

02/05/2026

David W. Slayton, Executive Officer / Clerk of Court

**Preliminary Approval of Class Action Settlement** By: L. Ennis Deputy  
**Department SSC-9**

**Keim v. Trader Joe's Company**

**Case No. 19STCV36790**

Hearing: February 5, 2026 c/f December 4, 2025 c/f October 7, 2025

**FINAL RULING**

The Parties' Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- The Settlement Amount ("SA") is **\$7,400,000**, non-reversionary. (¶II.U)
- The Parties will request the Court to approve and award the following payments and deductions to be made from the GSA:
  - Up to **\$2,466,666.67 (33%)** for attorney fees (¶III.D);
    - **Fee Split:** 1/3 to Keogh Law, Ltd.; 1/3 to Hekmat Law Group; and 1/3 to Scott D. Owens, P.A (¶III.F.1)
  - Up to **\$65,000** for attorney costs (¶III.D);
  - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶III.D);
  - Up to **\$997,000** for settlement administration costs. (¶III.D)
- Plaintiffs shall release Defendants from claims described in the Settlement.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **June 30, 2026** and will be heard on **August 10, 2026 at 8:30 am**. *Failure to file the Parties' Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court's first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment

containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearance Case Review is set for **July 7, 2026**, 8:30 a.m., Department 9 re filing of Motion for Final Approval of Class Action Settlement.

### **BACKGROUND**

This is a Fair and Accurate Credit Transactions Act, 15 U.S.C. §1681c(g) (“FACTA”) Class Action. Plaintiff alleges TJ’s stores printed point-of-sale transaction receipts that revealed ten (10) digits of its customers’ debit and credit card numbers, in willful violation of their FACTA rights.

On July 17, 2019, Plaintiff Keim filed this proposed class action in the federal Southern District of Florida against Defendant Trader Joe’s Company (“TJ’s”) on behalf of himself and a nationwide class of other individuals who, when making credit or debit card payments at a TJ’s store, were provided a point-of-sale receipt disclosing ten digits, i.e., most, of their credit or debit card number.

TJ’s moved to dismiss the lawsuit, moved for judicial notice of certain alleged facts it needed to support dismissal, moved to stay discovery, and also moved to transfer the lawsuit to the federal Central District of California. In addition, TJ’s moved to strike the expert Plaintiff engaged to address issues raised in TJ’s motion to dismiss. The parties briefed the motions to dismiss, stay, for judicial notice, and to transfer, but before they could be decided, the court stayed proceedings pending resolution of the federal Eleventh Circuit’s decision to rehear, en banc, its prior decision that FACTA cases satisfied the requirements for federal Article III standing.

Ultimately, the Eleventh Circuit reversed its prior holding that FACTA cases satisfy Article III, which necessitated the voluntary dismissal of Plaintiff’s suit from the Florida federal court and the re-filing of the case in California, where TJ’s is headquartered.

TJ’s then removed the case to the federal district court for the Central District of California. Keim responded by moving to remand, which was granted after full briefing.

Following remand, TJ’s filed a demurrer to Keim’s complaint, arguing Keim lacked standing to sue under California law, failed to state a cause of action, and failed to adequately plead TJ’s alleged FACTA violations were willful.

The demurrer was fully briefed and argued, and the Court sustained it, finding Keim failed to show he had standing to sue, but granted Keim leave to amend his complaint. Keim filed an amended complaint, to which TJ’s filed another demurrer. The demurrer was again fully briefed and argued, but this time the Court found Keim met California standing requirements, stated a cause of action, and adequately pled TJ’s violation was willful.

On October 18, 2021, the parties participated in a full-day mediation session with Judge Gonzalez. Although productive, a settlement was not reached and the litigation continued. The parties conducted follow up negotiations through Judge Gonzalez over the following eleven months. Ultimately, on September 13, 2022, Judge Gonzalez submitted a mediator’s proposal to the parties based on her knowledge of the case and review of the record, which the parties ultimately accepted, filing a notice of class settlement on September 20, 2022.

Thereafter, TJS refused to sign the settlement agreement, and instead wanted to re-assert the same “standing” argument it had made and lost on its demurrer to Plaintiff’s first amended complaint, this time based on an appellate decision from the 5th District, the Limon case, that had come down in October 2022.

The Court entertained the motion, taking full briefing and hearing argument, but in its June 9, 2023 Ruling, the Court ruled Keim has standing, finding Limon distinguishable.

After the Court’s rejection of TJ’s renewed standing argument, TJ unsuccessfully petitioned the Second District for a writ of mandate to overturn the Court’s finding Mr. Keim has standing, then unsuccessfully petitioned the California Supreme Court for review.

With TJ’s having exhausted its avenues for attempting to challenge Keim’s standing, Keim’s counsel reached out to TJ’s counsel to again attempt to proceed with approval of the parties’ settlement. However, TJ’s ignored Keim, prompting him to proceed with seeking to enforce the settlement under Cal. Code Civ. Proc. § 664.6. However, because settlement agreement itself had not been signed, the Court declined to enforce the settlement.

Instead, the Court set Plaintiff’s pending class certification motion for hearing, and directed Plaintiff to file amended trial plan to accompany the motion. Discovery continued, with Plaintiff serving and obtaining answers to additional interrogatories, document requests, requests for admissions, and issuing third-party subpoenas to gather additional information for trial.

TJ’s filed a new motion for judgment on the pleadings attacking Keim’s standing yet again based on a new case that simply reaffirmed Limon. On March 18, 2025, after full briefing and argument, the Court rejected TJ’s standing argument yet again.

On April 4, 2025, Plaintiff filed his amended trial plan, TJ’s filed a response, and Plaintiff filed a reply. Thereafter, the parties returned to the bargaining table and, on May 23, 2025, signed an enforceable “Settlement Term Sheet” memorializing the material terms of the settlement wherein TJ’s agreed to the same \$7.4 million dollar settlement it previously agreed to.

Subsequently, the parties exchanged several revised drafts of the comprehensive settlement agreement and exhibits (proposed class notices, class claim form, and preliminary and final approval orders) they had previously negotiated, finalizing the agreement on July 21, 2025. A fully executed long form Settlement Agreement was filed with the court on July 22, 2025 attached as Appendix 1 to the Motion for Preliminary Approval (“MPA”).

Plaintiff filed the MPA on July 22, 2025. On September 23, 2025, Defendant filed a “Response” to Plaintiff’s MPA. On September 30, 2025, Plaintiff filed its Reply ISO MPA. Essentially, the parties are in disagreement as to the Notice method and the Contents of Notice as described below.

On October 7, 2025, the Court issued a checklist of items for counsel to address and continued preliminary approval. In response, on November 6, 2025 counsel filed a fully executed Amended Settlement Agreement.

On December 4, 2025, the continued preliminary approval for counsel to provide further briefing and revisions. In response, on January 21, 2026 Counsel filed a fully executed Second Amended Settlement Agreement.

The Parties now move for preliminary approval of the proposed class action settlement.

### **SETTLEMENT CLASS DEFINITION**

- Settlement Class: 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 Agreement, ¶1.)
- Based on information produced in discovery and calculations done by Plaintiff's expert and not disputed by Trader Joe's, the parties estimate the Settlement Class contains 757,663 persons, i.e., persons who presented 757,663 unique card numbers for payment at Trader Joe's between March 5, 2019 and July 19, 2019. (*Ibid.*)
- The parties agree to class certification for the purposes of settlement. (¶III.A)

### **TERMS OF SETTLEMENT AGREEMENT**

The essential terms are as follows:

- The Settlement Amount ("SA") is **\$7,400,000**, non-reversionary. (¶II.U)
- The Net Settlement Amount ("Net") (**\$3,861,333.33**) is the SA minus the following:
  - Up to **\$2,466,666.67 (33%)** for attorney fees (¶III.D);
    - **Fee Split:** 1/3 to Keogh Law, Ltd.; 1/3 to Hekmat Law Group; and 1/3 to Scott D. Owens, P.A (¶III.F.1)
  - Up to **\$65,000** for attorney costs (¶III.D);
  - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶III.D);
  - Up to **\$997,000** for settlement administration costs. (¶III.D)
- Funding of Settlement Amount: Trader Joe's, either itself or via its insurer, will pay the Settlement Amount to the Claims Administrator within ten business days after Final Approval, except that it will deposit an amount necessary to pay for the estimated cost of Class Notice and administration no later than 30 days before the first date that Class Notice will be issued. The amount necessary to pay for the estimated cost of Class Notice and administration will be determined by the Claims Administrator 14 days before the deposit is due, and that amount will be less than the not-to-exceed cost of Class Notice and administration. (¶III.D)
- Distribution of Settlement Amount:
  - First Distribution: Within 45 days after the Effective Date, the Claims Administrator shall send payment to each claiming Settlement Class Member eligible to receive payment. Settlement Awards shall be paid by electronic deposit or check. The amount of each payment shall be the amount of the funds available for distribution divided by the number of Settlement Class Members to whom payments are being directed. (¶III.D.i)
  - Second Distribution: If, after the expiration date of the checks distributed pursuant to the First Distribution, there remains money in the Settlement Fund sufficient to pay at least \$10 to each Settlement Class Member who received an electronic deposit or cashed his or her initial settlement check prior to the expiration date of such check, such remaining monies will be distributed on a pro rata basis to those Settlement Class Members (the "Second Distribution"). The

Second Distribution shall be made within 90 days after the expiration date of the checks distributed pursuant to the First Distribution, and shall be paid in the same manner as the First Distribution. (§III.D.ii)

- Remaining Funds: Money in the Settlement Fund that has not been distributed after the expiration of checks issued pursuant to the Second Distribution, including but not limited to money not distributed because there is not enough money in the Settlement Fund to justify a Second Distribution (the “Remaining Funds”), shall be paid as cy pres to the Identity Theft Resource Center (“ITRC”) earmarked for education and efforts to minimize the risk and mitigate the impact of identity compromise. The Parties will jointly petition the Court for a cy pres distribution to the cy pres recipient. No money remaining in the Settlement Fund shall revert to or otherwise be paid to Trader Joe’s. (§III.D.iii)
- Attorneys’ Fees and the Class Representative Incentive Payment will be paid from the Settlement Amount within fourteen (14) days after the Effective Date. (§III.F)
- Uncashed Checks: The payment shall be made, at the option of the class member, either by electronic deposit or by check sent by first-class mail. The Claims Administrator will perform skip tracing and re-mailing as reasonably necessary. Checks will be valid for 180 days from the date on the check. The amounts of any checks that are returned as undeliverable or that remain uncashed more than 180 days after the date on the check will be included as part of the Second Distribution (as defined below). (§III.D.i) Checks issued pursuant to the Second Distribution will be valid for 180 days from the date on the check. (§III.D.ii) Money in the Settlement Fund that has not been distributed after the expiration of checks issued pursuant to the Second Distribution, including but not limited to money not distributed because there is not enough money in the Settlement Fund to justify a Second Distribution (the “Remaining Funds”), shall be paid as cy pres to the Identity Theft Resource Center (“ITRC”) earmarked for education and efforts to minimize the risk and mitigate the impact of identity compromise. The Parties will jointly petition the Court for a cy pres distribution to the cy pres recipient. No money remaining in the Settlement Fund shall revert to or otherwise be paid to Trader Joe’s. (§III.D.iii)
  - Neither Party nor their counsel have any interest in the cy pres recipient. (Supplemental Declaration of Keith J. Keogh, ¶12; Supplemental Declaration of Scott D. Owens, ¶12; Supplemental Declaration of Joseph M. Hekmat, ¶12; Declaration of Micheal S. Hilicki, ¶12; Declaration of Brian Keim, ¶14; Declaration of Noah Ickowitz, ¶13; Declaration of Kathryn Cahan, ¶13.)
- The Net Settlement Amount shall be distributed pro rata to Settlement Class Members who submit Settlement Claim Forms that are received on or before the Claims Deadline and are accepted by the Claims Administrator. A person whose claim form does not match a transaction in the class list shall not be a class member. (§III.D)
  - In order to make a claim, a Settlement Class Member must submit a valid and completed Settlement Claim Form in compliance with the procedures set forth in the Class Notice, Preliminary Approval Order, and Order of Final Approval. The claims shall be cross-reference against the transaction data for the class

members. Any claim that does not match the transaction data for the class members shall not be valid as that person is not a class member. For example, most Trader Joe's receipts contained no additional credit card digits and even then, they did so in a limited window of time, such that customers engaging in transactions outside of these specific locations or outside of the window of time would not be part of this class. All Settlement Claim Forms must be submitted by the Claims Deadline as set forth in the Class Notice. Any Settlement Claim Form submitted after the Claims Deadline shall be deemed an untimely and invalid claim. (¶IV.C)

- "Settlement Claim Form" means a form (Exhibit 5 to Settlement Agreement) to be completed by Settlement Class Members and submitted to the Claims Administrator. The Settlement Class Members shall be able to make a claim via website, mail, or telephone IVR provided that they are required to enter the claim member identification number printed on the direct notice. In addition to the claim member identification number, the Settlement Claim Form shall also require the Settlement Class Member to provide: (a) his or her name; (b) physical address; (c) phone number, which shall be optional; (d) e-mail address to the extent that he or she has one; and (e) any other information required on Exhibit 5. The website claim form will prepopulate this information for persons who first enter their claim ID and shall ask them to update or correct any information. The Claim Forms will be matched against the class list. (¶II.V)
  - The Claims Administrator shall retain all records relating to payment of claims under this Agreement for a period of three (3) years from the Effective Date. The confidentiality of those records shall be maintained in accordance with the Preliminary Approval Order and the Protective Order. (¶IV.D)
  - Counsel estimates based on a 5%-10% claim rate, which is common, that the estimated recovery for each class member is between \$56 and \$113. (MPA, 33:2-7.)
- "Opt-Out/Objection/Claims Deadline" the date of which shall be 60 days after the deadline for notice to be distributed to Settlement Class Members. (¶II.C; II.N) Any Settlement Class Member who does not validly and timely submit a Request for Exclusion before the Opt-Out Deadline shall be deemed a Settlement Class Member and shall be bound by the terms of this Agreement. (¶IV.B.5) In the event a class member's notice is returned as undeliverable and subsequently resent to a new address, the class member will be given an additional two weeks to respond to the notice. (Order, ¶18.)
  - Trader Joe's shall have the right to terminate this Settlement Agreement if more than 2% of the Settlement Class Members request to opt-out. (¶IV.B.8)
- The settlement administrator is Verita Global, LLC. (¶III.B)
- Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### **ANALYSIS OF SETTLEMENT AGREEMENT**

**1. Does a presumption of fairness exist?**

1. Was the settlement reached through arm's-length bargaining? Yes. On October 18, 2021, the parties participated in an unsuccessful full-day mediation session with Judge Gonzalez. Ultimately, on September 13, 2022, Judge Gonzalez submitted a mediator's proposal to the parties based on her knowledge of the case and review of the record, which the parties ultimately accepted, filing a notice of class settlement on September 20, 2022. (Declaration of Keith J. Keogh ("Keough Decl."), ¶¶19-21.) However, thereafter, TJS refused to sign the settlement agreement, and instead wanted to re-assert the same "standing" argument it had made and lost on its demurrer to Plaintiff's first amended complaint, this time based on an appellate decision from the 5th District, the Limon case, that had come down in October 2022. (*Id.* at ¶22.) TJS was not successful in its endeavors, and the parties returned to the bargaining table and, on May 23, 2025, signed an enforceable "Settlement Term Sheet" memorializing the material terms of the settlement wherein TJ's agreed to the same \$7.4 million dollar settlement it previously agreed to. (*Id.* at ¶27.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that the parties engaged in investigation and discovery, with Keim serving special interrogatories, document requests, and requests for admissions, and engaging TJ's multiple times to resolve issues with its responses and objections to the same. (*Id.* at ¶14.) It is represented that Keim: 1) secured responses and key documents, including nationwide transaction data needed to ascertain the class; 2) deposed a TJ's corporate designee regarding its discovery production and facts essential to class certification; 3) served third-party discovery on TJ's card transaction processing vendor, First Data, to gather additional information needed to ascertain the class (and successfully moved to compel production of said discovery); 4) engaged a consultant to electronically match TJ's class transaction data with the corresponding class transaction and class member card number information produced by First Data, identifying 757,663 unique class member card numbers; 5) responded to TJ's written discovery, and sat for his deposition. (*Id.* at ¶¶15-17.) In turn, it is represented that TJ's deposed the consultant to confirm the accuracy of his work, and ultimately agreed his analysis was correct. (*Id.* at ¶32.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation. (*Id.* at ¶¶2-5, 33-59; Declaration of Scott Owens ("Owens Decl."), ¶¶2-14; Declaration of Joseph M. Hekmat ("Hekmat Decl."), ¶¶2-4.)

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 14:139.18, ("Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.").

CONCLUSION: The settlement is entitled to a presumption of fairness.

**2. Is the settlement fair, adequate, and reasonable?**

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130.)

Counsel represents that there is a potential statutory recovery of \$100-\$1,000, which can only be achieved if Keim proves the violation was willful, and which most likely would be the bottom of that range given the nature of the violation (handing class members a receipt that discloses two thirds of their card number). (MPA, 33:8-15.)

Counsel contends it is particularly difficult here because TJ's claims a third-party vendor is responsible for its point-of-sale processing system printing the receipts that allegedly violated FACTA and, in similar circumstances, courts have granted the merchant summary judgment. (MPA, 31:16-19.)

Counsel further contends that even if Keim were to prove willfulness at trial, the actual result could be lower still if the Court were to determine the \$100 statutory minimum is unduly punitive. (MPA, 33:1-6.)

Therefore, the possible recovery in this matter at trial could be **\$75,766,300** (757,663 account holders x \$100) to **\$757,663,000** (757,663 account holders x \$1,000).

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (See *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.").)

4. Amount offered in settlement.

Plaintiff's counsel obtained a \$7,400,000 non-reversionary settlement, which represents approximately 9% to 97% of the estimated statutory recovery in this matter, which is within the "ballpark of reasonableness."

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including consumer class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and reasonable."

### 3. Scope of the release



Upon the Effective Date of this Agreement, the Trader Joe's Releasees shall be released and forever discharged from all Released Claims by the Class Representatives, 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. (¶VI)

"Released Claims" means 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. (¶II.S)

"Effective Date" means the date on which the Order of Final Approval becomes Final. (¶II.J)

#### **4. May conditional class certification be granted?**

##### **1. Standards**

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba* at 240.)

##### **2. Analysis**

a. Numerosity. Here, the class contains more than 750,000 account holders. (MPA, 23: 10-12.) This element is met.

b. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.)

Counsel contends that Ascertainability is met for several reasons. First, the Class is defined exclusively in terms of objective characteristics and common transactional facts because it is limited to persons whose credit or debit card was used in a transaction at a TJ's store for which, according to TJ's records, its payment system was coded to generate a receipt displaying the first six and last four digits of the card number. (MPA, 22:19-23.)

Second, these objective characteristics make ultimate identification of the class members "possible." TJ's already identified and produced the transaction details for each

transaction that has these characteristics, Plaintiff used this information to subpoena TJ's card processing vendor to identify the full number of the card used in each transaction, Plaintiff's consultant electronically matched TJ's class transaction data to the full card numbers associated with the class transactions produced by TJ's processor (identifying 757,663 class card numbers) and, after deposing him, TJ's agreed his analysis was correct. (MPA, 22:24-23:4.)

In turn, Plaintiff's counsel has begun the process of using the card numbers to subpoena the card-issuing banks to get the cardholders' name and contact information, as they have successfully done in numerous FACTA cases in order to give class members direct notice of the settlement. (MPA, 23:4-8.)

c. Community of interest. "The community of interest requirement involves 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.'" (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

Class counsel contends that commonality is met because the common issues that control Plaintiff's and each class member's claim are: 1. Whether TJ's practice of providing receipts displaying the first six and last four digits of the customers' debit/credit card numbers violated FACTA; and 2. Whether TJ's FACTA violations were willful, i.e., knowing or reckless. Both issues are subject to common proof as Plaintiff can prove the first issue from the records TJ's produced identifying the transactions for which its system was set to generate a receipt displaying the first six and last four digits of the credit and debit card used, and proof on the second issue is necessarily common because it turns on a single actor's knowledge and conduct. (MPA, 24:5-18.)

Further, counsel contends that typicality is met because Plaintiff and the Settlement Class Members necessarily incurred the same injury because the class exclusively includes those persons for which TJ's payment processing system was set to generate a receipt displaying the first six and last four digits of their card numbers, and their claims are based on identical conduct, i.e., TJ systematically generating those receipt. (MPA, 25:4-8.)

Finally, counsel contends that the Plaintiff is an adequate representative because he does not have conflicts with the class and is represented by adequate counsel. (MPA, 25:16-26:16; Declaration of Plaintiff Keim, *passim*.)

d. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including consumer class actions.

e. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

CONCLUSION: The class is conditionally certified as the prerequisites of class certification have been satisfied.

## **5. Is the notice proper?**

**1. Content of class notice.** The proposed notices are attached to the Second Amended Settlement Agreement as Exhibit 2 (Summary Email Notice) and Exhibit 3 (Full Notice). The contained information should include: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross

settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or objecting to, the settlement; and the consequences of participating in, opting out of, or objecting to, the settlement. **Counsel must ensure that the Class Notice includes accurate identification of the date, time, and place of the final approval hearing (312 North Spring Street, Department 9, Los Angeles, CA 90012)**

2. **Method of class notice.** Notice will be by mail and email. A copy of the Summary Notice, as approved by the Court after considering the positions of the parties, shall be mailed to all class members whose mailing address was provided by their card issuing banks, and e-mailed to those class members for which there is an e-mail address but no mailing address provided by the card issuing bank or a mailing address that results in notices being returned to sender. E-mail and mail will be the only means of direct notice. Class members' contact information will come from banking institutions or other third parties (such as the US Postal Service). Mailed notices shall be sent by first class mail. For any class member whose mailed Summary Notice is returned with a forwarding address, they shall be re-mailed a copy of the Summary Notice by first class mail to the forwarding address. For any class member whose Summary Notice is returned without a forwarding address, the Claims Administrator shall attempt to locate a new address for the class member from public databases and re-send the Summary Notice by first class mail to the new address. Trader Joe's shall reasonably cooperate with Plaintiffs' counsel in Plaintiff's counsel's efforts to retrieve Settlement Class Member information from any third party, including, but not limited to, Visa, MasterCard, American Express, Discover, and any other third party involved in processing Trader Joe's debit or credit card transactions, with the express understanding that any reasonable costs any other entity incurs will be paid from the Settlement Amount and not in addition to the Settlement Amount. The Parties agree that any contact information, personally identifiable information, or 19 transaction-specific information provided for purposes of identifying and/or notifying potential Settlement Class Members may be shared with the Claims Administrator, who agrees to be governed by the Protective Order in this Litigation, and any party Class Counsel decides to subpoena for the limited purpose of obtaining Settlement Class Member contact information. All such information shall be kept confidential and will be destroyed two years after the Settlement Fund is closed. Prior to destruction, Claims Administrator shall send all class administration data to Defendant, who will preserve it for an additional 5 years. (¶IV.B.1)

For every unreturned e-mail where that class member has not submitted a claim by ten days before the Claims Deadline, the Claims Administrator shall send a reminder notice, in substantially the form as the Summary Notice approved by the Court (except that the notice may be captioned with the phrase "Reminder Notice") by e-mail at least seven days before the Claims Deadline for the class members for whom it has an e-mail address. (¶IV.B.4)

By the deadline for distributing the Class Notice, the Claims Administrator shall establish and maintain the Settlement Website, which will, among other things, (i) enable Settlement Class Members to submit a claim and access and download the Settlement Claim Form, (ii) provide contact information for Class Counsel, and (iii) provide access to relevant documents. The Claims Administrator shall maintain the Settlement Website until at least 30 days following the void date for checks. (¶VI.B.2)

By the deadline for mailing the Class Notice, the Claims Administrator shall establish and maintain a toll-free number that maintains an interactive voice response (IVR) system to answer questions and allow class members who have a claim ID form mailed notice to submit a claim. (¶IV.B.3)

While the agreement does not specify the date for sending notice because that date turns on: (a) when the Court grants preliminary approval; and (b) when the process of gathering the data necessary to send the notice has been completed, and neither of those factors were known at the time the agreement was signed. Assuming the Court grants preliminary approval at the upcoming December 4, 2025 hearing, and assuming all motions to compel banks objecting to producing the data have been resolved by that date and the data has been produced, Plaintiff's counsel anticipates March 27, 2026 will be a reasonable deadline for issuing notice. (Supp. Brief ISO MPA, 7:21-8:1.)

**6. Cost of class notice.** As indicated above, claims administration costs are estimated not to exceed **\$997,000**. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

## **7. Attorney fees and costs**

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to **\$2,466,666.67 (1/3)** in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought (capped at **\$65,000**) by detailing how they were incurred.

## **8. Incentive Award to Class Representative**

The Settlement Agreement provides for an enhancement award of up to **\$10,000** to Plaintiff. In connection with the final fairness hearing, the named Plaintiff must submit declarations attesting to why they should be entitled to an enhancement award in the proposed amount. The named Plaintiffs must explain why they "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class."

(*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with “nothing more than *pro forma* claims as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . . .’” (*Id.* at 806-807, italics and ellipsis in original.) The Court will decide the issue of the enhancement award at the time of final approval.

### **CONCLUSION AND ORDER**

The Parties’ Motion for Preliminary Approval of Class Action Settlement is GRANTED as the settlement is fair, adequate, and reasonable.

The essential terms of the Settlement Agreement are:

- The Settlement Amount (“SA”) is **\$7,400,000**, non-reversionary. (¶III.U)
- The Parties will request the Court to approve and award the following payments and deductions to be made from the GSA:
  - Up to **\$2,466,666.67 (33%)** for attorney fees (¶III.D);;
    - **Fee Split:** 1/3 to Keogh Law, Ltd.; 1/3 to Hekmat Law Group; and 1/3 to Scott D. Owens, P.A (¶III.F.1)
  - Up to **\$65,000** for attorney costs (¶III.D);
  - Up to **\$10,000** for a Service Payment to the Named Plaintiff (¶III.D);
  - Up to **\$997,000** for settlement administration costs. (¶III.D)
- Plaintiffs shall release Defendants from claims described in the Settlement.

The Parties’ Motion for Final Approval of Class Action Settlement must be filed by **June 30, 2026** and will be heard on **August 10, 2026 at 8:30 am**. *Failure to file the Parties’ Motion for Final Approval of Class Action Settlement by this deadline will result in a continuance of the final approval hearing to the Court’s first available hearing date, which could be months after the hearing date noted here.* Prior to filing the moving papers, Plaintiff must contact the court staff for Department 9 to obtain a briefing schedule, which must be included in the caption of the moving papers.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged **single document** that constitutes a [Proposed] Order and Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out.

Non-Appearance Case Review is set for **July 7, 2026**, 8:30 a.m., Department 9 re filing of Motion for Final Approval of Class Action Settlement.

The Judicial Assistant is to give notice to Counsel for Plaintiff who is ordered to give further and formal notice to all parties and file proof of service of such within 10 days.

IT IS SO ORDERED.

DATED: February 5, 2026



A handwritten signature in cursive script that reads "Elaine Lu".

Elaine Lu / Judge

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Elaine Lu  
Judge of the Superior Court