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11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

13 CIRENA TORRES, on behalf of herself and) Case No. 1:16-cv-01915-DAD-BAM
14 all others similarly situated,)
15 Plaintiff,) **DECLARATION OF CHANT YEDALIAN IN**
16 v.) **SUPPORT OF: (1) MOTION FOR FINAL**
17 PICK-A-PART AUTO WRECKING (d/b/a) **APPROVAL OF CLASS ACTION**
Pick-A-Part); and DOES 1 through 10,) **SETTLEMENT AND; (2) MOTION FOR**
18 inclusive,) **AWARD OF ATTORNEY'S FEES AND**
19 Defendants.) **COSTS TO CLASS COUNSEL AND**
) **INCENTIVE PAYMENT TO THE CLASS**
) **REPRESENTATIVE; EXHIBIT 1**
) **Hearing**
20 _____) Date: July 17, 2018
Time: 9:30 a.m.
Courtroom: #5 (7th Floor)
Judge: Hon. Dale A. Drozd
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DECLARATION OF CHANT YEDALIAN

I, Chant Yedalian, declare as follows:

I am an attorney at law licensed to practice before all of the courts of the State of California and have been admitted to practice before this Court. I am an attorney for the named Plaintiff Cirena Torres ("Torres" or "Plaintiff") and the Settlement Class preliminarily certified by the Court. 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:

Settlement Discussions

1. I participated in all aspects of the settlement discussions and negotiations.

2. Between January 2017 to June 2017, the Parties participated in extensive settlement discussions and exchanged information to facilitate those discussions. In June 2017, the Parties signed a Memorandum Of Understanding Of Settlement ("MOU") through which they agreed to a class-wide settlement of this action. The Parties promptly informed the Court of the MOU as well of the fact that there remained issues to work out, including the preparation of a long-form settlement agreement, including the Newspaper Notice, the Full Notice to the Settlement Class and the Claim Form. Dkt. No. 11. The Parties also explained to the Court that the MOU provides that if the Parties cannot agree on these remaining issues, the MOU shall nonetheless be fully enforceable by the Court and the Court shall resolve any such differences. *Ibid.*

3. Between June 2017 to September 2017, the Parties continued to work on the remaining issues. They reached agreement as to all issues in late September 2017. The Stipulated Settlement Agreement and Release (hereinafter sometimes referred to as "Settlement" or "Agreement"), a true and correct copy of which is attached hereto as **Exhibit 1¹**, is the product of all of the negotiations and exchanges between January 2017 and September 2017.

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

1 **The Settlement Warrants Final Approval**

2 4. I considered several factors in evaluating the reasonableness of this Settlement,
3 including the following:

4 **A. The Likelihood Of Success By Plaintiff; Risks, Duration And Expense Of**
5 **Continuing Litigation**

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

9 **1. Outright Dismissal**

10 6. In her motion for preliminary approval, Plaintiff had pointed out that, although the
11 issue was not yet at the time resolved by the Ninth Circuit and that appeals were pending before
12 the Ninth Circuit, many federal courts, including but not limited to at least three federal cases
13 pending in the Washington federal courts (within the Ninth Circuit), and two federal courts of
14 appeal, had already dismissed FACTA cases like this one which allege expiration date violations
15 and seek statutory damages. The dismissals were based on the position that plaintiffs who allege
16 expiration date violations without any accompanying actual injury do not sustain any "concrete
17 injury" sufficient to satisfy Article III standing requirements in federal court. *Byles v. Ace Parking*
18 *Mgmt., Inc.*, Case No. C16-0834-JCC, Dkt. No. 24 (W.D. Wash. Oct. 4, 2016); *Israel v. Diamond*
19 *Parking Servs. Inc.*, Case No. C16-0687-JCC, Dkt. No. 23 (W.D. Wash. Oct. 11, 2016); *Bassett v.*
20 *ABM Parking Servs., Inc.*, C16-00947-TSZ, Dkt. No. 6 (W.D. Wash. July 21, 2016); *Meyers v.*
21 *Nicolet Rest. of De Pere, LLC*, 843 F.3d 724 (7th Cir. 2016); *Crupar-Weinmann v. Paris Baguette*
22 *America, Inc.*, 861 F.3d 76 (2nd Cir. 2017). These Article III arguments were circulating in the
23 federal courts for years prior to the issuance of the above opinions and they also ultimately made
24 their way up to the Supreme Court. See *Spokeo, Inc. v Robins*, 135 S.Ct. 1892 (certiorari granted
25 April 27, 2015); see also *First Am. Fin. Corp. v. Edwards*, 131 S.Ct. 3022 (certiorari granted June
26 20, 2011) but see *First Am. Fin. Corp. v. Edwards*, 132 S.Ct. 2536, 2537 (dismissed the writ of
27 certiorari as improvidently granted on June 28, 2012).

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1 7. Following the motion for preliminary approval, the Ninth Circuit issued an opinion
2 in *Bassett v. ABM Parking Services, Inc.*, 883 F.3d 776 (9th Cir. Feb. 21, 2018), affirming
3 dismissal of a similar FACTA case involving expiration date violations and holding that there was
4 no "concrete injury" sufficient to satisfy Article III standing requirements in federal court for the
5 circumstances involved in that particular case. As demonstrated by the Ninth Circuit's opinion,
6 the risk of outright dismissal was neither overstated nor hypothetical. It is very real.

7 8. Indeed, I have received several dismissal orders in FACTA expiration date cases
8 and FACTA excess digit cases in federal and state court. *E.g.*, *Llewellyn v. AZ Compassionate*
9 *Care Inc.*, No. 2:16-cv-04181-DGC, 2017 WL 1437632 (D. Ariz. Apr. 24, 2017); *Gant v. Fondren*
10 *Orthopedic Group. L.L.P.*, No. 4:16-cv-00648, 2017 WL 4479955 (S.D. Tex. May 23, 2017);
11 *O'Shea v. P.C. Richard & Son, LLC*, No. 1:15-cv-09069-KPF, 2017 WL 3327602 (S.D. N.Y. Aug.
12 3, 2017); *Batra v. RLS Supermarkets LLC*, No. 3:16-cv-02874-B, 2017 WL 3421073 (N.D. Tex.
13 Aug. 9, 2017); *Noble v. Nevada Checker Cab Corp.*, No. 2:15-cv-02322-RCJ-VCF, 2016 WL
14 4432685 (D. Nev. Aug. 19, 2016); *Miles v. The Company Store, Inc.*, No. 16-CVS-2346 (North
15 Carolina Superior Court Nov. 16, 2017); *Nowe v. Essex Technology Group, LLC*, No. 17-1-3769-
16 99 (Georgia Superior Court Jan. 12, 2018).

17 9. In short, FACTA litigation has been extremely high risk and the risks are not
18 hypothetical as demonstrated by many actual losses by me, as well as the Ninth Circuit's recent
19 opinion in *Bassett*.

20 10. However, Pick-A-Part knows that I will zealously prosecute matters, through
21 conclusion. For example, I, along with other co-counsel appealed and briefed and I recently
22 argued the issue of Article III standing in a FACTA case involving the first digit and the last four
23 digits before the Ninth Circuit Court of Appeals. *Noble v. Nevada Checker Cab Corp.*, 2018 WL
24 1223484 (9th Cir. March 9, 2018). Unfortunately, while that appeal resulted in an unfavorable and
25 unpublished result on the issue of Article III concerning those particular facts, my pursuit of the
26 appeal through the Ninth Circuit and my skilled determination for more than 11 years of
27 prosecuting FACTA cases was a substantial motivation for Pick-A-Part to settle this matter. Pick-
28 A-Part knows that I have pursued appeals in other FACTA cases too. *Ibid*.

1 11. If this case proceeded to litigation, Pick-A-Part also contends that a state court
2 would likewise not have subject-matter jurisdiction due to the purported lack of any actual
3 damage. If Pick-A-Part is correct, then class members would not be able to recover anything in
4 federal or state court. I recently defeated a demurrer brought by another defendant in Los Angeles
5 County Superior Court in another FACTA case where the defendant made just such an argument.
6 *Ibid.* Although the Court overruled the demurrer, it noted it was a "very close question" and that
7 defendant has since filed a motion for reconsideration and sought a writ. At a minimum, litigation
8 of this issue would cause delay and pose substantial risk, including the risk of outright dismissal as
9 has already occurred in many cases. In light of the acute risk of outright dismissal, this factor
10 alone renders the Settlement not only reasonable, but an exceptionally favorable result.

11 **2. "Willfulness"**

12 12. In order to recover any statutory damages and other remedies under 15 U.S.C. §
13 1681n, Plaintiff must show that Pick-A-Part engaged in "willful" conduct. However, Pick-A-Part
14 has vigorously denied that its conduct was willful. In contrast, Plaintiff believes, among other
15 things, that the printing of the expiration date was reckless and obvious to Pick-A-Part and the
16 result of a lack of adequate measures to safeguard consumer rights.

17 13. Regardless of how strongly the parties feel about the merits, the parties face issues
18 and risks concerning how the legal requirements for a "willful" violation of FACTA will be
19 applied to the particular facts of this case.

20 **3. Class Certification**

21 14. The parties have sharply divergent positions on class certification in this case,
22 absent a settlement. Pick-A-Part has denied that for any purpose other than that of settling this
23 lawsuit, this action is appropriate for class treatment. Agreement ¶¶ 3, 9 and 27.

24 15. I believe that cases such as the Ninth Circuit's decision in *Bateman v. American*
25 *Multi-Cinema, Inc.*, 623 F.3d 708 (9th Cir. 2010), which reversed the denial of class certification in
26 another FACTA case, strongly supports certification in this case.

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1 16. Yet, absent a settlement, class certification remains a hotly contested matter in this
2 case, and there are risks attendant in continued litigation of these issues, including, at a minimum,
3 delays and potential appeals.

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

11 18. In sum, while I feel strongly about certification in this case, *Martin* is an example
12 of a FACTA case demonstrating the risks inherent in certification, including, at a minimum,
13 delays and potential appeals.

14 **4. Likely Duration Of Litigation And Future Expense**

15 19. Litigation of the above issues, including through possible appeals, have the likely
16 potential to take years and be costly.

17 **B. The Amount Of Discovery Or Evidence; Recommendation And Experience of**
18 **Counsel**

19 20. A substantial amount of information was obtained and exchanged, including
20 specific figures concerning transactions during the Settlement Class Period. This information was
21 targeted, took time and effort to obtain, and was used as the foundation necessary to have
22 informed settlement discussions by me.

23 21. I believe my extensive experience with FACTA cases and my perseverance
24 resulted in getting this information through informal, rather than formal, discovery. Indeed, as
25 explained further below, I am among one of the first attorneys in the nation to prosecute FACTA
26 cases, have extensive experience prosecuting FACTA cases from start to finish on a class basis,
27 and have extensive experience with discovery and investigations in FACTA cases, including
28 extensive expert related work concerning various payment card processing issues, including

1 payment platforms, equipment and software, intermediaries involved in payment card acquisition
2 and processing, and related data and processes.

3 22. My FACTA experience did not occur overnight but required specialized learning
4 and experience over the course of more than 10 years of FACTA litigation.

5 23. I believe that my experience, perseverance and track record not only allowed me to
6 target and obtain information but also to achieve a settlement in the face of the substantial risk of
7 outright dismissal. For all of the foregoing reasons and the further reasons articulated below, I
8 believe this is a fair settlement, if not exceptional, given the real risks of dismissal as illustrated by
9 the actual outcome in other FACTA cases.

10 **C. Settlement Terms Provide Substantial Benefits of Settlement Compared to**
11 **Risks of Continued Litigation**

12 24. I believe the Settlement provides for substantial benefits, particularly when
13 compared to the risks of continued litigation.

14 25. The Settlement establishes a Settlement Fund in the amount of \$195,000.
15 Agreement ¶ 10(a).

16 26. Further, I believe the value of the value of the maximum settlement benefit to each
17 Settlement Class member is considerable in that it is 250% of the minimum statutory damages
18 (\$100) available for a willful violation of FACTA. Although compared to the maximum possible
19 recovery of \$1,000 in statutory damages, \$250.00 is a 25% value (which is not insubstantial), the
20 propriety of awarding *full* statutory damages to Settlement Class members who do not claim actual
21 monetary loss is strongly disputed. Many FACTA defendants have argued that lack of "actual
22 harm" precludes, if not any award of statutory damages to begin with, at the very least "excessive"
23 statutory damages. Since it remains to be seen how courts will resolve such constitutional
24 challenges to statutory damage awards under FACTA, I believe the value negotiated by the Parties
25 represents a fair compromise well within the range of reasonableness.

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

3 27. A further benefit of the Settlement assures that if there is an intervening change of
4 law before final approval of the Settlement, the Settlement and Settlement benefits will continue to
5 remain valid, enforceable and available to Settlement Class members. Agreement ¶ 20.

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

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

20 30. I had extensive first-hand experience of the devastating impact of the Clarification
21 Act.

22 31. I had invested thousands of hours and substantial expenses prosecuting many
23 FACTA expiration date cases leading up to the time the Clarification Act was enacted and I
24 suffered a huge financial setback as a result of the retroactive immunity provided by the
25 Clarification Act.

26 32. The risks posed by potential changes in the law through judicial opinions likewise
27 cannot be understated, particularly in the dynamic area of statutory damage issues. For example,
28 as explained in paragraphs 6-8, above, many federal courts, including now the Ninth Circuit and

1 two other federal courts of appeal, have dismissed FACTA cases like this one which allege
2 expiration date violations and seek statutory damages. Absent the Settlement, Pick-A-Part
3 contends that this federal court and state court would not have subject-matter jurisdiction due to
4 the purported lack of any actual damage. Despite the Ninth Circuit's opinion (and any possible
5 future state court opinion), this provision of the Settlement ensures that the Settlement would
6 nevertheless remain an enforceable settlement.

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

9 33. The Agreement is the product of extensive, adversarial, good-faith, arm's-length
10 discussions, negotiations, correspondence, factual and legal investigation and research, and careful
11 evaluation of the respective parties' strengths and weaknesses, without any collusion between
12 Plaintiff and Defendant or their respective counsel, as further explained in paragraphs 1-3, above.

13 34. Of course, none of my assessments were performed in a vacuum. I engaged in the
14 necessary due diligence that made it possible for Plaintiff and me to exercise informed judgment.

15 35. I did a thorough investigation of the facts, law and potential exposure and issues
16 related to possible trial. I made an objective assessment of the facts, the law and risks. In sum,
17 my efforts allowed me to effectively evaluate and exercise informed judgment on the strengths and
18 weaknesses of the claims and defenses involved in the case.

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

23 37. My opinion regarding the Settlement is also based in substantial part on my
24 experience and qualifications, a summary of which is set forth in paragraphs 38 - 59, below.

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Qualifications of Counsel

38. I am an attorney and a consumer activist.

39. 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 (including suits filed under California Business and Professions Code Section 17200 before and after its amendment by Proposition 64).

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

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

42. 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.

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

44. 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.).

45. In addition to successfully certifying FACTA class actions on a contested basis, I have successfully prosecuted to conclusion many FACTA cases on a class basis, including but not limited to the following FACTA cases:

- (1) *Potikyan v. JS Dreams, Inc. (Johnny Rockets - Commons At Calabasas), et al.*, No. CV13-6237 JEM (C.D. Cal.) (judgment entered Nov. 17, 2016);
- (2) *Potikyan, et al. v. Ice Specialty Entertainment, Inc., et al.*, No. BC559439 (California Superior Court, County of Los Angeles) (judgment entered Oct. 21, 2016);
- (3) *Kevorkian, et al. v. Super Mex Restaurants, Inc., et al.*, No. BC559619 (California Superior Court, County of Los Angeles) (judgment entered Aug. 29, 2016);

- 1 (4.) *Tran, et al. v. Catalina Channel Express, Inc., et al.*, No. 2:15-CV-03289-AB-
2 MRW (C.D. Cal.) (judgment entered Aug. 9, 2016);
- 3 (5.) *Hochstetler, et al. v. Pacific Gateway Concessions LLC, et al.*, No. 3:14-cv-
4 04748- THE (N.D. Cal.) (judgment entered June 7, 2016);
- 5 (6.) *Torres v. Kwong Yet Long Co., Inc., d/b/a International Marketplace*, No. 2:14-
6 cv-02223-MMD-PAL (D. Nev.)
- 7 (7.) *Torres, et al. v. Pet Extreme, Inc., et al.*, No. 1:13-CV-01778-LJO-SAB (E.D.
8 Cal.);
- 9 (8.) *Tchoboian, et al. v. FedEx Office And Print Services, Inc.*, No. SACV10-01008
10 JAK (MLGx) (C.D. Cal.);
- 11 (9.) *In Re: Toys "R" Us – Delaware, Inc. – Fair And Accurate Credit*
12 *Transactions Act (FACTA) Litigation*, MDL 08-01980 MMM (FMOx) (C.D.
13 Cal.);
- 14 (10.) *Albright, et al. v. The Bi-State Development Agency Of The Missouri-Illinois*
15 *Metropolitan District D/B/A Metro*, No. 4:11-CV-01691 AGF (E.D. Mo.);
- 16 (11.) *Sakamoto v. One Parking, Inc. et al.*, No. SACV11-1249 MLG (C.D. Cal.);
- 17 (12.) *Jarchaffian v. American Multi-Cinema, Inc., et al.*, No. CV09-03434 JHN
18 (AJWx) (C.D. Cal.);
- 19 (13.) *Tchoboian v. Parking Concepts, Inc., et al.*, No. SACV09-422 DMG (ANx) (C.D.
20 Cal.);
- 21 (14.) *McGee, et al. v. Ross Stores, Inc, et al.*, No. C06-7496 CRB (N.D. Cal.);
- 22 (15.) *Clark v. Stein Mart, Inc., et al.*, CV07-197 RC (C.D. Cal.).

23 46. Some of these above FACTA cases were prosecuted against some of the largest
24 merchants in the United States (FedEx Office And Print Services, Toys "R" Us, AMC theatres,
25 Ross Stores, Stein Mart, etc.). These facts not only demonstrate experience but they also provide
26 specific examples of the fact that I have the wherewithal and resources necessary to take on and
27 successfully prosecute FACTA class actions against the largest of merchants.

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

48. For example, nearly 10 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.

1 49. Throughout the years, I have opposed many motions to dismiss in FACTA cases
2 and continued to secure favorable results in favor of consumers. See, as recent examples,
3 *Deschaaf v. American Valet & Limousine, Inc.*, 234 F.Supp.3d 964 (D. Ariz. Feb. 15, 2017); *De*
4 *Cesare, et al v. Lab. Corp. of Am. Holdings*, 2016 WL 3483205 *3 (C.D. Cal. May 31, 2016).

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

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

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

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

21 54. I have also persevered and litigated a FACTA case through bankruptcy, on a class-
22 basis, resulting in a \$37 million dollar judgment. *Potikyan v. JS Dreams, Inc. (Johnny Rockets -*
23 *Commons At Calabasas), et al.*, No. CV13-6237 JEM (C.D. Cal.) (judgment entered Nov. 17,
24 2016).

25 55. Although FACTA litigation is a relatively new area of the law (given the statute's
26 most recent effective date of December 4, 2006), I am no stranger to "cutting-edge" litigation
27 involving consumer rights. I have been involved in various novel and "cutting edge" litigation
28 involving the enforcement of consumer rights, including statutory rights and constitutional rights.

1 I am a sincere believer in protecting the rights of consumers and am committed to act in their best
2 interests. For example, I have personally (as a party and lead attorney) filed lawsuits to help
3 preserve access to the court and jury system. I filed *Yedalian v. Kaiser Foundation Health Plan,*
4 *Inc., et al.* (L.A. Superior Court Case No. BC288469), which was a lawsuit against several of
5 California's largest HMO's challenging the enforceability of their arbitration clauses and asserting
6 that their representations to their patient members - that binding arbitration is a member's only
7 means of legal recourse to resolve disputes with their HMO - are false and misleading and violate
8 state consumer protection laws. *Yedalian* ultimately resulted in a landmark settlement with the
9 Kaiser and PacifiCare groups of defendants (respectively the State's largest and fifth largest
10 HMO's) requiring the HMO's to provide written notification to patient members concerning their
11 rights when disputes arose.

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

20 57. My work on behalf of consumers does not end with my legal efforts as an attorney.
21 I believe I am specially well suited to represent consumers because, in addition to my legal
22 experience, I am a consumer activist. I have worked hand-in-hand with various consumer
23 protection organizations including the Foundation for Taxpayer and Consumer Rights ("FTCR"),
24 Cal PIRG, AARP, Congress of California Seniors, Sierra Club and others to promote and preserve
25 consumer rights. For example, I along with the FTCR and the California Nurses Association held
26 the very first campaign in Oakland, California spearheading the movement to defeat Proposition
27 64 (which sought to amend California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200
28 et seq.). This was followed by editorial board meetings and rallies and other grass-root type

1 events throughout California to defeat Proposition 64, in which I actively participated. Several of
2 the organizations I have worked with including the FTCR and AARP have written articles about
3 my consumer related efforts.

4 58. In addition to working with consumer organizations, I have also worked with
5 members of the community such as musicians and other artists to create content to educate and
6 galvanize the public on consumer related issues. An example of one such project, which I
7 produced, directed, and co-wrote, is a video parody about the high-cost of prescription
8 medications confronting seniors and other residents of the United States (viewable at
9 www.todaysspecial.org).

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

14 60. I do not know of any conflict of interest between myself or my company and any
15 member of the Settlement Class which should or would preclude me from representing the
16 Settlement Class.

17
18 **Attorney Time Worked On This Case**

19 61. Up to June 15, 2018, I have devoted 107.08 hours of my time on this matter. I
20 estimate that I expect to devote at least an additional 10 hours of my time after June 15, 2018,
21 including for matters such as appearing for the final approval hearing and work relating to the
22 continuing administration of this Settlement.

23 62. To the extent the Court would like to review the different tasks I performed, I am
24 submitting an unredacted paper copy of my itemized time records for the Court's *in camera*
25 review.²

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27
28 ² Because the time records are unredacted, they contain sensitive and privileged information as well as work product, and they are therefore submitted for *in camera* review.

1 **Lodestar: Hours Worked Multiplied By The Reasonable Hourly Rate**

2 70. My 107.08 hours of work to date plus the additional estimated 10 hours I expect to
3 incur multiplied by my \$650 hourly rate yields a lodestar of \$76,102.

4
5 **Other Factors**

6 71. It should also not be lost on the Court that I have borne, and continue to bear, the
7 entire risk of litigation associated with the lawsuit on a pure contingency basis, and that as a result
8 of the time committed by me to this matter, I was precluded from taking on other matters which
9 were available. A practice like mine can only properly litigate a limited number of cases at one
10 time. Due to the commitment to and demands of litigating this matter, I was precluded from
11 taking on other matters, which were available, and where his time could have been otherwise
12 spent.

13 72. Additionally, this Court can appreciate that litigating a high-stakes and time-
14 consuming class action case against a corporate defendant, with litigation potentially lasting for
15 several years, is not appealing to most lawyers. I undertook this lawsuit without any guarantee of
16 any payment, and with any fees that I may recover entirely contingent on obtaining recovery.
17 Thus, I have borne, and continue to bear, the entire risk of obtaining a fee recovery in this case.

18 73. An award of attorney's fees equal to one-third (33 1/3%) of the Cash Fund is within
19 the fair market rate range for services. Unless otherwise specifically proscribed by law (such as,
20 for example, MICRA), the cases which I handle on a contingency basis generally consist of a
21 negotiated contingency fee of the gross recovery. A one-third contingent fee well within the range
22 of contingency fees freely negotiated in the legal marketplace for a matter involving the risks and
23 issues of this litigation. I would not hesitate to ask a minimum of one-third of the gross recovery
24 in a matter which involves significant risks of non-payment.

25
26 **Reimbursement Of Costs**

27 74. I seek reimbursement in the amount of \$1,082.78 consisting of the following costs:

28 Complaint filing fees: 400.00

1	Process of service fees	80.00
2		
3	Prelim approval motion papers express mail	23.75
4	Final approval motion papers express mail, estimated	24.90
5		
6	Travel final approval hearing mileage, hotel and related	554.13
7	TOTAL:	\$1,082.78

8 75. Each of the foregoing costs are accurate, reasonable, necessary and actually
9 incurred and/or paid or, with respect to the final approval papers/appearance expected to be
10 incurred. All of the requested costs are costs that would be billed to a fee paying client separate
11 from hourly rates consistent with the prevailing practice.

12

13 **The Service Award Requested For The Class Representative**

14 76. I respectfully request that the named Plaintiff and only Class Representative,
15 Cirena Torres, be awarded an incentive award in the amount of \$4,000.

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

21 78. Moreover, I believe Ms. Torres has done all things reasonably expected of her in
22 her capacity as Class Representative. Ms. Torres was subjected to liability for defense costs in the
23 event the litigation was unsuccessful. By stepping forward to shoulder this action on behalf of the
24 class, Ms. Torres also took on other risks, including the risk of subjecting herself to intrusive
25 discovery. Ms. Torres also regularly and consistently communicated with me throughout the time
26 this lawsuit was pending. Through my discussions and other communications with her I know
27 that she reviewed relevant documents, provided her input, and otherwise kept apprised of litigation
28 related events and developments. She also provided her ideas and input to me in the various

1 rounds of settlement negotiations and exchanges. In sum, I believe Ms. Torres contributed as
2 much of her valuable time as this litigation demanded to ensure a vigilant prosecution of and
3 favorable outcome for the best interests of the Settlement Class. I believe these facts further
4 support an incentive award because they "recognize [a class representatives] willingness to act as a
5 private attorney general." *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-959 (9th Cir.
6 2009).

7 79. I believe that but for Ms. Torres' actions, there would be no resulting benefit to
8 individual Settlement Class members or *cy pres* benefits. She was also willing and stepped
9 forward to act as a private attorney general where, to my knowledge, no other plaintiff has done
10 so.

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

14 81. Based upon my time records as well as my discussions and communications with
15 her, I estimate that Ms. Torres devoted approximately 5-10 hours of her time to pursue this matter.
16 By definition, the time she devoted to this matter was time spent away from other matters in an
17 effort to advance the interests of the entire class.

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

22 "An incentive award may be appropriate when a class representative will not
23 gain any benefit beyond that he would receive as an ordinary class member. See
24 *Razilov*, 2006 WL 3312024, at *4 (approving the payment of an incentive award
25 where the only benefit a class representative was going to receive from a settlement
26 was the same statutory damages other class members would receive); *Van Vranken*,
27 901 F.Supp. at 299 (where a class representative's claim made up 'only a tiny fraction
28 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."

EXHIBIT "1"

(i) **Distribution of Residue**: Given the nature of this particular consumer class action case, the fact that Pick-A-Part does not know, nor does Pick-A-Part have access to any information which would enable it to determine, the names, postal addresses, email addresses or facsimile numbers of absent Settlement Class members, the fact that Pick-A-Part ceased all retail operations before this lawsuit was filed, and experience with consumer class action claims-made rates, the Parties expect that relatively few claims will be made and that a residue will result. Accordingly, the Parties have agreed on a plan for the disposition of the anticipated residue. Thus, if any residual funds from the Net Cash Fund remain after claims payments are made to the Settlement Class members, any and all such residual funds will be distributed *cy pres* to one or more 501(c)(3) charities to be agreed upon by the Parties and proposed to the Court in connection with the motion for preliminary approval. If, for any reason, any or all of the selected charity(ies) proposed by the Parties are not approved by the Court, any such decision by the Court shall not affect the enforceability of the settlement because the Parties agree to propose alternative charity(ies) until the Court determines that, in the Court's view, each charity(ies) proposed would be a proper recipient(s) of the residue. If, for any reason, the Parties cannot agree on the charity(ies), the Parties agree that the Court will determine the charity(ies).

(c) **Administration of Settlement**: The Parties agree that, subject to the Court's approval, Atticus Administration, LLC shall serve as the settlement administrator ("**Settlement Administrator**"). All fees and costs incurred or charged by the Settlement Administrator to administer the Settlement ("**Administration Costs**"), including but not limited to check issuance, Settlement Website, notice to Settlement Class Members, and envelope and postage charges, will be paid from the Cash Fund. At the Request of Defendant, Torres and Class Counsel, jointly and severally, hereby expressly represent and warrant that they have never been employed by the Settlement Administrator, have never held any officer role or other title at the Settlement Administrator, and will not receive any portion of the Administration Costs to be charged by the Settlement Administrator.

(d) **Claims Submission**: Settlement Class members will have 180 days from the date Full Notice is first posted on the Settlement Website to submit a claim (the "**Claims Period**"). Settlement Class members must use the claim form ("**Claim Form**"), which will be in the form attached hereto as **Exhibit A**, or its electronic version on the Settlement Website, to submit a claim. Settlement Class members may submit a Claim Form (together with the required documentation) by postal mail or by facsimile. Claim Forms may be submitted to the Settlement Administrator's postal address or the Settlement Administrator's facsimile number. Alternatively, Settlement Class members may submit a claim by completing and submitting an electronic version of the Claim Form (and uploading and submitting the required documentation) on the internet through the Settlement Website. Each Settlement Class member may submit only one claim, regardless of whether they made one or more credit or debit card transactions during the period December 22, 2014 to October 28, 2015. A valid claim will require that a Settlement Class member produce evidence that he or she received a customer receipt from Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015 that displays the expiration date of his or her credit or debit card. Proof of claim may consist of the original or a copy of either (1) a customer receipt containing the expiration date of his or her credit or debit card showing that he or she made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015, or (2) a credit or debit card statement (which will be encouraged to be in redacted form) showing that he or she made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.

11. **Notice to the Class.**

Notice of this proposed Settlement shall be provided to the Settlement Class through the following methods:

(a) **Newspaper Notice:** Newspaper notice ("**Newspaper Notice**") shall be made as follows or as the Court may otherwise direct: Newspaper Notice will be substantially in the form attached hereto as **Exhibit B**; The Newspaper Notice will be published on three separate dates in the Fresno Bee, with the first date to occur within 20 days after the Court's preliminary approval of the settlement, the second date to occur within 30 days of the first date, and the third date to occur within 70 days after the first date. All costs for the Newspaper Notice shall be paid from the Cash Fund.

(b) **Settlement Website Notice:** Beginning no later than 10 days after the Court's preliminary approval of the settlement and continuing at least through the last day on which Settlement Class members may submit a Claim Form, the Settlement Administrator will provide a viewable and printable on-line long-form notice ("**Full Notice**"), which will be in the form attached hereto as **Exhibit C**, via a Settlement Website containing a description of the settlement terms. All costs for the Settlement Website shall be paid from the Cash Fund.

(c) **Telephone Number For Settlement Class Members:** The Newspaper Notice, Settlement Website, and Full Notice shall refer to the Settlement Administrator's toll-free telephone number, which Settlement Class members may call. As part of the administration of this settlement, the Settlement Administrator shall respond to calls and other inquiries or communications from Settlement Class members or possible Settlement Class members.

12. **Paper Copy Requests.**

If any Settlement Class member requests a paper copy of the Full Notice or of this long-form settlement agreement, it shall be the Settlement Administrator's obligation to provide and pay for same, including postage costs, from the Cash Fund.

13. **Opt-Out.**

(a) **The Opt-Out Process:** Settlement Class members will have until sixty (60) calendar days after the first date of posting the Full Notice to the Class pursuant to paragraph 11(b) above, to exclude themselves from the Settlement (the "**Opt-Out Deadline**"). Settlement Class members may opt out by timely sending a written request to the Settlement Administrator postmarked no later than the Opt-Out Deadline. The Settlement Administrator shall promptly provide a copy of any opt-out request to counsel for each of the Parties. Settlement Class members who timely opt out of the Settlement: (a) will not be a part of the Settlement; (b) will have no right to receive any benefits under the Settlement; (c) will not be bound by the terms of the Settlement; and (d) will not have any right to object to the terms of the Settlement or be heard at the fairness hearing.

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14. **Objections to the Settlement or to the Fee Motion.**

(a) Any Settlement Class member, on his or her own, or through an attorney hired at his or her own expense, may object to the terms of the Settlement. Any such objection must be filed with the Court and also served on Class Counsel and counsel for Pick-A-Part. To be effective, any such objection must be in writing and include the contents described in paragraph 14(c), and must be filed and served no later than sixty (60) calendar days after the first date of posting the Full Notice to the Class, or as the Court otherwise directs. Any objections not raised properly and timely will be waived.

(b) Any Settlement Class member, on his or her own, or through an attorney hired at his or her own expense, may object to Class Counsel's motion for an award of attorney's fees and costs and/or the Class Representative's motion for service (or incentive) award. Such motion will be posted on the Settlement Website no later than thirty (30) calendar days before the final fairness hearing scheduled by the Court. Any objection must be filed with the Court and also served on Class Counsel and counsel for Pick-A-Part. To be effective, any such objection must be in writing and include the contents described in paragraph 14(c), and must be filed and served no later than twenty-one (21) calendar days before the fairness hearing, or as the Court otherwise directs. Any objections not raised properly and timely will be waived.

(c) To be effective, any objection described in paragraph 14(a) or paragraph 14(b) must contain all of the following information:

A. A reference at the beginning to this matter, *Cirena Torres, et al., v. Pick-A-Part Auto Wrecking, et al.*, Case No. 1:16-cv-01915-DAD-BAM;

B. The objector's full name, address, and telephone number;

C. Proof of Class membership consisting of the original or a copy of either: (1) a customer receipt containing the expiration date of his or her credit or debit card showing that he or she made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015, or (2) a credit or debit card statement showing that he or she made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.

D. A written statement of all grounds for the objection, accompanied by any legal support for such objection;

E. Copies of any papers, briefs, or other documents upon which the objection is based;

F. A list of all persons who will be called to testify in support of the objection; and

G. A statement of whether the objector intends to appear at the fairness hearing. If the objector intends to appear at the fairness hearing through counsel, the objection must also state the identity of all attorneys representing the objector who will appear at the fairness hearing.

H. Regarding any counsel who represents the objector or has a financial interest in the objection: (1) a list of cases in which the objector's counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years, and

(2) a copy of any orders concerning a ruling upon counsel's or the firm's prior objections that were issued by the trial and/or appellate courts in each listed case.

I. A statement by the objector under oath that: (1) he or she has read the objection in its entirety, (2) he or she is a member of the Class, (3) states the number of times in which the objector has objected to a class action settlement within the five years preceding the date that the objector files the objection, (4) identifies the caption of each case in which the objector has made such objection, (5) authenticates any orders concerning a ruling upon the objector's prior such objections that were issued by the trial and/or appellate courts in each listed case, attaching such orders to the statement; and (6) states that he or she will personally appear at the fairness hearing.

15. **Requests To Appear.**

The Parties will request that the Court enter an order requiring any Settlement Class member who requests to be heard orally at the fairness (final approval) hearing to file with the Court and serve on Class Counsel and Pick-A-Part's counsel a written notice of intention to appear at the fairness hearing ("Notice of Intention to Appear"). The Notice of Intention to Appear must include copies of any papers, exhibits, or other evidence that the objecting Settlement Class member (or his/her counsel) will present to the Court in connection with the fairness hearing. Any Settlement Class Member who does not provide a Notice of Intention to Appear in complete accordance with specifications set forth in the Full Notice, subject to approval by the Court, may be barred from speaking or otherwise presenting any views at the fairness hearing. To be timely, a Notice of Intention to Appear concerning Class Counsel's motion for an award of attorney's fees and costs and/or the Class Representative's motion for service (or incentive) award must be postmarked no later than twenty-one (21) calendar days before the fairness hearing, or as the Court otherwise directs. To be timely, a Notice of Intention to Appear concerning any other matter about the Settlement Agreement must be postmarked no later than sixty (60) calendar days after the first date of posting the Full Notice to the Class, or as the Court otherwise directs.

16. **Release by the Settlement Class.**

As of the Settlement Date, and except as to such rights or claims created by the settlement, Torres and each Settlement Class member who does not timely opt-out of the settlement forever discharge and release Pick-A-Part Auto Wrecking as well as its insurers, predecessors, successors, affiliates, and all of their officers, shareholders, directors, managers, members, partners, employees, attorneys, and agents, from any and all suits, claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action, in law or equity, of whatever kind or nature, direct or indirect, known or unknown, arising out of the facts alleged in Plaintiff's Complaint from December 22, 2014 to October 28, 2015, concerning Pick-A-Part Auto Wrecking.

17. **Class Representative and Class Counsel.**

Pick-A-Part shall not object to, oppose or otherwise contest the designation and appointment of Torres as class representative ("**Class Representative**") for the Settlement

Class, and Chant Yedalian of Chant & Company A Professional Law Corporation as class counsel ("**Class Counsel**") for the Settlement Class.

18. **Incentive (Service) Award to Plaintiff.**

As part of the settlement, Pick-A-Part will not object to, oppose or otherwise contest Torres receiving an incentive payment of up to \$4,000, to be paid from the Cash Fund, to compensate her for her services as Class Representative. The award, if and when issued by the Court, will be paid from the Cash Fund by the Settlement Administrator delivering a check payable to "Cirena Torres" to Class Counsel within 10 days of the Settlement Date. The award will be in addition to any other benefit to which Torres will be entitled under the settlement as a Settlement Class member.

19. **Class Counsel's Fees and Costs.**

As part of the settlement, Pick-A-Part will not object to, oppose or otherwise contest Class Counsel receiving an award of attorney's fees of up to \$65,000, to be paid from the Cash Fund, plus an award of Class Counsel's litigation costs of up to \$3,000, also to be paid from the Cash Fund. The awards, if and when issued by the Court, will be paid from the Cash Fund by the Settlement Administrator delivering a check to Class Counsel, payable to "Chant & Company A Professional Law Corporation," within 10 days of the Settlement Date.

20. **Settlement Shall Survive Any Intervening Change of Law.**

The Parties agree and intend that the Settlement and its validity and enforceability shall not be affected by any future change, modification, reversal or clarification of the law, nor shall any future change, modification, reversal or clarification of the law provide either of the Parties with grounds to oppose preliminary or final approval of the settlement.

21. **Settlement Date.**

The Settlement shall become effective (the "**Settlement Date**") upon the entry of a final order and judgment ("**Judgment**") by the Court and the Judgment becoming final by virtue of it having become final and nonappealable through (i) the expiration of all allowable periods for appeal or discretionary appellate review without an appeal or request for discretionary appellate review having been filed, or (ii) final affirmance of the Judgment on appeal or remand, or final dismissal or denial of all such appeals and requests for discretionary review. The Court shall retain continuing jurisdiction over the interpretation, implementation and enforcement of the settlement.

22. **Duties of the Parties in Connection With Preliminary Court Approval of the Settlement.**

Promptly upon execution of this Agreement, counsel for Plaintiff and the Settlement Class will submit this Agreement to the Court as part of a motion for preliminary approval of the Settlement. The motion for preliminary approval will seek an order:

- (a) Certifying a Settlement Class as defined in this Agreement for purposes of settlement;
- (b) Appointing Plaintiff as class representative for settlement purposes;
- (c) Appointing Plaintiff's counsel, Chant Yedalian of Chant & Company A Professional Law Corporation as Class Counsel for settlement purposes;
- (d) Approving the means of notice to the Settlement Class, as well as the form and content of the proposed notice forms;
- (e) Directing notice to be made to Settlement Class members as described in this Agreement;
- (f) Establishing deadlines for Settlement Class members to submit a request to opt out of the Settlement and to submit objections to the Settlement;
- (g) Preliminarily approving the Settlement subject to final review by the Court; and
- (h) Scheduling a fairness hearing to determine whether the Settlement should be finally approved as fair, reasonable and adequate as to the members of the Settlement Class.

23. **Duties of the Parties in Connection With Final Court Approval of the Settlement.**

At least 30 days before the final fairness hearing set by the Court, Plaintiff will file a motion for final approval of the settlement and a motion for an award of attorney's fees and costs and for service (or incentive) awards. Plaintiff will submit a proposed final order and judgment:

- (a) Approving the Settlement contained in this Agreement, adjudicating the terms of the Settlement to be fair, reasonable and adequate, and directing completion of its terms and provisions;
- (b) Adjudicating that the release contained in paragraph 16 of this Agreement binds each Settlement Class member who does not timely opt out of the settlement;
- (c) Determining, as appropriate, an award to Plaintiff as compensation for her service as the class representative;
- (d) Awarding Class Counsel reasonable attorney's fees and costs;
- (e) Entering Judgment in this Action; and
- (f) Retaining continuing jurisdiction over the interpretation, implementation and enforcement of the Settlement.

24. **Parties' Authority.**

The signatories to this Agreement represent that they are fully authorized to enter into this Agreement and to bind the Parties to its terms and conditions.

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25. **Mutual Full Cooperation To Effectuate Settlement.**

The Parties agree to cooperate and take all steps necessary and appropriate to effectuate the settlement. The Parties shall diligently work together to seek preliminary and final court approval of the settlement. In the event that the Court fails to issue a preliminary approval order, or fails to issue a final approval order, the Parties agree to use their best efforts, consistent with this Agreement, to cure any defect(s) identified by the Court.

26. **No Prior Assignments.**

The Parties represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged in this settlement, except as set forth in this Agreement.

27. **No Admission.**

Nothing contained in this Agreement, nor the consummation of the settlement, is to be construed or deemed an admission of liability, culpability, or wrongdoing on the part of any of the Parties.

28. **No Tax Advice.**

No provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will be construed or relied upon as, tax advice. Each of the Parties has relied exclusively upon his, her or its own independent legal and tax advisers for advice (including tax advice) in connection with this Agreement. None of the Parties has entered into this Agreement based upon the recommendation of any of the other Parties or any attorney or advisor to any of the other Parties.

29. **Notices.**

Unless otherwise specifically provided in this Agreement, all notices, demands or other communications given under this Agreement shall be in writing and addressed as follows (subject to the right of each of the Parties to designate another address and/or telephone number should such change):

To Plaintiff and/or the Settlement Class:

Chant Yedalian, Esq.
CHANT & COMPANY
A Professional Law Corporation
1010 N. Central Ave.
Glendale, CA 91202
Phone: 877.574.7100

To Pick-A-Part:

Ted A. Galfin, Esq.
LAW OFFICES OF TED A. GALFIN

9160 Irvine Center Drive, Suite 200
Irvine, CA 92618
Phone: 949.752.2444

30. **Construction.**

The terms and conditions of this Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and their counsel. As a result, this Agreement will not be construed in favor of or against any of the Parties by reason of the extent to which any of the Parties or his, her or its counsel participated in the drafting of this Agreement.

31. **Parties To Bear Own Attorney Fees and Costs Except As Otherwise Provided Herein.**

The Parties shall each bear their own attorneys' fees and costs, except as provided in this Agreement.

32. **Headings and Interpretations.**

The paragraph titles, headings, and captions in this Agreement are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any of its provisions. Each term of this Settlement is contractual and not merely a recital.

33. **Modification.**

This Agreement may not be changed, altered, or modified, except in a writing signed by the Parties and their counsel and approved by the Court.

34. **Integration.**

This Agreement contains the entire agreement between the Parties relating to the Settlement. All prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written, are merged into this Agreement. No rights under this Agreement may be waived except in writing.

35. **Agreement Binding.**

This Agreement is binding upon, and inures to the benefit of, the Parties and their respective heirs, trustees, executors, administrators, successors and assigns.

36. **Class Counsel Signatories.**

Because the number of members of the Settlement Class could potentially be large, it is impossible or impractical to have each member of the Settlement Class execute this Agreement. The Full Notice to the Settlement Class described above will advise all members of the Settlement Class of the binding nature of the releases in this Agreement. Such Full Notice, when approved by the Court and completed by the Parties, will have the same force and effect as if this

Agreement were executed by each member of the Settlement Class who does not timely opt out of the Settlement.

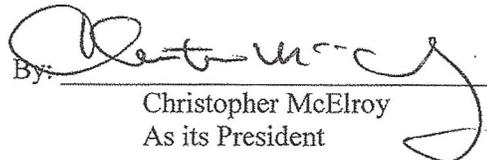
37. Counterparts.

This Agreement may be executed and delivered in counterparts, each of which, including but not limited to pages transmitted by facsimile or in electronic PDF file format, when so executed and delivered, shall be deemed to be an original.

AGREED TO AND ACCEPTED:

Dated: September 25, 2017

Defendant Pick-A-Part Auto Wrecking:

By: 
Christopher McElroy
As its President

Dated: September 25, 2017

Counsel for Defendant Pick-A-Part Auto Wrecking:
LAW OFFICES OF TED A. GALFIN

By: 
Ted A. Galfin

Dated: September ___, 2017

Plaintiff Cirena Torres:

By: _____
Cirena Torres

Dated: September ___, 2017

Counsel for Plaintiff and the Settlement Class:
CHANT & COMPANY
A Professional Law Corporation

By: _____
Chant Yedalian

Agreement were executed by each member of the Settlement Class who does not timely opt out of the Settlement.

37. **Counterparts.**

This Agreement may be executed and delivered in counterparts, each of which, including but not limited to pages transmitted by facsimile or in electronic PDF file format, when so executed and delivered, shall be deemed to be an original.

AGREED TO AND ACCEPTED:

Dated: September ____, 2017

Defendant Pick-A-Part Auto Wrecking:

By: _____
Christopher McElroy
As its President

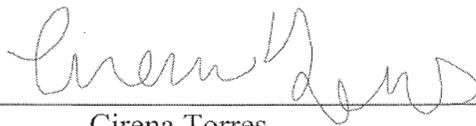
Dated: September ____, 2017

Counsel for Defendant Pick-A-Part Auto Wrecking:
LAW OFFICES OF TED A. GALFIN

By: _____
Ted A. Galfin

Dated: September 27, 2017

Plaintiff Cirena Torres:

By: 
Cirena Torres

Dated: September 27, 2017

Counsel for Plaintiff and the Settlement Class:
CHANT & COMPANY
A Professional Law Corporation

By: 
Chant Yedalian

EXHIBIT "A"

I. Your Information

Please clearly print or type your information in the spaces below:

Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____

Phone Number: _____ E-mail Address (Optional): _____

**II. Please provide either: (1) an original or copy of your customer receipt, OR
(2) an original or copy of your credit or debit card statement**

You must provide proof in either one of the following two ways:

Option (1): You may attach an original or a copy of your customer receipt that contains the expiration date of your credit or debit card and shows that you made a transaction from Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015;

OR

Option (2): You may attach an original or a copy of your credit or debit card statement showing that you made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015. Before providing your statement or copy of your statement, please redact (meaning you may white-out or mark-over) information contained in your credit or debit card statement to prevent it from showing things like your account numbers, your other purchases, etc. The only information that is required to show on your statement for purposes of making a claim under this Settlement is your name, address, and all of the details of your transaction from Pick-A-Part, including the date and amount of your purchase.

You may make only one claim regardless of whether you have made one or more than one eligible credit or debit card transaction. Accordingly, if you had more than one eligible transaction you only need to provide proof of either one receipt or one statement showing that you made one credit or debit card transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.

III. Please Sign This Form

I declare that the facts stated in this Claim Form are true and accurate.

Signature: _____

INSTRUCTIONS FOR THE CLAIM FORM

I. Deadline For Returning Your Completed Claim Form

In order to receive any benefits, you must complete and return the attached Claim Form **by no later than [DATE]**. You may submit the Claim Form by U.S. mail, fax, or on-line submission.

If you are mailing the Claim Form, your completed Claim Form (together with the required documentation) must be mailed to the following address **postmarked no later than [DATE]**:

[Settlement Administrator's Address]

You may also send your Claim Form (together with the required documentation) by facsimile to the following facsimile number 1-???-??-????, **by no later than 11:59 p.m. Pacific Time on [DATE]**.

You may also submit your claim by completing and submitting an electronic version of the Claim Form (and uploading and submitting the required documentation) on the internet at www.?????.com, **by no later than 11:59 p.m. Pacific Time on [DATE]**.

II. You Must Complete Section I Of The Claim Form

You must complete Section I entitled "Your Information" by clearly printing or typing your information in the appropriate spaces. You must complete all of the spaces, except for your E-mail address which is optional.

III. You Must Also Provide The Necessary Document With Your Claim Form

As explained in Section II of the Claim Form, you must provide proof **in either one of the following two ways**:

Option (1): You may attach an original or a copy of your customer receipt that contains the expiration date of your credit or debit card and shows that you made a transaction from Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015;

OR

Option (2): You may attach an original or a copy of your credit or debit card statement showing that you made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015. Before providing your statement or copy of your statement, please redact (meaning you may white-out or mark-over) information contained in your credit or debit card statement to prevent it from showing things like your account numbers, your other purchases, etc. The only information that is required to show on your statement for purposes of making a claim under this Settlement is your name, address, and all of the details of your transaction from Pick-A-Part, including the date and amount of your purchase.

You may make only one claim regardless of whether you have made one or more than one eligible credit or debit card transaction. Accordingly, if you had more than one eligible transaction you only need to

provide proof of either one receipt or one statement showing that you made one credit or debit card transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.

Although you may submit either the original or a copy of either your receipt or card statement, if you decide to send an original, it is encouraged that you make and keep a copy for yourself. We will not be responsible for original documents that are lost.

IV. You Must Sign In The Space Provided In Section III Of The Claim Form

You must also sign the Claim Form in the space provided in Section III of the Claim Form.

EXHIBIT "B"

EXHIBIT "C"

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CIRENA TORRES, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

PICK-A-PART AUTO WRECKING (d/b/a
Pick-A-Part); and DOES 1 through 10,
inclusive,

Defendants.

Case No. 1:16-cv-01915-DAD-BAM

NOTICE OF CLASS ACTION LAWSUIT AND SETTLEMENT
**READ THIS NOTICE CAREFULLY, YOUR LEGAL RIGHTS MAY BE
AFFECTED**

You may be a part of a pending class action lawsuit against Pick-A-Part Auto Wrecking ("Pick-A-Part"), and your legal rights may be affected by the lawsuit and a proposed Settlement of the lawsuit. Please read the rest of this notice to find out more.

What is this About?

A class action lawsuit is pending against Pick-A-Part. The lawsuit alleges that Pick-A-Part willfully violated a federal law (known as the Fair and Accurate Credit Transactions Act or FACTA, 15 U.S.C. §1681c(g)) by printing on customer receipts the expiration date of its customer's credit card or debit card. Pick-A-Part disputes the class action allegations and denies that it willfully violated FACTA. The Court has not yet decided in favor of either the Class or Pick-A-Part. Instead, both sides have agreed upon a proposed Settlement of the class action lawsuit to avoid the uncertainty and cost of a trial, and to provide benefits to Class members. Pick-A-Part does not admit any violation of FACTA by agreeing to the proposed Settlement.

What is a Class Action?

In a class action, one or more people called Class Representatives sue on behalf of a group of people (referred to as the Class) who have similar claims. One court resolves the issues for all of the people who are a part of the Class (referred to as Class members), except for those people who exclude themselves from the Class. The Class Representative in this case is Cirena Torres,

Am I a Class Member?

You are a Class member if you are an individual who made a purchase or other transaction at Pick-A-Part, 2274 E. Muscat Ave., Fresno, CA 93725, with your personal credit card or debit card at any time during the period December 22, 2014 to October 28, 2015 and received an electronically printed customer receipt which displays your card's expiration date.

Why Am I Receiving This Notice?

If you are a member of the Class, your legal rights will be affected by the Settlement unless you exclude yourself from the Class. The United States District Court for the Eastern District of California authorized this notice to inform Class members about this case and proposed Settlement and Class members' options.

What are The Settlement Benefits and What Can I Get From the Settlement?

Pick-A-Part will establish a non-reversionary cash fund in the amount of \$195,000 (the "Cash Fund"),

If you are a Class member, you may be entitled to an amount up to \$250.00.

Please refer to the section below entitled "How Can I Get Payment?" to find out what you need to do to receive a payment.

How Can I Get Payment?

To obtain a payment, in an amount up to \$250.00, you must complete and return a valid Claim Form. The Claim Form requires you to provide proof in either one of the following two ways:

Option (1): You may attach an original or a copy of your customer receipt that contains the expiration date of your credit or debit card and shows that you made a transaction from Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015;

OR

Option (2): You may attach an original or a copy of your credit or debit card statement showing that you made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015. Before providing your statement or copy of your statement, please redact (meaning you may white-out or mark-over) information contained in your credit or debit card statement to prevent it from showing things like your account numbers, your other purchases, etc. The only information that is required to

show on your statement for purposes of making a claim under this Settlement is your name, address, and all of the details of your transaction from Pick-A-Part, including the date and amount of your purchase.

You may make only one claim regardless of whether you have made one or more than one eligible credit or debit card transaction. Accordingly, if you had more than one eligible transaction you only need to provide proof of either one receipt or one statement showing that you made one credit or debit card transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.

Although you may submit either the original or a copy of either your receipt or card statement, if you decide to send an original, it is encouraged that you make and keep a copy for yourself. We will not be responsible for original documents that are lost.

If you are mailing the Claim Form, your completed Claim Form (together with the required documentation) must be mailed to the following address **postmarked no later than [DATE]**:

[Settlement Administrator's Address]

You may also send your Claim Form (together with the required documentation) by facsimile to the following facsimile number 1-???-??-????, **by no later than 11:59 p.m. Pacific Time on [DATE]**.

You may also submit your claim by completing and submitting an electronic version of the Claim Form (and uploading and submitting the required documentation) on the internet at www.?????.com, **by no later than 11:59 p.m. Pacific Time on [DATE]**.

Please visit www.?????.com to get a copy of the Claim Form or to complete and submit the Claim Form on the internet.

If the Court approves the proposed Settlement and the decision becomes final, payments will be distributed no later than 60 days after the last day to submit Claim Forms or the Settlement Date, whichever is later. Please be patient.

**If I Submit a Valid and Timely Claim,
What Will Be The Amount of My Payment?**

Pick-A-Part will establish a non-reversionary cash fund in the amount of \$195,000 (the "Cash Fund"). After subtracting from the Cash Fund Class Counsel's attorneys' fees and costs, an enhancement payment to the Class Representative, and Administration Costs, the remaining amount (the "Net Cash Fund") will be divided by the total number of Settlement Class members who submit a valid and timely claim to determine each claiming Settlement Class member's pro-rata share (the "Pro-Rata Share"). In the event the Pro-Rata Share is equal to or exceeds \$250, each Settlement Class member who

submits a valid and timely claim will be mailed a check in the amount of \$250, to be paid from the Net Cash Fund. In the event the Pro-Rata Share is less than \$250, each Settlement Class Member who submits a valid and timely claim will be mailed a check in the amount of the Pro-Rata Share, to be paid from the Net Cash Fund.

If any residual funds from the Net Cash Fund remain after claims payments are made to the Settlement Class members, any and all such residual funds will be distributed *cy pres* to one or more 501(c)(3) charity[ies in the following shares]: [Insert approved charity[ies and respective shares].

What Am I Giving Up to Receive Settlement Benefits?

Unless you exclude yourself, you are a Class member, and that means you will be legally bound by all orders and judgments of the Court, and you will not be able to sue, or continue to sue Pick-A-Part Auto Wrecking or any of the other persons or entities referenced in the "Release by the Settlement Class" paragraph below, about the issues in this case. You will not be responsible for any out-of-pocket costs or attorneys' fees concerning this case if you stay in the Class.

Staying in the Class also means that you agree to the following release of claims, which describes exactly the legal claims that you give up:

Release by the Settlement Class. As of the Settlement Date, and except as to such rights or claims created by the settlement, Torres and each Settlement Class member who does not timely opt-out of the settlement forever discharge and release Pick-A-Part Auto Wrecking as well as its insurers, predecessors, successors, affiliates, and all of their officers, shareholders, directors, managers, members, partners, employees, attorneys, and agents, from any and all suits, claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of action, in law or equity, of whatever kind or nature, direct or indirect, known or unknown, arising out of the facts alleged in Plaintiff's Complaint from December 22, 2014 to October 28, 2015, concerning Pick-A-Part Auto Wrecking.

Can I Exclude Myself From the Settlement and What Will That Mean For Me?

If you don't want to receive benefits from this Settlement, but you want to keep the right to sue Pick-A-Part Auto Wrecking or any of the other persons or entities referenced in the "Release by the Settlement Class" paragraph above, about the issues in this case, then you must take steps to exclude yourself from the Settlement. To exclude yourself from the Settlement you must include your name, address, telephone number, and your signature on correspondence requesting that you be excluded as a Class member from *Cirena Torres, et al., v. Pick-A-Part Auto Wrecking, et al.*, Case No. 1:16-cv-01915-DAD-BAM. To be effective, you must mail your request for exclusion, **postmarked no later than [Opt-Out Deadline]**, to the Settlement Administrator at the following address:

[Settlement Administrator's Address]

If you request to be excluded from the Settlement, then: (a) you will not be a part of the Settlement; (b) you will have no right to receive any benefits under the Settlement; (c) you will not be bound by the terms of the Settlement; and (d) you will not have any right to object to the terms of the Settlement or be heard at the fairness hearing.

If I Don't Exclude Myself, Can I Sue for the Same Thing Later?

No. Unless you exclude yourself from the Settlement, you give up the right to sue Pick-A-Part Auto Wrecking and the other persons and entities referenced in the "Release by the Settlement Class" paragraph above, for the claims that this Settlement resolves. If you have a pending lawsuit against Pick-A-Part Auto Wrecking or any of the other persons or entities referenced in the "Release by the Settlement Class" paragraph above, for any of the claims that this Settlement resolves, speak to your lawyer in your case immediately. You must exclude yourself from this Settlement to continue your own lawsuit. Remember, the exclusion deadline is **[Opt-Out Deadline]**.

How Do I Tell the Court That I Don't Like the Settlement?

If you are a Class member, you can object to the Settlement if you do not like any part of it. You must give reasons why you think the Court should not approve it. You can also object to the Class Representative's application for service (or incentive) award. You can also object to Class Counsel's motion for attorneys' fees and costs. The Court will consider your views. To object, you must send a letter saying that you object to the proposed settlement of *Cirena Torres, et al., v. Pick-A-Part Auto Wrecking, et al.*, Case No. 1:16-cv-01915-DAD-BAM. Your letter must include all of the following:

- a. A reference at the beginning to this matter, *Cirena Torres, et al., v. Pick-A-Part Auto Wrecking, et al.*, Case No. 1:16-cv-01915-DAD-BAM
- b. Your full name, address, and telephone number.
- c. Proof of Class membership consisting of the original or a copy of either: (1) your customer receipt containing the expiration date of your credit or debit card showing that you made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015, or (2) a credit or debit card showing that you made a transaction at Pick-A-Part at any time during the period December 22, 2014 to October 28, 2015.
- d. A written statement of all grounds for your objection, accompanied by any legal support for such objection.
- e. Copies of any papers, briefs, or other documents upon which your objection is based.

f. A list of all persons who will be called to testify in support of your objection.

g. A statement of whether you intend to appear at the fairness hearing. If you intend to appear at the fairness hearing through counsel, your objection must also state the identity of all attorneys representing you who will appear at the fairness hearing.

h. Regarding any counsel who represents you or has a financial interest in the objection: (1) a list of cases in which such counsel and/or counsel's law firm have objected to a class action settlement within the preceding five years, and (2) a copy of any orders concerning a ruling upon counsel's or the firm's prior objections that were issued by the trial and/or appellate courts in each listed case.

i. A statement by you under oath that: (1) you have read your objection in its entirety, (2) you are a member of the Class, (3) states the number of times in which you have objected to a class action settlement within the five years preceding the date that you file your objection, (4) identifies the caption of each case in which you have made such objection, (5) authenticates any orders concerning a ruling upon your prior such objections that were issued by the trial and/or appellate courts in each listed case, attaching such orders to the statement; and (6) states that you will personally appear at the fairness hearing.

You must mail your objection to the Court, Class Counsel, and Pick-A-Part's Counsel, addressed to each of the respective addresses listed below. Objections to the Settlement must be postmarked no later than [60 days after the first date of posting the Full Notice to the Class]. Objections to the Class Representative's application for service (or incentive) award, and/or to Class Counsel's motion for attorney's fees and costs must be postmarked no later than [21 calendar days before the fairness hearing].

COURT	CLASS COUNSEL	PICK-A-PART'S COUNSEL
Clerk of the Court for the Hon. Dale A. Drozd United States District Court for the Eastern District Of California, Fresno Division 2500 Tulare Street Courtroom 5, 7th floor Fresno, CA 93721	Chant Yedalian CHANT & COMPANY A Professional Law Corporation 1010 N. Central Ave. Glendale, CA 91202	Ted A. Galfin LAW OFFICES OF TED A. GALFIN 9160 Irvine Center Drive, Suite 200 Irvine, CA 92618

**What's the Difference Between Objecting to the Settlement
And Excluding Yourself From the Settlement?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can object only if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the Settlement no longer affects you.

What Happens if I Do Nothing At All?

If you do nothing, you will remain in the Class and be bound by the terms of the Settlement and all of the Court's orders. This also means that if the proposed Settlement is approved by the Court, you agree to the release of claims set forth under the heading "What Am I Giving Up to Receive Settlement Benefits?" above, which describes exactly the legal claims that you give up. You will not be responsible for any out-of-pocket costs or attorney fees concerning this lawsuit if you remain in the Class.

Do I Have a Lawyer in the Case?

The Court appointed a lawyer to represent you and other Class members. This lawyer is called Class Counsel. Class Counsel is Chant Yedalian of Chant & Company A Professional Law Corporation. You will not be charged for this lawyer. If you want to be represented by your own lawyer, you may hire one at your own expense.

How Will Class Counsel and the Class Representatives Be Paid?

Class Counsel will ask the Court to approve payment of up to \$65,000 for attorney's fees, to be paid from the Cash Fund, plus an award of Class Counsel's litigation costs of up to \$3,000, also to be paid from the Cash Fund. The fees and costs would pay Class Counsel for investigating the facts, prosecuting the lawsuit, negotiating the Settlement, and implementing the Settlement. Class Counsel will also ask the Court to approve payment of up to \$4,000 to Cirena Torres, to be paid from the Cash Fund, for her services as a Class Representative.

When and Where Will the Court Decide Whether to Approve the Settlement?

The Court will hold a fairness hearing at [time] on [date], at 2500 Tulare Street, Fresno, CA 93721, in Courtroom 8, 6th floor, before Magistrate Judge Barbara A. McAuliffe. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate, and whether the Class Representative and Class Counsel have fairly, adequately, reasonably and competently represented and protected the interests of the Class. If there are objections, the Court will consider them. After the hearing, the Court

will decide whether to approve the Settlement, including fees and costs to Class Counsel and service payment to the Class Representative. Class Counsel does not know how long these decisions will take.

Do I Have to Come to the Fairness Hearing?

No. Class Counsel will answer any questions that the Court may have. But you are welcome to come to the hearing at your own expense. You may also pay your own lawyer to attend, but it's not necessary.

May I Speak at the Fairness Hearing?

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear in *Cirena Torres, et al., v. Pick-A-Part Auto Wrecking, et al.*, Case No. 1:16-cv-01915-DAD-BAM." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be sent to the Clerk of the Court, Class Counsel, and Pick-A-Part's Counsel, at the three addresses listed above under the heading "How Do I Tell the Court That I Don't Like the Settlement?" To be timely, a Notice of Intention to Appear concerning Class Counsel's motion for an award of attorney's fees and costs and/or the Class Representative's motion for service (or incentive) award must be postmarked no later than [Deadline, 21 calendar days before the fairness hearing]. To be timely, a Notice of Intention to Appear concerning any other matter about the Settlement must be postmarked must be postmarked no later than [Deadline, 60 calendar days the first date of posting the Full Notice to the Class].

You cannot speak at the fairness hearing if you exclude yourself from the Class.

**Are There More Details About the Settlement
and How Do I Get More Information?**

This notice summarizes the proposed Settlement. More details are contained in a Settlement agreement that you may obtain through the Settlement Administrator. For more information, you may: (1) visit the website www.?????.com; (2) write the Settlement Administrator at the following address: [insert]; or (3) call the Settlement Administrator at 1-???-??-???