

Keim v. Trader Joe's Company

Case No. 19STCV36790 (Los Angeles County Sup. Ct.)

If you made a purchase at a Trader Joe's store using a credit card or debit card between March 5, 2019 and July 19, 2019, you may be entitled to benefits under a class action settlement.

A Court authorized this Notice. This is not a solicitation from a lawyer.

- Plaintiff Brian Keim (“Plaintiff”) alleges Trader Joe’s Company (“Trader Joe’s”) printed receipts for credit or debit card transactions at some of its stores that included the first six and last four digits (but not the middle digits, the expiration dates, customer names, customer addresses, or other personally identifiable information) of the debit or credit card number in violation of the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681c(g)(1) *et seq.* (“FACTA”).
- Trader Joe’s denies Plaintiff’s allegations and vigorously denies any and all liability or wrongdoing whatsoever. Not all Trader Joe’s stores printed receipts displaying the first six and last four digits of the card number, and in those stores that did, only a small minority of transactions involved such receipts. Trader Joe’s insurer has nonetheless concluded that further litigation would be protracted and expensive, and has taken into account the uncertainty and risks inherent in this litigation, and has determined that it is desirable that the litigation be fully, completely, and finally settled in the manner and upon the terms set forth in the settlement. The Court has not ruled on the merits of Plaintiff’s claims or Trader Joe’s defenses. By entering into the settlement, Trader Joe’s has not conceded the truth or validity of any of the claims against it.
- It has been more than five years since Plaintiff sued Trader Joe’s, and Trader Joe’s represents no person has reported to Trader Joe’s identity theft based on the conduct alleged in this case. However, identity theft is not required to prove a FACTA claim, and therefore you do not need to have suffered identity theft to submit a claim for payment from this Settlement.
- Trader Joe’s (through its insurer) has agreed to pay \$7,400,000 (the “Settlement Fund”) in full and final settlement and release of the claims of the Settlement Class defined as account holders whose credit or debit card was used in a transaction at a Trader Joe’s store for which the payment processing software caused a customer receipt to be formatted to display the first six and last four digits of the card number used in the transaction between March 5, 2019 and July 19, 2019.
- The Settlement Fund will be used to pay all amounts related to the settlement, including payments to each Settlement Class Member who submits a valid and timely claim form to receive payment (“Settlement Claim Form”), attorneys’ fees and reasonable expenses, and the costs of notice and administering the settlement. Class Counsel anticipate that they will petition the Court for attorney fees of _____ plus reasonable expenses, and will also petition for Incentive Payment of \$_____ to Plaintiff. Settlement Class Members who timely submit a valid Settlement Claim Form will receive—subject to the Settlement Administrator verifying their claims—a pro rata payment distribution, calculated by

dividing the available funds for distribution to the Settlement Class by the number of persons who submit valid Settlement Claim Forms. The Settlement Agreement provides more information on that calculation.

- Your rights and options, and the deadlines to exercise them, are explained in this Notice. Your legal rights are affected whether you act or don't act. Read this Notice carefully.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

SUBMIT A CLAIM FORM

If you submit a valid Settlement Claim Form by [____], you will receive a payment and will give up your rights to sue Trader Joe's and/or any other released parties ("Trader Joe's Releasees"), as defined in the Settlement Agreement) on any Released Claim, as defined in the Settlement Agreement. If you have a Class ID number, Claim Forms may be submitted by mail to [ADMIN PO BOX] or through the settlement website by clicking www.TJ-FACTASettlement.com or by calling [Insert]. The Claims Administrator may seek additional information from persons who submit Claim Forms to validate claims.

EXCLUDE YOURSELF OR "OPT OUT" OF THE SETTLEMENT

If you ask to be excluded, you will not receive a payment. This is the only option that allows you to pursue or continue to pursue claims against Trader Joe's or any other Trader Joe's Releasee on your own in the future. The deadline for excluding yourself is [60 days after Notice Deadline].

OBJECT TO THE SETTLEMENT

You may write to the Court about why you believe the settlement is unfair in any respect. Please see Section 16 below ("How do I tell the Court that I do not think the settlement is fair?"). The deadline for objecting is [____]. To obtain a benefit from this settlement, you must still complete and submit a Settlement Claim Form. If you only submit an objection, you will not receive any benefit from the settlement and you will give up your right to pursue or continue to pursue a Released Claim against Trader Joe's or any other Trader Joe's Releasee.

DO NOTHING

If you do nothing, you will not receive any monetary award, but you will give up your rights to pursue or continue to pursue a Released Claim against Trader Joe's or any other Trader Joe's Releasee.

GO TO THE FAIRNESS
HEARING

You may ask to speak in Court about the fairness of the settlement, if you object to the settlement. To speak at the Fairness Hearing, you must comply with the requirements set forth in Question 21 below no later than [_____].

BASIC INFORMATION

1. What is the purpose of this Notice?

The purpose of this Notice is to inform you that a proposed settlement has been reached in the class action lawsuit entitled *Keim v. Trader Joe's Company*, Case No. 19STCV36790 (Los Angeles County Sup. Ct.). Because your rights will be affected by this settlement, it is extremely important that you read this Notice carefully. This Notice summarizes the settlement and your rights under it.

2. What does it mean if I received an email or postcard about this settlement?

If you received an email or postcard describing this settlement, it is because records the Claims Administrator has obtained indicate you may be a member of the Settlement Class in this action. You are a member of the Settlement Class if you are an account holder whose credit or debit card was used in a transaction at a Trader Joe's store for which the payment processing software caused a customer receipt to be formatted to display the first six and last four digits of the card number used in the transaction between March 5, 2019 and July 19, 2019.

3. What is this class action lawsuit about?

In a class action, one or more people called Class Representatives (here, Plaintiff Brian Keim) sue on behalf of people who allegedly have similar claims. This group is called a class and the persons included are called class members. One court resolves the issues for all of the class members, except for those who exclude themselves from the class.

Here, Plaintiff alleges Trader Joe's willfully violated FACTA by printing point-of-sale receipts for credit card and debit card transactions at its stores that displayed the first six and last four digits (but not the middle digits, the expiration dates, customer names, customer addresses, or other personally identifiable information) of the card number in violation of FACTA. Trader Joe's denies these allegations and denies any wrongdoing. As noted above, the Court has conditionally certified a class action for settlement purposes only.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiff or Trader Joe's. Instead, both sides agreed to this settlement. That way, Plaintiff and Trader Joe's insurer avoid the risk and cost of continued litigation, and the Settlement Class Members will receive compensation. Plaintiff and Class Counsel think the settlement is fair and reasonable for all Settlement Class Members.

WHO IS IN THE SETTLEMENT CLASS?

5. How do I know if I am part of the Settlement Class?

The Court has certified this case as a class action for settlement purposes only. The Settlement Class is defined as:

The account holders whose credit or debit card was used in a transaction at a Trader Joe's store for which the payment processing software caused a customer receipt to be formatted to display the first six and last four digits of the card number used in the transaction between March 5, 2019 and July 19, 2019.

“Settlement Class Member” is defined as any person in the Settlement Class who is not validly excluded from the Settlement Class.

It is important to note that not all Trader Joe's stores printed receipts displaying the first six and last four digits of the card number, and in those stores that did, only a small minority of transactions involved such receipts. Therefore, just because you were provided a receipt for a credit or debit card transaction at a Trader Joe's store during the class period, it does not necessarily mean that you are a Settlement Class Member. If you are still not sure whether you are included, you can visit other sections of the Settlement Website, www.TJ-FACTASettlement.com, you may write to the Claims Administrator at Keim v. Trader Joe's Company, c/o [ADMINISTRATOR AT P.O. BOX], or you may call the Toll-Free Settlement Hotline, [INSERT NUMBER], for more information.

THE LAWYERS REPRESENTING YOU

6. Do I have lawyers in this case?

The Court has appointed lawyers from the law firms of Keogh Law, Ltd., Scott D. Owens, P.A., and Hekmat Law Group, P.C. as Class Counsel to represent you and the other persons in the Settlement Class. You will not be personally charged for fees or costs by these lawyers.

7. How will Class Counsel be paid?

Class Counsel will ask the Court to approve payment of up to one-third of the \$7,400,000.00 Settlement Fund, which is \$2,466,666.67, to them for attorneys' fees plus reasonable expenses. The three firms representing the class have agreed to split the attorneys' fee award equally, with each firm receiving one third. Class Counsel also will ask the Court to approve payment of up to \$10,000 to Plaintiff Brian Keim for his service as Class Representative. The Court may award less than these amounts.

THE SETTLEMENT BENEFITS – WHAT YOU GET

8. What does the settlement provide?

Settlement Fund. Trader Joe's (through its insurer) will pay \$7,400,000 into a fund (the “Settlement Fund”), which will cover: (1) payments to Settlement Class Members who submit timely and valid claim forms; (2) an award of attorneys' fees to Class Counsel; (3) Class Counsel's

reasonable expenses; (4) an Incentive Payment to Plaintiff, as approved by the Court; and (5) the costs of notice and administration of the Settlement.

Payments. All Settlement Class Members are eligible to submit a Settlement Claim Form and receive a payment. To submit a Settlement Claim Form, follow the procedures described under Question 11 below.

No Portion of the Settlement Fund Will Return to Trader Joe's. All money in the Settlement Fund beyond the funds the Court authorizes to be paid for the costs of notice and administration of the settlement, attorneys' fees and expenses to Class Counsel and any incentive awards to Plaintiff, will be divided and paid pro rata to the Settlement Class Members who submitted valid and timely Settlement Claim Forms. If feasible, all unclaimed funds shall be paid via a Second Distribution to those class members who cashed their checks. Only after a Second Distribution or if a Second Distribution is not feasible, will unclaimed funds be paid, as a cy pres award on behalf of the Class, to Identity Theft Resource Center earmarked for education and efforts to minimize the risk of and to mitigate the impact of identity compromise. No portion of the Settlement Fund will return to Trader Joe's.

Release. In exchange for the right to claim a payment, all Settlement Class Members release the following claims against all Trader Joe's Releasees: "any and all claims, actions, causes of action, rights, suits, defenses, debts, sums of money, payments, obligations, promises, damages, penalties, attorneys' fees, costs, liens, judgments, and demands of any kind whatsoever that each member of the Settlement Class may have or may have had in the past, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis, whether based on federal, state, or local law, statute, ordinance, regulations, contract, common law, or any other source, including, but not limited to, claims under the Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., as amended by the Fair and Accurate Credit Transactions Act, Pub. L. 108-159, and 15 U.S.C. § 1681c(g), or under any consumer protection statutes, that were alleged or reasonably could have been alleged based on the facts and allegations in the operative complaint, including, but not limited to, those reasonably related to credit or debit cards used in transactions at Trader Joe's stores for which customers' receipts were formatted to display the first six and last four digits of the card numbers, from July 17, 2017 to the date of the Court's order granting preliminary approval." Trader Joe's Releasees means "Trader Joe's, each of its affiliates, parents, subsidiaries, predecessors, successors, co-venturers, divisions, joint venturers, joint ventures and assigns, as well as each of those entities' past and present owners, investors, directors, officers, employees, partners, managers, members, principals, agents, underwriters, insurers, co-insurers, re-insurers, indemnitors, shareholders, attorneys, accountants and auditors, banks and investment banks, consultants, vendors, contractors, licensors, franchisors, and assigns."

The Trader Joe's Releasees shall be released and forever discharged from all Released Claims by the Settlement Class and each Settlement Class Member. The Settlement Class and each Settlement Class Member covenant and agree that they shall not hereafter seek to establish liability against any Trader Joe's Releasee based, in whole or in part, on any of the Released Claims.

9. How much will my payment be?

Your share of the Settlement Fund will depend on the number of valid Settlement Claim Forms the Settlement Class Members submit. Each Settlement Class Member who submits a valid Settlement Claim Form will be entitled to receive compensation that will be distributed on a pro rata basis after deductions for the following court-approved awards – the incentive payment to Plaintiff Brian Keim for his services as class representative (not to exceed \$10,000), Class Counsel’s attorneys’ fees (not to exceed \$2,466,666.67), Class Counsel’s reasonable expenses (not to exceed \$65,000), and the cost of notice and administration of the Settlement (not exceed \$977,000). **The final payment amount will depend on the total number of valid and timely claims submitted by Settlement Class Members, but Plaintiff estimates \$102.45.**

10. What am I giving up to stay in the Settlement Class?

Unless you exclude yourself from the settlement, you will be part of the Settlement Class and will be bound by the Release of claims in the settlement. This means that if the settlement is approved, you cannot pursue or continue to pursue any Released Claim against Trader Joe’s or any other Trader Joe’s Releasee, whether on your own or as part of any other lawsuit, as explained in the Settlement Agreement. It also means that all of the Court’s orders will apply to you and legally bind you. Unless you exclude yourself from the settlement, you will agree to release Trader Joe’s and any other Trader Joe’s Releasee, as defined in the Settlement Agreement, from any and all claims that were or could be asserted in the litigation and all claims that relate to or arise from printing too much information on any receipts from a Trader Joe’s store during the Settlement Class period.

If you have any questions about the Release or what it means, you can speak to Class Counsel, listed under Question 6, for free, or you can, at your own expense, talk to your own lawyer. The Release does not apply to persons in the Settlement Class who timely exclude themselves.

HOW TO OBTAIN A PAYMENT

11. How can I get a payment?

To receive a payment, you must submit a Settlement Claim Form by the deadline stated below. If you have a Class ID number, Settlement Claim Forms may be submitted by mail to [ADMIN PO BOX] or through the settlement website by clicking www.TJ-FACTASettlement.com or by calling [Insert]. The deadline for Trader Joe’s to fund the Settlement is 10 business days after final approval is granted. Your settlement check can be cashed for up to 180 days after the issuance date stated on the check.

WHEN WILL I RECEIVE MY SETTLEMENT PAYMENT?

12. When would I receive a settlement payment?

The Court has scheduled a hearing on [DATE] to decide whether to approve the settlement. If the Court approves the settlement, after that, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Update information will be posted on the Settlement Website at www.TJ-FACTASettlement.com. Please be patient.

EXCLUDING YOURSELF FROM THE SETTLEMENT

13. How can I get out of the settlement?

If you want to keep the right to pursue or continue to pursue any Released Claim against Trader Joe's or any Trader Joe's Releasee, as defined in the Settlement Agreement, then you must take steps to get out of the Settlement Class. This is called excluding yourself from, or opting out of, the Settlement Class.

To exclude yourself from the settlement, you must send an exclusion request to the Claims Administrator. To be valid, a member of the Settlement Class who wishes to be excluded from the Settlement Class shall mail a written notice of exclusion to the Claims Administrator, so that it is postmarked no later than _____, 2026 (the "Opt-Out and Objection Deadline"), and shall clearly provide the following in the written notice of exclusion: (a) the case name and number; (b) the name and address of the Settlement Class Member; (c) the personal signature of the Settlement Class Member requesting exclusion; and (d) a statement that indicates a desire to be excluded from the Settlement Class in the Litigation, such as "I hereby request that I be excluded from the proposed Settlement Class in *Keim v. Trader Joe's*." No request for exclusion will be valid unless all of the information described above is included. No person in the Settlement Class, or any person acting on behalf of or in concert or participation with that person in the Settlement Class, may exclude any other person in the Settlement Class from the Settlement Class.

To be valid, you must mail your exclusion request postmarked no later than [_____] to the Claims Administrator at Keim v. Trader Joe's Company, c/o [INSERT ADMIN PO BOX].

14. If I do not exclude myself, can I sue Trader Joe's for the same thing?

No. If you do not exclude yourself, you give up any right to pursue (or continue to pursue) any Released Claims against Trader Joe's or any Trader Joe's Releasee.

15. If I exclude myself, can I get a benefit from this settlement?

No. If you ask to be excluded, you will not be able to submit a Settlement Claim Form for a settlement payment and you cannot object to the settlement.

OBJECTING TO THE SETTLEMENT

16. How do I tell the Court that I do not think the settlement is fair?

If you are in the Settlement Class, you can object to the settlement or any part of the settlement that you think the Court should reject, and the Court will consider your views. If you do not provide a written objection in the manner described below, you shall be deemed to have waived any objection and shall forever be foreclosed from making any objection to the fairness, reasonableness, or adequacy of the settlement or the award of any attorneys' fees and expenses or Incentive Payment.

To be valid, the objection must be received by the Opt-Out Deadline (by _____ 2026), and include: (a) the case name and number; (b) the name, address, telephone number, and email address of the objecting Settlement Class Member and, if represented by counsel, of his or her counsel; (c) a statement of each objection, as well as the specific ground(s) for each objection; (d) a statement of whether he or she intends to appear at the Fairness Hearing, either with or without counsel; (e) any documentation supporting each objection; and (f) the claim ID number from the notice the Settlement Class Member received by regular mail or e-mail (or, if you do not receive a claim ID by regular mail or e-mail, the first six and last four digits of the credit or debit card used to make the purchase that generated the receipt giving rise to your claim, and the date of purchase).

Any Settlement Class Member who fails to object to the settlement in the manner described above shall be deemed to have waived any such objection, shall not be permitted to object to any terms or approval of the settlement at the Fairness Hearing, and shall be foreclosed from seeking any review of the settlement or the terms of the Settlement Agreement by appeal or other means.

To be considered, you must file your objections with the Court. Your objections must also be mailed to the addresses below and postmarked or received no later than [60 days after Notice Deadline].

For Plaintiff:

Keith J. Keogh
Michael S. Hilicki
Keogh Law, Ltd.
55 West Monroe St.
Ste. 3390
Chicago, Illinois 60603

For Trader Joe's Company:

Dawn Sestito
Noah Ickowitz
O'Melveny & Myers LLP
400 South Hope Street, 19th Floor
Los Angeles, California 90071-2899

Even if you timely and properly object, to obtain a benefit from this settlement, you must submit a Settlement Claim Form. If you object but fail to submit a Settlement Claim Form, you will not receive any monetary award.

17. What is the difference between objecting and excluding yourself?

Objecting is telling the Court that you oppose something about the settlement. You can object only if you stay in the Settlement Class. Excluding yourself means that you do not want to be part of the Settlement Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

IF YOU DO NOTHING

18. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary award, but you will give up your rights to pursue or continue to pursue Released Claims against Trader Joe's or any other Trader Joe's Releasee. For information relating to what rights you are giving up, see Question 10.

THE FAIRNESS HEARING

19. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at [TIME] on [_____] at _____ . At this hearing, the Court will consider whether the settlement is fair, reasonable and adequate. If there are valid objections that comply with the requirements in Question 16 above, the Court will also consider them and will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel and Plaintiff.

The Fairness Hearing may be moved to a different date or time without additional notice, so it is a good idea to check the Settlement Website for updates.

20. Do I have to come to the hearing?

No. Class Counsel will appear on behalf of the Settlement Class. But you are welcome to come, or have your own lawyer appear, at your own expense.

21. May I speak at the hearing?

You may speak at the Fairness Hearing to raise any objection that you have to the Settlement, even if you have not filed a written objection.

GETTING MORE INFORMATION

22. How do I get more information?

This Notice is only a summary of the proposed settlement. You can get a complete copy of the Settlement Agreement by visiting the Settlement Website, www.TJ-FACTASettlement.com, or you can write to the address below or call the Toll-Free Settlement Hotline, [INSERT NUMBER]. That Settlement Agreement contains definitions for most of the capitalized terms in this Notice. You can also call Class Counsel with any questions at 866.726.1092.

DO NOT CALL OR WRITE TO THE COURT, THE CLERK OF THE COURT, TRADER JOE'S, OR COUNSEL FOR TRADER JOE'S ABOUT THE SETTLEMENT. ALSO, TELEPHONE REPRESENTATIVES WHO ANSWER CALLS MADE TO THE TOLL-FREE NUMBER ARE NOT AUTHORIZED TO CHANGE THE TERMS OF THE SETTLEMENT OR THIS NOTICE.