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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LARRY TRAN, on behalf of himself and all others similarly situated,

Plaintiff,

v.

SPROUTS FARMERS MARKET, INC. (d/b/a Sprouts Farmers Market and d/b/a Sprouts); SF MARKETS, LLC (d/b/a Sprouts Farmers Market, d/b/a Sprouts, and d/b/a SFM, LLC); and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22STCV26572
[Consolidated with Case No. 23STCV08339]

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

[Filed concurrently with:
(1) Declaration of Larry Tran,
(2) Declaration of Robert Cohen,
(3) Declaration of Chant Yedalian,
(4) Declaration of Adrian R. Bacon,
(5) Declaration of Hunter Bennett,
(6) [Proposed] Order, lodged herewith, and
(7) Proof of Service of above documents.]

<u>Hearing</u>
Date: August 19, 2025
Time: 1:30 p.m.
Dept.: SS10
Judge: Hon. William F. Highberger

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE THAT on August 19, 2025 at 1:30 p.m. or as soon thereafter as the matter may be heard before the Honorable William F. Highberger in Department SS10, located at 312 North Spring Street, Los Angeles, California 90012, Plaintiffs, Larry Tran and Robert Cohen, on behalf of themselves and on behalf of the proposed Settlement Class, will and hereby do move the Court, pursuant to California Code of Civil Procedure § 382 and California Rules of Court Rule 3.769 for an Order granting preliminary approval of the proposed class action settlement on the terms and conditions set forth in the Stipulated Settlement Agreement and Release (hereinafter sometimes referred to as "Settlement" or "Agreement"), a copy of which is attached to the Declaration of Chant Yedalian as Exhibit 1.[1]

Plaintiffs further move the Court for an Order:

1. Certifying the Settlement Class for settlement purposes;
2. Appointing Plaintiffs Larry Tran and Robert Cohen as the Class Representatives for the Settlement Class;
3. Appointing attorneys, Chant Yedalian of Chant & Company A Professional Law Corporation and Todd M. Friedman and Adrian R. Bacon of Law Offices Of Todd M. Friedman, P.C., as Class Counsel for the Settlement Class;
4. Appointing Atticus Administration LLC as the Settlement Administrator.
5. Approving the proposed notice to the Settlement Class, including the Claim Form-R, Short-Form Claim Form, Email Notice, Mailed Notice, Newspaper Notice, and Full Notice, attached to the Agreement as Exhibits A-F, respectively;
6. Directing notice to be made to the Settlement Class as described in the Agreement;
7. Preliminarily approving the Settlement subject to final review by the Court;
8. Establishing deadlines for Settlement Class members to submit a request for exclusion from the Settlement and to submit objections to the Settlement; and

[1] Capitalized terms shall have the same meanings as in the Agreement, unless indicated otherwise.

9. Setting a final approval and fairness hearing in approximately 285 days, or as soon thereafter when the Court is available.

This Motion is based upon this Notice of Motion and Motion, the Declarations and other documents filed or otherwise provided to the Court concurrently in support thereof, the papers and pleadings on file in this action, and upon such other and further evidence as the Court may adduce at the time of the hearing.

DATED: May 30, 2025

CHANT & COMPANY
A Professional Law Corporation

By: /S/ – Chant Yedalian
Chant Yedalian
Counsel for Plaintiff

DATED: May 30, 20225

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /S/ – Adrian R. Bacon
Todd M. Friedman
Adrian R. Bacon
Counsel For Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After extensive negotiations, including settlement discussions before mediation, and a mediation with the Hon. S. James Otero (Ret.) in Los Angeles on December 21, 2023, Plaintiffs Larry Tran and Robert Cohen (collectively "Plaintiffs") and Defendants Sprouts Farmers Market, Inc. and SFM, LLC (collectively "Sprouts") have reached a proposed class-wide settlement of these lawsuits.

Plaintiffs, on behalf of themselves and on behalf of the proposed Settlement Class, hereby respectfully move the Court for an Order granting preliminary approval of the proposed class action settlement.

II. FACTUAL SUMMARY

The Sprouts defendants own, manage, maintain and/or operate many brick-and-mortar stores throughout the United States, including in California, through which they sell, among other things, groceries and other goods to their retail customers. Tran Complaint ¶ 18.

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

Plaintiff Larry Tran is a customer of Sprouts. In August 2022, Mr. Tran made a purchase from a Sprouts store in California. Tran Decl. ¶ 3. Mr. Tran paid for his purchase with his credit/debit card. *Ibid*. Mr. Tran was provided at the point of sale with a customer receipt which had the first six and last four digits of his card number printed on the receipt. *Ibid*.; Tran Complaint ¶ 39.

Plaintiff Robert Cohen is also a customer of Sprouts. On or around August 3, 2022, Mr. Cohen made several purchases from a Sprouts store in California. Cohen Complaint ¶¶ 9-10. Mr. Cohen paid for each of his purchases with his credit/debit card. *Ibid*. Mr. Cohen was provided at the point of sale with several customer receipts, each of which had the first six and last four digits of his respective card number printed on the receipt. *Ibid*.

FACTA's remedial provisions apply only to consumers. More specifically, the remedial statute (15 U.S.C. § 1681n) provides a cause of action to any "consumer" whose FACTA rights (15U.S.C. § 1681c(g)(1)) were violated because more than the last 5 digits of their card number or their card's expiration date was printed on a receipt. See, *e.g.*, *Armes v. Sogro, Inc.*, 2011 U.S. Dist. LEXIS 33241 *7 (E.D. Wis. 2011). The corollary to this is that if a card is a commercial card, such as, for example, a card issued to a corporation, FACTA's remedial provisions are not available.

During the Settlement Class period ("Settlement Class Period") in this case, which spans from August 16, 2020 through October 31, 2022 for debit and credit cards excluding EBT cards[2] and from March 15, 2021 through April 15, 2023 for EBT cards, there were 3,351,078 impacted credit and debit cards, including EBT cards. Agreement ¶ 2; Bennett Decl. ¶¶ 8 and 10.

While the exact number of Settlement Class members is not known, the number of Settlement Class members is expected to be smaller than the overall number of impacted cards. More specifically, there may be repeat Sprouts' customers who may have made multiple purchases during the Settlement Class period and some of those purchases may have also involved the use of a different credit card or different debit card but the data to date may not yet be sufficient to determine that the purchases were made by the same person using different cards. As part of the claims process, Settlement Class members will also need to verify that they used their personal (consumer) card for the subject transaction.

These distinctions are important because they reflect on Sprout's position that the maximum $1,000 in statutory damages under § 1681n(a)(1)(A) are to be awarded on a per

[2] EBT cards mean and refer to electronic benefits transfer cards that allow for certain government benefits to be issued through a magnetically encoded payment card.

consumer basis, not a per transaction basis. *Stillmock v. Weis Markets, Inc.*, 385 Fed.Appx. 267, 272 (4th Cir. 2010) (agreeing with this construction of the statute that would allow no more than $1,000 to any consumer regardless of the number of receipts issued to the consumer).

Mr. Tran commenced this action in this Court on August 16, 2022 by filing a proposed class action complaint against Sprouts.[3] Plaintiff's Complaint alleges, *inter alia*, that Sprouts willfully violated FACTA by printing more than the last five digits of credit and debit cards on electronically printed customer receipts printed at a point of sale or transaction.

In addition to filing his Complaint, Mr. Tran, through his counsel, sent to Sprouts a letter on August 17, 2022 entitled Notice To Cease And Desist FACTA Violations; And Notice Of Class Action Lawsuit. Yedalian Decl. ¶ 4. Enclosed with the August 17, 2022 letter was a copy of the filed Complaint. *Ibid.*

On September 6, 2022, Mr. Cohen filed a proposed class action complaint against Sprouts in Orange County Superior Court. Plaintiff's Complaint alleges, *inter alia*, that Sprouts willfully violated FACTA by printing more than the last five digits of credit and debit cards on electronically printed customer receipts printed at a point of sale or transaction. See *Cohen, et al. v. Sprouts Farmers Market, Inc., et al.*, OC Superior Court Case No. 22STCV26572 (the "*Cohen* Action"). Sprouts removed the *Cohen* Action to the United States District Court for the Central District of California where it was assigned to Judge David O. Carter with case number 8:22-cv-01837-DOC-DFM. Mr. Cohen filed a motion to remand the *Cohen* Action back to Orange County Superior Court. On December 8, 2022, Judge Carter issued an Order remanding the *Cohen* Action back to Orange County Superior Court.

Following remand, the *Cohen* Action was ultimately transferred to this Court and consolidated with the earlier filed *Tran* action.

Sprouts ultimately filed a Demurrer based upon, *inter alia*, *Limon v. Circle K Stores Inc.*, 84 Cal.App.5th 671 (2022).

[3] Based on certain records, the Complaint named Sprouts Farmers Market, Inc. and SF Markets, LLC d/b/a SFM, LLC.

After briefing and oral argument, the Court granted Sprouts' Demurrer and dismissed the consolidated actions. Mr. Tran (on January 5, 2024) and Mr. Cohen (on January 8, 2024) each filed a Notice of Appeal regarding the Dismissal. Before briefing was set to begin in the appeals, all parties stipulated to remand to this Honorable Court for the purpose of effectuating the proposed class settlement. The Court of Appeal issued its remand Order, remanding both actions to this Court, on September 18, 2024.

III. SETTLEMENT DISCUSSIONS, INCLUDING THE EXTENSIVE MEDIATION NEGOTIATIONS WITH THE MEDIATOR

The Parties had commenced settlement negotiations well before the filing of Sprouts' Demurrer and these settlement discussions continued after the ruling on the Demurrer. Yedalian Decl. ¶ 11.

The settlement discussions included an in-person mediation with Hon. S. James Otero (Ret.) in Los Angeles on December 21, 2023. Yedalian Decl. ¶ 12.

In preparation for the mediation, underlying facts and information were exchanged between Plaintiffs and Sprouts to facilitate the discussions. *Id.* at ¶ 13.

Also, as part of the preparation for the mediation, Judge Otero requested briefs from each of the Parties addressing the pertinent issues and disputes. *Id*. at ¶ 14.

Judge Otero also held separate telephonic conferences with the Parties' respective counsel in advance of the mediation to discuss pertinent issues. *Id*. at ¶ 15.

The Parties made substantial progress at the mediation. At the conclusion of the mediation, Judge Otero made a mediator's compromise proposal comprising key settlement terms, which he recommended both sides accept. *Id*. at ¶ 17. Both sides accepted the mediator's proposal at the mediation. *Id*. at ¶ 18.

Thereafter, the Parties worked on memorializing, in writing, all key terms. On February 17, 2024 the Parties finalized the memorialization of all key terms of the proposed class-wide settlement in a written Memorandum of Understanding ("MOU"). *Id*. at ¶ 19. The MOU was thereafter circulated for signatures and fully executed on February 22, 2024. *Ibid.*

Although the MOU was finalized and executed, it was with the understanding that the

Parties still had matters that they were working on and that they would prepare a long-form settlement agreement and related documents. *Id*. at ¶ 20. Various other issues were also addressed and worked on, including class member discovery and protective order and data security related matters. *Id*. at ¶ 21.

The Parties thereafter continued their efforts, as well as continued to consult with the Settlement Administrator, Atticus Administration LLC, until May 2025 when they reached final agreement on the long-form settlement agreement and related class notices. *Id*. at ¶ 22.

The long-form settlement agreement, entitled Stipulated Settlement Agreement and Release (hereinafter sometimes referred to as "Settlement" or "Agreement") (which includes the various notices to the Settlement Class) is a product of the extensive research, investigation, exchanges and negotiations, including but not limited to the mediation efforts with Judge Otero. Exh. 1; Yedalian Decl. ¶ 23.

IV. THE SETTLEMENT

Subject to the Court's approval, the Parties have agreed to settle this matter upon the terms and conditions set forth in the Agreement. A summary of the Settlement terms is as follows:

- For the purposes of the Settlement, Plaintiffs and Sprouts have stipulated to the certification of the following Settlement Class: All persons within the United States to whom Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring nationwide from August 16, 2020 through October 31, 2022 for debit and credit cards excluding EBT cards and from March 15, 2021 through April 15, 2023 for EBT cards, and wherein the receipt displayed more than the last five digits of the person's credit card or debit card number. The Parties understand and agree that the terms "credit card(s)" or "debit card(s)" includes EBT cards for purposes of settlement. Any individuals who fall within this definition shall be considered Settlement Class members. Agreement ¶ 2.

- While the exact number of Settlement Class members is not known, and the number of Settlement Class members is expected to be smaller than the number of overall impacted cards, during the Settlement Class period ("Settlement Class Period") in this case, which spans from August 16, 2020 through October 31, 2022 for debit and credit cards excluding EBT

cards and from March 15, 2021 through April 15, 2023 for EBT cards, there were 3,351,078 impacted credit and debit cards, including EBT cards. Agreement ¶ 2; Bennett Decl. ¶¶ 8 and 10.

- Sprouts will establish a non-reversionary cash fund in the amount of $5,000,000 (the "Cash Fund") that will be used to pay for claims, Class Counsel's fees and expenses, notice and administration costs, and an enhancement award to the Class Representatives. Agreement ¶ 3(a)-(b).
- The Settlement allows each Settlement Class member to submit a claim form for a payment equal to a Pro-Rata Share of the Net Cash Fund. Agreement ¶ 3(b).
- Settlement Class members will have 180 days from the date Full Notice is first posted on the Settlement Website to submit a claim (the "Claims Period"). Agreement ¶ 3(d).
- Each Settlement Class member may submit only one claim, regardless of whether they made one or more credit or debit card transactions during the Settlement Class Period. A valid claim will require that a Settlement Class member submit either a Short-Form Claim Form (if they are provided one by the Settlement Administrator) or Claim Form-R. The Short-Form Claim Form, Exhibit B to the Agreement (or its electronic version), may be used only where the Settlement Administrator has determined that the records show that the cardholder used a credit or debit card for one or more impacted card transactions at any Sprouts grocery store within the United States during the Settlement Class Period. If eligible to submit a Short-Form Claim Form, the Settlement Class member must timely submit a completed Short-Form Claim Form and state that he or she used their own personal card for such transaction. Alternatively, Settlement Class members may submit a claim by completing and submitting Claim Form-R, Exhibit A to the Agreement (or its electronic version), and submitting it together with required documentation. For Claim Form-R, in addition to stating that he or she used their own personal card for the subject transaction, proof of claim may consist of the original or a copy of either (1) a customer receipt that contains more than the last five digits of his or her credit card or debit card and shows that he or she made a transaction at any Sprouts grocery store within the United States at any time during the Settlement Class Period, or (2) an original or a copy of his or her credit card or debit card statement (which will be encouraged to be in redacted form) showing that he or she made a

transaction at any Sprouts grocery store within the United States at any time during the Settlement Class Period. Claim forms may be submitted electronically on the internet through the Settlement Website or mailed to the Settlement Administrator's postal address or faxed to the Settlement Administrator's facsimile number. Agreement ¶ 3(d).

- In addition to monetary relief, the Settlement also provides for equitable relief whereby a FACTA compliance policy shall be implemented as follows: Not later than thirty (30) days after the Settlement Date, Sprouts shall implement a written company policy which states that it will not print more than the last 5 digits of the credit or debit card number and the credit or debit card expiration date upon any printed receipt provided to any customer who uses a credit or debit card to transact business with Sprouts. Agreement ¶ 3(e).

- The Parties have agreed on a plan for the disposition of the anticipated residue. If any residual funds from the Net Cash Fund remain after claims payments are made to the Settlement Class members, any and all such residual funds will not revert to Sprouts and, instead, will be distributed as follows: To the extent postage and other costs render it economically feasible, the (1) the total amount of any settlement checks not cashed after 180 days shall be sent out in a second distribution to those Settlement Class members who have cashed checks in the first round of payments; and (2) any settlement checks that remain uncashed after the second round of distribution shall be sent to an appropriate 501(c)(3) *cy pres* recipient that promotes consumer privacy and/or identity theft protection. The Parties propose the Electronic Frontier Foundation as the *cy pres* beneficiary of any residual funds. Agreement ¶ 3(b)(i).

- To the extent an email address for a Settlement Class member is known by the Settlement Administrator, the Settlement Administrator will send to all such Settlement Class members, via email, the notice ("Email Notice") substantially in the form attached to the Agreement as Exhibit C. To the extent an email address for a Settlement Class member is not known by the Settlement Administrator, but a postal mailing address for a Settlement Class member is known by the Settlement Administrator, the Settlement Administrator will send to all such Settlement Class members, via United States Postal Service ("USPS") mail, the notice ("Mailed Notice") substantially in the form attached to the Agreement as Exhibit D. Newspaper

Notice in the form attached to the Agreement as Exhibit E will also be provided. Agreement ¶ 4(a)-(c).

- Sprouts shall have (i) 60 days following entry of a final order and judgment by the Court; (ii) 30 days following the expiration of all allowable periods for appeal or discretionary appellate review without an appeal, or (iii) 30 days following final affirmance of the Judgment on appeal or remand, or final dismissal or denial of all such appeals and requests for discretionary appellate review, whichever of the foregoing is later, to fund the Cash Fund, except that Sprouts will deposit an amount necessary to pay for the estimated costs of initial notice to the class and claims administration ($1,340,431.20) no later than thirty (30) business days after the Court enters the order granting preliminary approval. The estimated costs of notice and administration contributed by Sprouts upon preliminary approval shall be included in and deducted from the Cash Fund, with the balance ($3,659,568.80) due after final approval as described above. Agreement ¶ 3(a).
- Settlement Class members will have until sixty (60) calendar days after the first date of posting the Full Notice on the Settlement Website to exclude themselves from the Settlement (the "Opt-Out Deadline"). In the event that more than two-percent (2%) of Settlement Class members opt out of the Settlement, Sprouts shall have the right, but not the obligation, to rescind this Agreement. Agreement ¶ 6.
- Settlement Class members will have forty-five (45) calendar days after the first date of posting the Full Notice on the Settlement Website to object to the Settlement. Agreement ¶ 7.
- The Settlement, including the claims process, will be administered by Atticus Administration LLC, subject to the Court's approval. Agreement ¶ 3(c).
- Class Counsel will apply to the Court for an incentive (service) award of up to $10,000 for each of the named Plaintiffs, to be paid from the Cash Fund, to compensate each of them for their respective services as Class Representatives. Agreement ¶ 11.
- Class Counsel will apply to the Court for an award of up to $1,666,666.67, to be paid from the Cash Fund, plus an award of Class Counsel's litigation costs of up to $75,000, also to be paid from the Cash Fund. Agreement ¶ 12.

- Class Counsel's motion for an award of attorneys' fees and costs and the Class Representatives' motion for service (or incentive) award will be posted on the Settlement Website no later than thirty (30) calendar days before the fairness (final approval) hearing scheduled by the Court. Agreement ¶ 7(b). Any objection must be mailed to the Settlement Administrator and postmarked no later than twenty-one (21) calendar days before the fairness hearing.[4] *Ibid.*

- The Agreement includes a "No Admission" term whereby "Nothing contained in this Agreement, nor the consummation of the Settlement, is to be construed or deemed an admission of liability, culpability, or wrongdoing on the part of any of the Parties." Agreement ¶ 20.

V. CERTIFICATION FOR SETTLEMENT PURPOSES IS WARRANTED

For the reasons set forth more fully below, the Settlement Class satisfies the prerequisites for certification under Code of Civil Procedure § 382. Section 382 provides in pertinent part:

> [W]hen the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

There are two requirements to section 382: "(1) There must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." *Daar v. Yellow Cab Co.*, 67 Cal.2d 695, 704 (1967) (citations omitted). To clarify these requirements, the California Supreme Court has looked to Federal Rule of Civil Procedure 23 to explain that the community-of-interest requirement itself embodies three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Richmond v. Dart Indus., Inc.*, 29 Cal.3d 462, 470 (1981).

California law and policy favor the fullest and most flexible use of the class action device. *Richmond*, 29 Cal.3d at 469-473. Indeed, "Courts long have acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system"

[4] To the extent the 45-day objection period for objections to the settlement (Agreement ¶ 7(a)) and the objection period for fees, costs and incentive awards (Agreement ¶ 7(b)) require specifying different dates for the respective objection deadlines in the class notice documents (Exhibits C-F), the language of the class notice documents will be adjusted accordingly.

particularly where the rights of consumers are at issue. *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429, 434, 445 (2000). Any doubt as to the appropriateness of class treatment should be resolved in favor of certification. *Richmond*, 29 Cal.3d at 473-475.

A. <u>The Proposed Class Is Ascertainable</u>

The ascertainability requirement assures that the class will be readily definable. Subsumed within this requirement is the requirement that the class be so numerous that joinder of all parties is impracticable. C.C.P. § 382.

1. <u>The Class Is Readily Definable</u>

The law is well-established that a class is ascertainable if it is adequately defined by objective characteristics, even if class members cannot be individually identified. *Daar*, 67 Cal.2d at 706. Indeed, all that is required is that the class describe "a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Fed. Bank*, 81 Cal.App.4th 816, 828 (2000). "The goal in defining the class is to use terminology that will convey sufficient meaning to enable persons hearing it to determine whether they are members of the class." *Cho v. Seagate Tech. Holdings, Inc.*, 177 Cal.App.4th 734, 746 (2009).

Here, the proposed Settlement Class is readily definable by objective characteristics and consists of "All persons within the United States to whom Defendants provided an electronically printed receipt at the point of sale or transaction, in a transaction occurring nationwide from August 16, 2020 through October 31, 2022 for debit and credit cards excluding EBT cards and from March 15, 2021 through April 15, 2023 for EBT cards, and wherein the receipt displayed more than the last five digits of the person's credit card or debit card number. The Parties understand and agree that the terms 'credit card(s)' or 'debit card(s)' includes EBT cards for purposes of settlement." Agreement ¶ 2. The definition clearly uses terminology "to enable persons hearing it to determine whether they are members of the class." *Cho*, 177 Cal.App.4th at 746.[5]

[5] California's policy in favor of class actions also provides that: "'[I]f necessary to preserve the case as a class action, the court itself can and should redefine the class where the evidence before it shows such a redefined class would be ascertainable.'" *Cho*, 177 Cal.App.4th at 748.

2. Joinder Of All Parties Is Impracticable

In addition to being ascertainable, a class may be certified when the proposed class is so numerous as to make joinder impracticable. "[I]mpracticability does not mean impossibility but only that it would be difficult or inconvenient to have all members of the class come before the court individually." *Occidental Land, Inc. v. Superior Court*, 18 Cal.3d 355, 364 n.7 (1976). As few as 40 class members can raise a presumption that joinder is impracticable (1 *Newberg on Class Actions*, 4th Ed. 2002, §3.5), although more often, certified classes are larger (see, e.g., *Occidental Land, Inc.*, 18 Cal.3d at 364 n.7 ["more than 150 individuals"]; *Chance v. Superior Court*, 58 Cal.2d 275, 291 (1962) ["[I]t is impracticable to bring all the over 2,000 investors before the court other than by class action"]).

Here, while the exact number of Settlement Class members is not known, and the number of Settlement Class members is expected to be smaller than the overall number of if impacted credit/debit cards, there were 3,351,078 impacted credit/debit cards. Agreement ¶ 2; Bennett Decl. ¶¶ 8 and 10. This size surpasses the class sizes which California courts have deemed satisfy the numerosity requirement. The fact that, by the very nature of the Settlement Class, not all of its members are known and cannot be readily identified, further dictates that joinder is impracticable.

B. Common Questions Of Law And Fact Predominate

The predominance requirement simply means that there are questions of law or fact common to class members which predominate over individual issues. *Hicks v. Kaufman & Broad Home Corp.*, 89 Cal.App.4th 908, 916 (2001).

In assessing whether common issues predominate over individual issues, it is not necessary that the class members' claims or circumstances be identical. *L.A. Fire & Police Protective League v. Los Angeles*, 23 Cal.App.3d 67, 74 (1972). Indeed, as the California Supreme Court has explained:

> "We long ago recognized 'that each class member might be required ultimately to justify an individual claim does not necessarily preclude maintenance of a class action.' (*Collins v. Rocha*, *supra*, 7 Cal.3d at p. 238,.) Predominance is a comparative concept, and **'the necessity for class members to individually establish eligibility and damages does not mean individual fact questions predominate.'**
>
> …

Nor is it a bar to certification that individual class members may ultimately need to itemize their damages. We have recognized that the need for individualized proof of damages is not per se an obstacle to class treatment." *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 334 (2004) (emphasis added).

As the California Supreme Court has also explained:

"As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1022 (2012). (emphasis added).

Thus, as set forth above, the predominance standard recognizes that permissible variations may exist among the claims of individual class members and that, as long as common issues predominate over the individual issues, the variations will not defeat class certification. *Richmond*, 29 Cal.3d at 473-476. Further, and as also explained above, the possibility that some matters may require separate proof for liability or damages likewise will not defeat class certification. *Vasquez v. Superior Court*, 4 Cal.3d 800, 815 (1971).

"Individual issues will often be present in a class action, especially in connection with individual defenses against class plaintiffs, rights of individual class members to recover in the event a violation is established, and the type or amount of relief individual class members may be entitled to receive. Nevertheless, it is settled that the common issues need not be dispositive of the litigation. The fact that class members must individually demonstrate their right to recover, or that they may suffer varying degrees of injury, will not bar a class action; nor is a class action precluded by the presence of individual defenses against class plaintiffs." *Ticconi v. Blue Shield of Cal. Life & Health Ins. Co.*, 160 Cal.App.4th 528, 546 (2008).

Here, all class members share two common legal questions – whether Sprouts violated FACTA by printing more than the last five digits of the debit and credit card number on receipts, and whether its practice of doing so was "willful." None of the relevant questions relates to the conduct of the class members, but rather all focus on Sprouts' conduct and culpability in violating FACTA. See, *e.g.*, *Tchoboian v. Parking Concepts, Inc.*, 2009 WL 2169883 *5 (C.D. Cal. 2009), petition for permission to appeal grant of certification denied October 20, 2009, 9th Cir. Docket No. 09-80132 ("The overriding legal issue is whether [defendant']s alleged noncompliance was willful so that the class members are entitled to statutory damages. Moreover, whether [defendant] violated FACTA is a combined question of law and fact common to all members."); *Medrano v. WCG Holdings, Inc.*, 2007 WL 4592113 *2 (C.D. Cal. 2007) ("There is a common

core of salient facts across the class. Each member of the proposed class received a non-compliant receipt from [Defendant] after the applicable compliance deadline."); *Kesler v. Ikea U.S., Inc.,* 2008 WL 413268 *3 (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.")

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

C. Plaintiffs' Claims Are Typical Of Those Of The Settlement Class

The typicality requirement is satisfied if a representative plaintiff's claims arise from a similar event, practice, or course of conduct that gives rise to the claims of other class members, or if his or her claims are based upon similar legal theories. *Classen v. Weller*, 145 Cal.App.3d 27, 46-47 (1983) ("[I]t has never been the law in California that the class representative must have *identical* interests with the class members"). Indeed, "only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Richmond*, 29 Cal.3d at 470. Thus, as with commonality, typicality does not require that Plaintiffs' claims be identical to those of other class members, only that the claims and the defenses applicable to them are sufficiently similar to those of other class members. *Classen*, 145 Cal.App.3d at 46-47.

Here, Plaintiffs and all other Settlement Class members allege the same injury, violation of their FACTA rights resulting from the same course of conduct — the printing of more than the last five digits of their card number on a credit or debit card receipt. Accordingly, this lawsuit is based on conduct which is not unique to Plaintiffs, but on standardized, uniform conduct that is common to all class members. Moreover, the same relief, specifically, statutory damages under 15 U.S.C. § 1681n, is sought for all class members for Sprouts' "willful" violation of FACTA. Accordingly,

the typicality requirement is satisfied. *Tchoboian*, 2009 WL 2169883 *5 (C.D. Cal. 2009) (holding that typicality is satisfied because "[Plaintiff]'s claim is, in fact, 'substantially identical' to the claims of the proposed class members-namely, he alleges that [defendant] issued him a noncompliant receipt in willful violation of the FACTA"); *Medrano*, 2007 WL 4592113 *3 (same); *Kesler*, 2008 WL 413268 *4 (same); *Murray v. GMAC Mortgage Corp.*, 2007 WL 1100608 *5 (N.D. Ill. 2007) ("*Murray II*") (typicality satisfied where, despite minor factual discrepancies, all putative class members had "the same essential characteristics").

D. Plaintiffs And Counsel Fairly And Adequately Represent the Settlement Class

The adequacy requirement is met by satisfying two conditions. Plaintiff must demonstrate that "plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). Again, "only a conflict that goes to the very subject matter of the litigation will defeat a party's claim of representative status." *Richmond*, 29 Cal.3d at 470. Thus, the conflict must be "irreconcilable" for it to be of any relevance. *Nat'l Solar Equip. Owners Ass'n v. Grumman Corp.*, 235 Cal.App.3d 1273, 1286 (1991). Plaintiffs meet both of the criteria for adequacy of representation.

First, Plaintiffs' counsel is qualified to handle this litigation. Plaintiffs are represented by highly capable and competent counsel experienced in class action litigation, including FACTA lawsuits. Yedalian Decl. ¶¶ 33-37, 44-45, 69-92; Bacon Decl. ¶¶ 12-27.

Second, Plaintiffs have no conflict with the other Settlement Class members since each of them has been exposed to the same business practice, the identical FACTA cause of action is asserted on behalf of Plaintiffs and the Settlement Class, and the same types of remedies are sought for all of them in the form of statutory damages arising from the same facts, *i.e.*, Sprouts' printing of more than the last five digits of the respective credit or debit card on receipts. Tran Decl. ¶¶ 3-7; Cohen Decl.¶¶ 11-13 Further, Plaintiffs have shouldered the responsibility of serving as Class Representatives in this litigation and are committed to continue to pursue their responsibilities in this matter. Plaintiffs took the risks of incurring substantial costs had they ended up losing their appeals of this matter. Tran Decl. ¶¶ 6-7; Cohen Decl. ¶ 4.

Thus, there is no question that Plaintiffs and their counsel will continue to vigorously and competently pursue the interests of the Settlement Class.

E. A Class Action Is Also Superior For The Resolution Of This Controversy

Class certification is also appropriate because it is the only economically feasible method for fair and efficient adjudication. Any individual Settlement Class member's recovery remains modest relative to the time and expense required to properly prosecute the claims. As repeatedly recognized by the California Supreme Court, "class actions are appropriate 'when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.'" *Linder*, 23 Cal.4th at 446.

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

Likewise, as the Ninth Circuit explained in another FACTA case, the purpose of the class action device is "to allow integration of numerous small individual claims into a single powerful unit." *Bateman*, 623 F.3d at 722.

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

VI. THE TWO-STEP APPROVAL PROCESS

Any settlement of class litigation must be reviewed and approved by the court. California Rules of Court, Rule 3.769. Approval occurs in two steps: (1) an early (preliminary) review by

the trial court, and (2) a subsequent (final) review after notice has been distributed to the class members for their comments or objections. California Rules of Court, Rule 3.769 (c)-(g). The preliminary approval hearing and final approval (fairness) hearing coincide with these two required steps. The present motion seeks preliminary approval and the setting of a final approval hearing.

VII. THE PRESUMPTION OF FAIRNESS

Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. *Newberg*, § 11:51.

Courts do not substitute their judgment for that of the proponents, particularly where, as here, settlement has been reached with the participation of experienced counsel familiar with the litigation. *Hammon v. Barry*, 752 F.Supp 1087, 1093 (D. D.C. 1990); *Steinberg v. Carey*, 470 F.Supp. 471, 474 (S.D. N.Y. 1979); *Sommers v. Abraham Lincoln Federal Savings & Loan Assoc.*, 79 F.R.D. 571, 573-574 (E.D. Pa. 1978); *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995).

While the recommendations of counsel proposing the settlement are not conclusive, the Court should take them into account and afford them "great weight," particularly where, as here, they are capable and competent, have experience with this type of matter, and have been intimately involved in this litigation. *Nat'l Rural Telecomm. Coop. v. DirecTV*, 221 F.R.D. 523, 528 (C.D. Cal. 2004) ("'Great weight' is accorded to the recommendation of counsel, who are most closely acquainted with the facts of the underlying litigation. [citation.] This is because '[p]arties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in the litigation.'"); *Newberg*, § 11:47; *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1800-1801 (1996).

As further explained below, this presumption of fairness is further bolstered by the fact that the Settlement was reached through the extensive negotiations that occurred with the assistance of a mediator Hon. S. James Otero (Ret.). *Dunk*, 48 Cal.App.4th at 1803; *Satchell v. Fed. Express Corp.*, 2007 WL 1114010 *4 (N.D. Cal. 2007).

VIII. THIS SETTLEMENT IS FAIR AND REASONABLE

The Settlement is well within the range of reasonableness and preliminary approval should be granted. Fairness is presumed when: (1) the settlement is reached through arm's-length bargaining; (2) investigation is sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors (after notice is given to the class) is small. *Dunk*, 48 Cal.App.4th at 1802. "The trial court has broad discretion to determine whether the settlement is fair" and can consider factors tailored to the specific facts and circumstances of each particular case. *Dunk*, 48 Cal.App.4th at 1801. Thus, "the list of factors [that the court may consider] is not exhaustive" and no single factor is required to determine whether a class action settlement is fair. *Dunk*, 48 Cal.App.4th at 1801. Indeed, "one factor alone may prove determinative in finding sufficient grounds for court approval." *Nat'l Rural Telecomm. Coop. v. DirecTV*, 221 F.R.D. 523, 525 (C.D. Cal. 2004); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993), *cert. denied*, 512 U.S. 1220 (1994).

Due to the impossibility of predicting any litigation result with certainty, a court's evaluation of a settlement essentially amounts to "nothing more than `an amalgam of delicate balancing, gross approximations and rough justice.'" *Dunk*, 48 Cal.App.4th at 1801.

> "Due regard should be given to what is otherwise a private consensual agreement between the parties. The inquiry 'must be limited to the extent necessary to reach a reasoned judgment that the 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.' [Citation.] "Ultimately, the [trial] court's determination is nothing more than `an amalgam of delicate balancing, gross approximations and rough justice.'" *Dunk*, 48 Cal.App.4th at 1801.

Some of the factors considered in evaluating the fairness of this Settlement are as follows:

A. <u>Risks of Continuing Litigation</u>

Absent this Settlement, there are very real risks involved in continued litigation, including extensive delays, appeals and the possibility that Settlement Class members may ultimately end up with no recovery. Yedalian Decl. ¶ 25; Bacon Decl. ¶ 6-11.

1. Outright Dismissal, The Case Has Already Been Dismissed By The Trial Court

The risk of outright dismissal, with class members not recovering anything, is not just a hypothetical risk. Sprouts has already prevailed on its Demurrer in the trial court based upon *Limon v. Circle K Stores Inc.*, 84 Cal.App.5th 671 (2022), and, absent reversal on appeal, there will be no recovery.

While Plaintiffs have appealed, and believe in their prospects for reversal on appeal, there are no guarantees in litigation. Moreover, at a minimum, appeals will take substantial time. Yedalian Decl. ¶ 26-27

FACTA cases are currently high risk. While *Limon* is a California court of appeal opinion which resulted in this Court granting dismissal on the basis that it is bound by published California court of appeal opinions, FACTA cases have resulted in dismissals in many other jurisdictions too.

For example, many federal courts, including the Second, Third and Eleventh Circuits have dismissed FACTA excess digits cases involving the printing of the first six digits and last four digits, which are the exact same sets of digits Sprouts is accused of printing in this case. *Katz v. Donna Karan Company, L.L.C.*, 872 F.3d 114 (2nd Cir. 2017); *Kamal v. J. Crew Grp., Inc.*, 918 F.3d 102 (3rd Cir. 2019); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917 (11th Cir. 2020). The dismissals are based on the position that plaintiffs who allege such violations without any accompanying actual injury do not sustain any "concrete injury" sufficient to satisfy Article III standing requirements in federal court.

In addition, the Ninth Circuit, Second Circuit and Seventh Circuits have dismissed FACTA cases which allege expiration date violations that seek statutory damages. *Bassett v. ABM Parking Servs., Inc.*, 883 F.3d 776 (9th Cir. 2018)[6]; *Crupar-Weinmann v. Paris Baguette America, Inc.*, 861 F.3d 76 (2nd Cir. 2017); *Meyers v. Nicolet Rest. of De Pere, LLC*, 843 F.3d 724 (7th Cir. 2016).

Class Counsel has received several dismissal orders in FACTA expiration date cases and FACTA excess digit cases in federal and state court. *E.g.*, *Jacobson v. Peter Piper Inc.*, No. 4:16-

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[6] Prior to the Ninth Circuit's opinion, Class Counsel had obtained a published opinion from a federal district court holding that a FACTA expiration date violation satisfied Article III. *Deschaaf v. American Valet & Limousine, Inc.*, 234 F.Supp.3d 964 (D. Ariz. Feb. 15, 2017). Yedalian Decl. ¶ 30 at fn. 2.

cv-00596-JAS-LCK (D. Ariz. Aug. 3, 2018); *Llewellyn v. AZ Compassionate Care Inc.*, No. 2:16-cv-04181-DGC, 2017 WL 1437632 (D. Ariz. Apr. 24, 2017); *Gant v. Fondren Orthopedic Group. L.L.P.*, No. 4:16-cv-00648, 2017 WL 4479955 (S.D. Tex. May 23, 2017); *O'Shea v. P.C. Richard & Son, LLC*, No. 1:15-cv-09069-KPF, 2017 WL 3327602 (S.D. N.Y. Aug. 3, 2017); *Batra v. RLS Supermarkets LLC*, No. 3:16-cv-02874-B, 2017 WL 3421073 (N.D. Tex. Aug. 9, 2017); *Noble v. Nevada Checker Cab Corp.*, No. 2:15-cv-02322-RCJ-VCF, 2016 WL 4432685 (D. Nev. Aug. 19, 2016); *Miles v. The Company Store, Inc.*, No. 16-CVS-2346 (North Carolina Superior Court Nov. 16, 2017); *Nowe v. Essex Technology Group, LLC*, No. 17-1-3769-99 (Georgia Superior Court Jan. 12, 2018); *McCloud v. Save-A-Lot Knoxville, LLC*, 2019 WL 2250269 (E.D. Tenn. May 24, 2019). Yedalian Decl. ¶ 31.

In short, FACTA litigation has been extremely high risk and the risks are not hypothetical as demonstrated by many actual losses by Class Counsel. Yedalian Decl. ¶ 32.

However, Sprouts knows that Class Counsel will zealously prosecute matters, through conclusion, and that is a substantial factor in Sprouts' decision to settle this case. For example, Class Counsel appealed, briefed and argued the issue of Article III standing in a FACTA case involving the first digit and the last four digits before the Ninth Circuit Court of Appeals. *Noble v. Nevada Checker Cab Corp.*, 2018 WL 1223484 (9th Cir. March 9, 2018). While Class Counsel lost that appeal in that case, he was able to reverse a dismissal and have a case remanded to California state court in another FACTA case which Class Counsel appealed to the Ninth Circuit. *Marshall v. Motel 6 Operating LP*, 825 F.App'x 527 (9th Cir. 2020); Yedalian Decl. ¶ 33.

Class Counsel has also argued an appeal before the Eleventh Circuit in a FACTA case involving both excess digits and expiration date. *Taylor v. Fred's, Inc.,* Eleventh Circuit No. 18-10832. That case is currently stayed due to a pending bankruptcy filed after oral argument. Yedalian Decl. ¶ 34.

Class Counsel also received a published opinion from the D.C. Circuit in another appeal which he and his co-counsel were prosecuting and they successfully obtained a reversal of the district court's dismissal order in that FACTA case. *Jeffries v. Volume Services America, Inc.*, 928 F.3d 1059 (D.C. Cir. July 2, 2019). To date, Class Counsel and his co-counsel in *Jeffries* are the

only plaintiff's counsel to have prevailed in a published federal circuit court opinion on establishing Article III standing in a FACTA case which does not plead actual damages. Yedalian Decl. ¶ 35.

Class Counsel also has the distinction of obtaining the first published opinion issued in a FACTA case by the highest state court of any state. *Baskin v. PC Richard & Son*, 246 N.J. 157 (2021). In *Baskin*, after the New Jersey trial court (the Superior Court of New Jersey, Law Division, Ocean County), and the New Jersey court of appeal (Appellate Division) both held that plaintiff's class allegations should be dismissed, the New Jersey Supreme Court accepted Class Counsel's petition for review, heard oral argument which Mr. Yedalian argued on behalf of plaintiff, and, in a unanimous opinion, the New Jersey Supreme Court reversed and reinstated the class claims. *Baskin* resulted in a huge victory for various class action principles and they will apply beyond FACTA cases. Yedalian Decl. ¶ 36.

Baskin also limited the applicability of, if not implicitly overruled, a published New Jersey court of appeal opinion (*Local Baking Prods., Inc. v. Kosher Bagel Munch, Inc.*, 421 N.J. Super. 268 (App. Div. 2011)), which is a case which precludes class treatment to certain statutory causes of action. Prior to *Baskin*, that appellate opinion (*Local Baking*) had been relied upon by the defense bar in the State of New Jersey to defeat class treatment of statutory causes of action which seek statutory damages. Yedalian Decl. ¶ 37.

2. "Willfulness"

In order to recover any statutory damages and other remedies under 15 U.S.C. § 1681n, Plaintiffs must show that Sprouts engaged in "willful" conduct. However, Sprouts has vigorously denied that its conduct was willful. Yedalian Decl. ¶ 38. In contrast, Plaintiffs believe, among other things, that the printing of more than the last five digits of credit and debit cards was reckless and obvious to Sprouts and the result of a lack of adequate measures to safeguard consumer rights. Yedalian Decl. ¶ 38.

Regardless of how strongly the Parties feel about the merits, the Parties face issues and risks concerning how the legal requirements for a "willful" violation of FACTA will be applied to the particular facts of this case. Yedalian Decl. ¶ 39.

3. Class Certification

The Parties have sharply divergent positions on class certification in this case, absent a settlement. Sprouts has denied that for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment. Yedalian Decl. ¶ 40.

Plaintiff believe that the Ninth Circuit's decision in *Bateman v. American Multi-Cinema, Inc.*, 623 F.3d 708 (9th Cir. 2010), which reversed the denial of class certification in a FACTA case, as well as *Baskin* which reversed the dismissal of class allegations in a FACTA case, both strongly support certification in this case. Yedalian Decl. ¶ 41.

Yet, absent a settlement, class certification remains a hotly contested matter in this case, and there are risks attendant in continued litigation of these issues, including, at a minimum, delays and potential appeals. Yedalian Decl. ¶ 42.

For example, after the Ninth Circuit's decision in *Bateman*, one district court within the Central District denied class certification in a FACTA case, *Martin v. Pacific Parking Systems, Inc.*, 2012 WL 2552694 (C.D. Cal. July 2, 2012). On September 6, 2012, the Ninth Circuit granted a Rule 23(f) petition for permission for discretionary leave to appeal the district court's denial of certification in *Martin* (9th Cir. Docket No. 12-80144), and on appeal it was held that the district court did not abuse its discretion based upon the facts in that case. 2014 WL 3686135 (July 25, 2014). Yedalian Decl. ¶ 43.

As another example, as explained above in Section VIII.A.3., the risk of an adverse class certification outcome materialized in a published appellate opinion in New Jersey state court in another FACTA case prosecuted by Class Counsel. In *Baskin, et al. v. P.C. Richard & Son, LLC*, No. OCN-L-000911-18 (N.J. Superior 2018), the trial court struck the class allegations and dismissed the entirety of the case, holding, among other things, that a FACTA claim does not warrant class treatment. Yedalian Decl. ¶ 44. Class Counsel appealed and argued the matter before the New Jersey appellate court (known as the Superior Court Of New Jersey Appellate Division). *Ibid.* In a published opinion, the appellate court affirmed the dismissal of the class allegations but reinstated one plaintiff's individual FACTA claim. *Baskin v. P.C. Richard & Son, LLC*, 462 N.J. Super. 594 (App. Div. 2020).

Class Counsel filed a Petition For Certification to the New Jersey Supreme Court seeking the court's discretion to hear and review the matter. Yedalian Decl. ¶ 45. The New Jersey Supreme Court granted the petition limited to the class certification issues. *Ibid.* As explained above in Section VIII.A.3., Class Counsel persevered and ultimately prevailed in a unanimous opinion, and the New Jersey Supreme Court reversed and reinstated the class claims. *Baskin v. PC Richard & Son*, 246 N.J. 157 (2021). Of course, the process of appeals took years to accomplish. Yedalian Decl. ¶ 45.

As another example which demonstrates the inherent risks of class certification, the Judicial Council of California/Administrative Office of the Courts' "Findings of the Study of California Class Action Litigation, 2000-2006" shows that well under 21.4% of all class actions are successfully certified by way of a contested motion.[7]

In addition, Sprouts also argues that even if Plaintiffs were to prevail on class certification, only a California resident class could be part of the class. Sprouts argues that the inclusion of non-California residents in a class would violate its due process rights and it would object to such inclusion as part of any contested class certification proceeding. Yedalian Decl. ¶ 47.

In sum, despite these issues, Plaintiffs feel strongly about the prospect of certification in this case. However, the above examples demonstrate the risks inherent in certification, including, at a minimum, delays and potential appeals. Yedalian Decl. ¶ 48.

B. Substantial Benefits of Settlement Compared to Risks of Continued Litigation

The Settlement provides for substantial benefits. The Settlement establishes a non-reversionary Settlement Fund in the amount of $5,000,000, from which Settlement Class members may submit a claim for a payment equal to a Pro-Rata Share of the Net Cash Fund. Agreement ¶ 3(a) and (b).

The language of the applicable statute, § 1681n(a)(1)(A), provides statutory damages to the "consumer in an amount equal to ... not more than $1,000." Sprouts contends that this means that each consumer may recover at most $1,000 in statutory damages regardless of whether the consumer received one or more customer receipts during the Settlement Class Period. The Fourth

[7] Available at http://www.courts.ca.gov/documents/class-action-lit-study.pdf.

Circuit adopted this view in *Stillmock v. Weis Markets, Inc.*, 385 Fed.Appx. 267, 272 (4th Cir. 2010) (agreeing with district court's holding that the $1,000 maximum in statutory damages under § 1681n(a)(1)(A) are to be awarded on a per consumer basis, not a per transaction basis).

Many FACTA defendants have argued that lack of "actual harm" precludes, if not any award of statutory damages to begin with, at the very least "excessive" statutory damages. Since it remains to be seen how courts will resolve such constitutional challenges to statutory damage awards under FACTA, the Cash Fund established by the settlement represents a fair compromise well within the range of reasonableness. The Cash Fund is also in the amount proposed by Judge Otero as a mediator's compromise proposal. Yedalian Decl. ¶ 54.

Settlement is favored, and settlement agreements are realistically assessed. *Stamburgh v. Superior Court*, 62 Cal.App.3d 231, 236 (1976). "The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved had plaintiffs prevailed at trial." *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 238 (2001). Moreover, as long as the Settlement is reasonable, it does not matter that under the best case scenario, the potential value of the case may be much higher. *In re Cendant Corp., Derivative Action Litigation*, 232 F.Supp.2d 327, 336 (D. N.J. 2002) (approving settlement which provided less than 2% value compared to maximum possible recovery); *In re Heritage Bond Litigation*, 2005 WL 1594403 *27-28 (C.D. Cal. 2005) (median amounts recovered in settlement of shareholder class actions were between 2% - 3% of possible damages).

> "In the context of a settlement agreement, the test is not the maximum amount plaintiffs might have obtained at trial on the complaint, but rather whether the settlement is reasonable under all of the circumstances.
>
> …
>
> A settlement need not obtain 100 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank*, *supra*, 220 Cal.App.3d at p. 1139, 269 Cal.Rptr. 844 [settlements found to be fair and reasonable even though monetary relief provided was 'relatively paltry']; *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at p. 455 [settlement amounted to only 'a fraction of the potential recovery'].) Compromise is inherent and necessary in the settlement process. Thus, even if 'the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated,' this is no bar to a class settlement because 'the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.'" *Wershba*, 91 Cal.App.4th at 241.

1 The Settlement is also reasonable, especially considering that the trial Court dismissed this
2 action, thereby determining, in its view of applicable law, that Settlement Class members are not
3 entitled to recover *any* statutory damages, with the possible exception of only those who can
4 actually show they sustained actual damages. Yedalian Decl. ¶ 53. Stated another way, is it
5 reasonable for Settlement Class members to recover something if they are not actually entitled to
6 recover anything at all? Here, not only did Class Counsel and the Class Representatives secure
7 something for the Settlement Class, they secured a substantial $5,000,000 non-reversionary all-
8 cash common-fund.

9 This significant all Cash Fund is a true, non-reversionary, common fund. Agreement ¶
10 3(a). This non-reversionary aspect, means that any unclaimed funds (from uncashed checks, etc.)
11 will not revert back to Sprouts, but will instead be redistributed to the class claimants or provided
12 to a 501(c)(3) charity. Agreement ¶ 3(b)(i). Non-reversionary common fund settlements are
13 favored over reversionary settlements. *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1058-
14 1059 (9th Cir. 2019).

15 The non-reversionary nature of this settlement is particularly favored because the
16 pecuniary benefits provided consist of an all-cash fund (rather than including things like vouchers,
17 coupons, etc., instead of, or in combination with, cash). *Roes, 1-2*, 944 F.3d at 1053 ("The danger
18 of unjustifiably inflating the settlement value of coupons is even more grave when the value of
19 unused coupons will revert back to defendants.").

20 Another benefit of this lawsuit and Settlement is the fact that, as part of the Settlement,
21 Sprouts shall implement a written company policy which states that it will not print more than the
22 last 5 digits of the credit or debit card number and the credit or debit card expiration date upon any
23 printed receipt provided to any customer who uses a credit or debit card to transact business with
24 Sprouts. Agreement ¶ 3(e). This FACTA compliance policy ensures that Sprouts will not
25 continue to violate the law, willfully, inadvertently or otherwise. Yedalian Decl. ¶ 55.

26 Such non-pecuniary benefits are properly considered in judging the results of the lawsuit.
27 *See*, *e.g.*, *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking
28 into account fact that, in addition to monetary aspects, the defendant stopped the practices at

issue). This is especially true with a consumer protection statute such as FACTA which, as the Ninth Circuit has held, serves both a compensatory and "deterrent purpose." *Bateman*, 623 F.3d at 718.

Although Plaintiffs here achieved both the Cash Fund *and* non-pecuniary benefits, courts also approve class settlements where *only* nonpecuniary benefits in the form of business reforms are achieved. See, *e.g.*, *Kirsch v. Delta Dental of New Jersey*, 534 F. App'x 113, 114 (3d Cir. 2013) (affirming, over objections made by objector, district court's approval of class action settlement where the settlement included business reforms but no monetary relief, as well as affirming attorneys' fee award to class counsel); *Sutter v. Horizon Blue Cross Blue Shield of New Jersey*, 2012 WL 2813813 *10 (New Jersey App. Div. 2012) (affirming, over objections made by objector, court's approval of class action settlement where the settlement included business reforms but no monetary relief, as well as affirming $4 million attorneys' fee award to class counsel).

"In fashioning FACTA, Congress aimed to 'restrict the amount of information available to identity thieves.'" *Bateman*, 623 F.3d at 718. The non-pecuniary benefits achieve that substantial purpose.

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

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

C. <u>Agreement Provides That Change Of Law Before Final Approval of Settlement Will Not Compromise Settlement Class Members' Benefits</u>

A further benefit of the Settlement assures that if there is an intervening change of law before final approval of the Settlement, the Settlement and Settlement benefits will continue to remain valid, enforceable and available to Settlement Class members. Agreement ¶ 14.

The significance of this benefit cannot be understated. For example, as explained by the Ninth Circuit in *Bateman*, in 2008 (while many FACTA lawsuits were then pending) Congress enacted the Credit and Debit Card Receipt Clarification Act ("Clarification Act"). The Clarification Act retroactively granted a *temporary* immunity from statutory damages for FACTA violations to those defendants that printed an expiration date "between December 4, 2004, and June 3, 2008 [the date the Clarification Act was enacted]." *Bateman*, *supra*, 623 F.3d at 717. Stated another way, the effect of the Clarification Act was that it wiped-out liability for statutory damages for all then pending FACTA expiration date cases. As a result of the change of law imposed by the Clarification Act, many FACTA class action cases were dismissed without any recovery for consumers. Yedalian Decl. ¶ 59.

Even before the Clarification Act was enacted, it was apparent that many defendants believed that this immunity bill (H.R. 4008) was almost certain to pass. Yedalian Decl. ¶ 60. As a result, some defendants chose to settle by demanding and extracting very favorable terms to them while many others refused to budge at all knowing that complete immunity was on the horizon. *Ibid.*

Class Counsel had extensive first-hand experience of the devastating impact of the Clarification Act. Unfortunately, many affected putative classes did not recover. Yedalian Decl. ¶ 61. Moreover, Class Counsel had invested thousands of hours and substantial expenses prosecuting many FACTA expiration date cases leading up to the time the Clarification Act was enacted and suffered a huge financial setback as a result of the retroactive immunity provided by the Clarification Act. Yedalian Decl. ¶ 61.

The risks posed by potential changes in the law through judicial opinions likewise cannot be understated, particularly in the dynamic area of statutory damage issues. For example, as explained in VIII.A.1., above, many courts, state and federal, including this very Court in this very case which relied on new and intervening case law (*Limon*), have dismissed FACTA cases. Absent the Settlement, there are substantial risks of dismissal becoming final on appeal and zero recovery. Yedalian Decl. ¶ 25.

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D. The Settlement Is The Product of Extensive Arm's-Length Negotiations

The Agreement is the product of extensive, adversarial, arm's-length discussions, negotiations, correspondence, factual and legal investigation and research, and careful evaluation of the respective parties' strengths and weaknesses. Yedalian Decl. ¶¶ 63-68.

The Agreement was also reached through the extensive negotiations that occurred with the assistance of the mediator Hon. S. James Otero (Ret.). Yedalian Decl. ¶ 64. "The assistance of an experienced mediator in the settlement process confirms that the settlement is non-collusive." *Satchell v. Fed. Express Corp.*, 2007 WL 1114010 *4 (N.D. Cal. 2007); *Dunk*, 48 Cal.App.4th at 1803.

IX. PROPOSED NOTICE TO THE SETTLEMENT CLASS SHOULD BE APPROVED

Notice requirements are set forth in the California Rules of Court. Cal. Rules of Court, Rule 3.766 (e) and (f). California law vests the Court with broad discretion in fashioning an appropriate notice program. "The *manner* of giving notice is subject to the trial court's virtually complete discretion." *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 58 (2008).

Here, based upon informal discovery exchanges with Sprouts' counsel, it is expected that Sprouts has the names, email addresses and/or partial postal mailing addresses for fewer than 2% of Settlement Class members. In addition to serving formal discovery which seeks such information for the relatively small percentage of Settlement Class members for whom such information may be available, the formal discovery Class Counsel has served also seeks, among other things, millions of Settlement Class members' credit and debit card transaction records. Class Counsel intends to use those transaction records to try to determine who issued the credit/debit cards that were used in the transactions and then subpoena as many of the issuing card entities (within reasonable practical and financial feasibility considerations) to try to obtain names, email addresses and postal mailing addresses, etc., for the remaining Settlement Class members. Once this discovery process is completed, the information will be provided to the Settlement Administrator. Yedalian Decl. ¶ 94.

Then, to the extent an email address for a Settlement Class member is known by the Settlement Administrator, the Settlement Administrator will send to all such Settlement Class

members, via email, the notice ("Email Notice") substantially in the form attached to the Agreement as Exhibit C. Agreement ¶ 4(a).

Where email addresses are available, courts permit email notice in lieu of mailed notice. *Browning v. Yahoo! Inc.*, 2007 WL 4105971 *4-7 (N.D. Cal. 2007) (email notice sent to class members and mailed notice sent to those class members for whom an email address was not known).

To the extent an email address for a Settlement Class member is not known by the Settlement Administrator, but a postal mailing address for a Settlement Class member is known by the Settlement Administrator, the Settlement Administrator will send to all such Settlement Class members, via United States Postal Service ("USPS") mail, the notice ("Mailed Notice") substantially in the form attached to the Agreement as Exhibit D. Agreement ¶ 4(b).

With respect to Settlement Class members for whom neither an email address nor a postal mailing address is available, Newspaper Notice (Exhibit E to Agreement) and notice through a Settlement Website will be provided. Agreement ¶ 4(c) and (d). The Settlement Website will also provide, among other things, the Full Notice (Exhibit F to Agreement). Agreement ¶ 4(d).

Rule 3.766(f) provides that where, as here, "all members of the class cannot be notified personally, the court may order a means of notice reasonably calculated to apprise the class members of the pendency of the action." Thus, there is no statutory or due process requirement that all Settlement Class members receive actual notice. Instead, "[w]here the membership of a class is large, such as in this case, and individual damages are minimal, notice by publication alone may [be] adequate." *Wershba*, 91 Cal.App.4th at 242. "[A] large body of case law reflect[s] the view that `the whole concept of a large class-action might easily be stultified by insistence upon perfection in actual notice to class-members….'" *Hypertouch, Inc. v. Superior Court*, 128 Cal.App.4th 1527, 1540 (2005).

In a case like this, where the email or postal mailing addresses of Settlement Class members are not all known by the Parties, notice by publication and website clearly suffices for those Settlement Class members. "Using a summary notice that directed the class member wanting more information to a Web site containing a more detailed notice, and provided hyperlinks to that

Web site, was a perfectly acceptable manner of giving notice in this case." *Chavez*, 162 Cal.App.4th at 58; *In re Cellphone Termination Fee Cases*, 186 Cal.App.4th 1380, 1392 (2010) (same); *Mirfasihi v. Fleet Mortgage Corp.*, 356 F.3d 781, 786 (7th Cir. 2004) (notice by publication and website adequate where individual notice impossible; also recognizing increasing importance of website notice as a substitute form of notice); *Battle v. Liberty National Life Ins. Co.*, 770 F.Supp. 1499, 1515, fn.47 (N. D. Ala. 1991) (individual notice not required where absent members are not identified and cannot be located through diligent efforts) *affirmed*, 974 F.2d 1279 (11th Cir. 1992).

X. REASONABLE ATTORNEYS' FEES AND COSTS WILL BE SOUGHT IN CONNECTION WITH FINAL APPROVAL OF THE SETTLEMENT

At the time of final approval of the Settlement, Class Counsel will request an award of up to $1,666,666.67, to be paid from the Cash Fund, plus an award of Class Counsel's litigation costs of up to $75,000, also to be paid from the Cash Fund, to compensate Class Counsel for attorneys' fees and costs incurred for investigating the facts, prosecuting the lawsuit, negotiating the Settlement, drafting the Settlement documents, attempting to obtain the Court's preliminary and final approval of the Settlement, causing Sprouts to change its receipt printing processes and implement a new written policy concerning FACTA, and ensuring that the Settlement is properly administered and implemented. Agreement ¶ 12.

The custom and practice in class actions is to award approximately one-third of a fund as a fee award. *Chavez*, 162 Cal.App.4th at 66 n.11 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around *one-third* of the recovery.") (emphasis added); *Laffitte v. Robert Half Internat. Inc.*, 231 Cal.App.4th 860, 878 (2014) ("the trial court's use of a percentage of 33 1/3 percent of the common fund is consistent with, and in the range of, awards in other class action lawsuits").

In addition, there are also non-pecuniary benefits resulting from the fact that the Settlement requires Sprouts to implement a written FACTA compliance policy. *See*, *e.g.*, *Craft v. County of San Bernardino*, 624 F.Supp.2d 1113, 1121, (C.D. Cal. 2008) (taking into account fact that, in addition to monetary aspects, the defendant stopped the practices at issue and explaining

1 that "'Attorneys' fees [in class action cases] may be awarded even though the benefit conferred is
2 purely non-pecuniary in nature.'").
3 It should also not be lost on the Court that Class Counsel has borne, and continues to bear,
4 the entire risk of litigation associated with the lawsuit on a pure contingency basis, and that as a
5 result of the time committed by Class Counsel to this matter, Class Counsel was precluded from
6 taking on other matters which were available.
7 The fees and costs that will be requested in connection with final approval are reasonable
8 and further justified by the results achieved and substantial risks undertaken.

9 **XI. A REASONABLE INCENTIVE AWARD WILL BE SOUGHT FOR EACH OF THE**
10 **NAMED PLAINTIFFS IN CONNECTION WITH FINAL APPROVAL OF THE**
11 **SETTLEMENT**

12 At the time of final approval of the Settlement, Class Counsel will request, on behalf of
13 each of the named Plaintiffs, Larry Tran and Robert Cohen, an incentive (service) award of
14 $10,000 (Agreement ¶ 11), to compensate each of them for their services as the representatives of
15 the Settlement Class. Plaintiffs were subjected to the risk of intrusive discovery, risked liability
16 for defense costs and, in fact, were actually served with a cost bill of thousands of dollars
17 following dismissal, and contributed valuable time and resources during the pendency of the
18 litigation, all of which will be further detailed in connection with final approval proceedings.
19 "'[I]ncentive awards are fairly typical in class action cases…. These awards 'are
20 discretionary, [citation], and are intended to compensate class representatives for work done on
21 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,
22 and, sometimes, to recognize their willingness to act as a private attorney general.'" *In re*
23 *Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393-1394.
24 In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved
25 incentive awards of $300,000 to each named plaintiff in recognition of the services they provided
26 to the class by responding to discovery, participating in the mediation process and taking the risk
27 of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294,
28 300 (N.D. Cal. 1995), a $50,000 incentive award was approved for similar participation.

The requested enhancement award in the amount of $10,000 to each of the Class Representatives in this action is modest, reasonable, fair in comparison to other FACTA cases, and should be approved in connection with final approval.

XII. CONCLUSION

The proposed class action Settlement is well within the range of reasonable settlements. It is non-collusive, and it was achieved as the result of informed, extensive, and arm's-length negotiations conducted by experienced counsel and with the assistance of, and as a result of a mediator's compromise proposal made by, the mediator Hon. S. James Otero (Ret.).

Plaintiffs respectfully request that the Court grant preliminary approval of the proposed settlement, sign and enter the proposed Order, and set a final approval hearing in approximately 285 days, or as soon thereafter when the Court is available.

Respectfully submitted,

DATED: May 30, 2025

CHANT & COMPANY
A Professional Law Corporation

By: /S/ – Chant Yedalian
Chant Yedalian
Counsel for Plaintiff

DATED: May 30, 2025

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