

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DORIS JEFFRIES, on behalf of herself and all
other similarly situated,

Plaintiff,

v.

VOLUME SERVICES AMERICA, INC. (d/b/a
Centerplate and Centerplate/NBSE); and DOES 1
THROUGH 10,

Defendants.

Case No. 1:17-cv-01788 (CKK)

Hon. Colleen Kollar-Kotelly.

DECLARATION OF CHANT YEDALIAN

I, Chant Yedalian, declare as follows:

1. I am one of the attorneys for the named Plaintiff Doris Jeffries. As such, I have personal knowledge of, or am informed and believe, the following facts herein stated. If called as a witness, I could and would testify competently to the following:

2. I am an attorney at law, approved *pro hac vice* in this case. I am licensed to practice before all of the courts of the State of Texas and the State of California. I am also admitted to the Second, Fifth, Sixth, Ninth, Eleventh, and District of Columbia federal Circuit Courts of Appeals, and the federal District Courts for the Central, Northern, Eastern and Southern Districts of California, the Eastern District of Wisconsin, and the Western District of Tennessee.

3. I submit this Declaration in support of Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement, and for Plaintiff's Unopposed Motion for Award of Attorneys' Fees, Costs, and Class Representative Service Award.

Settlement Discussions

4. Beginning in September 2019, counsel for the parties commenced settlement

discussions. These discussions led to an agreement to meet in person in Washington D.C. on October 28, 2019. The in-person meeting was attended by counsel for both parties, a client representative for Volume Services America, Inc. ("Centerplate" or "Defendant"), and Michael Porter, Vice President of Emerging Technologies for Centerplate. The settlement discussions continued until June 9, 2020, and various proposals (oral and written) continued to be made and considered as part of the discussions between Plaintiff and Centerplate. During this time, underlying facts and information were also exchanged between Plaintiff and Centerplate. The Class Action Settlement and Release Agreement, a copy of which was previously filed with the Court in connection with the preliminary approval motion, is a product of all of the extensive negotiations and exchanges between the Parties, following the factual and legal investigation and research concerning the Parties' respective claims and defenses.

The Settlement Warrants Final Approval

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

6. My co-counsel and I considered several factors in evaluating the reasonableness of this Settlement, including the following:

7. "Willfulness" In order to recover any statutory damages and other remedies under 15 U.S.C. § 1681n, Plaintiff must show that Centerplate engaged in "willful" conduct. However, Centerplate has vigorously denied that its conduct was willful. In contrast, Plaintiff believes, among other things, that the printing of more than the last 5 digits and expiration date of credit and debit cards was reckless and obvious to Centerplate and the result of a lack of adequate measures to safeguard consumer rights.

8. 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.

9. Class Certification: The Parties have sharply divergent positions on class certification in this case, absent a settlement. Centerplate has denied that for any purpose other than that of settling this lawsuit, this action is appropriate for class treatment.

10. I 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 another FACTA case, strongly supports certification in this case.

11. 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.

12. For example, after the Ninth Circuit's decision in *Bateman*, one district court within the Ninth Circuit 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 in denying class certification based upon the facts in that case. 2014 WL 3686135 (July 25, 2014).

13. I reasonably and strongly believe about the prospect of certification in this case. However, *Martin* is an example of a FACTA case demonstrating the risks inherent in certification, including, at a minimum, delays and potential appeals.

14. Substantial Benefits of Settlement Compared to the Risks of Continued Litigation: I believe the Settlement provides for substantial benefits, particularly when compared to the risks of continued litigation.

15. The Settlement provides for substantial benefits.

16. Each Settlement Class member may make a claim in an amount of \$1,000. Not only is this amount reasonable, it is the full amount of statutory damages available if the class were to proceed and succeed at trial.

17. Another benefit of this lawsuit and Settlement is the fact that, as part of the Settlement, Centerplate shall also: (1) certify that its existing point of sale equipment is FACTA compliant; and (2) amend its standard operating procedures for employees who operate point of sale terminals to: (a) emphasize compliance with FACTA; and (b) include a written company FACTA policy which states that, with respect to any receipt provided to any customer that uses a credit or debit card to transact business with Centerplate, Centerplate will not print more than the last five digits of a customer's credit or debit card number, or the credit or debit card expiration date. Agreement ¶ 2.7. I believe these procedures and the FACTA compliance policy ensures that Centerplate will not continue to violate the law, willfully, inadvertently or otherwise. Such non-pecuniary benefits are properly considered in judging the results of the lawsuit. *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). This is especially true with a consumer protection statute such as FACTA which serves both a compensatory and "deterrent purpose." *Bateman*, 623 F.3d at 718. "In fashioning FACTA, Congress aimed to 'restrict the amount of information available to identity thieves.'" *Ibid.* The non-pecuniary benefits achieve that substantial purpose.

18. The Settlement Is The Product of Extensive Arm's-Length Negotiations: As explained above in paragraph 4, 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.

19. Of course, none of my co-counsel's and my assessments were performed in a vacuum. We engaged in the necessary due diligence that made it possible for Plaintiff and us to exercise informed judgment

20. We did a thorough investigation of the facts, law and potential exposure and issues related to possible trial. We made an objective assessment of the facts, the law and risks. In sum, our efforts allowed us to effectively evaluate and exercise informed judgment on the strengths and weaknesses of the claims and defenses involved in the case.

21. We concluded, after taking into account the sharply disputed factual and legal issues involved in the case, the defenses asserted by Centerplate, the risks of continued litigation including trial outcome and potential appeals, and the substantial benefits to be provided pursuant to the Settlement, that the proposed Settlement is fair, adequate and reasonable.

22. My opinion regarding the Settlement is also based in substantial part on my experience and qualifications, a brief summary of which is set forth in paragraphs 23-43, below.

Qualifications of Counsel

23. I am an attorney and a consumer activist.

24. As an attorney, I have had extensive experience in consumer related lawsuits, including complex cases, coordinated matters, multidistrict litigations ("MDL") and class actions and other representative suits.

25. I have been appointed class counsel on several occasions in both state and federal courts.

26. I have extensive experience with cases, like the instant matter, which allege violations of the FACTA.

27. I was among one of the first attorneys in the nation to prosecute FACTA cases and have extensive experience prosecuting FACTA cases from start to finish.

28. I have personally handled various aspects of FACTA litigation, including, but not limited to, class certification.

29. My efforts have resulted in the certification of several FACTA class actions where certification was contested by the defense. *See, e.g., In Re: Toys "R" Us – Delaware, Inc. – Fair And Accurate Credit Transactions Act (FACTA) Litigation*, MDL 08-01980 MMM (FMOx), 300 F.R.D. 347 (C.D. Cal. 2013); *Tchoboian v. Parking Concepts, Inc.*, SACV09-422 DMG (ANx), 2009 WL 2169883 (C.D. Cal. 2009) (C.D. Cal.); *McGee, et al. v. Ross Stores, Inc, et al.*, C06-7496 CRB (N.D. Cal.); *Klimp v. Rip Curl, Inc., et al.*, SACV07-1383 JVS (FFMx) (C.D. Cal.).

30. In addition to successfully certifying FACTA class actions on a contested basis, I have successfully prosecuted to conclusion many FACTA cases, including against some of the largest merchants in the United States (Party City, FedEx Office And Print Services, Toys "R" Us, AMC theatres, Ross Stores, Stein Mart, etc.). These facts not only demonstrate experience but they also provide specific examples of the fact that I have the wherewithal and resources necessary to take on and successfully prosecute FACTA class actions against the largest of merchants.

31. Of course, along the way to class-wide recoveries, I have had extensive experience litigating many issues in FACTA class action cases.

32. For example, about 15 years ago, I successfully opposed a motion to dismiss in the seminal case of *Pirian v. In-N-Out Burgers*, SACV-06-1251 DOC-MLGx, 2007 WL

1040864 (C.D. Cal. 2007), which set favorable pleading standards for FACTA claims.

33. Throughout the years, I have opposed many motions to dismiss in FACTA cases and continued to secure favorable results in favor of consumers. See, as examples, *Deschaaf v. American Valet & Limousine, Inc.*, Case No. 2:16-cv-03464-GMS, 2017 WL 610522 (D. Ariz. Feb. 15, 2017); *De Cesare, et al v. Lab. Corp. of Am. Holdings*, 2016 WL 3483205 *3 (C.D. Cal. May 31, 2016).

34. I have conducted extensive discovery and investigations in FACTA cases, including extensive expert related work concerning various payment card processing issues, including payment platforms, equipment and software, intermediaries involved in payment card acquisition and processing, and related data and processes.

35. I have also fiercely and successfully pursued discovery through discovery motions, when necessary. See, e.g., *In Re Toys “R” Us-Delaware, Inc. Fair And Accurate Credit Transactions Act (FACTA) Litigation*, 2010 WL 4942645 (C.D. Cal. 2010).

36. I have successfully defeated motions for summary judgment in FACTA cases. E.g., *Edwards v. Toys “R” Us*, 527 F.Supp.2d 1197 (C.D. Cal. 2007); *Tchoboian v. Fedex Office & Print Services, Inc.*, 2011 WL 12842230 (C.D. Cal. 2011).

37. I have handled several putative class action cases before the Judicial Panel On Multidistrict Litigation. I have argued before the Judicial Panel On Multidistrict Litigation. I have also served as a lead counsel on behalf of plaintiffs in an MDL. *In Re: Toys “R” Us – Delaware, Inc. – Fair And Accurate Credit Transactions Act (FACTA) Litigation*, MDL 08-01980 MMM (FMOx) (C.D. Cal.); *In Re: The TJX Companies, Inc. Fair and Accurate Credit Transactions Act (FACTA) Litigation*, MDL Case No. 07-md-1853 (D. Kansas).

38. I have litigated several appeals in FACTA cases. I have also argued before several courts of appeal in FACTA cases. Among my appeals, I have 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 Appellate Division both held that Plaintiff's class allegations should be dismissed, the New Jersey Supreme Court accepted our petition for review, heard oral argument which I argued on behalf of my client, and in a unanimous opinion reversed and reinstated the class claims.

39. I have also persevered and litigated a FACTA case through bankruptcy, on a class-basis, resulting in a \$37 million dollar judgment. *Potikyan v. JS Dreams, Inc. (Johnny Rockets - Commons At Calabasas), et al.*, No. CV13-6237 JEM (C.D. Cal.) (judgment entered Nov. 17, 2016).

40. Although FACTA litigation is a relatively new area of the law (given the statute's most recent effective date of December 4, 2006), I am no stranger to "cutting-edge" litigation involving consumer rights. I have been involved in various novel and "cutting edge" litigation involving the enforcement of consumer rights, including statutory rights and constitutional rights. I am a sincere believer in protecting the rights of consumers and am committed to act in their best interests. For example, I have personally (as a party and lead attorney) filed lawsuits to help preserve access to the court and jury system. I filed *Yedalian v. Kaiser Foundation Health Plan, Inc., et al.* (Los Angeles Superior Court Case No. BC288469), which was a lawsuit against several of California's largest HMO's challenging the enforceability of their arbitration clauses and asserting that their representations to their patient members - that binding arbitration is a member's only means of legal recourse to resolve disputes with their HMO - are false and misleading and violate state consumer protection laws. *Yedalian* ultimately resulted in a landmark settlement with the Kaiser and PacifiCare groups of defendants (respectively the State's largest and fifth largest HMO's)

requiring the HMO's to provide written notification to patient members concerning their rights when disputes arose.

41. My expertise in protecting consumer rights has been recognized and sought by various organizations. For example, when the late Peter Jennings decided to air a special, multiple-part series on consumer arbitration clauses on ABC World News Tonight with Peter Jennings, the producers of the show requested my services as a consultant, and I agreed to provide same, ultimately resulting in information and materials which were used in the series, including an interview of one of my clients whose then pending case was featured on the series as a result of my consulting services. My work and experiences have been featured in multiple other venues including radio, television, newspapers, magazines, etc.

42. My work on behalf of consumers does not end with my legal efforts as an attorney. I believe I am specially well suited to represent consumers because, in addition to my legal experience, I am a consumer activist. I have worked hand-in-hand with various consumer protection organizations including the Foundation for Taxpayer and Consumer Rights ("FTCR"), Cal PIRG, AARP, Congress of California Seniors, Sierra Club and others to promote and preserve consumer rights. For example, I along with the FTCR and the California Nurses Association held the very first campaign in Oakland, California spearheading the movement to defeat Proposition 64 (which sought to amend California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.). This was followed by editorial board meetings and rallies and other grass-root type events throughout California to defeat Proposition 64, in which I actively participated. Several of the organizations I have worked with including the FTCR and AARP have written articles about my consumer related efforts.

43. In addition to working with consumer organizations, I have also worked with

members of the community such as musicians and other artists to create content to educate and galvanize the public on consumer related issues. An example of one such project, which I produced, directed, and co-wrote, is a video parody about the high-cost of prescription medications confronting seniors and other residents of the United States (viewable at www.todaysspecial.org).

44. In sum, I believe my experience and expertise as a consumer attorney, my genuine interest in protecting consumer rights, and my work to date in FACTA litigation, including but not limited to this matter, adequately qualify me to serve as Class Counsel on behalf of the best interests of the consumer class.

45. I do not know of any conflict of interest between myself or my company and any member of the proposed class which should or would preclude me from representing the proposed class.

Attorneys' Fees

46. It should also not be lost on the Court that my co-counsel and I have borne, and continue to bear, the entire risk of litigation associated with the lawsuit on a pure contingency basis, and that as a result of the time committed by me to this matter, I was precluded from taking on other matters which were available.

47. Additionally, this Court can appreciate that litigating a high-stakes and time-consuming class action case against a corporate defendant, with litigation potentially lasting for several years, and involving appeal, is not desirable to most lawyers. I undertook this matter without any guarantee of any payment, and with any fees that I may recover entirely contingent on obtaining recovery. Thus, my co-counsel I have borne, and continue to bear, the entire risk of obtaining a fee recovery in this matter.

48. Further, the risks here were not hypothetical possibilities. An appeal actually occurred in this case, and while we prevailed on appeal, FACTA litigation has been extremely high risk as demonstrated by many actual losses.

49. Up to September 1, 2022, I have devoted 214.33 hours of my time on this matter. I expect to devote approximately 30 hours of additional time after September 1, 2022, including for matters such as work on the final approval motion and related papers, work on the fees, costs and incentive award motion and related papers, appearing in-person for the final approval hearing as required by the Court, and work relating to the continuing administration of this Settlement.

50. To the extent the Court would like to review my time records, I can submit my itemized time records for the Court's *in camera* review.

51. I have been an attorney since December 3, 2002. Thus, in a few months, I will have been a practicing attorney for 20 years.

52. Using the adjusted Laffey Matrix and applying the \$919 hourly rate for a twenty-year practicing attorney, and multiplying it by 244.33 hours yields a lodestar of \$224,539.27.

Reimbursement Of Costs

53. I seek reimbursement in the amount of \$6,174.41 consisting of the following costs:

Complaint filing fee:	400.00
Pro Hac Vice fee:	100.00
Service of Process fees:	67.90
Notice of Appeal fees:	505.00
D.C. Cir fees:	231.00
Airfare, lodging and related For D.C. settlement meetings and for final approval hearing:	4,670.51
Estimated ground transport to and from airports for final	

approval:	200.00
TOTAL:	\$6,174.41

Incentive Award for the Class Representative

54. I respectfully request that the Class Representative, Doris Jeffries, be awarded an incentive award in the amount of \$5,000.

55. Were it not for the Class Representative stepping forward and shouldering the duties of protecting and prosecuting the interests of other Settlement Class members, I believe that it is likely the interests of the Settlement Class would neither have been prosecuted, nor benefited. Indeed, the parties have acknowledged that, to their knowledge, there is no other litigation, either pending or otherwise, on a class or individual basis, concerning the claims in this lawsuit.

56. Moreover, I believe the Class Representative has done all things reasonably expected of her in her capacity as Class Representative. She was subjected to liability for defense costs in the event the litigation was unsuccessful. By stepping forward to shoulder this action on behalf of the class, she also took on other risks, including the risk of subjecting herself to intrusive discovery. She also regularly and consistently communicated with me throughout the time this lawsuit, including appeal, was pending. Through my discussions and other communications with her, I know that she reviewed relevant documents, provided her input, and otherwise kept apprised of litigation related events and developments. She also provided her ideas and input to me in the various rounds of settlement negotiations and exchanges. In sum, I believe the Class Representative contributed as much of her valuable time as this litigation demanded to ensure a vigilant prosecution of and favorable outcome for the best interests of the Settlement Class. I believe these facts further support an incentive award because they "recognize [a class representatives] willingness to act as a private attorney general." *In re Cellphone Termination Fee Cases*, 186 Cal.App.4th at 1393-1394; *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959

(9th Cir. 2009).

57. I believe that but for the Class Representative's actions, there would be no resulting benefit to individual Settlement Class members or any other benefits. Moreover, it is only as a result of the Class Representative's actions that the Defendant agreed to certify that its existing point of sale equipment is FACTA compliant, amend its standard operating procedures for employees who operate point of sale terminals, and include a written company FACTA compliance policy as described in the settlement. Thus, the Class Representative effectuated substantial change of conduct, thereby accomplishing the "deterrent" objectives of FACTA. She was also willing and stepped forward to act as a private attorney general where, to my knowledge, no other plaintiff has done so.

58. The fact that the Court has already made a preliminary finding that the settlement is fair, adequate and reasonable, also supports the significance of the benefits achieved through the Class Representative's initiative and perseverance.

59. Further, by definition, the time the Class Representative devoted to this litigation was time spent away from work and/or leisure in an effort to advance the interests of the entire class.

60. Another factor properly considered by the Court in assessing an incentive award is the personal benefit, or lack thereof, enjoyed by the class representative as a result of the litigation. *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014):

"An incentive award may be appropriate when a class representative will not gain any benefit beyond that he would receive as an ordinary class member. See *Razilov*, 2006 WL 3312024, at *4 (approving the payment of an incentive award where the only benefit a class representative was going to receive from a settlement

was the same statutory damages other class members would receive); *Van Vranken*, 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction of the common fund,' a substantial incentive award was appropriate). The named plaintiffs in this action will receive no relief beyond that available to members of the class in general; absent an incentive award, they will each be eligible to submit a claim for a \$5, \$15, or \$30 voucher. This factor, therefore, also favors approval of an incentive award."

61. I also believe that the amount requested is also reasonable in relation to other cases. In *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001), the court approved incentive awards of \$300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process and taking the risk of stepping forward on behalf of the class. In *Van Vranken v. Atl. Richfield Co.*, 901 F.Supp. 294, 300 (N.D. Cal. 1995), a \$50,000 incentive award was approved for similar participation.

62. The amount requested is also consistent with incentive awards in various other FACTA cases. For example, in *McGee, et al. v. Ross Stores, Inc., et al.*, C06-7496 CRB (N.D. Cal. January 9, 2009), the court awarded each of the two class representatives a \$5,000 incentive payment. In *Tchoboian v. Parking Concepts, Inc., et al.*, SACV09-422 DMG (ANx) (C.D. Cal. November 12, 2010) the court awarded the class representative a \$5,000 incentive payment. In *Jarchaffian v. American Multi-Cinema, Inc., et al.*, CV09-03434 JHN (AJWx), 2011 U.S. Dist. LEXIS 158005 *6 (C.D. Cal. October 6, 2011) the court awarded the class representative a \$5,000 incentive payment. In *Sakamoto v. One Parking, Inc. et al.*, SACV11-1249 MLG (C.D. Cal. June 21, 2012) the court awarded the class representative a \$5,000 incentive payment. In *In re Toys "R" Us—Delaware, Inc.—Fair And Accurate Credit Transactions Act (FACTA) Litigation*, No. cv-08-01980 MMM (FMOx), 295 F.R.D. 438, 472 (C.D. Cal. January 17, 2014), the court awarded each

of the three class representatives a \$5,000 incentive payment.

63. In sum, I believe the requested incentive payment of \$5,000 to the Class Representative in this case, for the valuable time and resources she contributed to advance this litigation is fair and reasonable, and I respectfully request that the Court approve and award this amount to her as her incentive award.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed in Rockwall, Texas, this the 14th day of September 2022.

/s/ Chant Yedalian
Chant Yedalian