or she made a credit transaction at any  
25 of the Saar's Stores at any time during the period July 20, 2014 through July 18, 2016. Agreement  
26 ¶ 13(d).

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1           •       The Parties agreed upon and the Court approved the notice plan set forth in Section  
2 IV., above. As also explained in Section IV., above, Settlement Class members were provided  
3 until January 12, 2018 to opt-out of or object to the Settlement or request to be heard at the  
4 fairness hearing, and no Settlement Class member opted-out, objected or made a request to be  
5 heard during this period.

6           •       Settlement Class Members will have until May 12, 2018 to submit a Claim Form.  
7 Agreement, ¶ 13(d).

8           •       The Settlement, including the claims process, will be administered by JND Legal  
9 Administration ("Settlement Administrator"), as approved by the Court. Agreement ¶ 13(c).

10          •       All notice and administration costs including but not limited to Gift Card issuance,  
11 Settlement Website and envelope and postage charges, will be paid for separately by Saar's.  
12 Agreement ¶ 13(c) and ¶¶ 14 and 15.

13          •       Class Counsel will apply to the Court for an incentive (service) award of up to  
14 \$5,000 for the named Plaintiff, to be paid separately by Saar's, to compensate Plaintiff for his  
15 services as the Class Representative. Agreement ¶ 21.

16          •       Class Counsel will apply to the Court for an award of \$140,000 for attorneys' fees  
17 and legal costs payable to Class Counsel, to compensate Class Counsel for investigating the facts,  
18 causing Saar's to change its software and cease the display of customer information, negotiating  
19 and securing the Settlement and obtaining class benefits (which include gift cards as well as  
20 equitable relief which requires Saar's to implement a new written policy concerning FACTA), and  
21 implementing the Settlement. Agreement ¶ 22.

22          •       Class Counsel's motion for an award of attorney's fees and costs and the Class  
23 Representatives' motion for service (or incentive) awards will be posted on the Settlement Website  
24 by January 24, 2018. Agreement ¶ 17(b) and (c); Order, ¶ 12. Any objection must be filed with  
25 the Court and also served on Class Counsel and counsel for Saar's no later than February 2, 2018.  
26 *Ibid.*

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1 • The Agreement includes a term of "No Admission" such that "Nothing contained in  
2 this Agreement, nor the consummation of the settlement, is to be construed or deemed an  
3 admission of liability, culpability, or wrongdoing on the part of any of the Parties." Agreement ¶  
4 30.

5 **VII. CR 23, FRCP RULE 23, AND FEDERAL AUTHORITIES**

6 Civil Rule 23 is nearly identical to its federal counterpart, Rule 23 of Federal Rules of  
7 Civil Procedure ("FRCP"), and thus federal cases interpreting FRCP 23 are highly persuasive.  
8 *Brown v. Brown*, 6 Wn. App.249, 252, 492 P.2d 581 (1971); *Schnall v. AT&T Wireless Servs.,*  
9 *Inc.*, 171 Wn.2d. 260, 271, 259 P.3d 129 (2011) ("Because CR 23 is identical to its federal  
10 counterpart, 'cases interpreting the analogous federal provision are highly persuasive.'").

11 **VIII. THE SETTLEMENT CLASS**

12 For the purposes of the Settlement, Plaintiffs and Saar's have stipulated to the certification  
13 of the following Settlement Class: "All consumers to whom Saar's, during the period July 20,  
14 2014 through July 18, 2016, provided an electronically printed receipt at the point of a credit sale  
15 or transaction at any of its Saar's or Super Saver Foods stores, on which receipt Saar's printed the  
16 expiration date of the consumer's credit card or debit card." Agreement ¶ 12.

17 In reviewing a class action settlement, a "court must assess whether a class exists." *Staton*  
18 *v. Boeing Co.*, 327 F.3d 938, 952 (9<sup>th</sup> Cir. 2003). The fundamental question "is not whether . . .  
19 plaintiffs have stated a cause of action or will prevail on the merits, but rather whether the  
20 requirements of Rule 23 are met." *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 178 (1974). This  
21 action meets these governing standards for certification under Rule 23(a) and Rule 23(b)(3).

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1           **A. Numerosity**

2           Under both CR 23(a)(1) and FRCP Rule 23(a)(1), a class action may be maintained where  
3 "the class is so numerous that joinder of all members is impracticable." "Although the absolute  
4 number of class members is not the sole determining factor, where a class is large in numbers,  
5 joinder will usually be impracticable." *Jordan v. Los Angeles*, 669 F.2d 1311, 1319 (9<sup>th</sup> Cir.  
6 1982).<sup>3</sup>

7           In *Jordan*, the Ninth Circuit determined that the proposed class sizes in that suit of 39, 64,  
8 and 71 were large enough such that the other factors need not be considered. *Ibid.* "The fact that  
9 the size of the proposed class has not been exactly determined is not a fatal defect in the motion; a  
10 class action may proceed upon estimates as to the size of the proposed class." *In re Alcoholic*  
11 *Beverages Litig.*, 95 F.R.D. 321, 324 (D.C. N.Y. 1982); *In re Computer Memories Sec. Litig.*, 111  
12 F.R.D. 675, 679 (N.D. Cal. 1986) (class certified where plaintiffs did not establish exact number  
13 of class members, but demonstrated that class would "obviously be sufficiently numerous").

14           Here, the 167,743 unique credit/debit cards used for credit transactions during the  
15 Settlement Class Period (Saar's Decl. ¶ 5) demonstrates that the sheer number of class members  
16 easily surpasses the class sizes in *Jordan* which the Ninth Circuit deemed satisfied the numerosity  
17 requirement. The fact that, by the very nature of the Settlement Class, its members are unknown  
18 and cannot be readily identified, further dictates that joinder is impracticable. *Jordan*, 669 F.2d at  
19 1319-1320.

20           **B. Commonality**

21           Both CR 23(a)(2) and FRCP Rule 23(a)(2) require that there be "questions of law or fact  
22 common to the class." This commonality requirement must be "construed permissively." *Hanlon*  
23 *v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9<sup>th</sup> Cir. 1998). "All questions of fact and law need not be  
24 common to satisfy the rule. The existence of shared legal issues with divergent factual predicates  
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26 <sup>3</sup> "Where the class is not so numerous, however, the number of class members does not weigh as  
27 heavily in determining whether joinder would be infeasible. In the latter situation, other factors  
28 such as the geographical diversity of class members, the ability of individual claimants to institute  
separate suits, and whether injunctive or declaratory relief is sought, should be considered in  
determining impracticability of joinder." *Jordan, supra*, 669 F.2d at 1319.

1 is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the  
2 class." *Ibid.* Where a class is united by a common interest in determining whether a defendant's  
3 broad course of conduct is actionable, commonality is not defeated "by slight differences in class  
4 members' positions." *Blackie v. Barrack*, 524 F.2d 891, 902 (9<sup>th</sup> Cir. 1975).

5 "This analysis does not turn on the number of common questions, but on their  
6 relevance to the factual and legal issues at the core of the purported class' claims.  
7 Compare *Dukes*, 131 S.Ct. at 2556 ('**We quite agree that for purposes of Rule**  
8 **23(a)(2), even a single common question will do.**') (internal quotation marks  
9 omitted), *Wang v. Chinese Daily News*, 737 F.3d 538, 544 (9<sup>th</sup> Cir. 2013) ('Plaintiffs  
10 need not show that every question in the case, or even a preponderance of questions, is  
11 capable of classwide resolution. '), *Mazza*, 666 F.3d at 589 ('[C]ommonality only  
12 requires a single significant question of law or fact. '), with *Dukes*, 131 S.Ct. at 2551  
13 ('What matters to class certification is not the raising of common `questions'—even in  
14 droves. ') *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9<sup>th</sup> Cir. 2014).

15 Commonality cannot be disputed here.

16 All class members share two common legal questions – whether Saar's violated FACTA by  
17 printing the expiration date of debit and credit cards on receipts, and whether its practice of doing  
18 so was "willful." None of the relevant questions relates to the conduct of the class members, but  
19 rather all focus on Saar's conduct and alleged culpability in violating FACTA. See, e.g.,  
20 *Tchoboian v. Parking Concepts, Inc.*, 2009 WL 2169883 \*5 (C.D. Cal. 2009), petition for  
21 permission to appeal grant of certification denied October 20, 2009, 9<sup>th</sup> Cir. Docket No. 09-80132  
22 ("The overriding legal issue is whether [defendant]'s alleged noncompliance was willful so that the  
23 class members are entitled to statutory damages. Moreover, whether [defendant] violated FACTA  
24 is a combined question of law and fact common to all members."); *Medrano v. WCG Holdings,*  
25 *Inc.*, 2007 WL 4592113 \*2 (C.D. Cal. 2007) ("There is a common core of salient facts across the  
26 class. Each member of the proposed class received a non-compliant receipt from [Defendant]  
27 after the applicable compliance deadline."); *Kesler v. Ikea U.S., Inc., et al.*, 2008 WL 413268 \*3  
28 (C.D. Cal. 2008) ("In this case, the facts and legal issues of each class member's claim are nearly,  
if not entirely, identical. There is a common core of salient facts across the class. Each member  
of the proposed class received a non-compliant receipt from IKEA after the December 4, 2006  
FACTA compliance deadline. The overriding legal issue is whether IKEA's noncompliance was  
willful, so that the class members are entitled to statutory damages.")

1           **C.     Typicality**

2           Both CR 23(a)(3) and FRCP Rule 23(a)(3) require that the representative plaintiff have  
3 claims "typical of the claims ... of the class." "[R]epresentative claims are 'typical' if they are  
4 reasonably co-extensive with those of absent class members; they need not be substantially  
5 identical." *Hanlon*, 150 F.3d at 1020. Named plaintiffs need not be "identically situated" with all  
6 other class members; rather, "[i]t is enough if their situations share a 'common issue of law or fact'  
7 [citation] and are 'sufficiently parallel to insure a vigorous and full presentation of all claims for  
8 relief.'" *Cal. Rural Legal Assistance, Inc. v. Legal Services. Corp.*, 917 F.2d 1171, 1175 (9<sup>th</sup> Cir.  
9 1990). Moreover, typicality refers to the "nature of the claim ... of the class representative, and  
10 not to the specific facts from which it arose or the relief sought." *Hanon v. Dataproducts Corp.*,  
11 976 F.2d 497, 508 (9<sup>th</sup> Cir. 1992). The test of typicality is thus "whether other members have the  
12 same or similar injury, whether the action is based on conduct which is not unique to the named  
13 plaintiffs, and whether other class members have been injured by the same course of conduct."  
14 *Ibid.*

15           Here, Plaintiff and all other class members allege the same injury, violation of their  
16 FACTA rights resulting from the same course of conduct — the printing of their card expiration  
17 date on credit or debit card receipts. Accordingly, this lawsuit is based on conduct which is not  
18 unique to Plaintiff, but on standardized, uniform conduct that is common to all class members.  
19 Moreover, the same relief, specifically, statutory damages under 15 U.S.C. § 1681n, is sought for  
20 all class members for Saar's's "willful" violation of FACTA. Accordingly, the typicality  
21 requirement is satisfied. *Tchoboian*, 2009 WL 2169883 \*5 (C.D. Cal. 2009) (holding that  
22 typicality is satisfied because "[Plaintiff]'s claim is, in fact, 'substantially identical' to the claims of  
23 the proposed class members-namely, he alleges that [defendant] issued him a noncompliant receipt  
24 in willful violation of the FACTA"); *Medrano*, 2007 WL 4592113 \*3 (same); *Kesler*, 2008 WL  
25 413268 \*4 (same); *Murray v. GMAC Mortgage Corp.*, 2007 WL 1100608 \*5 (N.D. Ill. 2007)  
26 ("*Murray II*") (typicality satisfied where, despite minor factual discrepancies, all putative class  
27 members had "the same essential characteristics"); *In re Activision Securities Litigation*, 621  
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1 F.Supp. 415, 428 (N.D. Cal. 1985) (finding that "the only material variation among class members  
2 is the amount of damages to which each member is entitled" and that "[s]uch differences are  
3 insufficient to defeat class certification.")

4 **D. Adequate Representation**

5 Both CR 23(a)(4) and FRCP Rule 23(a)(4) require that "the representative parties will  
6 fairly and adequately protect the interests of the class." Representation is adequate if (1) class  
7 counsel is qualified and competent and (2) the class representative and his or her counsel are not  
8 disqualified by conflicts of interest. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512  
9 (9<sup>th</sup> Cir. 1978).

10 Here, there are no conflicts of interest between Plaintiff and Settlement Class members.  
11 Plaintiff and each class member assert identical claims for statutory damages arising from the  
12 same facts, *i.e.*, Saar's printing of the expiration date of the respective credit or debit card on  
13 receipts. Thus, there is no potential for conflicting interests in this action. *Abels v. JBC Legal*  
14 *Group, P.C.*, 227 F.R.D. 541, 545 (N.D. Cal. 2005) (no conflict where claims asserted by plaintiff  
15 and class members arise from defendants' use of form letters allegedly violating the Fair Debt  
16 Collection Practices Act). Moreover, there is no basis for asserting against Plaintiff any unique  
17 defenses that Saar's could not assert against any other Settlement Class member. Nor is there any  
18 basis to suggest that Plaintiff lacks sufficient zeal or competence.

19 Nor are there any conflicts with Plaintiff's counsel. Plaintiff is represented by highly  
20 capable and competent counsel experienced in class action litigation, including FACTA lawsuits.  
21 Yedalian Decl. ¶¶ 37-59. *Local Joint Exec. Bd. of Culinary/Bartender Trust Fund v. Las Vegas*  
22 *Sands, Inc.*, 244 F.3d 1152, 1162 (9<sup>th</sup> Cir. 2001) (adequacy established by mere fact that counsel  
23 were experienced practitioners).

24 **E. Rule 23(b)(3) Requirements Are Met**

25 Plaintiff and Saar's seek certification pursuant to CR 23(b)(3) which, like FRCP Rule  
26 23(b)(3), authorizes certification if "[t]he court finds that the questions of law or fact common to  
27 the members of the class predominate over any questions affecting only individual members, and  
28



1 that a class action is superior to other available methods for the fair and efficient adjudication of  
2 the controversy." The predominance and superiority factors are satisfied.

3 **1. Predominance of Common Questions**

4 To satisfy predominance, common questions of law or fact must "present a significant  
5 aspect of the case" and be capable of resolution "in a single adjudication." *Hanlon*, 150 F.3d at  
6 1022-1023; *Culinary/Bartender Trust Fund*, 244 F.3d at 1163.

7 The predominance inquiry focuses on whether the class is "sufficiently cohesive to warrant  
8 adjudication by representation." *Culinary/Bartender Trust Fund*, 244 F.3d at 1162. Central to this  
9 question "is the notion that the adjudication of common issues will help achieve judicial  
10 economy." *Zinser v. Accufix Research Institute, Inc.*, 253 F.3d 1188, 1189 (9<sup>th</sup> Cir. 2001).

11 In this case, whether Saar's violated FACTA "willfully" is the central issue that clearly  
12 predominates over any individual issues. Whether Saar's did so depends upon facts concerning its  
13 own conduct — conduct that applies uniformly to all class members in this case.

14 That common issues predominate is also bolstered by the fact that the available remedy in  
15 this case is statutory damages. As the Ninth Circuit explained in *Bateman v. American Multi-*  
16 *Cinema, Inc.*, 623 F.3d 708, 719 (9<sup>th</sup> Cir. 2010), "irrespective of whether Bateman and all the  
17 potential class members can demonstrate actual harm resulting from a willful violation, they are  
18 entitled to statutory damages."

19 That common issues predominate is also evidenced by the fact that all class members'  
20 claims involve the very same conduct by Saar's—the printing of receipts which contain the credit  
21 or debit card's expiration date.

22 "When common questions present a significant aspect of the case and they can be resolved  
23 for all members of the class in a single adjudication, there is clear justification for handling the  
24 dispute on a representative rather than on an individual basis." *Hanlon*, 150 F.3d at 1022 (internal  
25 quotation marks omitted).

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1           The Supreme Court has similarly held. *Phillips Petroleum Co., v. Shutts*, 472 U.S. 797,  
2 809 (1985) ("this lawsuit involves claims averaging about \$100 per plaintiff; most of the plaintiffs  
3 would have no realistic day in court if a class action were not available"); *Deposit Guar. Nat'l*  
4 *Bank v. Roper*, 445 U.S. 326, 338 n.9 (1980) ("damages claimed by the two named plaintiffs  
5 totaled \$1,006.00. Such plaintiffs would be unlikely to obtain legal redress.... This, of course, is a  
6 central concept of Rule 23"); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 161 (1974) ("No  
7 competent attorney would undertake this complex antitrust action to recover so inconsequential an  
8 amount. Economic reality dictates that petitioner's suit [involving individual damage of \$70]  
9 proceed as a class action or not at all").

10           In sum, as the Ninth Circuit explained in another FACTA case, the purpose of Rule  
11 23(b)(3) is "to allow integration of numerous small individual claims into a single powerful unit."  
12 *Bateman*, 623 F.3d at 722.

13           The above authorities clearly dictate that the superiority requirements of Rule 23(b)(3) are  
14 satisfied here.

15           Consideration of the factors listed in CR 23(b)(3) and FRCP Rule 23(b)(3) bolsters this  
16 conclusion. Ordinarily, these factors are (A) the interest of class members in individually  
17 controlling the prosecution of separate actions; (B) the extent and nature of any litigation  
18 concerning the controversy already commenced by other class members; (C) the desirability or  
19 undesirability of concentrating the litigation of the claims in the particular forum; and (D) the  
20 difficulties likely to be encountered in the management of a class action. However, when a court  
21 reviews a class action settlement, the fourth factor does not apply. In deciding whether to certify a  
22 settlement class action, a district court "need not inquire whether the case, if tried, would present  
23 intractable management problems." *Amchem Products Inc. v. Woodward*, 521 U.S. 591, 620  
24 (1997). The remaining factors set forth in CR 23(b)(3) and FRCP Rule 23(b)(3) (A), (B) and (C)  
25 all favor class certification in this case.

26           First, class members have no particular interest in individually controlling the prosecution  
27 of separate actions. Statutory damages cannot exceed \$1,000, and the fact of the matter is that  
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1 there is no other known separate action filed or prosecuted by any other class members.  
2 Moreover, any Settlement Class member who desires to pursue actual damages could opt out of  
3 the Settlement.

4 Second, and as explained above, the parties are not aware of any other litigation regarding  
5 the FACTA violations at issue in this case.

6 Third, it is desirable to concentrate the litigation in this forum because all of the named  
7 parties, including Saar's, reside in Washington and the alleged FACTA violations involve Saar's  
8 stores only in Washington. Moreover, Plaintiff and Saar's have reached a Settlement. "With the  
9 settlement in hand, the desirability of concentrating the litigation in one forum is obvious." *Elkins*  
10 *v. Equitable Life Ins. of Iowa*, 1998 WL 133747 \*19 (M.D. Fla. 1998); *Strube v. American Equity*  
11 *Life Ins. Co.*, 226 F.R.D. 688, 697 (M.D. Fla. 2005) (third and fourth Rule 23(b)(3) factors are  
12 "conceptually irrelevant in the context of a settlement").

13 The conclusion is inescapable that there simply is no better method than a class action for  
14 resolving all the claims of the Settlement Class Members in this case. The conclusion of the court  
15 in *Murray II*, where the court certified a case involving claims for statutory damages under the  
16 FCRA, applies equally here:

17 "This is a case where class certification presents the most efficient means of  
18 adjudicating the controversy. The class is numerous but the potential recovery for  
19 each class member is quite small. Indeed, it is exceedingly unlikely that many  
individuals would wish to go to court for a potential recovery of \$100-or that they  
could find counsel willing to represent them." *Murray II*, 2007 WL 1100608 \*7.

20 Finally, FACTA is a consumer protection statute which serves not just to compensate, but  
21 also to "deter" future violations. *Bateman*, 623 F.3d at 718. As the Ninth Circuit has also  
22 explained, this "deterrent purpose" of FACTA is served by certification: "we are quite sure that  
23 certification of a class here would preserve, if not amplify, the deterrent effect of FACTA." *Id.* at  
24 723.

## 25 **IX. THE TWO-STEP APPROVAL PROCESS**

26 There is a "strong judicial policy that favors settlements," particularly in class actions and  
27 other complex cases where substantial resources can be conserved by avoiding the time, cost, and  
28 rigors of continued litigation. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9<sup>th</sup> Cir.

1 1992); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9<sup>th</sup> Cir. 1995); *City of Seattle v. Blume*,  
2 134 Wn.2d 243, 258, 947 P.2d 223 (1997) (explaining that there is an "express public policy of  
3 this state which strongly encourages settlement").

4 A settlement of class litigation must be reviewed and approved by the Court. CR 23(e) and  
5 FRCP Rule 23(e). This is done in two steps: (1) an early (preliminary) review by the trial court,  
6 and (2) a final review after notice has been distributed to the class members for their comment or  
7 objections.

8 This Court has already performed the first step, having granted preliminary approval of the  
9 proposed Settlement on November 2, 2017 and this Motion concerns the second step.

10 At the second step of the approval process (usually referred to as the fairness hearing or  
11 final approval hearing), after class members have been notified of the proposed settlement and  
12 have had an opportunity to be heard, the court makes a final determination whether the settlement  
13 is "fair, reasonable and adequate." *Armstrong v. Board of School Directors of the City of*  
14 *Milwaukee*, 616 F.2d 305, 314 (7<sup>th</sup> Cir. 1980)

#### 15 **X. THE PRESUMPTION OF FAIRNESS**

16 Courts presume the absence of fraud or collusion in the negotiation of a settlement unless  
17 evidence to the contrary is offered. In short, there is a presumption that the negotiations were  
18 conducted in good faith. *Newberg*, § 11:51, *In re Chicken Anti-Trust Litigation*, 560 F.Supp 957,  
19 962 (N.D. Ga. 1980); *Priddy v. Edelman*, 883 F.2d 438, 447 (6<sup>th</sup> Cir. 1989); *Mars Steel Corp. v.*  
20 *Continental Illinois National Bank and Trust Co.*, 834 F.2d 677, 682 (7<sup>th</sup> Cir. 1987). Courts do  
21 not substitute their judgment for that of the proponents, particularly where, as here, settlement has  
22 been reached with the participation of experienced counsel familiar with the litigation. *Hammon*  
23 *v. Barry*, 752 F.Supp 1087, 1093 (D. D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471, 474 (S.D.  
24 N.Y. 1979); *Sommers v. Abraham Lincoln Federal Savings & Loan Assoc.*, 79 F.R.D. 571, 573-  
25 574 (E.D. Pa. 1978); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9<sup>th</sup> Cir. 1995).

26 While the recommendations of counsel proposing the settlement are not conclusive, the  
27 Court should take them into account and afford them "great weight," particularly where, as here,  
28

1 they are capable and competent, have experience with this type of matter, and have been  
2 intimately involved in this litigation. *Nat'l Rural Telecomm. Coop. v. DirecTV*, 221 F.R.D. 523,  
3 528 (C.D. Cal. 2004) ("Great weight' is accorded to the recommendation of counsel, who are  
4 most closely acquainted with the facts of the underlying litigation. [citation.] This is because  
5 '[p]arties represented by competent counsel are better positioned than courts to produce a  
6 settlement that fairly reflects each party's expected outcome in the litigation."); *See also*  
7 *Newberg*, § 11:47.

#### 8 **XI. THIS SETTLEMENT IS FAIR AND REASONABLE**

9 The Settlement is well within the range of reasonableness and preliminary approval should  
10 be granted.

11 Some of factors used for final approval and which may guide the analysis here are as  
12 follows: "the likelihood of success by plaintiffs; the amount of discovery or evidence; the  
13 settlement terms and conditions; recommendation and experience of counsel; future expense and  
14 likely duration of litigation; recommendation of neutral parties, if any; number of objectors and  
15 nature of objections; and the presence of good faith and the absence of collusion." *Pickett v.*  
16 *Holland America Line-Westours, Inc.*, 145 Wn.2d 178, 188-189, 35 P.3d 351 (2001).

17 No single criterion determines whether a class action settlement meets the requirements of  
18 CR 23(e) or Rule 23(e). *Pickett*, 145 Wn.2d at 188-189; *Staton, supra*, 327 F.3d at 959.

19 "The above list is not exhaustive, nor will each factor be relevant in every  
20 case. *Officers for Justice*, 688 F.2d at 625. 'The relative degree of importance to be  
21 attached to any particular factor will depend upon and be dictated by the nature of the  
22 claim(s) advanced, the type(s) of relief sought, and the unique facts and  
23 circumstances presented by each individual case.' *Id.* This is a delicate, albeit largely  
24 unintrusive inquiry by the trial court.

25 [T]he court's intrusion upon what is otherwise a private  
26 consensual agreement negotiated between the parties to a lawsuit must  
27 be limited to the extent necessary to reach a reasoned judgment that the  
28 agreement is not the product of fraud or overreaching by, or collusion  
between, the negotiating parties, and that the settlement, taken as a  
whole, is fair, reasonable and adequate to all concerned. *Id.*

It is not the trial court's duty, nor place, to make sure that every party is  
content with the settlement. Indeed, this would contravene the very nature of  
consensual settlements." *Pickett*, 145 Wn.2d at 188-189.

"The relative degree of importance to be attached to any particular factor will depend upon  
and be dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique

1 facts and circumstances presented by each individual case." *Officers for Justice v. Civil Service*  
2 *Commission of City and County of San Francisco*, 688 F.2d 615, 625 (9<sup>th</sup> Cir. 1982). Indeed, "one  
3 factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l*  
4 *Rural Telecomm. Coop. v. DirecTV*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *Torrise v. Tucson Elec.*  
5 *Power Co.*, 8 F.3d 1370, 1376 (9<sup>th</sup> Cir. 1993), *cert. denied*, 512 U.S. 1220 (1994).

6 Due to the impossibility of predicting any litigation result with certainty, a court's  
7 evaluation of a settlement essentially amounts to "nothing more than 'an amalgam of delicate  
8 balancing, gross approximations and rough justice.'" *Officers for Justice*, 688 F.2d at 625. The  
9 ultimate touchstone, however, is whether "class counsel adequately pursued the interests of the  
10 class as a whole." *Staton*, 327 F.3d at 961. As the Ninth Circuit explained in *Officers for Justice*,  
11 the district court's role in evaluating a class action settlement is therefore tailored to meet that  
12 narrow objective. Review "must be limited to the extent necessary to reach a reasoned judgment  
13 that the agreement is not the product of fraud or overreaching by, or collusion between, the  
14 negotiating parties." *Officers for Justice*, 688 F.2d at 625.

15 Some of the factors which were considered in evaluating the reasonableness of this  
16 Settlement are as follows:

17 **A. The Likelihood Of Success By Plaintiffs; Risks, Duration And Expense Of**  
18 **Continuing Litigation**

19 Absent this Settlement, there are very real risks involved in continued litigation, including  
20 extensive delays, potential appeals and the possibility that Settlement Class members may  
21 ultimately end up with no recovery. Yedalian Decl. ¶ 10.

22 **1. Outright Dismissal**

23 Many federal courts, including but not limited to at least three federal cases pending in the  
24 Washington federal courts, and two federal courts of appeal, have dismissed FACTA cases like  
25 this one which allege expiration date violations and seek statutory damages. The dismissals are  
26 based on the position that plaintiffs who allege expiration date violations without any  
27 accompanying actual injury do not sustain any "concrete injury" sufficient to satisfy Article III  
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1 standing requirements in federal court. *Byles v. Ace Parking Mgmt., Inc.*, Case No. C16-0834-  
2 JCC, Dkt. No. 24 (W.D. Wash. Oct. 4, 2016); *Israel v. Diamond Parking Servs. Inc.*, Case No.  
3 C16-0687-JCC, Dkt. No. 23 (W.D. Wash. Oct. 11, 2016); *Bassett v. ABM Parking Servs., Inc.*,  
4 C16-00947-TSZ, Dkt. No. 6 (W.D. Wash. July 21, 2016); *Meyers v. Nicolet Rest. of De Pere,*  
5 *LLC*, 843 F.3d 724 (7<sup>th</sup> Cir. 2016); *Crupar-Weinmann v. Paris Baguette America, Inc.*, 861 F.3d  
6 76 (2<sup>nd</sup> Cir. 2017).

7 If this case proceeded to litigation, Saar's contends that this state court would likewise not  
8 have subject-matter jurisdiction due to the purported lack of any actual damage. If Saar's is  
9 correct, then class members would not be able to recover anything. At a minimum, litigation of  
10 this issue would cause delay and pose substantial risk, including the risk of outright dismissal  
11 without any recovery, as has occurred in all of the above federal cases.<sup>5</sup>

## 12 2. "Willfulness"

13 In order to recover any statutory damages and other remedies under 15 U.S.C. § 1681n,  
14 Plaintiff must show that Saar's engaged in "willful" conduct. However, Saar's has vigorously  
15 denied that its conduct was willful. Yedalian Decl. ¶ 13. In contrast, Plaintiff believes, among  
16 other things, that the printing of the expiration date was reckless and obvious to Saar's and the  
17 result of a lack of adequate measures to safeguard consumer rights. Yedalian Decl. ¶ 13. Saar's  
18 also contends that not only was its conduct not reckless, but also that because of the way the  
19 information was printed on the receipt — where the expiration date was displayed in reverse order  
20 and without any identification that is the expiration date — Saar's could not be reckless as a matter  
21 of law because there is no prior appellate guidance for this type of situation. Yedalian Decl. ¶ 13;  
22 Exh. 2: Saar's Decl. ¶ 3.

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26 <sup>5</sup> The three FACTA expiration date cases dismissed by Washington federal courts are currently on  
27 appeal to the Ninth Circuit. Plaintiff's counsel is currently pursuing two appeals before the Fifth  
28 Circuit after two federal district courts in Texas similarly dismissed FACTA expiration date cases.  
Plaintiff's counsel is also currently pursuing an appeal before the Ninth Circuit in a FACTA case  
involving the printing of excess digits of the card number. Yedalian Decl. ¶ 12.



1           Regardless of how strongly the parties feel about the merits, the parties face issues and  
2 risks concerning how the legal requirements for a "willful" violation of FACTA will be applied to  
3 the particular facts of this case. Yedalian Decl. ¶ 14.

### 4                           **3.       Class Certification**

5           The parties have sharply divergent positions on class certification in this case, absent a  
6 settlement. Saar's has denied that for any purpose other than that of settling this lawsuit, this  
7 action is appropriate for class treatment. Agreement ¶¶ 6, 12 and 30; Yedalian Decl. ¶ 15.

8           Plaintiff believes that the Ninth Circuit's decision in *Bateman v. American Multi-Cinema,*  
9 *Inc.*, 623 F.3d 708 (9<sup>th</sup> Cir. 2010), which reversed the denial of class certification in another  
10 FACTA case, strongly supports certification in this case. Yedalian Decl. ¶ 16.

11           Yet, absent a settlement, class certification remains a hotly contested matter in this case,  
12 and there are risks attendant in continued litigation of these issues, including, at a minimum,  
13 delays and potential appeals. Yedalian Decl. ¶ 17.

14           For example, after the Ninth Circuit's decision in *Bateman*, one district court within the  
15 Central District denied class certification in a FACTA case, *Martin v. Pacific Parking Systems,*  
16 *Inc.*, 2012 WL 2552694 (C.D. Cal. July 2, 2012). On September 6, 2012, the Ninth Circuit  
17 granted a Rule 23(f) petition for permission for discretionary leave to appeal the district court's  
18 denial of certification in *Martin* (9<sup>th</sup> Cir. Docket No. 12-80144), and on appeal it was held that the  
19 district court did not abuse its discretion based upon the facts in that case. 2014 WL 3686135  
20 (July 25, 2014). Yedalian Decl. ¶ 18.

21           In sum, while Plaintiff feels strongly about certification in this case, *Martin* is an example  
22 of a FACTA case demonstrating the risks inherent in certification, including, at a minimum,  
23 delays and potential appeals. Yedalian Decl. ¶ 19.

### 24                           **4.       Likely Duration Of Litigation And Future Expense**

25           Litigation of the above issues, including through possible appeals, have the likely potential  
26 to take years and be costly. Yedalian Decl. ¶ 20.

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1           C.     Settlement Terms Provide Substantial Benefits of Settlement Compared to  
2 Risks of Continued Litigation

3           The Settlement provides for substantial benefits, particularly when compared to the risks of  
4 continued litigation. Yedalian Decl. ¶ 25.

5           The Settlement establishes a Settlement Fund in the amount of \$475,000 in Gift Card  
6 value. Agreement ¶ 13(a). Additionally, all notice and administration costs including but not  
7 limited to Gift Card issuance, Settlement Website and envelope and postage charges, will be paid  
8 for separately by Saar's. Agreement ¶ 13(c) and ¶¶ 14 and 15.

9           Further, the value of the Saar's Gift Card is considerable in that it is 75% of the minimum  
10 statutory damages (\$100) available for a willful violation of FACTA. Although compared to the  
11 maximum possible recovery of \$1,000 in statutory damages, \$75.00 is a 7.5% value (which is not  
12 insubstantial), the propriety of awarding *full* statutory damages to Settlement Class members who  
13 do not claim actual monetary loss is strongly disputed. Many FACTA defendants have argued  
14 that lack of "actual harm" precludes, if not any award of statutory damages to begin with, at the  
15 very least "excessive" statutory damages. Since it remains to be seen how courts will resolve such  
16 constitutional challenges to statutory damage awards under FACTA, the value negotiated by the  
17 Parties represents a fair compromise well within the range of reasonableness. Yedalian Decl. ¶ 27.

18           "The proposed settlement is not to be judged against a hypothetical or speculative measure  
19 of what *might* have been achieved by the negotiators." *Officers for Justice, supra*, 688 F.2d at  
20 625. Moreover, as long as the Settlement is reasonable, it does not matter that under the best case  
21 scenario, the potential value of the case may be much higher. *In re Cendant Corp., Derivative*  
22 *Action Litigation*, 232 F.Supp.2d 327, 336 (D. N.J. 2002) (approving settlement which provided  
23 less than 2% value compared to maximum possible recovery); *In re Heritage Bond Litigation*,  
24 2005 WL 1594403 \*27-28 (C.D. Cal. 2005) (median amounts recovered in settlement of  
25 shareholder class actions were between 2% - 3% of possible damages).

26           The \$75 Gift Card is also reasonable when compared to the value of similar benefits in  
27 other FACTA cases. For example, in *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate*  
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1 *Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438,  
2 447 (C.D. Cal. January 17, 2014), the Court found that the benefit of vouchers having a maximum  
3 combined value of \$30.00 was reasonable in a case alleging nationwide FACTA violations against  
4 a much larger corporate defendant.

5 Another benefit of this lawsuit and Settlement is the fact that, as part of the Settlement,  
6 Saar's shall implement a written policy which states that it will not print more than the last five  
7 digits of the credit or debit card number nor the credit or debit card expiration date upon any  
8 printed receipt provided to any customer that uses a credit or debit card to transact business with  
9 Saar's. Agreement ¶ 13(f). This FACTA compliance policy ensures that Saar's will not continue  
10 to violate the law, willfully, inadvertently or otherwise. Yedalian Decl. ¶ 28.

11 Such non-pecuniary benefits are properly considered in judging the results of the lawsuit.  
12 *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking  
13 into account fact that, in addition to monetary aspects, the defendant stopped the practices at  
14 issue). This is especially true with a consumer protection statute such as FACTA which, as the  
15 Ninth Circuit has held, serves both a compensatory and "deterrent purpose." *Bateman*, 623 F.3d at  
16 718. "In fashioning FACTA, Congress aimed to 'restrict the amount of information available to  
17 identity thieves.'" *Ibid*. The non-pecuniary benefits achieve that substantial purpose.

18 The importance of such non-pecuniary benefits was also recently explained by the Ninth  
19 Circuit in a case involving another consumer protection statute, the Fair Debt Collection Practices  
20 Act:

21 "The FDCPA is a consumer protection statute and was intended to permit, even  
22 encourage, attorneys like Lemberg to act as private attorney generals to pursue  
23 FDCPA claims. Moreover, plaintiffs have already benefitted and will continue to  
24 benefit from this case. Mickell admits that he has ceased his practice of sending  
25 letters to debtor's workplaces, a benefit to all class members. Furthermore, certifying  
26 the class will serve a 'deterrent' component to other debt collectors who are engaging,  
27 or consider engaging in this type of debt collection tactic." *Evon v. Law Offices of*  
28 *Sidney Mickell*, 688 F.3d 1015, 1031 (9<sup>th</sup> Cir. 2012).

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1           **D. Agreement Provides That Change Of Law Before Final Approval of**  
2 **Settlement Will Not Compromise Settlement Class Members' Benefits**

3           A further benefit of the Settlement assures that if there is an intervening change of law  
4 before final approval of the Settlement, the Settlement and Settlement benefits will continue to  
5 remain valid, enforceable and available to Settlement Class members. Agreement ¶ 23.

6           The significance of this benefit cannot be understated. For example, as explained by the  
7 Ninth Circuit in *Bateman*, in 2008 (while many FACTA lawsuits were then pending) Congress  
8 enacted the Credit and Debit Card Receipt Clarification Act ("Clarification Act"). The  
9 Clarification Act retroactively granted a *temporary* immunity from statutory damages for FACTA  
10 violations to those defendants that printed an expiration date "between December 4, 2004, and  
11 June 3, 2008 [the date the Clarification Act was enacted]." *Bateman, supra*, 623 F.3d at 717. As a  
12 result of the change of law imposed by the Clarification Act, many FACTA class action cases  
13 were dismissed without any recovery for consumers. Yedalian Decl. ¶ 30.

14           The risks posed by potential changes in the law through judicial opinions likewise cannot  
15 be understated, particularly in the dynamic area of statutory damage issues. For example, as  
16 explained in XI.A.1., above, many federal courts, including but not limited to at least three federal  
17 cases pending in the Washington federal courts, and two federal courts of appeal, have dismissed  
18 FACTA cases like this one which allege expiration date violations and seek statutory damages.  
19 Absent the Settlement, Saar's contends that this state court would likewise not have subject-matter  
20 jurisdiction due to the purported lack of any actual damage. If a future judicial Washington state  
21 court opinion supported Saar's position, then this provision of the Settlement ensures that the  
22 Settlement would nevertheless remain an enforceable settlement. Yedalian Decl. ¶ 31.

23           **E. No Collusion; The Settlement Is The Product of Extensive Arm's-Length And**  
24 **Good-Faith Negotiations**

25           The Agreement is the product of extensive, adversarial, good-faith, arm's-length  
26 discussions, negotiations, correspondence, factual and legal investigation and research, and careful  
27  
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1 evaluation of the respective parties' strengths and weaknesses, without any collusion between  
2 Plaintiff and Defendant or their respective counsel. Yedalian Decl. ¶¶ 1-8, 32-36.

3 **F. The Findings Made In This Court's Orders Granting Preliminary Approval**  
4 **Likewise Support The Grant of Final Approval**

5 The findings made in this Court's Orders granting preliminary approval of settlement are  
6 likewise adequate considerations that support the grant of final approval of the settlement.

7 **G. The Lack Of Any Opt-Outs, Objections And Requests To Appear Also**  
8 **Supports The Grant of Final Approval**

9 The lack of any opt-outs, objections and requests to appear also provides further support  
10 for the Settlement. "It is established that the absence of a large number of objections to a proposed  
11 class action settlement raises a strong presumption that the terms of a proposed class settlement  
12 action are favorable to the class members." *In re Omnivision Techs., Inc.*, 559 F.Supp.2d 1036,  
13 1043 (N.D. Cal. 2008) (quoting *Nat'l Rural Telecomms. Coop. v. DirecTV*, 221 F.R.D. 523, 529  
14 (C.D. Cal. 2004)). "The absence of a single objection to the Proposed Settlement provides further  
15 support for final approval of the Proposed Settlement." *Nat'l Rural Telecomm. Coop.*, 221 F.R.D.  
16 at 529.

17 **XII. CONCLUSION**

18 The proposed class action Settlement is fair, adequate and reasonable. It is non-collusive,  
19 and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted  
20 by experienced counsel.

21 It is respectfully requested that the Court grant final approval of the settlement and enter an  
22 order and judgment in the form proposed and submitted herewith.

23 Plaintiff also respectfully requests that the Court grant Plaintiff's Motion For Award Of  
24 Attorneys' Fees And Costs To Class Counsel And Incentive Payment To The Class Representative  
25 (set for hearing concurrently with this instant Motion).

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Respectfully submitted,



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